IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA
CASE NO. 5D11-1836

RICHARD HACKETT,

Appellant,

v. L.T. Case No. 2009-31886-CICI

GRAND SEAS OWNER'S
RESORT ASSOCIATION, INC.,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

This appeal revolves around the legal question of whether Grand Seas Owner's Resort Association, Inc.'s (the "Association") purported exculpatory clause was sufficient to relieve the Association from its own acts of negligence. The trial court found that the language was sufficient as a matter of law and granted summary final judgment for the Association. (R48-49.) Appellant, Richard Hackett, disagrees and asks this Court to reverse the judgment.

This action arises out of personal injuries Mr. Hackett sustained when a patio chair at his timeshare unit collapsed. (R60.) The Association was the managing agent which furnished the chair and operated the timeshare unit. (R1-2, 12, 61.) When he checked into the unit, Mr. Hackett signed a Guest License Agreement ("Agreement"). (R12, 16; App'x Tab 1.) During his deposition, Mr. Hackett agreed that he signed the Agreement and had signed others like it during his previous stays at the timeshare property. (R13.)

The Agreement contains the following notice at the bottom of the contract:

> Notice to Guests: This property is privately owned. Management reserves the right to refuse service to anyone, and will not be responsible for accidents or injury to guest or for loss of money, jewelry or valuables of any kind. Guest authorizes the use of credit card on file for any and all unpaid charges.

(R16; App'x Tab 1.) The sole issue before the trial court on summary judgment was whether the purported exculpatory clause in the Association's Agreement was

sufficient to relieve the Association from liability for its own acts of negligence as a matter of law. (R14-15.)

At a hearing on March 29, 2010, the trial court initially recognized the uncertainty of the exculpatory terms used in the Agreement. (R74, 75-76.) Relying on what it believed to be binding Fifth District precedent, however, the trial court reluctantly granted the Association's motion for summary judgment. (R92-93.) While the trial court orally announced its intent to grant the motion, it never entered an order or otherwise reduced its ruling to writing. (R48.)

After the clerk of court for the lower tribunal alerted Mr. Hackett that his case could be dismissed for lack of prosecution, he promptly filed a motion for reconsideration. (R38-47.) Mr. Hackett again argued that the Agreement was not specific enough to relieve the Association from its own acts of negligence and cited the trial court to additional Fifth District cases supporting his position. (R40-46.) Without a hearing, the trial court entered a belated order granting summary judgment for the Association and denying Mr. Hackett's motion for reconsideration. (R48-49.) Thereafter, the trial court entered a final judgment in favor of the Association (R52), from which Mr. Hackett timely appealed (R50).

SUMMARY OF ARGUMENT

The trial court erred when it found that the Association was entitled to have summary judgment entered in its favor based on a purported exculpatory clause in the Agreement. Florida law is clear that exculpatory clauses are disfavored and will only be enforced where the terms are both clear and unequivocal. The terms in the Agreement are neither. While the trial court believed it was required to enter summary judgment for the Association based on Fifth District precedent, the trial court misinterpreted the cases on which the Association relied. Unlike the facts of those cases, the purported exculpatory clause here is vague, ambiguous, indefinite and does not give notice to a reasonable person that he is releasing the Association from its own acts of negligence. Accordingly, the Agreement was not legally sufficient to relieve the Association from its own negligence as a matter of law, and the trial court reversibly erred by entering final summary judgment for the Association.

Alternatively, Mr. Hackett asks this Court to reconsider its rejection of a "bright line" test with respect to exculpatory clauses. This district stands alone in not applying a bright line test mandating that the word "negligence" or a similar phrase appear in an exculpatory clause before it will release a party from its own negligent acts. The Agreement in this case does not contain any such phrase and thus, would be unenforceable in every other district. This Court may alter its

position on the bright line test through an *en banc* decision. Or, if the Court continues to adhere to its position, it should certify conflict. However, the Court need not reach the conflict issue if it finds the Agreement is not sufficiently definite to release the Association from its own negligence as a matter of law.

ARGUMENT

I. THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT FOR THE ASSOCIATION BECAUSE ITS PURPORTED EXCULPATORY CLAUSE DID NOT SUFFICIENTLY RELEASE THE ASSOCIATION FROM ITS OWN NEGLIGENCE.

Standard of Review. This Court reviews the entry of summary judgment under a *de novo* standard of review. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Because the determinative question in this case depends on the legal effect of the purported exculpatory clause in the Agreement, this Court must determine, *de novo*, whether the Association was entitled to prevail as a matter of law. *Id.* at 131.

Argument. The Association was not entitled to summary judgment because its Agreement did not clearly and unequivocally release the Association from liability. Accordingly, the trial court erred when it granted final summary judgment for the Association based on the supposed exculpatory clause in the Agreement.

An exculpatory clause is defined as "one that purports to deny an injured party the right to recover damages from a person negligently causing his or her

injury." *Tatman v. Space Coast Kennel Club, Inc.*, 27 So. 3d 108, 110 (Fla. 5th DCA 2010). The long-standing rule in Florida is that exculpatory clauses are disfavored in the law. As this Court has explained:

> While exculpatory clauses are enforceable, they are looked upon with disfavor; and any attempt to limit one's liability for his own negligent act will not be inferred from an agreement unless such intention is expressed in clear and unequivocal terms.

O'Connell v. Walt Disney World Co., 413 So. 2d 444, 446 (Fla. 5th DCA 1982). The Agreement "must unambiguously indicate which risks are assumed;" the trial court will not interpret the agreement "to include losses resulting from the defendant's negligence unless it is clear that the plaintiff so intended." *Id.* at 447; *see also Loewe v. Seagate Homes, Inc.*, 987 So. 2d 758, 760 (Fla. 5th DCA 2008) ("Exculpatory clauses are disfavored in the law because they relieve one party of the obligation to use due care and shift the risk of injury to the party who is probably least equipped to take the necessary precautions to avoid injury and bear the risk of loss.")

An exculpatory clause will only relieve a party of its own acts of negligence where the language is unambiguous. *Loewe*, 987 So. 2d at 760. "[T]he wording must be so clear and understandable that an ordinary and knowledgeable person will know what he is contracting away." *Cain v. Banka*, 932 So. 2d 575, 578 (Fla. 5th DCA 2006). In contrast, a "phrase in a contract is ambiguous when it is of

uncertain meaning, and thus may be fairly understood in more ways than one." *Tatman*, 35 So. 3d at 110.

Examples of cases in which unambiguous exculpatory clauses have been upheld by this Court include the following:

- "The instant exculpatory clause, by absolving the defendant of 'any and all liability, claims, demands, actions, and causes of action whatsoever' is sufficient … to encompass the plaintiff's negligence action." *Cain*, 932 So. 2d at 579.

- Appellant released appellee "from all, and all manner of action and actions, cause and causes of action, suits ... damages ... claims and demands whatsoever, in law or in equity, which [appellant] ever had, now has, ... hereafter can, shall or may have, against [appellee] for upon or by reason of any matter, cause or thing whatsoever ..." *Lantz v. Iron Horse Saloon, Inc.*, 717 So. 2d 590, 591 (Fla. 5th DCA 1998), *disapproved on other grounds*, *Kirton v. Fields*, 997 So. 2d 349, 350 (Fla. 2008).

- Following a dispute, the parties entered into a mutual release that stated: "each of the parties ... releases and forever discharges the other ... of and from any and all claims, demands, damages, actions, causes of action, or suits in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to the parties, for or because of any matter or thing done, omitted, or suffered to be done by either of such parties…." *Hardage Enterprises, Inc. v. Fidesys Corp., N.V.*, 570 So. 2d 436, 436-37 (Fla. 5th DCA 1990).[1]

[1] *See also Hopkins v. The Boat Club, Inc.*, 866 So. 2d 108, 110, 112 (Fla. 1st DCA 2004) (release sufficiently definite where it released defendant "from any and all liability of any nature for any and all injury or damage (including death) to me or my minor children and other persons as a result of my/our participating in the activity, *regardless of the cause*") (emphasis added).

The Association's supposed exculpatory clause stands in stark contrast to these examples. Whereas the clauses upheld by this Court contain specific, all-encompassing language reflecting the plaintiff's clear intention to release the defendant from all acts – even those the defendant negligently performed – the clause here does not go so far. Rather, sandwiched between disclosures about potentially refusing services to guests and reserving the right to charge a credit card on file, the notice states in un-bolded and un-emphasized language that the Association "will not be responsible for accidents or injury to guest." (*See* App'x Tab 1.) Unlike exculpatory clauses that explicitly release defendants from any and all liability, claims, causes of action, or demands *whatsoever*, the Association's clause does not evidence the clear and unequivocal intention of Mr. Hackett to release the Association from its own liability and acts of negligence.

No court in Florida has held that a clause as vague and indefinite as the one in the Agreement is sufficient to protect a party against claims for its own negligence. Rather, this Court has expressly found a similar clause, which states, "I agree to not hold SCKC or Brevard County Parks & Rec Dept. liable for any accident or injury," to be ambiguous and unenforceable. *Tatman*, 27 So. 3d at 109, 111. There, after the plaintiff signed an agreement as a condition of entering her dog in a show, she was bitten and seriously injured by another dog. *Id.* at 109. The appellate court found the clause was too vague to be enforceable because it did

not specify whose injuries were covered by the release, whether it covered injuries such as slip and falls, or whether the clause was intended to exculpate the defendants for any injuries the registered dog might cause to others. *Id.* at 111. "Because of its patent ambiguity," the *Tatman* court concluded that "an 'ordinary and knowledgeable' person would not, when viewing this clause, know what he or she was contracting away." *Id.*

Importantly, the Court in *Tatman* did not find that just because the release *could* be read broadly enough to exculpate the defendant from its own negligence that the clause *should*, in fact, be read that way. Rather, the indefiniteness of the breadth of acts covered by the exculpatory clause was fatal to its enforcement.

Similarly, here, the Association's clause does not define whether it covers only injuries to the guest who signed the Agreement or to all guests, and the clause does not specify what types of accidents or injuries are supposedly covered (*e.g.*, self-inflicted injuries, attacks by third parties, slip and fall, negligent maintenance claims, or injuries from natural causes like rip currents). It is this patent ambiguity that the trial court first recognized as a flaw in the Agreement. *See* R74 ("accident is an unprecise [sic] term in terms of what we do"); R75-76 ("It seems to me there's some imprecision there."). Furthermore, the Association did not bring forward any record evidence reflecting Mr. Hackett's intent, instead noting only that he signed the Agreement and had done so in the past. (R12, 16.)

Most importantly, the Agreement makes no hint that the Association was attempting to release itself from its own acts of negligence. Indeed, a reasonable person in Mr. Hackett's position could easily interpret the clause in a way that does not involve releasing the Association from its own negligence. The Agreement does not state that Mr. Hackett released the Association from any and all causes of action "whatsoever" or that he released the Association from liability "regardless of the cause." *See Cain*, 932 So. 2d at 579; *Hopkins*, 866 So. 2d at 110. Because the clause "may be fairly understood in more ways than one," it is ambiguous and unenforceable. *Tatman*, 27 So. 3d at 110.

In contrast, the cases upon which the Association and the trial court relied are readily distinguishable. There, the releases are specific and definite. (*See* R92.)

For example, in *Lantz v. Iron Horse Saloon, Inc.*, the release included clear and unambiguous language sufficient to put a prospective plaintiff on notice. The detailed language of the release in that case explicitly released the defendants from all actions, claims or demands whatsoever. 717 So. 2d 590, 591 (Fla. 5th DCA 1998); *see also Hardage*, 570 So. 2d at 436-37. In addition, the plaintiff in *Lantz* already had knowledge of the alleged negligence before signing the release. 717 So. 2d at 591. Thus, the exculpatory language in *Lantz* was upheld upon facts establishing that the plaintiff executed a specific and definite release with full

knowledge of the potential claims she might have against the defendant. The Association cannot point to any such facts in the case now before this Court. Accordingly, *Lantz* does not control.

The second case on which the trial court relied is *Cain v. Banka,* 932 So. 2d 575 (Fla. 5th DCA 2006). *Cain* is also readily distinguishable. There, the plaintiff signed a release the first time he used a motocross track, but he was not injured on the track until years later. *Id.* at 577. The exculpatory agreement contained language that the plaintiff released the track "of and from any and all liability, claims, demands, and causes of action whatsoever …." *Id.* This Court found the language was sufficient to release the track from its own negligence. *Id.* at 579. However, the Court also found the release did not exculpate the track from future acts of negligence because "it was insufficient to inform an ordinary and knowledgeable party that he was perpetually contracting away his right to sue the defendant for negligence." *Id.* at 581.

Cain emphasizes the law in this district, and around the state, that exculpatory language must be clear, definitive and specific to relieve a party from its own negligence. The Agreement in this case is not. The decision in *Cain* actually favors Mr. Hackett.

Finally, the Association and trial court relied on *Greater Orlando Aviation Authority v. Bulldog Airlines, Inc.*, 705 So. 2d 120 (Fla. 5th DCA 1998)

("*GOAA*"). There, just as in *Lantz*, the plaintiff entered into a contract containing release language after it already had knowledge of the defendant's alleged negligence. *Id*. at 122. The dispute in *GOAA* arose over construction that caused damage to plaintiff's helicopters. *Id.* at 121. With full knowledge of the construction, and having already complained of construction-related damage, plaintiff entered into back-to-back lease agreements with defendant in which plaintiff leased space in the middle of the construction area. *Id.* at 122. The lease agreements contained identical clauses allowing the defendant "to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to [plaintiff] for loss of business or damages of any nature whatsoever to [plaintiff] occasioned during the making of such improvements, repairs, alterations and additions...." *Id.* at 121. This Court found that the lease agreement, despite not containing the actual word "negligence," was sufficient to release the defendant from its own negligence. *Id.* at 122.

For this case to be analogous to *GOAA*, as the Association argues, the record evidence would include the following facts: Mr. Hackett would have stayed in the same timeshare unit (unit 1036) on multiple prior occasions. During those stays, he would have noted that a porch chair was broken and reported it to the Association. Then, on a subsequent stay, despite being fully aware of the

condition of the porch chair, Mr. Hackett would have signed a release stating that the Association was free to place whatever furniture it chose in the unit and would be free from any liability whatsoever. Only then, if Mr. Hackett had sat in a broken chair and been injured, could the Association rely on its release to avoid liability.

The Association cannot point to facts even remotely similar to these. While Mr. Hackett had admittedly stayed at the Association's property in the past (R13), there is no testimony or evidence that he had any advance notice that the patio chair in a particular unit would break and injure him. Unlike the unique factual scenario in *GOAA* – where the plaintiff had advance notice of potential negligence in construction practices and yet specifically agreed not to hold the defendant liable for any construction-caused damage – Mr. Hackett neither had advance notice of any negligence of the Association nor agreed to release the Association from liability.

In contrast to *GOAA*, this Court's decision in *O'Connell* is far more analogous. 413 So. 2d at 445. There, plaintiff filed an action against Disney when his son was injured on a horseback ride. *Id.* Although plaintiff had executed a release prior to his son participating in the ride, the Court concluded that the "hold

harmless" agreement was not sufficient, as a matter of law, to bar recovery for the injuries caused by Disney's own negligence.[2] *Id.* at 446. The agreement stated:

> I consent to the renting of a horse from Walt Disney World Co. by *Frankie*, a minor, and to his/her <u>assumption of the risks inherent in horseback riding</u>. I agree, personally and on his/her behalf, to waive any claims or causes of action which he/she or I may now or hereafter have against Walt Disney World Co. arising out of any injuries he/she may sustain as a result of that horseback riding, and I will hold Walt Disney World Co. harmless against <u>any and all claims resulting from such injuries</u>.

Id. at 445 n.2 (emphasis added).

The Court in *O'Connell* relied on long-standing precedent that "[w]hile exculpatory clauses are enforceable, they are looked upon with disfavor; and any attempt to limit one's liability for his own negligent act will not be inferred from an agreement unless such intention is expressed in clear and unequivocal terms." *Id.* at 446. The Court explained that because the hold harmless agreement did not have "any language indicating the intent to either release or indemnify the defendant for its own negligence," it would not read that language into the agreement. *Id.* at 447. The agreement limited itself to assuming risks inherent in horseback riding; the defendant's negligence was not such a risk. *Id.* As the

[2] The agreement in *O'Connell* contained an indemnification clause rather than an exculpatory clause. Yet, because the clause purported to shift responsibility for damages to the injured party, the *O'Connell* Court treated the indemnification clause just as it would an exculpatory clause, and applied the same type of analysis. *Id.* at 446.

Court explained, "[i]n order to be enforceable, the agreement must unambiguously indicate which risks are assumed and will not be interpreted to include losses resulting from the defendant's negligence unless it is clear that the plaintiff so intended." *Id.*

Here, the cursory language of the Agreement does not reflect a clear and unequivocal intent by Mr. Hackett to excuse the Association from its own negligence or liability. The trial court should not have inferred this intent. Just as in *O'Connell*, the trial court erred when it granted summary judgment for the defendant. This Court should reverse the judgment for the Association and remand for further proceedings.

II. AN EXCULPATORY CLAUSE SHOULD USE THE WORD "NEGLIGENCE" OR A SIMILAR PHRASE TO EFFECTIVELY RELEASE A PARTY FROM ITS OWN NEGLIGENCE.

Alternatively, in the event that this Court finds the Association's exculpatory clause is sufficiently definite, Mr. Hackett urges the Court to reconsider its position on whether inclusion of the word "negligence" is a prerequisite to finding an exculpatory clause enforceable. This Court stands alone in not requiring a contract to actually use the word "negligence" in the exculpatory clause. As the *Cain* Court explained:

> This district has rejected the need for express language referring to release of the defendant for "negligence" or "negligent acts" in order to render a release effective to bar a negligence action. The other districts take a "bright line" position requiring such express language.

932 So. 2d at 578 (internal citations omitted). The exculpatory clause in the Agreement unquestionably does not use the word "negligence" or the phrase "negligent acts." (R16; App'x Tab 1.) Accordingly, in any other district in this state, the Agreement would be insufficient as a matter of law because it does not satisfy the "bright line" test.

For preservation purposes, Mr. Hackett maintains that the Court is on the wrong side of the district court split and urges the Court to either reconsider its position via an *en banc* opinion, or to certify conflict to the Florida Supreme Court. *See Sturdivant v. State*, Case No. 1D08-6058, 2010 WL 3464410, at *3 (Fla. 1st DCA Sept. 7, 2010) (prior decisions of a district court are binding on other panels of that court unless overruled by the court sitting en banc or a higher court), *review granted,* 47 So. 3d 1290 (2010). However, this Court need not consider the split in authority among the districts if – as it should – it resolves the first issue in this appeal favorably to Mr. Hackett.

CONCLUSION

For all the foregoing reasons, Mr. Hackett asks this Court to reverse the summary final judgment for the Association and remand for a jury trial. Alternatively, Mr. Hackett asks this Court to revisit its position on the "bright line" test through an en banc opinion or by certifying conflict to the Supreme Court of Florida.

Respectfully submitted,

CREED & GOWDY, P.A.

/s/ Jessie L. Harrell

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to **Diane H. Tutt, Esq.** (appellant counsel for appellee), 3440 Hollywood Blvd, Second Floor, Hollywood, FL 33021, **E. Nannette Piccolo, Esq.,** The Law Offices of Michael J. Krakar, 1900 Summit Tower Boulevard, Suite 500, Orlando, FL 32810 (trial counsel for appellee), and **Lloyd Manukian, Esq.** Farah & Farah, P.A., 1301 Plantation Island Drive, Suite 206-A, St. Augustine, FL 32080 (trial counsel for appellant) this 27th day of September, 2011.

/s/ Jessie L. Harrell
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

_*/s/ Jessie L. Harrell*_____________
Attorney

IN THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA
CASE NO. 5D11-1836

RICHARD HACKETT,

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GRAND SEAS OWNER'S
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Appellee.

ON APPEAL FROM THE CIRCUIT COURT,
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APPENDIX TO THE INITIAL BRIEF

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Guest License Agreement .... Tab 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to **Diane H. Tutt, Esq.** (appellant counsel for appellee), 3440 Hollywood Blvd, Second Floor, Hollywood, FL 33021, **E. Nannette Piccolo, Esq.,** The Law Offices of Michael J. Krakar, 1900 Summit Tower Boulevard, Suite 500, Orlando, FL 32810 (trial counsel for appellee), and **Lloyd Manukian, Esq.** Farah & Farah, P.A., 1301 Plantation Island Drive, Suite 206-A, St. Augustine, FL 32080 (trial counsel for appellant) this 27th day of September, 2011.

Attorney

Guest License Agreeme

RICHARD C HACKETT
103 DOUGLAS ST
CRESCENT CITY, FL 32112-3227

Unit: 2056 Arrival: 9/9/2007
Folio 265562 Departure: 9/16/2007
Number of Nights: 7

1 It is understood that each unit is privately owned, including the linen and furnishings, with The GRAND SEAS RESORT acting solely as agent of the owner: The owner(s)/guest(s) agrees to compensate the agent for any damages caused by their carelessness or negligence, including ALL inventory and in-unl items.

2 Occupancy and use of premises and common areas shall not be such as to disturb or offend other guests or residents. The agent has the prerogative to terminate this agreement and ask disruptive guests to vacate Grand Seas property.

3 The GRAND SEAS RESORT is not responsible for articles lost, stolen, misplaced or left on property. PLEASE CHECK YOUR UNIT BEFORE YOU DEPART.

4 Owner(s)/guest(s) agrees that The Grand Seas Resort or its agents or employees, may enter the premises for the purpose of effecting necessary repairs or maintenance, cleaning or for other purposes.

5 Owner(s)/guest(s) acknowledges and understands that CHECK-OUT IS NO LATER THAN 10:00 AM. THERE WILL BE A $100.00 PER HOUR " Late Departure Fee" should you not depart by 10:00 AM. There are no refunds for late check-ins or early departures.

6 A $ 10.00 charge will be collected for each pool towel and $ 5.00 for each pool I.D. bracelet that is not reurned prior to, or at, check-out time. POOL TOWELS AND I.D. BRACELETS ARE TO BE RETURNED TO THE ATTENDANT AT THE POOL BOOTH, DURING THE HOURS OF OPERATION (8:00 AM - 8:00 PM.) Please do not leave your towels unattended at the pool or in your unit when you check out. Pool hours are from 8:00 AM - 10:00pm.

7 The Owner(s)/guest(s) acknowledges that there are_______ registered guests, and understands that this reservation is only for the number of adults and number of children listed on your confirmation letter and MAY NOT EXCEED THE NUMBER OF PERSONS PERMITTED IN THAT UNIT. 2 Person maximum inCourside Studio units, 4-Person max. in 1-bedroom units and Studio Units, 6-Person max in 2-bedroom units.
NO " HOUSE PARTIES" OR PETS WILL BE PERMITTED AT ANY TIME.

8 RV's, Trailers, jet-skis, campers, motor homes or boats are not allowed to be parked, serviced, repaired, washed, or flushed-out on The Grand Seas Reso property at any time.

9 Parking on The Grand Seas Resort property is by permit only and ONLY ONE PERMIT IS ISSUED PER UNIT : Any unauthorized vehicles will be towed immediately, without notice, at owner's expense. PLEASE DISPLAY YOUR PERMIT ON YOUR DASHBOARD AT ALL TIMES. TheGrand Seas Resort is not responsible for any loss or damage to vehicles parked on Resort property. If you park on the street with a trailer your vehicle must be attached to the trailer at all times.

10 All renters, bonus time, and exchangers will incur a $1.75 plus tax per day resort surcharge.

11 The Owner(s)/Guest(s) agrees to abide by all of The Grand Seas Resort policies and to be reminded that many of the " Pool Regulations" are imposed b state and federal laws.

12 The Grand Seas Resort is not responsible for any technical or other failures in our automated wake-up call system. Alarm clocks have been furnished in al units for use as "back up" for wake-up calls.

13. DEPOSIT REQUIREMENT- The Grand Seas Resort requires a minimum $50.00 security deposit upon check in. All CASH DEPOSITS will be refunded by mail within 10 days after check out. CREDIT CARD deposits will be credited upon check out.

Notice to Guests: This property is privately owned. Management reserves the right to refuse service to anyone, and will not be responsible for accidents or injury to guest or for loss of money, jewelry or valuables of any kind. Guest authorizes the use of credit card on file for any and all unpaid charges.

I have received the goods and / or services in the amount shown heron. I agree that my liability for this bill is not waived and agree to be held personally liabl in the event that the indicated person, company, or association fails to pay for any part or the full amount of these charges. If a credit card charge, I further agree to perform the obligations set forth in the cardholder's agreement with the issuer.

The Following is a List of All Individuals Staying In Your Unit

Your Signature: [signature] **Date:** 9-9-07

TAB 1

GRAND SEAS RESORT 2424 North Atlantic Ave. Daytona Beach, Florida 3211 Phone: 386-677-7880