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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA
CIVIL ACTION

MARINA SOUTH SHORE CONDOMINIUM
ASSOCIATION, INC., a Florida corporation
not-for-profit,

Plaintiff,

v.

Case No. 07-CA-005132

PUNTA GORDA ISLES, SECTION 22
HOMEOWNERS ASSOCIATION, INC., a
Florida corporation not-for-profit,

Defendant.

ORDER APPROVING SETTLEMENT AGREEMENT

THIS CAUSE came before the Court for hearing on August 25, 2008, at 2:30 p.m. on the Motion to Approve Settlement Agreement filed by Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC. ("Section 22"), and the Court having reviewed the Motion and the Settlement Agreement entered into between Plaintiff, MARINA SOUTH SHORE CONDOMINIUM ASSOCIATION, INC. ("Marina South Shore"), and Section 22, the Court having reviewed the Court file, and the Court having heard the argument of those presenting argument at the above-described hearing, it is hereby

ORDERED AND ADJUDGED that:

1. The Court finds that under the unique circumstances presented by this case, the terms of the Settlement Agreement provide a fair, equitable and uniform treatment to all similarly situated classes of unit owners in Marina South Shore and members of Section 22.

2. The claims being resolved in this Settlement Agreement involve matters of common interest to the unit owners in Marina South Shore and the members of Section 22. The

Settlement Agreement has been entered into by Marina South Shore on its own behalf and on behalf of all of its unit owners pursuant to section 718.111, Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure. The Settlement Agreement has been entered into by Section 22 on its own behalf and on behalf of all of its members pursuant to section 720.303(1), Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure.

3. The Settlement Agreement, a copy of which is attached hereto as Exhibit "A", is hereby approved and adopted in full by the Court as if the terms of the Settlement Agreement were set forth verbatim in this Order, and Marina South Shore, Section 22 and all persons bound by the terms of the Settlement Agreement are hereby ordered to abide by all of its terms.

4. The Court reserves jurisdiction to enforce the terms of this Order and the Settlement Agreement by entering any further orders or judgments as are appropriate.

DONE AND ORDERED in Lee County, Florida on this _____ day of _____, 2008.

ORIGINAL SIGNED

AUG 25 2008

The Honorable Michael T. McHugh
Circuit Court Judge

**MICHAEL T. MCHUGH
CIRCUIT JUDGE**

Conformed copies to:

Andrew I. Solis, Esq.
Mark H. Muller, Esq.

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PUNTA GORDA ISLES, SECTION 22
HOMEOWNERS ASSOCIATION, INC., a
Florida corporation not-for-profit,

Defendant.

Case No. 07-CA-005132

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made by and between Plaintiff, MARINA SOUTH SHORE CONDOMINIUM ASSOCIATION, INC. ("Marina South Shore") and Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC. ("Section 22").

RECITATIONS

1. Section 22 is the homeowners association which governs the Burnt Store Marina & Country Club community ("Burnt Store Marina") in Lee County, Florida.
2. Burnt Store Marina is governed by the provisions of chapter 720, Florida Statutes, and various declarations of restrictive covenants that have been recorded in the Public Records of Lee County, Florida (collectively, the "Declarations").
3. There are currently 1913 members of Section 22 (the "Members"). The Members are comprised of the individual home and condominium unit owners within Burnt Store Marina, and includes all of the unit owners in Marina South Shore.
4. Pursuant to the relevant Declarations, Section 22 has the power and authority to impose assessments against its Members for various purposes and all assessments against the Members are required to be equal.
5. On May 30, 2007, the membership of Section 22 voted to approve an amendment to Section 22's calendar year 2007 budget which in essence authorized Section 22 to lease the golf course, the clubhouse and related facilities that were located within the boundaries of Burnt Store Marina (collectively, the "Golf Course") from Realmark, the successor developer of Burnt

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Store Marina. Based upon that approval, Section 22 leased the Golf Course from Realmark and entered into other agreements with Realmark and third parties relating to the Golf Course.

6. Section 22 anticipated that the operation of the Golf Course in 2007 would not produce sufficient revenue to cover the Golf Course's operating expenses. As a result, in 2007 Section 22 assessed each of its members \$300.00 to cover the operation of the Golf Course (the "\$300 Golf Course Assessment"). Of the 1913 Members of Burnt Store Marina, 1869 Members paid, and only 44 Members did not pay, the \$300 Golf Course Assessment.

7. Section 22 anticipated that the operation of the Golf Course in 2008 would not produce sufficient revenue to cover its operating expenses. As a result, in 2008 Section 22 assessed each of its members \$400.00 to cover the operation of the Golf Course (the "\$400 Golf Course Assessment"). The \$400 Golf Course Assessment was held separately from the regular assessment that was levied by Section 22 for 2008 in the amount of \$490.00 to cover the general operating expenses of Section 22 (the "\$490 Regular Assessment"). In total, the Members were assessed \$890.00 in 2008.

8. On May 30, 2007, Marina South Shore filed this lawsuit (the "Lawsuit") pursuant to Rule 1.221, Florida Rules of Civil Procedure, and section 718.111, Florida Statutes, in its own name and on behalf of all of its unit owners and challenged Section 22's authority under Florida law and the Declarations to lease and operate the Golf Course and to assess the Members for the cost of operating the Golf Course.

9. On January 24, 2008, the Court entered an Order (the "Judgment") which ruled in favor of Marina South Shore and which held that Section 22 did not have the authority to lease and operate the Golf Course or to assess the Members for the cost of operating the Golf Course. In addition, the Judgment held that Marina South Shore was entitled to recover its costs and attorneys fees from Section 22. On March 7, 2008, Section 22's Motion For Rehearing was denied.

10. On April 4, 2008, Section 22 appealed the Judgment to the Second District Court of Appeal (the "Appeal"). Section 22 contends in the Appeal that the Judgment is incorrect, that Section 22 had the authority to lease and operate the Golf Course and to assess the Members for the cost of operating the Golf Course, and that in any case Marina South Shore was not entitled to recover its costs and attorneys fees from Section 22.

11. In May of 2008, Section 22 refunded in full the \$400 Golf Course Assessment to each and every Member who had paid the \$400 Golf Course Assessment.

12. Effective May 28, 2008, Section 22 terminated the lease for the Golf Course and all other agreements related to the Golf Course. As of May 29, 2008, the Golf Course began being operated by Burnt Store Golf & Activity Club, Inc., a not-for-profit Florida corporation. The Burnt Store Golf & Activity Club is financially supported by its members on a voluntary payment basis and does not rely on assessments or Section 22 for any of its revenue.

13. A hearing in the Lawsuit was scheduled by Marina South Shore for August 25, 2008 at 2:30 p.m. to determine, among other things, the amount of costs and attorneys fees that Section 22 would be required to pay to Marina South Shore and to determine whether Marina

South Shore's members were entitled to a refund of the \$300 Golf Course Assessment they had paid.

14. In order to resolve the financial expense, burden and uncertainties of the Lawsuit, the Appeal and any further litigation surrounding the leasing of the Golf Course and the \$300 Golf Course Assessment, Marina South Shore and Section 22 have agreed to enter into this Settlement Agreement.

TERMS OF AGREEMENT

In consideration of the foregoing representations and of the mutual covenants, promises and considerations set forth below, and with the intent to be legally bound, Marina South Shore and Section 22 agree as follows:

15. Recitations: The foregoing recitations are true and correct and are incorporated herein by reference as part of the terms of this Settlement Agreement.

16. Representative Capacity. Marina South Shore and Section 22 agree that all of the claims being resolved in this Settlement Agreement involve matters of common interest to their unit owners and the Members, respectively. Marina South Shore is entering into this Settlement Agreement on its own behalf and on behalf of all of its unit owners pursuant to section 718.111, Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure, with the intent that all of the terms of this Settlement Agreement will apply to and be binding on all of its unit owners. Section 22 is entering into this Settlement Agreement on its own behalf and on behalf of all of its Members pursuant to section 720.303(1), Florida Statutes, and Rule 1.221, Florida Rules of Civil Procedure, with the intent that all of the terms of this Settlement Agreement will apply to and be binding on all of its Members.

17. Payment of Costs and Attorneys Fees to Marina South Shore. Section 22 hereby agrees that it will pay to Marina South Shore the actual costs and attorneys fees incurred by Marina South Shore in the Lawsuit and the Appeal through July 25, 2008, in the amount of \$115,841.54, plus an additional sum of \$2,500.00 to reimburse Marina South Shore for the costs and attorneys fees they anticipate incurring in the Lawsuit and the Appeal to finalize this Settlement Agreement. The total amount to be paid by Section 22 to Marina South Shore in full and complete settlement of all of Marina South Shore's claims for the costs and attorneys fees they have incurred or will incur in the Lawsuit is \$118,341.54 (the "Direct Attorneys Fees Payment"). The Direct Attorneys Fees Payment will be paid by Section 22 to Marina South Shore by no later than September 25, 2008.

18. Reimbursement of Section 22 Costs and Attorneys Fees to Marina South Shore. The individual members of Marina South Shore are all Members of Section 22 and have, directly or indirectly, paid a portion of the costs and attorneys fees incurred by Section 22 to defend the Lawsuit through the payment of Section 22's general assessments. Section 22 hereby agrees to pay to Marina South Shore the sum of \$8,680.00 (the "Indirect Attorneys Fees Reimbursement") in full and complete settlement of all claims Marina South Shore has or may have against Section 22 to recover their share of assessments levied by Section 22 to fund Section 22's expenses

incurred in the Lawsuit. The Indirect Attorneys Fees Reimbursement will be paid by Section 22 to Marina South Shore by no later than September 25, 2008.

19. Entry of Amended Judgment. Marina South Shore and Section 22 agree that paragraphs 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 and 28(f) should be deleted from the Judgment in their entirety and that a new judgment vacating the Judgment and containing only the remaining paragraphs (the "Amended Judgment") should be entered by the Court. In consideration for these revisions to the Judgment, Section 22 agrees to pay Marina South Shore the sum of \$15,000.00 (the "Amended Judgment Payment"). The Amended Judgment Payment will be paid by Section 22 to Marina South Shore by no later than September 25, 2008.

20. Golf Course Audit. In connection with the termination of Section 22's lease of the Golf Course on May 28, 2008, Section 22 has hired an independent certified public accounting firm to perform an audit of Section 22's financial records for calendar year 2007 and the partial calendar year from January 1, 2008 through May 31, 2008. This audit will include an audit of Sections 22's general operations as well as an audit of Section 22's Golf Course operations. Section 22 agrees to provide Marina South Shore with complete copies of the audits of Section 22's general operations and the Golf Course operations for both periods of time within ten (10) calendar days of Section 22's receipt of the audits.

21. Refund Pool. Section 22 represents to Marina South Shore that the preliminary estimates from Section 22 and the audit are that after the payment of all necessary and reasonable expenses of the Golf Course operations, the net income from Section 22's Golf Course operations that will be available to refund to those Members who paid the \$300 Golf Course Assessment (the "Refund Pool") will be approximately \$135,000.

22. Classes of Members. With respect to the Refund Pool, Marina South Shore and Section 22 agree that all of the Members will be divided into the three classes of Members that are defined as follows:

A. Class A Members. Class A Members are those Members who paid the \$300 Golf Course Assessment and who did not unilaterally take a credit of all or a part of the \$300 Golf Course Assessment against the \$490 Regular Assessment, assessed penalties, interest and/or attorneys fees. Class A Members may have a zero balance or may owe a balance to Section 22. Regardless of the foregoing, any Member who is not a Class B Member or a Class C Member shall also be a Class A Member.

B. Class B Members. Class B Members are those Members who paid the \$300 Golf Course Assessment and who as of July 1, 2008 had unilaterally taken a credit of all or any part of the \$300 Golf Course Assessment (generally \$300.00, but in some cases slightly more or less) against the \$490 Regular Assessment or other amounts owed to Section 22 by paying to Section 22 only \$190.00 (but in some cases slightly more or less) in what they believed was payment in full of the \$490 Regular Assessment.

C. Class C Members. Class C Members are those Members who never paid the \$300 Golf Course Assessment.

23. Distribution of the Refund Pool. Section 22 and Marina South Shore agree that Section 22 will distribute the entire Refund Pool to the Class A Members so that each Class A Member will receive the same refund from Section 22. Class A Members will receive a refund check from Section 22. Class B Members and Class C Members will not receive any distribution from the Refund Pool.

24. Agreement to Recognize Credits and Write-Off Balances Owed on the \$300 Golf Course Assessment by Class B Members and Class C Members. Marina South Shore and Section 22 agree that Section 22 shall recognize the credits the Class B Members took against the \$490 Regular Assessment, assessed penalties, interest and/or attorneys fees. Marina South Shore and Section 22 further agree that Section 22 shall write-off as uncollectible and shall be prohibited from attempting to collect all or any portion of the \$300 Golf Course Assessment from Class B Members and/or Class C Members.

25. Liability for Current and Future Assessments. The unit owners in Marina South Shore include Class A Members, Class B Members and Class C Members. The distribution of the Refund Pool to Class A Members, the recognition of the credits taken by Class B Members against the \$490 Regular Assessment, assessed penalties, interest, and/or attorneys fees, and the write-off and prohibition on the collection of balances owed on the \$300 Golf Course Assessment by Class B Members and Class C Members, are specifically intended by Section 22 to provide a fair, equitable and uniform treatment to all similarly situated classes of Members in Burnt Store Marina and are intended to be a full and final resolution of all claims by the Members relating to the \$300 Golf Course Assessment. Section 22 and Marina South Shore specifically agree that after July 1, 2008, no Member shall be allowed to claim that it is owed money by Section 22 or to deduct from any current or future assessment levied by Section 22 any amount that Member claims is still owed by Section 22 to that Member, on account of the fact that that Member's distribution from the Refund Pool was less than a full refund of the \$300 Golf Course Assessment, that other Members took credits against the \$490 Regular Assessment, assessed penalties, interest, and/or attorneys fees, or that other Members ultimately did not have to pay all or a portion of the \$300 Golf Course Assessment.

26. Prohibition on General or Special Assessment to Pay for Refunds. Marina South Shore and Section 22 agree that Section 22 shall be prohibited from imposing a general or special assessment against any of Marina South Shore's unit owners or any other Members to pay for all or a part of the refund of the \$300 Golf Course Assessment to all of the Members who paid the \$300 Golf Course Assessment.

27. Prohibition on Assessment Against Marina South Shore to Pay for Settlement Costs. Section 22 agrees that it will not impose, now or in the future, any general or special assessment against Marina South Shore or any of its unit owners to directly or indirectly pay for the Direct Attorneys Fees Payment, the Indirect Attorneys Fees Reimbursement or the Amended Judgment Payment.

28. Attorneys Fees and Costs. Except as otherwise specifically provided for in this Settlement Agreement, Marina South Shore and Section 22 shall each bear their own costs and attorneys fees in the Lawsuit and the Appeal. The prevailing party in any dispute between Marina South Shore or any of its unit owners and Section 22 that relates to or arises out of this

Settlement Agreement shall be entitled to recover its costs and attorneys fees from the non-prevailing party.

29. Hearing to Approve Settlement Agreement. Marina South Shore and Section 22 agree that the hearing currently scheduled for August 25, 2008, at 2:30 p.m. shall be used by Marina South Shore and Section 22 to request the Court to enter an order approving this Settlement Agreement and to request the Court to enter the Amended Judgment.

30. Relinquishment of Jurisdiction and Dismissal of the Appeal. Within seven (7) days after the full execution of this Settlement Agreement, Section 22 shall advise the Second District Court of Appeal that a settlement has been agreed to by the parties, shall advise the Second District Court of Appeal that part of the settlement includes the entry of an Amended Judgment, and shall request the Second District Court of Appeal to relinquish jurisdiction of the Appeal to the trial court for the entry of any appropriate orders or judgments to effectuate the terms of the settlement. Within seven (7) days of the entry of the appropriate orders or judgments by the trial court, Section 22 shall voluntarily dismiss the Appeal.

31. Resolution of the Lawsuit. The entry of the order approving the Settlement Agreement and the Amended Judgment will constitute the resolution of all remaining issues in the Lawsuit and Section 22 shall promptly file a Final Disposition Form with the Court.

32. Authority to Execute Settlement Agreement. The individuals executing this Settlement Agreement represent and warrant to the other party that they have the full authority and approval of their associations to execute this Settlement Agreement.

33. Counterparts and Copies. Marina South Shore and Section 22 agree that this Settlement Agreement may be executed in counterparts and that copies of this Settlement Agreement, including facsimiles or electronic transmissions, are as binding and enforceable as an original.

34. Entire Agreement and Modification. This Settlement Agreement constitutes the entire agreement between Marina South Shore and Section 22 and all prior oral or written representations, negotiations and agreements regarding the subject matter of this Settlement

[continued on page 7]

Agreement are merged into this Settlement Agreement. This Settlement Agreement may not be amended or modified except in a writing signed by Marina South Shore and Section 22.

MARINA SOUTH SHORE CONDOMINIUM
ASSOCIATION, INC.

Date: _____

By: _____
Name: _____
Title: _____

PUNTA GORDA ISLES, SECTION 22
HOMEOWNERS ASSOCIATION, INC.

Date: August 12, 2008

By: John F. O'Neill
Name: John E. O'Neill
Title: PRESIDENT

Agreement are merged into this Settlement Agreement. This Settlement Agreement may not be amended or modified except in a writing signed by Marina South Shore and Section 22.

MARINA SOUTH SHORE CONDOMINIUM ASSOCIATION, INC.

Date: AUGUST 21, 2008

By: *Alan D. Ewing*
Name: ALAN D. EWING
Title: PRESIDENT

PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC.

Date: _____

By: _____
Name: _____
Title: _____

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