

2017 03034

COVER SHEET FOR FILING CIVIL ACTIONS  
COMMONWEALTH OF VIRGINIA

Case No. \_\_\_\_\_  
(CLERK'S OFFICE USE ONLY)

FAIRFAX COUNTY

Circuit Court

Sea Bay Hotel, LLC, et al. and

v./In re:

Barry R. Gosnell, et al.

PLAINTIFF(S)

DEFENDANT(S)

Don Wooden

I, the undersigned  plaintiff  defendant  attorney for  plaintiff  defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
  - Monetary Damages
  - No Monetary Damages
- Counterclaim
  - Monetary Damages
  - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Eschatement
- Establish Boundaries
- Landlord/Tenant
  - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
  - ABC Board
  - Board of Zoning
  - Compensation Board
  - DMV License Suspension
  - Employee Grievance Decision
  - Employment Commission
  - Local Government
  - Marine Resources Commission
  - School Board
  - Voter Registration
  - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
  - Adoption - Foreign
- Adult Protection
- Annulment
  - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
  - Complaint - Contested\*
  - Complaint - Uncontested\*
  - Counterclaim/Responsive Pleading
  - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
  - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
  - Guardian/Conservator
  - Standby Guardian/Conservator
- Trust (select one)
  - Impress/Declare
  - Reformation
- Will (select one)
  - Construe
  - Contested

MISCELLANEOUS

- Appointment (select one)
  - Church Trustee
  - Conservator of Peace
  - Marriage Celebrant
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
  - Reinstatement pursuant to § 46.2-427
  - Restoration - Habitual Offender or 3<sup>rd</sup> Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of U.S. Currency
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
  - Correct Erroneous State/Local
  - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

FILED  
CIVIL INTAKE  
2017 FEB 28 AM 11:41  
JOHN T. FREY  
CLERK OF CIRCUIT COURT  
FAIRFAX COUNTY, VA

Damages in the amount of \$ 35,000,000.00 are claimed.

2/28/2017  
DATE

PLAINTIFF  DEFENDANT  ATTORNEY FOR  PLAINTIFF  DEFENDANT

Stephen L. Pettler, Jr., Esquire

PRINT NAME

21 S. Loudoun Street, Winchester, Virginia 22601

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(540) 667-1266

\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

SEA BAY HOTEL, LLC,  
for itself and for the benefit of  
IOOC, LLC,  
and  
for itself and for the benefit of  
INNS OF OCEAN CITY, LLC

and

DON WOODEN,  
an individual,

Plaintiffs,

v.

Case No. \_\_\_\_\_

2017 03034

BARRY R. GOSNELL,  
Serve: 8130 Boone Boulevard  
Suite 100  
Vienna, Virginia 22182

and

RANDOLPH R. PALMER,  
Serve: 8130 Boone Boulevard  
Suite 100  
Vienna, Virginia 22182

and

SCOTT TAYLOR,  
Serve: c/o Secretary of the Commonwealth  
43 Brookwood Drive  
Briarcliff, New York 10510

and

GOSNELL PALMER HOLDINGS, LLC  
Serve: Randolph R. Palmer, Registered Agent  
1919 North Kenilworth Street  
Arlington, Virginia 22205

FILED  
CIVIL INTAKE  
2017 FEB 28 AM 11:41  
JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

and

PALMER GOSNELL HOSPITALITY, LLC  
Serve: Randolph R. Palmer, Registered Agent  
1919 North Kenilworth Street  
Arlington, Virginia 22205

and

SHELBY L. HAMMOND  
Serve: c/o Secretary of the Commonwealth  
702 Malibu Drive  
Silver Spring, Maryland 20901

and

HAILEY R. GOSNELL  
Serve: c/o Secretary of the Commonwealth  
7504 River Falls  
Potomac, Maryland 20854

and

MARYANN G. GOSNELL  
Serve: c/o Secretary of the Commonwealth  
7504 River Falls  
Potomac, Maryland 20854

and

GOSNELL CONSTRUCTION, LLC  
Serve: William H. Casterline, Jr., Registered Agent  
Blankingship and Keith PC  
4020 University Drive, Suite 300  
Fairfax, Virginia 22030

and

JOHN H. BAIN, III  
Serve: 7755 Grandwind Drive  
Lorton, Virginia 22079

and

CAMILLUS M. BAIN  
Serve: 7755 Grandwind Drive  
Lorton, Virginia 22079

and

GLENN LEBOWITZ  
Serve: 1212 Suffield Drive  
McLean, Virginia 22101

and

KEVIN POTTER  
Serve: 9704 Mill Run Drive  
Great Falls, Virginia 22066

and

PAUL WASSERMAN  
Serve: c/o Secretary of the Commonwealth  
4 Elizabeth Court  
Briarcliff Manor, New York 10510

and

RAYMOND TAYLOR  
Serve: c/o Secretary of the Commonwealth  
120 East 79<sup>th</sup> Street  
New York, New York 10021

and

BRIDGET TAYLOR  
Serve: c/o Secretary of the Commonwealth  
43 Brookwood Drive  
Briarcliff, New York 10510

and

BROOKE TAYLOR  
Serve: c/o Secretary of the Commonwealth  
43 Brookwood Drive  
Briarcliff, New York 10510

and

ROSS TAYLOR

Serve: c/o Secretary of the Commonwealth  
43 Brookwood Drive  
Briarcliff, New York 10510

and

DENISE TAYLOR

Serve: c/o Secretary of the Commonwealth  
9 Bluebird Lane  
Huntington, New York 11743

and

RICHARD E. WALLACE, JR.

Serve: c/o Secretary of the Commonwealth  
Sedgwick, LLP  
2900 K Street, NW  
Harbor Side, Suite 500  
Washington, D.C. 20007

and

ADASKO FAMILY LIMITED PARTNERSHIP

Serve: c/o Secretary of the Commonwealth  
BFFA, 8<sup>th</sup> Floor  
331 Madison Avenue  
New York, New York 10017

and

JOHN VUONG, LLC

Serve: John Vuong, Registered Agent  
4295 Birney Lane  
Fairfax, Virginia 22033

and

CALVIN NEIDER

Serve: c/o Secretary of the Commonwealth  
189 Hirst Road  
Briarcliff Manor, New York 10510

and

THE DAVID C. FOULK REVOCABLE TRUST

Serve: David C. Foulk, Trustee  
5 Boar's head Lane  
Garden Suite #3  
Charlottesville, Virginia 22902

Defendants.

**COMPLAINT**

*COME NOW*, the plaintiffs, Sea Bay Hotel, LLC, for itself and for the benefit of IOOC, LLC and for itself and the benefit of Inns of Ocean City, LLC, and Don Wooden, by their counsel, HARRISON & JOHNSTON, PLC and Stephen L. Pettler, Jr., and in support of their Complaint, aver as follows:

**I. PARTIES**

1. IOOC, LLC ("IOOC") is a Maryland limited liability company established by articles of organization filed on or about January 3, 2014, with its principal place of business located at 8130 Boone Boulevard, Suite 100, Vienna, Fairfax County, Virginia pursuant to the terms of its Operating Agreement (see *infra*, **Exhibit 4**, Sec. 1.03). IOOC is not registered to do business in the Commonwealth of Virginia despite having its offices located within its jurisdiction.

2. The members of IOOC, LLC and their respective Economic Interests and Voting Interests (as defined in the Operating Agreement for IOOC, as further described below) are as follows:

<u>IOOC Member</u>	<u>Economic Interests / Voting Interests</u>
Sea Bay Hotel, LLC	45%
Barry R. Gosnell	22.5%
Randolph R. Palmer	22.5%

Scott Taylor

10%

3. Inns of Ocean City, LLC (“Inns”) is a Maryland limited liability company established by articles of organization filed on or about January 2, 2014 with its principal place of business located at 8130 Boone Boulevard, Suite 100, Vienna, Fairfax County, Virginia pursuant to the terms of its Operating Agreement (see *infra*, **Exhibit 5**, Sec. 1.03).

4. The Members of Inns (as defined in the Operating Agreement for Inns, as further described below) are divided into two (2) classes, Class A and Class B. The Class A Member is IOOC holding 20% of the Membership Interests (as defined in its Operating Agreement; (see *infra*, **Exhibit 5**, Sec. 2.01). It is believed, and therefore averred, that as of November 14, 2016, the Class B Members consist of Sea Bay, Gosnell, Palmer, Taylor, and all other defendants named in this suit.

5. At the time Inns was formed, only Sea Bay, Gosnell, Palmer and Taylor were Class B Members of Inns. At that time, Sea Bay, as a Class B Member, possessed 39.41% of the Membership Interests (as defined in its Operating Agreement; see *infra*, **Exhibit 5**, Sec. 2.01). At that time, Gosnell, as a Class B Member, held 19.71% of the Membership Interests, Palmer, as a Class B Member, held 19.71% of the Membership Interests, and Taylor, as a Class B Member, held 1.18% of the Membership Interests.

6. The plaintiff, Sea Bay Hotel, LLC (“Sea Bay”), is a Virginia limited liability company in good standing, duly authorized to conduct business in the Commonwealth of Virginia, with its principal place of business located at 4080 Lafayette Center Drive, Suite 265, Chantilly, Fairfax County, Virginia. The principals of Sea Bay are members of the Meladon Group, a real estate development and property management organization which has developed, constructed, managed and financed hundreds of millions of dollars worth of real estate projects in the Mid-Atlantic and

South-Eastern regions of the United States under the leadership of its CEO, Don Wooden.

7. The defendant Barry R. Gosnell (“Gosnell”) is an individual conducting business in the Commonwealth of Virginia from his offices located at 8130 Boone Boulevard, Suite 100, Vienna, Fairfax County, Virginia.

8. The defendant Randolph R. Palmer (“Palmer”) is an individual conducting business in the Commonwealth of Virginia from his offices located at 8130 Boone Boulevard, Suite 100, Vienna, Fairfax County, Virginia.

9. The defendant Gosnell Palmer Holdings, LLC (“GPH”) is a Virginia limited liability company established by articles of organization filed on or about January 22, 2007, with its principal place of business located at 8130 Boone Boulevard, Suite 100, Vienna, Fairfax County, Virginia.

10. The defendant Scott Taylor (“Taylor”) is an individual conducting business in the State of New York from premises located at 43 Brookwood Drive, Briarcliff, New York.

11. The following defendants, who, upon information and belief, are the Class B Members of Inns as of November 14, 2016 (the “Class B Defendants”), are joined as defendants in this proceeding to the extent necessary to insure complete relief may be afforded the plaintiffs for the claims stated hereinafter. The Class B Defendants are: PALMER GOSNELL HOSPITALITY, LLC; SHELBY L. HAMMOND; HAILEY R. GOSNELL; MARYANN G. GOSNELL; GOSNELL CONSTRUCTION, LLC; JOHN H. BAIN, III; CAMILLUS M. BAIN; GLENN LEBOWITZ; KEVIN POTTER; PAUL WASSERMAN; RAYMOND TAYLOR; BRIDGET TAYLOR; BROOKE TAYLOR; ROSS TAYLOR; DENISE TAYLOR; RICHARD E. WALLACE, JR.; ADASKO FAMILY LIMITED PARTNERSHIP; JOHN VUONG, LLC; CALVIN NEIDER; and THE DAVID C. FOULK REVOCABLE TRUST.



## II. BACKGROUND

### A. The Ocean City Hotel Project

12. On or about January 18, 2013, Sea Bay, through its predecessor in interest and affiliated company, the Meladon Group, acquired the contractual right to purchase certain real property located at 300 Sea Bay Lane, Ocean City, Maryland.<sup>1</sup> The property is hereinafter referred to as the "Hotel Property".

13. The Hotel Property consists of two parcels of land located beside the bridge on Maryland Route 90, which serves as the primary access to Ocean City from the Maryland mainland.

14. Beginning in June, 2013 through September 23, 2013, Sea Bay, through the Meladon Group, worked to secure the purchase agreement for the Hotel Property, performed due diligence investigations to confirm the feasibility of the property for development as a waterfront resort and hotel (hereinafter referred to as the "Project"), and worked to obtain the entitlements to the Hotel Property to permit its use in the Project as contemplated. During this period, Sea Bay incurred expenses related to the acquisition and development of the Hotel Property and the Project.

15. During the period commencing on or about January 18, 2013 through September 23, 2013 (the "Negotiation Period"), Don Wooden, the managing principal of Sea Bay ("Wooden"), entered discussions with Gosnell and Palmer regarding the prospect of entering a joint venture agreement to develop the Hotel Property and complete the Project.

16. During the Negotiation Period, Gosnell and Palmer represented to Sea Bay that they had experience in the management and oversight of the development, construction and operation of

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<sup>1</sup>A description of the property, defined as the "Real Property" in the IOOC, LLC Operating Agreement, is attached as Exhibit B to **Exhibit 4** which is attached hereto, and discussed further, *infra*.

projects similar to that contemplated by Sea Bay for the Hotel Property and Project.

17. During the Negotiation Period, Wooden informed Gosnell and Palmer that Sea Bay insisted on being involved in the day to day management of the acquisition of the Hotel Property, development and construction of the Project and operation of the hotel once completed.

18. On numerous occasions during the Negotiation Period, Wooden, Gosnell and Palmer discussed operating the contemplated hotel on the Hotel Property as a Marriott Residence Inn.

19. On numerous occasions during the Negotiation Period, Gosnell and Palmer made certain representations to Wooden and other Sea Bay representatives in order to induce Sea Bay to enter a joint venture agreement with Gosnell and Palmer for the purchase of the Hotel Property, development and construction of the Project and operation of the hotel once completed. Gosnell and Palmer made the following representations to Wooden and other Sea Bay representatives during the Negotiation Period:

- (A) The deal would be structured such that Sea Bay would be the largest single equity holder in the Project.
- (B) The deal would be structured such that Sea Bay would be able to fully participate in the day-to-day management of all aspects of the Project, including review of contracts and finances.
- (C) Sea Bay would receive a development fee in an amount reflecting the value of its efforts and the expenses it incurred to acquire the purchase agreement for the Hotel Property, perform due diligence investigations and obtain entitlements necessary for the development of the Hotel Property in conformity with the contemplated Project.
- (D) Sea Bay's development fee would be credited as Sea Bay's capital contribution to the Project in an amount equal to (1) the value of the Hotel Property purchase agreement obtained by Sea Bay plus (2) the development fee payable to Sea Bay plus (3) the expected increase in the value of the Hotel Property after Sea Bay obtained all legal approvals and entitlements for the Hotel Property needed for development, construction and operation of the Project plus (4) the amount of un-reimbursed expenses Sea Bay incurred

related to development of the Hotel Property.

- (E) Gosnell and Palmer would source a number of small investors for Inns in order to fund ninety percent (90%) of the cash needed to obtain the expected Project debt financing, because they (Gosnell and Palmer) were successful, experienced brokers of these types of deals who had, in fact, done such deals in the past.
- (F) Wooden, Gosnell and Palmer would each personally guaranty the debt financing for the Project.
- (G) On or about September 4, 2013, the Meladon Group (the predecessor in interest to Sea Bay), Gosnell and Palmer created an excel spreadsheet "notebook" entitled "Ocean City LOI pro forma 9 4 13" (hereinafter referred to as the "Pro Forma"). A true and correct copy of the Pro Forma is attached hereto as **Exhibit 1** and made a part hereof by this reference as though set forth at length.
- (H) The Pro Forma and the information set forth therein, although never formally included in any written agreements eventually signed by the parties, reflects the parties' understandings regarding the expected costs and returns associated with the Project. Reference to the information set forth in the Pro Forma is contained in the agreements eventually entered between the parties (see, *infra*) and represents the parties' understandings in a manner consistent with that set forth in the Pro Forma. The Pro Forma contains the mutually agreed representations of the parties regarding the financial aspects of the Project addressed therein throughout all periods relevant to this proceeding.
- (I) On or about September 5, 2013, the Meladon Group (the predecessor in interest to Sea Bay), Gosnell and Palmer created a spreadsheet entitled "Ocean City equity structure LOI 9 5 13" (hereinafter referred to as the "Term Sheet"). A true and correct copy of the Term Sheet is attached hereto as **Exhibit 2** and made a part hereof by this reference as though set forth at length.
- (J) The Term Sheet and the information set forth therein reflects the parties' understandings regarding the expected costs associated with the Project, the amount of debt and equity financing needed for the Project, the allocation and valuation of the parties' capital contributions to the entities to be formed to complete the Project, and the ownership structure of the joint venture entities associated with the Project. Reference to the information set forth in the Term Sheet is contained in the agreements eventually entered between the parties (see, *infra*) and represents the parties' understandings in a manner consistent with that set forth in the Equity Spreadsheet. The Term Sheet

contains the mutually agreed representations of the parties regarding the financial aspects of the Project addressed therein throughout all periods relevant to this proceeding.

(The foregoing representations are hereinafter referred to as the "Pre-agreement Representations").

20. In reliance on the Pre-agreement Representations, Sea Bay continued to incur expenses related to the acquisition and development of the Hotel Property and the Project as well as additional expenses related to the negotiation of a joint venture agreement with Gosnell and Palmer for the Project.

21. During the Negotiation Period, Sea Bay incurred expenses related to the acquisition and development of the Hotel Property and the Project and created new value to the Hotel Property in the total amount of \$1,051,923 as agreed by the parties on September 5, 2013 (see, **Exhibit 2**).

#### **B. The Joint Venture Letter**

22. On or about September 23, 2013, the Meladon Group, predecessor in interest to Sea Bay, and Gosnell and Palmer, came to an agreement with regard to the terms of their joint venture based on the expectations set forth in the Pro Forma and Term Sheet. Sea Bay, Gosnell and Palmer reduced those terms to writing in that certain letter executed by Gosnell and Palmer on September 23, 2013 (hereinafter referred to as the "Joint Venture Letter"). A true and correct copy of the Joint Venture Letter is attached hereto as **Exhibit 3** and incorporated herein by this reference as though set forth at length.

23. The Joint Venture Letter contains the statement that it was intended to be "an indication of the intent of each party to negotiate in good faith the terms of a binding operating agreement and real estate purchase and sale agreement, and such other agreements as may arise" (**Exhibit 3**, first (unnumbered) paragraph). However, notwithstanding this general statement at the

beginning of the document, the unambiguous terms of the Joint Venture Letter state a number of agreements and conditions to which the parties affirmatively agreed to be bound and provides for a "Due Diligence Period" within which Palmer and Gosnell could terminate the "Agreement" set forth in the document if their investigations proved unsatisfactory to them (**Exhibit 3, passim**).

24. The following terms, conditions and obligations are set forth in the Joint Venture Letter and are not included in any other agreements eventually entered between Sea Bay, Gosnell, Palmer or any of their related entities. The following terms, conditions and obligations are integral to completing the Project and effecting the overall intentions of the parties as stated in the Joint Venture Letter and the Pre-Agreement Representations:

- (A) The Meladon Group agreed that it would assign its purchase contract for the Hotel Property to "Seabay Hotel, LLC," which, in turn, would be the member of the joint venture entity owned by the Meladon Group principals and which would assign the contract to the joint venture entity to be formed in exchange for certain equity in the joint venture entity (**Exhibit 3, first (unnumbered) paragraph and Paragraph 5**).
- (B) The Meladon Group/Sea Bay agreed that it would remove certain restrictive covenants from the Hotel Property, at its own expense, as a condition precedent to the parties' "other contemplated endeavors herein," i.e., their agreement to enter operating agreements for the joint venture entities and other contracts to complete the Project (**Exhibit 3, Paragraph 3**).
- (C) The Meladon Group/Sea Bay agreed to provide certain services related to obtaining entitlements to the Hotel Property so that it could be used as contemplated by the Project, at the Meladon Group's expense (**Exhibit 3, Paragraph 4**).
- (D) The parties agreed that the value of the "accretion of value" to the Hotel Property resulting from the Meladon Group/Sea Bay's obtaining the entitlements to the property would be \$800,000 and it would be "attributed to Meladon, or its assigns" (**Exhibit 3, Paragraph 5**).
- (E) The parties agreed that a "Development Fee" would be paid to the Meladon Group/Sea Bay and GPH equal four percent (4%) of the pre-fee total cost for

the Project as reflected in the Pro Forma and Term Sheet. It was agreed the Development Fee would be split such that 75% would be earned by GPH and 25% would be earned by Meladon Group/Sea Bay, and further and that "GPH will pay Meladon a lump sum of \$125,000 with 45 days after the Conditions Precedent [removal of the restrictive covenants referenced in Paragraph 3] have been met and the Due Diligence Period expired" in order to "equalize the value of contributions" (Exhibit 3, Paragraph 5).

- (F) The parties agreed to establish two (2) joint venture entities. One would be Inns, which would own the Hotel Property and have two classes of members, one Class A member which would own 20% of the equity and manage the company and a number of Class B investor members whose interests would be pro rated in proportion to their cash contributions. The other would be IOOC, which would be the Inns Class A Member. Each entity would initially be owned "50/50" between the Meladon Group/Sea Bay and GPH (Exhibit 3, Paragraph 5).
- (G) The parties agreed that, after satisfaction of the Conditions Precedent [removal of the restrictive covenants referenced in Paragraph 3] the Meladon Group/Sea Bay and GPH would "collectively contribute" the land accretion value and the Development Fee to the joint venture entities in exchange for their equity in each of Inns and IOOC (Exhibit 3, Paragraph 5).
- (H) The agreed allocation of the equity contributions by the Meladon Group/Sea Bay and GPH between Inns and IOOC is as set forth in the Pro Forma and Term Sheet (see, Exhibit 1 and Exhibit 2).
- (I) "The parties will use commercially reasonable best efforts to negotiate and finalize an Operating Agreement ("OA") for each of Inns and IOOC, LLC within 45 days of the satisfaction of the Conditions Precedent" (Exhibit 1, Paragraph 5).
- (J) "Prior to the finalization of the OAs" the parties agreed to incur certain development expenses. The Meladon Group/Sea Bay was to incur the expenses related to obtaining the Conditions Precedent. The parties were to share "50/50" all "Project Expenses" which were defined as those occurring after the satisfaction of the Conditions Precedent and continue "until such time as the OAs are finalized. After the OAs are finalized, the Project Expenses shall be reimbursed by Inns once capital contributions from third party investors are available. *The terms of this paragraph are fully enforceable and binding upon the parties to this letter*" (Exhibit 1, Paragraph 6, emphasis added).

- (K) Paragraph 7 sets forth the parties' agreement regarding the amount of debt versus equity to be used to fund the Project and states how the parties agreed to fund the equity (by crediting the stated amounts in Paragraphs 4 and 5 to the parties). In that Paragraph:

Any fee payable for the sourcing of investors and investment by Barry R. Gosnell or Rich Palmer shall not be a project expense and shall be the responsibility of Meladon. Any fee payable for the sourcing of investors and investment not introduced by Barry R. Gosnell or Rich Palmer shall not be a project expense. The expense of any third party broker used to source financing shall be a project expense. However, any investor sourced by Barry R. Gosnell or Rich Palmer shall not require a payment from the project or as a project expense to any third party broker. Meladon agreeing to be responsible for any such payment that may be due, including any fee to Terence Fulton or his affiliated entities

(Exhibit 1, Paragraph 7).

- (L) The construction management fee to be paid to Gosnell Construction would be "3% of the hard costs of construction" and "shall include pre-construction design review and coordination services" (Exhibit 1, Paragraph 10).
- (M) Palmer Gosnell Hospitality, Inc. would be paid a project management fee in the amount of \$35,000 for the "pre-opening fee" and "an on-going fee 3% of revenue" (Exhibit 1, Paragraph 11).
- (N) GPH agreed to pay the Meladon Group \$125,000 "forty-five days from the date that the Conditions Precedent have been satisfied" [defined as the "Due Diligence Period"] unless GPH elects to "terminate the Agreement by written notice to Meladon delivered prior to the expiration of the Due Diligence Period" (Exhibit 1, Paragraph 5 and Paragraph 13 ["Due Diligence Period"]).
- (O) The parties agreed GPH would have forty-five days within which to study the Hotel Property or it could "terminate the Agreement by written notice to the Meladon Group delivered prior to the expiration of the Due Diligence Period" (Exhibit 1, Paragraph 13).
- (P) The parties agreed the Meladon Group/Sea Bay would suspend negotiations with others regarding the Project during the term of the Joint Venture Letter (Exhibit 1, Paragraph 14).
- (Q) The Joint Venture Letter was executed by GPH under the language "ACCEPTED AND AGREED BY GPH."

25. The Joint Venture Letter constitutes a contract between the parties regarding the terms and conditions stated therein which were not subsequently addressed by the parties under the terms of the Operating Agreements for IOOC and Inns nor any other agreements entered by the individual principals of the Meladon Group/Sea Bay and GPH or any of their affiliated companies.

26. The Joint Venture Letter was negotiated, drafted, delivered to GPH, received by GPH, signed and substantially performed by the parties in Fairfax County, Virginia.

27. The Joint Venture Letter is a contract governed by Virginia law.

28. On, about or during December, 2013, the Meladon Group/Sea Bay completed all of the Conditions Precedent required under the terms of the Joint Venture Letter.

29. During the period from September 23, 2013 through January 2, 2014, Sea Bay incurred approximately \$220,000 in costs and expenses related to performing its obligations as stated under the terms of the Joint Venture Letter.

### **C. The IOOC Operating Agreement**

30. On or about January 2, 2014, Sea Bay, Gosnell, Palmer and Taylor entered that certain Operating Agreement of IOOC, LLC (the "IOOC Operating Agreement"). A true and correct copy of the IOOC Operating Agreement is attached hereto and incorporated herein by this reference as though set forth at length as **Exhibit 4**.

31. The IOOC Operating Agreement was negotiated in Fairfax County, Virginia, and was entered by the parties in Fairfax County, Virginia.

32. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 2**, Sec. 3.01), IOOC was organized for the sole purpose of acting as the Manager of Inns of Ocean City, LLC.

33. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 6.01 (A)),



the “Members” (as defined in the IOOC Operating Agreement) have the “authority, discretion, and responsibility to manage and control the affairs of the Company” and “shall oversee the *day-to-day* affairs of the Company and *make all decisions and take all actions with respect thereto*” (emphasis added).

34. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 6.01 (B)(1)), “Majority Approval of Voting Interests” (as defined in the IOOC Operating Agreement) “shall be *required prior to any action* by any Member or agent with respect to all decisions affecting the business of the Company” (emphasis added).

35. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 6.01 (B)(ii)), a ten (10) day “request for approval” notice of a proposed action must be delivered to each Member prior to the authorization of a proposed Company action.

36. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 2.01), “Notice” is defined, in part, as “[a] writing containing all information necessary to satisfy the purposes which notice is being given which is personally delivered, delivered by postal or reputable commercial overnight delivery service, or delivered by first-class postage prepaid and certified mail with a return receipt requested and addressed as applicable if to a Member at his address....”

37. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 6.03 [“Authority to Bind Company”]):

Except as otherwise provided by this Agreement or by Majority Approval, no Member, attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the member has been authorized by Majority Approval of the members to act as agent of the Company in accordance with the previous sentence.

38. Pursuant to the terms of the IOOC Operating Agreement (**Exhibit 4**, Sec. 6.04 [*“Limitations on Authority”*]):

No Member shall have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) *any act in contravention of this Agreement or failing to do any act required by this Agreement*, (iii) any act which would make it impossible to carry on ordinary business of the Company, or (iv) *act without the consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of this Agreement*.

(emphasis added).

#### **D. The Inns Operating Agreement**

39. On or about January 2, 2014, the members of Inns entered into that certain Limited Liability Company Operating Agreement of Inns of Ocean City, LLC (*“Inns Operating Agreement”*). A true and correct copy of the Inns Operating Agreement is attached hereto and incorporated herein by this reference as though set forth at length as **Exhibit 5**.

40. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 3.01), Inns was:

organized solely for the purposes of (i) acquiring land, owning, developing, constructing, renovating, operating, and managing a hotel located in Ocean City, Maryland (collectively, the *“Building”*) to be constructed on the Real Property [as defined in the Inns operating Agreement], (ii) entering into and performing the Company’s obligations with respect to any loan secured by a first deed of trust lien on the Real Property (the *“Mortgage Loan”*), and (iii) engaging in any and all activities permitted under the Act which are incidental thereto and such other activities or business undertakings as permitted under the Act.

41. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 6.01 (A)):

Subject to and limited by the provisions of this Agreement, the Class A Member(s) [IOOC] shall have the sole authority, discretion, obligation and responsibility to manage and control affairs of the Company to the best of its ability, (ii) shall use reasonable best efforts to carry out the business of the Company, and (iii) shall oversee day-to-day affairs of the Company and shall make all decisions and take all actions with respect thereto.

42. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 6.01 (C)), “Majority Approval shall be required *prior to* any action by any Class A Member or agent with respect to all decisions affecting the business of the Company” (emphasis added). Additionally, Section 6.01(C) requires that a ten (10) day “request for approval” notice of a proposed action must be delivered to each Class A Member prior to the authorization of a proposed Company action.

43. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 2.01), the term “Majority Approval” is defined to mean “[t]he affirmative vote of the Class A member [IOOC].”

44. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 6.03 [“Authority to Bind Company”]):

Except as otherwise provided by this Agreement or by Majority Approval, no Member, attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the member has been *authorized by Majority Approval* of the members to act as agent of the Company in accordance with the previous sentence.

45. Pursuant to the terms of the Inns Operating Agreement (**Exhibit 5**, Sec. 6.04 [“Limitations on Authority”]):

No Member shall have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) *any act in contravention of this Agreement or failing to do any act required by this Agreement*, (iii) any act which would make it impossible to carry on ordinary business of the Company, or (iv) *act without the consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of this Agreement*.

(emphasis added).

#### **E. Class B Member Investors Solicited by Gosnell and Palmer**

46. During the period from January 3, 2014 through March 17, 2014 (the "Solicitation Period"), Gosnell and Palmer, from their offices in Fairfax County, Virginia, solicited a number of individuals, located both within and outside of the Commonwealth of Virginia, to become Class B Member investors of Inns.

47. During the Solicitation Period, Gosnell and Palmer brokered the capital contributions of the Class B Defendants to Inns in exchange for the issuance of Class B Membership Interests in Inns.

48. Upon information and belief, plaintiffs aver that, during the Solicitation Period, neither Gosnell nor Palmer were securities brokers registered with the Securities and Exchange Commission or the Virginia Secretary of the Commonwealth.

49. During the Solicitation Period, Gosnell and Palmer represented to the Class B Defendants that IOOC and Inns would be operated in conformity with the expectations set forth in the Pro Forma, Term Sheet, the Joint Venture Letter and the respective Operating Agreements of IOOC and Inns in order to induce the Class B investors into contributing capital to Inns in exchange for Class B Membership Interests.

50. During the Solicitation Period and at all other times relevant to these matters, Gosnell and Palmer contacted and brokered the capital contributions of all of the Class B Defendants.

51. During the Solicitation Period, Gosnell and Palmer, purportedly acting as "managers" of IOOC and Inns, caused Inns to issue Class B Membership Interests to the Class B Defendants from time to time.

52. During the Solicitation Period, Gosnell and Palmer did not provide Sea Bay or Taylor, the other Members of IOOC, written notice requesting approval and authorization of capital

contribution agreements made by Inns with the Class B Defendants prior to consummating the same on behalf of IOOC, the Manager of Inns.

53. On information and belief, during the Solicitation Period, Gosnell and Palmer failed to maintain appropriate documentation on behalf of Inns and/or IOOC evidencing the agreement by each individual Class B Defendant with regard to his or her capital contribution to Inns in conformity with reasonable business practices for a company such as Inns.

54. On or about March 17, 2014, Gosnell and Palmer created a First Amendment to the Operating Agreement of Inns of Ocean City, LLC (hereinafter referred to as the “Inns First Amendment”) to reflect the purported capital contributions of Class B Members, and to restate the capital contributions allocated to Sea Bay, Gosnell, Palmer and Taylor resulting from the addition of the new Class B Members and to account for the contribution of the “Development Fee” and “Land Accretion Value” (as those terms are defined therein). A true and correct copy of the Inns First Amendment is attached hereto and incorporated herein by this reference as though set forth at length as **Exhibit 6**.

55. On, about and after March 17, 2014, Gosnell and Palmer induced Sea Bay and its principals to execute the Inns First Amendment by promising to obtain the signatures of all other Class B Members set forth therein subsequent to obtaining the Sea Bay signatures.

56. As evidenced by **Exhibit 6**, Gosnell and Palmer failed to obtain the signatures of all Class B Members identified therein as represented to Sea Bay and its principals.

**F. Gosnell and Palmer Purport to Act as Managers of IOOC and Inns  
without Required Authorization**

57. Beginning on or about January 2, 2014 and continuing through the present, Sea Bay,

through its representatives, repeatedly requested that Gosnell and Palmer allow it to participate in the day-to-day management of IOOC and Inns. These communications occurred on a number of occasions, and included the following:

- (A) Email dated October 15, 2014 from Don Wooden to Gosnell, Palmer and Nick Liu and Igor Levine of Sea Bay, requesting that the Sea Bay principals be “involved in these discussions and meetings” related to the general contract for the construction of the Project. A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 7**.
- (B) Email dated January 23, 2015 from Don Wooden to Gosnell, Palmer and James Mitchell (“Mitchell”), who is believed and therefore averred to be an employee of Gosnell, Palmer and/or GPH and a Class B Member of Inns, and Liu and Levine of Sea Bay, stating: “Just a reminder when email, setting up meetings or conf calls please CC: Me, Igor and Nick as like I said, I want to be more active in the day to day. Our goal is to add value and not take away!” A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 8**.
- (C) Email dated January 23, 2015 from Don Wooden to Gosnell, Palmer, Mitchell and Liu and Levine of Sea Bay indicating he had reviewed the construction “plans, budgets, etc.” for the project and requested a time to meet to discuss, only to be told by Gosnell that “The budget is out to the bank and our investors, so as a practical matter it won’t be changing at this point.” A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 9**.
- (D) Email exchanges dated February 4-5, 2015 by and between Wooden, Gosnell, Palmer, Levine and Liu indicating a request by Wooden for a copy of the construction management agreement with Gosnell Construction, LLC and delivery of a copy of the signed agreement which was signed without prior review by Sea Bay or vote to approve the same. A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 10**.
- (E) Email exchanges dated February 4-5, 2015 by and between Wooden, Gosnell, Palmer, Levine and Liu indicating a request by Wooden for copies of the general contractor’s agreements and exhibits and a request to have the terms of the construction management agreement comport with the terms agreed upon in the Joint Venture Letter. A true and correct copy of this email is

attached hereto and incorporated herein by this reference as **Exhibit 11**.

- (F) Email exchanges dated February 11-16, 2015 by and between Wooden, Gosnell, Palmer, Levine and Liu indicating Sea Bay's continued requests to be part of day-to-day management decisions and Gosnell's approval of construction plans from the engineers without providing them to Sea Bay representatives for review despite requests for the same. A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 12**.
- (G) Email exchanges dated April 2-6, 2015 by and between Wooden, Gosnell, Palmer, Levine, Liu and James Mitchell indicating Sea Bay's request "to be involved in calls, meetings, and day to day decision making with our project" and in which Sea Bay informs Gosnell and Palmer that "Our feeling at this point is exclusion...." A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 13**.
- (H) Email exchanges dated May 22-June 1, 2015 by and between Wooden, Gosnell, Palmer, Levine, Liu, Taylor and Mitchell wherein Sea Bay advised it wanted "to check in and see where we were at on a few things and let you know we would like to be involved in the process and decision making on them" including specific requests to be involved in review of elevations of the planned hotel; pool/tiki bar design; water feature construction change orders; direct hires (including the general manager and sales manager for the hotel); responses to requests for information from the general contractor and the lighting plan. A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 14**.
- (I) Email exchange dated June 13, 2015 between Wooden, Gosnell, Palmer, Levine, Liu, Taylor and Mitchell wherein Wooden asks that Gosnell keep Wooden "copied in" on the progress of the items listed in the foregoing email (**Exhibit 14**). A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 15**.
- (J) Email exchanges dated July 2-9, 2015 between Wooden, Gosnell, Palmer and Taylor wherein Wooden reiterates "I have asked you on numerous occasions in writing and verbally to keep us involved in the day to day decision making as the Co-Developer (GP) and Guarantor Joint and Several. This has not and is not happening so it is with great disappointment I must ask that we come to terms with where things are at." A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 16**.
- (K) Email exchanges dated October 8, 2015 between Levine, Gosnell, Palmer and

Mitchell wherein Levine demands to be included on "submittals, RFI's and other construction related communication that James [Mitchell] receives from Sens [the General Contractor] and the design team... Its [*sic*] difficult to show up at these meetings once a week and add value when we are being excluded." A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 17**.

- (L) Email exchanges dated December 29, 2015-January 26, 2016 between Levine, Mitchell, Wooden, Gosnell, Palmer and Taylor in which the parties discuss delays in the construction schedule, as well as Wooden's communication that "I don't believe our construction manager has been or is being effective with managing the people, process or look ahead schedule" and demanding "if you plan on having any meetings with Sens [the General Contractor] outside of the weekly meeting I would appreciate you inviting us." The exchanges from Gosnell also advise Sea Bay, for the first time, of alleged "mistakes" known to Gosnell and Palmer by the general contractor, and include further statements from Wooden confirming Sea Bay's exclusion from day to day decision making and the inclusion of Sea Bay "on a very limited amount of discussions" rendering Sea Bay's ability to meaningfully participate in decision making from that point forward to address the problems Gosnell and Palmer created by excluding Sea Bay from the day to day management throughout the course of the Project. A true and correct copy of this email is attached hereto and incorporated herein by this reference as **Exhibit 18**.

58. Beginning on or about January 2, 2014 and continuing through the present, Gosnell and Palmer commenced acting as managers of IOOC and, as managers of IOOC, as the Manager of Inns, without providing the other Class A Members of IOOC, Taylor and Sea Bay, written notices requesting approval and authorization for acts necessary to conduct the day-to-day business of IOOC as Manager of Inns.

59. Beginning on or about January 2, 2014 and continuing through the present, Gosnell and Palmer acted as managers of IOOC and, as managers of IOOC, as the Manager of Inns, without first obtaining Majority Approval authorizing their actions with regard to a number of material contracts and actions.

60. Beginning on or about January 2, 2014 and continuing through the present, Gosnell



and Palmer acted as managers of IOOC and, as managers of IOOC, as the Manager of Inns, on numerous occasions without informing Sea Bay of their actions until after the actions had been taken.

61. No written notice setting forth items to be considered for action by the Members of IOOC was ever delivered to Sea Bay in advance of any Member meetings at which the Members were advised they would be asked to vote to approve and authorize any actions by Gosnell and Palmer on behalf of IOOC and/or Inns.

62. On a limited number of matters, Sea Bay did express its consent to company actions. However, in each such instance, no advance notice requesting approval of such action was provided to Sea Bay, no formal vote of the IOOC Members was taken (or written consent duly adopted) to approve or authorize actions, and no record of the IOOC Members' consent (or any stated limitations or conditions thereto) was obtained by Gosnell and/or Palmer relative to such contracts or actions.

63. Gosnell and Palmer caused IOOC to act as Manager of Inns in order to enter the following agreements without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the Members of IOOC as required by the IOOC Operating Agreement:

- (A) Construction Management Agreement dated May 3, 2014 by and between Inns and Gosnell Construction, LLC (hereinafter referred to as the "Construction Management Agreement"). A true copy of the Construction Management Agreement is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 19**.
- (B) Standard Form of Agreement between Owner and Contractor (AIA Document A101 - 2007) between Inns and Sens, Inc. dated June 9, 2014 (hereinafter referred to as the "Sens Construction Contract"). A true copy of the Sens Construction Contract is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 20**.
- (C) Amendment to the Sens Construction Contract dated March 16, 2015 ("Sens Construction Amendment"). A true copy of the Sens Construction

Amendment is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 21**.

- (D) All Change Orders to the Sens Construction Contract throughout the course of the Project.
- (E) Applications for Payment under the Sens Construction Agreement throughout the course of the Project.

#### **G. The Construction Management Agreement**

64. The Construction Management Agreement was executed by Palmer as follows:

**Inns of Ocean City, LLC**

//s// Randolph R. Palmer

By: Randolph R. Palmer for  
Inns of Ocean City, LLC  
IOOC, LLC. as Class A  
Managing Member

65. The Construction Management Agreement was executed by Gosnell as follows:

**Gosnell Construction, LLC**

//s// Barry R. Gosnell

By: Barry R. Gosnell as President

66. Pursuant to Section 3.02(A) of the IOOC Operating Agreement [Authorized or Prohibited Acts"], the IOOC Members (including Palmer and Gosnell) agreed that "...the Company shall and shall require the [*sic*] Inns to ... (8) maintain an arm's length relationship with its Affiliates." An "Affiliate: is defined in the IOOC Operating Agreement to include "any entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with any Member" (**Exhibit 4**, Section 2.01).

67. Upon information and belief, Gosnell Construction, LLC is an "Affiliate" of Gosnell under the terms of the IOOC Operating Agreement.

68. The Construction Management Agreement is not an arm's length relationship between Inns and Gosnell Construction, LLC because:

- (A) It was entered without first disclosing the terms of the contract to Sea Bay, the largest single Member of IOOC;
- (B) It was entered by Palmer on behalf of Inns and IOOC without first seeking or obtaining the written approval and authorization of Sea Bay as required by the IOOC Operating Agreement;
- (C) The terms of the Construction Management Agreement differ from the terms of the Joint Venture Letter executed by Sea Bay's predecessor in interest (Meladon Group) and Gosnell and Palmer's predecessor in interest (GPH).
  - (1) The Joint Venture Letter states that the construction management fee would be "3% of the hard costs of construction" (Exhibit 3, Section 11).
  - (2) The Construction Management Agreement states that the fee to be paid to Gosnell Construction, LLC is \$517,500, subject to *increase* to 3% of the actual hard costs of construction incurred, and further provides that additional fees in the amount of \$33,500 per month would be paid starting in the fifteenth month of construction regardless of the actual amount of hard construction costs (Exhibit 19, Section 3).
  - (3) The Construction Management Agreement states that the fee to be paid to Gosnell Construction, LLC would be paid fifteen monthly installments equaling 1/15th of the \$517,500 fee (or \$34,500 per month)(Exhibit 19, Section 3).

69. Gosnell and Palmer did not disclose the terms of the Construction Management Agreement to Sea Bay until after it had been executed by Gosnell and Palmer, and after the Sens Construction Contract had been caused to be entered by Gosnell and Palmer (see, Exhibit 11).

70. Upon receiving the Construction Management Agreement, on or about February 5, 2015, Sea Bay informed Gosnell and Palmer that it objected to the entry of the Construction Management Agreement by Inns on the terms set forth therein (Exhibit 11).

## H. The United Bank Loan

71. On or about April 24, 2015, Inns obtained a \$23,250,000 construction and permanent loan from United Bank (the "United Bank Loan") for the construction of the Project consistent with the terms of the Joint Venture Letter.

72. Sea Bay approved the United Bank Loan as a Member of IOOC in reliance upon the terms of the Joint Venture Letter and the understanding that it would be participating in the day to day management of IOOC and Inns pursuant to the terms of the respective Operating Agreements.

73. Don Wooden agreed to personally guaranty the United Bank Loan in reliance upon the terms of the Joint Venture Letter and the understanding that Sea Bay would be participating in the day to day management of IOOC and Inns pursuant to the terms of the respective Operating Agreements.

74. The proceeds of the United Bank Loan were used to fund performance by Inns under the Sens Construction Contract and required that the Project be completed by January 24, 2017.

## I: The Sens Construction Contract

75. Gosnell executed the Sens Construction Contract as follows:

**Inns of Ocean City, LLC**

By: /s/ Barry R. Gosnell

Barry R. Gosnell, Member of Class A Member  
IOOC, LLC for Inns of Ocean City, LLC

76. The terms of the Sens Construction Contract differ from the terms required by the Joint Venture Letter executed by Sea Bay's predecessor in interest (Meladon Group) and Gosnell and Palmer's predecessor in interest (GPH) with regard to the construction contract to be entered for the Project:

(A) The terms of the Joint Venture Letter provide that the construction contract for the Project was to be a "Guaranteed Maximum Price" ("GMP") contract (**Exhibit 3**, Section 10).

(B) The Sens Construction Contract is not a GMP contract. It does not contain the standard AIA "GMP" contract provisions.

77. Gosnell did not disclose the terms of the Sens Construction Contract to Sea Bay until after it had been executed by Gosnell (See, **Exhibit 7**).

78. Upon being advised of the Sens Construction Contract, Sea Bay informed Gosnell and Palmer that it objected to the entry of the Sens Construction Contract by Inns on the terms set forth therein (See, **Exhibit 9** and **Exhibit 11**).

79. On or about March 16, 2015, Gosnell executed the Sens Construction Amendment as follows:

**Inns of Ocean City, LLC**

By: /s/ Barry R. Gosnell

Name: Barry R. Gosnell

Title: as Member of IOOC, LLC as  
Class A Member

80. Gosnell executed the Sens Construction Amendment without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the Members of IOOC as required by the IOOC Operating Agreement.

81. Gosnell did not disclose the terms of the Sens Construction Amendment to Sea Bay until after it had been executed by Gosnell.

82. After Gosnell executed the Sens Construction Contract, and throughout the course of the construction of the Project, Gosnell executed a number of change order amendments to the

Sens Construction Contract without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the Members of IOOC as required by the IOOC Operating Agreement.

83. After Gosnell executed the Sens Construction Contract, and throughout the course of the construction of the Project, Gosnell and Palmer acted on behalf of IOOC and Inns without allowing Sea Bay to participate in the day to day management, oversight and decision making related to the design and construction of the Project and despite Sea Bay's repeated requests to be allowed to participate.

84. Pursuant to the terms of the Sens Construction Agreement, the Project was expected to be completed and the hotel open and operating in 2015.

85. The financial budgets and projections agreed to by the parties in the IOOC set forth in the Pro Forma and Term Sheet were based on the presumption that the Project would be completed and the hotel operational during the 2015 summer vacation season.

86. In January, 2016, due to the mismanagement of the Project by Gosnell and Palmer, including their failure to properly manage the Sens Construction Contract, Gosnell and Palmer advised Sea Bay that the construction schedule for the Project was in jeopardy (See, **Exhibit 18**).

86. In January, 2016, Gosnell and Palmer first advised Sea Bay that Sens had requested over \$1 million in change orders requested for the completion of the Project (See, **Exhibit 18**).

87. In January, 2016, Sea Bay advised Gosnell and Palmer that, due to Gosnell and Palmer excluding Sea Bay from the day to day management of IOOC and Inns, Sea Bay was unable to meaningfully contribute to discussions regarding how to correct the construction management issues Gosnell and Palmer had created with Sens (See, **Exhibit 18**).

88. During the period from January, 2016 through July 28, 2016, Gosnell and Palmer,

without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the Members of IOOC as required by the IOOC Operating Agreement, caused Inns to be in default under the terms of the Sens Construction Agreement.

89. Due to the mismanagement of IOOC and Inns by Gosnell and Palmer, acting without proper authority, the Project was not completed and operational in 2015 as scheduled. To date, the Project is still not completed and operational.

90. On or about July 28, 2016, Sens issued a Notice of Noncompliance with Contractual Requirements to Gosnell (the "Sens Notice") outlining a number of breaches of the terms of the Sens Construction Contract by Inns (under the management of Gosnell and Palmer). A true copy of the Sens Notice is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 22**.

91. Pursuant to the Sens Notice, Sens requested that the owner (Inns) "sit down and negotiate a complete resolution of the outstanding unmet Owner responsibilities so that the project can move forward to completion as promptly and practicable as possible" (**Exhibit 22**).

92. Gosnell and Palmer failed to adequately address the breaches set forth in the Sens Notice.

93. On or about August 2, 2016, Sens notified Gosnell that Inns was in default under the terms of the Sens Construction Contract, that Sens was terminating the Sens Construction Contract and Sens stopped work on the Project. Sens has not performed any additional work on the Project from August 2, 2016 to the present. A true copy of the Sens Notice of Termination is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 23**.

94. On or about August 25, 2016, United Bank advised Inns and the guarantors under the

United Bank Loan (including Wooden) that it was reserving all rights of default under the terms of the United Bank Loan.

95. In August, 2016, Gosnell and Palmer caused Inns to make a claim against the surety which bonded completion of the project. The surety has advised Gosnell and Palmer, by letters dated September 30, 2016 and October 6, 2016 that it is acting under a "complete reservation of rights extending to all claims and defenses asserted or to be asserted by all parties; the Owner, Sens and USSC." Gosnell and Palmer failed to timely advise the Class B Members of Inns regarding this development.

96. Throughout the course of the Sens Construction Contract, Gosnell and Palmer purported to act on behalf of Inns and IOOC without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the Members of IOOC as required by the IOOC and Inns Operating Agreements.

97. On or about September 9, 2016, Gosnell advised Wooden by email that Inns would be required to make a capital call under the terms of the Inns Operating Agreement as a result of the termination of the Sens Construction Contract and requested a telephone conference with the Sea Bay principals to discuss the matter. A true copy of the email is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 24**.

98. By email dated September 14, 2016, Gosnell advised Sea Bay of his intention to have a call "for Members of IOOC, LLC," in order to, *inter alia*, "vote on the initial capital raise to affirm it." A true copy of the email is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 25**.

99. In response to Gosnell's email of September 14, 2016, Sea Bay, through its legal



counsel, advised Gosnell and Palmer that Sea Bay required proper notice of any IOOC member meetings to be held pursuant to the terms of the company's operating agreement, and further that the operating agreements of both companies (IOOC and Inns) were in breach due to their having denied Sea Bay formal participation in decision making prior to that time. A true copy of the email is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 26**.

100. On September 15, 2016, Gosnell and Palmer jointly issued a purported notice of a meeting of IOOC, LLC members scheduled for September 21, 2016. A true copy of the notice is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 27**. The purported notice does not identify any matters to be discussed or actions to be considered by the members (**Exhibit 27**).

101. By letter dated September 20, 2016 delivered that date by email, Sea Bay, through legal counsel, advised Palmer and Gosnell that they were in breach of the IOOC Operating Agreement for reasons set forth in detail. Gosnell and Palmer were further advised that "As a result of your breaches of the Operating Agreement, be advised that, consistent with Maryland law, Sea Bay Hotel, LLC does not consider the Operating Agreement Terms to be enforceable by either of you against Sea Bay Hotel, LLC due to your prior breaches of its terms." A true copy of the letter is attached hereto and incorporated herein by this reference as though set forth at length, as **Exhibit 28**.

102. Since receiving the notice of breach from Sea Bay on or about September 20, 2016, Gosnell and Palmer have continued to take actions purportedly on behalf of IOOC and Inns without first consulting with Sea Bay or otherwise obtaining appropriate approval and authority from the

Members of IOOC as required by the IOOC and Inns Operating Agreements, including causing additional capital contributions from the members of Inns.

**COUNT I - SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
REQUEST FOR DECLARATORY JUDGMENT RELIEF**

103. Paragraphs 1 through 102 are incorporated herein by reference as though set forth at length.

104. Pursuant to Virginia Code §8.01-184, this Court has the power to make declaratory judgments in cases of actual controversy.

105. The facts in this matter establish actual, justiciable controversies between the parties.

106. Sea Bay, on behalf of itself and for the benefit of IOOC and Inns seek to have this Court adjudicate the following controversies between the parties:

- (A) Whether Gosnell and/or Palmer had the legal authority to act on behalf of IOOC and Inns to enter into the Sens Construction Contract, the amendments thereto and related change orders under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- (B) Whether Gosnell and/or Palmer had the legal authority to act on behalf of IOOC and Inns to enter into the Construction Management Agreement under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- (C) Whether Gosnell and/or Palmer had the legal authority to act on behalf of IOOC and Inns to request and obtain additional capital contributions to Inns under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- (D) Whether Gosnell and/or Palmer had the legal authority to act on behalf of IOOC and Inns in making day to day decisions on behalf of the companies for which they failed to obtain "Majority Approval of Voting Interests" prior to any action by any Member or agent with respect to all decisions affecting the business of the Company under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- (E) Whether the books and records of Inns have been maintained properly by Gosnell and/or Palmer.

- (F) Whether the books and records of IOOC have been maintained properly by Gosnell and/or Palmer.
- (G) Whether Gosnell and/or Palmer materially breached the terms of the IOOC and Inns Operating Agreements.

107. Virginia Code §8.01-186 provides in pertinent part, “[f]urther relief based on a declaratory judgment order or decree may be granted whenever necessary or proper.”

108. Due to Gosnell and Palmer’s flagrant disregard for the terms of the Inns and IOOC Operating Agreements, Sea Bay seeks an injunction pursuant to Virginia Code §8.01-186 as follows:

- (A) Enjoining Gosnell and Palmer from exercising any authority on behalf of Inns and/or IOOC until such time as this matter has been adjudicated to a final decision; and
- (B) Enjoining Gosnell and/or Palmer from making any distributions from Inns and/or IOOC or causing any payments to be issued by Inns and/or IOOC until such time as this matter has been adjudicated to a final decision.

109. Due to Gosnell and Palmer’s flagrant disregard for the terms of the Inns and IOOC Operating Agreements, Sea Bay seeks the appointment of a receiver to operate and conduct the business of Inns and IOOC pursuant to Virginia Code §8.01-186.

*WHEREFORE*, Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, respectfully requests that this Honorable Court enter its Orders and Decrees entering declaratory judgment in their favor and against Gosnell and Palmer as follows:

- I. Declaring that Gosnell and Palmer did not have the legal authority to act on behalf of IOOC and Inns to enter into the Sens Construction Contract, the amendments thereto and related change orders under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- II. Declaring that Gosnell and Palmer did not have the legal authority to act on behalf of IOOC and Inns to enter into the Construction Management Agreement under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- III. Declaring that Gosnell and Palmer did not have the legal authority to act on behalf

of IOOC and Inns to request and obtain additional capital contributions to Inns under the terms of the IOOC Operating Agreement and Inns Operating Agreement.

- IV. Declaring that Gosnell and Palmer did not have the legal authority to act on behalf of IOOC and Inns in making day to day decisions on behalf of the companies for which they failed to obtain "Majority Approval of Voting Interests" prior to any action by any Member or agent with respect to all decisions affecting the business of the Company under the terms of the IOOC Operating Agreement and Inns Operating Agreement.
- V. Declaring that Gosnell and Palmer failed to properly maintain the books and records of Inns.
- VI. Declaring that Gosnell and Palmer failed to properly maintain the books and records of IOOC.
- VII. Declaring that Gosnell and Palmer materially breached the terms of the IOOC and Inns Operating Agreements.
- VIII. Enjoining Gosnell and Palmer from exercising any authority on behalf of Inns and/or IOOC until such time as this matter has been adjudicated to a final decision.
- IX. Enjoining Gosnell and/or Palmer from making any distributions from Inns and/or IOOC or causing any payments to be issued by Inns and/or IOOC until such time as this matter has been adjudicated to a final decision.
- X. Dissociating Gosnell and Palmer from the exercise of any rights associated with their Membership Interests in IOOC and Inns.
- XI. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Maryland Code §4A-804, together with pre-judgment interest at the legal rate; and
- XII. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT II - SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
BREACH OF IOOC OPERATING AGREEMENT**

110. Paragraphs 1 through 109 are incorporated herein by reference as though set forth at length.

111. Pursuant to Maryland Code §4A-402(d)(1), a court may enforce an operating

agreement by injunction or by granting such other relief which the court in its discretion determines to be fair and appropriate in the circumstances.

112. Pursuant to Maryland Code §4A-402(d)(2), as an alternative to injunctive or other equitable relief, when the provisions of §4A-903 of this title are applicable, the court may order dissolution of the limited liability company.

113. Pursuant to Maryland Code §4A-903, on application by or on behalf of a member, the circuit court of the county in which the principal office of the limited liability company is located may decree the dissolution of the limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement.

114. The county in which the principal office of IOOC is located is Fairfax County.

115. As set forth in herein above, Gosnell and Palmer breached the terms of the IOOC Operating on numerous occasions by, among other things:

- (A) failing to obtain "Majority Approval of Voting Interests" prior to taking actions regarding the day to day affairs of IOOC and prior to making all decisions and taking all actions with respect thereto as required pursuant to Section 6.01 and 6.03 of the IOOC Operating Agreement;
- (B) failing to deliver a ten (10) day "request for approval" notice of proposed actions to each Member prior to the authorization of a proposed action as required pursuant to Section 6.01 of the IOOC Operating Agreement;
- (C) acting in contravention of the terms of the IOOC Operating Agreement and failing to do any act required by the IOOC Operating Agreement as required pursuant to Section 6.04 of the IOOC Operating Agreement;
- (D) taking actions which would make it impossible to carry on ordinary business of IOOC as required pursuant to Section 6.04 of the IOOC Operating Agreement; and
- (E) acting without the consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of the IOOC Operating Agreement as required pursuant to Section 6.04 of the IOOC

Operating Agreement.

116. The breaches by Gosnell and Palmer are material breaches of terms of the IOOC Operating Agreement.

117. By failing to abide by the requirements of the IOOC Operating Agreement, Gosnell and Palmer undermined the ability of Sea Bay, the Member of IOOC holding the largest percentage of interest, to participate in the management of the company and the conduct of its business.

118. By failing to abide by the requirements of the IOOC Operating Agreement, Gosnell and Palmer entered agreements and undertook actions on behalf of IOOC and Inns without the knowledge of Sea Bay which have resulted in Inns' default under the terms of the Sens Construction Contract and the United Bank Loan documents and other improper acts.

119. The actions of Gosnell and Palmer in violation of the terms of the IOOC Operating Agreement have made it not reasonably practicable to carry on the business of IOOC in conformity with its articles of organization and the IOOC Operating Agreement. Gosnell and Palmer have caused IOOC to utterly fail in its obligations to act as the Manager of Inns for the benefit of the Inns investors, including Sea Bay.

*WHEREFORE*, Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, respectfully requests that this Honorable Court find Gosnell and Palmer in breach of the terms of the IOOC Operating Agreement and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate and post judgment interest.
- II. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Maryland Code §4A-804.

- III. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Section 11.17 of the IOOC Operating Agreement.
- IV. Entering its Decree enjoining Gosnell and Palmer from exercising any authority on behalf of IOOC due to their breach of the IOOC Operating Agreement.
- V. Entering its Decree enjoining Gosnell and/or Palmer from participating in the management of IOOC and/or Inns.
- VI. Entering Its Decree dissociating Gosnell and Palmer from the exercise of any rights associated with their Membership Interests in IOOC.
- VII. Pursuant to Maryland Code §4A-402(d)(2), Ordering the dissolution IOOC.
- VIII. Entering its Decree appointing a special receiver for IOOC in conformity with the provisions of Virginia Code §8.01-591, *et seq.*, and granting said receiver the power and authority to effect the winding down and dissolution of IOOC, and all other powers and rights as the Court may deem appropriate incident thereto.
- IX. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT III - SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
BREACH OF INNS OPERATING AGREEMENT**

120. Paragraphs 1 through 119 are incorporated herein by reference as though set forth at length.

121. Pursuant to Maryland Code §4A-402(d)(1), a court may enforce an operating agreement by injunction or by granting such other relief which the court in its discretion determines to be fair and appropriate in the circumstances.

122. Pursuant to Maryland Code §4A-402(d)(2), as an alternative to injunctive or other equitable relief, when the provisions of §4A-903 of this title are applicable, the court may order dissolution of the limited liability company.

123. Pursuant to Maryland Code §4A-903, on application by or on behalf of a member, the circuit court of the county in which the principal office of the limited liability company is located

may decree the dissolution of the limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement.

124. The county in which the principal office of Inns is located is Fairfax County.

125. As forth in herein above, Gosnell and Palmer breached the terms of the Inns Operating on numerous occasions by, among other things:

- (A) failing to obtain "Majority Approval of Voting Interests" by the duly authorized action of IOOC, the Class A Member of Inns, prior to taking actions regarding the day to day affairs of Inns and prior to making all decisions and taking all actions with respect thereto as required pursuant to Section 6.01 and 6.03 of the Inns Operating Agreement;
- (B) failing to deliver a ten (10) day "request for approval" notice of proposed actions to the Class A Member (IOOC) prior to the authorization of a proposed action as required pursuant to Section 6.01 of the Inns Operating Agreement;
- (C) acting in contravention of the terms of the Inns Operating Agreement and failing to do any act required by the Inns Operating Agreement as required pursuant to Section 6.04 of the Inns Operating Agreement;
- (D) taking actions which would make it impossible to carry on ordinary business of Inns as required pursuant to Section 6.04 of the Inns Operating Agreement; and
- (E) acting without the consent or ratification which is required to be consented to or ratified by the duly authorized act of the Class A Member (IOOC) pursuant to any provisions of the Inns Operating Agreement as required pursuant to Section 6.04 of the Inns Operating Agreement.

126. The breaches by Gosnell and Palmer are material breaches of terms of the Inns Operating Agreement.

127. By failing to abide by the requirements of the Inns Operating Agreement, Gosnell and Palmer undermined the ability of Sea Bay, the Member of Inns holding the largest total percentage of interest, to participate in the management of the company and the conduct of its business.



128. By failing to abide by the requirements of the IOOC Operating Agreement, Gosnell and Palmer entered agreements and undertook actions on behalf of Inns without the knowledge of Sea Bay which have resulted in Inns' default under the terms of the Sens Construction Contract and the United Bank Loan documents as well as other improper acts.

129. The actions of Gosnell and Palmer in violation of the terms of the Inns Operating Agreement have made it not reasonably practicable to carry on the business of Inns in conformity with its articles of organization and the Inns Operating Agreement. Gosnell and Palmer have caused Inns to fail to complete the Project, default on the Sens Construction Contract, and default on the United Bank Loan. To date, the Project remains incomplete and the hotel is not open for operation, nearly one (1) year after the contemplated date of completion, as a direct result of the acts and omissions of Gosnell and Palmer purportedly acting as the authorized managers of IOOC and Inns.

*WHEREFORE*, Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, respectfully requests that this Honorable Court find Gosnell and Palmer in breach of the terms of the Inns Operating Agreement and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate and post judgment interest.
- II. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Maryland Code §4A-804.
- III. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Section 11.17 of the IOOC Operating Agreement.
- IV. Entering its Decree enjoining Gosnell and Palmer from exercising any authority on behalf of Inns due to their breach of the Inns Operating Agreement.
- V. Entering its Decree enjoining Gosnell and/or Palmer from participating in the

management of IOOC and/or Inns.

- VI. Entering Its Decree dissociating Gosnell and Palmer from the exercise of any rights associated with their Membership Interests in Inns.
- VII. Pursuant to Maryland Code §4A-402(d)(2), Ordering the dissolution Inns.
- VIII. Entering its Decree appointing a special receiver for Inns in conformity with the provisions of Virginia Code §8.01-591, *et seq.*, and granting said receiver the power and authority to effect the winding down and dissolution of Inns, and all other powers and rights as the Court may deem appropriate incident thereto.
- IX. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT IV - SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
BREACHES OF FIDUCIARY DUTY**

130. Paragraphs 1 through 129 are incorporated herein by reference as though set forth at length.

131. Gosnell and Palmer, as members of IOOC participating in the management of the company, owe fiduciary duties to Sea Bay, and all other members of the company, to always act first and foremost in the best interests of the company.

132. Gosnell and Palmer, as members of Inns participating in the management of the company, owe fiduciary duties to Sea Bay, and all other members of the company, including IOOC, to always act first and foremost in the best interests of the company.

133. Gosnell and Palmer have failed to act in the best interests of IOOC and Inns and have breached their statutory and common law fiduciary duties to Sea Bay and the members of each respective company in various ways, including the following:

- (A) By acting without first obtaining proper authorization of the members.
- (B) By failing to properly maintain the books and records of the respective companies.

- (C) By entering agreements with their affiliates on terms which were not arm's length and which benefitted Gosnell and Palmer to the detriment of the other members of the respective companies.
- (D) By failing to provide the members with material and pertinent information regarding the status of the Project and the issues caused by the management of Gosnell and Palmer throughout the course of the Project.
- (E) By failing to timely advise the Class B Members of Inns regarding the Sens Notice and Sens Termination.
- (F) By failing to advise the Class B Members of Inns regarding the communications dated September 30, 2016 and October 6, 2016 from counsel to United States Surety Company, the surety for the performance bond obtained for the Project, in which the Surety communicates its "complete reservation of rights extending to all claims and defenses asserted or to be asserted by all parties; the Owner, Sens and USSC" and failing to explain the potential liability exposure and risks associated with the surety's communication in this regard.
- (G) By failing to oversee the construction of the Project in a reasonable manner consistent with industry standards.
- (H) By failing to provide Sea Bay with all information necessary to its meaningful participation in the management of IOOC and Inns.
- (I) By failing to provide Sea Bay required advanced notice of matters which required authorization and voting before actions could be taken on behalf of IOOC and Inns.
- (J) By failing to communicate material information to the Class B Members of Inns in the solicitation of their agreement to contribute additional capital to Inns to fund the Project.
- (K) By failing to obtain or attempt to obtain additional debt financing before making capital calls of the Members as required by the terms of the Operating Agreements.

134. The actions of Gosnell and Palmer in violation of their fiduciary duties have caused actual damages to Sea Bay and the other members of Inns, and have made it not reasonably practicable to carry on the business of IOOC and Inns in conformity with the articles of organization

and Operating Agreements of the respective companies.

135. Gosnell and Palmer have caused IOOC to utterly fail in its obligations to act as the Manager of Inns for the benefit of the Inns investors, including Sea Bay.

136. Gosnell and Palmer have caused Inns to fail to complete the Project, default on the Sens Construction Contract, and default on the United Bank Loan. To date, the Project remains incomplete and the hotel is not open for operation, nearly one (1) year after the contemplated date of completion, as a direct result of the acts and omissions of Gosnell and Palmer.

*WHEREFORE*, Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, respectfully requests that this Honorable Court find Gosnell and Palmer in breach of their fiduciary duties and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate and post judgment interest.
- II. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Maryland Code §4A-804.
- III. Awarding Sea Bay damages in the amount of its attorney's fees and costs in this matter pursuant to Section 11.17 of the IOOC Operating Agreement.
- IV. Entering its Decree enjoining Gosnell and Palmer from exercising any authority on behalf of IOOC and/or Inns.
- V. Entering its Decree enjoining Gosnell and/or Palmer from participating in the management of IOOC and/or Inns.
- VI. Entering its Decree dissociating Gosnell and Palmer from the exercise of any rights associated with their Membership Interests in IOOC and Inns.
- VII. Pursuant to Maryland Code §4A-402(d)(2), Ordering the dissolution of Inns.
- VIII. Entering its Decree appointing a special receiver for Inns in conformity with the provisions of Virginia Code §8.01-591, *et seq.*, and granting said receiver the power and authority to effect the winding down and dissolution of IOOC and Inns, and all

other powers and rights as the Court may deem appropriate incident thereto.

IX. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT V - SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
DISSOCIATION**

137. Paragraphs 1 through 136 are incorporated herein by reference as though set forth at length.

138. Virginia Code §13.1-1040.1(5) provides that a member of a limited liability company may be dissociated from the company by judicial determination because: the member engaged in wrongful conduct that adversely and materially affected the business of the limited liability company; the member willfully or persistently committed a material breach of the articles of organization or an operating agreement; or the member engaged in conduct relating to the business of the limited liability company which makes it not reasonably practicable to carry on the business with the member.

139. Gosnell and Palmer have engaged in wrongful conduct that adversely and materially affected the businesses of IOOC and Inns as stated above.

140. Gosnell and Palmer willfully or persistently committed a material breach of the articles of organization and operating agreements of IOOC and Inns as stated above.

141. Gosnell and Palmer engaged in conduct relating to the businesses of IOOC and Inns which makes it not reasonably practicable to carry on the business with them as stated above.

**WHEREFORE**, Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, respectfully requests that this Honorable Court enter judgment in their favor and against Gosnell and Palmer and decree that Gosnell and Palmer are dissociated as a members of IOOC and Inns pursuant to Virginia Code §13.1-1040.1(5), together with an award of attorney's fees and costs in this matter

pursuant to Virginia Code §13.1-1045 and Maryland Code §4A-804, pre-judgment interest at the legal rate, post judgment interest, and any and all other relief which may be deemed appropriate by the Court.

**COUNT VI - SEA BAY vs. GOSNELL, PALMER AND GPH-  
BREACH OF THE JOINT VENTURE LETTER**

142. Paragraphs 1 through 141 are incorporated herein by reference as though set forth at length.

143. Sea Bay is the successor in interest to the Meladon Group under the terms of the Joint Venture Agreement.

144. Gosnell, Palmer and GPH breached the terms of the Joint Venture Letter as stated herein and including by way of the following:

- (A) failing to reimburse "Project Expenses" as defined therein pursuant to Paragraph 6;
- (B) reimbursing Gosnell and Palmer for fees payable for sourcing investors contrary to Paragraph 7;
- (C) paying Gosnell Construction, LLC a construction management fee in excess of 3% of the hard costs of construction, including pre-construction design review and coordination services contrary to Paragraph 10; and
- (D) paying Palmer Gosnell Hospitality, Inc. in excess of the amounts stated in Paragraph 11.

145. Sea Bay has been damaged in an amount in excess of \$1,000,000 due to breaches of the Joint Venture Letter by Gosnell, Palmer and GPH.

**WHEREFORE**, Sea Bay respectfully requests that this Honorable Court enter judgment in its favor and against Gosnell, Palmer and GPH in an amount in excess of \$1,000,000 to be determined at trial, together with pre-judgment interest at the legal rate, post judgment interest, and

any and all other relief which may be deemed appropriate by the Court.

**COUNT VII - SEA BAY vs. GOSNELL, PALMER AND GPH-  
FRAUDULENT INDUCEMENT TO CONTRACT**

146. Paragraphs 1 through 145 are incorporated herein by reference as though set forth at length.

147. Gosnell, Palmer and GPH made material misrepresentations to induce Sea Bay to enter the Joint Venture Letter, invest in the Project and enter the IOOC and Inns Operating Agreements which representations they knew or should have known to be false when made, including the following:

- (A) The deal would be structured such that Sea Bay would be the largest single equity holder in the Project.
- (B) Sea Bay would be able to fully participate in the day-to-day management of all aspects of the Project, including review of contracts and finances.
- (C) Sea Bay would receive a development fee in an amount reflecting the value of its efforts and the expenses it incurred to acquire the purchase agreement for the Hotel Property, perform due diligence investigations and obtain entitlements necessary for the development of the Hotel Property in conformity with the contemplated Project.
- (D) Gosnell and Palmer would source a number of small investors for Inns in order to fund ninety percent (90%) of the cash needed to obtain the expected Project debt financing, because they (Gosnell and Palmer) were successful, experienced brokers of these types of deals who had, in fact, done such deals in the past.
- (E) The Pro Forma was an accurate statement of the expected costs and returns associated with the Project.
- (F) The Pro Forma contains the mutually agreed representations of the parties regarding the financial aspects of the Project addressed therein throughout all periods relevant to this proceeding.
- (G) The Term Sheet was an accurate statement of the expected costs associated with the Project, the amount of debt and equity financing needed for the

Project, the allocation and valuation of the parties' capital contributions to the entities to be formed to complete the Project, and the ownership structure of the joint venture entities associated with the Project.

- (H) The Term Sheet contains the mutually agreed representations of the parties regarding the financial aspects of the Project addressed therein throughout all periods relevant to this proceeding.
- (J) Gosnell, Palmer and GPH were experienced in hotel construction management.
- (K) Gosnell, Palmer and GPH had the experience and capability to manage the Project.

148. The foregoing representations were not true and Gosnell and Paler had no intention of undertaking the actions to make them true when made.

149. Sea Bay relied upon the foregoing representations as an inducement to its agreements to enter the Joint Venture Letter, the IOOC Operating Agreement, the Inns Operating Agreement, and its agreement to contribute capital to the companies as set forth in the Pro Forma and Term Sheet.

150. Sea Bay would not have entered the Joint Venture Letter, the IOOC Operating Agreement, the Inns Operating Agreement, nor contributed capital to the companies as set forth in the Pro Forma and Term Sheet but for the representations made by Gosnell, Palmer and GPH.

151. Sea Bay would not have continued to incur expenses related to the acquisition and development of the Hotel Property and the Project as well as additional expenses related to the negotiation of a joint venture agreement with Gosnell and Palmer for the Project but for the representations made by Gosnell, Palmer and GPH.

*WHEREFORE*, Sea Bay respectfully requests that this Honorable Court find Gosnell, Palmer and GPH liable for fraudulent inducement to contract and requests that this Honorable Court



enter judgment in its favor and against Gosnell, Palmer and GPII:

- I. Rescinding the Joint Venture Letter, IOOC Operating Agreement and Inns Operating Agreement and awarding all relief necessary to place Sea Bay in the same position it was in prior to the entry of those agreements, including its attorney's fees and costs incurred in this matter.
- II. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate from the date of the first material breach and post judgment interest.
- III. Entering its Decree enjoining Gosnell and Palmer from exercising any authority on behalf of IOOC and/or Inns.
- IV. Entering its Decree enjoining Gosnell and/or Palmer from participating in the management of IOOC and/or Inns.
- V. Pursuant to Maryland Code §4A-402(d)(2), Ordering the dissolution of IOOC and Inns.
- VI. Entering its Decree appointing a special receiver for IOOC and Inns in conformity with the provisions of Virginia Code §8.01-591, *et seq.*, and granting said receiver the power and authority to effect the winding down and dissolution of IOOC and Inns, and all other powers and rights as the Court may deem appropriate incident thereto.
- VII. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT VIII - WOODEN, SEA BAY, IOOC AND INNS vs. GOSNELL AND PALMER-  
TORTIOUS INTERFERENCE WITH CONTRACT**

152. Paragraphs 1 through 151 are incorporated herein by reference as though set forth at length.

153. The Inns Operating Agreement is an enforceable agreement between Sea Bay and all other Members of Inns.

154. The IOOC Operating Agreement is an enforceable agreement between Sea Bay and all other Members of IOOC.

155. The United Bank Loan is an enforceable agreement between Inns and United Bank.

156. The guaranty agreement executed by Don Wooden and United Bank incident to the United Bank Loan is an enforceable agreement between Wooden and United Bank.

157. The Sens Construction Agreement is an enforceable agreement between Inns and Sens.

158. Gosnell and Palmer were each aware of the existence of the Inns Operating Agreement, the IOOC Operating Agreement, the United Bank Loan, Wooden's guaranty agreement with United Bank incident to the United Bank Loan and the Sens Construction Contract.

159. Gosnell and Palmer intentionally, knowingly and wrongfully interfered with Sea Bay's performance under the terms of the IOOC Operating Agreement by prohibiting Sea Bay from participating in the management of IOOC as set forth herein above.

160. Gosnell and Palmer intentionally, knowingly and wrongfully interfered with Sea Bay's performance under the terms of the Inns Operating Agreement by prohibiting Sea Bay from participating in the management of Inns as set forth herein above.

161. Gosnell and Palmer intentionally, knowingly and wrongfully interfered with Inns' performance under the terms of the United Bank Loan as set forth herein above.

162. Gosnell and Palmer intentionally, knowingly and wrongfully interfered with Wooden's performance under the terms of the United Bank Loan guaranty as set forth herein above.

163. Gosnell and Palmer intentionally, knowingly and wrongfully interfered with Inns' performance under the terms of the Sens Construction Contract as set forth herein above.

164. The actions of Gosnell and Palmer constitute tortious interference with the contractual relationships between:

- (A) Sea Bay and the members of IOOC;
- (B) Sea Bay and the members of Inns;
- (C) Inns and United Bank;
- (D) Wooden and United Bank; and
- (E) Inns and Sens Construction.

165. As a direct and proximate result of the interference with the contractual relations between as stated above by Gosnell and Palmer, Sea Bay, IOOC, Inns and Wooden have suffered, and will continue to suffer harm and substantial damages to their respective businesses.

166. Gosnell and Palmer have at all times acted with conscious and willful disregard for the rights of Sea Bay, IOOC and its members, Inns and its members, and Wooden.

*WHEREFORE.* Sea Bay, on behalf of itself and for the benefit of IOOC and Inns, and Wooden respectfully request that this Honorable Court find Gosnell and Palmer liable for tortious interference with contract and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate from the date of the first material breach and post judgment interest.
- II. Awarding IOOC damages in an amount in excess of \$35,000,000 to be determined at trial for the value of its lost investment in the Project, together with pre-judgment interest at the legal rate and post judgment interest.
- III. Awarding Inns damages in an amount in excess of \$35,000,000 to be determined at trial for the value of its lost investment in the Project, together with pre-judgment interest at the legal rate and post judgment interest.
- IV. Awarding Wooden damages in an amount in excess of \$23,250,000 (or the amount of his liability under the terms of the United Bank guaranty agreement) to be determined at trial, together with pre-judgment interest at the legal rate and post

judgment interest.

- V. Awarding each of Sea Bay, IOOC, Inns and Wooden damages in the amount of their attorney's fees and costs incurred as a result of the various breaches of contract set forth herein (as the case may be for each) pursuant to *Prospect Development Company v. Bershader*, 258 Va. 75 (1999).
- VI. Awarding each of Sea Bay, IOOC, Inns and Wooden punitive damages in the amount of \$300,000.00 due to the conscious and willful disregard for the rights of Sea Bay, IOOC and its members, Inns and its members, and Wooden.
- VII. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT IX - WOODEN AND SEA BAY vs. GOSNELL AND PALMER-  
STATUTORY BUSINESS CONSPIRACY**

167. Paragraphs 1 through 166 are incorporated herein by reference as though set forth at length.

168. Gosnell and Palmer, without lawful justification, combined, agreed, and/or otherwise unlawfully conspired to injure Sea Bay in its trade or business in violation of Virginia Code §18.2-499 and §18.2-500 by taking the actions set forth herein above, including, but not limited to, intentionally depriving Sea Bay of the opportunity to participate in the day to day management of Sea Bay by entering agreements without its knowledge and consent, withholding information needed by Sea Bay to participate in such management, willfully ignoring the requirements of the IOOC Operating Agreement and the Inns Operating Agreement, undertaking the various intentional breaches of their fiduciary duties and making material misrepresentations to Sea Bay in order to induce it to contribute the Hotel Property and make other investments in the Project.

169. Gosnell and Palmer, without lawful justification, combined, agreed, and/or otherwise unlawfully conspired to injure Wooden in his trade or business in violation of Virginia Code §18.2-499 and §18.2-500 by taking the actions set forth herein above, including, but not limited to,

intentionally depriving Sea Bay of the opportunity to participate in the day to day management of Sea Bay by entering agreements without its knowledge and consent, withholding information needed by Sea Bay to participate in such management, willfully ignoring the requirements of the IOOC Operating Agreement and the Inns Operating Agreement, undertaking the various intentional breaches of their fiduciary duties and making material misrepresentations to Wooden in order to induce him to enter the guaranty agreement incident to the United Bank Loan and to invest in Sea Bay.

170. The actions of Gosnell and Palmer were malicious and evinced a conscious disregard of the rights of Sea Bay and Wooden.

171. Sea Bay and Wooden have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial as a result of the conduct of Gosnell and Palmer.

*WHEREFORE*, Sea Bay and Wooden respectfully request that this Honorable Court find Gosnell and Palmer liable for statutory business conspiracy pursuant to Virginia Code §18.2-499 and §18.2-500 and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate from the date of the first material breach and post judgment interest.
- II. Awarding Wooden damages in an amount in excess of \$23,250,000 (or the amount of his liability under the terms of the United Bank guaranty agreement) to be determined at trial, together with pre-judgment interest at the legal rate and post judgment interest.
- III. Awarding each of Sea Bay and Wooden treble the amount of each of their respective damages pursuant to Virginia Code §18.2-499 and §18.2-500.
- IV. Awarding each of Sea Bay and Wooden damages in the amount of their attorney's fees and costs incurred pursuant to Virginia Code §18.2-499 and §18.2-500.

- V. Awarding each of Sea Bay and Wooden damages in the amount of their attorney's fees and costs incurred pursuant to *Prospect Development Company v. Bershader*, 258 Va. 75 (1999).
- VI. Awarding each of Sea Bay, IOOC, Inns and Wooden punitive damages in the amount of \$300,000.00 due to the conscious and willful disregard for the rights of Sea Bay and Wooden.
- VII. Granting any and all other relief which may be deemed appropriate by the Court.

**COUNT X - WOODEN AND SEA BAY vs. GOSNELL AND PALMER-  
COMMON LAW BUSINESS CONSPIRACY**

172. Paragraphs 1 through 171 are incorporated herein by reference as though set forth at length.

173. Gosnell and Palmer, through their concerted actions, unlawfully combined together and conspired to injure Sea Bay by taking the actions set forth herein above, including, but not limited to, intentionally depriving Sea Bay of the opportunity to participate in the day to day management of Sea Bay by entering agreements without its knowledge and consent, withholding information needed by Sea Bay to participate in such management, willfully ignoring the requirements of the IOOC Operating Agreement and the Inns Operating Agreement, undertaking the various intentional breaches of their fiduciary duties and making material misrepresentations to Sea Bay in order to induce it to contribute the Hotel Property and make other investments in the Project.

174. Gosnell and Palmer, through their concerted actions, unlawfully combined together and conspired to injure Wooden by taking the actions set forth herein above, including, but not limited to, intentionally depriving Sea Bay of the opportunity to participate in the day to day management of Sea Bay by entering agreements without its knowledge and consent, withholding information needed by Sea Bay to participate in such management, willfully ignoring the requirements of the IOOC Operating Agreement and the Inns Operating Agreement, undertaking the

various intentional breaches of their fiduciary duties and making material misrepresentations to Wooden in order to induce him to enter the guaranty agreement incident to the United Bank Loan and to invest in Sea Bay.

175. The actions of Gosnell and Palmer were intentional, purposeful, malicious, and without lawful justification and evinced a conscious disregard of the rights of Sea Bay and Wooden.

176. Sea Bay and Wooden have suffered, and will continue to suffer, substantial damages in an amount to be proven at trial, which were and are a reasonably foreseeable consequence of the conduct engaged in by Gosnell and Palmer.

**WHEREFORE**, Sea Bay and Wooden respectfully request that this Honorable Court find Gosnell and Palmer liable for common law business conspiracy and enter judgment in their favor and against Gosnell and Palmer as follows:

- I. Awarding Sea Bay damages in an amount in excess of \$7,000,000 to be determined at trial for the value of its lost investment in IOOC and Inns, together with pre-judgment interest at the legal rate from the date of the first material breach and post judgment interest.
- II. Awarding Wooden damages in an amount in excess of \$23,250,000 (or the amount of his liability under the terms of the United Bank guaranty agreement) to be determined at trial, together with pre-judgment interest at the legal rate and post judgment interest.
- III. Awarding each of Sea Bay and Wooden damages in the amount of their attorney's fees and costs incurred pursuant to *Prospect Development Company v. Bershader*, 258 Va. 75 (1999).
- IV. Awarding each of Sea Bay, IOOC, Inns and Wooden punitive damages in the amount of \$300,000.00 due to the conscious and willful disregard for the rights of Sea Bay and Wooden.
- V. Granting any and all other relief which may be deemed appropriate by the Court.

**ALL COUNTS STATED ABOVE ARE PLEADED AS AFFIRMATIVE CLAIMS AS WELL AS IN THE ALTERNATIVE TO ANY AND ALL OTHER CLAIMS**

**A JURY TRIAL IS DEMANDED FOR ALL CLAIMS PERMITTED BY THE RULES OF  
COURT AND THE CODE OF VIRGINIA**

**WE ASK FOR THIS.**

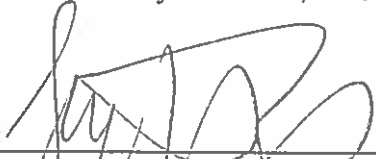
**SEA BAY HOTEL, LLC, for itself and  
for the benefit of  
IOOC, LLC and  
INNS OF OCEAN CITY, LLC**

**and**

**DON WOODEN**

*By Counsel*

HARRISON & JOHNSTON, PLC



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