

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA**

**BAREFOOT BEACH RESORT OF INDIAN
SHORES CONDOMINIUM ASSOCIATION,
INC., a Florida non-for-profit corporation,**

Plaintiff,

vs.

CASE NO.: 2012-13623-CI-19

**SUN VISTA INDIAN PASS, LLC, owner;
Unknown Tenant(s),**

Defendant(s).

MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement ("*Agreement*") is entered into as of the Effective Date, by and between BAREFOOT BEACH RESORT OF INDIAN SHORES CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation ("*Association*"), SUN VISTA INDIAN PASS, LLC, A Florida limited liability company ("*Sun Vista*"), and BAREFOOT HARBOR NORTH, LLC, a Florida limited liability company ("*Barefoot*"). The Association, Sun Vista and Barefoot may from time to time be referred to collectively as the "*Parties*".

RECITALS

WHEREAS, Sun Vista was the developer of a condominium now operated by Association;

WHEREAS, Sun Vista retained certain properties described herein and subsequently transferred said properties to Barefoot;

WHEREAS, Association claimed to be owed condominium association dues from Sun Vista and/or Barefoot;

WHEREAS, Barefoot and Sun Vista claimed that the condominium association dues were improperly calculated since the inception, and that therefore Barefoot and Sun Vista overpaid condominium association dues to Association;

EXHIBIT B

WHEREAS, the parties have reached a mediated settlement agreement and desire the terms herein to be enforced.

AGREEMENTS

1. Accuracy of Recitals; Consideration:

1.1 The parties acknowledge and agree that the Recitals set forth above are true and correct, and constitute good and sufficient consideration for the execution and delivery of this Agreement.

1.2 The parties further agree that the Recitals are incorporated herein by reference.

2. Entry of Final Judgment:

2.1 The parties stipulate to the entry of the Final Declaratory judgment attached hereto as Exhibit "A" ("**Final Judgment**").

2.2 Each and every provision of this Agreement is contingent upon the Court entering the Final Judgment.

2.3 Each of the parties will use their utmost good faith efforts to have the Court enter the Final Judgment.

2.4 The Effective Date of this Agreement shall be the same date that the Court enters the Final Judgment ("**Effective Date**").

3. Conveyances:

3.1 Within 30 days after the Effective Date, Barefoot will convey to the Association, via quitclaim deed, with no warranties, guarantees or assurances of any kind or description:

(a) 19417 Gulf Blvd C-3, Indian Shores, Florida 33785 a/k/a the Club House along with all structures and fixtures attached thereto, and

(b) 19417 Gulf Blvd C-2, Indian Shores, Florida 33785 a/k/a the Gazebo along with all structures and fixtures attached thereto.

(c) A copy of these quitclaim deeds is attached hereto as Exhibit 3.1.

3.2 Within 30 days after the Effective Date, Barefoot will convey to the Association a non-exclusive easement to the fishing dock ("**Fishing Dock**") located in the Barefoot Beach Resort of Indian Shores Condominium community ("**Condominium**").

(a) The easement is granted with no warranties, guarantees or assurances of any kind or description.

(b) A copy of the easement is attached hereto as Exhibit 3.2 ("**Easement**").

3.3 Within 30 days after the Effective Date, Barefoot will convey to the Association an assignment of all of Barefoot's right, title and interest in and to the Fishing Dock, conditioned

upon approval by the lessor of the submergible land lease, to *"reconfigure the use of the docks"*¹ located adjacent to the Condominium seawall.

(a) The assignment is granted with no warranties, guarantees or assurances of any kind or description.

(b) All boat slips and respective and corresponding docks located in the Condominium (*"Boat Slips"*) will retain an easement running with the land to use and enjoy the fishing dock.

3.4 Within 30 days after the Effective Date, Barefoot will convey to the Association an assignment of all of Barefoot's right, title and interest in and to the two (2) boat slips located directly next to the Fishing Dock depicted on the plat of the Condominium.

(a) These boat slips lie directly adjacent to and on each side of the Fishing Dock.

(b) The assignment is granted with no warranties, guarantees or assurances of any kind or description.

3.5 Within 30 days after the Effective Date, Barefoot will convey to the Association an assignment of all of Barefoot's right, title and interest in and to the sea wall, conditioned upon approval by lessor of the submergible land lease to assign rights to the sea wall and to *"reconfigure the use of the docks"* located adjacent to the Condominium seawall.

3.6 All costs and expenses relating to the conveyances delineated in this section 3 shall be borne solely and completely by the Association. These shall include, without limitation, recording costs, title insurance, documentary stamps, closing fees and attorney fees necessitated by drafting any conveyance instrument referenced in this section 3. The Association will undertake drafting the conveyance instruments referenced in this section 3 and submit the same to the other parties herein for approval. The parties will use their utmost good faith to resolve any and all drafting issues.

3.7 All conveyances will be transferred free of any liens and outstanding taxes that have come due and owing. Association will be responsible for any property taxes that have accumulated but have not come due as of the date of transfer.

4. Association's obligations to Barefoot:

4.1 Each of the parties agrees that all of the remaining twenty (20) boat slips shall remain for the exclusive use, possession and benefit of Barefoot (*"Boat Slips"*).

4.2 The Association will lease all of the Boat Slips still owned by Barefoot commencing thirty seven (37) months from the Effective date of this agreement and terminating sixty (60) months from the Effective Date of this agreement at a rate of \$200 per Boat Slip per month.

¹ "Reconfigure the use of the fishing docks" means changing the use of docks to condominium use and the number of docks/slips from 18 to 22, convert use from apartments to condominiums, and transferring the seawall and/or adjacent land from Barefoot to Association.

Rent payments will be remitted to Barefoot on the first day of each month during the term of the lease, beginning with the thirty seventh (37) month, without the necessity of demand.

4.3 Barefoot retains the right to terminate the lease and sell any individual Boat Slip at any time and by providing Association with fifteen (15) days prior written notice to the Association. The Association will receive a prorated credit from the next month's rent if any Boat Slip is sold mid-month. During the period of the lease, Barefoot may take any action to advertise, sell, and show the Boat Slips to potential buyers, in its sole and absolute discretion.

4.4 Association must cooperate with Barefoot and all city, county, state, and federal agencies to assist Barefoot in maintaining its submergible land lease, including but not limited to signing all documents that would otherwise be necessary for Barefoot to maintain its submergible land lease and Boat Slips.

5. Association's Payment to Barefoot:

5.1 Within 30 days after the Effective Date, the Association will pay to Barefoot, the sum of One Hundred Thousand and No/100 (\$100,000) Dollars ("*The Payment*").

(a) The Payment shall be in the form of certified funds or wire transfer.

(b) The Payment shall be delivered to Englander Fischer Escrow Account, 721 First Avenue North, St. Petersburg, FL 33701.

(c) Should the Association fail to timely pay Barefoot, Barefoot is entitled to have the Final Judgment vacated, reinstate all of its claims and defenses, and take any further action against the Association.

6. Mutual Release:

6.1 Each of the Parties and their respective employees, agents, executors, administrators, personal representatives, heirs, successors, assigns, and attorneys, do hereby mutually release each other from any and all claims and demands, past, present or future, known or unknown, and all manner of action and actions, causes of action, suits, administrative proceedings, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, torts, trespasses, damages, judgments, executions, warranties, claims and demands whatsoever, in law or in equity, which either party and its respective heirs, executors, administrators, agents, distributees, beneficiaries, successors in interest and assignees, ever had, now has or in the future may have, by reason of any matter, cause or things whatsoever from the beginning of the world to the day of the date of these presents, arising out of any business relationships between them, including without limitation the claims made or which could have been made in this litigation. This release is not intended to include any claims or causes of action arising out of the continuing and executory obligations delineated in this Agreement.

6.2 This Settlement Agreement is in full and final settlement of all claims relating in any manner to the relationship of the parties, contains the entire agreement between the parties with regard to the matters addressed herein, and shall be binding upon and inure to the benefit of the employees, agents, executors, administrators, personal representatives, heirs, successors, assigns, attorneys and other representatives of each.

6.3 The Association waives any and all dues or assessments that are owed or may become due to the Association until thirty (30) days after the Effective Date.

6.4 Barefoot and the Association have agreed to each pay one half of the cost of the mediation giving rise to this Agreement.

6.5 Save and except for the expenses delineated in drafting the instruments referenced in section 3 of this Agreement, each party will bear their own attorney fees and costs.

7. Authority:

7.1 By executing this Agreement, the Parties and their respective representatives represent to each other Party that they have full authority to execute this Agreement either on their own behalf or on behalf of their principal as the case may be.

8. Confidentiality:

8.1 Except as disclosure is required by law, the terms and conditions of this Agreement shall remain confidential among the Parties. Provided however, the Parties may discuss this Agreement with their attorneys, business partners, boards of directors, accountants and with such other persons as may have a true and legitimate need to know of the contents hereof. The terms and conditions of this Agreement shall not be disclosed to third parties who have no involvement in this dispute or who have no legitimate need to know of the information set forth herein.

9. Miscellaneous:

9.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

9.2. This Agreement may not be changed orally, but only by an agreement in writing signed by all parties hereto. Nothing in this Agreement is intended, nor shall it be construed, to give any other person or entity not a party to this Agreement any right, remedy, claim, or defense under or by reason of this Agreement.

9.3. This Agreement supersedes all other previous oral or written proposals or negotiations between the parties relating to the subject matter of this Agreement.

9.4 This may be executed in counterparts, each of which shall be treated as an original. This Agreement shall become binding upon the parties when all parties have executed at least one counterpart of the Agreement.

9.5 Should it become necessary to enforce or construe any provision of this Agreement, the prevailing party in any such action or proceeding shall be entitled to reasonable attorney fees and paralegal fees, through all appeals, if any.

9.6 The parties acknowledge, represent, warrant and confirm to each other that: (a) they have carefully read and understand the effect of this Agreement and have had the assistance of separate legal counsel in carefully reviewing, discussing and considering all terms hereof; (b) their execution of this Agreement is not based on their reliance on any representation, understanding, or agreement not expressly set forth herein, and neither party nor any counsel have made any representations which are not expressly set forth herein; (c) each party hereby executes this Agreement as their free and voluntary act, without any duress, coercion or undue influence exerted by or on behalf of any other party; (d) this instrument embodies the entire agreement regarding the respective rights, obligations, and liabilities of the parties and supersedes all prior agreements and understandings, if any, relating to the subject matter herein.

9.7 The parties hereto and their legal counsel agree to cooperate with one another and to assist one another to effectuate the intention of this Agreement, particularly with regard to the prompt preparation and approval of all reasonably necessary instruments drawn ancillary hereto.

9.8 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Facsimile or PDF signatures shall suffice to bind the parties.

9.9 Should any portion of this Agreement be found to be illegal, all other provisions contained herein shall remain enforceable, unless one of the contingencies described herein occurs making the entire Agreement void ab initio.

9.10 It is the intent of Barefoot to sell the Boat Slips, but only at a time and place in Barefoot's sole and exclusive discretion.

BAREFOOT BEACH RESORT OF
INDIAN SHORES CONDOMINIUM
ASSOCIATION, INC.

BAREFOOT HARBOR NORTH, LLC

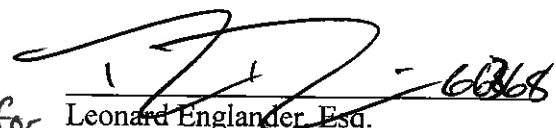


By: Bruce Bornick, Authorized Agent
Its President



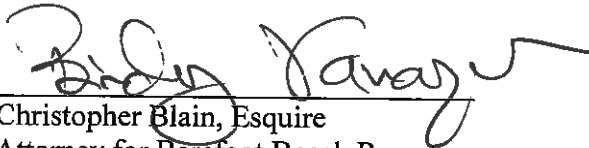
By: Steve Gianfilippo
Its Member

SUN VISTA INDIAN PASS, LLC


for Leonard Englander, Esq.
Attorney for Sun Vista Indian Pass, LLC
and Barefoot Harbor North, LLC


By: Steve Gianfilippo
Its: Member

Richard Zacur, Esquire
Attorney for Barefoot Beach Resort
of Indian Shores Condominium
Association, Inc.


for Christopher Blain, Esquire
Attorney for Barefoot Beach Resort
of Indian Shores Condominium
Association, Inc.