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Attorneys for Plaintiffs.

MARK W. EICHHORN and LINDA  
ANN EICHHORN, husband and wife;  
and KATHLEEN MOORE.

Plaintiffs,

v.

THOMAS SCANNAPIECO,  
BELLA DEVELOPMENT GROUP,  
LLC., SCANNAPIECO  
DEVELOPMENT CORPORATION,  
SCANNAPIECO RESIDENTIAL  
HOLDINGS, LLC.,  
SDC REALTY OF ATLANTIC  
CITY, INC.,  
NEW VISTAS CORPORATION,  
THOMAS TROFE, BOARD OF  
DIRECTORS OF THE BELLA  
CONDOMINIUM ASSOCIATION,  
INC., INDIVIDUAL BOARD OF  
DIRECTORS MEMBERS 1-5  
(fictitious parties), John Does, 1-10  
(fictitious parties), and ABC  
Corporations 1-10 (fictitious parties).

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
ATLANTIC COUNTY

Docket No.:

Civil Action

**VERIFIED COMPLAINT  
And  
JURY DEMAND**

The Plaintiffs, by way of their Verified Complaint against Defendants, Thomas Scannapico, Bella Development Group, LLC., Scannapico Development Corporation,

Scannapieco Residential Holdings, LLC., SDC Realty of Atlantic City, Inc., New Vistas Corporation, Thomas Trofe, and the Board of Directors of the Bella Condominium Association, Inc. (collectively, the “Defendants”) hereby allege the following:

1. The Bella Condominium Association, Inc. (“Association” or the “Bella”) is a New Jersey non-profit corporation created pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., and organized pursuant to and existing in accordance with the New Jersey Non-Profit Corporation Act, N.J.S.A. 15A:1-1 et seq.
2. The Association is a twenty-eight story building containing 200 residential units and one commercial unit.
3. The Association is governed by: (1) a Master Deed recorded in the Office of the Clerk of Atlantic County; (2) Articles of Incorporation; (3) By-Laws; and (4) any and all subsequent amendments to these documents (collectively the “governing documents”). See Exhibit A attached hereto as to the Master Deed; See Exhibit B attached hereto as to the By-Laws; and See Exhibit C attached hereto as to the First Amendment to the By-Laws.
4. In accordance with the governing documents, the Association is responsible for the operation, administration, management, and regulation of the Bella which is a residential condominium building located in Atlantic County, New Jersey.
5. This condominium complex consists of residential units, one commercial unit and

certain common property, which includes, but is not limited to, roadways, driveways, sidewalks, parking areas, open spaces, landscaping, exterior of buildings including finishes and exterior mechanics, trim, foundation, roofing, gutters, main walls, basements and any other such property as described in the governing documents. See Exhibit A attached hereto.

6. Pursuant to the Association's Master Deed and By-Laws, the Association is governed by a Board of Directors (the "Board").
7. Upon the recording of his/her respective unit deed with the Atlantic County Register, the unit owner becomes a voting member of the Association.

### **THE PARTIES**

#### **Plaintiffs**

8. Plaintiffs, Mark W. Eichhorn and Linda Ann Eichhorn, husband and wife, are owners of a condominium unit within the Association. As such, both Mr. and Mrs. Eichhorn are members of the Association.
9. For a period of time, Mark Eichhorn served on the Board.
10. Plaintiff, Kathleen Moore is an owner of a condominium unit within the Association. As such, Ms. Moore is a member of the Association.

#### **Defendants**

11. Defendant, Thomas Scannapieco is the Sponsor of the Association, and is

currently the President of the Association's Board of Directors. See Exhibit D attached hereto. Thomas Scannapieco's address is 400 South Main Street, New Hope, Pennsylvania 18938.

12. Thomas Scannapieco is Sponsor of the Association by way of his ownership and control of the Association's developing entity, the defendant Bella Development Group, LLC ("BDG"). BDG is a New Jersey for-profit limited liability corporation incorporated in July 2004.
13. Defendant, Scannapieco Development Corporation ("SDC") is a foreign for-profit corporation established in the Commonwealth of Pennsylvania. SDC lists Thomas Scannapieco as its president, secretary and treasurer. SDC lists its address as 400 South Main Street, New Hope, Pennsylvania 18938.
14. SDC is engaged in real estate sales, real estate development, real estate rentals, and property management.
15. Defendant, SDC Realty of Atlantic City, Inc. ("SDC Realty") is a foreign for-profit corporation established in the Commonwealth of Pennsylvania. SDC Realty lists Thomas Scannapieco as its president, secretary and treasurer. SDC lists its address as 400 South River Road, New Hope, Pennsylvania 18938. See Exhibit E attached hereto.
16. From the time of the development of the Association until approximately December 31, 2016, SDC Realty served as the property management company for

the Association.

17. Defendant, Scannapieco Residential Holdings, LLC. (“SR Holdings”) is a New Jersey limited liability corporation. SR Holdings holds titles to a number of residential condominium units within the Association.
18. Thomas Scannapieco exercises control of SR Holdings and votes the shares related to the condominium units held by SR Holdings.
19. Defendants SDC, SDC Realty and SR Holdings are all solely held and controlled by Thomas Scannapieco. Thomas Scannapieco, SDC, SDC Realty and SR Holdings shall herewith be referred to collectively as “Scannapieco”.
20. Defendant, New Vistas Corporation (“New Vistas”) is a New Jersey for-profit corporation with a main office of 450 Tilton Road, Suite 220, Northfield, New Jersey 08225.
21. Michael Cohan is the president, principal and founder of New Vistas.
22. Thomas Scannapieco and Michael Cohan have a long personal and professional relationship.
23. Scannapieco and/or the Scannapieco-controlled Board contracted with New Vistas in early 2016 to provide accounting, bookkeeping, and payables/receivables services for the Association.
24. Scannapieco and/or the Board have entered into a contract with New Vistas for New Vistas to act as the professional management company for the Association.

25. New Vistas obtains business and management contracts from the various Scannapieco entities located within Pennsylvania and New Jersey.
26. New Vistas has a strong financial incentive to follow the instructions and directives of Scannapieco and to ensure that Thomas Scannapieco remains in a position of control of the Association.
27. The Commercial Unit is the largest unit within the Association. The Commercial Unit holds the largest voting percentage – equal to approximately four residential units. The Commercial Unit is listed as being owned by “Cohan Properties LLC”. Cohan Properties LLC acquired the Commercial Unit from BDG on November 15, 2009. Cohan Properties LLC has a listed address of 400 S. Main Street, New Hope, Pennsylvania 18938. See Exhibit K.
28. Michael Cohan was asked if he owned Cohan Properties LLC. Michael Cohan responded that he did not, but that in or about 2009, Thomas Scannapieco asked if he could use the Cohan name and that Michael Cohan agreed to allow Scannapieco to create a limited-liability corporation with the Cohan name.
29. As of this date, it is unknown who the principals or owners are of Cohan Properties LLC. The Certificate Of Formation for Cohan Properties, LLC lists no principals or operating officials of the corporation. See Exhibit G.
30. Defendant, Thomas Trofe (or “Trofe”) was a member of the Board of Directors, having served on the Board for at least ten years. Trofe lives at 6 Stable Drive,

Sewell, New Jersey 08080.

31. The identities of the other Defendant members of the Board of Directors, Directors 1 – 10, are Board members responsible for illegal and improper actions are heretofore unknown to the unit owners in the Association, and thus have been joined as fictitious parties until such time as Defendants produce minutes and records identifying the official actions of these unknown Defendant members of the Board.

## HISTORY

### 2016 Election

32. Defendant Thomas Scannapieco, as Sponsor of the Association, claimed that he had the automatic right to one seat on the Board.
33. Thomas Scannapieco has occupied and controlled the Board as the Sponsor from the inception of the Association until 2016 without being formally elected. In late 2016, Thomas Scannapieco stated that he was no longer holding the Sponsor seat and would run as a candidate for election with all other members. This position was taken by Scannapieco despite the fact that Scannapieco still owned and controlled Sponsor units and other units within the Association.
34. An electronic mail (“email”) notice was sent out to some of the membership informing the membership that the Association’s annual meeting and election

would be conducted on December 10, 2016 (the “2016 Election”).

35. Upon information and belief, not all unit owners regularly use or check their email accounts.
36. The Association’s By-Laws on page #3, Article I states in relevant part:

“Notice of Meeting. Except as otherwise provided by law, notice of each meeting of unit owners, whether annual or special, shall be given not less than ten (10) days, nor more than (90) days before the date on which the meeting is to be held, to the representative of each unit at his last known address, by delivering a written or printed notice thereof to him personally, or by mailing such notice, postage prepaid....” (emphasis added). See Exhibit B.
37. The Association’s By-Laws do not permit notice by email.
38. Upon information and belief, unit owners have not been formally asked for, nor have they given, written authorization that the Association is permitted to provide them with formal and required notices by way of email.
39. The Plaintiffs did not receive written notice by either hand-delivery or postal service of the 2016 Election.
40. Upon information and belief, no unit owner received written notice by either hand-delivery or postal service of the 2016 Election.
41. Upon information and belief, the only “notice” given of the 2016 Election was provided by email.
42. On December 10, 2016, the Association held its annual meeting and election.



43. The Association's By-Laws at Article XII provides:

"Association Membership List. The Association is required to keep an updated list of all members in the Association and a list of all mortgagees. This lists will contain the names, addresses and telephone numbers of the unit owners and mortgagees in the condominium, as well as the same information for any other residences the unit owners may maintain. The purpose of this list is to allow the Association to give notice to the unit owners as required by the By-Laws." See Exhibit B.

Hereinafter, the "Contact List".

44. In the weeks leading up to the 2016 Election, Thomas Scannapieco, members of his family and employees used the Contact List to call unit owners and campaigned for votes for Thomas Scannapieco.

45. No other candidate was given access to the Contact List.

46. Thomas Scannapieco directed the Association's property manager, Keith Silverman, to actively contact unit owners via telephone and emails on behalf of Thomas Scannapieco's candidacy.

47. In addition, Keith Silverman was directed to have unit owners send proxies directly to Thomas Scannapieco.

48. Keith Silverman is the owner of First Day Consulting, LLC ("First Day"). First Day was in contract renewal negotiations with Scannapieco prior to the 2016 Election.

49. The then current Board President was Aaron Cohen. Pursuant to the By-Laws,

Mr. Cohen was to serve as the chairman of the 2016 Election.

50. To be authorized to vote at any election, a member must be “Good Standing” per the By-Laws at page #2, Article I:

“Suspension of Membership Rights and Voting Rights. The membership rights and voting rights of any unit owner may be suspended by action of the Board during the period when such unit owner’s common expense assessments remain unpaid; but upon payment of such assessments, his rights and privileges shall be automatically restored.” See Exhibit B.

51. Despite the requirement of “Good Standing”, on December 8, 2016, Keith Silverman sent an email to the “Bella Owners” in which he stated, “It should be noted that in the past there was some limitation on voting based on HOA fees outstanding. This will not be the case this year and all can vote.” See Exhibit H.

52. The By-Laws at page #4, Article I set forth the requirement for the annual meeting’s quorum. The By-Laws specifically state:

“Quorum. At the meeting of the unit owners, unit owners representing ownership of fifty (50%) present, present in person or by proxy shall constitute a quorum for the transaction of business, except where otherwise provided herein. See Exhibit B.

53. The By-Laws provide at page #4, Article I:

“Judges. If at any meeting of the unit owners a vote by ballot shall be taken on any question, the chairperson of such meeting shall appoint two judges to act thereat with respect to such vote. Each judge so appointed shall first subscribe an oath faithfully to execute the duties of a judge at such meeting with

strict impartiality and according to the best of his ability. Such judges shall decide the qualifications of voters and shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the question. Reports of judges shall be in writing and subscribed and delivered by them to the Secretary of the meeting. The judges need not be members of the Association, and any officer of the Association may be a judge on any question other than a vote for or against his election to any position with the Association or any other question in which he may be directly interested.” See Exhibit B.

54. Pursuant to the By-Laws, only the appointed judges are authorized to certify and determine the election result.
55. Mr. Cohen appointed two judges. Those judges were Emil D’Elsa and Plaintiff Linda Eichhorn (collectively, the “2016 Judges”).
56. The 2016 Judges were not provided a list or account statement showing which unit owners were delinquent, therefore not in Good Standing and ineligible to vote.
57. No individual certified that Quorum had been obtained, being at least 50% of the ownership interest being present or by proxy.
58. During the 2016 Election, the ballots and proxies were opened and counted. Keith Silverman counted votes and entered the results into his laptop. The 2016 Judges worked on a hand count with a handwritten tally sheet.
59. During the tabulation of ballots, Mr. Cohen left the meeting hall to take a business

call. While he was out of the room, and before the tabulation had been completed, Thomas Scannapieco went to the microphone and announced to the unit owners that the winners of the election were himself, along with Walter Klekotka and Thomas Trofe. When Mr. Cohen returned to the room, he was “astounded”.

60. The 2016 Judges were “in shock” as they were still doing a manual count and by their manual count there was no way that Thomas Scannapieco, Thomas Trofe or Walter Klekotka had obtained enough votes to win the election.
61. The 2016 Judges raised an immediate protest to Thomas Scannapieco’s announcement.
62. In response, Thomas Scannapieco announced to the unit owners, “we have a contested vote”. He instructed Keith Silverman to take the open ballot box and his laptop computer back to Silverman’s office at the Association.
63. Thomas Scannapieco then stated to the unit owners, “I will decide how to handle the recount later”.
64. A group of concerned unit owners, being Plaintiffs Mark and Linda Eichhorn, Plaintiff Kathleen Moore, and unit owners Joel Miller and Stephanie Miller left the meeting hall and went to the Association to keep an eye on Keith Silverman (“Silverman”).
65. Silverman took an unreasonably long time to return to the Association from the

meeting hall.

66. When he arrived, Silverman sat in his automobile for approximately 30 minutes, while apparently speaking to someone on the telephone.
67. Silverman informed these unit owners that he had been instructed to lock the ballots in his safe.
68. The next day, Silverman stated to unit owners that he did not review the ballots. However, unit owners specifically reported to the Plaintiffs that they witnessed Silverman looking at ballots in his office.
69. Later that day, Thomas Scannapieco, now addressing himself as “Board President”, contacted New Vistas and directed New Vistas to review the ballots.
70. New Vistas reported that Thomas Scannapieco, Thomas Trofe and Walter Klekotka had received the most votes. This determination by New Vistas ran counter to the tabulation performed by the 2016 Judges.
71. The 2016 Judges had given their handwritten tabulation sheet to Silverman. Silverman refused to provide them with a photocopy of the document (the “2016 Tab Sheet”). To this day, the 2016 Tab Sheet has not been produced.
72. Unit owner Stephanie Miller telephoned New Vistas and spoke to Senior Vice President Nicholas Faulhaber. Mrs. Miller inquired if New Vistas had and/or retained a copy of the ballots. Mr. Faulhaber informed Mrs. Miller that New Vistas was retaining a copy of the ballots.

73. The Plaintiffs requested to review the ballots.
74. On January 6, 2017, Stephanie Miller (nee Segal) requested from the Board:
- “a certified of copy of the handwritten hand tally sheet by the two unit owners from the election December 11, 2017 [sic 2016]. I am officially asking that you release the total number of units that voted, how many votes went to each candidate, and how you calculated the percentages you announced... Given the extreme controversies of the election, none of the ballots should have been destroyed and every single ballot from the election must be accounted for (whether you included or not in the count).” See Exhibit I.
75. To this day, the ballots from the 2016 Election have not been produced.
76. No information has been presented as to how many members were not in Good Standing, carrying a balance of their common assessments, and therefore ineligible to vote at the 2016 Election.
77. No certification of Quorum has been provided. To the contrary, Thomas Scannapieco provided an email in which he stated that he received the highest number of votes, being 63 votes. This number is a far cry from the approximately 100 ballots/proxies required to establish that quorum was obtained.
78. On January 7, 2017, Thomas Scannapieco sent an email to discuss the results of the 2016 Election. In his email, Scannapieco stated, “The recount of the election results was completed by New Vistas Corporation, an independent third-party. The election results are unchanged from the night of the election.” See Exhibit J.

79. No further information as to the 2016 Election was provided to the unit owners and/or the Plaintiffs.
80. The First Amendment to the By-Laws, recorded July 5, 2005 (the "First Amendment"), provides in relevant part:

"Article III: Meetings Open to Unit Owners; Notice. All Board Meetings, except conferences or working sessions at which no binding votes are to be taken, shall be open to attendance by all Unit Owners, subject to the exceptions set forth in N.J.S.A. 46:8B-13a and N.J.A.C. 5:20-1.1, as now or hereafter amended. The Board may exclude or restrict attendance at those meetings, or portions of meetings, at which any of the following matters are to be discussed: 1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; 2) any pending or anticipated litigation or contract negotiations; 3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or 4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the Association. Adequate written notice of the time, place and agenda, to the extent known, of all such open meetings shall be given by the Board to all Unit Owners at least forty-eight (48) hours in advance of such meeting in the manner required by N.J.A.C. 5:20-1.2(b). Moreover, the Board shall also within seven (7) days following the Annual Meeting of the Association post, mail to newspapers and file with the administrator of the business office of the Association a schedule of the regular Board Meetings to be held in the succeeding year, as prescribed by N.J.A.C. 5:20-1.2(c) and make appropriate revisions thereto, all as required by N.J.A.C. 5:20-1.2(c)1. See Exhibit C.

81. In violation of the First Amendment, on the evening of December 15, 2016, the new Board conducted an improper and illegal “Board meeting” by way of conference call. “Meeting Minutes” of this meeting are attached hereto as Exhibit K.
82. At this conference call, Thomas Scannapieco raised the issue of renewing and extending the contract with Silverman’s company, First Day Consulting, LLC (“First Day”). The Board agreed to extend the contract with First Day. See Exhibit K.
83. On January 14, 2017, the new Board conducted an improper “Board meeting” by way of conference call. During this conference call, the Board “passed” a resolution “regarding elections” (the “Election Resolution”)(a true copy of the Election Resolution is attached hereto as Exhibit L).
84. The Election Resolution states in relevant part:

**“Policy regarding elections**

1. All voting will be by sealed ballots, and or proxies to respect unit owner privacy, remove peer pressure and awkwardness among neighbors
  1. All absentee ballots will be sent by mail, email or fax directly to the third party responsible for counting the ballots and ensuring that all votes remain confidential
  1. (New Vistas, Citron Cooperman, Association legal counsel)



**2. No ballots or proxies will be available for inspection by any unit owner, or board member for any reason**

3. During the election meeting, the president of the Association will provide the opportunity for those in attendance to vote, collect proxies and then declare the balloting process ended, after which point no additional ballots or proxies will be considered.

**2. Vote recounts will be reviewed by Association legal counsel.**

**1. Any party requiring the recount will pay the cost by providing a \$4,000 deposit and agreeing in writing to pay any additional legal time required,** however if the recount provides a different election result than the original official tally, then the deposit will be fully returned to the petitioner and the Association will cover 100% of the cost

**2. A petitioner must request a recount in writing within 3 business days** of the result of the election to the property manager with the deposit.

3. The Association's legal counsel will work alongside the original third-party during the recount

3. The exact percentage vote will be reported by the third party for every candidate after the election tally

4. Absentee ballots must be submitted by midnight prior to the day of the election

5. Proxies can be delivered by the proxy designee to the third party at any time prior to or during balloting.

6. Unit owners must only provide the signature of one individual in title on ballots, proxies, absentee ballots.

1. No original signatures are required. fax or email or written directions are acceptable

7. Revised votes will be accepted until the balloting process is declared ended during the election meeting. Revised votes must indicate that they are revising or replacing a prior ballot and should include the date and time.

1. If multiple ballots or proxies are submitted for a single unit, only the latest date and time will be considered

.....  
Any unit owner owing more than \$300 as of 2 business prior to the annual meeting will be ineligible to vote because they will not be in good standing

See Exhibit L.

85. Unit owners, on their own and also on behalf of the Plaintiffs, brought complaints as to the 2016 Election to the New Jersey Department of Community Affairs (the “DCA”).

86. One of the complaints was that unit owner DLJ Mortgage Capital, Inc., a Delaware corporation (“DLJ”), was prohibited from voting for its units as DLJ is and was considered a “successor sponsor”. DLJ had taken title to condominium units under a funding agreement with Scannapieco.

87. In response to the complaints made to the DCA, on January 4, 2017, DLJ’s Vice President, Bruce Kaiserman, submitted a “Certification to Withdraw Votes”. See Exhibit M. In this certification, DLJ stated that it “hereby withdraws all of the votes it cast to elect Board of Director members at the BCAI annual meeting on

December 10, 2016.” See Exhibit M.

88. In addition, the DCA contacted the Association regarding issues with the election and whether Scannapieco had improperly voted shares while still the Association’s Sponsor.
89. In response, the Association’s attorney, Douglas A. Baker, Esq., acting upon the direction of Thomas Scannapieco, sent a letter dated January 18, 2017 to the DCA (the “January 18 Letter”). See Exhibit N.
90. In his January 18 Letter, Attorney Baker wrote in relevant part:

“I have been requested to respond to your email dated of January 5, 2017 wherein it is alleged that Tom Scannapieco, President of the Bella Development Group (the developer of Bella) voted in the annual election of December 10, 2016 as the owner of Unit 1202.

These accusations are without merit. Mr. Scannapieco did not vote for Unit 1202 and that fact has been confirmed by an independent recount company, New Vistas Corporation. New Vistas’ representative, Nicholas Faulhaber forwarded an email to Keith Silverman, current Property Manager of Bella Condominium Association, Inc., stating that the recount lists and the actual ballot show that Teach Solois NJ LLC was the owner of record and voted in the election on behalf of Unit 1202 (see email attached). The transfer of this Unit was completed on December 9, 2016, the day prior to this election. This was the last

Unit that Bella Development Group owned in Bella Condominiums. See Exhibit N.

91. Attorney Baker than enclosed a certification from Thomas Scannapieco in support of the statements of his January 18 Letter. See Exhibit N.

92. This claim was made by Scannapieco and Attorney Baker despite the fact that the official ballot provided to unit owners listed Scannapieco as the owner of Unit 1202. See Exhibit O.

93. There is no such entity as “Teach Solois NJ LLC”. There however is an entity named “Teach Solais NJ LLC”.

94. In an arm-in-arm transaction, Scannapieco’s Bella Development Group transferred its interest in Unit 1202 to Teach Solais NJ LLC (“Teach Solais”). This transfer references a deed dated June 6, 2016. However, according to Thomas Scannapieco’s certification dated January 17, 2017 (the “Scannapieco Certification”), “In fact, Unit 1202 was sold to Teach Solois NJ LLC on December 9, 2016, the day prior to the election.” See Exhibit N.

95. According to the Atlantic County tax records, the deed for Unit 1202 was not recorded until January 12, 2017. See Exhibit P.

96. The By-Laws at page #1, Article I state:

“Change of Membership. Change of membership shall be accomplished by recording in the Office of the Clerk of Atlantic County, New Jersey a deed establishing record title to a Unit, and delivering to the Secretary of the

Condominium Association a certified copy of such instrument. The membership of the prior Unit Owner shall be thereby terminated.”

See Exhibit B.

97. Despite the statements of Attorney Baker and Thomas Scannapieco in his certification, Teach Solais was not a member of the Association entitled to vote in the 2016 Election for Unit 1202. If the closing of Unit 1202 occurred on December 9, 2016, then no recorded deed was possibly available and no certified copy of same had been presented to the Secretary of the Condominium Association.

98. Stephanie Miller wrote the Board via email on February 2, 2017 and addressed the DCA complaints and her challenges to the 2016 Election. Ms. Miller’s email stated:

“Bella Condominiums is not responsible for Tom Scannapieco’s personal legal bills. The reason a complaint was filed with the DCA regarding Developer unit 1202 is because independent unit owners allegedly saw Tom Scannapieco attempt to vote unit 1202 and submit a ballot. That ballot was included when the ballots went into the safe. Those ballots are all the property of Bella Condominiums and as you know, any destruction of any ballot is spoliation of evidence and is not legal.

Regardless of the veracity of Tom’s claim, it is a conflict of interest for Douglas Baker, Esq. to represent Bella Condominiums in this matter as this unit was owned by Tom Scannapieco as the Developer. Bella should not be billed for Tom Scannapieco’s personal legal bills, nor pay for this matter in any way. This is

just another example of Tom claiming owners are running up legal bills when he is the only one responsible.

The DCA required DLJ to withdraw their 5 votes. Please see attached. Even more evidence of why owners are questioning the validity of the entire election. Since you have refused owner requests to release even the most basic election information, such as which units voted (not who they voted for), the entire election remains in question.” See Exhibit Q.

99. In response to Ms. Miller’s February 2, 2017 email, Thomas Trofe wrote, “This allegation to our latest election is not in compliance with our new policy requiring a deposit of \$4000 for anticipated legal fees. Therefore I do not feel we should respond until that requirement is meet.” See Exhibit Q.

### 2017 ELECTION

100. On October 20, 2017, an email was sent by Thomas Scannapieco to the Plaintiffs stating that the 2017 annual meeting and election will be conducted on December 2, 2017 (the “2017 Election”). The email did not provide the time of the meeting or the location.
101. Thomas Scannapieco has stated that because he was elected as an “unit owner” and not as the Sponsor, and because he received the most votes, his term does not expire until January 1, 2019.
102. Thomas Scannapieco has determined that the other four Board seats will be decided at the election scheduled for December 2, 2017.

103. On November 15, 2017, New Vistas emailed the Plaintiffs and provided information on the 2017 Election, including the time of the meeting and the location (the "New Vistas Letter")(a true copy of the New Vistas Letter is attached hereto as Exhibit R).
104. The New Vistas Letter includes a ballot and a proxy form.
105. In violation of the By-Laws, the New Vistas Letter was not mailed or hand-delivered to the Plaintiffs.
106. In violation of the By-Laws, upon information and belief, the New Vistas Letter was not mailed or hand-delivered to any unit owner.
107. According to New Vistas, there are twelve candidates running for election in 2017.
108. Pursuant to the By-Laws at page #8, Article IV, there is a special two ballot/two stage process for elections when there are over twice as many candidates as there are open seats.
109. The Bylaws at page #8, Article IV state:

"If at any meeting for election of membership to the Board more than twice the number of candidates to be elected at such meeting are nominated, then and in such event there shall be two (2) ballots for membership. At the end of the first ballot, the field of nominees shall be reduced so that there are no more than twice as many candidates running as there are positions to be filled, with the lowest vote getters being eliminated. The second ballot shall be held, and on the second ballot the top vote getters will be elected. If there are no more than twice

the number of nominees for the number of positions to be filled, then there shall be one ballot, with the top vote getters being elected to membership on the Board.” See Exhibit B.

110. The election procedure set forth in the New Vistas Letter is in violation of the By-Laws at page #8, Article IV.

111. The New Vistas Letter and related proxy are in violation of the New Jersey Planned Real Estate Development Full Disclosure Act, N.J.S.A 45:22A-22, et seq. (“PREDFDA”).

112. The Planned Real Estate Development Full Disclosure Act provides that:

“(5) An association shall provide association members written notice of an election by **personal delivery, mail**, or electronic means, no less than 14 nor more than 60 days prior to the meeting at which an election of executive board members is scheduled... In the case of mailing, the notice shall be effective when deposited in the mailbox with proper postage. The **notice may only be sent by electronic means** if either (a) the affected association member, or voting-eligible tenant where applicable, **has agreed in writing to accept notice by electronic means**; or (b) the governing documents permit electronic notices, provided another form of voting by absentee balloting or proxy voting is available.” N.J.S.A. 45:22A-45.2c.(5). (emphasis added)

113. The Association also violated the provisions of the PREDFDA which requires written notice of the right to nominate candidates. This provision requires the notice to be given 30 days before the mailing of the notice of the meeting. This



provision also requires the period for submitted nominations to be open for at least 14 days from the date of mailing of the request for nominations. See N.J.S.A 45:22A-45.2c.(4) and c.(5).

114. Furthermore, PREDFDA requires all proxies to contain a prominent notice that the use of the proxy is “voluntary” and that “it may be revoked at any time” before the proxy holder casts a vote. See N.J.S.A 45:22A-45.2a.
115. The New Vistas proxy does not contain the notice required by PREDFDA. In addition, the New Vistas Letter states, “Under no circumstances are your Ballots/Proxies to be given to anyone at Bella.” See Exhibit R.
116. The New Vistas Letter does not provide a date by which the absentee ballots are required to be received by New Vistas. See Exhibit R.

#### **SCANNAPIECO SELF-DEALING AND CONTROL OF THE BOARD**

117. Scannapieco has controlled the Board and thereby the Association since the date of the Association’s inception.
118. During his control, Scannapieco has never allowed the Association to go out to bid on the professional management contract. Instead, Scannapieco has repeatedly commandeered the Board to contract with management companies which he controls and from which he directly benefits.

119. The Association has paid significantly more on its management contracts than similar based condominiums.
120. Scannapieco has directed the Association to enter into leases with his own entities, either SDC or Cohan Properties, LLC, in which the Association has paid thousands of dollars for unneeded parking spaces and a bathroom facility which most residents are unaware exist nor which do they have access to use.
121. Scannapieco, Thomas Trofe and the Board under their control, have failed to increase the common assessments in over eleven years. This has caused the financial state of the Association to decline and the physical elements to deteriorate.
122. Scannapieco, Thomas Trofe and the Board under their control, have failed to engage a proper facilities engineering firm to conduct the required reserve study.
123. Scannapieco, Thomas Trofe and the Board under their control, have repeatedly failed to properly fund the Association's Reserve account.
124. Scannapieco, Thomas Trofe and the Board under their control, have failed to properly conduct financial audits of the Association's finances.
125. Scannapieco, Thomas Trofe and the Board under their control, have regularly provided "payment holidays" in which common assessments were not due from the unit owners. As historically the owner of the largest block of units, these payment holidays directly benefited Scannapieco and his related entities,

including Cohan Properties, LLC.

126. Scannapieco, Thomas Trofe and the Board under their control, have failed to properly maintain the Association's common elements and facilities. This has led to unit owners bringing damage claims and insurance claims against the Association.
127. The mismanagement of the Association has led to a significant reduction in the market value of the units.
128. The artificial hold on the common assessment charges for over eleven years has served to personally and directly benefit Scannapieco while his related entities attempted to sell their units and holdings within the Association.
129. For years, Scannapieco and Thomas Trofe, have been aware of water infiltration into the building's envelope. Scannapieco and Trofe have taken actions to hide the extent of this water infiltration from the unit owners.
130. Scannapieco and Trofe have directed projects to place caulking over areas related to the water infiltration. This was done to hide the existence and extent of the water infiltration.
131. Upon information and belief, the Association will have to expend hundreds of thousands of dollars to properly remediate this damage to the building's envelope and structure.
132. The unit owners, including the Plaintiffs, will now be required to pay significantly

more assessments and fees to fund and replace years of underfunded reserves and accounts.

133. For years, Scannapieco commandeered common areas and elements of the Association, including offices, for use by its own related entities. These are common areas which could have been used for the Association's benefit and/or rented for income.
134. Scannapieco directed Association maintenance employees and housekeeping staff to maintain and clean units owned by Scannapieco, Cohan Properties LLC, and DLJ, all without making demand nor tendering compensation for those years of services.
135. The Master Deed prohibits short term rentals of units.
136. The Master Deed at Article XI- "Restrictions, Rights, and Ownership" provides:

“(21) Any lease or rental agreement concerning the lease of a Unit shall be in writing and subject to the Master Deed, By-Laws and their constituent documents and no Unit may be leased or rented for less than ninety (90) days.” See Exhibit A.
137. Despite this clear restriction on short term rentals, Scannapieco purposely, deliberately and openly rented his units for periods as short as one week. For years, Scannapieco advertised his units as “vacation rentals” and allowed them to be rented for short period.
138. Thomas Scannapieco admitted to renting up to 20 of his units as vacation rentals

in violation of the ninety day requirement.

139. The Scannapieco controlled Board was aware of these rental violations and refused to take any action.

### COUNT ONE

**(2016 ELECTION VIOLATIONS OF THE ASSOCIATION'S MASTER DEED AND BY-LAWS AND THE NEW JERSEY CONDOMINIUM ACT RELATED TO ELECTIONS AND TURN OVER OF DOCUMENTS)**

140. The Plaintiffs repeat and reallege each of the allegations made in the foregoing paragraphs as if set forth herein at length.
141. Pursuant to the Association's By-Laws and the PREDFDA, notices of all annual and election meetings must meet specific requirements and timelines.
142. The Defendants have violated the By-Laws and PREDFDA by failing to provide the meeting notices within the required time periods.
143. The Defendants conducted the 2016 Election in direct violation of the By-Laws and PREDFDA.
144. The Defendants have attempted to deceive and hide their conduct relating to the 2016 Election.
145. The Defendants have made and submitted false statements and certifications to the New Jersey Department of Community Affairs in relation to the 2016 Election.

146. The provisions of the By-Laws also provide that upon the transfer of 201 units, unit owners other than the Sponsor shall be elected to the Board. See Exhibit B.
147. Thomas Scannapieco has claimed a position on the Board for years as the Sponsor, and then took fraudulent steps and made arm-in-arm transactions with Cohan Properties, LLC, Teach Solais LLC and DLJ to maintain his control over the Association.
148. Thomas Scannapieco has not been properly elected to the Board and therefore has no legal right to a position on the Board.
149. Despite ballots being emailed and collected, there has never been proof provided that Quorum was obtained at any prior election or legal proof of mailing was provided to the unit owners.
150. Despite the requirements of the Association's By-Laws, the New Jersey Condominium Act ("Condo Act") and PREDFDA, no proper and formal election has ever been held within the Association.
151. In violation of Association's By-Laws, the Condo Act and PREDFDA, the Board has failed to conduct open meetings observable to the unit owners.
152. In violation of Association's By-Laws, the Condo Act and PREDFDA, the Board has failed to conduct meetings and has taken binding votes via conference call, without access or notice to the unit owners.
153. In further violation of the By-Laws, the Condo Act and PREDFDA, the unit

No

owners are not provided with required information, such as the identity of the unit owners, mailing addresses for unit owners, the election results, financial documents and contracts into which the Association has entered.

154. The Defendants' wrongful conduct has caused the Association and the Plaintiffs damage and, unless enjoined, will continue to cause irreparable harm and damage to the Association and its members.

155. There is no adequate remedy at law to compensate the Plaintiffs for the substantial and irreparable harm caused by Defendants' actions.

**WHEREFORE**, Plaintiffs demand judgment against Defendants, granting injunctive relief and specific performance in a summary fashion, as set forth in the Plaintiffs' Order to Show Cause; injunctive relief requiring the removal of Thomas Scannapieco from the Board, compensatory damages; punitive damages; interest; attorneys' fees and costs of suit; and such other relief as this Court deems just and equitable.

**COUNT TWO**

**(2017 ELECTION VIOLATIONS OF THE ASSOCIATION'S MASTER DEED, BY-LAWS, THE NEW JERSEY CONDOMINIUM ACT, the NEW JERSEY NONPROFIT CORPORATIONS ACT AND PREDFDA RELATED TO ELECTIONS AND TURN OVER OF DOCUMENTS)**

156. The Plaintiffs repeat and reallege each of the allegations made in the foregoing paragraphs as if set forth herein at length.

157. Pursuant to the Association's By-Laws and the PREDFDA, notices of all annual and election meetings must meet specific requirements and timelines.
158. The Defendants have violated the By-Laws and the PREDFDA by failing to provide the meeting notices within the required time periods for the 2017 Election.
159. As stated in the New Vistas Letter, the Defendants intend to conduct the 2017 election in direct violation of the PREDFDA.
160. As stated in the New Vistas Letter, the Defendants intend to conduct the 2017 election in direct violation of By-Laws due to the number of candidates.
161. The Defendants have failed to advise unit owners of any account balances and if they are or will be considered delinquent and therefore not in "Good Standing" to vote.
162. The Defendants intend to allow Thomas Scannapieco to remain on the Board and occupy the fifth Board seat, which is not listed for being open for election in 2017.
163. Keith Silverman has informed unit owners that New Vistas intends to immediately remove the ballots from the meeting hall and conduct the tabulation outside of the view of the unit owners or judges.
164. New Vistas, as clearly evidenced above, is not a neutral third-party.
165. New Vistas has a direct and clear financial interest in ensuring that Scannapieco remains in control of the Board and Association.



166. The New Jersey Nonprofit Corporations Act, N.J.S.A 5A:1-1, et seq. (the “Nonprofit Act”) governs the Association. The Nonprofit Act requires the Association to “keep books and records of account and minutes of the proceedings of its members and Board and executive committee if any....” N.J.S.A 15A:5-24(a).
167. The Nonprofit Act provides that the records containing names and addresses of members and the dates they became members are required to be available for inspection by the unit owners. N.J.S.A 15A:5-24(b).
168. As provided above, the By-Laws specifically calls for the maintenance of the Contact List. The Contact List is a record of the Association.
169. Scannapieco has used the Contact List for his own benefit and personal agenda.
170. Despite numerous requests from unit owners and the Plaintiffs, the Defendants have failed to provide a list of all unit owners and failed to provide access to the Contact List.
171. The Defendants have passed Board resolutions intentionally designed to quash and suppress challenges to their improper election schemes.
172. The Defendants’ wrongful conduct has caused the Association and the Plaintiffs damage and, unless enjoined, will continue to cause irreparable harm and damage to the Association and its members.
173. There is no adequate remedy at law to compensate the Plaintiffs for the substantial

and irreparable harm caused by Defendants' actions.

174. The Plaintiffs, by way of this Verified Complaint, hereby demand the immediate removal of Thomas Scannapieco from the Board.
175. The Plaintiffs, by way of the Verified Complaint, hereby demand that pursuant to the By-Laws and the PREDFDA, that the 2017 Election be adjourned at least 35 days to provide time for the Association to send the required notices, proxies and ballots.
176. The Plaintiffs, by way of the Verified Complaint, hereby demand that pursuant to the By-Laws and the PREDFDA, that proper and adequate notices be either hand-delivered or mailed to all unit owners.
177. The Plaintiffs, by way of the Verified Complaint, hereby demand that pursuant to the PREDFDA, corrected proxy forms be either hand-delivered or mailed to all unit owners.
178. The Plaintiffs, by way of the Verified Complaint, hereby demand that the Contact List be provided to them at least 20 days prior to the adjourned election date.
179. The Plaintiffs, by way of the Verified Complaint, hereby demand that the Association engage a true neutral third-party to collect all ballots and proxies, tabulate same and conduct the 2017 Election. With regard to election procedures, the Plaintiffs request that the Court find that pursuant to the governing documents of the Association and other applicable rules and statutes, that an election official

be selected to administer the election at the Association's expense. It is respectfully suggested to the Court that the Court appoint David R. Dahan, Esq., a partner with the firm of Hyland Levin, as the election official. Attorney Dahan has no connection in any way to the Plaintiffs. Attorney Dahan's professional information is attached hereto as Exhibit S.

180. The Defendants' wrongful conduct has caused the Association and the Plaintiffs damage and, unless enjoined, will continue to cause irreparable harm and damage to the Association and its members. The Plaintiffs request that an election be ordered to occur in accordance with the governing documents and any applicable statutes and case law, including but not limited to the Condo Act, the PREDFDA and the Nonprofit Act.

181. Without the intervention of the Court, the Plaintiffs will continue to be harmed.

**WHEREFORE**, Plaintiffs demand judgment against Defendants, granting injunctive relief and specific performance in a summary fashion, as set forth in the Plaintiffs' Order to Show Cause; injunctive relief requiring the removal of Thomas Scannapieco from the Board, injunctive relief directing and scheduling a new election date, injunctive relief appointing an election official, compensatory damages; punitive damages; interest; attorneys' fees and costs of suit; and such other relief as this Court deems just and equitable.

**COUNT THREE**  
**(BREACH OF FIDUCIARY DUTY)**

182. Plaintiffs repeat and reallege each of the allegations made in the foregoing paragraphs as if set forth herein at length.
183. As the Sponsor and Board President, Thomas Scannapieco has a fiduciary duty to the Association and its members. The primary responsibility of the Board Members is to protect the interests of the unit owners.
184. Thomas Scannapieco, Thomas Trofe, the Board of Directors and Board Members 1-10, have breached their fiduciary duties to the Association by:
- a) Failing to adequately fund the reserve funds account as same is required to be maintained pursuant to the Association's governing documents and the Condo Act.
  - b) Purposefully failing to conduct elections as required by law and statute.
  - c) Purposefully engaging in fraudulent activity to maintain control of the Board of Directors.
  - d) Failing to hold open Board meetings with access for the unit owners.
  - e) Failing to vote upon and/or ratify decisions of the Board at open meetings of the owners.
  - f) Failing to maintain and/or produce records of payments to vendors in violation of N.J.S.A 15A:5-24.

- g) Failing to maintain and/or produce records of repairs and maintenance to the Association's common elements. Ibid.
- h) Failing to maintain and/or produce financial statements and records, in violation of N.J.S.A 46:8B-14(g). Ibid.
- i) Failing to repair the Association's common elements.
- j) Improperly and illegally drafting and enforcing resolutions as to election procedures and review.
- k) Improperly hiring a Sponsor controlled and/or owned management company and paying Association funds to this company in excess of market rates.
- l) Using Association employees and staff to clean and maintain the Defendants' units and property without reimbursing the Association.
- m) Using Association common elements for the benefit of the Defendants and to the exclusion of the unit owners.
- n) Failing to repair roof and façade leaks, causing damage to the interiors of several units and the common elements.
- o) Failing to properly budget and adjust common assessments to address the needs of the Association.
- p) Failing to inform the unit owners of the true physical condition of the building and common elements.
- q) Providing false information related to account balances of various units and/or

failing to maintain proper financial records.

- r) Self-dealing by using only Scannapieco-related companies to provide maintenance, repair and management services.
- s) Failing to obtain competitive bids for work done to the Association's common elements.
- t) Failing to enforce the ninety (90) day rental restriction set forth in the Master Deed.

185. The Defendants' wrongful conduct has caused the Plaintiffs and the Association damage and, unless enjoined, will continue to cause irreparable harm and damage to the Plaintiffs and Association.

186. Given the Defendants' actions, which are in direct conflict with their fiduciary duties to the Association and its members, Thomas Scannapieco and Thomas Trofe should be prohibited from sitting on the Board.

187. The Plaintiffs have been also been financially harmed and will be required to expend thousands of dollars in future assessments to address the improper actions of the Defendants.

**WHEREFORE**, Plaintiffs demand judgment against Defendants, granting injunctive relief as set forth in the Association's Order to Show Cause; injunctive relief requiring the removal of Thomas Scannapieco from the Board, injunctive relief preventing Thomas Trofe from serving on the Board, compensatory damages; punitive damages; interest; attorneys' fees

and costs of suit; and such other relief as this Court deems just and equitable.

**COUNT FOUR**  
**(INVALIDATION OF ASSOCIATION ACTIONS)**

188. The Plaintiffs repeat and reallege each of the allegations made in the foregoing Paragraphs as if set forth herein at length.
189. The Defendants have created and promulgated amendments, resolutions and rules without following proper procedures provided by the governing documents and the applicable law.
190. The Defendants have failed to conduct proper votes of the Board at open meetings or of the proper percentage of the voting members of the Association in order to effectuate these rules.
191. Further, the Board as comprised was illegal and improper, and thus any actions of the Board are null and void as a matter of law.
192. Specifically, but not by way of limitation, the Defendants promulgated the Election Resolution in violation of the Association's governing documents and the Condo Act.
193. Specifically, but not by way of limitation, the Defendants have entered into a contract with New Vistas to provide management and other undisclosed services.
194. Specifically, but not by way of limitation, the Defendants have entered into lease

agreements wherein the Association is required to pay rental monies to Scannapieco.

195. These acts are in contravention of the Association's governing documents, the Nonprofit Act and the Cond Act and are thus void as a matter of law.

196. The Plaintiffs request that the Court find that the improper acts of the Defendants, including all improper amendments, resolutions, rules, contracts and leases promulgated by the Defendants, are invalid and void as a matter of law.

**WHEREFORE**, the Plainiffs demand judgment against Defendants, granting injunctive relief as set forth in Plaintiffs' Order to Show Cause; compensatory damages; punitive damages; interest; attorneys' fees and costs of suit; and such other relief as this Court deems just and equitable.

**COUNT FIVE**  
**(SHAREHOLDER DERIVATIVE CLAIMS)**

197. The Plaintiffs repeat and reallege each of the allegations made in the foregoing Paragraphs as if set forth herein at length.

198. Pursuant to R. 4:32-3, N.J.S.A 15A:3-5 and other applicable statutes and case law, the Plaintiffs bring claims on behalf of the Association because the Association refuses to enforce its own rules and rights.

199. The Plaintiffs to this Verified Complaint are and were owners in the Association



at the time of the transactions complained of herein.

200. The Plaintiffs have attempted to secure from the Defendants the production of certain documents, the holding of proper and regular elections, the holding of required open meetings of the unit owners, the production of certain financial records, and the proper hiring and vetting of contractors and other vendors hired by the Association, but to no avail.

201. As such, the Plaintiff shareholders in the Association seek an Order compelling the Defendants to comply with the governing documents of the Association and forcing the Association as a corporate entity to comply with the law, including holding a proper election for the Board of Directors seats, removal of Thomas Scannapieco from the Board, and producing various documents.

**WHEREFORE**, the Plaintiffs demand judgment against Defendants, granting injunctive relief as set forth in Plaintiffs' Order to Show Cause; compensatory damages; punitive damages; interest; attorneys' fees, indemnification, costs of suit; and such other relief as this Court deems just and equitable.

ANSELL GRIMM & AARON PC  
Attorneys for Plaintiffs

By:   
RICHARD B. LINDERMAN, ESQUIRE

Dated: November 16, 2017

**CERTIFICATION**

Pursuant to R. 4:5-1(b)(2), it is hereby stated that to the best of my knowledge and belief the matter in controversy is the subject of no action pending in any other Court or of a pending arbitration proceeding. To the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading and the previous pleadings, if any, at the present time we know of no other parties that should be joined in the within action.

ANSELL GRIMM & AARON PC  
Attorneys for Plaintiffs

By:   
RICHARD B. LINDERMAN, ESQUIRE

Dated: November 16, 2017

**JURY DEMAND**

The Plaintiffs Make Demand for Trial By Jury on Non –Injunctive Causes of Action.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:5-1(c) , Richard B. Linderman, Esquire is hereby designated as trial counsel for the above-captioned matter.

ANSELL GRIMM & AARON PC  
Attorneys for Plaintiffs

By:

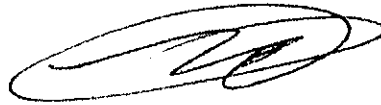
  
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RICHARD B. LINDERMAN, ESQUIRE

Dated: November 16, 2017

VERIFICATION

I, Mark W. Eichhorn, of full age, hereby state:

1. I am a Plaintiff in this action and the owner of a residential condominium unit in the Bella Condominium Association, Inc.
2. I make this verification based upon my personal knowledge of the facts and circumstances stated herein.
3. I have read the Complaint and verify that all statements made therein are true.
4. I am aware that if any statement made herein is willfully false, I am subject to punishment.



11/16/17

MARK W. EICHHORN

Dated: