

Email Date: February 16, 2021

To: Chris Millar, Representative of Litus to Let

From: Jerry Noel, Unit Owner 308

Dear Mr. Millar:

Again, thank you for posting some of the contracts on the website. Likewise, I have located all posted Board Meeting minutes and some other related documents. My thoughts on these documents are detailed below.

**Items Noted from Tribune Holdings LLC Contract:**

1. *Origins of Contract:* From the May 4, 2018 board meeting, it reflects "Chris will secure 5 bid proposals and present them to the BOD and the Board will decide on 3 to interview." At the 2/15/2019, three contractors were interviewed – Glasstec, Procon, and Tribune. The only notes regarding the interview were that Procon, "wanted to bid the building with the figures they had on record". There was no record as to bid prices, scope of work, contract provisions, such as risks from change orders, or any other matter. Furthermore, there are no records as to the pros or cons of each bid or recommendation of a specific contractor. This is especially relevant given the known fact Procon bid on 6/2/2010, was \$586,476 for similar work regarding balconies. This leads to the question of whether the detailed specs by Muhle were above what was actually needed or if the project could have been completed in different stages at different times based on POA financial condition. There was no discussion of either of these items in Board minutes.
2. *Board Approval:* I am unable to locate any Board meeting minutes where the initial contract of \$1,567,000 with Tribune Holdings was approved by the Board. The need for these repairs were discussed as early as August 2017. I have heard it was approved at the 11/17/18 Board meeting but the minutes do not reflect that information.
3. *Scope of Contract:* The initial contract of \$1,567,000 appears to have many separate components, such as waterproofing, painting, and deck railings. The Board then approved \$95,000 for roof anchors at 7/10/2019 board meeting and \$136,350 at the 1/6/ 2020 meeting for repairs at the NE building corner (discussed separately under change orders). The Board minutes does not reflect initial contract provisions and performance standards were ever discussed at any Board meetings. Only 1 of the 39 change orders, totaling \$940,796, appears to have been discussed and approved at Board Meetings. Board minutes do not reflect any discussions of cost overruns, no discussions of oversight of the contractor or Muhle Consulting and no discussion of funding at board meetings

## Items Noted from Tribune Holdings LLC Contract (Continued)

4. *Signature Authority:* The copy of the Tribune Holdings contract on the website was not signed for the HOA nor were any of the 23 change orders. As a matter of fact, the only contracts on the website that were signed, were signed by you. Master Deed section 5.06 states clearly that the Board President shall sign on behalf of the HOA all documents and contracts. Likewise, I realize this may be a gray area given Master Deed section 4.01 which gives authority to delegate which duties that can be “properly delegated” but that raises two questions: 1) I have not been allowed to see your company’s contract and do not know if this duty was delegated and 2) if delegated, is this an item that can be “properly delegated”?
5. *Responsible Party:* There was no discussion of who was responsible. Master Deed, part 2.3c specifically states maintenance (of balconies), other than structural, “shall” be the primary responsibility of the Owner of a Unit. The language seems to read like the language regarding plumbing leaks – where is the leak - under a sink or inside of a wall? As a minimum, I thought the matter of responsible party would at least have been discussed and determined by some expert, such as Muhle Consulting, that it was structural in nature. I am unable to find any such discussion or advice on this issue.
6. *Change Orders:* Of the 39 change orders totaling \$940,796, I was able to only locate 23 change orders on the Association website. Included in the ones I could not locate on the website, were CO 37 for \$116,000 for 2 months extra for general expense and equipment, CO 25 for \$156,950 and CO 39 for \$48,500 for carbon fiber at shutter locations and finally, a bill for \$60,100 for interest at 18%. Only 1 Board approved change order appears in the 39 change orders, CO 2 for \$136,350 for repairs to the NE Corner. However, CO2, was dated and signed 12/31/2019 by the contractor and Muhle Consulting but was not approved by the Board until the 1/6/2020 Special Meeting and specs from Muhle consulting for this project were dated 1/7/2020. Furthermore, the Board minutes do not reflect any other bids were secured for repairs to the NE Corner, no dates are given when the panels fell, no discussion whether this was an insurance item or a result of on-going construction at that time. Many of the other change orders appear to be lumped together and it is impossible to determine what projects under what phase of the contract that they involve.
7. *Oversite:* From the undated Special Notice, Mr. Matheson claims BOD were kept up to date with engineering, cost updates, etc. Even with knowledge of cost overruns, there was little to no efforts to contain costs overruns and no planning on how to pay cost overruns. There is no record of oversight of the contractor or of Muhle Consulting. Was Muhle Consulting job to prepare specs and monitor Tribune Holdings? If so, out of the 23 change orders I can locate that they approved, I cannot find any they questioned.

### **Items Noted from Tribune Holdings LLC Contract (Continued)**

8. *Member Input:* Simply given the size and complexity of this contract dictates this project be brought to the full membership for a vote. Furthermore, given the fact that the entire reserve account was far below the amount of the initial contract amount of \$1,567,000 automatically represents a need for a Special Assessment to pay for this project *before* the contract was signed. Then, the 39 change orders totally \$940,766, leaves the members with massive debts. The initial contract, change orders, and need for a Special Assessment to pay for this project were never discussed with the members. All this information appears to have been hidden from members and Buyers until posted, middle of January 2021.
9. *Summary:* It appears there was inadequate review of the initial contract, inadequate to no review of the change orders, inadequate oversight during construction and little to no effort to contain cost overruns. At no point in time in any Board Meeting minutes was funding discussed as to how to pay for these projects. It appears BOD and Agent failed to perform their fiduciary responsibilities duties to protect the members funds.

### **Other Items Noted from Board Meeting Minutes:**

1. Notice of all Board Meetings for 2019 were waived except Board Meeting of 7/10/19 and 12/13/19 with statement they had been scheduled at the 11/17/2018 Board Meeting. From reviewing the minutes of the 11/17/2018 there were no records of any future Board Meeting schedule.
2. Board Meeting of 7/10/2019 and 12/13/2019 were labeled as "Special Meetings". Under section 4.04 of the By-Laws, Special Meetings require at least a 4-day notice. The minutes 7/10/2021 states It was scheduled on 7/8/20, only 2 days.
3. Board meeting 2/23/2018 received bid for \$19,000 for foam installation of garages. Board meeting 2/15/2019 approved bid for \$59,000 for foam installation of garages.
4. Board meeting 8/30/2019, approved motion to add \$5000 per month or \$60,000 a year to the budget for maintenance repairs. South Carolina Homeowners Act Section 27-30-140 (1) Before an HOA may take action to increase budget in any year, the HOA must provide notice to owners at least 48 hours in advance. There is no record this was done.
5. The Board Meeting of 12/13/2019, approved borrowing up \$600,000 and assignment of POA regular assessment and future required special assessments. This action directly obligated the members to pay this debt without any notice, consent, or approval of members and is in direct violation of 4.7 and 4.8 of the Master Deed.
6. Board meeting of 1/6/2020 and 3/20/20 were labeled "special meetings" and notice of meeting was waived as it had been scheduled by email (no date given). A violation of 4.04 of By-Laws.
7. None of minutes of the Board Meeting for past 2 years reflect funding for all these projects discussed by Board or discussed with members.
8. After 4 months, there still is no minutes to Board meeting of 11/20/20.

## **Special Assessment Notice Received December 28, 2020**

1. Notice was not signed or dated. Under 5.06 of Master Deed, The President, on behalf of the HOA “shall” sign all conveyances, mortgages, documents, and contracts. Even if signature authority was assigned to Litus to Let, it still is not signed and does not appear to contain the lawful requirements of a binding contract or order. While not an attorney, common sense dictates that if the President of the United States must sign executive orders to become law of the land, why would BOD get an exclusion. I do not believe this is a simple error or omission. There was a reason.
2. Notice contains an increase in regular monthly dues without any notice to members, a direct violation of South Carolina Homeowners Act, Section 27-30-140(1) as previously discussed.
3. The notice of Special Assessment far exceeds the authority of the Board as set forth in the Master Deed 4.7 and 4.8. Section 4.7 states in part, the BOD may approve an amount up to ten (10%) of prior year’s budget or \$137,042. Any amount above that falls under 4.8, which states HOA may levy, upon affirmation vote of at least 51% of *total* votes of HOA a Special Assessment. There was no notice to members, no consent by members and no approval of members. Furthermore, this was not an emergency – discussed separately.
4. This notice is inaccurate, incomplete and presents a false and misleading picture of the HOA. For example, the notice states “We were caught in the middle of that squabble between the contractor and subcontractor.” It appears that the correct representation is the Association did not pay Tribune and Tribune did not pay Structural Waterproofing. Likewise, this notice was the first notice to members that Pearce Law Group was hired but court records reflect they were working for the owners on or before 8/20/2020. Points, previously noticed and discussed in my email of 12/31/2020, where is the savings of \$224,478? Why is the Association imposing an Assessment of \$1,828,234 when the calculations are for \$1,316,319 - or over \$500,000 above the amount calculated. As previously requested, where is the financial reports for year ending 2020? Where is there a reconciliation of the reserve account for last 2 years. All these were requested in my email of December 31, 2020.

### **Emergencies:**

I have heard that one of the defenses you wish to use to cover your company and the Board’s actions is that this was an emergency. Please explain, what was the emergency? A major fire never occurred. These repair items appear to be capital upgrades. To keep matters simple, let us just stick with the Tribune Holdings contract, since it represents about 80% of capital expenditures in 2019-2020.

1. This matter was discussed as early as August 2017. According to 3.04 of the By-Laws, it takes only a 10-day notice period for a meeting of members. Thus, a meeting could be held in less than 2 weeks, even as soon as the September 2017.

## **Emergencies (Continued):**

2. In the Board Meeting of 11/17/2018, it appears from the minutes, you brought up the idea of waterproofing with an estimated cost of 1.4M. Then, the minutes said, “the Board has tabled this as it is too late in the year to decide and start the work”. *Well, it was not an emergency in November 2018.* I do not believe it was ever an emergency.

The only emergency appears to have happened was created by the Board –after approving amounts without any regards to funding repeatedly and without any repayment plan - they simply ran out for money and credit. Then, it appears the Board, under your company’s guidance, decided to dump the debt to the owners without their knowledge, advise or consent with the intent to hide their gross negligence.

## **Legal Matters:**

From reviewing documents now available on the website, it appears that there have been and there still may be several active lawsuits involving the members and the POA related to actions by the BOD and Agent. Likewise, I have heard more may still be coming. Each of the existing lawsuit is discussed briefly below as well as other legal matters:

In the first lawsuit, as previously stated, it appears Structural Waterproofing, a subcontractor of Tribune Holdings LLC placed a lien of \$700 on each unit owner since they were not paid. *My first question is who was responsible for paying Structural Waterproofing – Tribune Holdings LLC or the Association?* Then, I have heard from several unit owners that this lien showed up on title searches when sales occurred. *How was this lien paid off so title could be conveyed, specifically who paid the lien and why were not Buyers made aware of this?* From the Special Notice, it appears two law firms are involved in the defense of this matter, Clemmons Law Firm representing the POA and Pearce Law firm representing the owners. *Why was this done? Are you saying Clemmons Law Firm only represents the Association and not the members? Then, who hired Pearce Law Group- was it the POA or Clemmons Law Firm?* I have no knowledge the members hired any attorney. The logic behind this appears faulted – It appears, on one hand, to deny defense for members, on the other hand, the same people provide defense by appointing another law firm. *All of this without the knowledge and consent of defendant, the members. What was the legal cost to the members by both law firms in this matter?*

The second, and most recent lawsuit involves unit owners suing the Association for removing storm shutters. As of this date, I have no knowledge of which Law Firm is representing the Association or the Members but both lawsuits bring up some remarkably interesting questions.

First, regarding this lawsuit, *is this the reason that owners with storm shutters were not charged extra for the “substantial damage” as reflected on the Special Notice?* Second, *what if the Plaintiffs win the case and it is determined to be an unlawful act by the Association, who pays? Is the award from the courts charged to the members?*

### **Legal Matters:**

On the surface, with both lawsuits, it appears to be a vicious circle. The Agent or BOD commits a negligent act, the members get penalized (lien with the first lawsuit) then the members appear to have to pay the legal cost of two Law Firms. Finally, repeat again, as with the second lawsuit and probably again with more lawsuits. All of this without members even knowing the actions occurred or who is representing them.

Regarding other legal matters, did the Association attorney review and approve the Tribune Holdings initial contract and change orders? If not, why? No one in their right mind would go out and buy a \$30,000 house without a detailed legal review, let alone enter into a massive and complex legal contract of \$1,567,000, then growing to \$2,507,797 with many questionable change orders without a detailed legal review. What was the cost of the legal review?

While discussing legal matters, does Clemmons Law firm represent Litus to Let? To the best of my knowledge, Litus to Let is a contractor, just like any other contractor. In the past, most Association attorneys have had to take legal action against contractors. There is a clear appearance of a conflict of interest in the event the Association ever needs to act against Litus to Let "professional management". Likewise, it just seems unethical to pay our attorney to protect an Agent, if the Agent gave advice or took actions that are believed to have caused losses to POA and its members. This is even more pronounced if there are other relationships, which I have heard do exist, creating dual loyalties, conflicts of interest and a legal nightmare. These relationships appear to be to the detriment of members. Specifically, it appears some members simply fear voicing their concerns about property, financial concerns, or Agent's decisions or actions since they fear it will have legal consequences for them by the Association attorney. To my knowledge, these relationships were never fully disclosed to the full membership. I was never informed and to my knowledge, none of the members have been formally informed of these relationships.

### **Financial Data:**

Simply stated, I have been unable to piece together a financial picture of the Reserve Account from being completely locked out of financial data. From the 2019 statement, it appears the reserve balance on December 31, 2019 was \$977,138 and that \$743,324 was paid out of the account in 2019 but I was only able to locate \$476,800, in Board approved purchases for 2019. Given the fact, I do not know who was paid in 2019 and who was paid in 2020, it is impossible to determine if payments were proper.

Again, I am respectfully requesting the following data to help develop a clear financial picture.

1. Reserve account reconciliation for 2019 and 2020 including details on payments made, who they were made to, and dates of payments from the reserve account.
2. Copy of your company's contract with the Board.
3. Copy of Clemmons Law Firm contract with the Board.

**Financial Data (continued):**

4. Copy of the Pearce Law Group contract and legal cost to date to members.
5. Copy of the Note, Assignment, Loan Cost, and all other docs for the \$600,000 loan.
6. Copy of the Note, Assignment, Loan Cost, and all other docs for \$1,316,319 loan.
7. Copy of Board Minutes of November 20, 2020.
8. Copy of all five bid proposals for waterproofing including bid prices and scope of work.
9. Fully executed contract with Tribune Holdings LLC

**Request to Review Books and Records:**

As you are aware, I have requested many times from emails, and phone calls to see the POA records as set forth in the Master Deed 4.17 which states in part "The book "shall" be available for examination by all Co-owners during normal business hours." This sentence cannot be any clearer, yet I have been denied access with one excuse after another.

Perhaps a brief personal history may help explain why I passionately believe in this concept. Specifically, in some of my prior work, I was a bank examiner for the FDIC and inspector of mortgage companies for FHA loans under HUD. When we examined a bank, I did not even know which bank until the morning of the assignment. When we arrived, the first thing we did was to secure all files, all computer records and other items and documents. Likewise, with HUD, we picked FHA loan files to review immediately upon arrival. This would be a mix of current active loans, delinquent loans, and foreclosed files. You may say the government can do anything. That is not the case. We had a contract and they had fiduciary responsibility. With the FDIC, we insured deposits, they agreed to provide sound banking practices. With FHA and HUD, we provided insurance for loans they could not otherwise make, they agreed to follow our rules for these loans. With your company, while I have been denied the right to inspect the contract with the Association, I believe your company is expected to provide "professional management" consistent to the By-Laws, Master Deed and State Laws and to safeguard our funds. The reason for the unannounced visits with FDIC and HUD is the same reason as I wanted to review the records with your company. To ensure the records had not been tainted, doctored, and provide a true and accurate picture at the time of inspection. Even if I ever gain approval to see the bills all members pay for, that has now been lost.

**Summary Observations:**

1. The Special Assessment does not appear to be legal for the reasons sated herein.
2. The Board and Agent appear to have acted without proper authority and without regard to the protections provided to owners and members in the Master Deed and By-Laws.
3. Contracts have been entered into without proper authorization and huge debts have been incurred without proper budgeting or proper approval. Both of which without the knowledge, consent, and approval of the membership.

### Summary Observations (Continued):

4. Failure to call a meeting of the members for substantial projects to seek their advice, consent and approval was at a minimum, unprofessional, unethical, and resulted in the true physical and financial conditions being hidden from owners and Buyers.
5. Due to these negligent actions of BOD and Agent, individual owners who should have been billed, were never billed and owners who should not have been billed have been billed for amounts they do not owe.
6. The sum of this is simply gross negligence, breach of fiduciary duties, and substantial financial loss and stress to members.

None of this needed to occur. There were two roads to take.

One road was to act openly, to represent the members and follow guidance and intent of the Master Deed, By-Laws, and State Housing Act. On this road, the BOD would have called a Special Meeting of all members to discuss future projects sometime as soon as September 2017, when the issue was first discussed. The BOD and Agent would have done proper planning in advance for the meeting including:

1. Project in General: Need for work, who is responsible for the project (in the case of balconies, data would be presented that it was either the owner or the Association), work quality standards, sharing prep work such as removal of storm shutters, time frames, risks involved such as change order, etc.
2. Contractor Details: including requesting bids from qualified contractors, reviewing bids based on price, quality, timeframes, experience, or other legal criteria. Maybe even asking owners who they may know that could do the job or recommending a preferred bidder based on the overall criteria.
3. Funding: Determining how to pay for the work, either part with available reserve funds, one-time special assessment, or a loan. *Letting members chose the option.*
4. Approval: Have the members vote to approve or disapprove the project and fund it.

This road seems like Easy Street to me.

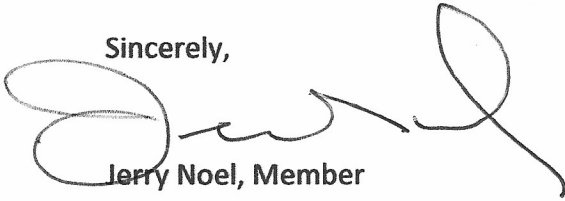
The other road, do whatever, whenever, to whomever without regards to recorded documents, housing acts, costs, or damage to others. Well, we know where that road leads.

**Where from here:** I have no authority to speak on behalf of the membership; however, I have heard some members want to call a Special Meeting to discuss actions to move forward. Some want to look at removing responsible parties, still others may seek other legal actions including being reimbursed for damages caused.



In closing, I am not demanding your response, instead by writing this email, I am giving you an opportunity to respond if you believe any of the statements are inaccurate. That is more than the members received in the unsigned and undated special notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Noel". The signature is fluid and cursive, with a large initial "J" and "N".

Jerry Noel, Member

CC: Board of Directors