

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into by and between Plaintiff, James Larry McLaughlin (“McLaughlin”), individually and derivatively, and Defendant, Sandpiper Towers Condominium Association, Inc. (“Association”). These parties will be referred to as indicated above, individually as a “Party,” or collectively as the “Parties.”

RECITALS

WHEREAS, the McLaughlin is a unit owner at the Association and has asserted certain derivative claims against the Association in a certain lawsuit, styled *McLaughlin v. Sandpiper Towers Condominium Association, Inc.* in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Case No. 05-2023-CA-041603 (“Lawsuit”).

WHEREAS, McLaughlin alleges in his Lawsuit that the special assessment for the installation of the fire sprinkler system, a financial audit, and security services approved on June 21, 2023 (“Special Assessment”) was improper because the Association did not properly notice that meeting at which the Board approved the special assessment and that a vote of 75% of the membership was required to pass such a special assessment.

WHEREAS, on June 29, 2023, McLaughlin sent a letter titled Notice of Intention to File Shareholders’ Derivative Action Pursuant to Florida Statute § 607.07401 and Chapter 718 to the Association which included a demand section titled “Improper New Special Assessments” in which McLaughlin disputed the notice related to the Special Assessment and sought to invalidate or cancel the Special Assessment.

WHEREAS, the Parties have reached an agreement and desire to amicably resolve and settle all claims in the Lawsuit by virtue of the terms and conditions set forth in this Agreement, which the Parties acknowledge is entered into freely, voluntarily, and without coercion or duress

of any kind.

WHEREAS, this Agreement represents an amicable settlement of disputed claims. This Agreement is not and shall not be construed in any manner as an admission of any fault, liability, or wrongdoing whatsoever but is rather for purposes of resolution and finality; and

NOW THEREFORE, for the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. McLaughlin's counsel shall be paid the total sum of \$10,000.00 ("Attorney's Fees Settlement Payment") for Plaintiff's attorneys' fees and costs incurred in the Lawsuit. The Settlement Payment shall be paid to McLaughlin's counsel of record in this action within fifteen (15) days following the Effective Date of this Agreement, as hereinafter defined. The Attorney's Fees Settlement Payment shall be in full and final satisfaction of the Lawsuit and any and all Claims of the McLaughlin against the Association as hereinafter defined in paragraph 7, below, including without limitation any claim of McLaughlin to attorneys' fees and costs incurred in the Lawsuit. The Attorney's Fees Settlement Payment shall be payable to and delivered to the McLaughlin's counsel of record in the Lawsuit, Erik Perez of Perez Mayoral, P.A., 999 Ponce De Leon Blvd, Suite 705, Coral Gables, Florida 3313. McLaughlin, individually and derivatively, agrees that he is not entitled to any additional compensation whatsoever from the Association for the claims released as part of this Agreement, as defined in Paragraph 7, below.

2. Within five (5) business days of bank clearance of the Attorney's Fees Settlement Payment, or court approval of this settlement agreement, whichever occurs later, the Lawsuit shall be dismissed with prejudice. The dismissal shall be accomplished by the execution and filing of a joint stipulation for dismissal of the Lawsuit with prejudice with the Court reserving jurisdiction

to enforce this Agreement and enter such orders as may be necessary to fully effectuate this Agreement, including those orders specifically referenced herein. Except for the Attorney's Fees Settlement Payment as part of this Agreement, each party shall bear its own attorneys' fees and costs.

3. This Agreement represents an amicable settlement of disputed claims and is made solely for the purposes of avoiding the cost and expense of litigation, for the peace of mind of the Parties and to bring the Lawsuit to a conclusion with finality. This Agreement is not and shall not be construed in any manner as an admission of any fault, liability, or wrongdoing whatsoever on the part of the Association.

4. Further, the Parties agree that the Association will seek court approval of this Agreement, and that such court approval is a condition precedent to the Effective Date of this Agreement. Upon motion and hearing thereon, a preliminary approval order shall, at a minimum, find that (i) this Agreement is fair, reasonable, and in the best interests of the Association and (ii) that pursuant to Section 718.111, Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure, the Association has the authority to settle the Lawsuit as herein provided.

5. This Agreement shall become effective and binding thirty-five (35) days after the trial court's issuance of a final order approving this Agreement, which final order satisfies the conditions of this Agreement, and for only so long as a Notice of Appeal has not been filed by any interested person ("Effective Date"). If a Notice of Appeal is filed, then this Agreement shall not be deemed effective and valid until the appeal has been finally determined in favor of the Parties and after the Mandate has issued. Further, this Agreement shall be deemed null and void if (i) the Court declines to approve this Agreement; or (ii) in the event of an appeal, the District Court of Appeal enters an opinion that does not affirm the entirety of the final order. However, once this

Agreement has been executed by all Parties, pending the Effective Date, no party may withdraw from this Agreement or modify or change any provisions hereof without the written consent of all of the Parties hereto, and each of the Parties shall fully and vigorously jointly support the approval of this Agreement by the trial court and through any appeal, should any appeal be filed. So long as all Parties comply with the provisions of this paragraph, no Party shall have any liability whatsoever arising out of, or connected to, the negotiations and execution of this Settlement Agreement and all such discussions leading up to the Agreement and resolution, including the sums and allocations agreed to herein and subsequent motions and related oral arguments addressed herein shall be and remain inadmissible settlement discussion. No party shall be entitled to indemnification for their fees and costs should any Court not approve this Agreement.

6. Within seven (7) business days of the full execution of this Agreement, the Parties shall file a Joint Motion Seeking a Preliminary Order Approving Settlement Agreement and Release, the form of which is attached hereto as Exhibit "A."

7. With the exception of the rights and obligations arising from this Agreement, McLaughlin (all references to the McLaughlin in this paragraph and paragraph 1, above, shall include, McLaughlin individually, and McLaughlin derivatively as a member/owner of and on behalf of all members of the Association, and each and all of their respective spouses or partners, children, minor children, family members, heirs, executors, administrators, agents, representatives, successors in interest, entity-members, agents, property management companies and property managers, representatives, insurers, attorneys, parent, subsidiary and related entities and any predecessors, successors or assigns of any of these parties to which the Association could be liable) agree to forever release and discharge the Association (all references to the Association in this paragraph shall include the Association and all of its former and current: officers, directors,

board members, committee members, employees, shareholders, members, agents, property management companies, property managers, representatives, insurers including but not limited to Continental Casualty Company (CNA), reinsurers, attorneys, parent, subsidiary and related entities and any predecessors, successors or assigns of any of these parties for which McLaughlin could claim or attempt to claim liable) of and from any and all manner of claims, counterclaims, cross-claims, third party claims, derivative claims, controversies, causes of action, action and actions, class actions, collective actions, suits, debts, dues, sums of money, reimbursement, indemnification, rights, obligations, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, guarantees, promises, liens, notes, variances, trespasses, charges, damages, judgments, executions, claims, disputes, claims for attorneys' fees, claims for costs or expenses, and demands, whatsoever, whether in law or in equity, known or unknown, and both past and present which McLaughlin ever had, now has, or hereinafter can, shall or may have against the Association from the beginning of the world through the Effective Date of this Agreement which in any way arise out of the allegations and claims contained in the Lawsuit, including but not limited to, all claims and allegations related to the special assessment passed on June 21, 2023, the installation of the fire sprinkler system, and any and all notices and notice requirements for the special assessment meeting on June 21, 2023 and with respect to the letter titled "Notice of Intention to File Shareholders' Derivative Action Pursuant to Florida Statute § 607.07401 and Chapter 718" ONLY the section titled "Improper New Special Assessments" (and related relief "to invalidate or cancel the improper newly passed special assessments that do not comply with Florida statute" and "[t]he fire marshal required the Board to hire a security service while the fire malfunction was being repaired. After the repairs, the Board kept the security service company at an expensive rate without necessity or approval from the members.") (all collectively

referred to as "Claims"). All other unrelated allegations and claims asserted in the letter titled "Notice of Intention to File Shareholders' Derivative Action Pursuant to Florida Statute § 607.07401 and Chapter 718" shall survive this Agreement and McLaughlin individually as well as derivatively may assert those claims in a later proceeding. McLaughlin covenants and agrees not to sue the Association for any of the Claims released hereby and agree that if he does so he shall be in material breach of this Agreement. McLaughlin represents and warrants that he has the authority to enter into this Agreement. McLaughlin represents and warrants that he has the full and complete authority to release any and all Claims as provided in this paragraph and also represents and warrants, subject to Court approval, that he has the full and complete authority to release any and all Claims as provided in this paragraph. McLaughlin also represents and warrants that there has been no assignment of any Claims against the Association, and that there are no other parties who are entitled to the Attorney's Fees Settlement Payment or to assert any of the Claims released hereby. To reiterate, by entering into this Agreement, McLaughlin retains the right to initiate a derivative shareholder action for any other claims presented in the letter titled "Notice of Intention to File Shareholders' Derivative Action Pursuant to Florida Statute § 607.07401 and Chapter 718," (except for the allegations and claims in the section titled "Improper New Special Assessments" and related relief including "to invalidate or cancel the improper newly passed special assessments that do not comply with Florida statute" and "[t]he fire marshal required the Board to hire a security service while the fire malfunction was being repaired. After the repairs, the Board kept the security service company at an expensive rate without necessity or approval from the members" which is part of this release, and the Claims released by this Agreement), and without waiving that right including, but not limited to other, unrelated alleged director's malfeasance, breach of fiduciary duty, improper enforcement of covenants, fraud, breach of the Florida Chapter 718, breach of the

Declaration of the Association, and all other claims that have arisen that are not released by this Agreement or may arise in the future.

8. The Association also hereby fully and forever releases McLaughlin for its attorneys' fees and costs in the Lawsuit. McLaughlin acknowledges and agrees he is not released, discharged, excused, absolved or otherwise from ongoing compliance with the Association's governing documents or applicable Florida Statutes or other governing laws, restrictions, covenants, rules and regulations, codes and ordinances, all of which as may be amended from time to time, including without limitation, the obligation to pay assessments (regular, special or otherwise), including the special assessments outlined in or which form the basis of the Lawsuit, and any lien in favor of the Association created by the governing documents and pursuant to Ch. 718, Fla. Stat., and governing law. This is a material provision in this Agreement which the Association has materially relied upon in entering into this Agreement. McLaughlin agrees to pay the special assessments at issue in the Lawsuit and which form the basis for his claims and exhibits attached to the Complaint.

9. Should any provisions of this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The Parties agree that failure of any Party to insist upon strict performance of this Agreement shall not be construed as a waiver of any rights to enforce this Agreement. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default.

10. This Agreement represents the full, complete and entire agreement between the Parties concerning the Lawsuit and any Claims arising out of the same. The Parties agree that there are no other discussions, statements, representations or agreements leading up to or representing

the terms of this Agreement that are not expressly set forth herein. Any such prior discussions, promises, statements, representation or agreements leading up to or representing the terms of this Agreement if not specifically expressed in this Agreement, are void and have no effect. McLaughlin agrees and acknowledges he has not relied on any such items and that the Association (as defined in paragraph 7, above) is not responsible for such prior discussions, promises, statements, representation or agreements leading up to or representing the terms of this Agreement, if any. McLaughlin waive any rights or Claims (as defined in paragraph 7, above) from any such discussions, statements, representations or agreements leading up to or representing the terms of this Agreement. This Agreement may only be modified in writing, signed by all of the Parties.

11. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Florida. Jurisdiction for any action arising from this Agreement shall be solely and exclusively in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida.

12. In the event that any Party to this Agreement breaches this Agreement, including any provision thereof, and the other Party seeks to enforce it, the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs, including appellate attorneys' fees and costs.

13. The Parties have jointly participated in the drafting and negotiating this Agreement, and no rule of construction shall be applied that construes any provision against the drafter(s) hereof. This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any other party based on attribution of drafting to any party. The terms of this Agreement are executed without reliance upon any representations

except those contained herein, and the Parties have carefully read this Agreement and sign the same of their own free will.


14. The Parties acknowledge and agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable. The Parties further acknowledge and agree that: (i) each Party has had the opportunity to consult with such professionals, experts and legal counsel of its choice as such Party may have desired with respect to all matters settled and resolved herein; (ii) each Party has participated fully in the negotiation and preparation of this Agreement; and (iii) each Party has carefully reviewed this Agreement and is entering into same freely.

15. Any true fully executed copy of this Agreement, including any fully executed facsimile or electronic copy hereof, shall be deemed to constitute an original of the same. This Agreement may be executed in counterparts. Executed counterparts may be exchanged and delivered through electronic mail or facsimile transmissions, and each counterpart shall be treated as an original for all purposes. All counterparts shall, collectively, constitute one Agreement, provided, however, that this Agreement shall not be effective or enforceable until all Parties named herein shall have executed it. The Parties agree to execute or endorse any and all other instruments, papers, or documents that may be reasonably required to carry out or to fully effectuate this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

**SANDPIPER TOWERS
CONDOMINIUM
ASSOCIATION, INC.**

DocuSigned by:
Signature: 

Name: Scott Feighner

As its: President
Date: 10/31/2023

**JAMES MCLAUGHLIN, individually and
derivatively**

Signature: _____

Date: _____

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

**SANDPIPER TOWERS
CONDOMINIUM
ASSOCIATION, INC.**

Signature: _____

Name: _____

As its: _____

Date: _____

**JAMES MCLAUGHLIN, individually and
derivatively**

Signature: *James Barry McLaughlin*

Date: 10-31-2023
