

152789

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL  
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE15017778

HOLLYWOOD BEACH RESORT  
CONDOMINIUM ASSOCIATION, INC.,  
HOLLYWOOD BEACH HOTEL OWNERS  
ASSOCIATION, INC., and HHBR, LLC,

Plaintiffs,

v.

MICHAEL JEKIC, LAURA WELLIVER, OCEAN  
WALK MALL, LLC and COMMERCIAL UNIT  
100, LLC

Defendants.

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**LAURA WELLIVER'S ANSWER AND AFFIRMATIVE DEFENSES TO THIRD  
AMENDED COMPLAINT**

Welliver, LAURA WELLIVER ("Welliver"), by an through her undersigned counsel, hereby files this Answer and Affirmative Defenses to the Third Amended Complaint, with Jury demand Endorsed Hereon, served on December 18, 2017 by the Plaintiffs, THE HOLLWOOD BEACH RESORT CONDOMINIUM ASSOCIATION, INC., THE HOLLYWOOD BEACH HOTEL OWNERS ASSOCIATION, INC. AND HHBR, LLC, and states:

**JURISDICTION AND VENUE<sup>1</sup>**

1. Admitted for jurisdictional purposes only, and Welliver denies any liability to Plaintiffs for the claims alleged and further denies Plaintiffs entitlement to damages.
2. The allegations in paragraph 2 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**STANDING**

3. The allegations in paragraph 3 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.
4. The allegations in paragraph 4 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.
5. Welliver admits the allegations in paragraph 5 of the Third Amended Complaint.
6. Welliver is without sufficient knowledge of the allegations in paragraph 6 of the Third Amended Complaint, which are therefore denied.
7. Welliver is without sufficient knowledge of the allegations in paragraph 6 of the Third Amended Complaint, which are therefore denied.
8. Welliver is without sufficient knowledge of the allegations in paragraph 8 of the Third Amended Complaint, which are therefore denied.
9. Welliver is without sufficient knowledge of the allegations in paragraph 9 of the Third Amended Complaint, which are therefore denied.

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<sup>1</sup> Welliver includes the sub-captions from the Third Amended Complaint in this Answer for convenience only and does not admit to any allegations or legal conclusions that appear therein.

10. Welliver is without sufficient knowledge of the allegations in paragraph 10 of the Third Amended Complaint, which are therefore denied.

11. The allegations in paragraph 11 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Welliver further states that the documents attached as Exhibit A speak for themselves.

12. Welliver is without sufficient knowledge of the allegations in paragraph 12 of the Third Amended Complaint, which are therefore denied.

13. Welliver is without sufficient knowledge of the allegations in paragraph 13 of the Third Amended Complaint, which are therefore denied.

14. Welliver is without sufficient knowledge of the allegations in paragraph 14 of the Third Amended Complaint, which are therefore denied.

15. Welliver is without sufficient knowledge of the allegations in paragraph 15 of the Third Amended Complaint, which are therefore denied.

16. Welliver is without sufficient knowledge of the allegations in paragraph 16 of the Third Amended Complaint, which are therefore denied.

**JEKIC'S AND WELLIVER'S TENURE AS DIRECTORS/OFFICERS OF BOTH ASSOCIATIONS**

17. Welliver admits only that she served on the Board of Directors of both Associations from February 2011 through February 2015; the remainder of paragraph 17 is denied.

18. Welliver admits only that she served as the Vice-President of both Associations from February 2011 through February 2015; the remainder of paragraph 18 is denied.

**THE OWNERSHIP OF THE TO COMMERCIAL UNITS AT HBR**

19. Welliver is without sufficient knowledge of the allegations in paragraph 19 of the Third Amended Complaint, which are therefore denied.

20. Welliver is without sufficient knowledge of the allegations in paragraph 20 of the Third Amended Complaint, which are therefore denied.

21. The allegations in paragraph 21 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

22. The allegations in paragraph 22 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

23. Welliver is without sufficient knowledge of the allegations in paragraph 23 of the Third Amended Complaint, which are therefore denied.

24. The allegations in paragraph 24 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**RICHARD KING'S DUAL AGENCY RELATIONSHIP AND THE FAILURE TO DISCLOSE SAME**

25. Welliver is without sufficient knowledge of the allegations in paragraph 25 of the Third Amended Complaint, which are therefore denied.

26. Welliver is without sufficient knowledge of the allegations in paragraph 26 of the Third Amended Complaint, which are therefore denied.

27. Welliver is without sufficient knowledge of the allegations in paragraph 27 of the Third Amended Complaint, which are therefore denied.

28. Welliver is without sufficient knowledge of the allegations in paragraph 28 of the Third Amended Complaint, which are therefore denied.

29. Welliver is without sufficient knowledge of the allegations in paragraph 29 of the Third Amended Complaint, which are therefore denied.

30. Welliver is without sufficient knowledge of the allegations in paragraph 30 of the Third Amended Complaint, which are therefore denied.

31. Welliver is without sufficient knowledge of the allegations in paragraph 31 of the Third Amended Complaint, which are therefore denied.

32. The allegations in paragraph 32 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

33. The allegations in paragraph 33 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

34. The allegations in paragraph 34 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

35. The allegations in paragraph 35 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE JULY 2012 LEASE BEWTWEEN BOTH ASSOCIATIONS, AS LESSEES, AND OCEAN WLAK AND CU 100, AS LESSORS**

36. Welliver is without sufficient knowledge of the allegations in paragraph 36 of the Third Amended Complaint, which are therefore denied.

37. Exhibit D, attached to the Third Amended Complaint speaks for itself.

38. Welliver neither admits nor denies the allegations of paragraph 38 of the Third Amended Complaint, because the document referenced as Exhibit D speaks for itself.

39. Welliver neither admits nor denies the allegations of paragraph 39 of the Third Amended Complaint, because the document referenced as Exhibit D speaks for itself.

40. Welliver neither admits nor denies the allegations of paragraph 40 of the Third Amended Complaint, because the document referenced as Exhibit D speaks for itself.

41. The allegations in paragraph 41 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE JULY LEASE IS UNLAWFUL DUE TO NON-DISCLOSURE OF ITS TERMS**

42. The allegations in paragraph 42 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

43. The allegations in paragraph 43 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

44. The allegations in paragraph 44 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

45. Welliver denies the allegations of paragraph 45 of the Third Amended Complaint as to herself; Welliver is without knowledge as to the other persons identified and therefore denied.

46. Welliver denies the allegations of paragraph 46 of the Third Amended Complaint.

47. The allegations in paragraph 47 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

48. The allegations in paragraph 48 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

49. Welliver denies the allegations of paragraph 49 of the Third Amended Complaint.

50. Welliver is without sufficient knowledge of the allegations in paragraph 50 of the Third Amended Complaint, which are therefore denied.

51. Welliver is without sufficient knowledge of the allegations in paragraph 51 of the Third Amended Complaint, which are therefore denied.

52. Welliver is without sufficient knowledge of the allegations in paragraph 52 of the Third Amended Complaint, which are therefore denied.

53. The allegations in paragraph 53 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

54. The allegations in paragraph 54 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE JULY LEASE IS ALSO UNLAWFUL DUE TO THE 41.09% REDUCTION IN ASSESSMENTS AND OTHER REDUCTIONS IN ASESMENTS GRANTED TO CU 100 AND COMMERCIAL UNIT 200**

55. The allegations in paragraph 55 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

56. Welliver is without sufficient knowledge of the allegations in paragraph 56 of the Third Amended Complaint, which are therefore denied. Further, the document attached as Exhibit E to the Third Amended Complaint speaks for itself.

57. The allegations in paragraph 57 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Further, the document attached as Exhibit F to the Third Amended Complaint speaks for itself.

58. The allegations in paragraph 58 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Further, the document attached as Exhibit F to the Third Amended Complaint speaks for itself.

59. The allegations in paragraph 59 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

60. Welliver is without sufficient knowledge of the allegations in paragraph 60 of the Third Amended Complaint, which are therefore denied.

61. Welliver is without sufficient knowledge of the allegations in paragraph 61 of the Third Amended Complaint, which are therefore denied.

62. The allegations in paragraph 62 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE JULY LEASE IS ALSO UNLAWFUL DUE TO RENTING OFF-SITE PROPERTY WITHOUT A UNIT OWNER VOTE APPROVING SAME**

63. The allegations in paragraph 63 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

64. The allegations in paragraph 64 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

65. The allegations in paragraph 65 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE OCTOBER 2012 LEASE BETWEEN BOTH ASSOICATIONS, HHBR, AS LESSEES, OCEAN WALK AND CU 100, AS LESSORS**

66. Welliver is without sufficient knowledge of the allegations in paragraph 66 of the Third Amended Complaint, which are therefore denied.

67. Welliver neither admits nor denies the allegations in paragraph 67 as to herself because the document referenced as Exhibit G speaks for itself.

68. Welliver neither admits nor denies the allegations in paragraph 67 as to herself because the document referenced as Exhibit H speaks for itself.

69. Welliver neither admits nor denies the allegations of paragraph 69 of the Third Amended Complaint, because the document referenced as Exhibit H speaks for itself.

70. Welliver neither admits nor denies the allegations in paragraph 70 as to herself because the document referenced as Exhibit I speaks for itself.

71. The allegations in paragraph 71 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Welliver further states that the documents referenced as Exhibits J and K speak for themselves.

72. Welliver neither admits nor denies the allegations of paragraph 72 of the Third Amended Complaint, because the document referenced as Exhibit K speaks for itself.

73. Welliver neither admits nor denies the allegations of paragraph 73 of the Third Amended Complaint, because the document referenced as Exhibit K speaks for itself.

74. Welliver neither admits nor denies the allegations of paragraph 74 of the Third Amended Complaint, because the documents, Exhibits D and J referenced therein, speak for themselves.

75. Welliver neither admits nor denies the allegations of paragraph 75 of the Third Amended Complaint, because the document referenced as Exhibit K speaks for itself.

**THE OCTOBER LEASE IS UNLAWFUL DUE TO CONCEALMENT AND NON-DISCLOSURE OF ITS MATERIAL TERMS TO UNIT OWNERS**

76. Welliver neither admits nor denies the allegations of paragraph 76 of the Third Amended Complaint, because the document referenced as Exhibit G speaks for itself.

77. Welliver neither admits nor denies the allegations of paragraph 77 of the Third Amended Complaint, because the document referenced as Exhibit G speaks for itself.

78. The allegations in paragraph 78 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Welliver further states that the document referenced as Exhibit G speaks for itself.

79. Welliver denies the allegations in paragraph 79 of the Third Amended Complaint. Welliver further states that the document referenced as Exhibit G speaks for itself.

80. Welliver denies the allegations in paragraph 80 of the Third Amended Complaint. Welliver further states that the document referenced as Exhibit G speaks for itself.

81. Welliver denies the allegations in paragraph 81 of the Third Amended Complaint. Welliver further states that the document referenced as Exhibit G speaks for itself.

82. Welliver is without sufficient knowledge of the allegations in paragraph 82 of the Third Amended Complaint, which are therefore denied. Welliver further states that the document referenced as Exhibit K speaks for itself.

83. Welliver is without sufficient knowledge of the allegations in paragraph 83 of the Third Amended Complaint, which are therefore denied. Welliver further states that the document referenced as Exhibit K speaks for itself.

84. Welliver is without sufficient knowledge of the allegations in paragraph 84 of the Third Amended Complaint, which are therefore denied. Welliver further states that the document referenced as Exhibit K speaks for itself.

85. The allegations in paragraph 85 purport to state a legal conclusion and are therefore denied.

86. Welliver denies the allegations in paragraph 86 of the Third Amended Complaint, as to the October lease. Welliver is without sufficient knowledge regarding the allegations concerning the lease identified as the July lease, which are therefore denied.

87. Welliver denies the allegations in paragraph 87 of the Third Amended Complaint, as to herself.

88. Welliver denies the allegations in paragraph 88 of the Third Amended Complaint, as to herself.

89. Welliver denies the allegations in paragraph 89 of the Third Amended Complaint, as to herself.

**THE OCTOBER LEASE IS ALSO UNLAWFUL DUE TO THE 41.09% REDUCTION IN ASSESSMENTS AND OTHER REDUCTIONS IN ASSESSMENTS GRANTED TO CU 100 AND COMMERCIAL UNIT 200**

90. The allegations in paragraph 90 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE OCTOBER LEASE IS ALSO UNLAWFUL DUE TO RENTING OFF-SITE PROPERTY WITHOUT A UNIT OWNER VOTE APPROVING SAME**

91. The allegations in paragraph 91 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE OCTOBER LEASE IS ALSO UNLAWFUL BECAUSE HHBR IS REALLY AN ASSOCIATION CREATED WITH THE EXCLUSIVE INTENT TO CIRCUMVENT THE PROTECTIONS AND PROVISIONS OF 718.101 FLA. STAT.**

92. The allegations in paragraph 92 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

93. Welliver denies the allegations in paragraph 87 of the Third Amended Complaint.

94. The allegations in paragraph 94 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

95. The allegations in paragraph 95 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

**THE PLUNDERING AND MISAPPROPRIATION OF BOTH ASSOCIATIONS' MONEY AND DISREGARD OF APPROVED BUDGETS BY JEKIC, WELLIVER AND KING**

96. The allegations in paragraph 96 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied. Moreover, the document referenced therein speaks for itself.

97. Welliver denies the allegations in paragraph 97 of the Third Amended Complaint.

98. The allegations in paragraph 98 of the Third Amended Complaint purport to state a legal conclusion, and are therefore denied. Welliver specifically denies that the Associations' operating funds were "plundered."

99. Welliver denies the allegations in paragraph 99 of the Third Amended Complaint.

100. Welliver denies the allegations in paragraph 100 of the Third Amended Complaint.

101. The allegations in paragraph 101 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

102. Welliver denies the allegations in paragraph 102 of the Third Amended Complaint.

103. Welliver is without sufficient knowledge of the “several contracts” as alleged in paragraph 103 of the Third Amended Complaint, which are therefore denied.

104. Welliver denies the allegations in paragraph 104 of the Third Amended Complaint.

105. Welliver denies the allegations in paragraph 105 of the Third Amended Complaint, as to herself.

**ACTIVE CONCEALMENT OF THEIR MISAPPROPRIATION OF ASSOCIATION FUNDS**

106. The allegations in paragraph 106 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

107. Welliver denies the allegations in paragraph 107 of the Third Amended Complaint, as to herself.

108. Welliver denies the allegations in paragraph 108 of the Third Amended Complaint, as to herself.

109. The allegations in paragraph 109 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

110. Welliver denies the allegations in paragraph 110 of the Third Amended Complaint, as to herself. Welliver is without sufficient knowledge to either admit or deny

the allegations concerning KW Property Management and its actions regarding the Balance Sheet referenced in paragraph 110 of the Third Amended Complaint, and are therefore denied.

111. Welliver denies the allegations in paragraph 111 of the Third Amended Complaint, as to herself.

112. Welliver denies the allegations in paragraph 112 of the Third Amended Complaint, as to herself.

**BINDING DETERMINATION OF UNLAWFUL REBATE TO OCEAN WALK AND CU100**

113. The allegations in paragraph 113 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

114. Welliver is without sufficient knowledge of the allegations in paragraph 114 of the Third Amended Complaint, which are therefore denied.

115. Welliver is without sufficient knowledge of the allegations in paragraph 115 of the Third Amended Complaint, which are therefore denied. Welliver further states that the referenced documents speak for themselves.

116. Welliver is without sufficient knowledge of the allegations in paragraph 116 of the Third Amended Complaint, which are therefore denied. Welliver further states that the referenced documents speak for themselves.

**JEKIC, WEILLIVER, RICHARD KING AND OTHER BOARD MEMBERS' SPECIFIC FIDUCIARY DUTIES OWNED IN THIS CASE**

117. The allegations in paragraph 117 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

118. The allegations in paragraph 118 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

119. The allegations in paragraph 119 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

120. Welliver is without sufficient knowledge of the allegations in paragraph 120 of the Third Amended Complaint, which are therefore denied

**COUNT I / BREACH OF FIDUCIARY DUTY**  
**(Jekic and Welliver)**

121. Welliver re-alleges the answers in paragraphs 1 through 120 above and incorporates them by reference.

122. The allegations in paragraph 122 of the Third Amended Complaint are denied, including all subparts.

123. The allegations in paragraph 123 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

124. Welliver denies the allegations in paragraph 124 of the Third Amended Complaint, as to herself.

125. Welliver denies the allegations in paragraph 125 of the Third Amended Complaint, as to herself.

126. Welliver denies the allegations in paragraph 126 of the Third Amended Complaint, as to herself.

127. Welliver denies the allegations in paragraph 127 of the Third Amended Complaint, as to herself.

128. Welliver denies the allegations in paragraph 128 of the Third Amended Complaint, as to herself.

129. Welliver denies the allegations in paragraph 129 of the Third Amended Complaint, as to herself.

**COUNT II / FRAUD**  
**(Jekic and Welliver)**

130. Welliver re-alleges the answers in paragraphs 1 through 120 above and incorporates them by reference.

131. The allegations in paragraph 131 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

132. Welliver denies the allegations in paragraph 132 of the Third Amended Complaint, as to herself.

133. Welliver denies the allegations in paragraph 133 of the Third Amended Complaint, as to herself.

134. Welliver denies the allegations in paragraph 134 of the Third Amended Complaint, as to herself.

135. Welliver denies the allegations in paragraph 135 of the Third Amended Complaint, as to herself..

136. Welliver denies the allegations in paragraph 136 of the Third Amended Complaint, as to herself.

**COUNT III / FRAUD-VICARIOUS LIABILITY**  
**(Ocean Walk and CU 100)**

137-143. Welliver, Laura Welliver does not respond to paragraphs 137 through 143 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT IV / VICARIOUS LIABILITY FOR BREACH OF FIDUCIARY DUTIES**  
**(Ocean Walk and CU 100)**

144-150. Welliver, Laura Welliver does not respond to paragraphs 144 through 150 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT V / VICARIOUS LIABILITY FOR BREACH OF FIDUCIARY DUTIES BY  
SELF-DEALING  
(Ocean Walk and CU 100)**

151-159. Welliver, Laura Welliver does not respond to paragraphs 151 through 159 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT VI / AVOIDANCE OF JULY LEASE AND OCTOBER LEASE DUE TO FRAUD  
BY UNDISCLOSED AGENCY  
(Ocean Walk and CU 100)**

160-166. Welliver, Laura Welliver does not respond to paragraphs 160 through 166 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT VII / BREACH OF FIDUCIARY DUTIES-AIDING AND ABETTING  
(Ocean Walk and CU 100)**

167-170. Welliver, Laura Welliver does not respond to paragraphs 167 through 170 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT VIII / UNCONSCIONABILITY AND UNFAIRNESS OF LEASES AND  
AMENDMENTS  
(Ocean Walk and CU 100)**

171-173. Welliver, Laura Welliver does not respond to paragraphs 171 through 173 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT IX / DECLARATORY JUDGMENT  
(Ocean Walk and CU 100)**

174-188. Welliver, Laura Welliver does not respond to paragraphs 174 through 188 of the Third Amended Complaint, as the allegations do not apply to her.

**COUNT X / CONSTRUCTIVE FRAUD  
(Jekic and Welliver)**

189. Welliver re-alleges the answers to paragraphs 1 through 120 and 122 through 129 above and incorporates them by reference.

190. The allegations in paragraph 190 of the Third Amended Complaint purport to state a legal conclusion and are therefore denied.

191. Welliver denies the allegations in paragraph 191 of the Third Amended Complaint, as to herself.

192. Welliver is without sufficient knowledge of the allegations in paragraph 192 of the Third Amended Complaint, which are therefore denied.

193. Welliver denies the allegations in paragraph 193 of the Third Amended Complaint, as to herself.

194. Welliver denies the allegations in paragraph 194 of the Third Amended Complaint, as to herself.

**COUNT XI / CONSTRUCTIVE FRAUD-VICARIOUS LIABILITY**  
**(Ocean Walk and CU 100)**

195-201. Welliver, Laura Welliver does not respond to paragraphs 195 through 201 of the Third Amended Complaint, as the allegations do not apply to her.

**AFFIRMATIVE DEFENSES**

202. As her First Affirmative Defense, the Welliver states that this action is barred by res judicata and/or collateral estoppel, as this Amended Complaint arises from the same nucleus of operative facts and involves the same parties as a previous federal action, styled The Hollywood Beach Resort Rental Program, LLC v. Michel Jekic, Laura Welliver, et al., Case No.: 2014-cv-22889, in which Wellivers prevailed, and arises from the same nucleus of operative facts and involves the same parties as two (2) previous state actions, styled The Hollywood Beach Resort Condominium Association, Inc. v.

Creative Hospitality Ventures, Inc., Case No.: 2013-017031 CACE 25, and The Hollywood Beach Resort Rental Program, LLC v. The Hollywood Beach Resort Condominium Association, Inc. and The Hollywood Beach Hotel Owners Association, Inc., Case No.: 2012-023997 CACE 05 which were settled and all claims against this Welliver dismissed, with prejudice.

203. As her Second Affirmative Defense, the Welliver states that Plaintiffs' claims are barred as a matter of law, because the damages alleged by Plaintiffs are speculative in nature, depend upon several contingencies, and have not yet occurred.

204. As her Third Affirmative Defense, the Welliver states that Plaintiff, HHBR's claims are barred for lack of standing, because HHBR attempts to claim against Welliver for alleged breaches of fiduciary duties owed to the Associations, not to HHBR.

205. As her Fourth Affirmative Defense, the Welliver states that Plaintiffs' claims are barred because the actions alleged by Plaintiff reflect the exercise of reasonable business judgment, in Welliver's capacity as a member of the Board of Directors of the Associations, and therefore Welliver is immune from suit therefore and/or liability for the alleged actions is barred by Sections 617.0834 and 718.111, Florida Statutes.

206. As her Fifth Affirmative Defense, the Welliver states that Plaintiffs' claims are barred because the actions alleged by Plaintiff were undertaken upon the advice of counsel, in Welliver's capacity as a member of the Boards of Directors of the Associations.

207. As her Sixth Affirmative Defense, Welliver states that the Plaintiffs' claims are barred by waiver, laches, release, accord and satisfaction, ratification, acquiescence, abandonment and/or estoppel, for the reasons set forth in paragraph 202, *supra*, among other reasons, and because the Plaintiffs continued to operate a bar/restaurant and rental

program through HHBR, as well as to pay rent to the landlord pursuant to their Lease, for several years, including after such time as Welliver was no longer a member of the Board of Directors.

208. As her Seventh Affirmative Defense, Welliver states that Plaintiffs' claims are barred by unclean hands, as all Plaintiffs' were a party to and/or beneficiary of the alleged breaches of fiduciary duty set forth in the Amended Complaint.

209. As her Eight Affirmative Defense, Welliver states that Plaintiffs' claims are barred by the *in pari delicto* doctrine, as all Plaintiffs were a party to and/or beneficiary of the alleged breaches of fiduciary duty set forth in the Amended Complaint.

210. As her Ninth Affirmative Defense, Welliver states that Plaintiff's Third Amended Complaint fails to satisfy the pleading standards of Fla.R.Civ.P. 1.110, because it improperly lumps together the claims against Welliver and Jekic, consistently refers to them indiscriminately as the "Defendants" or as "Jekic and Welliver," and fails to adequately apprise this Welliver of the factual basis for the claims against her.

211. As her Tenth Affirmative Defense, the Welliver states that Plaintiffs have failed to mitigate their damages, as required under Florida law, and are therefore not entitled to any damages arising from the instant claims; or in the alternative, any recovery should be proportionately reduced as a result of Plaintiffs' failure to mitigate.

212. As her Eleventh Affirmative Defense, the Welliver states that Plaintiffs' claims are barred for failure to state a cause of action, for the reasons set forth in paragraphs 202-211, *supra*.

213. Welliver states that discovery in this matter is ongoing, and reserves the right to modify, alter, supplement and/or amend these Affirmative Defenses as these proceedings continue.

By: /s/ Dale L. Friedman, Esq.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished by service through the eportal to Michael Kessler, Esq., Cole, Scott, Kissane, P.A., 222 Lakeview Avenue, Suite 120, West Palm Beach, FL 33401, Michael.Kessler@csklegal.com; Denise.Allwine@csklegal.com; Stephen Hunter Johnson, Esq., Lydecker Diaz, 1221 Brickell Avenue, 19th Floor, Miami, FL 33131, Attorney for Plaintiff, The Hollywood Beach Resort Condominium Association, Inc. (only), shj@lydeckerdiaz.com, marlene@lydeckerdiaz.com; Brian J. Perreault, Esq., Lydecker Diaz, 1221 Brickell Avenue, 19th Floor, Miami, FL 33131, Attorney for Plaintiff, The Hollywood Beach Resort Condominium Association, Inc. (only), bp@lydeckerdiaz.com; Gregory R. Elder, Esquire, Law Offices of Gregory R. Elder, LLC, 108 SE 8th Avenue, Suite 114, Fort Lauderdale, FL 33301, Attorney for Wellivers/Counter-Plaintiffs and Plaintiffs, HHBR, LLC, Hollywood Beach Hotel Owners Assoc., Inc., gelderlaw@gmail.com; Sheryl S. Natelson, Esq., Lydecker Diaz, 1221 Brickell Avenue, 19th Floor, Miami, FL 33131, Attorney for Hollywood Beach Resort Condominium Association, Inc., snatelson@lydeckerdiaz.com; bn@lydeckerdiaz.com; Gerard S. Collins, Esquire, Kaye Bender Rembaum, P.L., 1200 Park Central Blvd. South, Pompano Beach, FL 33065, Counsel for The Hollywood Beach Resort Condominium Association, Inc., litigation@kbrlegal.com, gcollins@kbrlegal.com;

Jonathan Vine, Esquire, Cole, Scott & Kissane, P.A., 222 Lakeview Avenue, Suite 120,  
West Palm Beach, FL 33401, jonathan.vine@csklegal.com, leslie.vargo@csklegal.com;  
David B. Haber, Esq., Haber Slade, P.A., 201 South Biscayne Boulevard, Suite 1205,  
Miami, FL 33131, Attorney for Commercial Unit 100, LLC, dhaber@dhaberlaw.com;  
Stephanie S. Copelow, Esq., Cole, Scott, Kissane, P.A., 222 Lakeview Avenue, Suite  
120, West Palm Beach, FL 33401, stephane.copelow@csklegal.com;  
Iraida.Avila@csklegal.com on this 16th day of January, 2018.

CONROY SIMBERG  
Attorney for Laura Welliver  
3440 Hollywood Boulevard, Second Floor  
Hollywood, FL 33021  
Telephone: (954) 961-1400 Broward  
Facsimile: 954-518-8652  
Primary Email: eservicehwd@conroysimberg.com  
Secondary Email: dfriedman@conroysimberg.com

By: /s/ Dale L. Friedman  
Dale L. Friedman, Esquire  
Florida Bar No. 854646  
David Newman  
Florida Bar No. 784771