I. OPENING OF MEETING
A Regular Meeting of the Barefoot Resort Residential Owners Association Board of Directors was called to order by Mr. Atwood at 4:04 pm at the Lakeside Conference Center, 2250 Premier Resort Blvd., North Myrtle Beach, SC 29582.

Members Present: Michael Atwood, Joe Gosiewski, Lester Jee, Dennis Suckstorf, Tony Sfarra, Bobbi Reeves, and Bill Schulz

Also Present: Kelly White, Community Manager, and Chrissy Trevathan, Ponderosa Management, LLC, Robert E. Lee, Association Attorney, and Committee Chairs and Voting and Alternate Voting Members attached as EXHIBIT A

II. ROLL CALL/ESTABLISHMENT OF QUORUM
The roll was called and it was established that a quorum of the Board of Directors was present.

III. PLEDGE OF ALLEGIANCE

IV. VOTING MEMBER INTRODUCTION

V. VOTING MEMBER RIGHTS AND RESPONSIBILITIES
Robert E. Lee, the Association attorney, provided the attendees with a list of the Duties, Rights and Powers of Voting Members, attached as Exhibit B. He spoke briefly about the Voting Member position and asked if there were any questions. There were none.

VI. APPROVAL OF BOARD MEETING MINUTES
On motion of Mr. Gosiewski, seconded by Mr. Jee, and carried, it was: MOVED: To waive the reading of the Board of Directors Budget Meeting Minutes of September 22, 2016 and approve as submitted.

Bobbi Reeves and Bill Shulz abstained as they were not present at the meeting.

On motion of Mr. Jee, seconded by Mr. Gosiewski, and carried, it was: MOVED: To waive the reading of the Regular Board of Directors Meeting Minutes of December 8, 2016 and approve as amended.

Bobbi Reeves and Bill Shulz abstained as they were not present at the meeting.

On motion of Mr. Gosiewski, seconded by Mr. Jee, and carried, it was: MOVED: To waive the reading of the Organizational Board of Directors Meeting Minutes of December 12, 2016 and approve as amended.

Bobbi Reeves abstained as she was not present at the meeting.

VII. UNFINISHED BUSINESS
A. Beach Cabana Committee – Anne Kepple

Ms. Kepple stated that the new furniture for the Beach Cabana had been ordered and was expected to be delivered in March or April. She stated that she and the Board met with David Heath, KB Sunspaces, and that the scope of work of the Invisirail at the Cabana is being revised.
Following a lengthy discussion, on motion of Mr. Suckstorf, seconded by Mr. Schulz, and unanimously carried, it was: MOVED: To delay the installation of Invisirail until such time as the Board has a clear vision for the possible renovations of the Cabana.

Mr. Atwood stated that the Board was obtaining quotes for the removal the “public” restroom and the installation of decking. The Board requested that the Strategic Planning and Development Committee draft a survey to be sent to all owners regarding the removal of the restroom.

B. Strategic Planning and Development Committee – Rocky Rockwell

Mr. Rockwell stated that the Committee is meeting on January 10th and will review the summary report from the workshop and Committee appointments.

C. Residents’ Club Committee – Joe Gosiewski

Mr. Gosiewski stated that Bill Hartman, who had been on the Committee since its inception, was leaving the Committee. He thanked Mr. Hartman for all his work. Mr. Gosiewski stated that the Committee is recommending Jane Young be appointed Chairperson.

On motion of Mr. Gosiewski, seconded by Mr. Suckstorf, and unanimously carried, it was: MOVED: To appoint Jane Young to serve as Chairperson of the Residents’ Club Committee.

D. Architectural Review Committee – George Griffiths

Mr. Griffiths provided the Board with recommended revisions to the ARC Guidelines regarding “For Sale” signs and solar tubes, attached as Exhibit C.

Following discussion, on motion of Mr. Suckstorf, seconded by Mr. Gosiewski, and unanimously carried, it was: MOVED: To approve the revisions to the ARC Guidelines to allow for a 4”x4” placard to be attached to the “For Sale “sign posts with the real estate company name and to add solar tube verbiage to the guidelines for skylights.

Mr. Griffiths reported that the Committee had reviewed 285 applications in 2016 and that 269 of those were approved. He stated that 54 of the applications were for roof replacements and that they were also receiving a lot of applications for landscape improvements.

Mr Griffith asked if the Board had reviewed the estimate the Committee provided for a new fence along Water Tower Road and stated that the Committee recommended a professional entrance and border fence to compete with the new developments along Water Tower Road.

• Sign Sub Committee - Pat Heerey

Ms. Heerey provided the Board with an estimate to make needed repairs to 38 signs. She stated that she was working with Ponderosa Management to develop an annual maintenance plan to include paint touch up to 25% of the signs each year to extend the life of the signs and reduce costly repairs. The Board discussed possibly changing the material of the signs to something more durable. The Board asked why there was only one bid for the sign repair. Ms. Heerey explained that Ponderosa Management’s hourly rate was less expensive than other companies.

On motion of Mr. Suckstorf, seconded by Mr. Gosiewski, and unanimously carried, it was: MOVED: To approve the bid from Ponderosa Management to repair 38 signs in the amount of $3,591.45 to be paid from the 1% Marketing Fund.
E. Website Committee – Pat Heerey

Ms. Heerey stated they had received 30 applications for the web manager position and the Committee was in the process of reviewing the resumes and scheduling interviews. The website is scheduled to go live on approximately March 1st.

F. Newsletter – Pat Heerey

Ms. Heerey stated that the deadline for submission for the March newsletter is February 17, 2017 and that hopefully it would be published on the new website. She asked the Board to consider setting up a staggered schedule for annual Committee reports. Ms. Heerey stated that the web address will likely be barefoothoa.com.

G. Neighborhood Watch Program – Barbara Beech

Ms. Beech reported that there no new incidents to report. She stated that no one had volunteered to serve as the Single Family Coordinator, but that Val Malekar, previous coordinator, had agreed to help until someone was found to fill the position. Ms. Beech stated that a meeting would be scheduled for March with all of the block captains and the North Myrtle Beach Police liaison. The meeting will be held at Putter’s Pub and Ms. Beech asked the Board to approve funds for food and beverages to be served.

Following discussion, on motion of Mr. Sfarra, seconded by Mr. Gosiewski, and unanimously carried, it was: MOVED: To approve the Neighborhood Watch Committee to spend up to $1,000.00 for food and beverages at the March “event”.

H. Joint Committee – Tom Powell

Mr. Powell stated that there were still tree stumps throughout the community and in the median on Windy Hill Road Extension, but that the Committee did not have the funds to remove the stumps. He added that the Federal Emergency Management Agency (FEMA) had marked additional trees that needed to be trimmed or removed and were scheduled to remove the marked trees this week. The work FEMA will do is at no cost to the Association.

Mr. Powell stated that the Joint Committee did not have the funds to remove the tree stumps and finish the storm cleanup. He added that they had decided not to replace any trees at this time, but to evaluate needed replacements later in the year. He estimated that an additional $20,000.00 was needed to complete the clean up and asked the Board to consider using the 1% Marketing funds to complete this work. Following discussion, the Board tabled any decision until exact costs were provided.

I. Traffic Committee – Joe Gasiewski

Mr. Gasiewski stated that they were still waiting for a commitment for the City of North Myrtle Beach to conduct a traffic study. He stated that the Committee is looking for volunteers to serve on the Committee and help to build a strong working relationship with the City.

J. City Liaison – Joe Gasiewski

Mr. Gosiewski stated that the City of North Myrtle Beach was implementing paid parking beginning January 15th at the parking lots near the Avista, adding that they had previously done this at the parking lots on 4th Avenue South near the Wyndham. He also reported that the plans for rezoning property at the Dye Townhomes was sent back to the developer to get approval from the Dye Estates Homeowners Association. He added that there was a possibility that 3000 condominiums could be built on Long Bay Road.
K. Water Tower Road Fence – Michael Atwood/Robert Lee

Mr. Lee stated that after review of the governing documents, it was his opinion that the fence along Water Tower Road is a shared party structure and not common property. Therefore, the maintenance, repair and replacement of the fence is the responsibility of the homeowners whose property the fence is on. Memorandum from Mr. Lee attached as Exhibit D. Mr. Lee stated the Voting Members could change the Master Deed with 67% approval to make the fence and the property it is on common property. All of the owners would have to convey ownership of the property as well. The property would have to be surveyed and a new deed recorded. Following discussion, the Board will follow up with Mr. Lee on the process to possibly convey the fence to the Association.

L. Wetland Area Between Brookstone & Sweetbriar and Brookstone & Park Hill – Kelly White

Ms. White stated that she received a proposal from Mainscape in the amount of $8,500.00 to clear the "snags" from the wetlands. She has requested four others bids. Following discussion, this item was tabled until the next meeting to allow time to receive additional bids.

M. SCE&G Natural Gas Line – Kelly White

A survey from SCE&G to assess the interest by Barefoot residents in getting natural gas was made available to the attendees. The Board instructed Ponderosa Management to email the survey to all single family homeowners as well.

N. Horry Telephone Contract Expiration – Michael Atwood

Mr. Atwood stated that a preliminary meeting with Horry Telephone Cooperative (HTC) was scheduled for January 16th at 3:00 pm at the Barefoot Fire Station.

Q. Other

There was no unfinished business that required discussion.

VIII. NEW BUSINESS

A. Financial Report

Ms. White reported the following account balances as of November 30th –

- 1% Marketing Account $1,300,000.00
- Cash Operating $117,000.00

Ms. White stated that the November financials were provided to the Board and posted on the website.

B. By-Law Amendment – Election/Annual Meeting Date

Mr. Atwood stated that the Voting Members may be asked to vote to amend the By-laws to change the election date for the Board of Directors and annual meeting date.

C. Meeting Minutes – Attendance Recordation – Dennis Suckstorf

Mr. Suckstorf stated that beginning with this meeting, the minutes of the Board meeting would include a list of all Voting & Alternate Voting Members in attendance. The sign in sheet will be attached as an exhibit.
D. Board Communication

Mr. Atwood stated that all emails received will be acknowledged upon receipt. Emails with opinions or suggestions do not require any further response. Emails with questions will be addressed at the next Board meeting.

E. Address Emails/Questions Received from Owners

Ms. White stated that a request was received from an owner to install sod at the corner of Tall Grass and Club Course. Ms. White stated that this was previously brought before the Board and was denied. The Board concluded that due to its use for dog walking, the amount of shade, and that the area is not irrigated, sod would not grow well.

F. Other

There was no other new business that required discussion.

IV. MEMBER COMMENTS

Larry Fillian, Oak Pointe, stated that the Voting Member should be utilized to conduct the surveys regarding the removal of the “public” restroom at the Cabana and the Water Tower Road fence.

Mr. Fillian, also asked why the Joint Committee had spent money for the removal of trees after Hurricane Matthew if the City owned the roads and FEMA was removing trees at their expense. He added that the Joint Committee needed a better contingency plan if they were responsible for the cleanup and replacement of the trees and did not have the funds to complete work. Mr. Powell explained that the Joint Committee was responsible for the landscaping on the spine roads and the median on Windy Hill Road Extension, He added that FEMA did not come to identify trees that need to be trimmed or removed until weeks after the storm and at this time had not done any work.

Terry Ashby, Brookstone, stated that the solar lights on the directional did not light the tops of some of the signs and that some were angled so as to interfere the sight of oncoming cars. Additionally, it was discussed that some of the panels needed to be repositioned to capture more sunlight.

Bill O'Neil, Longbridge, asked if he understood correctly that in order for the Association to take responsibility for the Water Tower Road fence, 100% of those owners as well as Voting Members representing 67% of the membership had to approve.

Mr. Lee stated that the first step was to obtain approval from Voting Members representing at least 67% of Class A members. A survey of the property would then need to be done and 100% of the owners of that property would have to convey interest of the property to the Association. He further stated that he recommended the conveyance be done by deed and not easement, as deeding the property provided more protection to the Association.

Other issues regarding the fence were discussed such as any affect conveyance of the property may have on mortgages, subdividing the lots, and Voting Members fiduciary duty on casting a in favor or opposed vote as it relates to a survey of their community.

James Grosso, Ironwood, stated that he was a part-time resident and that it would be helpful if the meetings could be attended via teleconference or video on the internet. He offered to assist the Board in setting this up.

Clayton Fillian, Leatherleaf, stated that the three bids and specifications should be looked at closer, specifically Mainscape's bids. He also suggested installing metal plates at the bottom of
the signs to prevent damage from landscaping equipment. Mr. Atwood replied that the Board had previously researched this and felt the metal was not aesthetically compatible.

Ann Marie Sfarra, Tanglewood, asked if the Board would provide surveys for the Voting Member to use so that consistent information was sent to and received from the communities. Mr. Jee responded that the Strategic Planning and Development Committee would draft the survey. Clayton Fillian asked for confirmation that the Voting Members should do nothing until further information was received from the Board. This was confirmed.

Rocky Cutuli, Brookstone, asked if monies from the 1% Marketing Fund would be used to build a new fence along Water Tower Road. The Board responded that no decision had been made at this point. Mr. Cutuli stated that he believed the fence should be a trademark/monument for Barefoot Resort and that all in Barefoot would benefit.

Mr. Cutuli referred to language in the governing documents regarding a co-op collecting and distributing the 1% Marketing funds and asked who the members of the co-op were. Mr. Lee responded that a co-op was never created and the Board acted as the co-op.

Mr. Cutuli stated that one of the suggestions from the 2016 Strategic Planning and Development workshop was a handicap ramp from the Cabana to the beach. He stated that since the recent hurricane has washed away the dunes, the ramp may now be possible. Mr. Powell agreed that in the past there were issues with obtaining permits from the City but that the City is willing to revisit this.

Mr. Cutuli asked the Board to consider rescheduling the Board meeting set for September 11, 2017 as many members would be participating in memorial events on that day.

X. SCHEDULE OF NEXT MEETING

The next Regular Meeting of the Board is scheduled for February 13, 2017 at 4:00 pm at the Lakeside Conference Center.

XI. ADJOURNMENT

On Motion of Mr. Jee, and seconded by Mr. Suckstorf, and carried, it was: MOVED: To adjourn the meeting at 6:37 pm.

Respectfully submitted by:

 Chrissy Trevathan, Recording Secretary

Approved by:

Michael Atwood, President

Date: 2-13-2017
# Barefoot Resort Residential Owners Association Board Meeting January 9, 2017

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<td>Jean Laskowski</td>
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<td>843-390-5261</td>
<td>908-625-7810</td>
<td><a href="mailto:ginomarie@embarqmail.com">ginomarie@embarqmail.com</a></td>
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...
EXHIBIT B

Duties, Rights, and Powers of Voting Members

1. Voting Members can direct the President of the BRRA to call special meetings. (By Laws, Art.2, Sec.2.4)

2. The presence of the Voting Members representing 25% of the total Class A votes in the Assn., and the presence of a Class B Member, if any, shall constitute a quorum at all meetings of the Assn. (By Laws, Art.2, Sec.2.11)

3. Any Director elected by the Class A Members may be removed, with or without cause, by the vote of Class A Members holding a majority of the votes entitled to be cast for the election of such director. (By Laws, Art. 3, Sec.3.6)

4. Voting Members representing a majority of the total Class A votes in the Assn. at a regular or special meeting may approve compensation for Directors. (By Laws, Art. 3, Sec.3.13)

5. All open meetings of the Board may be attended by all Voting Members, and, if required by law, all Owners, but attendees other than directors may not participate in any discussion unless permission is granted by a Director. (By Laws, Art.3, Sec.3.15)

6. Voting Members have the power to control the borrowing of money by the Assn. if it exceeds 20% of the budgeted gross expenses of the Assn. for that fiscal year. (By Laws, Art. 3, Sec.3.22)

7. The By Laws may be amended by Voting Members representing 51% of the total Class A Members. (By Laws, Art. 6, Sec. 6.6b)

8. Voting Members, by a vote representing a majority of the total Class A votes, may disapprove any rule adopted by the Board. (CCR's, Art. 3, Sec.3.2a, second paragraph.)

9. The Voting Members may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules applicable to all of the Properties, by a vote of a majority of the total Class A votes in the Assn. (CCR's, Art. 3, Sec.3.2b)

10. The Voting Delegate from any village may adopt, modify, repeal and create exceptions to rules applicable only to that Village by a vote of a majority of the total Class A votes in such Village. (CCR's, Art. 3, Sec.3.2b)

11. Voting Members representing 75% of the Class A votes in the Assn. may agree in writing to discontinue the continuous operation of the Assn in using the easements to maintain the facilities and equipment within the Area of Common Responsibility in performing required maintenance or repairs. (CCR's, Art. 7, Sec.7.2f, second paragraph)

12. Voting Members at a meeting may disapprove the budget covering the estimated Common Expenses during the coming year and a Base Assessment for a reserve fund by a 75% of the total number of Voting Members, and at least 75% of the total Class A votes in the Assn. (CCR's, Art.8, Sec.8.1, 4th paragraph)

13. Any approved special assessment for Common Expenses which would exceed 35% of the annual budget for the year immediately preceding, shall require the affirmative vote or written consent of Voting Members representing 51% of the total votes allocated to units which will be subject to such assessment. (CCR's, Art.8, Sec.8.4, 2nd paragraph)

April 29, 2015
14. Except as provided in this Section, the Assn. shall not commence judicial or administrative proceedings without the prior approval of at least 75% of the Voting Members. (Note the exceptions to this) (CCR's, Art.14, Sec.14.1)

15. Voting Members representing at least 67% of the total Class A Votes in the Assn. can prohibit the Assn from changing the following: (a) Changing any part of the Common Areas owned by the Assn. (b) Changing the method of determining the obligations, assessments, dues, or other charges levied against an owner. (c) Changing any scheme of regulations pertaining to architectural design or exterior appearance of Units or Common areas. (d) Maintaining appropriate insurance. (e) The use of hazard insurance for any Common area losses for other than the repair, replacement or reconstruction of such property. (CCR's, Art. 16, Sec.16.2, a----e)

16. The approval of Voting Members representing at least 67% of the Class A votes is required for any election to terminate the Association for circumstances other than in the event of substantial destruction. Also required is the approval of the Eligible Holders of first Mortgages on units to which at least 67% of the votes of Units subject to a Mortgage held by an Eligible Holder appertain. (CCR's, Art. 16, Sec.16.3c)

17. Condemnation of or any conveyance of any part of the Common Area by the Board requires the written direction of Voting Members representing at least 67% of the total Class A votes in the Assn. and Silver Carolina, as long as they own any developable Land. (CCR's, Art. 18, Sec.18.1, first 2 paragraphs)

18. This declaration may be amended only by the affirmative vote or consent of Voting Members representing 51% of the total Class A votes in the Assn., including 51% or the Class A votes held by Members other than Silver Carolina, and the consent of Silver Carolina, so long as they have an option to subject additional property to this Declaration. (CCR's, Art. 19, Sec.19.2)
EXHIBIT C

requirement where these elements contribute to the visual continuity of the neighborhood by evoking similarities in style among nearby homes.

In those cases in which residents wish to alter the stylistic features of the existing facade (for example, by replacing rough vertical groove paneling with smooth, horizontal clapboard siding or by adding shutters or accent panels) the ARC will render a decision based on the following considerations:

a. The size and shape of the residence in relation to existing and proposed materials.
b. The variety of styles and siding materials of the homes immediately surrounding the residence.
c. The overall visibility of the residence from nearby public and private properties.
d. A complete application must be submitted and is to include:
   i. A photograph or sketch of the existing house, including the color and texture of the existing siding materials.
   ii. A description of the proposed residing material including the color, texture, and manner in which it will be applied. Color and texture samples are to be submitted with the application. Significant changes of present trim size and location, and removal or addition of other stylistic features should also be noted on application.

Signs

The following types of signs will be allowed for single-family homes only for the time frames shown:

a. Real Estate signs advertising sale, rental or lease of the premise on which the sign is located must be removed within forty-eight (48) hours immediately after sale, rental or lease. Only one approved residential “For Sale” sign will be allowed. This sign is available through Sign Studio & Graphics located in Garden City, SC or a vendor of your choice. The sign specifications are as follows:

20”x20”x 1” Sandblasted/Routed Sign Face
Green Background
Tan Border and “Barefoot Resort”
White “For Sale” and Phone Number
Gold & Silver Logo
Sign Mounted on a 4” Tan Treated Post

A 4”x4” placard with the Real Estate Company Name will be permitted attached the post, providing it is tan in color to match the post with company name printed in white.

Only one sign advertising a property for sale or rent may be displayed centered on the lot and five feet back from the curb or edge of the sidewalk. Signs may only be placed in the yard of available properties.

House Sold signs are not permitted.
b. One temporary political sign advertising candidates or issues may be erected 45 days before the election, run off, primary or referendum, and must be removed within 2 days of the election, run off, primary or referendum.
c. Yard and garage sales signs must be removed within 1 day of the event. Community Watch signs or one small “house is alarmed” sign do not need approval.
d. Sign lighting is not permissible. Only those sign types listed above may be erected without prior approval, all others require approval in advance. No signs will be allowed in the common areas.

Skylights/Solar Tubes
The installation of skylights/solar tubes will be considered for single-family homes. Approval of skylights/solar tubes will depend on the location in respect to the effect of reflection during the day and interior lighting at night. Interior lights shall not be directed up into the skylights and roof-mounted lighting directed down through the skylights is not acceptable.

Solar Collectors
Solar collectors can represent a large visual impact on a structure due to their size. Therefore, it is important to properly integrate the collector into the design of the house to properly conceal it.

a. Placement Solar collectors are not permitted on the street side of the roof. When homes have visible roof lines from dual streets, the collector shall not be placed on roof lines visible from either of the streets. There are some homes in Barefoot where roof lines will not allow a collector to be placed on them based upon their orientation to the streets within their community (i.e. total roof line visible from all street sides). In this case, the homeowner may consider placing the collector at ground level. The ARC reserves the right to review and consider each application on a case by case basis.

b. Appearance Large collectors, on a sloping roof, should appear to be flush with the roof and not laying on top. Collectors on a flat roof should be set back and concealed with a parapet unless integrated with the roof design of the structure. Smaller collectors may be laid on top of a sloping roof and finished to appear like a skylight.

c. Materials Collectors should be constructed of glass with wood or metal trim. All trim should be painted to match the background color of the roof or house to conceal it. Plexiglas is not acceptable because it sags and provides an unsatisfactory appearance.

d. All pipe work are to be concealed. All electrical wiring must be screened from view.

e. Ground level installation for collectors at ground level, the collector are to be placed in the backyard and surrounded by an approved screening material as to screen equipment from the view from the street and/or common areas.

f. All applications must include:
   i. A site plan and elevations of the house showing the appearance and size (dimensions) of the collector.
   ii. Details must show how the collector edges will meet the roof. Any superstructure necessary to elevate the collector above the roof plane must be enclosed by approved materials and colors.

Solar Panels/Solar Tubes
Solar panels/solar tubes are to be the same color as the main color of the house, the trim or accent. The mullion design of panels are to be compatible with the existing windows of the house.

Sprinkler Systems
In ground sprinkler systems may be installed without ARC approval. It is recommended that any portion of the landscaping that comes within two (2) feet of neighboring property be designed so as to be adequately watered with a drip system.
MEMORANDUM

To: Barefoot Resorts Residential Assoc. Board of Directors
From: Robert E. Lee, Esq.
Date: January 6, 2016
Re: Responsibility for Maintenance, repair and replacement of the Fence Located on Fire Tower Road

Issue:

Is the fence along Fire Tower Road a common element making the Barefoot Resort Residential Assoc. ("BRRA") responsible for its maintenance and replacement or is the maintenance, repair and replacement of the fence the responsibility of the owners?

Summary:

Upon review of the Declaration of Covenants, Conditions, and Restrictions for Barefoot Resort Residential Properties ("DCCR"), it is likely that the fence would be considered a "party structure," which places the responsibility of maintenance, repair and replacement on the individual unit owners.

Analysis:

The fence is likely considered a shared, party structure and not a common area element. For example, the DCCR’s definition of neither "common area" nor its statement of maintenance responsibilities specifically indicate that the fence is within a common area. (See: Page 5, 24-25). When the DCCR does go into more detail regarding its common area elements and responsibilities, it states that it includes areas such as "...landscaping and other flora, parks, lakes, signage, structures, and improvements... situated upon the Common Area... landscaping, sidewalks, streetlights, and signage within public rights-of-way within or abutting the Properties... all ponds, streams, and/or wetlands and wetland buffers...any future beach club... any property and facilities owned by Silver Carolina and made available...for the primary use and enjoyment of the Association...to be identified by written notice from Silver Carolina to the Association..." (Page 24-25). Fences are not mentioned in either the common area definition or listed as a common area structure to be maintained by the BRRA.
Moreover, under Section 13.1, the DCCR defines fencing as a shared, party structure. (See: Page 52). For example, the section states that, “Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. Id. In this case, because the border fence is a structure that serves and/or separates more than one Unit it would likely be considered a shared, party structure and not a common area element.

Because the fence is a shared, party structure, the Unit owners would bear the cost of maintenance, repair and replacement. For example, the DCCR mandates that “all Owners who make use of any party structure shall share the cost of reasonable repair and maintenance of such structure equally.” Id. It further states that if the fence is destroyed or damaged by fire or other casualty, and the damage is not completely covered by insurance proceeds, any Owner who has used the structure may restore it. Id. If this were to occur, other subsequent users of the structure must contribute to the restoration cost in equal proportions. Id.

Furthermore, the DCCR mandates that each Owner... “maintain his or her Unit and all structures...and other improvements comprising the Unit...unless such maintenance responsibility is otherwise assumed by or assigned to the Association...” (See: Page 18). The DCCR does not assign responsibility of the fence to the Association. Therefore, the fence is not only a shared, party structure but likely also to be considered a regular structure or improvement on the Unit which would require the owner to repair, replace and maintain the fence.