

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,  
IN AND FOR SARASOTA COUNTY, FLORIDA**

**SARASOTA SURF & RACQUET CLUB  
CONDOMINIUM ASSOCIATION, INC.**

**Plaintiff,**

**Case No. 2015 CA 002612 NC**

**v.**

**SARASOTA COUNTY, FLORIDA; and  
FLORIDA DEPARTMENT OF REVENUE**

**PLAINTIFF'S MOTION  
FOR FINAL SUMMARY  
JUDGEMENT**

**Defendants.**

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**PLAINTIFF'S MOTION FOR FINAL SUMMARY JUDGMENT**

Plaintiff, SARASOTA SURF & RACQUET CLUB CONDOMINIUM ASSOCIATION, INC., ("Association" or "Plaintiff"), by and through its undersigned attorneys, pursuant Rule 1.510, Florida Rules of Civil Procedure, hereby moves this Court for entry of Final Summary Judgment in its favor and against the Defendants, SARASOTA COUNTY, FLORIDA ("Sarasota County") and the FLORIDA DEPARTMENT OF REVENUE ("Department") (collectively, "Defendants"). Based on the pleadings, there exist no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law. In support of its motion, Plaintiff states as follows:

**PRELIMINARY STATEMENT**

This is an action whereby Plaintiff is challenging a Tourist Development Tax assessment issued by Sarasota County.

As more fully set forth below, Plaintiff solicits prospective renters through various communication methods, charging a rental fee, a reservation/booking fee and for reservations of

five nights or less, a cleaning fee. Sarasota County improperly determined that Plaintiff owed Tourist Development Tax (“TDT”) on the cleaning fee and booking fee charged during the audit period at issue. Sarasota County’s TDT assessment against Plaintiff as to the cleaning fee and booking fee violates Florida law.

Indeed, the Florida Supreme Court recently ruled on this exact issue relating to TDT. In *Alachua County v. Expedia, Inc.*, 175 So.3d 730, 733 (Fla. 2015), the Florida Supreme Court held that TDT applies to the amount received for the rental of the accommodations and not to mark-up charges and service charges used to secure the reservations.

There is no dispute that the TDT assessment occurred and there are no other material facts in dispute. The sole issue is whether Sarasota County improperly assessed TDT against Plaintiff. Based on the holding in *Expedia* and the additional law set forth below, Plaintiff was improperly assessed TDT as to the booking fee and cleaning fee. Therefore, Plaintiff respectfully requests that this Court enter summary judgment in Plaintiff’s favor.

Sarasota County raised one Affirmative Defense which does not prevent summary judgment as discussed more fully below. The Department did not raise any Affirmative Defenses.

An Affidavit in Support of Plaintiff’s Motion for Summary Judgment (“Motion”) is attached hereto as Exhibit A and incorporated herein.

### **PRELIMINARY STATEMENTS OF FACT**

The undisputed facts alleged within Plaintiff’s complaint relevant to this Court’s determination of Plaintiff’s motion are:

a. Plaintiff is a Florida condominium association which manages and maintains residential condominium units owned by individuals and entities unrelated to the Association. See Affidavit, at ¶3.

b. The Association operates a rental operation for the benefit of the unit owners. See Affidavit at ¶4. A copy of the Rental Agreement is attached to the Affidavit as Exhibit A.

c. Plaintiff, acting as an agent for the owners, solicits prospective renters through various communication methods including print, telephone, and the internet. See Affidavit, at ¶5.

d. Plaintiff handles the booking of ultimate renters and then facilitates a stay for the ultimate renters. See Affidavit, at ¶6.

e. Besides a rental charge, Plaintiff charges a reservation booking fee (“booking fee”) in the amount of \$85.00 on each rental which is a non-refundable charge. See Affidavit, at ¶7. A copy of the Resort Requirements and Reservation Confirmation are attached to the Affidavit as Composite Exhibit B.

f. The booking fee is not used to offset any rental charges or room rates and is not a charge for the occupancy of the room. See Affidavit, at ¶8.

g. The booking fee is based on activities involved with the registration and confirmation of a renter or lessee’s stay and is not payment for rental accommodations. The booking fee is guaranteed whether or not the renter or lessee ultimately honored the reservation. See Affidavit, at ¶9.

h. For all reservations of five nights or less, Plaintiff charged a flat rate cleaning fee. See Affidavit, at ¶10.

i. The cleaning fee is not used to offset any rental charges or room rates and is not a charge for the occupancy of the room. Additionally, the cleaning fee is not payment for rental accommodations. See Affidavit, at ¶11.

j. During an audit for TDT which occurred on or around August 5, 2014, Sarasota County determined that Plaintiff owed TDT on the cleaning fees and booking fees during the audit period at issue. See Affidavit, at ¶11; Answer of Sarasota County, at ¶25

k. On or around February 18, 2015, Sarasota County issued a final determination (the “Determination Letter”) upholding proposed audit findings related to Sarasota County’s TDT. See Affidavit, at ¶12; See Answer of Sarasota County, at ¶7.

l. On or around March 13, 2015, Sarasota County issued the TDT Assessment (“Assessment”). See Affidavit, at ¶14; See Answer of Sarasota County, at ¶9. A copy of the Assessment is attached to the Affidavit as Exhibit C.

m. Guidance on the Department’s position on the taxability of transient rentals is provided in Rule 12A-1.061, Florida Administrative Code (“F.A.C.”). See Answer of Sarasota County, at ¶42; Answer of Department, at ¶42.

#### **AFFIRMATIVE DEFENSE**

Sarasota County raised one Affirmative Defense. The Department did not raise any Affirmative Defenses.

In its Affirmative Defense, Sarasota County alleges that pursuant to Section 194.181, F.S., Plaintiff has failed to make the Sarasota County Tax Collector a defendant in this case. As set forth below, Sarasota County’s Affirmative Defense fails as a matter of law.

Section 194.181(4) provides that “[i]n any suit involving a tax other than an ad valorem tax on property, the tax collector charged under the law with collecting such tax shall be defendant. **However, this section does not apply in any instance wherein general law provides for some other person to be the party defendant.**” (Emphasis added). This is an instance where general law provides the indispensable party defendants.

It is undisputed that Plaintiff is challenging a TDT assessment administered locally by Sarasota County pursuant to Section 125.0104, F.S. Section 72.031, F.S., provides the party defendants for an action brought pursuant to Section 125.0104, F.S. Sarasota County and the Department admit that Section 72.031(1) is applicable to this matter. See Answer of Sarasota County, at ¶6; Answer of Department, at ¶6.

Section 72.031, F.S., states “for actions contesting an assessment or denial of refund of a tax imposed under s. 125.0104 . . . by a county that has elected under s. 125.0104(10) . . . to administer the tax, **the defendant shall be the county and the Department of Revenue.**” (Emphasis added).

Because Sarasota County and the Department have been named as defendants, all indispensable defendants have been named. Therefore, Sarasota County’s Affirmative Defense fails.

#### **SUMMARY JUDGMENT STANDARD**

Plaintiff is entitled to summary judgment in its favor if this Court finds “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Fla. R. Civ. P.* 1.510(c). Once Plaintiff has shown no issue of material fact exists, the burden shifts to the Defendant to assert a genuine material disputed issue of fact, and it is insufficient to merely assert that an issue exists. *See Landers v. Milton*, 370 So. 2d 368, 369 (Fla.1979). Here, there is no genuine issue of material fact and Plaintiff is entitled to a judgment as a matter of law. Therefore, final summary judgment should be issued in the Plaintiff’s favor.

#### **APPLICABLE LAW**

The TDT is authorized pursuant to the Local Option Tourist Development Act (the “LOTDA” or “Enabling Act”) as set forth in section 125.0104, F.S.

The Enabling Act permits a Florida county to impose a TDT on the privilege of renting, leasing or letting “for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of six months or less.” See Fla. Stat. § 125.0104(3)(a)1.

Section 125.0104 further authorizes counties to impose TDT as follows:

TDT is "due on the consideration paid **for occupancy** in the county ...." § 125.0104(3)(a)2.a., Fla. Stat. (emphasis added). It also provides that TDT is levied on the "**total consideration charged for such lease or rental.**" § 125.0104(3)(c), Fla. Stat. (emphasis added). The TDT is to be charged by the "person receiving the consideration for the lease or rental ...." § 125.0104(3)(f), Fla. Stat. (emphasis added). Once charged and collected, the person "receiving the consideration for such lease or rental" must remit the tax to the Department of Revenue. § 125.0104(3)(g), Fla. Stat. (emphasis added).

The Enabling Act permits counties levying the TDT to adopt an ordinance providing for collection and administration of the TDT by the county. Fla. Stat. §125.0104(10), F.S.

Sarasota County imposes TDT under section 114-60 of the Sarasota County Code of Ordinances.

Pursuant to the authority and in accord with section 125.0104, Fla. Stat., Sarasota County does levy and impose TDT on:

[T]he total consideration charged every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment hotel, rooming house, mobile home park, recreational vehicle park, or condominium which renting, leasing or letting is for a term of six months or less and is not exempt according to the provisions of Florida Statutes chapter 212

See Section 114-61 of the Sarasota County Code of Ordinances.

Section 114-61(g) of the Sarasota County Code of Ordinances indicates that TDT is “in addition to any other tax imposed under F.S. ch. 212, and in addition to all other taxes and fees and the consideration for the rental or lease.”

Section 114-61(h) of the Sarasota County Code of Ordinances further provides that TDT levied pursuant to this section “shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.”

Rule 12A-1.061(4)(d), F.A.C., provides that charges or fees for the processing of an application for rental or lease are not subject to tax unless the charges are used to offset or reduce rental charges or room rates that are charged to a guest or tenant.

Rule 12A-1.091(b), F.A.C., provides “[c]harges to clean residential facilities that provide temporary or permanent residences are not subject to tax, even though the rental, lease, letting, or licensing of such living accommodations may be subject to the tax imposed under Section 212.03, F.S.”

### **ARGUMENT**

Pursuant to the applicable Statutes, Rules and the Florida Supreme Court holding in *Expedia*, the service charges, i.e., the booking fee and cleaning fee, are not subject to TDT. See *Expedia*, at 733. In analyzing the TDT Statutes and local ordinances in which counties impose TDT, the Florida Supreme Court held that TDT is only due on the actual rental amount and not to the markup charges and service fees associated with the rental. See *Expedia*, at 733.

I. **The holding in *Expedia* clearly establishes that TDT is only due on the actual rental amount paid for the occupancy of the room, not for other fees.**

a. ***Expedia Trial and Appellate Court Proceedings.***

In *Expedia*, seventeen Florida Counties (“Counties”) sought a declaratory judgment against Expedia, Inc. and other online travel companies (“Companies”) relating to the Counties’ assessment of TDT against the Companies with respect to room rentals and related charges.

In exchange for compensation, the Companies would enable consumers to make reservations with hotels and other service providers without the consumer having direct interaction with those service providers. See *Alachua County v. Expedia, Inc.*, 110 So. 3d 941, 942-43 (Fla. 1<sup>st</sup> DCA 2013).

With respect to room rentals, the consumer would pay the Companies for the hotel room rental and the Companies would remit the payment to the hotel for the rent and retain reservation fees incurred by the Companies. The Counties argued that TDT applied to the Companies’ fees. The Companies argued that only the portion of the fee for the room rental was taxable. See *Expedia*, 110 So. 3d at 943.

The trial court granted summary judgment in the Companies’ favor, and the Counties appealed. See *Expedia*, 110 So. 3d at 943.

On appeal, the First DCA affirmed the trial court, finding that TDT applied to the actual rate paid for the occupancy of the room, not any other taxes or fees. The First DCA held that:

The Tourist Development Tax does not plainly evince an intention to include the additional fees that Companies charge for advertising hotel facilities, setting up internet websites, and forwarding and assisting in the making of reservations on behalf of hotel customers. The rent itself – the amount charged by the hotels \*947 for allowing customers to occupy their rooms – is what has been taxed. *Id.* at 946-47.



In construing the TDT Statutes, the Court further held that section 125.0104, Fla. Stat., provides that TDT is due on the total consideration paid for the occupancy for such lease or rental and therefore, it is the rent itself, which is subject to TDT. See *Expedia*, 110 So. 3d at 946-47.

***b. Expedia Florida Supreme Court Ruling***

The First DCA certified to the Florida Supreme Court the question of whether TDT applies only to the room rate or includes the additional compensation kept by the Companies. See *Alachua County v. Expedia, Inc.*, 175 So. 3d 730 (Fla. 2015).

The Florida Supreme Court affirmed the First DCA, holding that, pursuant to section 125.0104, Fla. Stat., TDT only applies to the monetary amount charged for room rentals, not the additional charges used to secure reservations. See *Expedia*, 175 So. 3d, at 733.

The Florida Supreme Court further held that nothing in section 125.0104 or the legislative history of section 125.0104, directed that TDT should be applied to markup charges or service fees associated with transactions for room rentals. See *Expedia*, 175 So. 3d, at 734-35. The only directive is that TDT applies to the monetary amount charged for occupancy of room rentals. See *Expedia*, 175 So. 3d at 735 (“[I]t is irrelevant to the taxation issue at hand which actors are involved and what roles they play in transactions for facilitating transient hotel room reservations . . . [T]he tax required by the TDT will be based solely upon the transient rental rate of a room.”).

***c. Identical to the Expedia litigation, Sarasota County attempts to improperly assess TDT for additional charges other than rent.***

Similar to the Companies, the Association solicits prospective renters through print, telephone, and the internet. Also similar, upon the booking of the renter, the Association charges service fees in the form of a booking fee and, for reservations of five nights or less, cleaning fees. Just as the Companies, the service fees are in addition to the rental fee, are not a charge for the

occupancy of the room and are not payments for rental accommodations. Additionally, the booking fee is guaranteed whether or not the renter or lessee ultimately honored the reservation.

The trial court, First DCA and Florida Supreme Court in *Expedia* have made clear that TDT can only be assessed as to the rental amount, not the additional service charges. See *Expedia*, 175 So. 3d at 733. Despite this holding, Sarasota County is improperly assessing TDT against the Association as to the additional service charges.

Based on the holding in *Expedia* and the TDT Statutes, it is requested that this Court enter summary judgment in the Association's favor, ruling that the portion of the assessment relating to the booking fee and cleaning fee are not subject to the TDT.

**II. The Rules established by the Department support Plaintiff's position.**

As set forth above, guidance on the Department's position relating to taxability of transient rentals, including any TDT, is provided in Rule 12A-1.061, F.A.C.

Rule 12A-1.061(4)(d), F.A.C., provides that charges or fees for the processing of an application for rental or lease are not subject to tax unless the charges are used to offset or reduce rental charges or room rates that are charged to a guest or tenant.

As set forth above, the booking fee charged by the Association is not used as an offset to reduce rent; is not a charge for the occupancy of the room; and is non-refundable.

Further, Rule 12A-1.091(b), F.A.C., provides that "[c]harges to clean residential facilities that provide temporary or permanent residences are not subject to tax, even though the rental, lease, letting, or licensing of such living accommodations may be subject to the tax imposed under Section 212.03, F.S.

Plaintiff manages residential properties for individuals and entities and rents those properties when they are not being resided in. The condominiums Plaintiff manages provide at least temporary residences which the rule clearly indicates are not subject to “cleaning” tax.

Therefore the booking fee and cleaning fee are not subject to TDT.

**III. Any Ambiguity in a taxing Statute must be resolved in the Association’s favor.**

Even if the *Expedia* decision did not already invalidate Sarasota County’s proposed TDT assessment against the Association (it does), this Court should still resolve any statutory ambiguities in the Association’s favor. See *Maas Bros., Inc. v. Dickinson*, 195 So. 2d 193, 198 (Fla. 1967).

Florida courts have long emphasized as a fundamental rule of statutory construction that tax laws are to be construed strongly in favor of the taxpayer and against the government, and that all ambiguities or doubts are to be resolved in favor of the taxpayer. Thus taxes may be collected only within the clear definite boundaries recited by statute. See *Maas Bros., Inc.*, at 198; *see also: Mikos v. Ringling Bros.-Barnum & Bailey Combined Shows*, 497 So. 2d 630, 632 (Fla. 1986); *New Sea Escape Cruises, Ltd. v. Florida Dept. of Revenue*, 823 So. 2d 161, 163 (Fla. 4th DCA 2002) approved, 894 So. 2d 954 (Fla. 2005). Moreover, an ambiguity in a taxing statute must be construed “strongly in favor of the taxpayer and against the government with all ambiguities or doubts resolved in the taxpayer’s favor.” See *Mass Bros.*, at 198.

The TDT Statutes authorize counties to impose TDT on “every person who rents, leases, or lets for consideration any living quarters or accommodations in any . . . condominium . . . for a term of 6 months or less . . . .” See Fla. Stat. §125.0104(3)(a)1. Further, TDT is due on the “consideration charged for such lease or rental.” See Fla. Stat. §125.0104(3)(a)1. There is nothing in the Statutes authorizing TDT as to charges in addition to the rental charges.

Pursuant to their plain meaning the TDT Statutes do not tax service providers for amounts they charge customers and retain as compensation for their services. See *Expedia*, 175 So. 3d, at 733-34. It is certainly not within the “clear definite boundaries” of the Statutes. See *id.*

To the extent the Court determines any ambiguity exists, such ambiguity must be resolved in favor of the Association. See *Mass Brs.*, at 198.

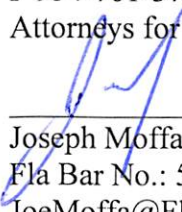
### CONCLUSION

Based on the foregoing analysis, the Plaintiff’s Motion for Final Summary Judgment should be granted. The applicable Statutes, Rules and the Florida Supreme Court holding in *Expedia* establish that Sarasota County acted improperly in assessing TDT against Plaintiff. Specifically, the booking fees and cleaning fees should be removed from the assessment as they were not payments for rental accommodations. Defendants have raised no Affirmative Defenses that would prevent Final Summary Judgment being entered in Plaintiff’s favor. Consequently, the Plaintiff should be granted Final Summary Judgment.

WHEREFORE, Plaintiff, SARASOTA SURF & RACQUET CLUB CONDOMINIUM ASSOCIATION, INC., respectfully requests that this Court [1] enter Final Summary Judgment in Plaintiff’s favor, [2] determine that Sarasota County’s action in levying the assessment at its current amount is invalid and illegal, [3] determine that Plaintiff’s booking fees and cleaning fees are not subject to the TDT, [4] award Plaintiff its reasonable attorneys’ fees and costs, and [5] for such further relief as this Court deems just and proper.

Respectfully submitted this 24 day of March, 2016

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been electronically filed with the Clerk of Court using the E-Filing Portal System, and by email to Milan Brkich, Assistant County Attorney, Sarasota County via email at MBrkich@scgov.net. on this 24 day of March, 2016.

By:



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Joseph Moffa, Esq.

EXHIBIT A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,  
IN AND FOR SARASOTA COUNTY, FLORIDA

SARASOTA SURF & RACQUET CLUB  
CONDOMINIUM ASSOCIATION, INC.

Plaintiff,

Case No. 2015 CA 002612 NC

v.

SARASOTA COUNTY, FLORIDA; and  
FLORIDA DEPARTMENT OF REVENUE

Defendants.

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**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL SUMMARY JUDGMENT**

STATE OF FLORIDA

COUNTY OF SARASOTA

BEFORE ME, the undersigned authority, personally appeared Carolyn Strouse, General Manager of SARASOTA SURF & RACQUET CLUB CONDOMINIUM ASSOCIATION, INC., ("Association" or "Plaintiff"), who after being duly sworn by me, the undersigned authority, a notary public within and for the county and state aforesaid, deposes and says upon her own personal knowledge:

1. I am over 18 years of age and duly competent and authorized to provide this Affidavit. I make this Affidavit on my own personal knowledge and not upon information or belief and the statements herein are true and correct.

## EXHIBIT A

2. I am the General Manager of the Association. I am familiar with the business practices of the Association. Among my duties are monitoring the Association's rental operation that is maintained for the benefit of the unit owners.

3. The Association is a Florida condominium association which manages and maintains residential condominium units owned by individuals and entities unrelated to the Association.

4. The Association operates a rental operation for the benefit of the unit owners. A copy of the Rental Agreement is attached hereto as Exhibit A.

5. The Association, acting as an agent for the owners, solicits prospective renters through various communication methods including print, telephone, and the internet.

6. The Association handles the booking of ultimate renters and then facilitates a stay for the ultimate renters.

7. Besides a rental charge, the Association charges a reservation booking fee ("booking fee") in the amount of \$85.00 on each rental which is a non-refundable charge. A copy of the Resort Requirements and Reservation Confirmation are attached hereto as Composite Exhibit B.

8. The booking fee is not used to offset any rental charges or room rates and is not a charge for the occupancy of the room.

9. The booking fee is based on activities involved with the registration and confirmation of a renter or lessee's stay and is not payment for rental accommodations. The booking fee is guaranteed whether or not the renter or lessee ultimately honored the reservation.

10. For all reservations of five nights or less, the Association charged a flat rate cleaning fee.

EXHIBIT A

11. The cleaning fee is not used to offset any rental charges or room rates and is not a charge for the occupancy of the room. Additionally, the cleaning fee is not payment for rental accommodations.

12. During an audit for Tourist Development Tax ("TDT") which occurred on or around August 5, 2014, Sarasota County determined that the Association owed TDT on the cleaning fees and booking fees during the audit period at issue.

13. On or around February 18, 2015, Sarasota County issued a final determination upholding proposed audit findings related to Sarasota County's TDT.

14. On or around March 13, 2015, Sarasota County issued a TDT assessment against the Association. A copy of the assessment is attached hereto as Exhibit C.

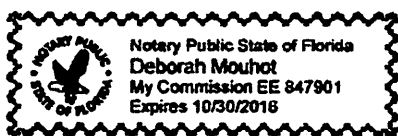
15. The Association has employed the Law Firm of Moffa, Sutton, & Donnini, P.A., as its attorney to represent its interests in this proceeding and has agreed to pay them a reasonable fee for their services.

16. I make the foregoing statements in support of the Association's Motion for Final Summary Judgment.

FURTHER AFFIANT SAYETH NAUGHT.

Carolyn A. Strouse  
Carolyn Strouse  
General Manager, Sarasota Surf & Racquet  
Club Condominium Association, Inc.

SWORN TO AND SUBSCRIBED before me this 14<sup>th</sup> day of MARCH, 2016, by Carolyn Strouse, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.



Deborah Mounot  
Notary Public, State of Florida

My Commission Expires:



## **Sarasota Surf & Racquet Club Condo Association, Inc.**

### **Rental Agreement**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_ by and between Sarasota Surf & Racquet Club Condo Association, Inc., a Florida corporation (herein called "Association") and \_\_\_\_\_ (herein called "Owner"), the owner(s) of Unit(s) \_\_\_\_\_ at Sarasota Surf & Racquet Club, (herein called "Unit"). Owner agrees to appoint the Association as the Owner's exclusive rental agent and Association accepts that appointment in consideration of mutual covenants contained herein.

1. **TERM.** This Agreement shall be for a term of one year and shall automatically renew for one year terms. It shall remain in force until either party terminates this Agreement, with not less than 30 days written notice. In the event of termination of this Agreement by Owner, Owner agrees to pay the Association all commissions due and honor all pending reservations.
2. **DUTIES AND AUTHORITY OF ASSOCIATION.**
  - (a) Association shall actively seek to locate and secure tenants for Unit, including taking the telephone, internet and in-person reservations and by such marketing, advertising and brochures as Association in its sole discretion shall determine appropriate. Association does not, however, guarantee any level of rental incomes. Association shall collect the rent due from tenant and remit the net rent due to Owner as provided herein on a monthly basis or as Association otherwise determines appropriate from time to time. Association shall not be liable to Owner for any insufficient checks or stop-payment checks received by Association from tenants. Association may deduct from the gross rental proceeds any and all costs, fees, expenses and commissions authorized under this Agreement. In addition, if Owner is more than thirty days delinquent in the payment of assessments due the Association under the governing condominium documents, Association may also deduct any and all assessments (regular or special) due the Association together with accrued interest, late charges, costs and attorney fees, as applicable. Provided however that Association may also bill Owner for any such sums due. Upon receipt of a bill from Association, Owner shall immediately remit such payment to Association in full.
  - (b) The rental rates for Unit shall be determined by Association from time to time in its sole discretion. Association shall, however, in determining rental rates, take into account prevailing rental rates in other condominiums, or any other comparable rental properties, as to which Association determines to inquire, as well as any expressed preferences of

Exhibit A

Owner. If Owner elects to arrange for a rental directly Owner may depart from the established rental rates however the commission earned by the Association for any such rental shall be based upon the rental rate established by the Association for that unit at the time of the guest's stay. However, use of the Unit by Owner, Owner's children, parents, siblings, or grandchildren shall not be subject to such rates or any management fee.

- (c) Association shall seek to be fair to all unit owners involved in the rental program, with due consideration to the tenants' rental preferences in regard to Unit location, style and rates. Provided however, any unit that does not meet the standards, as determined by Association, shall be given lesser preference in rental assignments, until that unit is brought up to standard. Association further reserves the right after sending notice to the unit owner, to suspend rentals to any unit which fails to meet that standard, or is in arrears to the Association for dues or assessments.
- (d) Association shall periodically inspect Unit to determine needs for maintenance, repair and replacement. Association may perform or arrange for a third party to perform needed maintenance, repair and/or replacement of items or conditions within the Unit at the sole expense of Owner, not to exceed \$250.00 in any instance without the prior consent of Owner except in an emergency.
- (e) Association shall register tenant upon tenant's arrival, or as soon as practical thereafter; provide the tenant with keys to the Unit, security identification tags and such rules and other information as Association determines appropriate.
- (f) Association shall assist Owner in obtaining and maintaining a license of Unit as a public lodging establishment, if applicable, and shall collect and remit to the state revenue authorities all sales and use tax due on the rental of Unit.

**3. DUTIES AND RESPONSIBILITIES OF OWNERS**

- (a) Owner shall honor all confirmed reservations. Owner shall notify Association not later than January 1 of each year of all dates that Unit will not be available for rental during the next calendar year (i.e. Owner reserves dates for Owner's use in 2015 by January 1, 2014).
- (b) Owner agrees to pay the Association twenty (20) percent of all gross rental monies for rentals under this Agreement (including forfeited deposits), as a rental management fee which shall be withheld from the rental proceeds. The rental management fee shall be based upon the rental rate in effect for the Unit at the time of rental, taking into account any discounts or special offers made by the Association, or the amount of rent actually paid by the tenant, which ever is greater.
- (c) Owner agrees to pay for in-house maintenance, service and repairs at the rate of cost of materials plus labor.
- (d) Owner shall maintain Unit in such a manner as to satisfy the minimum standards established by Association for units in the rental program, including but not limited to repairs, inventory and provisions for safety control, or shall provide such funds and authority to Association as are necessary for that purpose in accordance with this Agreement. Owner shall provide Association with full access to Unit during the term of this Agreement

Exhibit A

- (e) Owner shall provide in Unit, for the use of tenants of Unit, telephone service and electric service.
- (f) Owner shall strictly comply and cause all other occupants of Unit to strictly comply with all provisions of the Declaration of Condominium and with the Association Rules, with respect to the rental, use and occupancy of the Unit and the common elements. Owner shall also timely pay all condominium assessments, both regular and special, due Association, which have been properly levied under Florida Statutes.
- (g) Owner shall indemnify and hold harmless Association, and its agents and employees from and against any claims, suits, damages, costs, losses, expenses or other liability arising from injury to any person or property occurring on or about the premises or any other liability relating to the performance of this Agreement or any other duty of Owner. Owner acknowledges that losses from theft, vandalism and acts of God or nature shall be borne by Owner. Association suggests Owner obtain landlord liability insurance on the premises.
- (h) Owner's Unit shall be deep cleaned annually in conformance with the standards of the Association. Owner may elect to perform this cleaning or retain the Association to perform this service for a fee to be established by the Association.
- (i) Owner shall not assign this Agreement without the prior written consent of the Association.

4. This Agreement constitutes the entire agreement between the parties and supersedes all prior understandings and writings and may be amended only in writing signed by all parties.

5. The invalidity in whole or part of any term, covenant or provision hereof shall not affect the validity of the remainder hereof. This Agreement shall be governed by the laws of the State of Florida and venue shall lie only in Sarasota County, Florida. This Agreement shall inure to the benefit of and be binding upon all parties, their legal representatives, heirs, successors, and assigns.

6. Owner hereby appoints Association as its representative and agent for all purposes related to the use, maintenance, and service of the cable television cable system and related equipment serving the Unit.

**Sarasota Surf & Racquet Club**  
**Condo Association, Inc.**

**Owner (Signatures of all Owners of**  
**Unit, or the Authorized Officer of a**  
**Corporate Owner)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Composite Exhibit B  
**Reservation Confirmation**

7/29/2015

Bill Atkins

Confirmation #	894
Arrival	Saturday Mar 28, 2015
Departure	Friday Apr 3, 2015
Nights	6
Adults / Children	2 / 0
Room Type	Y Back Partial View
Room #	Y0109

Final Due Date

Check-in time is 4pm. During peak periods check-in time may be later than 4pm.  
 Check-out time is 10am. Late check-outs will not be given if the unit is rented with an arrival on the same day as your departure.

Late check-outs will not be given until the day before your departure and only if the unit is not rented immediately following your stay.

Please see the reverse side of this document or the additional attachment for email confirmations for the rental conditions, policies and procedures.

<u>Charge Summary</u>	
Charges	\$2,535.00
Taxes	304.20
<b>Total</b>	<b>\$2,839.20</b>
Payments	0.00
<b>Total Due</b>	<b>\$2,839.20</b>

<u>Date</u>	<u>Description</u>	<u>Room Rate</u>	<u>Tax</u>	<u># of Days</u>	<u>Total Charge</u>
Sat 3/28/15	Departure Clean	80.00	9.60	1	89.60
Sat 3/28/15	New Reservation Fee	85.00	10.20	1	95.20
Sat 3/28/15	Rack Rate	395.00	47.40	6	2,654.40
	<b>Total Charges:</b>	<b>2,535.00</b>	<b>304.20</b>		<b>2,839.20</b>



**RESORT REQUIREMENTS:**

There is a 3 night minimum stay. Rates are subject to change during holidays, special events and peak season.

Prices for rentals are listed per night. Rates do not include taxes. Please add 7% State Tax and 5% Local Tax to all rental rates. A one-time reservation processing fee of \$85 applies to all reservations. Please add a one-time departure cleaning fee of \$80.00 to all reservations. Fees do not include taxes. Please add 7% State Tax and 5% Local Tax to all rental fees.

Full payment is due 90 days prior to the arrival date. If the reservation is made fewer than 90 days prior to the arrival date, payment is due in full at the time of booking. All cancellations are subject to forfeiture of the reservation processing fee of \$85.00 plus taxes. Cancellations must be received in writing 90 days prior to arrival for rent refunds. Cancellations made fewer than 90 days prior to your scheduled arrival are subject to forfeiture of the entire rental amount unless we are able to re-rent your original booking, minus the processing fee. A \$200 down payment will be due at the time of booking, and will be applied to your final balance. SSRC management maintains the right to change the reserved unit under warranted circumstances.

**OCCUPANCY:**

A one bedroom unit can accommodate a maximum of 4 persons, including children and infants.

A two bedroom unit can accommodate a maximum of 6 persons, including children and infants.

**OFFICE HOURS:**

Our hours are: Monday through Saturday from 9:00 a.m. to 5:00 p.m. The office is open seasonally on Sundays.

**MINIMUM AGE FOR RENTAL:**

At least one person in the party must be 25 years of age or older.

**PAYMENT OF NIGHTS RESERVED**

The guest is responsible for payment of all night's reserved, regardless of the guest's actual arrival or departure.

**DAMAGES:**

Guest is liable for any damages to the premises and to the furnishings, equipment (this also includes electronic entry lock) and household items therein, which occur during renter's occupancy, excluding normal wear and tear. Guest may be charged for plumbing problems resulting from carelessness. Any damages will be charged to the credit card on file.

**ENTRY OF PREMISES:**

## Composite Exhibit B

An authorized employee or repair person may enter the premises during customary business hours for any purpose connected with the repair, improvement, care and management of the premises.

### **PETS ARE NOT ALLOWED ON THE PROPERTY OR IN THE UNITS.**

Exceptions will be made for documented Service Assistance Animals.

### **PARKING:**

Parking is limited to two vehicles per unit. Additional vehicles must be parked at a public lot. Parking passes will be issued through the office at check-in and must be displayed prominently on rear view mirror at all times.

Recreational vehicles and boats are not allowed. It is against local ordinances to wash vehicles or boats on private property such as this. Visitor parking passes are issued daily if available.

### **LOCKOUTS:**

In the event that you lock yourself out of your unit after business hours, call (941) 349-2200 for assistance. There is a \$35.00 fee per incident to assist you.

Emergency phone is located in front of the office.

### **TELEPHONE:**

Each condominium has a private telephone that is not connected to a central switchboard. Local calls are free. Long distance access is not provided. Calling cards may be used to make long distance calls, and can be purchased at most convenience stores.

Mail may be sent to you in care of Sarasota Surf & Racquet Club, 5900 Midnight Pass Road, Sarasota, FL 34242 and may be picked up during office hours.

### **The Resort Provides:**

- Bed Linens
- Kitchen Linens
- 8 Towel Sets per Bathroom
- 1 (one) Towel Exchange mid-week; the Tower and Buildings C, D and E receive towel exchange on Tuesday. Buildings W and Y receive towel exchange on Wednesday.
- Trash Can Liners
- Facial soap and Bathroom Tissue
- Dishwasher Packets

### **Items to Bring:**

- Beach Towels

## Composite Exhibit B

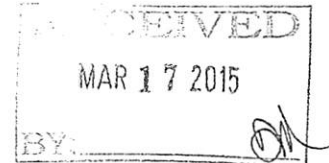
- Coffee
- Coffee Filters
- Paper Towels
- Dish Detergent
- Bath Soap
- Shampoo
- Salt and Pepper
- Laundry Detergent
- Hair Dryer



Exhibit C

**Barbara Ford-Coates**  
Florida Tax Collector – serving Sarasota County

*Exceptional Staff Exceptional Service*



March 13, 2015

Sarasota Surf & Racquet Club Condominium Association  
5900 Midnight Pass Road  
Sarasota, FL 34242

Subject: Tourist Development Tax Audit Findings - Acct # 24122

Dear Taxpayer:

As a result of the final determination letter dated February 18<sup>th</sup>, 2015, from the Sarasota County Clerk of the Court's office, additional tourist development tax is now due on the above referenced account.

Enclosed is a copy of the final tourist development tax assessment. Please note that no additional interest or penalties were adjusted since the pending audit of September 24, 2014. This tax should be paid as soon as possible in order to avoid additional charges.

If you have any questions, please do not hesitate to contact Kenni Gregg at (941) 861-8395.

Very truly yours,

A handwritten signature in cursive script that reads "Sherri L. Smith".

Sherri Smith  
Chief Deputy Tax Collector

Enclosures

**[www.SarasotaTaxCollector.com](http://www.SarasotaTaxCollector.com)**

101 S. Washington Blvd. | Sarasota, FL 34236 | 941.861.8300  
(f) 941.861.8349 | [Info@SarasotaTaxCollector.com](mailto:Info@SarasotaTaxCollector.com)

x-629





Exhibit C  
**SARASOTA COUNTY TAX COLLECTOR**  
**BARBARA FORD-COATES**  
 941-861-8300

**TOURIST DEVELOPMENT TAX ASSESSMENT**

**ACCOUNT # 24122**

**1 of 2**

**SARASOTA SURF & RACQUET CLUB**

**5900 MIDNIGHT PASS RD  
 SARASOTA, FL 34242**

**FINAL AUDIT FINDINGS**

**Situs Address: VARIOUS**

<u>YEAR</u>	<u>MONTH</u>	<u>TAXABLE</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
		<u>RECEIPTS</u>		10% per month Max 50% tax \$50.00 min	Variable*	
2011	March	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	April	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	May	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	June	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	July	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	August	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	September	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	October	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	November	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	December	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2012	January	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	February	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	March	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	April	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	May	\$26,310.00	\$1,315.50	\$657.75	\$207.07	\$2,180.32
	June	\$29,350.00	\$1,467.50	\$733.75	\$222.44	\$2,423.69
	July	\$29,830.00	\$1,491.50	\$745.75	\$217.39	\$2,454.64
	August	\$19,090.00	\$954.50	\$477.25	\$133.55	\$1,565.30
	September	\$8,590.00	\$429.50	\$214.75	\$57.59	\$701.84
	October	\$13,120.00	\$656.00	\$328.00	\$84.14	\$1,082.90
	November	\$11,470.00	\$573.50	\$286.75	\$70.21	\$943.37
	December	\$5,970.00	\$298.50	\$149.25	\$34.81	\$489.27

Exhibit C  
**SARASOTA COUNTY TAX COLLECTOR**  
**BARBARA FORD-COATES**  
941-861-8300

**TOURIST DEVELOPMENT TAX ASSESSMENT**

**ACCOUNT #24122**

**2 of 2**

**SARASOTA SURF & RACQUET CLUB**

**Situs Address: VARIOUS**

<u>YEAR</u>	<u>MONTH</u>	<u>TAXABLE</u>	<u>TAX</u>	<u>PENALTY</u> 10% per month	<u>INTEREST</u> Variable*	<u>TOTAL DUE</u>
<u>RECEIPTS</u>						
				Max 50% tax \$50.00 min		
2013	January	\$11,880.00	\$594.00	\$297.00	\$65.80	\$956.80
	February	\$13,690.00	\$684.50	\$342.25	\$71.83	\$1,098.58
	March	\$37,390.00	\$1,869.50	\$934.75	\$185.29	\$2,989.54
	April	\$30,960.00	\$1,548.00	\$774.00	\$144.40	\$2,466.40
	May	\$39,810.00	\$1,990.50	\$995.25	\$174.07	\$3,159.82
	June	\$41,250.00	\$2,062.50	\$1,031.25	\$168.34	\$3,262.09
	July	\$45,480.00	\$2,274.00	\$1,137.00	\$172.35	\$3,583.35
	August	\$29,220.00	\$1,461.00	\$730.50	\$102.21	\$2,293.71
	September	\$7,250.00	\$362.50	\$181.25	\$23.25	\$567.00
	October	\$18,600.00	\$930.00	\$465.00	\$54.22	\$1,449.22
	November	\$12,880.00	\$644.00	\$322.00	\$33.79	\$999.79
	December	\$15,150.00	\$757.50	\$378.75	\$35.33	\$1,171.58
2014	January	\$10,250.00	\$512.50	\$256.25	\$20.92	\$789.67
	February	\$17,740.00	\$887.00	\$443.50	\$31.03	\$1,361.53
	March	\$36,440.00	\$1,822.00	\$911.00	\$53.11	\$2,786.11
	April	\$35,070.00	\$1,753.50	\$701.40	\$40.89	\$2,495.79
	May	\$38,830.00	\$1,941.50	\$582.45	\$33.96	\$2,557.91
	June	\$34,335.00	\$1,716.75	\$343.35	\$20.02	\$2,080.12
	July	\$56,375.00	\$2,818.75	\$281.88	\$32.87	\$3,133.49
	<b>Total</b>	<b>\$676,330.00</b>	<b>\$33,816.50</b>	<b>\$14,702.08</b>	<b>\$2,490.86</b>	<b>\$51,043.81</b>
<b>Total</b>						<b>\$51,043.81</b>