



**Crescent Beach Condominium Association, Inc.
October 3, 2023
Private Board Meeting between the Board of Directors
& Attorney Steven Falk, ESQ**

1. CALL TO ORDER

The meeting was called to order by President Jeff Patterson at Crescent Beach Condominium Social Room at 9:00 a.m.

2. CALL OF ROLL

The following five directors were in attendance as well as Mgr. Pam Carey

<i>Jeff Patterson</i>	<i>- President</i>	<i>- Via Zoom</i>
<i>Peggy Frazier</i>	<i>- Vice President</i>	<i>- Via Zoom</i>
<i>Pete Brown</i>	<i>- Treasurer</i>	<i>- In Person</i>
<i>Rick Burkhardt</i>	<i>- Secretary</i>	<i>- In Person</i>
<i>Jack Hillegas</i>	<i>- Director</i>	<i>- Via Phone</i>

3. PROOF OF NOTICE OF MEETING

Pam Carey stated the 48-hour notice was posted on Friday September 29th 2023 in the lobby bulletin board and emailed to all owners as required by Florida Statutes.

4. AGENDA:

Discuss Mediation Settlement Agreement:

The Pre-Suit Mediation between the Niermans and the Association was discussed.

The settlement agreement that has been legally executed by both parties is annexed as Exhibit 1.

5. ADJOURNMENT:

There being no further business brought before the Board, Jeff Patterson asked for a motion to adjourn the meeting.

Motion was made by Rick Burkhardt, seconded by Peggy Frazier.

Motion carried unanimously in favor to adjourn the meeting.

Meeting was adjourned at 9:35am.

A handwritten signature in black ink, appearing to read "Rick Burkhardt", written over a horizontal line.

Secretary

27 OCT 2023

Date

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is made and entered into by and between Todd and Carolyn Nierman (hereinafter "the Owners"), and Crescent Beach Condominium Association (hereinafter the "Association") on the date of the last signature below (the "Effective Date"). The Owners and Association are sometimes referred to herein individually as "Party," or collectively as "Parties."

RECITALS

WHEREAS, the Owners own a condominium unit located at 100 N. Collier Blvd., Unit 1203, Marco Island, FL 34145 ("Unit 1203") and part of the Crescent Beach Condominium Association which is subject to the Amended and Restated Declaration of Condominium recorded in the Official Records of Collier County at OR Book 5741 Page 3807 and a subsequent amendment recorded in the Official Records of Collier County at OR Book 6231 Page 154 (collectively hereinafter referred to as the "Declaration").

WHEREAS, the Owners and the Association are parties to a condominium dispute regarding whether the Owners violated Section 11.3(C) of the Declaration by installing tile in the bedrooms of Unit 1203.

WHEREAS the Parties agree that it is in their mutual interests to avoid the uncertainty, expense, and time of further dispute regarding potential litigation of the dispute by reaching a settlement and to amicably resolve all matters between them.

NOW, THEREFORE, in consideration of the mutual covenants, promises, representations, warranties, and conditions to be performed by the Parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties expressly, knowingly, and voluntarily agree as follows:

1. Fine Payment and Ratification. The Owners' counsel shall pay to the Association \$1,000.00 currently held in her firm's trust account no later than 3 business days after the Association's Board of Directors have ratified this Agreement. The Association's Board of Directors shall vote on ratification within 7 business days of the date of this Agreement. Jeff Patterson, Richard Burkhart and the Association's legal counsel shall recommend that the Association's Board of Directors ratify this Agreement.

2. Restoration of Condominium Amenity Access. Upon receipt of the \$1,000.00, the Association shall immediately revoke the prior suspension of the Owners use and rights to the common elements, including all recreational facilities and social room.

3. Reconsideration of Amendment to 11(C). Within 90 days after the date of this Agreement, the Association's Board of Directors shall submit an amendment to Section 11.3(C) of the Amended and Restated Declaration of Condominium to a

membership vote, which amendment shall permit the installation of hard surface flooring throughout the entirety of units in Crescent Beach.

If the membership approves the amendment, the Owners shall be permitted to keep tile in the bedrooms in Unit 1203, subject to providing the Association with a photograph that establishes that a sound dampening underlayment was installed that complies with the Association's current specifications.

If the membership does not approve the amendment, the Owners shall be required, within 60 days of the date of disapproval, to install wall-to-wall carpeting over high quality padding that is over the tile in the bedrooms in Unit 1203, that complies with the Association's current specifications. In addition, the Owners shall be required to remove the tile in the bedrooms in Unit 1203 prior to the conveyance of Unit 1203 to a party other than one of the Owners.

Notwithstanding the foregoing, the Owners shall not be required to remove the tile in the bedrooms in Unit 1203 if the membership, following the initial unsuccessful vote (but prior to conveyance of Unit 1203 to a party other than one of the Owners), subsequently approves an amendment that permits installation of hard surface flooring throughout the entirety of units in Crescent Beach.

4. Release of Liability for Injury. The Parties agree that the Association will not be responsible for any injuries that might arise from the placement of carpet upon the tile in the bedrooms of Unit 1203.

5. Mutual Release. By entering into this Agreement, the Association and the Owners waive all claims they may have or could have asserted against the other party and the Association's directors, officers, employees and agents.

6. Compromise and Settlement. This Agreement is a full and complete compromise of all claims, demands, causes of action, damages, and disputes, which were or could have been asserted by the parties and their respective agents, shareholders, members, directors, employees, affiliates and legal representatives regarding the dispute. No Party hereto admits to any liability or wrongdoing in connection with the allegations in the dispute, any such liability or wrongdoing being expressly denied. The fact that mutual covenants and/or monies are exchanged is and should not be construed as an admission of liability by either Party to the dispute.

7. Miscellaneous.

a) *Successors and Assigns.* This Agreement shall extend to, inure to the benefit of, and be binding upon the Parties hereto and their respective managers, members, directors, officers, shareholders, partners, proprietors, agents, servants, employees, representatives, affiliates, parents, subsidiaries, predecessors, and permitted successors and assigns.

- b) *Entire Agreement.* This Agreement constitutes the entire agreement among the Parties and supersedes all prior negotiations and agreements, whether written or oral. This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by an instrument in writing duly executed by authorized representatives of each of the Parties hereto.
- c) *Severability.* If any provision of this Agreement is judicially determined to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining provisions.
- d) *Headings.* The paragraph headings contained in this Agreement are provided for convenience only and shall not be considered in the interpretation and construction of this Agreement.
- e) *Execution of Other Documents.* The Parties agree to cooperate to affect the intent and terms of this Agreement and agree to execute such any and other papers or documents required or necessary to affect the terms and obligations contained in this Agreement.
- f) *Voluntary Agreement.* The parties understand and expressly agree that this Agreement has been freely and voluntarily entered into and that no oral or written representations or promises of any kind, unless specifically contained in this Agreement have been made or relied upon by any party.
- g) *Waiver.* The failure of any Party at any time or times to demand strict performance by the other Party of any of the terms or conditions of this Agreement shall not be construed as a permanent or continuing waiver or relinquishment thereof and each may at any time demand strict and complete performance by the other of said terms and conditions.
- h) *Enforcement.* In the event either Party has to expend attorney's fees and/or any other costs to enforce this Agreement, or any litigation arising out of or related to this Agreement, then the prevailing party shall be entitled to an award of its attorney's fees and costs, inclusive of any collection or appellate attorney fees and costs.
- i) *Execution.* This Agreement may be executed in duplicate and may be made in counterparts delivered by e-mail, fax, or mail.
- j) *Governing Law/Venue.* This Agreement shall be construed in accordance with Florida law. The Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida shall retain exclusive jurisdiction and venue to enforce the terms of this Agreement.

IN WITNESS WHEREOF AND INTENDING TO BE BOUND, the parties hereby execute this Agreement through their duly authorized representatives.

By: _____ Date: _____
Todd Nierman

By: _____ Date: _____
Carolyn Nierman

Crescent Beach Condominium Association

By: Jeffrey W Patterson _____ Date: 9/27/23 _____
Its:

By: _____ Date: _____
Its:

Woodward Pires & Lombardo, PA

By: _____
Lenore T. Brakefield, Esq.
Attorney for Todd and Caryon Nierman

Falk Law Firm, P.A.

By: _____
Steven M. Falk, Esq.
Attorney for Crescent Beach Condo Association

By: _____ Date: _____
Todd Nierman

By: _____ Date: _____
Carolyn Nierman

Crescent Beach Condominium Association

By: _____ Date: _____
Its: _____

By: RK RICHARD BURKHART Date: 9/27/23
Its: SECRETARY

Woodward Pires & Lombardo, PA

By: _____
Lenore T. Brakefield, Esq.
Attorney for Todd and Caryon Nierman

Falk Law Firm, P.A.

By: _____
Steven M. Falk, Esq.
Attorney for Crescent Beach Condo Association

IN WITNESS WHEREOF AND INTENDING TO BE BOUND, the parties hereby execute this Agreement through their duly authorized representatives.

By: Todd Nierman Date: 9/27/23
Todd Nierman
By: Carolyn Nierman Date: 9.27.23
Carolyn Nierman

Crescent Beach Condominium Association

By: _____ Date: _____
Its: _____
By: _____ Date: _____
Its: _____

Woodward Pires & Lombardo, PA

By: _____
Lenore T. Brakefield, Esq.
Attorney for Todd and Caryon Nierman

Falk Law Firm, P.A.

By: Steven M. Falk 9/27/23
Steven M. Falk, Esq.
Attorney for Crescent Beach Condo Association

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By: Todd Nierman Date: 9/27/23
Todd Nierman

By: Carolyn Nierman Date: 9.27.23
Carolyn Nierman

Crescent Beach Condominium Association

By: _____ Date: _____
Its: _____

By: _____ Date: _____
Its: _____

Woodward Pires & Lombardo, PA

By: Lenore T. Brakefield
Lenore T. Brakefield, Esq.
Attorney for Todd and Carolyn Nierman

Falk Law Firm, P.A.

By: _____
Steven M. Falk, Esq.
Attorney for Crescent Beach Condo Association