

IN THE CIRCUIT COURT FOR THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

ANA DANTON, individually and  
for the use and benefit of other  
property owners within Hammocks  
Community Association Incorporated,

CASE NO. 2022-007798-CA-01

Plaintiff,

v.

HAMMOCKS COMMUNITY ASSOCIATION  
INCORPORATED,

Defendant.

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**RECEIVER'S SUPPLEMENTAL REPORT  
FOR THE PERIOD JANUARY 5, 2023 THROUGH FEBRUARY 22, 2023**

The Honorable David M. Gersten (Retired), the court-appointed Receiver (the "Receiver") in the above-captioned action, and pursuant to the Court's November 21, 2022 Order Appointing Receiver by Stipulation of the Parties, submits his Supplemental Report setting forth his activities and efforts to fulfill his court-appointed duties for the period from January 5, 2023 through February 22, 2023.<sup>1</sup>

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<sup>1</sup> This Report supplements the Receiver's January 4, 2023 Initial Report and Inventory (the "Initial Report").

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**A.**  
**INTRODUCTION**

This Report marks the close of the third month of the Receiver's appointment.

During the last forty-five (45) days (since the Receiver's Initial Report to this Court), the Receiver and his team have:

- formulated (with this Court's approval) a procedure for an election of a new Board of Directors on March 30, 2023;
- uncovered further evidence of fraud by the prior Board;
- achieved substantial progress in the complete transition of the operation of the Association's day-to-day activities to property manager First Service Residential ("FSR");
- by virtue of the work of landscaping vendor Turf Management ("Turf"), tackled the Association's long-ignored landscaping needs;
- established a 24-hour security presence – via an independent and legitimate third-party security company (Elite Guard, Inc., "Elite") – to protect the Association's property and its homeowners;
- otherwise addressed safety concerns that were ignored by the prior Board for years;
- filed a \$3.7 million claim with the Association's Crime insurance carrier (subject to the policy's \$1 million policy limits) to attempt to recover some of the monies fraudulently diverted from the Association and its homeowners;
- appeared in approximately fifty (50) active lawsuits involving the Association, including a) in one of those lawsuits, filing a motion seeking to have the Association relieved of a nearly \$300,000 judgment issued against it arising from the self-serving misconduct of prior Board member Marglli Gallego, and b) in the others, begun working towards the most expeditious (and "just") resolution of those lawsuits;
- begun analyzing all foreclosures of properties governed by the Association since 2015 for any self-dealing;
- retained additional professionals to provide periodic auditing of the Association's financial records (to protect against fraud in the future), prepare the Association's taxes, correct conditions of disrepair throughout the Association's property, and otherwise service the Association's extensive grounds;

- taken efforts to eliminate unnecessary costs, liquidate unnecessary assets, and bring additional (and much needed) monies into the Association to offset its expenses to the benefit of all homeowners;
- solidified the Association’s insurance coverage, including procuring additional umbrella coverage; and
- begun investigating the Association’s prior attorneys, including in an attempt to recover legal fees improperly paid by the prior Board members to conceal or otherwise avoid justice for their fraudulent activities (including seeking relief in this Court due to some of those attorneys’ refusal to cooperate with the Receiver).

Much has been accomplished in less than one hundred (100) days, yet more needs to be done (as detailed below). The Receiver and his team are working tirelessly to ensure that his work is completed as soon as humanly possible (and to this Court’s satisfaction) so that he can exit, handing the Association over to the new Board to usher in a new era at the Hammocks.

**B.**  
**THE RECEIVER’S ACTIVITIES AND EFFORTS FOR THE PERIOD JANUARY 5, 2023 THROUGH FEBRUARY 22, 2023 AND ACTION PLAN MOVING FORWARD**

**1.**  
**The Receiver’s Employment of Professionals**

As discussed in the Receiver’s Initial Report, during the prior reporting period the Receiver engaged the following professionals: 1) Damian & Valori LLP / Culmo Trial Attorneys (“Lead Counsel”) as his lead counsel; 2) FSR as property manager; 3) landscaping vendor Turf; 4) an outside security vendor, Elite; 5) EHRlinked to establish and operate a homeowners’ hotline (and accompanying Airtable database) and create and update an interim replacement website for the Association; and, 6) forensic accountants, Kapila Mukamal, LLP (“KM.”). A summary of the work of each of these professionals during the current reporting period is included in Sections (2), (3) and/or (4) below, as applicable.

During the current reporting period, the Receiver directed the payment of \$646,753.20 in Association expenses, including, but not limited to, for the payment of some of the aforementioned professionals. Those payments did not include payment for the services of the Receiver, Lead Counsel, EHRLinked, KM, or the Advisory Committee's counsel.<sup>2</sup>

During the current reporting period, Receiver has also engaged (or is currently in the process of engaging) the following professionals: 1) Citrin Cooperman to conduct periodic audits of the Association's financial records as well as to prepare the Association's taxes; 2) The Fitness Solution Inc. to perform bi-monthly preventative maintenance on the Association's fitness center as well as necessary one-time repairs due to the state of disrepair of some of the equipment in the fitness center; 3) e-discovery document management company DISCO to assist with the Receiver's analysis of the Association's voluminous records (for an initial period of three (3) months); 4) The Lake Doctors, Inc. to service the Association's numerous lakes (replacing prior vendor Solitude Lake Management); and, 5) AI Windows & Doors to replace the aged and deteriorating lobby doors in the Association's clubhouse.

## 2.

### **The Receiver's Continued: 1) Analysis of the Association's Financial Records; and, 2) Management of Association Assets**

#### a.

### **The Forensic Accountants Continue Digging Up Evidence of Fraud**

As noted in the Initial Report, the forensic accounts retained by the Receiver (KM) have determined that the Association's financial records are incomplete and inconsistent, exacerbated by the fact that audited financial statements have not been prepared since fiscal year 2018.

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<sup>2</sup> On February 13, 2023, the Receiver filed his Second Interim Application for Order Authorizing Payment of Fees and Expenses and for Authorization to Distribute Funds Pursuant to the Appointment Orders, requesting authorization to issue payment for the fees and costs of the Receiver, Lead Counsel, EHRLinked, KM, and the Advisory Committee's counsel for the period from December 15, 2022 through January 15, 2023 (a total of \$275,847.19).

During the current reporting period, KM continued its analysis of the information obtained from the Association's TOPS database (including general ledger detail reports, check register reports, and owner activity reports), together with the records: 1) retrieved by the Receiver from the Association's clubhouse in the days after his appointment; 2) located on the computers in the clubhouse at that time; and, 3) provided by the Association's prior accountants.

Based upon that analysis, KM has: 1) prepared a preliminary analysis of all parties who received monies from the Association from 2015 through 2022; 2) prepared an analysis of monies paid to entities that KM has identified as fraudulent vendors, which information was instrumental in the Receiver's submission of a claim for over \$3.7 million with the Association's Crime policy carrier (discussed below); 3) identified at least fifteen (15) individuals on the Association's payroll from 2019 through 2022 who are related to ousted Board members or the aforementioned fraudulent vendors; and, 4) identified fifty-five (55) bank accounts and credit card accounts (discussed further below).

KM is diligently working to complete its analysis: 1) to further assist the Receiver in submitting additional insurance claims and/or filing lawsuits to recover monies misappropriated from the Association, as appropriate; and, 2) so that accurate financial statements and a budget can be promptly prepared.

**b.**  
**The Association's Bank Accounts**

During the prior reporting period, the Receiver identified thirteen (13) active bank accounts with a total balance of \$1,132,392.09. The current balance of those accounts totals \$301,422.59, more particularly as follows: 1) \$38,595.18 in an account at City National Bank, which account was opened by the Receiver upon FSR's recommendation; 2) \$121,353.23 in three (3) checking accounts at Popular Bank; 3) \$8,696.81 in seven (7) accounts (checking and savings) at Truist

Bank<sup>3</sup>; 4) \$115,271.29 in a checking account at TD Bank; and, 5) \$17,506.08 in two (2) accounts at CIT/First Citizens Bank.

As discussed in the Initial Report, at that time the Receiver had preliminarily identified an additional bank account maintained with Mutual of Omaha (“MoA”). The Receiver has since been advised by MoA that the Association opened that account in February 2015, in which account minimal activity has occurred (a few transactions in 2016 totaling approximately \$5,000.00). MoA has not yet confirmed whether that account remains active and, if so, the current balance of that account.

Supplementing the Receiver’s investigation, as part of its analysis KM has identified fifty-five (55) bank accounts (including the aforementioned accounts) and credit card accounts. KM has prepared a detailed inventory of all documents that it has received pertaining to those accounts and has identified for the Receiver missing documents for further follow up; the Receiver is currently working to obtain those documents for further analysis by KM.

Twenty-eight (28) of the accounts identified by KM have no or very little activity during the period 2019 through 2022. Of the remaining accounts, KM has completed reconstructing of sixteen (16) of those accounts and is in the process of reconstructing the activity in the others for the years 2019 through 2022.

As discussed in the Initial Report, pre-receivership the Association obtained a loan from Popular Bank (then with an outstanding balance of \$435,547.67), for which monthly payments of \$44,353.59 are due by the tenth day of each month. Since the Initial Report, the Receiver has

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<sup>3</sup> Most of the funds in the Truist accounts at the time of the Initial Report (\$738,299.51) were subsequently transferred to the Association’s City National Bank account, the latter of which is now being used as the primary account for the payment of the Association’s expenses.



made two (2) additional monthly loan payments to Popular Bank, bringing the total loan balance down to \$306,757.16.

**c.**  
**The Association's Unnecessary Vehicles and Other Equipment =**  
**More Monies In the Association's Coffers**

During the prior reporting period, the Receiver had preliminarily identified approximately fifty (50) vehicles owned (or potentially owned) by the Association. The Receiver has since determined that the Association does, in fact, own thirty-two (32) of those vehicles, only five (5) of which are actually needed to operate the Association (as advised by FSR). Accordingly, the Receiver is in the process of selling the remaining vehicles for fair market value to AutoNation and CarMax, which funds can be used to offset the Association's expenses, including to satisfy \$92,116.20 in loans obtained by the prior Board to purchase five (5)<sup>4</sup> of those vehicles. FSR is currently coordinating AutoNation and CarMax's onsite appraisal of those vehicles.

To bring additional monies into the Association, the Receiver is also in the process of selling (for fair market value minus money owed) much of the Association's landscaping equipment (also identified in Exhibit C to the Receiver's Initial Report). Because the Receiver has hired Turf as the Association's landscaping vendor (replacing the prior "insider" landscaping vendor, Coco Landscaping), it is not necessary for the Association to own that equipment.

**d.**  
**Insurance**

During the current reporting period, the Receiver has: 1) remedied all pending insurance issues identified in his Initial Report; 2) obtained additional insurance coverage, as needed; and,

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<sup>4</sup> As indicated in Exhibit C to the Receiver's Initial Report, one of those vehicles was reported as stolen. However, that vehicle was recently located, albeit damaged. The Receiver is in the process of filing a claim with the Association's automobile insurer to have that vehicle repaired.

3) submitted a claim to one of the Association's insurance carriers to recover monies misappropriated by the prior Board.

As noted in his Initial Report, upon the Receiver's renewal of the Association's General Liability policy, the carrier for that policy requested that certain conditions at the property be repaired, improved and/or cleaned. At the time of the Initial Report, the Receiver had addressed many (but not all) of those conditions. Those remaining conditions have since been remedied.

During the prior reporting period, the Receiver also received a Notice of Cancellation from the Association's Commercial Property carrier indicating that policy would be cancelled in February 2023 for "non-compliance of inspection recs." At the time of his prior report: 1) the Receiver had remedied the vast majority of the identified non-compliance issues and was working to remedy one last issue (electrical work); and, 2) as a result, the Association's insurance broker had advised that it was working to have the Notice of Cancellation rescinded. The Receiver has since remedied that electrical issue and the Notice of Cancellation has been rescinded.

Since his prior Report, the Receiver has also procured: 1) a \$5,000,000 umbrella insurance policy with Richmond National Insurance Company, Policy No. RN-7-0325486, for the policy period January 18, 2023 through January 18, 2024, to further safeguard the Association; and, 2) as directed by the Court, a Professional Liability policy providing coverage to the Receiver with Gemini Insurance Company, Policy No. VPPL018597, for the policy period January 17, 2023 through January 17, 2024.

Having now received the necessary information from KM to do so, the Receiver has also submitted a Proof of Loss with the Association's Crime policy carrier (Philadelphia Indemnity Insurance Company) seeking to recover \$3,429,744.03 in payments made by the prior Board to

vendors that have been identified by KM as fraudulent, subject to the Crime policy's \$1 million policy limits.

As noted in his Initial Report, the Receiver is also investigating a separate and distinct claim against the Association's Directors and Officers ("D&O") policy. The day after he was appointed, the Receiver directed the Association's insurance broker to send a notice of potential claims to the D&O carrier (also Philadelphia Indemnity Insurance Company). The Receiver's analysis of that potential claim is ongoing, although the Receiver anticipates that he will have that analysis completed by the time of his next Supplemental Report to this Court (and well before that policy expires on August 22, 2023).

### 3.

#### **The Association's Business Operations**

##### a.

#### **FSR's Operation of the Association, Under the Direction of the Receiver**

FSR has now completed its second month of operating the Association under the direction of the Receiver.

At the time of the Initial Report, FSR was in the process of: 1) creating accounts for the Association's homeowners on FSR's new and improved payment system (ClickPay), which was necessitated as a result of operational issues with the Association's prior auto-debit system and which will drastically reduce the processing time for payments made to the Association; 2) taking over the full-time management of the Association's Airtable database, used to field, catalogue and track responsiveness to homeowner complaints, from EHRLink (to eliminate the need for any further work by EHRLink); and, 3) taking over the Association's day-to-day bookkeeping, subject to period audits by an outside auditing firm. FSR has since completed those action items.

During the period from January 5, 2023 through February 15, 2023, FSR collected \$348,886.89 in assessments from homeowners. FSR has also collected \$99,360.00 in maintenance payments from Cortland, which owns seven hundred and twenty (720) rental units governed by the Association and is responsible for total monthly maintenance payments of \$33,120.00. Cortland was in arrears by two (2) months but (as a result of FSR's collection efforts) is now current.

FSR has also collected over \$1,900.00 for the rental of the Association's boat storage spaces and anticipates receiving hundreds of dollars in additional payments on delinquent accounts. The Association has thirty-five (35) boat storage spaces available, seventeen (17) of which are currently vacant. Going forward, the Receiver intends to: 1) send a 30-day notice to any accounts which are not made current by the end of the month; 2) increase the rental fee from \$100.00 per month to \$200.00 per month (to bring much needed additional monies into the Association); and, 3) if the demand for rental spaces exceeds the current capacity (as appears to be the case), obtain proposals for the paving and fencing of an unused grassed area adjacent to the boat storage lot at the Association's Black Creek Recreational Center to provide additional capacity and additional income.

During the current reporting period, FSR has also, as directed by the Receiver:

- coordinated the consolidation of the Association's off-site storage units (eliminating one of those units) to conserve costs;
- in addition to having obtained proposals for some of the additional professionals identified in Section (1) above, obtained proposals for a) monthly pest control services for the Association's clubhouse and Wild Lime Center, b) new light fixtures and poles in two (2) of the Association's communities, c) repair of non-leased light poles located throughout the Association's property, as needed, d) pool maintenance (to replace the Association's existing pool vendor, Elite Pool and Spa Services, about which the Advisory Committee has raised concerns about a potential connection to the prior Board), e) electrical wiring for the Association's tennis court, and f) the restructuring of the IT setup in the Association's office;

- prepared an estimated budget (for Receiver approval) for painting and reupholstering of seating in the clubhouse clubroom;
- recommended guidelines for the rental income of the clubhouse's clubroom;
- continued to audit the Association's pre-existing utility accounts to identify and terminate any fraudulent/personal accounts;
- painted over graffiti underneath the bridges traversing the Association's property;
- due to complaints of suspicious activity around certain of the Association's lakes, secured the access gates to those lakes;
- begun to reassess the Association's AT&T plan in an attempt to reduce those costs; and
- begun working on an action plan to address complaints of suspected gang activity on the Association's property, which activity appears to be an ongoing issue that was not adequately addressed by the prior Board.

FSR also recently hired an Assistant Manager to expand its Hammocks team and further expedite the property management transition, including the preparation of a proposed master budget (for approval by the Receiver).

**b.**

**A New Board is On The Way Next Month**

After thoroughly discussing with the Advisory Committee their concerns with the prior Board's elections, on January 23, 2023 the Receiver filed his Motion to Approve Election Procedure. On January 24, 2023, the Court entered the parties' proposed Agreed Order granting that Motion.

Pursuant to that Order, the following election procedure has been established and is underway:

- beginning on January 27, 2023, the mailing of the First Notice of Annual Meeting and Election (inviting interested, eligible persons to submit their application for candidacy) began;

- on February 14, 2023, the deadline for the Receiver's receipt of candidate applications expired;
- on February 24, 2023, the mailing of the Second Notice of Annual Meeting and Election (announcing the candidates for the Board, voting locations, and election procedures) will begin;
- on February 28, 2023 at 7:00 p.m., a meet-and-greet with the candidates will be conducted for the Association's members at the clubhouse;
- on March 18, 2023 at 11:00 a.m., a second meet-and-greet with the candidates will be conducted at the clubhouse;
- on March 25, 2023, early voting begins, which will continue from March 27<sup>th</sup> through March 29<sup>th</sup> at the clubhouse during clubhouse hours; and
- on March 30, 2023, Election Day will be held, in conjunction with the Association's Annual Meeting.

As soon as March 31, 2023 (and no later than April 10, 2023), the new Board members will meet to take their seats, set regularly scheduled meetings, and elect officers and the Advisory Committee will be dissolved. The Board of Directors will serve in an advisory capacity until the receivership is terminated by this Court.

On January 27, 2023 at 7:00 p.m., the Receiver conducted an in-person town hall meeting with the Association's residents at the Association's clubhouse to discuss the approved election procedure and answer any questions. Due to capacity limitations, Zoom access was also provided. Hundreds of homeowners attended that meeting (in person and via Zoom), the vast majority of who appeared to be pleased with and assured by the election procedure approved by the Court (and otherwise as to the progress of the receivership).

c.

**Turf Continues Beautifying the Association's Grounds**

On December 21, 2022, Turf began work on the property, including tree sucker/limb work which required immediate attention due to safety and liability reasons as a result of the prior Board's neglect of the Association's landscaping needs.

During the current reporting period, Turf has continued to promptly address the Association's extensive landscaping deficiencies, including: 1) regular mowing of the Association's neighborhoods, roadways, greenbelts, and recreation centers; 2) tree trimming throughout the Association's property; 3) trimming of all roadway hedges; 4) removal of ficus stumps and dead trees; 5) shrub maintenance; and, 6) debris pickup on the major roadways running throughout the Association as well as in the Association's neighborhoods (three times per week).

The lion's share of the feedback that the Receiver has received from the Advisory Committee and other homeowners regarding Turf's work has continued to be positive.

The Receiver has also requested that Turf provide proposals for the: 1) maintenance of the Association's twenty-two (22) beaches; and, 2) dumping of debris, as (due to the extensiveness of the debris located throughout the Association's property) the Association's dumpsters are filling up so quickly that they are having to be emptied more frequently than the City's garbage pickup schedule permits. Turf has provided those proposals to the Receiver, which the Receiver is currently evaluating.

d.

**An Independent, Legitimate Security Force is Back at the Hammocks**

At the time of his Initial Report, the Receiver had recently decided to retain Elite to provide security services to the Association's residents. The Receiver has since formally retained Elite;

the Receiver's contract with Elite is attached as **Exhibit 1**. Accordingly, on January 23, 2023, Elite began providing 24-hour security services (with two (2) guards on each shift).

As has been the case with regard to Turf, the homeowners' assessment of Elite's work (as conveyed to the Receiver) has been overwhelmingly positive.

e.

#### **Cleaning Up the Association's Governing Documents**

In February 2021, the prior Board purported to pass an amendment to the Association's Declaration, which changed the Declaration by: 1) making assessments payable monthly rather than quarterly; 2) increasing late fees from \$20.00 to \$25.00; and, 3) restricting conveyances and leasing of homeowner property, including authorizing the Association to collect fees to approve conveyances, leases and inheritances.

As this purported amendment resulted in additional fees and costs to homeowners, the Declaration required that it be approved by fifty-one percent (51%) of the Association's members, which it was not. Accordingly, on February 2, 2023, the Receiver filed his Motion to Void that purported amendment. The next day, this Court entered the parties' Agreed Order granting the Receiver's Motion and properly restoring the Association's Declaration to the pre-amendment iteration.

4.

#### **Lawsuits Involving the Association**

a.

#### **The Receiver Takes On Over Fifty (50) Active Lawsuits**

As discussed in the Initial Report, the Receiver identified over one hundred and twenty (120) lawsuits filed by or against the Association since 2013. Upon further analysis of those lawsuits, over fifty (50) remain active, the vast majority of which are foreclosure cases filed either by the Association or by a lender against a homeowner and joining the Association as a defendant



(due to the Association's filing of a lien against the property). The Receiver's counsel has appeared in those lawsuits and is working towards an expeditious resolution of all of those claims by or against the Association, including the dismissal of any meritless lawsuits filed by the Association.

**b.**

**Rescuing the Association From a Nearly \$300,000 Judgment**

One of those cases (highlighted in the Initial Report) is an appeal by the Association from the United States Bankruptcy Court for the Southern District of Florida to the United States District Court for the Southern District of Florida, styled *Hammocks Community Association, Inc., et al. v. Josue Cepero, et al.*, Case No. 21-cv-22821-RKA. That appeal arises from a judgment entered by the Bankruptcy Court against the Association and former Board member Marglli Gallego for \$288,437.60 following evidentiary hearings on motions for contempt. The basis of those motions was alleged harassment of the subject homeowners by Ms. Gallego.

At the time of the Initial Report, the Association had filed its Initial Brief (pre-receivership), the Appellees had filed their Answer Brief, and the Association's Reply Brief was due by January 24, 2023. Rather than proceeding with the appeal, on January 20, 2023, the Receiver filed with the Bankruptcy Court his Motion for Relief from the Final Judgment (pursuant to Rule 60 of the Federal Rules of Civil Procedure, as adopted by Rule 9024 of the Federal Rules of Bankruptcy Procedure).

More particularly, the Receiver seeks relief for the Association from the Bankruptcy Court's Final Judgment: 1) based upon the "cleansing" of the Association – as previously controlled by Ms. Gallego and her accomplices for their own fraudulent purposes – as a result of the appointment of the Receiver; and, 2) newly-acquired evidence (i.e. the State Attorney's Office's November 2022 Affidavit) indicating that Gallego's misconduct underlying the Final

Judgment was perpetrated in her own interests (as part of her fraudulent scheme), and, thus, the Association a) cannot be held liable for that conduct, and, b) was not free to raise that issue (through counsel appointed by Ms. Gallego to jointly represent her and the Association) prior to the entry of the Final Judgment. The Bankruptcy Court has scheduled the Receiver's Motion for hearing on April 11, 2023 at 1:30 p.m.

Contemporaneously with the filing of his Motion for Relief, the Receiver filed with the Appellate Court a motion for extension of time to file the Association's Reply Brief (until 20 days after the Bankruptcy Court rules on the Motion for Relief) and to reschedule oral argument, which was then scheduled for February 17<sup>th</sup>. That same day, the Appellate Court granted the Association's motion for extension and cancelled the February 17<sup>th</sup> oral argument pending the Bankruptcy Court's ruling.

**c.**

**Potential Claims Against Former Directors/Officers**

In addition to the insurance claims/potential insurance claims discussed above, to attempt to recover monies that were improperly diverted from the Association the Receiver is currently evaluating a potential lawsuit for breach of fiduciary duty against certain of the Association's former officers and directors (who were not arrested).

**d.**

**Analyzing 8 Years of Foreclosure Lawsuits for Self Dealing**

As directed by this Court, the Receiver has begun analyzing all foreclosure cases filed by the Association since 2015 (i.e. the year that Ms. Gallego became an officer of the Association). The Receiver has analyzed those cases community-by-community; the Association is comprised of eighteen (18) different communities.

Thus far, the Receiver has analyzed all of the foreclosure cases during the subject time period for two (2) of the eighteen (18) communities; the Receiver's analysis has, thus far, not revealed any "red flags." The Receiver is endeavoring to have his analysis completed by the time of his next Supplemental Report to this Court.

**5.**  
**The Association's Prior Attorneys**

As part of its analysis of the Association's financial records, KM has advised that of the approximately \$3.2 million in legal fees paid by the Association from 2019 through the appointment of the Receiver: 1) \$1,295,000.00 was paid to Hilton Napoleon, II P.A (\$1,155,000.00 in 2022 alone, which comprised over half of the legal fees paid by the Association in 2022); 2) an additional \$222,037.00 was paid to Rasco Klock Perez & Nieto, P.A., a firm at which Mr. Napoleon provided services to the Association; 3) \$257,237.00 was paid to Alfaro & Fernandez, P.A. ("Alfaro"); 4) \$825,000.00 was paid to criminal defense attorneys (Jauregui Law, Ricardo Hermida Law Office, and Quintero Broche P.A.); and, 5) an additional \$26,205.00 was paid to Santiago Legal PLLC (retained by Ms. Gallego) to represent Richard Trueba, who has been implicated in a cash-back scheme with Ms. Gallego.

As discussed in the Initial Report, on December 16, 2022, the Receiver sent correspondence to all counsel who the Receiver was then aware previously represented the Association, demanding that they identify all matters in which they have represented the Association (or involving the Association of which they are otherwise aware), provide their files for each such matter, and identify all monies of the Association that they are holding in trust. To date, several of the attorneys and firms have provided documents, although additional documents are forthcoming from some of those attorneys. If required, the Receiver will promptly seek relief

from this Court to obtain those additional documents (as well as documents requested from the additional counsel identified by the Receiver since the Initial Report).

As this Court is aware, the Receiver has been constrained to file a Motion for Order to Show Cause against Hilton Napoleon II P.A. and Hilton Napoleon II, Esq. due to their refusal to provide several categories of documents requested over two (2) months ago.<sup>5</sup> Hilton Napoleon II P.A., and Hilton Napoleon II, Esq.'s refusal to provide all documents requested is particularly disconcerting as those attorneys are the recipients of nearly half of all attorneys' fees paid by the Association from 2019 until the appointment of the Receiver. The Receiver's Motion against Hilton Napoleon II P.A. and Hilton Napoleon II, Esq. was set for hearing for February 15, 2023 but was cancelled by the Court the morning of that hearing due to a trial conflict. The motion has been reset for March 7, 2023.

Once he has obtained prior counsel's complete files, the Receiver can then more fully evaluate potential: 1) claims against prior counsel and/or their insurance carriers to clawback any monies improperly paid to them, particularly monies paid in furtherance of and/or otherwise to conceal the prior Board's fraud; and, 2) referrals to the Florida Bar.

### **C.** **CONCLUSION**

The Receiver and his professionals continue to work to: 1) uncover the full extent of the prior Board's fraud; 2) remedy (to the extent possible) the injustice perpetrated upon the Association's homeowners, including by recovering monies that were improperly diverted from the Association; and, 3) restore the Association and the Hammocks community to their former – and much deserved – glory (and to the control of the homeowners).

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<sup>5</sup> Rasco Klock Perez & Nieto, P.L. has begun to produce documents and is working with the Receiver's counsel to provide further documents.

Although work remains to be done, much progress has already been made during the first three (3) months of this Receivership. Soon enough, the “Gallego days” will be a distant memory for the Association’s homeowners.

Respectfully submitted this 22<sup>nd</sup> day of February, 2023.

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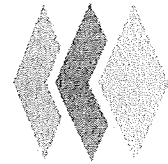
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 22, 2023, a true and correct copy of the foregoing was filed electronically using the Court's electronic filing system, which will send notice and a copy of this filing to all counsel of record listed in the Florida Courts E-Filing Portal.

/s/ Eric R. Thompson  
Eric R. Thompson, Esq.

# EXHIBIT 1

# ELITE GUARD



17070 Collins Avenue Suite 263 Sunny Isles Beach, Florida 33160  
4101 N. Andrews Avenue Suite 108 Fort Lauderdale, Florida 33309

305-956-9520

Fax 305-956-9392

## SECURITY SERVICE CONTRACT

Elite Guard & Patrol Services Inc. a Florida Corporation hereinafter referred to as "Elite Guard" agrees to provide **THE HAMMOCKS COMMUNITY ASSOCIATION, INC.**, hereinafter referred to as "CLIENT" with "Class D" Licensed Security Personnel upon the premises of **THE HAMMOCKS COMMUNITY** and more particularly described as the address located at: **9020 HAMMOCKS BLVD. MIAMI, FL 33196** for the days, times, and hours set forth herein by Client and hereafter requested by the Client.

SERVICE PROVIDED	SERVICE SCHEDULE	TOTAL SERVICE HOURS PER WEEK	HOURLY SERVICE RATE	ESTIMATED TOTAL COST PER WEEK
Two (2) Elite Guard State of FL Class D Licensed, Unarmed, Uniformed & Insured Security Rover Personnel	Monday - Sunday 24 hours per day 7 days per week	296 hours	\$26.90 per hour	\$7962.40
One (1) Elite Guard State of FL Class D Licensed Unarmed, Licensed, Uniformed, & Insured Security Officer	DIRECTOR OF SECURITY / SITE SUPERVISOR  Schedule TBD	40-48 hours TBD	\$36.90 per hour	\$1476.00
		Security Only	7% FL Sales Tax	\$660.69
			TOTAL	\$10,099.09

- 1. TERM:** The services furnished by Elite Guard will commence on **JANUARY 23, 2022 @ 3PM** for a period of one year. This Agreement will renew each year with an annual cost of living / administrative cost increase of four and one-half percent (4.5%). **Either party may terminate this Agreement with or without cause at any time by providing (30) days written notification to terminate via first class certified mail to the Elite Guard Corporate Office.**



2. **SCOPE OF WORK:** Elite Guard shall provide services to client only within the established area(s) of the "Client Premises", not including adjacent property, sidewalks, streets, residences, bodies of water, canals, lakes, wooded areas, establishments, businesses, or other areas not specifically indicated in this agreement. The personnel shall perform the services described on the established & Client approved Elite Guard post orders. Employees of Elite Guard shall not perform duties not contracted for. Additional actions or duties performed by any Elite Guard personnel contrary to or in addition to the established post orders are done at the employee's own initiative and are not part of this service Agreement. Further that this Agreement is solely for the mutual benefit of the parties who enter into it.
3. **PERSONNEL:** Elite Guard employees will be assigned without regard to race, age, color, creed, sex, sexual orientation, gender identity or expression, natural origin and disabilities which do not impair performance, veteran status, or on any basis as prohibited by Federal or State law. Client may reasonably request via email to Elite Guard the removal of any personnel assigned provided such exercise is not in violation of law. In the event the Client is not satisfied with services performed or the personnel of Elite Guard, the Client (designated member of the property management) will give specific notice of their complain in writing via email and allow two (2) days to make any and all corrections (unless Security personnel has violated Florida Law or Chapter 493). Client may also request to meet with Security personnel and Elite management instead of providing complaint in writing. Isolated breaches in performance by individual security personnel shall not of it-self be grounds for termination of this Agreement.
4. **INVOICES:** Elite Guard will invoice the Client: **Bi-weekly** for services rendered and said amount will be payable within fourteen (14) days. Client agrees that in the event they are requesting an adjustment, the Client is required to notify Elite Guard within 24 hour notice from the date of the invoice otherwise all disputes and defenses will be deemed waived. If payment is not received within twenty (20) days after the invoice date the Client will then incur a cumulative late charge of five percent (5%) of the balance owed each billing cycle. In the event payment is past due at any time during the terms of this Agreement, the service rate will be subject to increase by **8%** per man hour. Any claims for losses or damages shall be made separately to invoices. Such claims shall be handled by submitting an invoice to Elite Guard or the appropriate insurer. Deductions or offsets from invoices will be considered a breach of contract.
5. **OFFSETS / DEDUCTIONS:** In the event that Elite Guard services include or require the observation, reading, recording, or adjustment of gauges, thermostats, thermometers, counters, watchman's clock, or other meter devices, Elite Guard's liability for losses arising from any error or non-performance shall be limited to One Hundred Dollars (\$100), notwithstanding the cost or cause of said loss. Payment for services shall in no way be related to reading or recording of above listed devices and is payable without offset. Client retains sole liability and responsibility for keys placed in the possession of or its employees and for the loss of any key or keys and the cost of changing of locks as the result of any loss. In the event Client alleges damage or loss based upon any claim of illegal activity on the part of an Elite Guard employee, the failure of the Client to prosecute said employee shall operate as a waiver of any right of Client to recover for such claimed damage or loss from Elite Guard.
6. **FINANCIALLY SOLVENT:** Client represents that it is financially solvent. Client represents that Client alone shall be responsible for payment of all amounts invoiced by Elite Guard hereunder. Not with standing anything to the contrary herein. Elite Guard may terminate this Agreement or suspend services at any time after twenty-four (24) hours prior written notice to Client due to Client's failure to pay any monies due hereunder, or if at any time during the term of this Agreement there shall be filed by or against Client in any court, pursuant to any statute, a petition in Bankruptcy, Insolvency, Reorganization, or the appointment of a receiver all or a portion of the Client's property. For purposes of this paragraph, time is of the essence. In such an event Client agrees to pay as liquidated damages, a sum equal to twice the amount owed to Elite Guard by Client as of the last date of services rendered (in addition to the 30 days of service required for termination stipulated in paragraph 1).

**7. RATES:**

- (a) Overtime rates will be applied as required by law and for additional hours of service when the Client requests an increase in the number of hours of Elite Guard personnel. Such additional hours requested may be needed for special events, emergency services, fire-watch, parties, moves, etc. It is understood that should a condition arise that calls for an increase in services in addition to the services specified in this Agreement, the Client will give Elite Guard written notice of such additional services and Elite Guard will amend this Agreement to provide for such increase in the number of Elite Guard employees accordingly.
- (b) Average Salary compensation for Elite Guard Personnel Year: **\$18.50 - \$19.00 per hour**
- (c) Average Salary compensation for Shift Supervisor: **TBD if applicable**
- (d) Average Salary Compensation for Elite Guard Site Supervisor: **\$25.00 - \$26.00 per hour**
- (e) Any increase or costs due to a change in Federal, State, or Local Laws or Taxes (Wages, Labor Law, FICA, COLA, Federal and State withholding taxes, insurance). Costs associated with additional licensing required for personnel or additional training required, on-site training, medical service training requested if applicable, jury duty, staff meetings, court appearances / depositions on behalf of the Client, or any increases or additional labor costs, employee benefits, beyond the control of the parties, will be passed directly through to Client on a cost basis.
- (f) In the event the Federal and/or State minimum wage is increased, the rate for security services will be subject to adjustment accordingly/proportionately.
- (g) Client agrees there will be an annual cost of living / administrative cost increase of four and one-half percent (4.5%) on the hourly rate invoiced by Elite Guard.
- (h) Service rate is subject to adjustment (increase) as a result of any decrease of scheduled service hours.
- (i) Holiday hours will be invoiced at time and one-half the service rate invoiced. The recognized holidays include Christmas Day, New Year's Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Memorial Day.

**8. HEALTH BENEFITS:** In the event Federal Law requires Elite Guard to offer medical benefits to its employees, Client shall reimburse Elite Guard for its actual cost of such benefits for those Elite Guard employees assigned to Client that elect coverage.

**9. EQUITABLE LIEN:** Client acknowledges that the Services Elite Guard is providing hereunder materially benefits the property, as well as the occupants of the Community if applicable. To secure the payment of all charges incurred pursuant to this Agreement, Client hereby grants Elite Guard a lien on real property identified as the property / community, and Elite Guard shall be entitled to enforce its lien and foreclose on the subject real property in the event its charges hereunder are not paid by the Client in full. Client further acknowledges that it has full and complete authority to grant a lien in favor of Elite Guard as set forth herein, and acknowledges that this a material fact on which Elite Guard is relying in entering into this Agreement. Client authorizes Elite Guard to file this Agreement in the public records and record it as a lien against the subject real property.

**10. TERMS & CONDITIONS:** Upon any default by the Client with respect to payment for the services herein described or otherwise, the Client shall be liable for costs of collection, including reasonable attorney's fees whether suit is filed or not and court costs, if any, plus interest on the amount due at the highest lawful rate. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida, and the parties agree to submit to the exclusive jurisdiction of the courts of Miami-Dade County, Florida. FURTHERMORE, IN ANY ACTION BROUGHT UNDER THIS AGREEMENT, BOTH PARTIES AGREE TO EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY.

- 11. HIRING:** It is agreed that the Client will not directly (in-house security) or indirectly (through a different security agency/Elite Guard competitor) hire a current or former employee of Elite Guard assigned to their property for a period of twelve (12) months subsequent to the termination date of this Agreement. Recognizing the costs incurred and expertise dedicated by Elite Guard in recruiting, selecting, and training its personnel, Client agrees to pay Elite Guard seven thousand nine hundred fifty dollars (\$7,950.00) as liquidated damages for each person employed by the Client or its contractor hired in violation of this Agreement. Shift Supervisors hiring fee client agrees to pay eight thousand nine hundred fifty dollars (\$8,950.00). Site Supervisor hiring fee will be nine thousand nine hundred ninety dollars (\$9,990.00). Client agrees to submit to Elite Guard in writing the names of all Elite Guard personnel they wish to retain upon termination of services. Monies must be paid within three (3) days of violation. Client agrees to pay all court costs, collection costs, and attorney fees for non-payment.
- 12. HEALTH & SAFETY:** Client shall notify Elite Guard of any known or suspected hazards at any client site where services are to be provided. Client represents client property, including but not limited to structural integrity, is safe and secure from bodily injury and/or death. This provision includes all common areas, attached or detached buildings within client property area. Client represents it is in full compliance and following all current OSHA guidelines and regulations.
- 13. UNIFORMS:** All security officers assigned to the property will be required to wear a complete security uniform & concierge uniform provided by Elite Guard. Client may request changes in uniform style provided changes are not in violation of the State of Florida / Chapter 493 requirements and Elite Guard approval.
- 14. ELITE GUARD SECURITY EQUIPMENT PROVIDED (within 30 days of commencement)**

<b>SECURITY EQUIPMENT DESCRIPTION</b>	<b>COST FOR SECURITY EQUIPMENT PROVIDED</b>
<b>Two (2) Phone for report writing</b>	<b>\$180.00 + applicable taxes</b>
<b>One (1) licensed Security Application (Trak-Tik) for tablet App integrated for report writing with internet and basic word processing to send security reports and emails including PDF/Photo Attachments to management</b>	<b>NO CHARGE / INCLUDED IN PHONE COST</b>
<b>Rechargeable Flashlights (MAG-LITE)</b>	<b>NO CHARGE / INCLUDED IN SERVICE RATE</b>
<b>Office Supplies (Pens, Paper, etc)</b>	<b>NO CHARGE / INCLUDED IN SERVICE RATE</b>
<b>Rain Gear / Jackets</b>	<b>NO CHARGE / INCLUDED IN SERVICE RATE</b>
<b>Two (2) Marked Security Vehicles</b>	<b>\$1150.00 per month/per vehicle + applicable taxes</b>
<b>Fuel Costs/Maintenance</b>	<b>Will be invoiced to client on cost basis per billing cycle applicable</b>

**15. INSURANCE:** Client agrees to assume all risk of loss or damage to its premises, business and property and other's property on Client's premises occurring as a result of fire, theft or other casualty and Client agrees that it will maintain insurance to fully protect Client against such loss or damage. Accordingly, Client waives its right of recovery against Elite Guard for such loss or damage however caused.

Elite Guard shall maintain during the entire term of this Agreement and furnish the Client with a Certificate of Insurance, evidencing the following minimal insurance coverage:

A. WORKERS COMPENSATION IN THE MINIMUM AMOUNT OF \$1,000,000.00

B. GENERAL LIABILITY COVERAGE IN THE MINIMUM AMOUNT OF \$1,000,000.00

C. UMBRELLA LIABILITY INSURANCE WITH THE LIMITS OF NOT LESS THAN \$2,000,000.00 COMBINED SINGLE LIMIT PER OCCURRENCE FOR BODILY INJURY AND PROPERTY DAMAGE.

D. COMPREHENSIVE AUTOMOBILE LIABILITY COVERAGE WITH THE LIMITS OF NOT LESS THAN \$1,000,000.00 COMBINED SINGLE LIMIT PER OCCURRENCE FOR BODILY INJURY AND PROPERTY DAMAGE

Elite Guard shall furnish the Client with a Certificate of Insurance, and an endorsement from Elite Guard's insurance carrier naming the Client as an additional insured on all liability policies. Elite Guard will provide insurance policy adherence to the requirements established by the State of Florida / Division of Licensing regulations.

**16. LIABILITY LIMITATION AND INDEMNITIES:**

(a) Client agrees that Elite Guard is not an insurer and that amounts payable hereunder are based upon the value of services offered and not the value of Client's interest being protected or the property of Client or of others located on Client's premises. Accordingly, Elite Guard undertakes no liability to Client and makes no representation, express or implied, that its services will prevent occurrences or their consequences that result in loss or damage.

(b) Client agrees that Elite Guard shall not be liable for any claims incurred by Client, irrespective of origin, to person or property, whether directly or indirectly caused by performance or nonperformance of obligations imposed by this Agreement or by negligent acts or omissions, including those relating to the hiring, training, supervision, or retention of personnel of Elite Guard, its agents or employees.

(c) Client agrees that the services performed under this Agreement are solely for the benefit of Client and neither this Agreement nor any services rendered hereunder confer any rights on any other party as third party beneficiary, or otherwise.

(d) It is specifically understood that Elite Guard is providing the number of security personnel and type of service including service hours as requested by the Client. Client is relying upon its own knowledge and investigation as to the number and type of security service required for their premises.

(e) Both parties agree to indemnify and hold each other harmless from and against any Claims made by a third party(s) including but not limited to injury, death, or damage or loss of property, arising from Elite Guard's gross negligence or willful misconduct or omissions, including those relating to hiring, training, supervision, or retention of Personnel by Elite Guard, its agents or employees.

(f) No general or limited partner in or of Elite Guard, whether direct or indirect or any direct or indirect partners in such partners or any disclosed or undisclosed officers, shareholders, principals, directors, employees, members, partners, servants, or managers of Elite Guard shall be personally liable for the performance of any liability or obligations under this Agreement.

(g) Client agrees that Elite Guard shall not be liable to perform this Agreement due to any "Act of God or Nature" or cause beyond Elite Guard's reasonable economic control, nor in any case for any consequential, incidental, or special damages or loss of profits including but not limited to riots, floods, washouts, fires, explosions, and

any other cause not reasonably within the control of Elite Guard. Client agrees that in the event services continue during any natural disaster additional cost / overtime rates may apply to be allocated to the assigned personnel. Client may request to suspend services temporarily until client property / surrounding area is determined safe and accessible by local authorities.

(h) Elite Guard shall not responsible for damages to vehicles, gatehouse, and gatehouse arms, caused by mechanical functioning or malfunctioning. Elite Guard is not responsible / liable for repairs, damage or injuries.

(i) Client hereby waives any and all rights of subrogation that any insurer of Client may have against Elite Guard.

**16. NON-WAIVER:** Failure of Elite Guard to enforce any provision of this Agreement, or any of its rights, or to exercise any election herein provided, shall not be considered a waiver of such provision or election or in any way affect the validity of this Agreement. The exercise by Elite Guard of any of its rights or any of its elections shall not preclude Elite Guard from exercising the same or any other right it may have under this Agreement.

**17. ASSIGNMENT:** Elite Guard is an independent contractor of the Client. This Agreement shall not be assigned by either party without the written consent of the other, except the Client may assign this Agreement to who is otherwise responsible for operating the security for the described property(s). Elite Guard will not utilize any subcontractor in performing their contractual obligation without written approval by The Client.

**18. EXCLUSIVITY:** Elite Guard shall be the exclusive security provider to the Client.

**19. MODIFICATIONS:** No amendment, modification, waiver, or discharge of this Agreement, or any provision hereof (including, without limitation, this paragraph) shall be valid or effective unless in writing and signed by both the Client and Elite Guard.

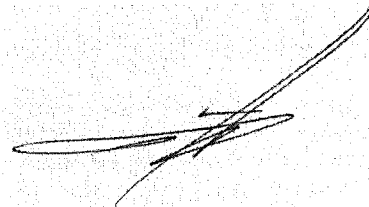
**20. ENTIRE AGREEMENT AND INTERPRETATION:** This Agreement constitutes the entire Agreement and understanding between the parties, and no representations, inducements, promises or Agreements not embodied herein shall be governed under the law of the state of its performance.

**21. CHANGES IN SERVICES / ADDITIONAL CLIENT LOCATIONS:** Each of the terms and conditions contained in this Agreement shall be applicable to any additional locations of Clients serviced by Elite Guard after the date of this Agreement including Special Details, Fire Watch, and Special Events, etc. Client is required to submit all changes in services or requests for additional service in writing.

This Agreement entered this 23<sup>rd</sup> day of December 2022 by and between HAMMOCKS COMMUNITY ASSOCIATION, INC. and Elite Guard.

HAMMOCKS COMMUNITY  
ASSOCIATION, INC.  
9020 HAMMOCKS BLVD.  
MIAMI, FL 33196

ELITE GUARD  
17070 Collins Avenue  
SUITE 263  
SUNNY ISLES BCH, FL 33160



On behalf of the Receiver  
AUTHORIZED REPRESENTATIVE David Kersten

AUTHORIZED REPRESENTATIVE

BOARD OF DIRECTORS

ELITE GUARD