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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2022-001587

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315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, ...Respondents/Appellants,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, ... Appellants/Respondents.

RECORD ON APPEAL
VOLUME I (Pages 1-489)

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS CASE NO.: 2022-CP-07-00632
315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, v. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Defendants.	**ORDER**

This matter came before the Court on July 20, 2022, for a hearing on multiple motions, including Plaintiffs' Motion to Stay Arbitration, Defendants' Motion to Compel

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Arbitration, Defendants' Motion to Dismiss pursuant to Rule 12(b)(8), Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as Counsel, and Plaintiffs' Motion for Partial Summary Judgment. The Court heard arguments and considered extensive briefing from the parties. Upon thorough consideration of the evidence and arguments of counsel, for the reasons set forth herein and in the materials on file with the Court and argued during the hearing, the Court rules as follows:

- Plaintiffs' Motion to Stay Arbitration and to Invalidate Purported Arbitration Clause is GRANTED.
- Defendants' Motion to Compel Arbitration is DENIED.
- Defendants' Motion to Dismiss is DENIED.
- Plaintiffs' Motion for Partial Summary Judgment is not ripe for determination at this time.
- Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as counsel is not ripe for determination at this time.

BACKGROUND FACTS

This case arises out of the development of real estate in Beaufort County, South Carolina in a community called Palmetto Bluff. The facts set forth herein are taken from the Complaint or constitute contentions of the parties. Because the motions currently before the Court present questions of law, the Court is not making findings of fact in this Order. Plaintiffs are owners of residential property within the Palmetto Bluff development. Plaintiffs assert individual, derivative, and class claims relating to the

development of Palmetto Bluff. Defendants include the developer and various entities engaged in the development, management, and sale of real property within Palmetto Bluff, as well as in commercial operations relating to the development and the community.

In the course of developing Palmetto Bluff, the developer subjected the residential property to certain covenants, restrictions, and governing documents for the community ("Governing Documents"). Plaintiffs contend that among the Governing Documents, the Community Charter is hierarchically superior, with all other community documents being subservient to it.

Plaintiffs argue the Governing Documents purport to impose an automatic, mandatory obligation requiring residential property owners to join a for-profit entity, the Palmetto Bluff Club. According to the Governing Documents, "[b]y acceptance of a deed, each Owner shall automatically become a member of the Palmetto Bluff Club and shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference." Plaintiffs allege that at some real estate closings for properties at Palmetto Bluff—or after the closing is done—the Club interjects "Membership Agreements" pertaining to the "automatic" Club membership. Defendants deny this. According to Defendants, these agreements are "mandatory" upon "acceptance of a deed"; the Club states that "all persons must mail or deliver to the Membership Office a fully completed and signed Membership Agreement."

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The Defendants have never recorded a copy of the "Palmetto Bluff Club Documents" with the Register of Deeds for Beaufort County. Defendants maintain that they can unilaterally change the Palmetto Bluff Club Documents in their "sole and absolute discretion." Plaintiffs contend the Palmetto Bluff Club Documents were changed multiple times between the years 2017–2021 to add (and to subsequently alter) an arbitration provision. By its terms, Defendants acknowledge the arbitration provision applies "only to members who acquire their membership on or after June 19, 2017."

Meanwhile, the Community Charter contains an entire chapter dedicated to the resolution of disputes within the community. The Community Charter's dispute resolution provisions require pre-suit mediation and other steps, but Plaintiffs argue the Charter expressly permits and contemplates civil litigation. Plaintiffs assert the Community Charter's dispute resolution provisions conflict with the purported arbitration provision within the Palmetto Bluff Club Documents. The Palmetto Bluff Club Documents are expressly designated as being subservient to the Community Charter. In the event of a conflict, the Governing Documents state that the Community Charter controls. In their motions and memoranda, Plaintiffs argue a conflict exists between the Community Charter and the Palmetto Bluff Documents regarding dispute resolution.

The arbitration provision asserted by Defendants is contained within certain Palmetto Bluff Club Documents—including a "Membership Agreement"—which pertain to only one defendant: Palmetto Bluff Club, LLC (the "Club"). Plaintiffs believe the majority of the Plaintiffs did not sign a membership agreement with the Club containing

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an arbitration provision. Defendant Club produced "Membership Agreements," several of which were incomplete, signed by only seven (7) of the Plaintiffs. Defendants did not produce any evidence to support a veil-piercing theory as to corporate plaintiffs. Aside from the few Club membership agreements the Club asserted, Defendants did not produce or provide evidence of any agreement to arbitrate by any plaintiff with any other defendant. Defendants did present, however, numerous legal arguments as to why the LLC Plaintiffs should be bound by the agreements signed by the individual members of each corporate plaintiff.

Plaintiffs contend the arbitration clause asserted by the Defendants contains numerous unfair and one-sided provisions, as discussed below. Plaintiffs have argued the arbitration clause is buried within hundreds of pages of covenants, restrictions, easements, rules, and guidelines. Plaintiffs contend because Defendants have never recorded it, potential purchasers may have no notice of its existence. Plaintiffs further argue that the arbitration clause is ostensibly mandatory and "automatic" on acceptance of a deed; it seeks to eliminate statutory damages; it purports to unlawfully abridge time limitation periods on claims; it has an alleged capacity for unilateral amendment by the Club. Finally, Plaintiffs contend the Defendants—who regularly pursue disputes outside of arbitration—believe they can ignore the provision when it suits them, while enforcing it against residential owners.

Plaintiffs have a dispute with Defendants, as further set forth in their Complaint. After undergoing the mediation process set forth in the Community Charter, the

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Plaintiffs filed this lawsuit in the Beaufort County Court of Common Pleas. Plaintiffs deny the existence of agreements to arbitrate.

Several days after the initiation of this civil action, to preserve their rights under the 60-day limitations period asserted by Defendants, some of the plaintiffs contacted the American Arbitration Association, denying its jurisdiction but providing notice of the claims made in the lawsuit "for the purpose of preserving and not waiving . . . claims that may survive after the conclusion of [this civil action]." Defendants later filed demands in arbitration against all of the Plaintiffs. An arbitration is therefore currently pending between the parties before the American Arbitration Association, AAA Case No. 01-22-0001-5722. That arbitration is STAYED by this Order.

PLAINTIFFS' MOTION TO STAY ARBITRATION AND TO INVALIDATE PURPORTED ARBITRATION CLAUSE
AND
DEFENDANTS' MOTION TO COMPEL ARBITRATION

This case involves the development of real estate in Beaufort County, South Carolina. The development of real property does not involve interstate commerce, and therefore the South Carolina Uniform Arbitration Act ("SCUAA") applies. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012) (holding Federal Arbitration Act did not apply because "the development of real estate is an inherently intrastate transaction."). Plaintiffs have alleged the Community Charter, the Palmetto Bluff documents, and the Deeds allow for short-term rentals, and Defendants' acts interfere with Plaintiffs' short-term rental of their properties. See Complaint, pp. 7, 8, 14-18, and ¶¶ 49, 50, 129, 130, 132, 141, 145, 146, 147, 165, 179, 181, 191-194, and 198. Defendants

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argue that the rental of real property involves interstate commerce. See, e.g., *Russell v. US*, 471 US 858, 862 (1985) ("The rental of real estate is unquestionably such an activity. We need not rely on the connection between the market for residential units and 'the interstate movement of people,' to recognize that the local rental of an apartment unit is merely an element of a much broader commercial market in rental properties. The congressional power to regulate the class of activities that constitute the rental market for real estate includes the power to regulate individual activity within that class.")

The SCUAA provides that a "court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate." S.C. Code § 15-48-20. Moreover, a written agreement to arbitrate is invalid and unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code § 15-48-10(a). "Notice that a contract is subject to arbitration . . . shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." *Id*.

South Carolina law requires that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place." *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 373 S.C. 14 (2007); *see also Housing Authority v. Cornerstone Housing*, 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003); *Hooters of America v. Phillips*, 39 F. Supp. 2d 582, 609 (D.S.C. 1998) (holding issues of "substantive arbitrability" are properly before the trial court and these issues are whether "a valid arbitration agreement exists between the

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parties and . . . [whether] the specific dispute falls within the substantive scope of the agreement") (*quoting Glass v. Kidder Peabody & Co.*, 114 F.3d 446, 453 (4th Cir. 1997)).

The construction of a clear and unambiguous contract is a matter of law for the court. *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014). Similarly, "the construction of a clear and unambiguous deed is a question of law for the court." *S.C. Dep't. of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required, and the contract's language determines the instrument's force and effect." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013) (internal citations omitted). Likewise, "unconscionability raises a question of law." *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013). Courts in South Carolina do not enforce unconscionable contracts, nor those that violate public policy. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993).

I. There is no agreement to arbitrate as between numerous parties.

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110 (2001). Arbitration must be "predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019). "[A] presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate. . . ." *Id.* at 337 (emphasis in original; internal citations omitted). Here, there appears to be no agreement to arbitrate among the vast majority of the parties

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to this litigation. This Court cannot enforce contracts that do not exist, and nor will it require parties to surrender access to the courts when they have never agreed to do so.

There are twenty-one (21) Plaintiffs in this action, and twelve (12) Defendants. Only one Defendant (the Club) produced any alleged agreements to arbitrate, and those alleged agreements were signed by only seven (7) of the Plaintiffs.

A. No Agreement to Arbitrate Whatsoever Exists as to Fifteen (15) Plaintiffs.

As an initial matter, fifteen (15) of the Plaintiffs have never signed any agreement to arbitrate any dispute with any of the Defendants, whatsoever. Although they appear to be limited liability companies formed by the signatories to one or more of the agreements to arbitrate, those Plaintiffs are: (1) 315 Corley CW, LLC, (2) Bridge Charleston Investments B, LLC, (3) Bridge Charleston Investments C, LLC, (4) Bridge Charleston Investments E, LLC, (5) Bridge Charleston Investments H, LLC, (6) 368 Mount Pelia, LLC, (7) Sebrina Leigh-Jones, (8) Live Oak Assets, LLC, (9) MKM 22 West, LLC, (10) One Rumford Lane, LLC, (11) Salt Works, LLC, (12) TTJR, LLC, (13) Jennifer Albero, (14) Geoffrey J. Block, and (15) Bosler-Hart Trust. In the absence of an agreement to arbitrate, those fifteen Plaintiffs cannot be deemed to have surrendered their fundamental right to access the courts, nor can they be required to arbitrate their disputes with any Defendant.[1]

[1] Defendants' primary case on this point is *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (S.C. App. 2012). *Pearson* involved significantly different facts and circumstances than here, including that (1) essentially three parties were involved in *Pearson*—a doctor, a hospital system, and a medical placement company, and (2) the dispute involved the doctor's South Carolina Payment of Wages Act and other claims against the other two parties after he was fired by them. *Pearson*'s very different circumstances cannot be compared with Defendants' attempt in this case to force numerous nonsignatory litigants—who never signed arbitration agreements with each other—into an arbitration.

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Despite the lack of agreements to arbitrate, each Defendant has made demands in arbitration against each Plaintiff, within AAA Case No. 01-22-0001-5722.

AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands made against the fifteen Plaintiffs for whom no arbitration agreement exists whatsoever. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

B. No Agreement to Arbitrate Exists between Plaintiffs and Eleven (11) Defendants.

Defendants have not produced any contract in which any Plaintiff has agreed to arbitrate any dispute with the following eleven Defendants: (1) Palmetto Bluff Development, LLC, (2) Palmetto Bluff Real Estate Company, LLC, (3) PBLH, LLC, (4) Montage Palmetto Bluff, LLC, (5) Palmetto Bluff Preservation Trust, Inc., (6) Palmetto Bluff Preservation Trust Board of Stewards, (7) Jordan Phillips, (8) Mark Polites, (9) Gray Ferguson, (10) Henry Armistead, or (11) South Street Partners LLC. Although Defendants argued numerous grounds for why these Defendants are covered by the arbitration agreement as non-signatory beneficiaries, they are not signatories themselves.

Despite the lack of agreements to arbitrate, those eleven Defendants have brought demands in arbitration against each Plaintiff, within AAA Case No. 01-22-0001-5722.

Because those eleven Defendants have failed to demonstrate an agreement to arbitrate with any Plaintiff, **AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands against Plaintiffs made by those eleven Defendants.** S.C. Code § 15-48-20(b)

("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

II. The Club's arbitration clause is invalid, unlawful, and unenforceable.

Defendant Club claims an arbitration agreement exists between itself and seven (7) of the Plaintiffs.[2] The Court finds that those agreements are invalid, for all or any one of the following reasons:

A. Plaintiff the Bosler-Hart Trust is not bound.

For Bosler and Hart, the named plaintiff in this lawsuit is the Bosler-Hart Trust, which has never signed an arbitration agreement and therefore is not bound to arbitration. Instead, the documents produced by the Club have signatures of Bosler and Hart individually and personally, as to their personal membership in the Club, which is legally different from the real property dispute involved in this litigation and not applicable here. Moreover, the Court finds that Defendants have failed to produce evidence or make arguments sufficient for this Court to hold the Trust responsible for the individual acts of its trustees.

AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands against the Bosler-Hart Trust, for which no agreement to arbitrate exists. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

[2] The Club produced four purported arbitration agreements signed by the following Plaintiffs: (1) Jeffrey Kimball and Deborah Kimball, (2) Chris Leigh-Jones, (3) Matthew N. Lynch and Barbara A. Lynch, and (4) Anne Bosler and Dylan Hart.

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B. The arbitration provision is eclipsed by the Community Charter, which allows filing "in any court."

Plaintiffs argue the Club's arbitration provision is within "low-level community documents" called the "Palmetto Bluff Club Documents." The alleged provision is superseded by a superior document, the Community Charter for Palmetto Bluff, which has its own dispute resolution provisions specifically allowing residential owners to file suit in court. The Community Charter's dispute resolution procedures control over those in the Palmetto Bluff Club Documents.

The Community Charter states it "is intended to serve as a framework for community governance" at Palmetto Bluff. The Charter has a table identifying for homeowners the various "Governing Documents" within the Palmetto Bluff community:

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TABLE 1.1

GOVERNING DOCUMENTS	
Community Charter: (recorded or to be recorded)	this Community Charter for Palmetto Bluff, which creates obligations that are binding upon the Trust and all present and future Owners of property in Palmetto Bluff
Supplement: (to be recorded)	a recorded Supplement to this Charter, which may submit Additional Property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Neighborhoods as described in Chapter 4 or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Palmetto Bluff Preservation Trust, Inc., as they may be amended, which establish the Trust as a nonprofit corporation under South Carolina law
By-Laws: (attached as **Exhibit "D"**)	the By-Laws of Palmetto Bluff Preservation Trust, Inc. adopted by its Board of Stewards, as they may be amended, which govern the Trust's internal affairs, such as voting, elections and meetings
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 10, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Rules: (initial set attached as **Exhibit "E"**)	the rules of the Trust adopted pursuant to Chapter 11, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Trust activities and to regulate the operation and use of property which the Trust owns or controls
Palmetto Bluff Club Documents: (Palmetto Bluff Club Owner adopts)	the Membership Plan and related documents, as amended from time to time, which obligate all present and future Owners to be members of the Palmetto Bluff Club

Listed last are the "Palmetto Bluff Club Documents," which by definition include the "Membership Plan" and "Membership Agreement" which contain the arbitration clause asserted by the Defendants. Plaintiffs contend the Community Charter controls among the Governing Documents, and over the lower-level Membership Plan:

> 1.3 Conflicts. If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control. **If there are conflicts between or among any of the Governing Documents, then the Charter**, the Articles, and the By-Laws (in that order) **shall control**.
> . . .

(emphasis added). The Membership Plan is identified as one of the Governing Documents.

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The Community Charter has a dispute resolution provision which controls over that contained within the Club documents. The Charter's provision requires mediation before a lawsuit may be filed in court, but after that the Charter explicitly allows a party to "to file suit in any court":

> Accordingly, each Bound Party agrees not **to file suit in any court** with respect to a Claim described in subsection (b), **unless and until** it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 [non-binding mediation] in a good faith effort to resolve such Claim. . . .

Community Charter p. 52 § 18.1(a) (emphasis added). Here, parties mediated the dispute in conformance with this provision. As such, the Community Charter allows filing "in any court."

By their plain and clear terms, the Charter's provisions allowing disputes to be resolved "in any court" take precedence over the conflicting arbitration provision—which Plaintiffs claim was belatedly and unilaterally inserted into "low-level governing documents". Under the unambiguous language of the Charter (particularly its "Conflicts" provision), the arbitration clause does not control Plaintiffs in their resolution of disputes with Defendants. Instead, Plaintiffs are expressly authorized to file suit "in any court," and Defendants cannot compel arbitration.

AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

C. The purported arbitration clause excludes members before June 19, 2017.

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By its own terms, the Club's purported arbitration clause does not apply to members who bought before June 19, 2017:

> This "Arbitration/Mediation" provision shall apply only to members who acquire their membership on or after June 19, 2017.

This language specifically excludes Plaintiffs Bridge Charleston Investments B LLC ("Bridge B"), Geoffrey J. Block, and Jennifer Albero from its scope. Bridge B acquired its Club membership in 2015; Jennifer Albero acquired her membership on June 5, 2017; and Geoffrey J. Block acquired his membership in 2016—all before June 19, 2017. As such, the clear language of the Club's clause excludes them from mandatory arbitration.

AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate, particularly as to Bridge B, Geoffrey Block, Jennifer Albero, and any Plaintiff who acquired their membership before June 19, 2017. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.")

D. The purported arbitration clause is unenforceable and invalid on its face.

As to the alleged arbitration agreements which Defendants have put forth, there are multiple reasons that this Court grants Plaintiffs' Motion to Stay and denies the Defendants' Motion to Compel arbitration. Each reason discussed below is independent grounds for this Court's decision:

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1. Defendants are outside of the limitations period in their own "agreement."

First, Defendants have waived arbitration of their claims under the terms of the very agreements which Defendants seek to enforce against Plaintiffs. The asserted agreement requires that a

> party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice **shall** be given **no later than sixty (60) calendar days after the conclusion of the mediation** . . . of the controversy, dispute, or claim which is the subject of the notice.

If this provision were valid, Defendants unequivocally breached its self-selected sixty-day notice and filing requirement, which is made mandatory by their use of the word "shall." The referenced mediation concluded on February 14, 2022. Therefore, the sixty-day calendar deadline expired on April 14, 2022. Defendants did not file a demand with the American Arbitration Association until May 23, 2022, ninety-eight (98) days after the conclusion of the mediation. They did not file this Motion to Compel until May 24, 2022. As such—if valid—under the mandatory requirements of the provisions which Defendant Club drafted and now seeks to enforce, the Defendants have waived arbitration. *See Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 308, 698 S.E.2d 773, 778 (2010) ("[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement."). This waiver does apply to Defendants' arguments that Plaintiffs' claims should be arbitrated. The Court addresses this argument elsewhere in this Order.

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2. The contract fails the conspicuous notice requirement of the South Carolina Uniform Arbitration Act.

The SCUAA is clear: a contract is not subject to arbitration when it fails to give proper notice—on its very first page, in UNDERLINED CAPITAL LETTERS—that it is subject to arbitration. S.C. Code Ann. § 15-48-10(a) (2005). The alleged arbitration provision that Defendants assert fails this basic test and is therefore unenforceable as a matter of law.

This case involves real estate in Beaufort County, South Carolina, and it challenges the validity and enforceability of covenants that Defendants claim run with the land. As a threshold matter, the law is clear that the subject transaction does not involve interstate commerce, and therefore the South Carolina Uniform Arbitration Act ("SCUAA") applies. *Bradley*, 398 S.C. at 447.

The SCUAA requires conspicuous notice of a requirement to arbitrate, rendering invalid all arbitration provisions which fail to give statutorily-sufficient notice. The Act mandates: "[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." S.C. Code Ann. § 15-48-10(a) (emphasis added). Defendants have produced Membership Agreements with this Notice on the first page, but Plaintiffs contend this is insufficient under the Act.

Here, Plaintiffs maintain that the Club documents are buried toward the end of hundreds of pages of fine-print covenants, articles, restrictions, easements, waivers,

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bylaws, policies, procedures, rules, resolutions, and guidelines, all of which are imposed on purchasers as part of the real estate closing process. As discussed above, the "Palmetto Bluff Club Documents" are low-level documents within the community, which are subservient to the Community Charter. According to Defendants, the arbitration provision ostensibly comes into effect, automatically, upon the closing of a home: "I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a 'Community Member' of the Palmetto Bluff Club (the 'Club') and automatically assumed and agreed to be bound by all the terms and conditions of the Membership Plan." An arbitration clause buried within hundreds of pages of real estate closing documents violates the SCUAA's requirement that notice of arbitration must be IN UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE.[3]

As such, the asserted arbitration provision runs afoul of the SCUAA's conspicuous notice requirement, and this Court will not enforce it.

3. The purported agreement to arbitrate is unconscionable and invalid.

Even if the asserted arbitration clause had not been inconspicuous and concealed, the provision would nonetheless be unenforceable under South Carolina law. The alleged arbitration agreement is unconscionable, oppressive, and adhesive: the few Plaintiffs to whom it might apply were deprived of any meaningful choice, and the terms of the contract itself are oppressive and one-sided. The "Palmetto Bluff Club

[3] In addition, the Club's Membership Plan for years did not have the mandatory language, and therefore is unenforceable. The Club later added the language, but too late to purport to bind the previous signatories.

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Documents," in which the arbitration clause is buried, are themselves contracts of adhesion, unconscionable, oppressive, and one-sided. "Arbitration is a matter of contract and controlled by contract law." *Smith*, 742 S.E.2d at 37, 403 S.C. at 10 (citation omitted). As such, arbitration agreements may be stricken "upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code § 15-48-10. Courts in South Carolina do not enforce unconscionable contracts, or those that violate public policy. *Berkebile*, 311 S.C. at 50, 426 S.E.2d at 760.

The test for determining whether an arbitration agreement is unconscionable has two prongs: (1) whether there is an absence of meaningful choice, and (2) whether the terms are oppressive and one-sided. *Smith,* 417 S.C. at 42, 790 S.E.2d at 1 ("In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.").

(a) The Club documents are contracts of adhesion.

As to the first prong, there is no question that there is no meaningful choice here—mere "acceptance of a deed for property within Palmetto Bluff" ostensibly means that a person is "**automatically** assumed and agreed to be bound by all the terms and conditions of the Membership Plan." (emphasis added). The Club's membership agreement is a classic example of a "take-it or leave-it" contract with terms that are not negotiable. *See Smith* at 49-50, 790 S.E.2d at 4. The Court recognizes that modern real estate

developments are filled with mandatory covenants, including covenants that require payments of fees, charges, and assessments.

Notably, the alleged governing documents for the Palmetto Bluff community are many hundreds of pages long. They include a Community Charter which purportedly has been amended and supplemented at least seventy-one (71) times, and a separate recreational covenant which purportedly has been amended and supplemented at least sixty (60) times. While Plaintiffs have produced no evidence these supplements and amendments impact Plaintiffs' claims, the Community Charter purports to incorporate the "Palmetto Bluff Club Documents" (which contain the asserted arbitration "agreement"), and the Club has never recorded a copy of its governing documents (which it states that it can change at any time in its "sole and absolute discretion") with the Register of Deeds for Beaufort County.

The asserted "Membership Agreement" is one part of a vast constellation of purported "terms and conditions" of "membership" in Palmetto Bluff Club. The purported agreement falls under the umbrella of the "Palmetto Bluff Club Membership Plan." Plaintiffs contend that at real estate closings for properties at Palmetto Bluff—or, often, after the closing is done—the Club interjects "Membership Agreements." These agreements are "mandatory;" the Club states that "all persons **must** mail or deliver to the Membership Office a fully completed and signed Membership Agreement." (emphasis added). The agreement ostensibly memorializes something "automatic" that occurs "by acceptance of a deed."

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There is no opportunity whatsoever to negotiate these "automatic" provisions, in addition to the automatic acceptance of other mandatory covenants, conditions, and restrictions incident to ownership of real property at Palmetto Bluff. Elsewhere within the hundreds of pages, this lack of meaningful choice reverberates:

- By acceptance of a deed, each Owner shall ***automatically*** become a member of the Palmetto Bluff Club and shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference." (Charter, Ch. 19, Palmetto Bluff Club) (emphasis added).
- Membership in the Club is ***mandatory*** for all owners of property in the Community. (Waiver Agreement, ¶ 1) (emphasis added).
- By acceptance of a deed, every Owner of a residence . . . shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of this Membership Plan." (Plan, p. i) (emphasis added).
- Prior to or contemporaneous with the acquisition of a homesite or residence, all persons **must** mail or deliver to the Membership Office a fully completed and signed Membership Agreement. (Plan, p. iii) (emphasis added).
- Any Owner of a residence or homesite within Palmetto Bluff **must become a member of the Club**. (Plan, p. 1) (emphasis added).
- By acceptance of a deed, every Owner of a residence . . . shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of this Membership Plan. (Plan, p. 2) (emphasis added).
- Each member agrees to be bound by the terms and conditions of the Membership Documents, **as they may be modified from time to time**. (Plan, p. 2) (emphasis added).

Because these terms are purportedly "automatic" and "mandatory," there is no conceivable potential for bargaining power on the part of those whom the provisions purport to bind.

Because the Club's asserted arbitration "agreement" is a classic contract of adhesion under South Carolina law, this Court finds it to meet the first prong of the test for unconscionable contracts.

(b) Oppressive and one-sided terms

The second prong of the unconscionability analysis is a determination of whether the arbitration agreement contains "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Unconscionable, oppressive terms include lack of mutuality, violation of public policy, and limitation on statutory remedies. *Simpson*, 644 S.E.2d at 663, 373 S.C. at 14. Here, the arbitration agreement asserted by the Club strips members of statutory remedies, purports to alter the statute of limitations, and it is capable of unilateral amendment in the Club's "sole and absolute discretion." Moreover, because a person is purportedly "automatically" bound by onerous, oppressive, one-sided terms within the hundreds of pages of documents, it is reasonable to conclude that no fair or honest person would accept them—if they even knew they existed.

Significantly, the evidence demonstrates that the Club frequently pursues collection of dues and charges from its members outside of arbitration, including by filing liens against its members' real property and pursuing foreclosure actions against members and their property. There is no evidence that a property owner ever demanded these collection actions be arbitrated, however.

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This Court finds that the asserted arbitration clause is oppressive, unreasonable, unfair, one-sided, and unconscionable as a matter of law, including for the following reasons:

> First, the clause improperly limits damages when it states, for example:
>
> Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only.

This provision is similar to terms which led our Supreme Court in *Simpson* to strike down that arbitration agreement. *See* 644 S.E.2d at 670-672. Like this one, the arbitration clause in *Simpson* prohibited the "award [of] punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect)." *Id*. at 670. The *Simpson* Court found that by purporting to prohibit certain damages, the clause violated the statutory law of the South Carolina Unfair Trade Practice Act ("SCUTPA"), which "requires a court to award treble damages for violation of the statute." *Id.*

Here, Plaintiffs have asserted a cause of action against Defendants pursuant to SCUTPA. The *Simpson* Court found that "this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA" claims. *Id*. Moreover, the Supreme Court included strong language against such terms in an adhesion contract:

> Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest.

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Id. at 671. The Club's attempt to strip its members of statutory remedies within a "mandatory" and "automatic" "agreement" renders the provision unconscionable.[4]

Second, the asserted "arbitration agreement" contains a one-sided provision allowing unilateral amendment—the Club, and only the Club, claims it may change the deal whenever it likes:

> The Company reserves the right **in its sole and absolute discretion**, from time to time, to modify the Membership Plan and Rules and Regulations [of which the purported arbitration clause is a part] . . . and to make any other changes to the Membership Documents . . . .

(emphasis added). As discussed above, this vast capacity for alteration of the arbitration clause is unreasonable and oppressive, and it demonstrates a lack of mutuality that is unfair and unreasonable. The presence of a term permitting unfettered change to the arbitration clause by one side renders the clause unconscionable and unenforceable.

Third, the asserted arbitration clause purports to impose a 60-day statute of limitations period, which violates South Carolina law:

> The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given **no later than sixty (60) calendar days after the conclusion of the mediation** . . . of the controversy, dispute, or claim which is the subject of the notice.

(emphasis added). Although the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days, this language provides

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[4] In *Simpson*, the contract contained a severability clause, which the Court nonetheless declined to enforce due to the pervasive unconscionability of the entire arbitration agreement in that case. Importantly, the arbitration agreements asserted by Defendants do not contain a severability clause. Thus, as a matter of law, the entire agreement is invalid and unenforceable.

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further grounds for this Court's decision. *See* S.C. Code § 15-3-140 ("Contract provision shortening statutory period."; "No clause, provision or agreement in any contract of whatsoever nature, verbal or written, whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, for similar causes of action, shall bar such action . . ."). The presence of such an oppressive provision within an adhesion contract renders the alleged arbitration clause unconscionable. *See Simpson*, 644 S.E.2d at 670-672 ("The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.").

Fourth, the asserted arbitration clause, which is already unlawful, oppressive, and unfair as discussed above, may apparently be ignored at the choice of the Club. This remarkable is shown in the public record, where the Club has filed many liens with the Beaufort County Register of Deeds, and then sought to foreclose on them in the Beaufort County Court of Common Pleas. (Declaration of Recreational Covenant for Palmetto Bluff, § 3.3, Lien for Membership Fees) (Club "may enforce such lien . . . by suit, judgment, and foreclosure."). Such one-sidedness is unconscionable, and it would be deemed objectively unfair and oppressive by a reasonable person.

Fifth, the purported arbitration clause improperly purports to divest Plaintiffs of their statutory right to have a court determine legal rights under South Carolina's Declaratory Judgment Act, S.C. Code § 15-30-10 *et seq*. That statute states that "**Courts of record** within their respective jurisdictions **shall have power** to declare rights, status and

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other legal relations . . . ." including "under a deed, will, written contract or other writings constituting a contract . . ." *Id.* §§ 15-33-20, -30 (emphasis added). Here, Plaintiffs seek declaratory judgments on deeds and written contracts. Although this section is a jurisdictional statute, and although Plaintiffs point to no case or statute that prohibits parties agreeing to an arbitrator declaring such rights, the arbitration agreement is unenforceable.

In sum, the purported arbitration clause is unenforceable for the foregoing reasons. Moreover, the Club's asserted arbitration clause does not contain a severability provision, although, as the drafter, the Club certainly could have included one. Therefore, this Court finds that the above unfair and oppressive provisions render the entire arbitration agreement wholly unconscionable, invalid, and unenforceable. *See Simpson,* 644 S.E.2d at 674 (holding, despite a severability provision, that the arbitration agreement was "wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions contained within the entire clause.").

This Court strikes the alleged arbitration clause entirely, denies Defendants' Motion to Compel, and **AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate.** S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

III. No arbitration by non-signatories.

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Without offering proof sufficient to pierce a corporate veil, Defendants argued that certain corporate Plaintiffs should be bound by Club Membership Agreements apparently signed by some of the corporation's members or shareholders. The Court finds that Defendants' arguments lacked adequate evidentiary or factual basis. Moreover, Defendants cite no applicable law for ignoring a company's corporate form in the context of limited club membership agreements, apparently signed personally by some of the corporation's purported shareholders. "It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders . . . ." *Mid-South Mgmt. v. Sherwood Dev.*, 649 S.E.2d 135, 139, 374 S.C. 588 (Ct. App. 2007) (internal citations omitted). An agreement signed by a person individually does not bind a separate company; the agreement must be explicitly signed on behalf of the company. Here, none of the Plaintiffs which are companies entered into a membership agreement or plan with the Club, and none can be bound by the purported arbitration clause. Defendants offer no evidence to pierce the corporate veil. Similarly, if individuals used the Club pool or restaurant at times for their personal enjoyment, that cannot be used as an estoppel or "benefit" argument against the separate, non-member, limited-liability company to force the company into arbitration under an agreement the company never signed. The Court finds that Defendants have failed to offer evidence sufficient to overcome the presumption against arbitration by non-signatories to a written agreement to arbitrate.

IV. Claims in the Complaint are outside the scope of the purported arbitration agreement.

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Even if a valid arbitration clause existed, claims in the Complaint are outside of its scope. A party seeking to compel arbitration must establish that the claims fall within the scope of the agreement. *Wilson*, 426 S.C. at 336, 827 S.E.2d 173. Defendants have failed to do so.

The purported arbitration clause states, in broad terms, that it applies to controversies "relating directly or indirectly to, or arising directly or indirectly from "the Club Membership Plan. The Club is a recreational and social organization, and the Membership Plan "describes the terms, conditions and privileges of membership in the Club." Membership involves use of the pool, restaurants, pottery studio, bowling alley, and fitness facilities, *inter alia*.

Despite the numerous allegations and Claims related to access to the Club, many allegations in the Complaint are not related to the Membership Plan or Agreement. For example:

1. Allegations against non-Club entities are not related to the Membership Plan, which only applies to the relationship between the Club and its member. Allegations in the Complaint against, for example, Defendants South Street Partners, Palmetto Bluff Development, LLC, Palmetto Bluff Preservation Trust, Inc., PBLH, LLC, Montage Palmetto Bluff, LLC, and numerous others are based on those entitles' actions and documents, not on the Membership Plan. *See, e.g.*, Compl. pp. 5–10.

2. Allegations regarding the Community Charter and the Declaration of Recreational Covenant for Palmetto Bluff relate to the terms of those documents themselves, not to the Membership Plan, which is subordinate. *See, e.g.*, *id.* ¶¶ 41–52.

3. Allegations as to the Founder's breach of fiduciary duty are based on South Carolina's law of breach of fiduciary duty, not on the Membership Plan, to which the Founder is not a signatory. *See, e.g.*, *id.* p. 11, ¶¶ 103, 129.20, 129.21.

4. Allegations as to South Street Partners, Palmetto Bluff Development, LLC, and others' unfair and unlawful competition are based on the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 *et seq.*, not on the Membership Plan, to which those parties are not signatories. *See, e.g.*, *id.* ¶¶ 128, 129.7, 129.18, 129.20, 129.21, 129.24, 129.25, 179–184.

5. Allegations as to the Trust and the Board of Stewards' breach of fiduciary duty are based on South Carolina's law of breach of fiduciary duty, not on the Membership Plan, to which those parties are not signatories. *See, e.g.*, *id.* ¶¶ 130, 130.1, 130.2, 130.3, 130.4, 157, 186–189.

6. Allegations that the Club is a homeowners' associations and subject to the South Carolina Homeowners Association Act, S.C. Code § 27-30-110 *et seq.*, are based on that statute, not on the Membership Plan. *See, e.g.*, *id.* ¶¶ 131, 169–177.

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7. Allegations of civil conspiracy against Defendants are based on the common law of South Carolina, not on the Membership Plan. *See, e.g.*, *id.* ¶¶ 197–199.

These are selected examples; the 83-page Complaint contains numerous others. In sum, many of the claims in this lawsuit are not controversies relating to the Membership Plan—which mainly involves members' use of the social club, such as pools, fitness centers, etc.—and therefore are outside of the scope of the purported arbitration clause.

In conclusion, Plaintiffs' Motion to Stay Arbitration and to Invalidate Purported Arbitration Clause is **granted** and Defendants' Motion to Compel Arbitration is **denied**. AAA Case No. 01-22-0001-5722 is stayed and shall not proceed.

DEFENDANTS' MOTION TO DISMISS

Defendants argue that this lawsuit should be dismissed pursuant to Rule 12(b)(8), SCRCP because, they claim, an identical action is pending before the American Arbitration Association ("AAA"). This Court **denies** Defendants' motion. Plaintiffs filed this civil action first, in the Beaufort County Court of Common Pleas. Certain Plaintiffs later made filings with AAA only for the purposes of preserving their rights under (*inter alia*) the ostensible 60-day statute of limitations in the purported arbitration clause, and in doing so repeatedly denied jurisdiction of the AAA. Plaintiffs have reserved and preserved all rights to pursue their claims in court. Only later did Defendants bring demands in arbitration. The arbitration proceeding, which involves different parties and claims, is not identical to this civil action. An arbitration is not an "action" under the

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Rules of Civil Procedure, and a later-filed arbitration proceeding does not fulfill the terms of Rule 12(b)(8), SCRCP.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs moved for partial summary judgment on several declaratory judgment causes of action. Plaintiffs argued, *inter alia,* that summary judgment should be granted on (a) the question of whether the covenants within certain Defendants' documents, requiring Plaintiffs to pay fees to a for-profit endeavor as part of the real estate transfer, violate South Carolina's statutory prohibition against transfer fee covenants; (b) the question of whether the covenants' requirement of mandatory membership in a for-profit Club is unlawful; (c) the question of whether the Club's unrecorded governing documents are unlawful and unconscionable; and (d) the question of whether the for-profit Club is nonetheless subject to the South Carolina Homeowners' Association Act. Defendants asserted that summary judgment would be premature.

This Court finds that the motion is not ripe for determination at this time, and therefore **denies the motion at this time without prejudice to any party**. All parties maintain all claims and defenses regarding this motion, and no party is prejudiced by this ruling. Plaintiffs are free to re-file the motion at a later time.

PLAINTIFFS' MOTION TO DISQUALIFY NEXSEN PRUET, LLC AS COUNSEL FOR DEFENDANTS

Plaintiffs filed a motion to disqualify Nexsen Pruet LLC as counsel for defendants. After reviewing the filed papers, the relevant law, the case file, and the arguments of counsel, the Court determines that this motion is not ripe for determination at this time.

The Court therefore **denies the motion at this time without prejudice to any party**. All parties maintain all claims and defenses regarding this motion, and no party is prejudiced by this ruling. Plaintiffs are free to re-file the motion at a later time.

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Beaufort Common Pleas

Case Caption:	Bridge Charleston Investments B Llc , plaintiff, et al VS Palmetto Bluff Development Llc , defendant, et al
Case Number:	2022CP0700632
Type:	Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS CASE NO.: 2022-CP-07-00632
315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, v. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Defendants.	**AMENDED ORDER**

This matter came before the Court on July 20, 2022, for a hearing on multiple motions, including Plaintiffs' Motion to Stay Arbitration, Defendants' Motion to Compel

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Arbitration, Defendants' Motion to Dismiss pursuant to Rule 12(b)(8), Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as Counsel, and Plaintiffs' Motion for Partial Summary Judgment. The Court heard arguments and considered extensive briefing from the parties. Upon thorough consideration of the evidence and arguments of counsel, for the reasons set forth herein and in the materials on file with the Court and argued during the hearing, the Court rules as follows:

- Plaintiffs' Motion to Stay Arbitration and to Invalidate Purported Arbitration Clause is GRANTED.
- Defendants' Motion to Compel Arbitration is DENIED.
- Defendants' Motion to Dismiss is DENIED.
- Plaintiffs' Motion for Partial Summary Judgment is not ripe for determination at this time.
- Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as counsel is not ripe for determination at this time.

BACKGROUND FACTS

This case arises out of the development of real estate in Beaufort County, South Carolina in a community called Palmetto Bluff. The facts set forth herein are taken from the Complaint or constitute contentions of the parties. Because the motions currently before the Court present questions of law, the Court is not making findings of fact in this Order. Plaintiffs are owners of residential property within the Palmetto Bluff development. Plaintiffs assert individual, derivative, and class claims relating to the

development of Palmetto Bluff. Defendants include the developer and various entities engaged in the development, management, and sale of real property within Palmetto Bluff, as well as in commercial operations relating to the development and the community.

In the course of developing Palmetto Bluff, the developer subjected the residential property to certain covenants, restrictions, and governing documents for the community ("Governing Documents"). Plaintiffs contend that among the Governing Documents, the Community Charter is hierarchically superior, with all other community documents being subservient to it.

Plaintiffs argue the Governing Documents purport to impose an automatic, mandatory obligation requiring residential property owners to join a for-profit entity, the Palmetto Bluff Club. According to the Governing Documents, "[b]y acceptance of a deed, each Owner shall automatically become a member of the Palmetto Bluff Club and shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference." Plaintiffs allege that at some real estate closings for properties at Palmetto Bluff—or after the closing is done—the Club interjects "Membership Agreements" pertaining to the "automatic" Club membership. Defendants deny this. According to Defendants, these agreements are "mandatory" upon "acceptance of a deed"; the Club states that "all persons must mail or deliver to the Membership Office a fully completed and signed Membership Agreement."

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The Defendants have never recorded a copy of the "Palmetto Bluff Club Documents" with the Register of Deeds for Beaufort County. Defendants maintain that they can unilaterally change the Palmetto Bluff Club Documents in their "sole and absolute discretion." Plaintiffs contend the Palmetto Bluff Club Documents were changed multiple times between the years 2017–2021 to add (and to subsequently alter) an arbitration provision. By its terms, Defendants acknowledge the arbitration provision applies "only to members who acquire their membership on or after June 19, 2017."

Meanwhile, the Community Charter contains an entire chapter dedicated to the resolution of disputes within the community. The Community Charter's dispute resolution provisions require pre-suit mediation and other steps, but Plaintiffs argue the Charter expressly permits and contemplates civil litigation. Plaintiffs assert the Community Charter's dispute resolution provisions conflict with the purported arbitration provision within the Palmetto Bluff Club Documents. The Palmetto Bluff Club Documents are expressly designated as being subservient to the Community Charter. In the event of a conflict, the Governing Documents state that the Community Charter controls. In their motions and memoranda, Plaintiffs argue a conflict exists between the Community Charter and the Palmetto Bluff Documents regarding dispute resolution.

The arbitration provision asserted by Defendants is contained within certain Palmetto Bluff Club Documents—including a "Membership Agreement"—which pertain to only one defendant: Palmetto Bluff Club, LLC (the "Club"). Plaintiffs believe the majority of the Plaintiffs did not sign a membership agreement with the Club containing

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an arbitration provision. Defendant Club produced "Membership Agreements," several of which were incomplete, signed by only seven (7) of the Plaintiffs. Defendants did not produce any evidence to support a veil-piercing theory as to corporate plaintiffs. Aside from the few Club membership agreements the Club asserted, Defendants did not produce or provide evidence of any agreement to arbitrate by any plaintiff with any other defendant. Defendants did present, however, numerous legal arguments as to why the LLC Plaintiffs should be bound by the agreements signed by the individual members of each corporate plaintiff.

Plaintiffs contend the arbitration clause asserted by the Defendants contains numerous unfair and one-sided provisions, as discussed below. Plaintiffs have argued the arbitration clause is buried within hundreds of pages of covenants, restrictions, easements, rules, and guidelines. Plaintiffs contend because Defendants have never recorded it, potential purchasers may have no notice of its existence. Plaintiffs further argue that the arbitration clause is ostensibly mandatory and "automatic" on acceptance of a deed; it seeks to eliminate statutory damages; it purports to unlawfully abridge time limitation periods on claims; it has an alleged capacity for unilateral amendment by the Club. Finally, Plaintiffs contend the Defendants—who regularly pursue disputes outside of arbitration—believe they can ignore the provision when it suits them, while enforcing it against residential owners.

Plaintiffs have a dispute with Defendants, as further set forth in their Complaint. After undergoing the mediation process set forth in the Community Charter, the

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Plaintiffs filed this lawsuit in the Beaufort County Court of Common Pleas. Plaintiffs deny the existence of agreements to arbitrate.

Several days after the initiation of this civil action, to preserve their rights under the 60-day limitations period asserted by Defendants, some of the plaintiffs contacted the American Arbitration Association, denying its jurisdiction but providing notice of the claims made in the lawsuit "for the purpose of preserving and not waiving . . . claims that may survive after the conclusion of [this civil action]." Defendants later filed demands in arbitration against all of the Plaintiffs. An arbitration is therefore currently pending between the parties before the American Arbitration Association, AAA Case No. 01-22-0001-5722. That arbitration is STAYED by this Order.

PLAINTIFFS' MOTION TO STAY ARBITRATION AND TO INVALIDATE PURPORTED ARBITRATION CLAUSE
AND
DEFENDANTS' MOTION TO COMPEL ARBITRATION

This case involves the development of real estate in Beaufort County, South Carolina. The development of real property does not involve interstate commerce, and therefore the South Carolina Uniform Arbitration Act ("SCUAA") applies. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012) (holding Federal Arbitration Act did not apply because "the development of real estate is an inherently intrastate transaction."). Plaintiffs have alleged the Community Charter, the Palmetto Bluff documents, and the Deeds allow for short-term rentals, and Defendants' acts interfere with Plaintiffs' short-term rental of their properties. See Complaint, pp. 7, 8, 14-18, and ¶¶ 49, 50, 129, 130, 132, 141, 145, 146, 147, 165, 179, 181, 191-194, and 198. Defendants

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argue that the rental of real property involves interstate commerce. See, e.g., *Russell v. US*, 471 US 858, 862 (1985) ("The rental of real estate is unquestionably such an activity.")

Palmetto Bluff is a high-end real estate development which consists of primary and secondary homes. Unlike an apartment complex, this development was not intended to be used for long term rental properties. The fact that some of the homes within the development are used for short-term rentals does not transform the development into one which involves interstate commerce.

The SCUAA provides that a "court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate." S.C. Code § 15-48-20. Moreover, a written agreement to arbitrate is invalid and unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code § 15-48-10(a). "Notice that a contract is subject to arbitration . . . shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." *Id*.

South Carolina law requires that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place." *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 373 S.C. 14 (2007); *see also Housing Authority v. Cornerstone Housing*, 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003); *Hooters of America v. Phillips*, 39 F. Supp. 2d 582, 609 (D.S.C. 1998) (holding issues of "substantive arbitrability" are properly before the trial court and these issues are whether "a valid arbitration agreement exists between the

parties and . . . [whether] the specific dispute falls within the substantive scope of the agreement") (*quoting Glass v. Kidder Peabody & Co.*, 114 F.3d 446, 453 (4th Cir. 1997)).

The construction of a clear and unambiguous contract is a matter of law for the court. *Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014). Similarly, "the construction of a clear and unambiguous deed is a question of law for the court." *S.C. Dep't. of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required, and the contract's language determines the instrument's force and effect." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013) (internal citations omitted). Likewise, "unconscionability raises a question of law." *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013). Courts in South Carolina do not enforce unconscionable contracts, nor those that violate public policy. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993).

I. There is no agreement to arbitrate as between numerous parties.

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110 (2001). Arbitration must be "predicated on an agreement to arbitrate because parties are waiving their fundamental right to access to the courts." *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019). "[A] presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate. . . ." *Id.* at 337 (emphasis in original; internal citations omitted). Here, there appears to be no agreement to arbitrate among the vast majority of the parties

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to this litigation. This Court cannot enforce contracts that do not exist, and nor will it require parties to surrender access to the courts when they have never agreed to do so.

There are twenty-one (21) Plaintiffs in this action, and twelve (12) Defendants. Only one Defendant (the Club) produced any alleged agreements to arbitrate, and those alleged agreements were signed by only seven (7) of the Plaintiffs.

A. No Agreement to Arbitrate Whatsoever Exists as to Fifteen (15) Plaintiffs.

As an initial matter, fifteen (15) of the Plaintiffs have never signed any agreement to arbitrate any dispute with any of the Defendants, whatsoever. Although they appear to be limited liability companies formed by the signatories to one or more of the agreements to arbitrate, those Plaintiffs are: (1) 315 Corley CW, LLC, (2) Bridge Charleston Investments B, LLC, (3) Bridge Charleston Investments C, LLC, (4) Bridge Charleston Investments E, LLC, (5) Bridge Charleston Investments H, LLC, (6) 368 Mount Pelia, LLC, (7) Sebrina Leigh-Jones, (8) Live Oak Assets, LLC, (9) MKM 22 West, LLC, (10) One Rumford Lane, LLC, (11) Salt Works, LLC, (12) TTJR, LLC, (13) Jennifer Albero, (14) Geoffrey J. Block, and (15) Bosler-Hart Trust. In the absence of an agreement to arbitrate, those fifteen Plaintiffs cannot be deemed to have surrendered their fundamental right to access the courts, nor can they be required to arbitrate their disputes with any Defendant.[1]

[1] Defendants' primary case on this point is *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (S.C. App. 2012). *Pearson* involved significantly different facts and circumstances than here, including that (1) essentially three parties were involved in *Pearson*—a doctor, a hospital system, and a medical placement company, and (2) the dispute involved the doctor's South Carolina Payment of Wages Act and other claims against the other two parties after he was fired by them. *Pearson*'s very different circumstances cannot be compared with Defendants' attempt in this case to force numerous nonsignatory litigants—who never signed arbitration agreements with each other—into an arbitration.

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Despite the lack of agreements to arbitrate, each Defendant has made demands in arbitration against each Plaintiff, within AAA Case No. 01-22-0001-5722.

AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands made against the fifteen Plaintiffs for whom no arbitration agreement exists whatsoever. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

B. No Agreement to Arbitrate Exists between Plaintiffs and Eleven (11) Defendants.

Defendants have not produced any contract in which any Plaintiff has agreed to arbitrate any dispute with the following eleven Defendants: (1) Palmetto Bluff Development, LLC, (2) Palmetto Bluff Real Estate Company, LLC, (3) PBLH, LLC, (4) Montage Palmetto Bluff, LLC, (5) Palmetto Bluff Preservation Trust, Inc., (6) Palmetto Bluff Preservation Trust Board of Stewards, (7) Jordan Phillips, (8) Mark Polites, (9) Gray Ferguson, (10) Henry Armistead, or (11) South Street Partners LLC. Although Defendants argued numerous grounds for why these Defendants are covered by the arbitration agreement as non-signatory beneficiaries, they are not signatories themselves.

Despite the lack of agreements to arbitrate, those eleven Defendants have brought demands in arbitration against each Plaintiff, within AAA Case No. 01-22-0001-5722.

Because those eleven Defendants have failed to demonstrate an agreement to arbitrate with any Plaintiff, **AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands against Plaintiffs made by those eleven Defendants.** S.C. Code § 15-48-20(b)

("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

II. The Club's arbitration clause is invalid, unlawful, and unenforceable.

Defendant Club claims an arbitration agreement exists between itself and seven (7) of the Plaintiffs.[2] The Court finds that those agreements are invalid, for all or any one of the following reasons:

A. Plaintiff the Bosler-Hart Trust is not bound.

For Bosler and Hart, the named plaintiff in this lawsuit is the Bosler-Hart Trust, which has never signed an arbitration agreement and therefore is not bound to arbitration. Instead, the documents produced by the Club have signatures of Bosler and Hart individually and personally, as to their personal membership in the Club, which is legally different from the real property dispute involved in this litigation and not applicable here. Moreover, the Court finds that Defendants have failed to produce evidence or make arguments sufficient for this Court to hold the Trust responsible for the individual acts of its trustees.

AAA Case No. 01-22-0001-5722 is hereby STAYED as to the demands against the Bosler-Hart Trust, for which no agreement to arbitrate exists. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

[2] The Club produced four purported arbitration agreements signed by the following Plaintiffs: (1) Jeffrey Kimball and Deborah Kimball, (2) Chris Leigh-Jones, (3) Matthew N. Lynch and Barbara A. Lynch, and (4) Anne Bosler and Dylan Hart.

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B. The arbitration provision is eclipsed by the Community Charter, which allows filing "in any court."

Plaintiffs argue the Club's arbitration provision is within "low-level community documents" called the "Palmetto Bluff Club Documents." The alleged provision is superseded by a superior document, the Community Charter for Palmetto Bluff, which has its own dispute resolution provisions specifically allowing residential owners to file suit in court. The Community Charter's dispute resolution procedures control over those in the Palmetto Bluff Club Documents.

The Community Charter states it "is intended to serve as a framework for community governance" at Palmetto Bluff. The Charter has a table identifying for homeowners the various "Governing Documents" within the Palmetto Bluff community:

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TABLE 1.1

GOVERNING DOCUMENTS	
Community Charter: (recorded or to be recorded)	this Community Charter for Palmetto Bluff, which creates obligations that are binding upon the Trust and all present and future Owners of property in Palmetto Bluff
Supplement: (to be recorded)	a recorded Supplement to this Charter, which may submit Additional Property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Neighborhoods as described in Chapter 4 or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Palmetto Bluff Preservation Trust, Inc., as they may be amended, which establish the Trust as a nonprofit corporation under South Carolina law
By-Laws: (attached as **Exhibit "D"**)	the By-Laws of Palmetto Bluff Preservation Trust, Inc. adopted by its Board of Stewards, as they may be amended, which govern the Trust's internal affairs, such as voting, elections and meetings
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 10, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Rules: (initial set attached as **Exhibit "E"**)	the rules of the Trust adopted pursuant to Chapter 11, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Trust activities and to regulate the operation and use of property which the Trust owns or controls
Palmetto Bluff Club Documents: (Palmetto Bluff Club Owner adopts)	the Membership Plan and related documents, as amended from time to time, which obligate all present and future Owners to be members of the Palmetto Bluff Club

Listed last are the "Palmetto Bluff Club Documents," which by definition include the "Membership Plan" and "Membership Agreement" which contain the arbitration clause asserted by the Defendants. Plaintiffs contend the Community Charter controls among the Governing Documents, and over the lower-level Membership Plan:

> 1.3 Conflicts. If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control. **If there are conflicts between or among any of the Governing Documents, then the Charter**, the Articles, and the By-Laws (in that order) **shall control**.
> . . .

(emphasis added). The Membership Plan is identified as one of the Governing Documents.

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The Community Charter has a dispute resolution provision which controls over that contained within the Club documents. The Charter's provision requires mediation before a lawsuit may be filed in court, but after that the Charter explicitly allows a party to "to file suit in any court":

> Accordingly, each Bound Party agrees not **to file suit in any court** with respect to a Claim described in subsection (b), **unless and until** it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 [non-binding mediation] in a good faith effort to resolve such Claim. . . .

Community Charter p. 52 § 18.1(a) (emphasis added). Here, parties mediated the dispute in conformance with this provision. As such, the Community Charter allows filing "in any court."

By their plain and clear terms, the Charter's provisions allowing disputes to be resolved "in any court" take precedence over the conflicting arbitration provision—which Plaintiffs claim was belatedly and unilaterally inserted into "low-level governing documents". Under the unambiguous language of the Charter (particularly its "Conflicts" provision), the arbitration clause does not control Plaintiffs in their resolution of disputes with Defendants. Instead, Plaintiffs are expressly authorized to file suit "in any court," and Defendants cannot compel arbitration.

AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

C. The purported arbitration clause excludes members before June 19, 2017.

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By its own terms, the Club's purported arbitration clause does not apply to members who bought before June 19, 2017:

> This "Arbitration/Mediation" provision shall apply only to members who acquire their membership on or after June 19, 2017.

This language specifically excludes Plaintiffs Bridge Charleston Investments B LLC ("Bridge B"), Geoffrey J. Block, and Jennifer Albero from its scope. Bridge B acquired its Club membership in 2015; Jennifer Albero acquired her membership on June 5, 2017; and Geoffrey J. Block acquired his membership in 2016—all before June 19, 2017. As such, the clear language of the Club's clause excludes them from mandatory arbitration.

AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate, particularly as to Bridge B, Geoffrey Block, Jennifer Albero, and any Plaintiff who acquired their membership before June 19, 2017. S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.")

D. The purported arbitration clause is unenforceable and invalid on its face.

As to the alleged arbitration agreements which Defendants have put forth, there are multiple reasons that this Court grants Plaintiffs' Motion to Stay and denies the Defendants' Motion to Compel arbitration. Each reason discussed below is independent grounds for this Court's decision:

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1. Defendants are outside of the limitations period in their own "agreement."

First, Defendants have waived arbitration of their claims under the terms of the very agreements which Defendants seek to enforce against Plaintiffs. The asserted agreement requires that a

> party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice **shall** be given **no later than sixty (60) calendar days after the conclusion of the mediation** . . . of the controversy, dispute, or claim which is the subject of the notice.

If this provision were valid, Defendants unequivocally breached its self-selected sixty-day notice and filing requirement, which is made mandatory by their use of the word "shall." The referenced mediation concluded on February 14, 2022. Therefore, the sixty-day calendar deadline expired on April 14, 2022. Defendants did not file a demand with the American Arbitration Association until May 23, 2022, ninety-eight (98) days after the conclusion of the mediation. They did not file this Motion to Compel until May 24, 2022. As such—if valid—under the mandatory requirements of the provisions which Defendant Club drafted and now seeks to enforce, the Defendants have waived arbitration. *See Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 308, 698 S.E.2d 773, 778 (2010) ("[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement."). This waiver does apply to Defendants' arguments that Plaintiffs' claims should be arbitrated. The Court addresses this argument elsewhere in this Order.

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2. The contract fails the conspicuous notice requirement of the South Carolina Uniform Arbitration Act.

The SCUAA is clear: a contract is not subject to arbitration when it fails to give proper notice—on its very first page, in UNDERLINED CAPITAL LETTERS—that it is subject to arbitration. S.C. Code Ann. § 15-48-10(a) (2005). The alleged arbitration provision that Defendants assert fails this basic test and is therefore unenforceable as a matter of law.

This case involves real estate in Beaufort County, South Carolina, and it challenges the validity and enforceability of covenants that Defendants claim run with the land. As a threshold matter, the law is clear that the subject transaction does not involve interstate commerce, and therefore the South Carolina Uniform Arbitration Act ("SCUAA") applies. *Bradley*, 398 S.C. at 447.

The SCUAA requires conspicuous notice of a requirement to arbitrate, rendering invalid all arbitration provisions which fail to give statutorily-sufficient notice. The Act mandates: "[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration." S.C. Code Ann. § 15-48-10(a) (emphasis added). Defendants have produced Membership Agreements with this Notice on the first page, but Plaintiffs contend this is insufficient under the Act.

Here, Plaintiffs maintain that the Club documents are buried toward the end of hundreds of pages of fine-print covenants, articles, restrictions, easements, waivers,

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bylaws, policies, procedures, rules, resolutions, and guidelines, all of which are imposed on purchasers as part of the real estate closing process. As discussed above, the "Palmetto Bluff Club Documents" are low-level documents within the community, which are subservient to the Community Charter. According to Defendants, the arbitration provision ostensibly comes into effect, automatically, upon the closing of a home: "I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a 'Community Member' of the Palmetto Bluff Club (the 'Club') and automatically assumed and agreed to be bound by all the terms and conditions of the Membership Plan." An arbitration clause buried within hundreds of pages of real estate closing documents violates the SCUAA's requirement that notice of arbitration must be IN UNDERLINED CAPITAL LETTERS ON THE FIRST PAGE.[3]

As such, the asserted arbitration provision runs afoul of the SCUAA's conspicuous notice requirement, and this Court will not enforce it.

3. The purported agreement to arbitrate is unconscionable and invalid.

Even if the asserted arbitration clause had not been inconspicuous and concealed, the provision would nonetheless be unenforceable under South Carolina law. The alleged arbitration agreement is unconscionable, oppressive, and adhesive: the few Plaintiffs to whom it might apply were deprived of any meaningful choice, and the terms of the contract itself are oppressive and one-sided. The "Palmetto Bluff Club

[3] In addition, the Club's Membership Plan for years did not have the mandatory language, and therefore is unenforceable. The Club later added the language, but too late to purport to bind the previous signatories.

Documents," in which the arbitration clause is buried, are themselves contracts of adhesion, unconscionable, oppressive, and one-sided. "Arbitration is a matter of contract and controlled by contract law." *Smith*, 742 S.E.2d at 37, 403 S.C. at 10 (citation omitted). As such, arbitration agreements may be stricken "upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code § 15-48-10. Courts in South Carolina do not enforce unconscionable contracts, or those that violate public policy. *Berkebile*, 311 S.C. at 50, 426 S.E.2d at 760.

The test for determining whether an arbitration agreement is unconscionable has two prongs: (1) whether there is an absence of meaningful choice, and (2) whether the terms are oppressive and one-sided. *Smith,* 417 S.C. at 42, 790 S.E.2d at 1 ("In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.").

(a) The Club documents are contracts of adhesion.

As to the first prong, there is no question that there is no meaningful choice here—mere "acceptance of a deed for property within Palmetto Bluff" ostensibly means that a person is "**automatically** assumed and agreed to be bound by all the terms and conditions of the Membership Plan." (emphasis added). The Club's membership agreement is a classic example of a "take-it or leave-it" contract with terms that are not negotiable. *See Smith* at 49-50, 790 S.E.2d at 4. The Court recognizes that modern real estate

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developments are filled with mandatory covenants, including covenants that require payments of fees, charges, and assessments.

Notably, the alleged governing documents for the Palmetto Bluff community are many hundreds of pages long. They include a Community Charter which purportedly has been amended and supplemented at least seventy-one (71) times, and a separate recreational covenant which purportedly has been amended and supplemented at least sixty (60) times. While Plaintiffs have produced no evidence these supplements and amendments impact Plaintiffs' claims, the Community Charter purports to incorporate the "Palmetto Bluff Club Documents" (which contain the asserted arbitration "agreement"), and the Club has never recorded a copy of its governing documents (which it states that it can change at any time in its "sole and absolute discretion") with the Register of Deeds for Beaufort County.

The asserted "Membership Agreement" is one part of a vast constellation of purported "terms and conditions" of "membership" in Palmetto Bluff Club. The purported agreement falls under the umbrella of the "Palmetto Bluff Club Membership Plan." Plaintiffs contend that at real estate closings for properties at Palmetto Bluff—or, often, after the closing is done—the Club interjects "Membership Agreements." These agreements are "mandatory;" the Club states that "all persons **must** mail or deliver to the Membership Office a fully completed and signed Membership Agreement." (emphasis added). The agreement ostensibly memorializes something "automatic" that occurs "by acceptance of a deed."

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There is no opportunity whatsoever to negotiate these "automatic" provisions, in addition to the automatic acceptance of other mandatory covenants, conditions, and restrictions incident to ownership of real property at Palmetto Bluff. Elsewhere within the hundreds of pages, this lack of meaningful choice reverberates:

- By acceptance of a deed, each Owner shall ***automatically*** become a member of the Palmetto Bluff Club and shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference." (Charter, Ch. 19, Palmetto Bluff Club) (emphasis added).
- Membership in the Club is ***mandatory*** for all owners of property in the Community. (Waiver Agreement, ¶ 1) (emphasis added).
- By acceptance of a deed, every Owner of a residence . . . shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of this Membership Plan." (Plan, p. i) (emphasis added).
- Prior to or contemporaneous with the acquisition of a homesite or residence, all persons **must** mail or deliver to the Membership Office a fully completed and signed Membership Agreement. (Plan, p. iii) (emphasis added).
- Any Owner of a residence or homesite within Palmetto Bluff **must become a member of the Club**. (Plan, p. 1) (emphasis added).
- By acceptance of a deed, every Owner of a residence . . . shall ***automatically*** **assume and agree to be bound** by all of the terms and conditions of this Membership Plan. (Plan, p. 2) (emphasis added).
- Each member agrees to be bound by the terms and conditions of the Membership Documents, **as they may be modified from time to time**. (Plan, p. 2) (emphasis added).

Because these terms are purportedly "automatic" and "mandatory," there is no conceivable potential for bargaining power on the part of those whom the provisions purport to bind.

Because the Club's asserted arbitration "agreement" is a classic contract of adhesion under South Carolina law, this Court finds it to meet the first prong of the test for unconscionable contracts.

(b) Oppressive and one-sided terms

The second prong of the unconscionability analysis is a determination of whether the arbitration agreement contains "terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Unconscionable, oppressive terms include lack of mutuality, violation of public policy, and limitation on statutory remedies. *Simpson*, 644 S.E.2d at 663, 373 S.C. at 14. Here, the arbitration agreement asserted by the Club strips members of statutory remedies, purports to alter the statute of limitations, and it is capable of unilateral amendment in the Club's "sole and absolute discretion." Moreover, because a person is purportedly "automatically" bound by onerous, oppressive, one-sided terms within the hundreds of pages of documents, it is reasonable to conclude that no fair or honest person would accept them—if they even knew they existed.

Significantly, the evidence demonstrates that the Club frequently pursues collection of dues and charges from its members outside of arbitration, including by filing liens against its members' real property and pursuing foreclosure actions against members and their property. There is no evidence that a property owner ever demanded these collection actions be arbitrated, however.

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This Court finds that the asserted arbitration clause is oppressive, unreasonable, unfair, one-sided, and unconscionable as a matter of law, including for the following reasons:

> First, the clause improperly limits damages when it states, for example:
>
> Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only.

This provision is similar to terms which led our Supreme Court in *Simpson* to strike down that arbitration agreement. *See* 644 S.E.2d at 670-672. Like this one, the arbitration clause in *Simpson* prohibited the "award [of] punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect)." *Id*. at 670. The *Simpson* Court found that by purporting to prohibit certain damages, the clause violated the statutory law of the South Carolina Unfair Trade Practice Act ("SCUTPA"), which "requires a court to award treble damages for violation of the statute." *Id.*

Here, Plaintiffs have asserted a cause of action against Defendants pursuant to SCUTPA. The *Simpson* Court found that "this arbitration clause violates statutory law because it prevents Simpson from receiving the mandatory statutory remedies to which she may be entitled in her underlying SCUTPA" claims. *Id*. Moreover, the Supreme Court included strong language against such terms in an adhesion contract:

> Second, unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest.

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Id. at 671. The Club's attempt to strip its members of statutory remedies within a "mandatory" and "automatic" "agreement" renders the provision unconscionable.[4]

Second, the asserted "arbitration agreement" contains a one-sided provision allowing unilateral amendment—the Club, and only the Club, claims it may change the deal whenever it likes:

> The Company reserves the right **in its sole and absolute discretion**, from time to time, to modify the Membership Plan and Rules and Regulations [of which the purported arbitration clause is a part] . . . and to make any other changes to the Membership Documents . . . .

(emphasis added). As discussed above, this vast capacity for alteration of the arbitration clause is unreasonable and oppressive, and it demonstrates a lack of mutuality that is unfair and unreasonable. The presence of a term permitting unfettered change to the arbitration clause by one side renders the clause unconscionable and unenforceable.

Third, the asserted arbitration clause purports to impose a 60-day statute of limitations period, which violates South Carolina law:

> The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given **no later than sixty (60) calendar days after the conclusion of the mediation** . . . of the controversy, dispute, or claim which is the subject of the notice.

(emphasis added). Although the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days, this language provides

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[4] In *Simpson*, the contract contained a severability clause, which the Court nonetheless declined to enforce due to the pervasive unconscionability of the entire arbitration agreement in that case. Importantly, the arbitration agreements asserted by Defendants do not contain a severability clause. Thus, as a matter of law, the entire agreement is invalid and unenforceable.

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further grounds for this Court's decision. *See* S.C. Code § 15-3-140 ("Contract provision shortening statutory period."; "No clause, provision or agreement in any contract of whatsoever nature, verbal or written, whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, for similar causes of action, shall bar such action . . ."). The presence of such an oppressive provision within an adhesion contract renders the alleged arbitration clause unconscionable. *See Simpson*, 644 S.E.2d at 670-672 ("The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.").

Fourth, the asserted arbitration clause, which is already unlawful, oppressive, and unfair as discussed above, may apparently be ignored at the choice of the Club. This remarkable is shown in the public record, where the Club has filed many liens with the Beaufort County Register of Deeds, and then sought to foreclose on them in the Beaufort County Court of Common Pleas. (Declaration of Recreational Covenant for Palmetto Bluff, § 3.3, Lien for Membership Fees) (Club "may enforce such lien . . . by suit, judgment, and foreclosure."). Such one-sidedness is unconscionable, and it would be deemed objectively unfair and oppressive by a reasonable person.

Fifth, the purported arbitration clause improperly purports to divest Plaintiffs of their statutory right to have a court determine legal rights under South Carolina's Declaratory Judgment Act, S.C. Code § 15-30-10 *et seq.* That statute states that "**Courts of record** within their respective jurisdictions **shall have power** to declare rights, status and

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other legal relations . . . ." including "under a deed, will, written contract or other writings constituting a contract . . ." *Id.* §§ 15-33-20, -30 (emphasis added). Here, Plaintiffs seek declaratory judgments on deeds and written contracts. Although this section is a jurisdictional statute, and although Plaintiffs point to no case or statute that prohibits parties agreeing to an arbitrator declaring such rights, the arbitration agreement is unenforceable.

In sum, the purported arbitration clause is unenforceable for the foregoing reasons. Moreover, the Club's asserted arbitration clause does not contain a severability provision, although, as the drafter, the Club certainly could have included one. Therefore, this Court finds that the above unfair and oppressive provisions render the entire arbitration agreement wholly unconscionable, invalid, and unenforceable. *See Simpson,* 644 S.E.2d at 674 (holding, despite a severability provision, that the arbitration agreement was "wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions contained within the entire clause.").

This Court strikes the alleged arbitration clause entirely, denies Defendants' Motion to Compel, and **AAA Case No. 01-22-0001-5722 is hereby STAYED for lack of a valid agreement to arbitrate.** S.C. Code § 15-48-20(b) ("the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate.").

III. No arbitration by non-signatories.

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Without offering proof sufficient to pierce a corporate veil, Defendants argued that certain corporate Plaintiffs should be bound by Club Membership Agreements apparently signed by some of the corporation's members or shareholders. The Court finds that Defendants' arguments lacked adequate evidentiary or factual basis. Moreover, Defendants cite no applicable law for ignoring a company's corporate form in the context of limited club membership agreements, apparently signed personally by some of the corporation's purported shareholders. "It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders . . . ." *Mid-South Mgmt. v. Sherwood Dev.*, 649 S.E.2d 135, 139, 374 S.C. 588 (Ct. App. 2007) (internal citations omitted). An agreement signed by a person individually does not bind a separate company; the agreement must be explicitly signed on behalf of the company. Here, none of the Plaintiffs which are companies entered into a membership agreement or plan with the Club, and none can be bound by the purported arbitration clause. Defendants offer no evidence to pierce the corporate veil. Similarly, if individuals used the Club pool or restaurant at times for their personal enjoyment, that cannot be used as an estoppel or "benefit" argument against the separate, non-member, limited-liability company to force the company into arbitration under an agreement the company never signed. The Court finds that Defendants have failed to offer evidence sufficient to overcome the presumption against arbitration by non-signatories to a written agreement to arbitrate.

IV. Claims in the Complaint are outside the scope of the purported arbitration agreement.

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Even if a valid arbitration clause existed, claims in the Complaint are outside of its scope. A party seeking to compel arbitration must establish that the claims fall within the scope of the agreement. *Wilson*, 426 S.C. at 336, 827 S.E.2d 173. Defendants have failed to do so.

The purported arbitration clause states, in broad terms, that it applies to controversies "relating directly or indirectly to, or arising directly or indirectly from "the Club Membership Plan. The Club is a recreational and social organization, and the Membership Plan "describes the terms, conditions and privileges of membership in the Club." Membership involves use of the pool, restaurants, pottery studio, bowling alley, and fitness facilities, *inter alia*.

Despite the numerous allegations and Claims related to access to the Club, many allegations in the Complaint are not related to the Membership Plan or Agreement. For example:

1. Allegations against non-Club entities are not related to the Membership Plan, which only applies to the relationship between the Club and its member. Allegations in the Complaint against, for example, Defendants South Street Partners, Palmetto Bluff Development, LLC, Palmetto Bluff Preservation Trust, Inc., PBLH, LLC, Montage Palmetto Bluff, LLC, and numerous others are based on those entitles' actions and documents, not on the Membership Plan. *See, e.g.*, Compl. pp. 5–10.

2. Allegations regarding the Community Charter and the Declaration of Recreational Covenant for Palmetto Bluff relate to the terms of those documents themselves, not to the Membership Plan, which is subordinate. *See, e.g.*, *id.* ¶¶ 41–52.

3. Allegations as to the Founder's breach of fiduciary duty are based on South Carolina's law of breach of fiduciary duty, not on the Membership Plan, to which the Founder is not a signatory. *See, e.g.*, *id.* p. 11, ¶¶ 103, 129.20, 129.21.

4. Allegations as to South Street Partners, Palmetto Bluff Development, LLC, and others' unfair and unlawful competition are based on the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 *et seq.*, not on the Membership Plan, to which those parties are not signatories. *See, e.g.*, *id.* ¶¶ 128, 129.7, 129.18, 129.20, 129.21, 129.24, 129.25, 179–184.

5. Allegations as to the Trust and the Board of Stewards' breach of fiduciary duty are based on South Carolina's law of breach of fiduciary duty, not on the Membership Plan, to which those parties are not signatories. *See, e.g.*, *id.* ¶¶ 130, 130.1, 130.2, 130.3, 130.4, 157, 186–189.

6. Allegations that the Club is a homeowners' associations and subject to the South Carolina Homeowners Association Act, S.C. Code § 27-30-110 *et seq.*, are based on that statute, not on the Membership Plan. *See, e.g.*, *id.* ¶¶ 131, 169–177.

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7. Allegations of civil conspiracy against Defendants are based on the common law of South Carolina, not on the Membership Plan. *See, e.g.*, *id.* ¶¶ 197–199.

These are selected examples; the 83-page Complaint contains numerous others. In sum, many of the claims in this lawsuit are not controversies relating to the Membership Plan—which mainly involves members' use of the social club, such as pools, fitness centers, etc.—and therefore are outside of the scope of the purported arbitration clause.

In conclusion, Plaintiffs' Motion to Stay Arbitration and to Invalidate Purported Arbitration Clause is **granted** and Defendants' Motion to Compel Arbitration is **denied**. AAA Case No. 01-22-0001-5722 is stayed and shall not proceed.

DEFENDANTS' MOTION TO DISMISS

Defendants argue that this lawsuit should be dismissed pursuant to Rule 12(b)(8), SCRCP because, they claim, an identical action is pending before the American Arbitration Association ("AAA"). This Court **denies** Defendants' motion. Plaintiffs filed this civil action first, in the Beaufort County Court of Common Pleas. Certain Plaintiffs later made filings with AAA only for the purposes of preserving their rights under (*inter alia*) the ostensible 60-day statute of limitations in the purported arbitration clause, and in doing so repeatedly denied jurisdiction of the AAA. Plaintiffs have reserved and preserved all rights to pursue their claims in court. Only later did Defendants bring demands in arbitration. The arbitration proceeding, which involves different parties and claims, is not identical to this civil action. An arbitration is not an "action" under the

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Rules of Civil Procedure, and a later-filed arbitration proceeding does not fulfill the terms of Rule 12(b)(8), SCRCP.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs moved for partial summary judgment on several declaratory judgment causes of action. Plaintiffs argued, *inter alia,* that summary judgment should be granted on (a) the question of whether the covenants within certain Defendants' documents, requiring Plaintiffs to pay fees to a for-profit endeavor as part of the real estate transfer, violate South Carolina's statutory prohibition against transfer fee covenants; (b) the question of whether the covenants' requirement of mandatory membership in a for-profit Club is unlawful; (c) the question of whether the Club's unrecorded governing documents are unlawful and unconscionable; and (d) the question of whether the for-profit Club is nonetheless subject to the South Carolina Homeowners' Association Act. Defendants asserted that summary judgment would be premature.

This Court finds that the motion is not ripe for determination at this time, and therefore **denies the motion at this time without prejudice to any party**. All parties maintain all claims and defenses regarding this motion, and no party is prejudiced by this ruling. Plaintiffs are free to re-file the motion at a later time.

PLAINTIFFS' MOTION TO DISQUALIFY NEXSEN PRUET, LLC AS COUNSEL FOR DEFENDANTS

Plaintiffs filed a motion to disqualify Nexsen Pruet LLC as counsel for defendants. After reviewing the filed papers, the relevant law, the case file, and the arguments of counsel, the Court determines that this motion is not ripe for determination at this time.

The Court therefore **denies the motion at this time without prejudice to any party**. All parties maintain all claims and defenses regarding this motion, and no party is prejudiced by this ruling. Plaintiffs are free to re-file the motion at a later time.

[COURT'S ELECTRONIC SIGNATURE APPEARS ON NEXT PAGE]

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Beaufort Common Pleas

Case Caption:	Bridge Charleston Investments B Llc , plaintiff, et al VS Palmetto Bluff Development Llc , defendant, et al
Case Number:	2022CP0700632
Type:	Order/Stay

So Ordered

R. Ferrell Cothran, Jr.

Electronically signed on 2022-11-02 11:26:33 page 33 of 33

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP0700632

Bridge Charleston Investments B Llc et al
PLAINTIFF(S)

Palmetto Bluff Development Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The Court's Amended Order which was electronically filed on November 2, 2022 was entered in relation to Defendants' Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was electronically filed on September 26, 2022.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/08/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Nov 08 11:18 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Beaufort Common Pleas

Case Caption:	Bridge Charleston Investments B Llc , plaintiff, et al VS Palmetto Bluff Development Llc , defendant, et al
Case Number:	2022CP0700632
Type:	Order/Electronic Form 4

So Ordered

R. Ferrell Cothran, Jr.

ELECTRONICALLY FILED - 2022 Apr 12 8:48 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS CIVIL ACTION NO.: ___
315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, v. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Defendants.	**SUMMONS**

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you and to serve a copy of your Answer to the said Complaint on Plaintiffs' undersigned attorney at the address below, within thirty

(30) days after the service hereof, exclusive of the day of such service, and if you fail to answer said Complaint within the time aforesaid, the Plaintiffs will apply to the Court for the relief demanded in the said Complaint.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian S. Ford
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Charleston, South Carolina
April 12, 2022

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ELECTRONICALLY FILED - 2022 Apr 12 8:48 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS CIVIL ACTION NO.: ___
315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, v. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Defendants.	**VERIFIED COMPLAINT** **Jury Trial Requested**

Plaintiffs 315 Corley CW LLC, 368 Mount Pelia LLC, Bridge Charleston Investments B LLC, Bridge Charleston Investments C LLC, Bridge Charleston Investments E LLC Bridge Charleston Investments H LLC, Anne Bosler and Dylan

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Hart as Trustees of the Bosler-Hart Trust, Geoffrey J. Block, R. Jeffrey Kimball and Deborah S. Kimball, Sebrina Leigh-Jones and Chris Leigh-Jones, Jennifer Albero, Live Oak Assets LLC, Matthew N. Lynch and Barbara A. Lynch, MKM 22 West LLC, One Rumford Lane LLC, Salt Works, LLC, and TTJR LLC, individually, derivatively, and as class representatives, as set forth herein, by and through the undersigned attorneys, submit this Complaint and allege as set forth below.

INTRODUCTION—THE PALMETTO BLUFF HOAX

This lawsuit is about the illegal actions of the developer of Palmetto Bluff, which is working with the other Defendants to carry out a deceptive and costly hoax on Palmetto Bluff property owners. For the reasons discussed herein, this Court should order, among other things, that Palmetto Bluff's governing documents are unlawful, unconscionable, in violation of the law and public policy of this State, and unenforceable. Plaintiffs bring numerous causes of action against Defendants, including:

- Declaratory Judgment as to real property interests
- Violation of the South Carolina Unfair Trade Practices Act
- Breach of Fiduciary Duty
- Interference with Contractual Relationships
- Civil Conspiracy
- Misrepresentation
- Unjust Enrichment
- Violation of the South Carolina Homeowners Act

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- Equitable Title
- Conversion
- Fraud
- Breach of Contract

The damages include Defendants' disgorgement of illegally-imposed dues and joining fees and other wrongfully collected amounts, as well as damage to the marketability of Plaintiffs' title, diminution in value of Plaintiffs' real property, long-term loss of business costs, and punitive and treble damages.

A. The Setting

In 2003, Palmetto Bluff Development, LLC (the "Founder") undertook to develop a tract of land nestled between the May, Cooper, and New Rivers. The Founder planned for private residences and a premier luxury hotel in the midst of an extensive infrastructure: walking trails and nature preserves, restaurants, shops, swimming pools, spa, fitness facilities, clubhouses, horseback riding, golf, tennis, and boating. All of this infrastructure was promised to be exclusive and premium. The Founder promoted its vision to potential buyers with marketing materials promising exceptional first-class amenities in a community that was intentionally designed around those amenities. Purchasers invested in homes in the community because of the Founder's promoted design.

What the Founder contemplated was extraordinarily costly: its vision for an infrastructure of not just roads and landscaping—but also premier club facilities—would require enormous resources to develop. Behind the scenes,

however, the Founder was focused on manipulating its promises to buyers in order to drive its own profit, to the detriment of those to whom it was promoting the community. Although it was promising exceptional facilities to potential buyers, the Founder knew that it could not fund those facilities and still reap the profit it demanded. **The Founder therefore constructed a house of cards, buttressed by deceptive and illegal governing documents—intending to exit before the cards collapsed.**

The most costly components of the Founder's vision were the club amenities. The Founder needed world-class, luxury amenities to attract guests to its resort hotel, and to aggressively market its community to homebuyers who could afford it. To accomplish this, the Founder crafted the idea that it would allocate the costs of those amenities to the homeowners . . . but the Founder planned to keep for itself the valuable amenities, including multi-millions of dollars of swimming pools, clubhouses, dining venues, fitness centers, and tennis courts. The Founder intended to hold back this value for itself, to the detriment of homeowners, while selling the illusion that residents have a stake in the community.

B. The Defendants

The Founder chose to parse itself out into several corporate entities, only some of which are mentioned below. Through these entities, which acted

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individually and in concert with one another, the Founder orchestrated its fraudulent scheme.

Palmetto Bluff Development, LLC: This is the Founder, the architect of the community, which as the developer undertook fiduciary duties to the nascent community, to the future homeowners' association, and to the individual residential buyers to whom it was promoting its planned community.

Palmetto Bluff Preservation Trust, Inc.: The "Trust" is the homeowners' association, with its board currently entirely controlled by the Founder's own appointees.[1] The Trust holds title to the common property and is responsible, *inter alia*, for enforcing the Community Charter, which runs with the residential property and includes assessment provisions for the maintenance of common property. Every owner of a residential lot bound by the Charter is a member of the Trust, thereby holding a common interest in the common property, benefitting from the use of the common property and burdened with its maintenance. But, strikingly, none of the promoted top-tier club facilities are formally designated as common property. Embedded in the Charter is an unlawful provision purporting to require owners to be members of a for-profit club.

The Trust is a nonprofit corporation, bound to act in the best interest of its members. But, as discussed herein, its board members are violating their fiduciary duties to residential owners by working on behalf of the Founder, in the Founder's

[1] These appointees are employed by Defendant South Street Partners (*see infra*), and they have inherent and undisclosed conflicts of interest.

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best interests—to the damage of the people they should be protecting and advocating for: the residential owners.

Palmetto Bluff Club, LLC: The "Club" is the Founder's for-profit company that owns and operates the community's amenities and the property on which they sit. It does this on the backs of residential property owners, who have been told from the outset that their membership in the Club is mandatory, that they are required to pay a hefty "joining fee," and that they are obligated to pay thousands of dollars in dues and fees per year, lest their home be liened. The Founder's for-profit Club has a detailed (but never recorded) "Membership Plan" and rules, which it changes often, unilaterally, and purportedly in its sole discretion. The Club has frequently ratcheted up the "joining fee" and dues, and it has pocketed tens of millions of dollars from its captive market. In exchange, the Club purports to give nothing more to the owners than a personal, revocable license. **The ostensibly obligatory membership in a for-profit Club is a deliberately designed hoax, slipped into the Charter and the Plan as if it were a real covenant—although it is strictly personal.**

The purported requirement to pay dues and a "joining fee" to this for-profit corporation is an unlawful transfer fee covenant, which is prohibited by South Carolina law. The Club's governing documents are illegal and unenforceable. Both the Founder and the Club are aware of the illegality of their documents, but they nonetheless market Club membership to potential and current homeowners as "mandatory." The governing documents give lip service to the concept that the

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Club amenities are "for the benefit of the owners of the Residential Property," and the Club is marketed to the owners as a "private club" for its membership.

PBLH, LLC: This is the Founder's entity that owns the hotel property. For years, it has had a deal with the Founder allowing preferential treatment for its hotel guests to use the high-end Club facilities, which are paid for by the residential owners and are "for the benefit of the owners of the Residential Property." For years, the resort profited from guests driven to the hotel by their desire to experience the Club's pools, clubhouses, event venues, dining facilities, and racquet courts, all of which are paid for and supported by the residential owners, and which are purportedly "for the benefit of the owners of the Residential Property."

As discussed below, the Founder promised and conveyed to certain homebuyers the right to rent their homes on a short-term basis. It later realized, to its irritation, that these rentals directly compete with its hotel business. Because competition dilutes profit, the Founder decided to brandish its unlawful governing documents to kill competition. It began to unilaterally eliminate the rights to which residential owners are entitled, while continuing to tie up Club property for its own purposes and events. The Trust's Board of Stewards looks on, complicitly.

Palmetto Bluff Real Estate Company, LLC: This is the Founder's real estate sales company, which sells the Founder's plan for the community in a deceptive and misleading way. The Real Estate Company has a sales office

deliberately located in the middle of the community—near Club amenities and homes rented out to prospective purchasers. Prospective purchasers stay in rental homes, enjoy the amenities, and then are likely to buy property from the Founder.

In addition to the above entities (which are likely just an amalgamated single business enterprise), the Founder tried to delegate some of its duties and obligations to:

Montage Palmetto Bluff, LLC: "Montage" is a hotel management company with a specialty niche in high-end, luxury resort properties. The Founder contracted with Montage to manage its hotel, as well as its for-profit Palmetto Bluff Club. Remarkably, although the Club facilities are "for the benefit of" the residential homeowners and are paid for by tens of millions of dollars in dues and joining fees collected from the residential homeowners, it is Montage—the hotel—that has been managing the Club. In the course of this management, Montage gave priority use of the Club amenities—including its pools, restaurants, and racquet facilities—to its own hotel guests. Montage further assisted the Founder in its endeavor to kill competition with the hotel from owners with the vested right to rent their homes short-term.

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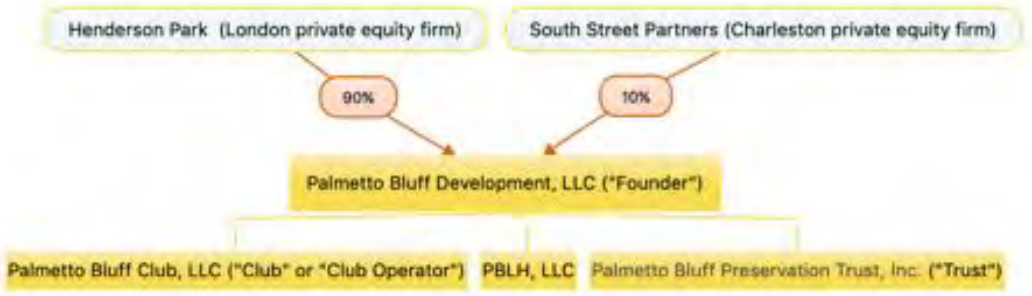
THE FLIP

South Street Partners, LLC: A catalyst for this lawsuit is that the ownership of the Founder and its entities changed hands in 2021. Palmetto Bluff is now just one cog in the massive investment portfolio of a private equity firm out of London, partnered with "South Street," a private equity firm based in Charleston:



South Street now is making the day-to-day decisions at Palmetto Bluff, and it is directly responsible for the current situation.

South Street and its co-investor have a business plan to flip Palmetto Bluff within eight years . . . after wringing from it as much profit as they can manufacture. They hope to keep homeowners in the dark: While paying superficial homage to their own commitment to a long-term stewardship of Palmetto Bluff's pristine land, these profit-focused private equity executives see Palmetto Bluff as a lucrative short-term transaction on a manipulated spreadsheet. To get their planned profit from the flip, they are endeavoring to squeeze as much

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juice out of the homeowners as they can, now. The more they squeeze, the higher the "multiple" might be for their exit strategy.

A significant part of South Street's anticipated financial gain depends on maximizing the value of the resort hotel and the Club amenities in order to sell to the next prospective investor—with little regard for fiduciary duty, the lawfulness of their actions, or detriment to the homeowners. As described herein, South Street has decided that the homeowners themselves are a speed-bump to its otherwise lucrative plans.

While—on its own—South Street's desire to make a profit is not problematic, South Street's means to do so hinges on exploiting unlawful governing documents, among other transgressions. South Street Partners has packed the Trust's board with its own people, who routinely put the investors' interests ahead of those of the community, and it has blurred distinctions between itself, the Trust, the Club, and the hotel.

Meanwhile, development at Palmetto Bluff continues at a rapid clip, as designed and intended by the Founder. The Founder's master plan calls for approximately 4,000 homesites, at least 800 lots of which already have been constructed and conveyed through the efforts of the Founder's Real Estate Company. More than 400 additional homes are currently in construction, and the new Founder plans for many more. Coupled with this growth is an increasingly higher demand for the premium Club amenities. Frequently, Palmetto Bluff

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residents find that the amenities they have paid for are overwhelmed, oftentimes by hotel guests and hotel events; there is no room in the dining venues; there is no room by the pools; there is no room on the courts; there is no room in the fitness areas. Owners no longer have access to the very amenities that induced them to buy into the community and which the Founder has a fiduciary duty to provide.

Nineteen years after the Founder began to promote its vision, the promised infrastructure is woefully inadequate to support the occupancy that easily should have been forecast by the Founder. Of course, increasing the capacity of the amenities commensurate with the growth would detract from its new investor's business plan to flip the property in eight years at a high profit.

Instead, the Founder's response to high demand has been to deploy its unlawful, unrecorded, ever-changing governing documents to unilaterally cut off access to the promised infrastructure, while radically (and unilaterally) increasing the Club "joining fee" and membership dues. The Founder tells owners that they must pay Club dues and fees, regardless of whether the Club actually permits them to use the amenities they were promised.

C. The Plaintiffs

Palmetto Bluff's governing documents intentionally mislead homeowners and prospective buyers. Therein lies part of the hoax. As alleged herein, the Founder's vision, and particularly the way the Founder promoted it to prospective homeowners, was designed for the Founder's profit to the detriment of residential

owners. South Street Partners, acting as the Founder, now plays on the community's unlawful documents with a heavy hand.

The documents promise a seemingly typical residential neighborhood with neighborhood amenities and an HOA to maintain them. The documents appear to use all the "right words," setting up an expectation of community of property, shared ownership, and the benefits of common areas. Alongside the documents is the master plan itself, which depicts first-rate amenities nestled among residential homes, with the value of homes driven by their proximity to and the accessibility of the facilities. The Founder promotes its community with marketing materials which tout the benefit of a neighborhood designed around the very best amenities.

But, obscured deep within the documents is a different story: **there is no community of property** in the amenities. Instead, the Founder plucked out and appropriated the Club facilities for itself, for its own profit and for the benefit of its hotel. The Founder's profit begins by imposing a purportedly mandatory "joining fee," which is thrust into every real estate transaction in Palmetto Bluff. Each time a property changes hands, the Founder's for-profit Club scoops up a $30,000 transfer fee. Alarmingly, the Club claims it can hike up this "joining fee" in its sole discretion—and it does. Over the years, the Founder has reaped tens of millions of dollars from unlawful joining fees alone.

When you buy a home in Palmetto Bluff, the Founder and the Club tell you that you must pay the joining fee and dues, and you must be a "member" of the

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Club. But in truth . . . you have no real interest in it.[2] You get a mere personal license, which purportedly can be limited or revoked at any time by the Club, in its sole discretion. Ostensibly, the Founder can charge what it wants, when it wants, for what it wants—in its "sole discretion." According to the Founder, your interest is personal, but your obligation to pay is real, and that obligation exists regardless of whether and how the Club revokes or restricts your access to its facilities. A personal privilege is just that: personal, not real. It does not touch and concern the land. The purported mandatory "membership" in the Founder's for-profit Club is unlawful.

Emboldened by the broad discretion it purportedly gave itself within its unlawful documents, the Founder has sought to rectify its own failure to plan for and provide sufficient, promised infrastructure. It is doing this by limiting its captive membership's access to the same Club amenities that it tells them they must pay for, while raising dues and increasing the "joining fee." This has particularly harmed the following people:

Owners of All Homes Subject to the Unlawful Covenants: At real estate closings, the Founder informs every purchaser of a homesite in Palmetto Bluff that acceptance of a deed imparts "automatic" and mandatory membership in the Club

[2] The concept of "membership" is itself a part of the hoax. Legally, a "member" of an organization "enjoys the full rights of participating in the organization—including the rights of making, debating, and voting on motions." *Black's Law Dictionary*, 11th Edition. According to Defendants, however, **owners at Palmetto Bluff have no stake or voice whatsoever in the for-profit Club.**

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for which they must pay a "joining fee." The Club says that it is not the homeowners' association; it is a separate, for-profit business entity in which residential owners are ostensibly given nothing more than a personal license which is revocable—and which the Club can (and does) restrict and modify, unilaterally and without notice—at any time. As such, the purported covenant to join the Club is not a real covenant, it does not run with the land, and it is illegal and unenforceable. Moreover, the purported requirements to pay dues and "joining fees" to a for-profit endeavor violate public policy and South Carolina's statute forbidding transfer fee covenants, and they are void and unenforceable.

The Founder's governing documents unreasonably restrain the free alienability of property, they contravene the public policy of South Carolina, and they are illegal, unenforceable, and void. The Founder's actions in imposing and enforcing covenants it knows to be unlawful and promoting a community without adequate infrastructure—while pocketing tens of millions of dollars which it has extracted from homeowners in consideration for that infrastructure—is fraudulent and unlawful. Because of these illegal actions, the homeowners have sustained actual damage, including that the marketability of their title is impaired.

Owners of Homes Designated for Short Term Rental: Part of the Founder's master plan was that some homesites were to be located in "Designated Rental Areas." These areas were chosen and promoted by the Founder as those within close proximity to the Club amenities. Here are examples of the Designated

Rental Areas, which are deliberately positioned beside the racquet club, fitness center, and a pool complex:[3]

Homes in the Designated Rental Areas are conveyed with the vested right to rent them out short-term; their location in easy walking distance of the Club amenities lends itself to this right.[4] These select homesites are priced higher than others, to reflect the increased value of this vested right, which would purportedly allow a

[3] Several of the Founder's maps of the Designated Rental Areas are attached as Exhibit 6 to this Complaint.

[4] In the two designated Rental Areas depicted above, Wilson Village (on the left) is directly adjacent to the Canoe Club complex, which includes pool, fitness, and dining amenities; the West Wilson area (on the right) has at its center the Wilson Lawn and Racquet Club, which includes tennis, pickleball, and bocce, among other offerings.

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buyer to recoup some of the cost of ownership in Palmetto Bluff through occasional rental.

Lots in these Designated Rental Areas are subject to the same governing documents as all other lots. According to the governing documents, owners of these lots must be members of the Club. According to the governing documents, owners of these lots are no less and no more responsible than any other owner for the financial cost of the infrastructure.

For years, the Founder has itself operated a home rental program, promoting these homes for rent, encouraging guests to use the nearby Club amenities, and using these rentals as a marketing platform: having experienced a taste of Palmetto Bluff, these guests were likely to buy a home in the community. By design, the Founder put its own Real Estate Office directly within the Designated Rental Area.

Practically speaking, short-term rental guests put no additional burden on Palmetto Bluff's infrastructure. The occupancy of homesites in Designated Rental Areas is no different from any other homesites, because—obviously—a homeowner cannot be in his home at the same time as he is renting it out.[5] Nonetheless, the Founder and the Club charge these owners unique, exorbitant extra fees, ostensibly in exchange for permission for their guests to enter onto Club property.

[5] That the Founder and the Club understand this reality is reflected by their lenient attitudes toward longer rental terms. The Founder unreasonably targets short-term rentals only because they compete with the Founder's hotel.

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Now, South Street Partners perceives these homeowners to be undesirable: their homes are an alternative to the hotel, and therefore they (now) are a threat to its business plan. By puppeteering Montage, the Club, and the Trust, South Street intends to unlawfully kill competition. Thus, despite for many years promoting and practicing the model that short-term rental guests get to use the Club amenities, the Founder has recently begun to spin a new narrative. The Founder now depicts short-term rental guests as such a burden on the Club infrastructure that it must unilaterally end their use of the Club amenities for the good of its other members. This new narrative is designed to draw attention away from the fact that ***the Founder*** has failed to provide adequate infrastructure to sustain its community's use, despite promoting and selling to buyers (including buyers in the Designated Rental Areas) a master plan that includes premier amenities for access by all homes. Further, this narrative aims to divert from awareness that hotel guests and other guests of the Founder are a massive burden on the existing resources of the community. **Finally, this new narrative is designed to rationalize the Founder's otherwise unlawful plan to kill its competition.**

Rather than correct its own inadequate infrastructure, the Founder is using its unlawful governing documents to sever use by property in the Designated Rental Areas. Although owners in homes in the Designated Rental Areas pay the same dues as every other member, the Club has (a) created, then increased, a purported "daily use fee" for their guests and, at the same time, (b) eliminated guest access to numerous amenities for which these homeowners are, and have

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been, paying, and now (c) eliminated Designated Rental Area guests' access to any Club amenities.

Pursuant to South Street Partners' business plan, the Founder intends to completely end amenity access by the rental guests of homeowners within the Designated Rental Areas. **It will accomplish this plan by weaponizing the community's governing documents**, to propel business away from resident-owned and managed homes and toward the Founder's own resort hotel and short-term rental program. This is part of South Street Partners' strategy to maximize its revenue and to flip the community in eight years. Indeed, a business plan of the private equity firm makes the intent clear:

> Bring all amenities back under the management of the Club and do away with "neighborhood" amenities **to eliminate VBRO [sic] and third party rental managers thus increasing market share for the [Developer's] rental management business . . .**

and

> **JV [South Street's joint venture] will consolidate control over 3rd party rentals (VRBO) to drive traffic to [Developer's] hotel & branded residential**.

This language illuminates South Street Partners' motive, which is unequivocally **not** the best interest of the community: it is to generate value for itself, so that it can flip the community as fast as possible. The same internal document also alludes to South Street Partners' plan to flip the property in eight years: "Exit ClubCo for . . . 8x NOI[6] at the end of the 8 year hold period . . . ." The internal

[6] NOI is "net operating income"—a calculation used to analyze the profitability of income-generating real estate investments.

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document indicates at least twenty-one (21) times that the intent is to exit Palmetto Bluff in eight (8) years, by 2028. Within that finite time span, South Street will have extracted as much money as it conceivably can from its ensnared Club members.

* * *

As this Complaint next alleges, Palmetto Bluff's Founder deliberately imposed unlawful governing documents on the land that it markets to potential buyers. The documents hide the truth: homeowners are told they are bound to a for-profit Club with indefinite, ever-shifting costs and indefinite, ever-shifting access rights, because, they are told, "membership" is mandatory and automatic. The developer wields its documents for its own benefit, seeking to profit by unilaterally increasing fees and dues, denying access at its whim, overburdening the infrastructure, and discriminating against any perceived competition to its bottom line. It has wrongly pocketed tens of millions of dollars from its ostensibly captive audience, while denying them the value of their investment.

I. PARTIES

1. Plaintiff 315 Corley CW LLC owns real property in Palmetto Bluff at 315 Corley Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0125 0000.

2. Plaintiff 368 Mount Pelia LLC owns real property in Palmetto Bluff at 368 Mount Pelia Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0526 0000.

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3. Plaintiff Jennifer Albero owns real property in Palmetto Bluff at 18 Drayton Street, in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0175 0000. She is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of her ownership of the subject property, she was told that she was required to hold a membership in the Palmetto Bluff Club.

4. Plaintiff Bridge Charleston Investments B LLC owns real property in Palmetto Bluff at 454 Old Landing Road in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0079 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

5. Plaintiff Bridge Charleston Investments C LLC owns real property in Palmetto Bluff at 852 Old Moreland Road in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0080 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

6. Plaintiff Bridge Charleston Investments E LLC owns real property in Palmetto Bluff at 19 South Drayton Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0151 0000. It

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is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

7. Plaintiff Bridge Charleston Investments H LLC owns real property in Palmetto Bluff at 8 Hannah Lane in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0095 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

8. Plaintiff Geoffrey Block owns real property in Palmetto Bluff at 8 Anson Park Road, in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0334 0000. He is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of his ownership of the subject property, he was told that he was required to hold a membership in the Palmetto Bluff Club.

9. Plaintiffs Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust own real property in Palmetto Bluff at 753 Old Moreland Road in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0233 0000. They are members of the Palmetto Bluff Preservation Trust, Inc. By virtue of their ownership of the subject property, they were told that they were required to hold a membership in the Palmetto Bluff Club.

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10. Plaintiffs R. Jeffrey Kimball and Deborah S. Kimball own real property in Palmetto Bluff at 14 Parkman Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0162 0000. They are members of the Palmetto Bluff Preservation Trust, Inc. By virtue of their ownership of the subject property, they were told that they were required to hold a membership in the Palmetto Bluff Club.

11. Plaintiffs Chris and Sebrina Leigh-Jones are citizens of the State of South Carolina, and they are members of the Palmetto Bluff Preservation Trust.

12. Plaintiff Live Oak Assets LLC owns real property in Palmetto Bluff at 38 Blue Willow Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0477 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

13. Plaintiffs Matthew N. Lynch and Barbara A. Lynch own real property in Palmetto Bluff at 323 Corley Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0126 0000. They are members of the Palmetto Bluff Preservation Trust, Inc. By virtue of their ownership of the subject property, they were told that they were required to hold a membership in the Palmetto Bluff Club.

14. Plaintiff MKM 22 West, LLC is a limited liability company that owns real

property in Palmetto Bluff at 22 Westerwald Street, in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 047 000 0224 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

15. Plaintiff One Rumford Lane, LLC owns real property in Palmetto Bluff at 1 Rumford Lane, in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0549 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

16. Plaintiff TTJR LLC owns real property in Palmetto Bluff at 10 North Drayton Street in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 045 000 0099 0000. It is a member of the Palmetto Bluff Preservation Trust, Inc. By virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

17. Plaintiff Salt Works, LLC is a limited liability company that owns real property in Palmetto Bluff at 790 Old Moreland Road, in Beaufort County, South Carolina, which property is identified by Beaufort County PIN No. R614 052 000 0225 0000; it is a member of the Palmetto Bluff Preservation Trust, Inc. By

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virtue of its ownership of the subject property, it was told that it was required to hold a membership in the Palmetto Bluff Club.

18. Defendant Palmetto Bluff Development, LLC ("Founder") is a limited liability company organized under the laws of South Carolina, with its principal place of business in Beaufort County.

18.1. Founder owns and has certain legal interests in real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

19. Defendant Palmetto Bluff Club, LLC ("Club") is a limited liability company organized under the laws of South Carolina, with its principal place of business in Beaufort County.

19.1. Club owns real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

20. Defendant Palmetto Bluff Preservation Trust, Inc. ("Trust") is a nonprofit corporation organized under the laws of South Carolina, with its principal place of business in Beaufort County.

20.1. The Trust owns real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

20.2. The Trust is operated and controlled by its Board of Stewards, comprised of the following individuals:

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20.2.1. Defendant Gray Ferguson is the president of the Trust and is an individual citizen of South Carolina who resides in Bluffton, South Carolina.

20.2.2. Defendant Jordan Phillips is the vice president of the Trust and is an individual citizen of South Carolina who resides in Charleston, South Carolina.

20.2.3. Defendant Henry Armistead is an officer of the Trust, and upon information and belief, works and resides in Bluffton, South Carolina.

20.2.4. Defendant Mark Polites is the treasurer of the Trust and is an individual citizen of South Carolina who resides in Bluffton, South Carolina.

21. Defendant PBLH, LLC ("PBLH") is a limited liability company organized under the laws of Delaware, with its principal place of business in Beaufort County.

21.1. PBLH owns real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

22. Defendant Palmetto Bluff Real Estate Company, LLC (the "Real Estate Company") is a limited liability company organized under the laws of South Carolina, with its principal place of business in Beaufort County.

23. Defendant Montage Palmetto Bluff, LLC ("Montage") is a limited liability

company organized under the laws of Delaware, with its principal place of business in Beaufort County.

23.1. Montage leases, operates, and/or manages real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

24. Defendant South Street Partners LLC ("South Street Partners") is a South Carolina limited liability company with its principal place of business in South Carolina. South Street Partners' limited liability company members are citizens of South Carolina who reside in South Carolina.

24.1. Upon information and belief, South Street Partners owns 10% of the Founder, and is responsible for the day-to-day decisions and operations at Palmetto Bluff, many of which give rise to this lawsuit.

24.2. South Street Partners has an ownership or other legal interest in the real property, located in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

25. The Defendants Founder, Trust, Club, the Real Estate Company, PBLH, and South Street Partners are a single business enterprise and/or are amalgamated (the "Developer").

25.1. There is an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities, including, *inter alia*, intertwining of the operations of the

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entities and a failure to strictly comply with corporate formalities.

25.2. The blurring of the entitles' legal distinctions has resulted in, *inter alia*, bad faith, abuse, fraud, wrongdoing, and/or injustice.

25.3. As discussed below, justice, equity, and fundamental fairness require that accountability be placed on the single business enterprise.

26. Defendants John Does 1–25 are heretofore unidentified corporations, entities, and/or individuals, whose identity will be discovered during discovery in this action, who caused or contributed to the alleged bad acts and damages, who may be substituted in or added in as parties as discovery progresses.

II. JURISDICTION AND VENUE

27. The focus of this case is real property in Beaufort County, South Carolina.

28. Every party to the lawsuit is named because it has an interest in real property in Beaufort County, South Carolina.

29. At issue is the interpretation of real property rights and interests as set forth in various deeds, declarations, master plans, covenants, restrictions, easements, and other instruments pertaining to real property in Beaufort County, South Carolina.

30. This Court has subject-matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and, *inter alia*, South Carolina Code § 14-5-350 *et seq*. and § 15-7-10, *et seq.*

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31. This action must be tried in Beaufort County, South Carolina, pursuant to South Carolina Code § 15-7-10, because it is an action for an estate or interest in real property, for the determination of the right or interest, and for injuries to real property, and the subject property is situated in Beaufort County.

32. This Court has personal jurisdiction over the parties because they reside, own property, or do business in Beaufort County.

33. Venue is proper in this circuit under, *inter alia*, South Carolina Code § 15-7-10 *et seq*. because a substantial part of the events or omissions giving rise to the claim occurred in Beaufort County, South Carolina, and the property that is the subject of this action is located in Beaufort County.

34. This action relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State of South Carolina, in which such corporation or business enterprise is incorporated or organized.

35. Upon information and belief, two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are residents of the State of South Carolina.

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III. BACKGROUND

36. Located in Beaufort County, South Carolina, Palmetto Bluff is a private waterfront community with residential properties in the midst of premier club amenities, including swimming pools, courts for racquet sports, fitness facilities, dining venues, and clubhouses.

37. In 2003, the Founder undertook to develop the Palmetto Bluff community by creating a master plan and subjecting some of its land to various instruments containing covenants, conditions, restrictions, and easements.

A. Governing Documents

38. At issue in this litigation is the unlawfulness and unenforceability of certain provisions within the legal instruments that the Founder imposed on the Palmetto Bluff property. Also at issue are the questions of whether the Founder's governing documents for the community are deliberately designed to mislead residential property owners and prospective buyers, whether they include unlawful contracts of adhesion, whether they are unconscionable, whether they unreasonably restrain the alienability of property, whether they are the intentional vehicle for unfair and deceptive trade practices, whether they are otherwise contrary to the law and the public policy of the State of South Carolina, and whether the Founder's actions in pursuit of its profit are unfair trade practices in violation of South Carolina law.

39. Plaintiffs deny that there are any valid or enforceable mediation, arbitration, or

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other alternative dispute resolution requirements within the subject documents. Even if such existed, they have been satisfied. Moreover, any such prerequisites or proceedings would be futile given the Defendants' categorical refusal to meaningfully negotiate the concerns of the Plaintiffs.

40. The governing documents which are the subject of this lawsuit include:

i. The Community Charter for Palmetto Bluff

41. The Founder recorded the Community Charter for Palmetto Bluff (the "Charter") with the Office of the Beaufort County Register of Deeds in Book 1747 at Page 2090; a true and correct copy of the Charter is attached hereto as Exhibit 1.[7]

42. The Charter sets forth the Founder's vision for Palmetto Bluff, and it "is intended to serve as a framework for community governance."

43. The Charter establishes the homeowners' association for Palmetto Bluff, which is the Trust. According to the Founder, the Trust's function is to own, operate, and maintain the common areas of the Community and to enforce the governing documents of the Community.

44. The Trust acts through a Board of Stewards. At the time of filing of this lawsuit, the Board of Stewards consists entirely of members appointed by the Founder.

[7] The following capitalized terms in this Complaint have the same meaning as within the Charter: "Community," "Dwelling," "Owner," "Rental Areas," and "Unit."

45. Defendants Henry Armistead, Jordan Phillips, Mark Polites, and Gray Ferguson are Founder-appointed members of the Trust's Board of Stewards.

46. The Charter dictates that all Owners of residential property units are members of the Trust, entitled to certain rights, interests, and privileges. All Owners of residential units in Palmetto Bluff are of the same class of membership in the Trust.

47. The Charter contemplates that Owners of residential property will have the obligation to pay certain assessments for common expenses for the maintenance of common areas.

48. The Charter dictates that the Owners of residential units have the same financial burdens and the same rights to use the common areas, as between members of the same class.

49. The Charter states that certain residential units are located within designated "Rental Areas," and that Owners of such units have the right to rent their homes located in those areas for less than six months ("STR Dwellings").

50. The Charter is clear that STR Dwellings are otherwise to be treated the same as any other dwelling in Palmetto Bluff, and Owners in Rental Areas have the same rights as other residential property owners in Palmetto Bluff.

51. The Plaintiffs that are Owners of STR Dwellings ("STR Class Plaintiffs") are set forth herein and are incorporated by reference.

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52. Defendants have acted, individually and in concert with one another, to treat STR Dwellings and STR Class Plaintiffs differently and unfairly, in violation of the Charter and the law of South Carolina.

53. Chapter 19 of the Charter is an apparently stand-alone provision that discusses Palmetto Bluff Club in a manner that is designed to mislead the reader:

CHAPTER 19: PALMETTO BLUFF CLUB

By acceptance of a deed, each Owner shall automatically become a member of the Palmetto Bluff Club and shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference. Each Owner's obligations pursuant to the Palmetto Bluff Club Documents, including, without limitation, the obligation to pay club dues, user fees and other charges, shall be covenants running with the land with respect to the Owner's Unit. The Palmetto Bluff Club Documents establish a charge and continuing lien encumbering each Unit for the monetary obligation of the Owner or Owners of that Unit pursuant to the Palmetto Bluff Club Documents. The Palmetto Bluff Club Documents may be amended from time to time without the consent of the Owners. Founder shall provide each initial purchaser of a Unit with copies of the Palmetto Bluff Club Documents prior to or at the time of conveyance of the Unit. The Trust shall provide current copies of the Palmetto Bluff Club Documents to any Owner upon request.

54. In fact, the Palmetto Bluff Club is owned by the Defendant Club, which is a for-profit entity distinct from the Trust, although the Charter does not say so and instead deliberately obscures this fact.

55. The Charter deceptively omits any reference to the corporate form of the Club and to its ownership.

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56. The Charter is **drafted to deliberately mislead prospective purchasers** into believing that the Club and its amenities are an extension of the Trust and the Common Areas of the Community. Indeed, the verbiage used deceivingly suggests that the Club is a secondary homeowners' association.

56.1. The descriptive term "member" was chosen, artfully, deliberately, and deceptively, to mislead homeowners into thinking that they would acquire a stake in the governance of the Club.

57. The Charter deceptively defines "Palmetto Bluff Club" as "The club with diverse recreational and social facilities established for the use and enjoyment of all Owners subject to the Palmetto Bluff Club Documents," deliberately and deceptively excluding the material information that the Club is a separate, for-profit business.

57.1. While the documents use the term "member," a more accurate term might be "captive customer."

57.2. The notion of a captive customer base attracted South Street Partners to invest in Palmetto Bluff.

58. As alleged herein, Plaintiffs have been deceived by the Charter's misleading words and material omissions, to their detriment and damage.

59. The Palmetto Bluff Club documents have never been recorded with the Beaufort County Register of Deeds.

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60. Chapter 19 of the Charter contains ostensibly mandatory terms purporting to require owners of residential property to "automatically become" members of the Club, purportedly obligating them to pay "club dues, user fees, and other charges."

61. Chapter 19 refers to "Palmetto Bluff Club Documents," which are not of record and which ostensibly "may be amended from time to time without the consent of the Owners."

    61.1. In fact, the "Palmetto Bluff Club Documents" are unconscionable.

    61.2. In fact, unilateral amendments are invalid and void *ab initio*.

62. Chapter 19 explains that the Founder will provide initial purchasers of residential property in Palmetto Bluff with a copy of the Palmetto Bluff Club Documents "at the time of conveyance" and that the Trust is charged with providing current copies (presumably containing amendments made without consent of the Owners) only "upon request."

63. As discussed herein—and by their very definition and description within Chapter 19—the Palmetto Bluff Club Documents are unlawful **contracts of adhesion, and they are otherwise invalid, unenforceable, and unconscionable**.

    63.1. Similarly, unilateral amendments to the documents are invalid and void *ab initio*.

64. The property subject to the Charter includes the residential property within

Palmetto Bluff, along with Common Area property to be owned by the Trust.

65. The property subject to the Charter does not include the property ultimately owned and operated by the "Club."

66. As such, there is not direct privity between the Trust and the Club.

67. As such, the Charter does not touch, concern, or bind the Club property.

68. The Charter cannot legally require Owners to be members of a for-profit Club located on real property that is outside of the scope of the Charter.

69. As discussed herein, the Club documents (which have never been recorded) are explicit in their indication purporting that membership in the Club confers no real interest whatsoever in the Club property, but only a revocable personal license.

70. The Charter's provisions purporting to require residential property owners to be members of a for-profit Club located on a separate tract, in which they expressly receive no real interest, **does not touch and concern the land**.

71. Chapter 19 does not contain a real covenant.

72. Chapter 19 does not run with the land.

73. Chapter 19 is invalid and unenforceable.

74. The Founder and the Trust are aware that Chapter 19 is unlawful and unenforceable, and yet they have enforced and continue to enforce its

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provisions in bad faith and to the detriment of the Plaintiffs.

75. Tellingly, the Founder belatedly and ineffectively attempted to amend Chapter 19 of the Charter to include some half-hearted, misleading verbiage suggesting (but not granting) a tie to the land. The Fifty-Seventh Supplement to the Charter leaves Chapter 19 otherwise unaltered except to state that each Owner "acknowledges and agrees that mandatory membership in the Palmetto Bluff Club enhances the value of the Unit the Owner acquires because the availability of amenities owned by Palmetto Bluff Club are for all Owners within the Community." (Exhibit 2, 57th Supplement to Community Charter).

75.1. This additional language, which still does not convey any real interest in the Club property—owned and controlled by a for-profit entity—and it does not magically transform a strictly personal license into a real covenant.

75.2. This unilateral modification leaves no question that the **Founder had actual knowledge** that its Charter's mandatory Club membership provision was (and is) unlawful, unenforceable, and not tied to the land.

75.3. This unilateral modification makes it clear that the Founder and the Trust are intentionally and knowingly enforcing unlawful documents, in bad faith.

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ii. The Declaration of Recreational Covenant for Palmetto Bluff

76. The Founder recorded the Declaration of Recreational Covenant for Palmetto Bluff (the "Recreational Covenant") with the Office of the Beaufort County Register of Deeds, in Book 1747 at Page 2185; a true and correct copy of the Recreational Covenant is attached hereto as Exhibit 3.[8]

77. The Recreational Covenant was recorded after the Charter.

78. The Recreational Covenant was imposed by the Founder on the residential property and on the property owned by the Defendant Club.

79. The Recreational Covenant is a declaration by the Founder of its intent to develop the recreational and social facilities to be known as the Palmetto Bluff Club, "for the benefit of the Residential Property."

80. As set forth herein, the Defendants have acted, individually and in conspiracy with one another, to deprive residential property owners of the benefit of the Club to which they are entitled.

81. Article 1 of the Recreational Covenant nominates Defendant Club as the "successor Founder hereunder," thereby binding Defendant Club as the developer for the Club amenities and imposing on Defendant Club the fiduciary duties of a developer to residential homeowners.

[8] When used herein, the term "Club Property" has the same definition as that within the Recreational Covenant.

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82. As set forth herein, the Club has breached its fiduciary duties including but not limited to by acting in its own best interest, and in the interest of those with whom it has conspired, to the detriment of residential owners.

83. The Founder later attempted, unsuccessfully, to pull back the Club's status as successor, but such attempt was invalid and unlawful as to residential property owners, including Plaintiffs.

84. The Recreational Covenant is drafted to deceive: it continues the Charter's misleading narrative suggesting that the Club is a secondary HOA.

85. According to the Recreational Covenant, the Club amenities are "for the benefit of the owners of the Residential Property," and owners of each Residential Unit will be given a "Community Membership."

85.1. Importantly, the term "Membership" is deceptive.

85.2. Palmetto Bluff Club is owned by a limited liability company.

85.3. Residential Owners are not actual, statutory members of Palmetto Bluff Club LLC.

85.4. Despite the illusory, deceptive, and misleading promise that they are automatic "members," Residential Owners purportedly do not have any ownership or control over Palmetto Bluff Club LLC.

86. According to the Recreational Covenant, membership in the Club purportedly is automatic and mandatory, with memberships issued by the "Club Operator" to each owner of residential property in Palmetto Bluff.

87. Defendant Montage was the Club Operator through the year 2021.

88. The Club and/or Defendant South Street Partners is currently the Club Operator.

89. Montage, the Club, and the Founder, enforce the Recreational Covenant's purported mandatory, automatic membership provision at real estate closings, by requiring all prospective purchasers to execute a purported "Membership Agreement" as a condition of closing.

90. The Membership Agreement, discussed *infra*, is a contract of adhesion.

91. The Recreational Covenant purports to subject residential Owners to the financial obligation to pay membership "assessments, annual dues, minimum usage fees and other costs" for so long as they own residential property in Palmetto Bluff, regardless of their use or non-use of the Club amenities.

92. The Recreational Covenant purports to require Owners of residential property to maintain membership status in good standing, until such time as they divest themselves of title to the residential property, in accordance with the "Palmetto Bluff Membership Plan," which is not of record.

93. The Recreational Covenant purports to empower the "Club Operator" to enforce and foreclose upon a lien on the property of a residential Owner for delinquent dues.

94. Significantly, in exchange for the obligation to pay substantial assessments,

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dues, and "other costs," Owners of residential property are ostensibly given no real interest whatsoever in the Club Property or its facilities.

95. The Recreational Covenant expressly states that a residential property owner purportedly acquires "No Ownership Interest," including no "ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator." (Ex. 3) (emphasis in original).

96. The Recreational Covenant purports to give residential Owners nothing more than the personal "privilege of using" the Club's facilities, subject to Club's governing documents, which are not of record and purportedly "which are subject to change at any time."

97. **Either**, despite its language indicating otherwise, the Recreational Covenant confers upon residential Owners an equitable ownership interest in the Club's Property and its facilities, **or** the Owner's purported "Covenant to Pay" in exchange for nothing more than the revocable offer of a limited, personal license is not a real covenant, and it does not touch and concern the land.

98. If the Owners have an equitable ownership interest in the Club Property, then neither the Founder nor the Club has the power to modify, limit, revoke, or charge for that real property interest without the express consent and permission of the owner of the interest.

99. If the Owners have an equitable ownership interest in the Club Property, then they have property rights including but not limited to the right to possession,

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the right to control, the right of exclusion, the right to derive income from it, and the right to dispose of it.

100. Alternatively, if the Owners have only a personal license and there is no real property interest conferred, then the purported covenant to hold a "membership" license in a for-profit Club, and to pay associated dues, is not a real covenant, it does not run with the land, and it is an unenforceable and unlawful obligation, and it was void *ab initio*.

101. The Recreational Covenant's purported obligation to pay assessments, dues, fees, and costs "in accordance with" a Plan and other governing documents—which are not of record and which can be changed at any time, unilaterally, by the Founder and the Club—is unenforceable and invalid because it is **indefinite, unreasonable, unconscionable, and otherwise against the law and public policy of this State.**

102. The Recreational Covenant is an unreasonable restraint on the alienation of Plaintiffs' property and it impairs and has damaged the marketability of their title.

103. The Founder, the Trust, and the Club have actual knowledge of the unlawfulness and unenforceability of the Charter and the Recreational Covenant, and they nonetheless seek to enforce them against residential Owners including the Plaintiffs and their prospective purchasers, in violation of the law, in bad faith, in breach of their fiduciary duties, unfairly, with the

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intent to deceive and mislead owners, and to the detriment of the value of Plaintiffs' property and the marketability of Plaintiffs' title.

iii. The Palmetto Bluff Club Membership Plan

104. A recent version of the Palmetto Bluff Club Membership Plan (the "Plan"), which neither the Founder nor the Club have ever recorded with the Beaufort County Register of Deeds and the terms of which many prospective purchasers and Owners have no notice, neither actual nor constructive, and which has been amended unilaterally by Defendants Club, Founder, and Montage multiple times, without notice, is attached hereto as Exhibit 4.

104.1. The Plan is unconscionable, unlawful, invalid, and void *ab initio*.

104.2. Any material changes to the Plan that were unilateral are invalid and void *ab initio*.

105. The Charter defines the "Palmetto Bluff Club Documents" as "The Membership Plan and other membership documents which control the use, enjoyment, and administration of the Palmetto Bluff Club" and which "may be amended from time to time without the consent of the Owners." (*See* Ex. 1).

106. The Recreational Covenant purports to make memberships "subject to" the "Plan." (*See* Ex. 3).

107. The Plan has never been recorded with the Beaufort County Register of Deeds, nor have any of the other purported governing documents of the Club.

108. The Plan purports that every Owner of residential property in Palmetto

Bluff "shall automatically assume and agree to be bound by all the terms and conditions of" the Plan. (Ex. 4, emphasis added).

109. The Plan purports to require all persons who acquire a homesite in Palmetto Bluff to execute a "Membership Agreement" at the time of purchase, as a condition of closing.

110. Among other reasons, because membership in the Club is purportedly "automatic" and "mandatory" and subject to unilateral change without notice or consent, the Plan is a **contract of adhesion**, as is the "Membership Agreement."

111. The Plan is also **unconscionable** because it is purportedly mandatory and purportedly the Club maintains and exercises "the right, in its sole and absolute discretion, from time to time, to modify" the Plan and any other Club document; its **indefinite terms are against public policy**. The purported "Membership Agreement" is void and unconscionable for the same reasons.

112. Defendants South Street, the Founder, Club, and Montage unlawfully have wielded their purportedly unqualified "right" to change the Plan without consent by, *inter alia*, making numerous unilateral changes that unlawfully:

112.1. Unilaterally increase Plaintiffs' dues and fees,

112.2. Unilaterally impose a "joining fee" as a condition of the conveyance of Plaintiffs' property,

112.3. Unilaterally and radically increase the purported "joining fees,"

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112.4. Unilaterally invent new "transfer fees" for owners who move to different homes in Palmetto Bluff,

112.5. Unilaterally divest Property Owners of access rights to the amenities for their houseguests,

112.6. Unilaterally impose fees on Property Owners for their houseguests' use of the amenities,

112.7. Unilaterally strip STR Plaintiffs of theirs and their guests' access rights to Club Property,

112.8. Unilaterally impose on STR Plaintiffs additional fees for their guests to use Club Property and amenities.

113. The Plan continues the Founder's deceptive narrative that membership in the Club is mandatory and that the Club Property and amenities are for the benefit of residential owners. However, the unrecorded Plan and other purported governing documents, which are frequently changed in the Club's sole discretion, reiterate that the Plan does "not grant any ownership rights in the Club Property or Club Facilities in favor of any member but, rather grant a non-exclusive license to use the Club facilities subject to" the Plan.

114. The Plan purports to run with and bind the land, although it is not recorded, contains no property description, is unsigned, is not witnessed, and it changes frequently without notice or consent.

115. The Plan contains provisions purporting to run with the land and to bind current Owners and to bind successors in title to their real property, which

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obligates a transferee to pay a fee to the Club upon each transfer of interest in real property.

115.1. The Plan purports to obligate transferees to pay annual dues to the Club.

115.2. The Plan purports to obligate transferees to pay a "Joining Fee" to the Club.

115.3. The Plan purports to obligate Owners to pay a fee to "transfer" their "membership" to a new home in the Community, if they move.

116. Pursuant to S.C. Code § 27-1-70, the provisions of the Plan purporting to run with the land and to bind successors in title to real property, obligating real property transferees to pay Club dues and the "Joining Fee," were not and are not binding on or enforceable against Plaintiffs or their purportedly affected real property belonging to residential Owners in Palmetto Bluff.

117. The provisions of the Plan, purporting to run with the land and to bind successors in title to real property, obligating real property transferees to pay dues and the "Joining Fee" to the Club, constitute **unreasonable restraints on the alienation of Plaintiffs' property**.

118. The provisions of the Plan, purporting to run with the land and to bind successors in title to real property, obligating real property transferees to pay Club dues and a "Joining Fee" to the Club, **impair the marketability of title** to the Plaintiffs' residential property in Palmetto Bluff and **diminish its value**.

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119. To the extent that the Plan and other governing documents of the Club are contracts, they are **illegal and void** ***ab initio***.

120. The Founder, the Club, the Trust, and Montage have **actual knowledge** that the Plan and the purported Joining Fee and the purported Club dues are unlawful and unenforceable, but they nonetheless seek to enforce them against residential Owners including the Plaintiffs and their prospective purchasers, in violation of the law, in bad faith, **in breach of their fiduciary duties**, unfairly, and with the intent to deceive and mislead Owners, including Plaintiffs.

121. The Plan purports to require all Owners of residential property to be members of the Club, and to pay dues (which may be increased in the sole discretion of the Club).

122. On information and belief, the Defendant Club imposes the same purported joining fee and annual dues on each residential Owner.

123. Despite charging all residential Owners the same joining fee and dues, the Club then turns around and unfairly extracts an even greater cost from Owners of STR Dwellings, including STR Class Plaintiffs, which the Founder expressly stated were to bear no greater financial burden than any residential unit.

124. The Plan purports to authorize the Club to charge additional fees to the STR Class Plaintiffs, purportedly in exchange for their guests to use the Club Property and amenities.

125. STR Class Plaintiffs put no additional burden on the Club amenities.

126. The imposition of additional fees by the Founder, Montage, and the Club on STR Class Plaintiffs is unlawful, unfair, unreasonable, and in violation of the Charter.

127. The Plan purports to have a mandatory arbitration/mediation provision, but such provision is void, invalid, unconscionable, oppressive, one-sided, and unenforceable, including (without limitation) because (a) the document has inadequate notice per S.C. Code § 15-48-10 *et seq.* and other applicable law, (b) the document and provision violate public policy and statutory law, including statutory remedies pled by Plaintiffs and required by law, (c) the document and provision are contracts of adhesion, (d) the document and provision fails to comply with other applicable law, and (e) the Club's governing documents are void *ab initio*.

B. Unlawful actions by Defendants

128. As described above, the Defendants have been improperly squeezing the Owners of residential property in Palmetto Bluff. This is in part to support South Street's plan to flip the Community by selling it to the highest bidder, in eight years. The method is to drive amenities, resources, and income away from Owners and to the Defendants' for-profit endeavors, including the Club and PBLH.

129. Defendants' improper actions include all those identified above, and they

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are not limited to the examples below:

129.1. Purportedly requiring Owners to join the for-profit Club,

129.2. Charging improper dues to the Owners for use of the Club Property,

129.3. Overcharging dues to Club members, and incorrectly allocating those dues to support the Defendants' overhead costs and other expenses,

129.4. Unilaterally and unreasonably increasing the dues imposed on captive Club members, without their consent,

129.5. Failing to abide by the right of first offer requirement in the documents, which mandated that the Owners be given the opportunity to purchase the Club and its facilities before it recently was sold to the private equity firms,

129.6. Instituting, maintaining, and enforcing unlawful transfer fees and transfer fee covenants, despite actual knowledge that they are unlawful,

129.6.1. Deceiving Plaintiffs into paying the unlawful transfer fee, including by portraying it as mandatory payment to join a membership club in which proceeds support a membership club,

129.7. Misleading and deceiving purchasers and Owners as to the nature and structure of the facilities and amenities at Palmetto Bluff,

129.8. Misleading and deceiving purchasers and Owners as to the access that would be available to the facilities and amenities at Palmetto Bluff,

129.9. Charging duplicative and improper fees purportedly for access to the amenities by household guests,

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129.10. Limiting and eliminating access to Club Property, including pools and other amenities in the community,

129.11. Misleading and deceiving Owners and purchasers of properties within the Designated Rental Areas regarding access to and use of facilities and amenities at Palmetto Bluff,

129.11.1. This includes, but is not limited to, misleading Plaintiffs into believing their tenants and guests would have rights to use the amenities as promised,

129.12. Hiding and failing to disclose purported governing documents and amendments regarding Palmetto Bluff and its amenities and structure,

129.13. Failing to record the purported governing documents with the Register of Deeds,

129.14. Violations of the purported governing documents,

129.15. Improperly amending the governing documents and purporting to impose unilateral, invalid, indefinite, and ever-changing obligations on the Owners, including Plaintiffs,

129.16. Unreasonably restraining the alienation of property at Palmetto Bluff,

129.17. Impairing the marketability of title to the Plaintiffs' property in Palmetto Bluff,

129.18. Diminishing the value of Plaintiffs' property in Palmetto Bluff,

129.19. Improperly claiming full ownership of the Palmetto Bluff name and

purporting to prohibit others from using the name in any circumstance,

129.20. Putting the interests of the Developer and its amalgamated entities above that of the Owners in Palmetto Bluff, in violation of fiduciary duties,

129.21. Failing to disclose conflicts of interest and true motives of (among other things) maximizing Developer's for-profit businesses over the good of the Community, and deceiving the Community (including Plaintiffs) as to Defendants' true intent,

129.22. Conspiring, including with Montage, to eliminate short term rentals in the Designated Rental Areas, including by improperly limiting and prohibiting Owners' guests and tenants in the Designated Rental Areas from using Community facilities, including (but not limited to) by:

129.22.1. Using improper methods to drive short-term rental business and customers to the Developer's own businesses,

129.22.2. Improperly limiting and eliminating access to amenities based on the length of a rental,

129.22.3. Improperly favoring certain commercial interests over the interests of members of the STR Class and the other Plaintiffs,

129.22.3.1. This includes, but is not limited to, favoring Defendants' short-term rental programs and properties over those of Plaintiffs, (on information and belief) waiving design requirements for Developer properties, charging improper daily resort fees and similar fees, failing to perform proper reserve

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studies, keeping joinder fees for Defendants' sole or primary benefit, and removing amenities that the Defendants perceive not to favor their commercial interests,

129.22.4. Charging duplicative and improper fees to the STR Class,

129.22.5. Limiting and eliminating access to Club Property, including pools and other amenities in the community,

129.22.6. Limiting and eliminating access to Club restaurants and discriminating in taking reservations to restaurants, and in access to amenities such as golf,

129.23. Failing to have a licensed property manager in charge of managing the properties and the Defendants' rental business,

129.24. Using Trust, Club, and other Community property and facilities for Developer's personal and corporate purposes, over the interests and benefits of residential property Owners,

129.25. Misleadingly marketing to real estate purchasers, through Defendant Real Estate Company, the proximity of Designated Rental Area properties to the amenities,

129.26. Having inadequate capacity, amenities, and facilities,

129.26.1. Diverting the inadequate capacity, amenities, and facilities in favor of Defendants' for-profit endeavors over the interest of the Owners, including Plaintiffs,

129.26.2. Misleading the Owners, including Plaintiffs, as to the reasons

for the inadequate capacity, amenities, and facilities.

130. The Board of Stewards and the Trust in particular have improperly allowed the governing documents to be violated, and through their actions and inactions have become complicit in such violations, to the detriment of the organization and the Trust members to whom they owe their fiduciary duties, including Plaintiffs. Instead, the Board of Stewards and the Trust have acted as a puppet for the Developer and other Defendants.

130.1. The Board of Stewards' and the Trust's failures of duty of care and diligence are illustrated by, for example, their failure to have annual meetings, failure to follow the procedures established in the Trust's governing documents, failure to keep accurate minutes, failure to enforce the governing documents against the other Defendants, and ceding use of common property to the Developer's for-profit functions, among other things.

130.2. For example, the Board of Stewards and the Trust have improperly acted with the other Defendants to promote the unlawfully-structured planned unit development to deceptively put the interests of the for-profit venture ahead of the community's and property owners' interests, including Plaintiffs' interests.

130.3. For example, the Board of Stewards and the Trust have improperly, without objection or appropriate legal action, allowed property and facilities to which Owners have the right of use—such as the Village Green

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and Club facilities—to be improperly co-opted by the Developer for its for-profit endeavors, over the interests of the Owners, including Plaintiffs.

130.4. For example, the Board of Stewards and the Trust have improperly, without objection or appropriate legal action, allowed properties in the Designated Rental Areas to be disparately treated, in favor of the Developer's and Montage's for-profit endeavors, including competing short-term rentals.

130.5. For example, the Board of Stewards and the Trust have improperly, without objection or appropriate legal action, allowed the Club facilities to be sold to a new owner without enforcement of the Owners' (including Plaintiffs') right of first offer option required by the governing documents.

131. In addition and in the alternative, as to the Defendants Club and Montage, the Club is a homeowners' association, and it and the "Club Operator" have the duties and responsibilities belonging to such entities, which Defendants have breached in the ways described above and below.

C. Damages caused by Defendants' improper actions

132. Damages caused to Plaintiffs by Defendants' unlawful actions include, but are not limited to, the items summarized below:

132.1. Diminution of property values at Palmetto Bluff relative to where they would be without Defendants' improper actions,

132.2. Depreciation of property values at Palmetto Bluff relative to where

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they would be without Defendants' improper actions,

132.3. Damage to long-term values of STR Class properties,

132.4. Damage to the marketability of Plaintiffs' title,

132.5. Unreasonable restraints on the alienation of Plaintiffs' title,

132.6. Payments of dues and fees pursuant to void and fraudulent contracts,

132.7. Overpayment on property purchases due to Defendants' misrepresentations and breaches of duties,

132.8. Inducement into purchasing properties that the Plaintiffs would not otherwise have purchased,

132.9. Loss of access to the promised Club amenities,

132.10. Duplicative fees purportedly for access to the promised Club amenities,

132.11. Damage to rental income of members of the STR Class, including:

132.11.1. Lost customers,

132.11.2. Lost revenue,

132.11.3. Lost profits,

132.11.4. Lost marketability due to (*inter alia*) negative ratings and reputation caused by Defendants' actions,

132.11.5. Interference with contracts and causing breached contracts,

132.12. Other improperly charged or billed amounts, including purported daily resort fees, joining fees, annual Club dues, and annual Trust dues,

132.13. Overpayment of dues because of Defendants' overcharging and misuse of funds, and,

132.14. To the extent not identified above, wrongly inflated costs of lots/home purchase and cost of building/improvements through, for example, improvements made to STR Class properties for the purpose of short-term rentals, when Defendants intended to eliminate such businesses at Palmetto Bluff.

IV. CLASS ACTION—PROPERTY OWNERS CLASS

133. The "Property Owners Class" is defined as all Owners, including former Owners, of residential property Units within the Palmetto Bluff development who joined the Palmetto Bluff Club pursuant to the purported "automatic" and mandatory membership provisions within the governing documents within the past twenty (20) years, or within the period permitted under applicable statutes of limitations and repose, whichever is longer and permitted by applicable law.

134. The class claims pertain to real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

135. The class is so numerous that joinder of all members is impracticable, given that the number exceeds 800.

136. Property Owners Class representatives include 315 Corley CW LLC, 368 Mount Pelia LLC, Bridge Charleston Investments B LLC, Bridge Charleston

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Investments C LLC, Bridge Charleston Investments E LLC, Bridge Charleston Investments H LLC, Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust, Geoffrey J. Block, R. Jeffrey Kimball and Deborah S. Kimball, Sebrina Leigh-Jones and Chris Leigh-Jones, Jennifer Albero, Live Oak Assets LLC, Matthew N. Lynch and Barbara A. Lynch, MKM 22 West LLC, One Rumford Lane LLC, Salt Works, LLC, and TTJR LLC.

137. There are questions of law or fact common to the class, including (*inter alia*) whether the Developer unlawfully compelled class members' mandatory membership in the for-profit Club, which is not the homeowners' association; whether Defendants have imposed and enforced an unlawful transfer fee covenant on class members' properties; whether class members' were improperly charged and overcharged for Club dues; whether the Defendants violated the right of first offer provision of the class members; whether the Trust, Board of Stewards, and other Defendants breached fiduciary duties to the class members; whether the Trust, the Board of Stewards, and other Defendants unlawfully conspired against the class members as summarized above; and other improper actions set forth herein.

138. The claims or defenses of the representative parties are typical of the claims or defenses of the class, because (*inter alia*) they all own property in Palmetto Bluff, all are members of the Club, all are members of the Trust, and all are similarly harmed and damaged by Defendants as described herein.

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139. The representative parties will fairly and adequately protect the interests of the class, including because their interests are aligned by the facts that they all own property at Palmetto Bluff, all are members of the Club and the Trust, and all are similarly harmed and damaged by the Defendants' wrongful actions, as set forth herein.

140. For claims in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class, including because each Property Owner Class member is entitled to disgorgement of improperly charged dues and fees amounting to many thousands of dollars per person.

V. CLASS ACTION—SHORT-TERM RENTAL PROPERTY OWNERS CLASS

141. The Short-Term Rental Property Owners Class ("STR Class") is defined as all Owners of residential property units within Palmetto Bluff whose Unit is located within a designated "Rental Area," as that term is defined in the Charter (as properly amended), and who purchased their Unit within the past twenty (20) years, or within the period permitted under applicable statutes of limitations and repose, whichever is longer and permitted by applicable law.

142. The class claims pertain to real property in Beaufort County, South Carolina, which real property is the subject of this lawsuit.

143. The class is so numerous that joinder of all members is impracticable, given that the number exceeds 200.

144. STR Class representatives include 315 Corley CW LLC, 368 Mount Pelia LLC, Bridge Charleston Investments B LLC, Bridge Charleston Investments C LLC, Bridge Charleston Investments E LLC, Bridge Charleston Investments H LLC, Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust, Geoffrey J. Block, R. Jeffrey Kimball and Deborah S. Kimball, Sebrina Leigh-Jones and Chris Leigh-Jones, Jennifer Albero, Live Oak Assets LLC, Matthew N. Lynch and Barbara A. Lynch, MKM 22 West LLC, One Rumford Lane LLC, Salt Works, LLC, and TTJR LLC.

145. There are questions of law or fact common to the class, including (*inter alia*) whether Defendants misled and deceived class members regarding access to facilities and amenities for Rental Areas; whether Defendants conspired to eliminate short-term the rental activity and business of class members; whether Defendants improperly limited and prohibited members' guests and tenants from using facilities and amenities; whether Defendants used unlawful and improper methods to drive short-term rental business away from class members and in favor of Defendants' for-profit interests; whether Defendants unlawfully favored certain commercial interests over class members' interests and rights; whether Defendants charged duplicative and improper fees to class members; and other improper actions set forth herein.

146. The claims or defenses of the representative parties are typical of the claims or defenses of the class, including (*inter alia*) because they all own property in the designated Rental Areas of Palmetto Bluff, all are members of the Club, all

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are members of the Trust, and all are similarly harmed and damaged by Defendants as described herein.

147. The representative parties will fairly and adequately protect the interests of the class, including because their interests are aligned by the facts that they all own property in designated Rental Areas of Palmetto Bluff, all are members of the Club and the Trust, and all are similarly harmed and damaged by the Defendants' wrongful actions, as set forth herein.

148. For claims in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class, including because the lost business, harm to property value and use, interference with contracts, and improperly charged fees amount to many thousands of dollars per person.

VI. DERIVATIVE STANDING

149. Although Plaintiffs do not believe that they are required to meet the requirements of a derivative action, they plead the derivative elements out of an abundance of legal caution.

150. Derivative Plaintiffs include Jeffrey Kimball, Jennifer Albero, and Chris and Sebrina Leigh-Jones.

151. At all times relevant to the subject matter of this lawsuit, Derivative Plaintiffs were, and/or are today, members of the Trust.

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152. This derivative action is not a collusive one to confer jurisdiction that the Court would otherwise lack.

153. Derivative Plaintiffs have demanded, without success, that the Board of Stewards of the Trust, and the Developer, stop and refrain from the unlawful actions alleged herein, including but not limited to by letters dated July 29, 2020 and October 29, 2021, attached hereto as "Exhibit 5," which are incorporated herein by reference.

154. Moreover, demand to the Board of Stewards, the Trust, the Developer, and other Defendants, would be futile because they have rejected all previous offers, and they are entirely controlled by the Developer, which has refused all previous demands and has indicated a categorical refusal to comply with Plaintiffs' demands and concerns.

155. In order to bring this suit, the Board of Stewards would be forced to sue themselves or persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing a specific demand on the Board of Stewards.

156. The directors of the Trust (the Board of Stewards) have failed to comply with the demands.

157. The complained-of actions by the Trust and the Board of Stewards are not authorized by South Carolina law or by valid or properly-amended governing documents, and therefore are *ultra vires*, unlawful, unauthorized, and

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incapable of ratification. Accordingly, the actions complained of herein are not protected by the business judgment rule, and any reasonable, good faith inquiry into this wrongdoing would conclude that Plaintiffs' claims should be pursued and are in the best interests of the Trust and its members.

158. The actions complained of herein have been and will continue to be to the detriment of the Trust and its members.

159. Derivative Plaintiffs fairly and adequately represent similarly situated members of the Trust, because (*inter alia*) the Plaintiffs are members of the Trust and own property at Palmetto Bluff that is in certain ways subject to the Trust and Developer, or purports to be subject to the Trust and Developer.

VII. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment—All Plaintiffs vs. All Defendants)

160. The allegations above are incorporated into this cause of action as if set forth fully herein.

161. This claim is brought pursuant to the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-10 *et seq*. and other applicable law.

162. Due to the facts, conditions, and circumstances set forth in this Complaint, an actual and justiciable controversy exists.

163. Plaintiffs own real property in Palmetto Bluff, as set forth above.

164. Defendants have breached the law of South Carolina and the purported

contracts at issue, as described above, including by:

164.1. Purporting to tie membership dues and fees paid to the Club to ownership of property in Palmetto Bluff, in violation of South Carolina's prohibition on unlawful transfer fee covenants.

164.2. Purporting to tie an unlawful, unconscionable, and unilateral contract and/or contract terms to the ownership of property in Palmetto Bluff, in violation of the law of South Carolina.

164.3. Numerous other ways described above.

165. Through their improper and unlawful actions, Defendants have damaged Plaintiffs, including by (*inter alia*) improperly inducing and causing: "mandatory" and "automatic" joinder of a for-profit endeavor run by the Developer; causing Plaintiffs to pay unlawful joining fees and dues; causing Plaintiffs to overpay on property purchases; causing Plaintiffs to overpay on dues, assessments, and other amounts because of Defendants' overcharging and misuse of funds; inducing Plaintiffs to purchase properties that the Plaintiffs would not otherwise have purchased; damage to rental income of members of the STR Class; damage to long-term value of properties of the STR Class; and other damages described herein.

166. Plaintiffs accordingly request that the Court enter a judgment declaring that:

166.1. The transfer fee covenant and mandatory Club membership are unlawful and were unlawful and are void *ab initio*.

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166.2. The transfer fee covenant and mandatory membership may not be enforced going forward.

166.3. All Plaintiffs (including class members) are entitled to a refund of all amounts paid under the unlawful transfer fee covenant and purported mandatory membership, going back for at least the period of twenty (20) years, including interest on the amounts paid at the highest rate permitted by applicable law.

166.4. The Club Membership Plan, Membership Agreement, and associated documents are unlawful, invalid, unconscionable, and void, including because:

166.4.1. They fraudulently purport to be mandatory and automatic.

166.4.2. They purport to be unilateral and give entire discretion to one party, the Club.

166.4.3. They have been amended without consent.

166.4.4. They are unconscionable, void, indefinite, and against public policy.

166.4.5. They are unlawful contracts of adhesion.

166.4.6. They violate the South Carolina Homeowners Association Act, S.C. Code § 27-30-110 *et seq.*

166.4.7. For the individual Plaintiffs, they violate the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 *et seq.*

166.4.8. They violate South Carolina's prohibition on transfer fee

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covenants, including under S.C. Code § 27-1-70, as well as the law and public policy set forth in S.C. Code § 27-1-70(B).

166.5. Defendants must provide an accounting of the funds received from Plaintiffs and spent by Defendants during the statute of limitations period.

167. Plaintiffs request that they be awarded damages caused by Plaintiffs' unlawful conduct, including attorneys' fees and costs.

FOR A SECOND CAUSE OF ACTION
(Violation of the South Carolina Homeowners Association Act—
All Plaintiffs vs. Palmetto Bluff Development LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards)

168. The allegations above are incorporated into this cause of action as if set forth fully herein.

169. This claim is brought pursuant to S.C. Code § 27-30-110 *et seq*. and other applicable law.

170. Defendants hold the Club out as an entity developed to manage and maintain planned Community amenities, and they purport to require Plaintiffs, by virtue of their ownership of residential property, to pay dues and assessments related to Club Property.

171. The Club therefore meets the South Carolina Homeowners Association Act's definition of a homeowners' association.

172. Because the Defendants hold the Club out as a homeowners' association, and because the Club meets the definition of a homeowners' association, Defendants are bound by the South Carolina Homeowners Association Act.

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173. The South Carolina Homeowners Association Act required that the Club's governing documents must have been recorded on or before January 10, 2019, in order to remain enforceable.

174. Defendants failed to record the Club's governing documents, including the Plan and any purported rules, regulations, guidelines (including purported access guidelines), and fee schedules.

175. Due to Defendants' failure to record the Club's governing documents, the documents—including but not limited to any purported rules, regulations, guidelines (including purported "access guidelines"), and fee schedules—are unenforceable, and Plaintiffs request a judgment so holding, pursuant to the Act.

176. Defendants have actual knowledge that the Club's governing documents are and have been unenforceable since at least January 10, 2019, and yet they have intentionally and unlawfully enforced them against the Plaintiffs to their damage.

177. Plaintiffs request that they be awarded damages caused by Defendants' unlawful conduct, including attorneys' fees and costs.

FOR A THIRD CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act—
Individual Plaintiffs vs. All Defendants)

178. The allegations above are incorporated into this cause of action as if set forth fully herein.

179. Defendants have violated the South Carolina Unfair Trade Practices Act

(SCUTPA), S.C. Code § 39-5-10 *et seq.*, including by (*inter alia*):

179.1. Misleadingly and falsely inducing Plaintiffs into "mandatory" membership in the Developer's for-profit enterprise, the Club,

179.2. Improperly burdening Plaintiffs' property with unlawful transfer fee covenants,

179.3. Overcharging dues and other items to Plaintiffs, and incorrectly allocating those dues to support the Developer's overhead costs and other expenses unrelated to the property and/or the amenities,

179.4. Misleading and deceiving Plaintiffs as to the nature and structure of the facilities and amenities at Palmetto Bluff,

179.5. Purporting to institute and enforce unlawful contracts and associated obligations, as described above,

179.6. Improperly damaging short term rentals in the Designated Rental Areas, including by improperly limiting and prohibiting guests in the Designated Rental Areas from using Community facilities, and

179.7. Other improper actions set forth above.

180. The complained-of actions by Defendants constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce.

181. As a proximate cause of Defendants' unlawful actions, the individual Plaintiffs have suffered ascertainable loss of money and damages, including:

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181.1. Overpayment on property purchases due to Defendants' misrepresentations and breaches of duties,

181.2. Inducement into purchasing properties that the buyers would not otherwise have purchased,

181.3. Damage to rental income of Plaintiffs who own Units within the Designated Rental Areas, including:

181.3.1. Lost customers,

181.3.2. Lost revenue,

181.3.3. Lost profits,

181.3.4. Interference with contracts and causing breached contracts,

181.4. Diminution of Plaintiffs' property values at Palmetto Bluff relative to the values without Defendants' unlawful actions,

181.5. Depreciation of Plaintiffs' property values at Palmetto Bluff relative to the values without Defendants' unlawful actions,

181.6. Other improperly charged amounts, including purported daily resort fees, joining fees, annual Club dues, and annual Trust dues,

181.7. Overpayment of dues due to Defendants' overcharging and misuse of funds, and,

181.8. Other damages described above.

182. Defendants' unlawful acts have an impact on the public interest and are capable of repetition, including because Defendants are promoting and attempting to sell thousands of properties at Palmetto Bluff to the general

public, which are subject to the same unlawful activities of Defendants described herein. Moreover, in the future, the properties at Palmetto Bluff likely will be marketed and sold to thousands of later owners, who will be exposed to and burdened with the same unlawful activity by Defendants.

183. Defendants' unlawful acts were willful and knowing, and they knew or should have known that the conduct was a violation of the SCUTPA.

184. Plaintiffs are entitled to trebled damages and attorneys' fees and costs in addition to their actual damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty—All Plaintiffs vs. Palmetto Bluff Development LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards)

185. The allegations above are incorporated into this cause of action as if set forth fully herein.

186. Defendants are in a fiduciary relationship with the Plaintiffs, who are property owners in a planned unit development that the Defendants are developing, administering, promoting, marketing, and controlling.

186.1. In the alternative, and in addition, Defendants are in a fiduciary relationship with the Trust (including its Board of Stewards), which has improperly refused to protect, pursue, and maintain the rights and interests of its members (including Plaintiffs), and which Plaintiffs now represent derivatively.

187. Defendants have breached their fiduciary duty by, *inter alia*,

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187.1. Setting up and supporting a legally-defective structure which unlawfully requires Plaintiffs to be members of Defendants' for-profit endeavor, the Club, on onerous, one-sided terms that violate South Carolina law and public policy;

187.2. Purporting to force Plaintiffs to be and remain members of Defendants' for-profit endeavor, the Club, in violation of South Carolina law;

187.3. Self-dealing and conflicts of interest, including the Board of Stewards, Trust, Club, and Founder all deliberately manipulating the Community and directing funds to the Developer's for-profit endeavor contrary to the best interest of the Community, and using community property and assets for their for-profit endeavor without appropriate disclosure or compensation;

187.4. Other improper actions set forth above.

188. Defendants' breaches were willful, wanton, or in reckless disregard of Plaintiffs' rights.

189. Plaintiffs have been damaged by the breaches of Defendants, including as set forth above.

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FOR A FIFTH CAUSE OF ACTION
(Interference with Contractual Relationships—STR Class and Individual Plaintiffs vs. All Defendants)

190. The allegations above are incorporated into this cause of action as if set forth fully herein.

191. Contracts exist and have existed between these Plaintiffs and their short-term rental guests.

192. Defendants were aware that these Plaintiffs have entered into, and are entering into, short-term rental contracts with guests, for short-term rentals at Palmetto Bluff.

193. Defendants intentionally interfered with and caused the breach of those contracts by improperly prohibiting access to amenities in the Community that were used for years by short-term rental customers.

193.1. This was done in accordance with Defendants' plan to eliminate outside short-term rentals within the Community.

194. Defendants had no adequate justification for their actions, which were done with the intention of eliminating short-term rentals which are a vested and promised right within Palmetto Bluff.

195. These Plaintiffs have been damaged as set forth above, including by, *inter alia*, the loss of customers, breaches of contracts, lost profits, lost value of the contracts, and damage to their businesses and economic endeavors.

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FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – All Plaintiffs vs. All Defendants)

196. The allegations above are incorporated into this cause of action as if set forth fully herein.

197. Defendants engaged in an unlawful civil conspiracy, which involved a combination of two or more persons or legal entities.

198. Defendants' conspiracy was for the purpose of injuring Plaintiffs, including:

198.1. An unlawful scheme in which Defendants purported to require Plaintiffs, through unlawful transfer fee covenants and other unconscionable and unlawful documents, to be "automatic" members of their for-profit endeavor, required to pay dues and fees to their for-profit endeavor.

198.2. Unlawfully conspiring to ruin or damage short term rentals in the Designated Rental Areas of Palmetto Bluff.

198.3. Unlawfully conspiring to cause Plaintiffs to pay, or overpay for numerous items improperly, including for dues, fees, properties, and other costs at Palmetto Bluff.

198.4. Other actions set forth above.

199. Defendants' conspiracy caused damages to Plaintiffs, including special damages, as set forth herein.

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FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation—All Plaintiffs vs. All Defendants)

200. The allegations above are incorporated into this cause of action as if set forth fully herein.

201. Defendants made false representations to Plaintiffs, including:

201.1. That Plaintiffs were "automatic" members of the Club and were required to join the Club and pay fees to the Club;

201.2. That Plaintiffs are required to remain members of the Club as long as Plaintiffs own property at Palmetto Bluff;

201.3. That Plaintiffs' properties are bound to the Club and to membership therein;

201.4. That Defendants have sole and complete discretion to dictate the price and amenities of the Club that Defendants required Plaintiffs to join and to remain members of;

201.5. That the amenities at Palmetto Bluff were sufficient and adequate for the Community;

201.6. Other false and misleading representations as set forth herein.

202. Defendants had a pecuniary interest in making the statements.

203. Defendants owed a duty of care to see that truthful information was communicated to Plaintiffs.

204. Defendants breached their duties by failing to exercise due care.

205. Plaintiffs justifiably relied on the representations.

206. Plaintiffs suffered pecuniary loss as a direct and proximate result of reliance

on the representations, as set forth herein.

FOR AN EIGHTH CAUSE OF ACTION
(Quantum Meruit and Unjust Enrichment—
All Plaintiffs vs. All Defendants)

207. The allegations above are incorporated into this cause of action as if set forth fully herein.

208. Plaintiffs conferred benefits upon Defendants, including by becoming members of the Club and paying ongoing dues and other fees, under a scheme created by Defendants to unlawfully mandate that all property Owners at Palmetto Bluff join Defendants' for-profit endeavor.

209. Defendants realized those benefits, including by collecting and keeping dues and fees from persons who would not otherwise have joined the Club, or who would not have remained members, in the absence of Defendants' unlawful scheme. Defendants also improperly inflated prices and overcharged at Palmetto Bluff, as set forth above.

210. Retention by Defendants of the benefits would be unjust without Defendants paying for the value, including as set forth above and prejudgment interest.

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FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel—STR Class and Individual Plaintiffs vs. Palmetto Bluff Development LLC, Palmetto Bluff Club LLC, PBLH LLC, and Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards)

211. The allegations above are incorporated into this cause of action as if set forth fully herein.

212. Defendants made promises that were unambiguous in their terms, as set forth above.

213. These Plaintiffs reasonably relied on the promises made by Defendants, as set forth above, including by purchasing property at Palmetto Bluff and paying amounts represented by Defendants to be lawfully required.

214. The reliance by these Plaintiffs was expected and foreseeable by Defendants, including because Defendants had fiduciary duties and were obligated to deal with Plaintiffs fairly and in good faith.

215. These Plaintiffs have been damaged in reliance on the promises, including as set forth above.

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FOR A TENTH CAUSE OF ACTION
(In the Alternative, For Equitable Title in Common—
All Plaintiffs vs.
Palmetto Bluff Development LLC and
Palmetto Bluff Club LLC)

216. The allegations above are incorporated into this cause of action as if set forth fully herein.

217. The Club Property and amenities are Common Areas of the Community, irrespective of recorded title ownership.

218. Plaintiffs have equitable title to the Club Property and amenities, such title flowing from and being created by the Charter, Recreational Covenant, and other various other instruments.

219. The Charter, the Recreational Covenant, and the Club Plan are clear that the intent of the Founder was to convey a beneficial interest in the Club Property and amenities to the owners of the residential property.

219.1. The Recreational Covenant expressly states that the Palmetto Bluff Club is "for the benefit of the Residential Property" and "for the benefit of the owners of the Residential Property."

219.2. The Charter expressly states that the Palmetto Bluff Club and its facilities are "established for the use and enjoyment of all owners."

219.3. The Club Plan contains a provision requiring the Club to give to homeowners the right of first offer in the event of a sale of the Club facilities, which manifests the Founder's intent that members would have an interest in the Club Property.

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219.3.1. This provision was breached on sale of the Club and its facilities to South Street Partners.

220. Plaintiffs, who are all Residential Owners under the Charter and the Recreational Covenant, have been—and are currently—paying assessments, dues, fees, and other costs, purportedly in exchange for title in common to the Club and its Property, in a total amount that, upon information and belief, far exceeds the value of the Club Property and amenities.

221. Plaintiffs are entitled to a judgment granting them equitable title in common to the Club Property and amenities.

222. Plaintiffs are entitled to have the Club Property and amenities conveyed to all Unit Owners in undivided interest at no cost to the Unit Owners, by way of this Court's Order, for the use and enjoyment of all Owners as a Common Area.

FOR AN ELEVENTH CAUSE OF ACTION
(In the alternative, For Equitable Common Interest—
All Plaintiffs vs. Palmetto Bluff Development LLC and
Palmetto Bluff Club LLC)

223. The allegations above are incorporated into this cause of action as if set forth fully herein.

224. The Charter, the Recreational Covenant, and the Club Plan are clear that the intent of the Founder was to convey a beneficial common interest in the Club Property and amenities to the Owners of the residential property.

224.1. The Recreational Covenant expressly states that the Palmetto Bluff Club is "for the benefit of the Residential Property" and "for the benefit of

the owners of the Residential Property."

224.2. The Charter expressly states that the Palmetto Bluff Club and its facilities are "established for the use and enjoyment of all owners."

224.3. The Plan contains a provision requiring the Club to give to members the right of first offer in the event of a sale of the Club facilities, which manifests the Founder's intent that members would have an interest in the Club Property.

224.3.1. This provision was breached on sale of the Club and its facilities to South Street Partners.

225. Plaintiffs, who are all Residential Owners under the Charter and the Recreational Covenant, have been—and currently are—paying assessments, dues, fees, and other costs, purportedly in exchange for a promised interest in the Club, in a total amount that, upon information and belief, far exceeds the value of the Club Property and facilities.

226. Plaintiffs are entitled to a judgment granting them an equitable common interest in the Club Property and amenities, to which Defendants' title, if any, is subordinate, and which gives Plaintiffs the right to possess and control the Club Property, exclude others from it, derive income from it, and convey it as they so agree.

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FOR A TWELFTH CAUSE OF ACTION
(In the alternative, For Equitable Easement Appurtenant—
All Plaintiffs vs. Palmetto Bluff Development LLC and
Palmetto Bluff Club LLC)

227. The allegations above are incorporated into this cause of action as if set forth fully herein.

228. Plaintiffs have an equitable easement appurtenant of use and enjoyment over the Club Property as a Common Area of the Community.

229. Plaintiffs are entitled to an Order of this Honorable Court declaring that Plaintiffs have an equitable easement appurtenant over the Club Property, for which Defendants may not seek to charge Plaintiffs, the Trust, or its members.

FOR A THIRTEENTH CAUSE OF ACTION
(Money Had and Received and Conversion—
All Plaintiffs vs. All Defendants)

230. The allegations above are incorporated into this cause of action as if set forth fully herein.

231. Defendants wrongfully hold and/or received money that belongs to Plaintiffs, given that it was obtained under false pretenses and improper circumstances, including the false representation by Defendants that Plaintiffs were required to be and remain members of the Club and were required to pay dues, fees, and other amounts unilaterally dictated by the Developer.

232. In equity and good conscience, Defendants cannot be permitted to retain the money, which belongs to Plaintiffs.

233. The Court should order the money to be repaid to Plaintiffs with interest at

the maximum rate permitted by law.

FOR A FOURTEENTH CAUSE OF ACTION
(Constructive Fraud—All Plaintiffs vs. All Defendants)

234. The allegations above are incorporated into this cause of action as if set forth fully herein.

235. Defendants made false representations to Plaintiffs, including as described above.

236. Defendants ought to have known the falsity of the representations.

237. The false representations were material and made with the intent to be acted upon, including by inducing Plaintiffs to buy property in Palmetto Bluff, maintain, upgrade, and upkeep property in Palmetto Bluff, join the Club, and pay dues, costs, and other amounts.

238. Plaintiffs were not aware of the falsity of the statements, and they relied on their truth.

239. Plaintiffs had a right to rely on the truth of the statements, including because of (*inter alia*) the fiduciary relationships that existed, and the nature of the transaction called for good faith and fair dealing.

240. Plaintiffs have been consequently and proximately damaged, including as set forth above.

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FOR A FIFTEENTH CAUSE OF ACTION
(Fraud and Misrepresentation—All Plaintiffs vs. All Defendants)

241. The allegations above are incorporated into this cause of action as if set forth fully herein.

242. Defendants made false representations to Plaintiffs, including that Plaintiffs and all residential property owners are required, as a condition of the purchase of residential property, to be members of a for-profit Club, and to pay ongoing assessments, dues, fees, and other costs to the Club for so long as they own residential property.

243. Defendants either had knowledge of the falsity of the representations or acted in reckless disregard of their truth or falsity.

244. The false representations were material and made with the intent to be acted upon, including by inducing Plaintiffs to buy property in Palmetto Bluff, maintain, upgrade, and upkeep property in Palmetto Bluff, join the Club, and pay dues, costs, and other amounts unilaterally dictated by the Developer.

245. Plaintiffs were not aware of the falsity of the statements and relied on their truth.

246. Plaintiffs had a right to rely on the truth of the statements, including because of (*inter alia*) the fiduciary relationships that existed, and the nature of the transaction called for good faith and fair dealing.

247. Plaintiffs have been consequently and proximately damaged, including as set forth above.

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FOR A SIXTEENTH CAUSE OF ACTION
(In the alternative, Breach of Contract—All Plaintiffs vs. Palmetto Bluff Development LLC, Palmetto Bluff Club LLC, and Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards)

248. The allegations above are incorporated into this cause of action as if set forth fully herein.

249. In the alternative, if the parties have entered into binding contracts, Defendants have breached the contracts or unjustifiably failed to perform the contracts, including by (*inter alia*) overcharging Plaintiffs, failing to provide adequate facilities, breaching the right of first offer provision, deceiving and misleading Plaintiffs as set forth above, and purporting to bind Plaintiffs to Defendants' for-profit endeavor.

250. Defendants also have breached their duties of good faith and fair dealing, including through numerous misrepresentations to Plaintiffs, as summarized above. This includes, but is not limited to, failing to provide adequate or exceptional amenities as contemplated in the documents.

251. Plaintiffs have suffered damages as a direct and proximate result of the breach.

252. Plaintiffs are entitled to actual and consequential damages, including attorney's fees and costs incurred in this action, together with such other relief as this Court deems just and proper.

253. Alternatively, Plaintiffs are entitled to rescission of the contracts.

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VIII. CONCLUSION

WHEREFORE, Plaintiffs request that judgment be entered against Defendants on all causes of action, and that Plaintiffs be awarded:

A. Actual damages;

B. Consequential damages;

C. Special damages;

D. Punitive damages;

E. Declaratory judgment as set forth above;

F. Equitable relief as set forth above;

G. Rescission;

H. Disgorgement of unlawful joining fees and other payments;

I. Disgorgement of all dues unlawfully collected;

J. Disgorgement of unlawful profits by Defendants;

K. Disgorgement of over-paid fees and dues;

L. Depreciation and diminution in value of property due to Defendants' unlawful actions;

M. Treble damages as allowed by law;

N. Lost rental income;

O. Lost future rental income;

P. Overpayment for property based on Defendants' unlawful actions;

Q. Reformation of the relevant contracts to comply with applicable law;

R. Pre-judgment and post-judgment interest;

S. Attorneys' fees and costs; and

T. Such other and further relief as the Court and jury deem just and appropriate.

Plaintiffs request a trial by jury.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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Charleston, South Carolina
April 12, 2022

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STATE OF SOUTH CAROLINA)
) VERIFICATION OF
COUNTY OF BEAUFORT) R. JEFFREY KIMBALL

I, R. JEFFREY KIMBALL, being duly sworn, say that I am a Plaintiff herein, and I have read the foregoing Verified Complaint and know the factual contents thereof and I believe the same to be true to the best of my knowledge.

R. JEFFREY KIMBALL

Sworn to and subscribed to before me
this 11th day of April, 2022.

Notary Public for South Carolina
My Commission expires: 2-8-2028

ALEXINA S. HARTER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 02/08/2028

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

VERIFICATION OF
JENNIFER ALBERO

I, JENNIFER ALBERO, being duly sworn, say that I am a Plaintiff herein, and I have read the foregoing Verified Complaint and know the factual contents thereof and I believe the same to be true to the best of my knowledge.

JENNIFER ALBERO

Sworn to and subscribed to before me
this 11 day of APRIL 2022.

Notary Public for South Carolina
My Commission expires: 12/7/2031

Kim M. Dubell
NOTARY PUBLIC
State of South Carolina
My Commission Expires 12/7/2031

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

VERIFICATION OF
SEBRINA LEIGH-JONES

I, SEBRINA LEIGH-JONES, being duly sworn, say that I am a Plaintiff herein, and I have read the foregoing Verified Complaint and know the factual contents thereof and I believe the same to true to the best of my knowledge.

Sebrina Leigh-Jones
by [illegible]
SEBRINA LEIGH-JONES

Sworn to and subscribed to before me
this 12 day of April, 2022.

Notary Public for South Carolina
My Commission expires: 1/15/2029

JAIME D'AMBROSIO
NOTARY PUBLIC
My Commission Expires
01-15-2029
STATE OF SOUTH CAROLINA

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95/101 PB Nelsen

(2)

EXHIBIT 1

COMMUNITY CHARTER

FOR

PALMETTO BLUFF

BEAUFORT COUNTY SC - ROD
BK 01747 PG 2090
FILE NUM 2003029854
04/17/2003 12:58:21 PM
REC'D BY P BAXLEY RCPT# 139610
RECORDING FEES 101.00

NPHH1:10966.18-DOC-(JDL) 029888-00002
4/16/03 8:54 AM

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"A"	Land Initially Submitted
"B"	Additional Property
"C"	Definitions
"D"	Bylaws of Palmetto Bluff Preservation Trust, Inc.
"E"	Initial Rules

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COMMUNITY CHARTER

FOR

PALMETTO BLUFF

THE VISION FOR PALMETTO BLUFF. Palmetto Bluff's guiding principle is to preserve and protect one of America's treasured landscapes, while creating a human settlement for those who will cherish this unique environment.

The intrinsic value of Palmetto Bluff lies in the beauty, vastness and richness of its sea island landscape. For most of the last century, Palmetto Bluff has been managed and enjoyed as a private hunting club and forest preserve. Palmetto Bluff is surrounded by approximately 32 miles of frontage on the May, Cooper and New Rivers and their salt marshes.

The plan for Palmetto Bluff has been and will continue to be guided by the land, rather than by imposition of a "developer template" on the land. Planners have crafted a plan that respects the property's physical form, the topography, wetlands, and the diverse maritime forest and miles of undulating marsh and river edge.

It is our desire to create a "place" rather than a "project". While there is no set formula for accomplishing this, our plan will allow ideas to evolve. We will strive not to be predictable in all of our development patterns, such that Palmetto Bluff, as it evolves, will remain a place for discovery and surprise.

Palmetto Bluff as a place will have many dimensions. It will promote connection to the Lowcountry land, to the rivers, to history, to people, and to ideas. Form will be given to the plan by walking, riding and water trails, which will connect rural "escapes" with gathering places and provide people with opportunities for both activities and solitude.

Perhaps most importantly, the people drawn to Palmetto Bluff will likely establish common visions and a common goal central to the community. A primary goal and vision will be the shared dedication to the natural treasures which have made Palmetto Bluff so special for so long.

The Founder's vision is that we will preserve and protect and enhance this place as we build. Our vision for Palmetto Bluff as a place requires, however, that we remain authentic. As we plan for the future of Palmetto Bluff, we will also respect its past and be guided by it. We will connect with its history.

This Community Charter is intended to serve as a framework for community governance reflective of the priority given to the preservation of Palmetto Bluff's rich history, abundant wildlife, natural beauty and critical fresh and salt water environments.

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THIS COMMUNITY CHARTER FOR PALMETTO BLUFF ("Charter") is made as of the date on the signature page hereof by PALMETTO BLUFF DEVELOPMENT, LLC, a South Carolina limited liability company ("Founder").

Founder is the owner of property described in **Exhibit "A"**, which is attached hereto. This Charter imposes upon the Community mutually beneficial restrictions for the benefit of the Owners of each portion of the Community and establishes a procedure for the overall development, administration, maintenance, protection, conservation and preservation of the Community. This Charter provides for the creation of Palmetto Bluff Preservation Trust, Inc. ("Trust"). The primary function of the Trust is to own, operate and maintain the Common Areas and to administer the Community in accordance with the Governing Documents.

Founder hereby declares that all of the property described in **Exhibit "A"** and any Additional Property as described on **Exhibit "B"** subjected to this Charter or by Supplement shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Charter. This Charter shall be binding upon all parties having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Community.

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CHAPTER 1: GOVERNING DOCUMENTS

1.1 Scope and Applicability. The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all Owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the Governing Documents, include this Charter and the other documents described in Table 1.1, as they may be amended. All Owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

TABLE 1.1

GOVERNING DOCUMENTS	
Community Charter: (recorded or to be recorded)	this Community Charter for Palmetto Bluff, which creates obligations that are binding upon the Trust and all present and future Owners of property in Palmetto Bluff
Supplement: (to be recorded)	a recorded Supplement to this Charter, which may submit Additional Property to this Charter, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, designate Neighborhoods as described in Chapter 4 or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Palmetto Bluff Preservation Trust, Inc., as they may be amended, which establish the Trust as a nonprofit corporation under South Carolina law
By-Laws: (attached as **Exhibit "D"**)	the By-Laws of Palmetto Bluff Preservation Trust, Inc. adopted by its Board of Stewards, as they may be amended, which govern the Trust's internal affairs, such as voting, elections and meetings
Design Guidelines: (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 10, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units
Rules: (initial set attached as **Exhibit "E"**)	the rules of the Trust adopted pursuant to Chapter 11, which regulate use of property, activities, and conduct within the Community
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Trust activities and to regulate the operation and use of property which the Trust owns or controls
Palmetto Bluff Club Documents: (Palmetto Bluff Club Owner adopts)	the Membership Plan and related documents, as amended from time to time, which obligate all present and future Owners to be members of the Palmetto Bluff Club

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1.2 Additional Covenants. The Founder may impose additional covenants on its property that the Founder owns. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Trust shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3 Conflicts. If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community, the Governing Documents shall control. If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4 Capitalized Terms. Capitalized terms used in the Governing Documents and not specifically defined in the Governing Documents shall have the meaning set forth on **Exhibit "C"**.

NOTES:_____
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CHAPTER 2: PROPERTY RIGHTS

2.1 Common Area. Subject to the limitations of Section 12.1, every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the designated Common Areas, as shown on plats prepared by the Founder and recorded in the Public Records. Such Common Areas are appurtenant to the title to each Unit.

Any Owner may extend the right of use and enjoyment to family members, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit upon written notification or authentic electronic notification to the Trust that the Unit has been leased.

2.2 Exclusive Common Area. Certain portions of the Common Areas may be designated as Exclusive Common Area as designed on plats prepared by the Founder and recorded in the Public Records and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units or Neighborhoods. By way of illustration and not limitation, Exclusive Common Area may include entry features, recreational facilities, social event shelters, landscaped medians and cul-de-sacs, ponds, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Units to which the Exclusive Common Areas are assigned either as a Neighborhood Assessment or as a Specific Assessment, as applicable.

Initially, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Trust or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Founder from later assigning use of the same Exclusive Common Area to additional Units or Neighborhoods, or both, during the Development Period. Thereafter, a portion of the Common Areas may be assigned as Exclusive Common Area of particular Units or a particular Neighborhood or Neighborhoods and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Owners representing a Majority of the total Class "A" votes in the Trust, including, if applicable, a Majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Neighborhood(s) to which the Exclusive Common Area is to be assigned or reassigned.

The Trust may, upon approval of a Majority of the Class "A" votes within the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.3 No Partition. Except as permitted in this Charter, the Common Areas shall remain undivided and no Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Charter.

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This Chapter shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Charter.

2.4 Condemnation. Each Owner shall be entitled to notice in the event any part of the Common Area shall be (a) taken by any authority having the power of condemnation of eminent domain or (b) conveyed in lieu of or under threat of condemnation by the Board, which may do so upon the written direction or authenticated electronic direction of Owners representing a Majority of the total Class "A" votes in the Trust and, during the Development Period with the written or authenticated electronic consent of the Founder.

The award or proceeds of such activities shall be payable to the Trust and disbursed at the discretion of the Board.

2.5 Subdivision. No Unit may be subdivided and no Units can be combined to constitute one (1) Unit without the expressed written consent of the Trust. Notwithstanding the above, no Family Compound may be subdivided.

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CHAPTER 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner is automatically a Member of the Trust. However, there shall be only one membership per Unit. Thus, if a Unit is owned by more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, steward, member, partner or trustee, or by any individual designated from time to time by the Owner in writing or electronically to the secretary of the Trust.

3.2 Voting. The Trust shall have two classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners of Units. Class "A" Members shall have one (1) vote for each Unit owned.

(b) Class "B". The sole Class "B" Member is the Founder. After termination of the Founder Management Period as described below, the Class "B" Member shall have a right to disapprove actions of the Board, the Design Review Board and committees as provided in the Bylaws. The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Founder Management Period; or

(ii) when, in its discretion, the Founder so determines and declares in an instrument recorded in the Public Records.

Upon termination of the Class "B" membership, the Founder shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Founder Management Period. The Founder shall appoint all members of the Board of Stewards during the Founder Management Period which shall continue until the first to occur of the following:

(i) when one hundred (100%) percent of the total number of Units permitted by the Development Agreement for the Community have certificates of occupancy thereon and have been conveyed to Persons other than Builders; or

(ii) when, in its discretion, the Founder so determines and voluntarily relinquishes such right in writing by the filing of a Supplement.

(d) Suspension of Voting Rights. No vote shall be exercised for any Unit if any assessment for the Unit is delinquent or for any property which is exempt from assessment.

(e) Additional Classes of Membership. The Founder may, by Supplement, create additional classes of membership for the Owners of Units within the Additional Property submitted to this Charter. The Founder shall specify in any such Supplement the rights, privileges and obligations.

(f) Exercise of Voting Rights. The vote for each Unit owned by a Class "A" Member shall be exercised by the Owner of the Unit. If there is more than one (1) Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Trust's secretary in writing or electronically prior to the vote being taken. Absent such

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advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

NOTES:_____
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CHAPTER 4: NEIGHBORHOODS

4.1 Established by Founder. Every Unit shall be located within a Neighborhood. The Founder, in its sole discretion, may establish Neighborhoods within the Community by designation on **Exhibit "A"** to this Charter, a Supplement, or a plat. During the Development Period, the Founder may unilaterally amend this Charter or any Supplement from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

4.2 Division of Neighborhood. The Owner(s) of a Majority of the total number of Units within any Neighborhood may, at any time, petition the Board to divide the Neighborhood into two or more Neighborhoods. The petition shall be in writing or electronic transmission and shall include a survey of the entire parcel reflecting the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) days following the filing, either by hand or by electronic transmission of all required documents with the Board unless the Board determines, in its sole discretion, not to allow such division and denies the petition in writing either by hand or electronic transmission within the thirty (30) day period. All petitions and any denials shall be filed with the books and records of the Trust and shall be maintained as long as this Charter is in effect.

4.3 Additional Covenants. The Units within a particular Neighborhood may be subject to additional covenants and the Owners may be members of a Neighborhood Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law.

4.4 Level of Service. Any Neighborhood may request that the Trust provide a higher level of service or special services, and, upon the affirmative vote, written or authenticated electronic consent, or a combination thereof, of Owners of a Majority of the Units within the Neighborhood, the Trust may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment.

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CHAPTER 5: RIGHTS AND OBLIGATIONS OF THE TRUST

5.1 Function of Trust.

(a) The Founder has established the Trust to be the primary entity responsible for administering the Community in accordance with the Governing Documents and is continually leading in efforts to accomplish the goals for the Community as established by the Founder as expressed in (b) below. On most matters, the Trust acts through the Board of Stewards. However, in some instances, the Governing Documents or applicable law limit the Board's ability to act without approval of the Owners. Unless the Governing Documents or South Carolina law specifically provide otherwise, the Board may exercise the Trust's rights and powers without a vote of the membership.

(b) The Community is planned to evolve into a vibrant settlement where a diverse group of people create their own legacy of living well by connecting to their family, friends and neighbors, by close contact with nature, and through enjoyment of the history and culture of the area. This diverse group will enjoy a majestic, beautiful, stimulating and protected environment.

The Board of Stewards will seek to create a place that achieves such objectives, and which will continually appeal to people who share a common appreciation of diversity, desire for cooperation and harmony for mutual advantage, respect for nature and the opportunities within the Community environment and its surrounding waters and share in creation of volunteer service and other community organizations in response to interest of Owners.

5.2 Personal Property and Real Property for Common Use. The Trust, through action of its Board, may acquire, hold, convey, mortgage, pledge and hypothecate tangible and intangible personal property and real property. The Founder and its designees may convey to the Trust interests in improved or unimproved real estate located within the Community, personal property and leasehold and other property interests. The Trust shall accept such conveyance in an "as is", "where is" condition and thereafter the property shall be maintained, managed, operated and controlled by the Trust at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Trust. Upon written or authenticated electronic request of Founder, the Trust shall reconvey to Founder any unimproved real property in the Community originally conveyed to the Trust for no payment, to the extent conveyed in error or needed to make adjustments in property lines or accommodate changes in the development plan.

The Trust may enter into leases (for both personal and real property), licenses, management agreements or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Trust may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

5.3 Sanctions with Notice and Hearing. The Board may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures in accordance with the Bylaws. Such sanctions may include, without limitation:

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(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (in the event that any occupant of a Unit or guest or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall be first assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine);

(b) filing liens in the Public Records for nonpayment of any assessment fines or fees;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(e) suspending any services provided by the Trust to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Trust;

(f) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 10 and the Design Guidelines, or both, from continuing or performing any further activities in the Community; and

(g) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, their agents, contractors, employees, licensees, invitees or guests.

5.4 Other Sanctions. In addition, the Board may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(a) requiring an Owner, at the Owner's expense or a Neighborhood Association, at its expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, in violation of the Governing Documents and to restore the applicable property to its previous condition;

(b) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (a) above within ten (10) days after receipt of written or authenticated electronic notice to do so, and any such entry shall not be deemed a trespass;

(c) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of the parking provisions of the Rules; and

(d) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Chapter 18, if applicable.

If an Owner is legally responsible for damage inflicted on any Common Area, the Trust may direct such Owner to repair such damage or the Trust may make the repair and recover damages from the responsible Owner.

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The Trust shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Trust's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Trust to enforce such provision under any circumstances or estop the Trust from enforcing any other covenant, restriction or rule.

5.5 Implied Rights; Board Authority. The Trust may exercise any right or privilege given to it expressly by this Charter or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by South Carolina law, all rights and powers of the Trust may be exercised by the Board without a vote of the Members.

5.6 Indemnification. The Trust shall indemnify every officer, each member of the Board, the Design Review Board and other committee member against all damages, liabilities, and expenses, including attorney's fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Stewards) to which he or she may be a party by reason of being or having been an officer, steward, the Design Review Board or other committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles and South Carolina law.

The officers, members of the Board, Design Review Board and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, fraud or bad faith. The officers, members of the Board, Design Review Board and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Trust (except to the extent that such officers, Board members, Design Review Board or other committee members may also be Members of the Trust). This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Board member, or Design Review Board or other committee member may be entitled. The Trust may, as a Common Expense, maintain adequate general liability and officers' and Board member's liability insurance to fund this obligation, if such insurance is reasonably available.

5.7 Dedication of Common Areas. The Trust may dedicate portions of the Common Areas to any local, state, or federal governmental or quasi-governmental entity.

5.8 Security. The Trust shall maintain or support certain activities within the Community designed to make the Community safer than they otherwise might be. However, neither the Trust, nor the Founder shall in any way be considered insurers or guarantors of security within the Community, nor shall either of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security measures undertaken will in all cases prevent loss or provide the detection or protection for which

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the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Trust, its Board of Stewards and committees, and the Founder are not insurers and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

5.9 Relationship With the Foundation and Other Tax-Exempt Organizations. The Founder shall establish the Foundation which shall be a non-profit entity which is exempt from federal income taxes. The Foundation is a vehicle for generating, enhancing and preserving the unique environment of the Community. The Foundation exists to empower, encourage and provide a means for each Owner and occupant within the Community to benefit from environmentally oriented services, programs and activities. The Founder or the Trust may create, enter into agreements or contracts with, or grant exclusive or non-exclusive easements over the Common Areas to the Foundation for the benefit of the Community. Likewise, the Founder or Trust may create, enter into agreements or contracts with, or grant exclusive or non-exclusive easements over Common Areas to similar tax-exempt organizations for the benefit of the Community.

5.10 Powers of the Trust Relating to Neighborhood Associations. The Trust may veto any action taken or contemplated by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Trust or its Members. The Trust also may require specific action to be taken by any Neighborhood Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Trust may require that specific maintenance or repairs or aesthetic changes be performed by the Neighborhood Association. If the Neighborhood Association fails to comply with such requirements within a reasonable time as specified in writing either by hand or electronic notice by the Trust, the Trust may take such action on behalf of the Neighborhood Association and assess the Units within such Neighborhood for any expenses so incurred. Such assessments may be collected as a Specific Assessment.

The Trust shall also be empowered to enter into agreements with Owners within Neighborhoods or Neighborhood Associations, or both, for the management, maintenance, repair and replacement of Neighborhood Common Area. Further, the Trust shall be empowered to receive title to Neighborhood Common Area if Owners within a Neighborhood or a Neighborhood Association desire to convey the Neighborhood Common Area to the Trust. If the Trust receives title to any Neighborhood Common Area, the Board shall designate such property as Common Area or Exclusive Common Area.

5.11 Provision of Services to Units. The Trust may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Trust may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. For example, such services may include cable television, utilities, fire protection, trash collection, landscape maintenance, pest control, caretaker services and technology services.

Any Trust contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain

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specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Trust to provide such services.

5.12 Community Technology.

(a) Without limiting the generality of Section 12.19, the Trust is specifically authorized to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems including cable television, high speed data/internet/intranet services and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community Internet. Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Internet as the Board determines appropriate. The Trust shall have no obligation to utilize any particular provider.

(b) The Trust may make use of computers, the internet, and expanding technology to facilitate community interaction and encourage participation in Trust activities. For example, the Trust may sponsor a community cable television channel, create and maintain a community internet or internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and occupants to interact and participate in Trust sponsored activities. To the extent South Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Trust may send notices by electronic means, hold Board or Trust meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means. If notices and voting (with authentication) are allowed by electronic means, such notices and votes shall be deemed made as if in person, via U.S. Mail, physical posting, telephone, proxy, telegraph, facsimile or other traditionally accepted forms of notice communication and voting. All references to electronic deliveries and all other electronic communication shall only be allowed if authorized by the Trust.

5.13 Delegations of Duties. Subject to the Board's continuing oversight and monitoring, the Board of Stewards may appoint officers for the Trust, and delegate to such officers the various duties and responsibilities of the Trust. Such delegations shall not include rule-making, adoption of budgets for Assessments, and appointments to the Design Review Board. The Board of Stewards may also enter into professional services contracts with professional community association managers and others to provide security services, maintenance, sports and recreation management, wildlife management, property improvements and similar services.

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CHAPTER 6: MAINTENANCE

6.1 Trust's Responsibility.

(a) The Trust shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

(i) Common Areas;

(ii) Exclusive Common Areas;

(iii) all furnishings, equipment and other personal property of the Trust;

(iv) all ponds, streams, lagoons, lakes and wetlands located within the Community which serve as part of the drainage and storm water retention system for the Community and which are not conveyed to the Foundation, including any retaining walls or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(v) such portions of any Additional Property included within the Area of Common Responsibility by this Charter, any Supplement, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Trust or assigned to the Trust by the Founder; and

(vi) any property and facilities owned or leased by the Founder and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Trust and its Members, such property and facilities to be identified by written or authenticated electronic notice from the Founder to the Trust and to remain a part of the Area of Common Responsibility and be maintained by the Trust until such time as Founder revokes such privilege of use and enjoyment by written or authenticated electronic notice to the Trust.

The Trust may maintain other property and improvements which it does not own, including property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Stewards determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Trust shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation during reasonably scheduled daily and seasonal hours of operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs, unless Members holding seventy-five (75%) percent of the Class "A" votes in the Trust and the Class "B" Member, if any, agree in writing, either by hand or electronically, to discontinue such operation.

(c) The Trust may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Neighborhood Association or (ii) such property is dedicated to any local, state, or federal governmental or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Trust may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Charter or

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any other means during the Development Period except with the written or authenticated electronic consent of the Founder.

(d) Except as otherwise specifically provided herein, all costs associated with the Trust's maintenance responsibilities shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Trust to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Charter, any Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. All maintenance, repair and replacement of the Area of Common Responsibility shall be consistent with the requirements of the Development Agreement.

(e) All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Units to which the Exclusive Common Areas are assigned, notwithstanding that the Trust may be responsible for performing such maintenance hereunder. The maintenance, repair and replacement of the Exclusive Common Areas shall be consistent with the requirements of the Development Agreement.

6.2 Owner's Responsibility. Each Owner shall maintain such Owner's Unit, together with all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Trust or a Neighborhood Association. In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Trust may perform such maintenance and assess all costs incurred by the Trust against the Unit and the Owner in accordance with Section 9.7. The Trust shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

6.3 Neighborhood's Responsibility. Upon resolution of the Board of Stewards, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring their designated Exclusive Common Areas and portions of the Area of Common Responsibility within or adjacent to such Neighborhood as determined by the Board. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Trust; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

Neighborhood Associations, if any, having responsibility for maintenance within a particular Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Trust may perform such responsibilities and assess the costs as a Specific Assessment against all Units within such Neighborhood as provided in Section 9.7.

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6.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Trust, an Owner or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

6.5 Covenant to Share Costs. Adjacent to or in the vicinity of property encumbered by this Charter, there may be certain residential, nonresidential, commercial or recreational areas, including without limitation, residential developments, retail, commercial, or business areas and Private Amenities, which are not subject to this Charter. The owners of such adjacent properties shall not be Members of the Trust, shall not be entitled to vote, nor shall they be subject to assessment.

The Trust may enter into agreements with the owners or operators of portions of the adjacent properties:

(a) to obligate the owners or operators of such adjacent properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Community;

(b) to permit use of any recreational and other facilities located on such adjacent properties by the Owners of all Units or by the Owners of Units within specified Neighborhoods; and/or

(c) to obligate the Trust to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such adjacent properties, if any, which are used by or benefit jointly the owners or operators of such adjacent properties and the Owners within the Community.

The owners or operators of such adjacent properties shall be subject to assessment by the Trust only in accordance with the provisions of such Covenants to Share Costs. If the Trust is obligated to share costs incurred by the owners of such adjacent properties, the Covenant to Share Costs shall provide whether such payment by the Trust shall constitute Common Expenses or Neighborhood Expenses of the Trust. The owners or operators of the adjacent properties shall not be subject to the restrictions contained in this Charter except as otherwise specifically provided herein or in a Covenant to Share Costs.

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CHAPTER 7: INSURANCE AND CASUALTY LOSSES

7.1 Trust Insurance.

(a) Required Coverages. The Trust shall obtain and maintain in effect the following types of coverages, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas and on other portions of the Area of Common Responsibility to the extent that the Trust has responsibility for repair or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Trust shall have the authority to and interest in insuring any property for which it has repair responsibility, regardless of ownership. The limits of Trust property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; and

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Trust and its Members for damage or injury caused by the negligence of the Trust or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least One Million Dollars ($1,000,000) per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Trust is authorized to obtain such additional coverages or limits.

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Stewards and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Trust funds in an amount determined in the Board's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(iv) Such additional insurance as the Board, in is best business judgment, determines advisable.

(b) Optional Coverages. The Trust may obtain and continue in effect the following types of coverages:

(i) Computer and media insurance; and

(ii) Such additional insurance as the Board, in its best business judgment, determines advisable.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred (100%) percent of current "replacement cost" of all affected improvements and other

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insurable property or the maximum limit of coverage available, whichever is less.

In addition, the Trust may obtain and maintain property insurance on the insurable improvements within any Neighborhood in such amounts and with such coverages as the Owners in such Neighborhood may agree upon. Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association or Neighborhood Committee, as applicable, and to the Owner of each Unit insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Stewards reasonably determines that other treatment of the premiums is more appropriate. The Trust shall have no insurance responsibility for any portion of the Private Amenities.

(c) Policy Requirements. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 7.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 9.7.

To the extent available at reasonable cost and terms, all Trust insurance shall:

(i) be written with a company authorized to do business in the State of South Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Trust as trustee for the benefited parties. All policies shall be for the benefit of the Trust as trustee for the benefited parties. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Trust;

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(vii) provide a waiver of subrogation against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Trust's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Trust and allowance of a reasonable time to cure the defect or violation; and

(ix) provide that the Founder, its affiliates and subsidiaries are insured persons.

7.2 Owner's Insurance. By virtue of taking title to a Unit, each Owner agrees to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association for the Neighborhood in which the Unit is located or the Trust carries such insurance. Notwithstanding the above, the Trust shall have no responsibility to determine if all Owners carry such property insurance and shall have no liability if any Owner fails to do so. If the Trust assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 9.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Chapter 10. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association that owns common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

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CHAPTER 8: ANNEXATION AND WITHDRAWAL OF PROPERTY

8.1 Annexation by Founder. Until fifty (50) years after the recording of this Charter in the Public Records, Founder may from time to time submit to the provisions of this Charter all or any portion of the Additional Property. Until then, the Founder may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in **Exhibits "A"** or **"B"**. Any such transfer shall be described in a recorded instrument executed by Founder.

Such annexation shall be accomplished by filing a Supplement in the Public Records describing the property being annexed. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if other than Founder. Any such annexation shall be effective upon the filing for record of such Supplement unless otherwise provided therein.

Nothing in this Charter shall require the Founder or any successor to submit Additional Property to this Charter or to develop any Additional Property in any manner whatsoever.

8.2 Annexation by the Trust. The Trust may also submit property to the provisions of this Charter with the consent of the owner of such property, the affirmative vote of a Majority of the Class "A" votes of the Trust represented at a meeting duly called for such purpose, and, if during the Development Period, the written or authenticated electronic consent of the Founder.

Such annexation shall be accomplished by filing a Supplement describing the property being annexed in the Public Records. Any such Supplement shall be signed by the President and Secretary of the Trust, and by the owner of the annexed property, and by the Founder, if the Founder's consent is required.

8.3 Withdrawal of Property. The Founder reserves the right to amend this Charter during the Development Period, for the purpose of removing any portion of the property within the Community from the coverage of this Charter. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Founder. If the property is Common Area, the Trust must consent to such withdrawal.

8.4 Additional Covenants and Easements. The Founder may impose additional covenants and easements on property described in a Supplement, including covenants obligating the Trust to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Trust through Neighborhood Assessments. Such additional covenants and easements shall require the written consent of the owner(s) of such property, if other than the Founder. Any such Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the subject property in order to reflect the different character and intended use of such property. Such additional covenants and easements shall not encumber portions of the Community previously submitted to this Charter.

8.5 Amendment. This Chapter shall not be amended during the Development Period without the prior written consent of Founder.

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CHAPTER 9: TRUST FINANCES.

9.1 Creation of Assessments. There are hereby created assessments for Trust expenses as the Board may specifically authorize from time to time. There shall be five (5) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 9.6; (d) Specific Assessments as described in Section 9.7; and (e) Community Enhancement Assessments as described in Section 9.8. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 9.9. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee that obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to acquisition of title.

The Trust shall, upon request, furnish to any Owner liable for any type of assessment a written or authenticated electronic statement setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Trust may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself from liability for assessments by non-use of Common Areas, including Exclusive Common Area reserved for such Owner's use, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Trust or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Trust is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Founder or other entities for payment of Common Expenses.

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9.2 Founder's Obligation for Assessments. During the Development Period, the Founder may annually elect to pay either (a) an amount equal to the assessments on all of its unsold Units, notwithstanding the commencement date set forth in Section 9.10; or (b) the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Trust, exclusive of any reserves, during the fiscal year. Unless the Founder otherwise notifies the Board, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Founder's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

9.3 Computation of General Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.5.

General Assessments shall be levied equally against all Units subject to assessment. The assessment rate shall be set at a level which is reasonably expected to produce total income for the Trust equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Trust, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the Founder may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy or contributions of services and materials, or both, (in addition to any amounts paid by Founder under Section 9.2), which may be treated as either a contribution, an advance against future Assessments, or a loan, in the Founder's discretion. Any such anticipated payment or contribution by the Founder shall be conspicuously disclosed as a line item in the Common Expense budget. Payments by the Founder in any year shall under no circumstances obligate the Founder to continue such payments in future years, unless otherwise provided in a written agreement between the Trust and the Founder.

The Board shall send or post electronically a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. The budget and General Assessment shall automatically become effective unless disapproved at a meeting by Owners representing at least sixty-seven (67%) percent of the total Class "A" votes in the Trust and, during the Development Period, by the Founder. There shall be no obligation to call or conduct a meeting for the purpose of considering the budget except on petition for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within thirty (30) days after delivery of the notice of the General Assessments. If a meeting is requested, Assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such Assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

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If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of or electronically post the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

9.4 Computation of Neighborhood Assessments. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Charter, any Supplement, or the Bylaws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Trust and, upon approval of Owners in accordance with Chapter 4, any additional costs shall be added to the budget. Such Neighborhood budgets and assessments may include funds for periodic Neighborhood social functions, special events, and other programs and activities conducive to Neighborhood harmony and good feeling. Additionally, the budget shall include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood(s) benefited thereby and levied as a Neighborhood Assessment; provided, however, if so specified in the Supplement applicable to such Neighborhood or if so directed by petition signed by a Majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to or electronically posted to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners representing at least sixty-seven (67%) percent of the Units in the Neighborhood to which the Neighborhood Assessment applies and, during the Development Period, by the Founder. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least seventy-five (75%) percent of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the Owners within any Neighborhood disapprove any line item of a Neighborhood budget, the Trust shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Neighborhood budget for any

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year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.5 Reserve Budget. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Neighborhood budgets reserve amounts sufficient to meet the projected needs of the Trust.

9.6 Special Assessments. In addition to other authorized assessments, the Trust may levy Special Assessments from time to time to cover unbudgeted expenses, expenses in excess of those budgeted or any other purposes as determined by the Board. Any such Special Assessment may be levied against and allocated among all Units, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Units subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Owners representing at least seventy-five (75%) percent of the total Class "A" votes allocated to Units which will be subject to such Special Assessment and, during the Development Period, by the Founder. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within thirty (30) days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.7 Specific Assessments. The Trust shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of optional services which the Trust may offer. Specific Assessments may be levied in advance of the provision of the service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Unit Owner prior written or authenticated electronic notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this subsection (b).

The Trust may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Trust for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents; provided, however, the Board shall give prior written or authenticated electronic notice to the Owners of Units in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

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9.8 Community Enhancement Assessments. A Community Enhancement Assessment shall be paid at the closing of the transfer of a Unit. The Community Enhancement Assessment shall be charged to the seller of the Unit, shall be payable to the Trust at the closing of the transfer and shall be secured by the Trust's lien for assessments as provided in Section 9.9. An Owner shall notify the Trust's secretary or other authorized agent of a pending transfer of such Owner's Unit at least seven (7) days prior to the transfer. Such notice shall include the name of the purchaser, the date of title transfer and such other information as the Board may reasonably require.

The Community Enhancement Assessment to be paid shall be equal to one (1%) percent of the gross sales price for a Lot or three-quarters (3/4) of one (1%) percent of the gross sales price of a Dwelling. For the purposes of determining the amount of the Community Enhancement Assessment, the gross selling price shall be the total cost to the purchaser of the Unit, excluding prorations for taxes and other assessments.

All Community Enhancement Assessments shall be deposited into a segregated account. On a quarterly basis, the Trust shall contribute one-half (1/2) of the Community Enhancement Assessments collected for the applicable quarter to the Foundation. The remainder of the Community Enhancement Assessments so collected shall be utilized by the Trust as follows:

(i) one-half (1/2) of such Community Enhancement Assessments shall be paid for the general marketing of the Community, either by the Trust or through a corporation which the Trust establishes or designates to promote the sale of Units, including, without limitation, the costs of complying with state and federal land sales registrations and broker licensing requirements; and

(ii) one-half (1/2) is to be paid to fund the reserve budget as described in Section 9.5.

9.9 Lien for Assessments. The Trust shall have a lien against each Unit to secure payment of delinquent assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of South Carolina law), late charges in such amount as the Board may establish (subject to the limitations of South Carolina law), costs of collection and reasonable attorney's fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage of record made in good faith and for value, and (c) the lien or charge for unpaid dues, fees, assessments and other charges established in the Palmetto Bluff Club Documents. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Trust may bid for the Unit, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Trust following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its prorata share of the assessment that would have been charged such Unit had it not been acquired by the Trust. The Trust may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to

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pursuing any and all remedies allowed by law to enforce the lien.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 9.3, including such acquirer, its successors and assigns.

9.10 Date of Commencement of Assessments. The obligation to pay General Assessments and Neighborhood Assessments shall commence as to each Unit on the first day of the month following the date which the Unit is shown on a plat or survey recorded in the Public Records. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. Notwithstanding the provisions of this Section 9.10, General Assessments shall not commence until January, 2004.

9.11 Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Trust may retroactively assess any shortfalls in collections.

9.12 Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments, Special Assessments and Community Enhancement Assessments:

(a) All Common Areas and such portions of the property owned by the Founder as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority or public utility;

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common;

(d) Any property utilized as a Private Amenity;

(e) Any property conveyed to the Foundation or other tax-exempt organization, including churches, educational and cultural facilities; and

(f) As to the Community Enhancement Fees only, any Dwelling sold by a Builder.

9.13 Capitalization of Trust. Upon acquisition of record title to a Unit by the first Owner thereof other than the Founder or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Trust in an amount equal to one-fourth (1/4th) of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in

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lieu of, the annual General Assessment and shall not be considered advance payments of such assessments. This amount shall be collected and disbursed to the Trust at closing of the purchase and sale of the Unit for use in covering operating expenses and other expenses incurred by the Trust pursuant to the Governing Documents.

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CHAPTER 10: ARCHITECTURAL STANDARDS

10.1 General. No exterior structure or improvement shall be placed, entered, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in strict compliance with this Chapter, and with the prior written or authenticated electronic approval of the Design Review Board, unless exempted from the application and approval requirements of this Chapter or the Design Guidelines.

The interior of structures of any Unit may be remodeled, painted or redecorated without approval. Generally, no approval is required for work done to the interior of a structure, however, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval.

All Dwellings constructed on any portion of the Community shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer unless the Founder or its designee, in its sole discretion, otherwise approve.

This Chapter shall not apply to the activities of the Founder, nor to improvements to the Common Areas by or on behalf of the Trust.

This Chapter may not be amended during the Development Period without the Founder's written consent.

10.2 Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Chapter shall be handled by the Design Review Board, the members of which need not be Members of the Trust or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Design Review Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals. The Design Review Board shall consist of at least three (3), but not more than five (5) persons and shall have exclusive jurisdiction over all construction on any portion of the Community. Until one hundred (100%) percent of the Community has been developed and conveyed to Owners other than Builders, the Founder retains the right to appoint all members of the Design Review Board who shall serve at the Founder's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Founder. Upon the expiration of such right, the Board of Stewards shall appoint the members of the Design Review Board, who shall thereafter serve and may be removed in the Board's discretion.

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10.3 Review Process. The design review process and procedures and construction guidelines are set forth, in detail, in the Design Guidelines.

10.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar

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proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.5 Variance. The Design Review Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, either by hand or electronically; (b) be contrary to this Charter; or (c) estop the Design Review Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

10.6 Limitation of Liability. Review and approval of any application pursuant to this Chapter is made on the basis of aesthetic considerations only and neither the Design Review Board, the Founder or the Trust shall bear responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Founder, the Trust, the Board, any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Design Review Board, committees of the Board and their members shall be defended and indemnified by the Trust.

10.7 Enforcement. Any structure or improvement placed or made in violation of this Chapter shall be deemed to be nonconforming. Upon written or authenticated electronic request from the Design Review Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, any authorized agent of the Design Review Board or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, including legal fees, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment. In addition, the Design Review Board or the Board shall have the right to exercise any means of enforcement set forth in this Charter.

Neither the Design Review Board or any member of the foregoing nor the Trust, the Founder, or their officers or stewards shall be held liable to any Person for exercising the rights granted by this Chapter. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Chapter or the Design Guidelines may be excluded by the Design Review Board from the Community, subject to the notice and hearing procedures contained in the Bylaws.

In addition to the foregoing, the Trust shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Chapter and the decisions of the Design Review Board.

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CHAPTER 11: USE AND CONDUCT

11.1 Use and Occupancy in Units.

(a) Except for Live/Work Structures and except in Rental Areas, Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community;

(iv) is consistent with the Community's character and does not constitute a nuisance or a hazardous or offensive use, or threaten or endanger others, as the Board determines in its discretion.

The term "Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Except for Rental Areas, leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time or for a period less than six (6) months. This provision shall not preclude an institutional lender from leasing a Unit upon take title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

(b) Any portion of the Community identified on any recorded subdivision plat or the Master Plan as an archaeological or historical site shall be left in its natural, undisturbed state.

(c) Except for Live/Work Structures and except in Rental Areas, any Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a Unit may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to Chapter 10 may be leased separate from the main dwelling.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within ten (10) days of a lease being signed, the Owner of the leased Unit shall notify the Board, electronically or in writing,

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of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Trust or the Board may adopt rules governing leasing and subleasing.

(d) No Person other than the Founder shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

11.2 Live/Work Structures. Founder reserves the right to allow the construction of Live/Work Structures in certain areas of the Community. The designation of an area in which Live/Work Structures may exist shall be in a Supplement or a plat. Certain limited commercial or business activity may occur within a Dwelling that is considered a Live/Work Structure provided that such commercial activity shall not be industrial or manufacturing in nature and shall not be a commercial activity prohibited by the Development Agreement.

Notwithstanding the fact that multiple uses can occur in a Live/Work Structure, each Live/Work Structure shall be deemed a Dwelling for all purposes other than the use restrictions contained within Section 11.1.

11.3 Rental Areas. Founder reserves the right to designate areas within the Community as Rental Areas. Owners of Dwellings within a Rental Area shall be allowed to rent such Dwellings for periods of less than six (6) months and such rental activity shall not be a "business" within the meaning of this Article. The designation of an area as a Rental Area shall be in a Supplement or a plat. Each Dwelling within a Rental Area shall be deemed a Dwelling for all purposes other than the use restrictions contained in Section 11.1

11.4 Rulemaking Authority and Procedures. The Governing Documents establish a framework of covenants and conditions that governs the Community. The initial Rules attached as **Exhibit "E"** are a part of that framework. However, within that framework, the Trust must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board is authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in this Section 11.4.

(a) Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Trust and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) Subject to the notice requirements in subsection (c), Owners entitled to cast sixty-seven (67%) percent of the votes may also adopt new Rules and modify or rescind existing Rules at any meeting of the Trust duly called for such purpose, regardless of the manner in which the original Rules were adopted. However, during the Development Period, any such

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action shall also be subject to the Founder's approval.

(c) The Board shall send written or post an electronic notice to all Owners concerning any proposed Rules changes at least thirty (30) business days prior to the meeting of the Board or the Members at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) A Rules change adopted under this section shall take effect thirty (30) days after the date on which written or authenticated electronic notice of the Rules change is provided to the Owners.

(e) No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

11.5 Protection of Owners and Others. Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in **Exhibit "E"**, all Rules shall comply with the following provisions:

(a) Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood.

(b) No Rules shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed, nor shall any Rules regulate the content of political signs. However, the Trust may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

(c) No Rules shall interfere with an Owner's freedom to determine household composition, except that the Trust may impose and enforce reasonable occupancy limitations and conditions based on Residential Unit size and facilities and its fair share use of the Common Area.

(d) No Rules shall interfere with the activities carried on within a dwelling, except that the Trust may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Trust or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) No Rules shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing, either by hand or electronically, to the Trust. Nothing in this provision shall prevent the

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Trust from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying Assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of Assessments as provided in Chapter 9.

(f) No Rules shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rules.

(g) No Rules may unreasonably interfere with the Founder's ability to develop, market, and sell property in the Community.

(h) No Rules may unreasonably interfere with the exercise of any easement.

11.6 Owner's Acknowledgement and Notice to Purchasers. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Trust may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy or electronic posting of the current Rules and all administrative policies shall be available from the Trust upon request or upon authenticated access to the Community Internet. The Trust may charge a reasonable fee to cover its reproduction cost.

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CHAPTER 12: EASEMENTS

Founder grants the non-exclusive, perpetual easements set forth herein for the enjoyment of the Founder, the Trust, the Members, the Owners, and the owners of any Private Amenities, and their successors-in-title.

12.1 Easements in Common Area. The Founder grants to each Owner a nonexclusive, perpetual, and appurtenant easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such Common Area to the Trust;

(c) Certain Owner's rights to the exclusive use of those portions of the Common Area designed "Limited Common Area"; and

(d) The Board's right to:

(i) adopt Rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;

(ii) suspend an Owner's right to use Common Area facilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter.

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

(vii) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

12.2 Easements of Encroachment. Founder grants a non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units, between each Unit and any adjacent Common Areas, between Common Areas and any adjacent Private Amenity, and between each Unit and any adjacent Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

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12.3 Easements for Utilities.

(a) Founder reserves for itself, its successors and assigns and grants to the Trust non-exclusive, perpetual, appurtenant easements upon, across, over, and under all of the Community but not through a structure for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, lagoons, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Community, as necessary, to exercise the easements described above. Founder specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier the easements set forth herein across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Founder reserves for itself during the Development Period and its designees the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Founder, in connection with the orderly development of any property described on **Exhibits "A"** or **"B"**.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Founder reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Community, or at any other time, (i) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

12.4 Easement for Slope Control, Drainage and Waterway Maintenance. Founder reserves non-exclusive, perpetual, appurtenant easements, for itself, the owner of any Private Amenity and the Trust, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Unit for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion;

(b) drainage of natural or man-made flow and water areas from any portion of the Community or any Private Amenity;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit or Common Areas;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Community; and

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(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Community or any Private Amenity.

12.5 Easements to Serve Additional Property. The Founder reserves non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation the owners of Private Amenities, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Areas for the purposes of enjoyment, use, access, and development of the property described in **Exhibit "B"**, whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas for construction of roads, for the posting of signs, and for connecting and installing utilities on such property. Founder agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of such property. Founder further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Charter, the Founder, its successors or assigns shall enter into a reasonable agreement with the Trust to share the cost of any maintenance which the Trust provides to or along any roadway providing access to such property.

12.6 Easements for Entry. Founder reserves non-exclusive, perpetual, appurtenant easements for the Trust to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Trust's officers, agents, employees and managers of the Trust, any member of its Board or committees, and its officers, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any Dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

12.7 Easements for Maintenance and Enforcement. Founder reserves non-exclusive, perpetual, appurtenant easements for the Trust to enter all portions of the Community, including each Unit, to (a) perform its maintenance responsibilities under Chapter 6, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Trust at its expense. Entry under this Section shall not constitute a trespass.

The Trust also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorney's fees, may be assessed against the violator as a Specific Assessment.

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12.8 Easements for Lake, Lagoon and Pond Maintenance and Flood Water. Founder reserves for itself and its successors, assigns, and designees the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the lakes, lagoons, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility or any Private Amenity; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Charter. The Founder's rights and easements provided in this Section shall be transferred to the Trust at such time as the Founder shall cease to own any property subject to the Charter, or such earlier time as Founder may elect, in its sole discretion, to transfer such rights by a written instrument. The Founder, the Trust, and their designees shall have an access easement over and across any of the Community abutting or containing any portion of any lake, lagoon, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Founder reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Community, or at any other time, (a) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

12.9 Easements for Private Amenities. Founder reserves for the benefit of the owners of any Private Amenity the following non-exclusive, perpetual, appurtenant easements which shall benefit the Private Amenity the following:

(a) Every Unit and the Common Areas and the common property of any Neighborhood Association adjacent to any Private Amenity are burdened with an easement permitting golf balls unintentionally to come upon such Common Areas, Units or common property of a Neighborhood and for golfers at reasonable times and in a reasonable manner to come upon the Common Areas, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from any activity relating to a Private Amenity, including but not limited to, any errant golf balls or the exercise of this easement: the Founder, or any successor Founder; the Trust or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any Builder or contractor (in their capacities as such); any officer, director, Board, member, manager or partner of any of the foregoing, or any officer, member, manager, Board member or director of any partner of the foregoing.

(b) The owner(s) of the Private Amenities, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Community for the purpose of retrieving golf balls from bodies of water within the Common Areas, if any, lying reasonably within range of golf balls hit from any golf course within such Private Amenity.

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(c) The owner of any Private Amenity within or adjacent to any portion of the Community, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of its Private Amenity.

(d) There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between the entrance to the Community and the Private Amenities and over those portions of the Community (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities shall have the right to park their vehicles on the roadways located within the Community at reasonable times before, during, and after special events, tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenities have insufficient parking to accommodate such vehicles.

(e) Any portion of the Community immediately adjacent to the Private Amenities are hereby burdened with a non-exclusive easement in favor of the adjacent Private Amenities for overspray of water from the irrigation system serving the Private Amenities. Under no circumstances shall the Trust or owner(s) of the Private Amenities be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(f) The Founder hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Private Amenities, an easement and all rights to draw water from the lakes, lagoons and ponds within or adjacent to the Community for purposes of irrigation of the Private Amenities and for access to and the right to enter upon the lakes, lagoons and ponds within or adjacent to the Community, if any, for installation and maintenance of any irrigation systems.

(g) Each Owner of a Unit adjacent to the Private Amenities hereby acknowledges the nature of the easements contained in this Section and any nuisances incidental to the maintenance, operation, and use of, in particular, any golf course.

12.10 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Founder, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Community, except in cases of willful or wanton misconduct.

12.11 Easement for Special Events. Founder reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Areas for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Founder, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related

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inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

12.12 Rights to Stormwater Runoff, Effluent and Water Reclamation. Founder reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Unit, that Founder shall retain all such rights. Such right shall include an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

12.13 Easement for Public Park. Founder reserves, creates, establishes, promulgates and declares for the general public a non-exclusive, perpetual easement of access and use over any rivers adjacent to or within the Community and all roadways located within the Community reasonably necessary to travel between the entrance to the Community and any public park located within the Community.

12.14 Easements for Walks, Trails and Signs. Founder hereby reserves for Founder, the Trust and their respective successors and assigns, the alienable, transferable and perpetual right and easement upon, over and across all land located along the interior of and within ten (10) feet of each boundary located adjacent to street and roads, such lands to be bounded by such exterior boundaries adjacent to streets and roads and by lines in the interior of such Units which are exactly ten (10) feet from such exterior boundaries, for the installation, maintenance and use of sidewalks, jogging trails, bike paths, golf cart paths, traffic directional signs and related improvements.

12.15 Easement for Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Founder and its affiliates, successors and assigns the alienable and transferable right and easement in and to the Community for the construction and maintenance of signs, sales offices, construction offices, business offices and model homes, together with such other facilities as in the sole opinion of Founder may be reasonably required, convenient, or incidental to the completion, improvement, or sale of any Units, Common Areas or Additional Property, for so long as Founder owns any Units primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof during the Development Period. Founder shall have the right to locate the above-described sales and construction offices within any property owned by Founder without the additional consent of any Owners.

12.16 Easements for Founder. During the Development Period, Founder shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing improvements in and to the Units, the Common Areas and the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Community (including portions of Common Areas) as are contemplated by this Charter or as Founder desires, in its sole discretion, including, without limitation, any improvements or changes permitted by this Charter, and for the purpose of doing all things reasonably necessary and proper in

connection therewith, provided in no event shall Founder have the obligation to do any of the foregoing.

12.17 Easements for Environmental Management. As described in Chapter 13 herein, the Founder has adopted the Environmental Management Plan. The Founder hereby reserves for the Founder, the Trust and their respective successors and assigns, the alienable, transferable and perpetual right and easement over all Units, Common Areas and all other property contained within the Property to implement and perform the activities and function as set forth in the Environmental Management Plan.

12.18 Easements for Equestrian Activities. Founder hereby reserves for Founder, the Trust and their respective successors and assigns, the alienable, transferable and perpetual right and easement upon certain designated equestrian trails to be contained within the Common Areas for equestrian activities. Equestrian activities shall be subject to reasonable restrictions promulgated by the Board. Such trails shall be designated for equestrian activities prior to the conveyance of the same to the Trust. Equestrian activities shall be prohibited on all Common Areas not so designated.

12.19 Easement for Community Internet. Founder hereby reserves for the Founder, the Trust and their respective successors and assigns, the alienable, transferable and perpetual right and easement over, across, under, through and upon each Unit for the purpose of installing, maintaining and operating the telecommunications, entertainment and video and Community Internet as more fully described in Section 5.12 herein.

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CHAPTER 13: ADDITIONAL RELATIONSHIPS AND DISCLOSURES

13.1 Safety and Security.

Owners and their guests and invitees shall be responsible for their own personal safety and the security of their property in the Community and the Owners assume all risks of personal injury and loss or damage to their property, including Units and Unit contents, resulting from acts of third parties. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants and invitees that the Trust, the Board and its committees, Founder and any predecessor of Founder are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the content of Units, resulting from acts of third parties.

The Trust may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security within the Community. However, no representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community or any portion thereof, cannot be comprised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. The Trust, the Founder, or the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall any be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

13.2 Environmental Management Plan. The Community contains a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including wild boars, alligators, insects, venomous and non-venemous snakes and other reptiles, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and every person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community.

The Founder has established the Environmental Management Plan for the control, removal or eradication of such plants and wildlife. By accepting the deed to a Unit, each Owner agrees to abide by all terms and conditions of the Environmental Management Plan. The Environmental Management Plan specifically includes provisions for culling and thinning of the deer herds, wild boars and other wildlife within the Community. The Environmental Management Plan may be changed by the Board in accordance with the same provisions for changing the Rules.

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CHAPTER 14: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community. The provisions of this Chapter apply to both this Charter and to the Bylaws, notwithstanding any other provisions contained therein.

14.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Trust (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Charter or Bylaws relating to such Unit or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Trust; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees representing at least sixty-seven (67%) percent of the total Trust vote consent, the Trust shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Areas which the Trust owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Areas shall be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any charter subsequently recorded on any portion of the Community regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent charter is otherwise authorized by this Charter);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Areas (the issuance and amendment of Design Guidelines, architectural standards, procedures, rules, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

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(d) Fail to maintain insurance, as required by this Charter; or

(e) Use hazard insurance proceeds for any Common Areas losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Trust policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Trust.

14.3 No Priority. No provision of this Charter or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

14.4 Notice to Trust. Upon request, each Owner shall be obligated to furnish to the Trust the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.5 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Trust does not receive a written response from the Mortgagee within thirty (30) days of the date of the Trust's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

14.6 Construction of Chapter 14. Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under the Charter, Bylaws, or South Carolina law for any of the acts set out in this Chapter.

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CHAPTER 15: FOUNDER'S RIGHTS

Any or all of the special rights and obligations of the Founder set forth in this Charter or the Bylaws may be transferred in whole or in part to the Trust or to other Persons. Upon any such transfer, the Founder shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Founder and duly recorded in the Public Records.

The Founder and Builders authorized by Founder may maintain and carry on upon portions of the Community including Common Areas such facilities and activities as, in the sole opinion of the Founder, may be reasonably required, convenient, or incidental to the development of the Community and/or the construction, sale and marketing of Units, including, but not limited to, business offices, signs, model units, sales offices and related parking facilities.

The Founder and its employees, agents and designees shall also have a right and easement over and upon all of the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Community without Founder's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Founder and recorded in the Public Records. No such instrument recorded by any Person, other than the Founder may conflict with the Charter, Bylaws or Articles.

No Person shall use the name "Palmetto Bluff" without Founder's written consent.

Notwithstanding any contrary provision of this Charter, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written consent of the Founder, during the Development Period.

This Chapter may not be amended without the written consent of the Founder. The rights contained in this Chapter shall terminate upon the earlier of (a) forty (40) years from the date this Charter is recorded, or (b) upon recording by Founder of a written statement that all sales activity has ceased.

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CHAPTER 16: PRIVATE AMENITIES

16.1 General. Neither membership in the Trust nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity, except as may be set forth in a separate recreational covenant, if any, that Founder records in the Public Records on all or a portion of the Community or in the Palmetto Bluff Club Documents. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

16.2 Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Founder, the Trust, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the Founder. No consent of the Trust, any Neighborhood Association, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

16.3 View Impairment. Neither the Founder, the Trust, nor the owner of any Private Amenity, guarantees or represents that any view over and across any Private Amenity, the Common Area or any public facilities from Units will be preserved without impairment. The owners of such property, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities, the Common Areas or the public facilities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.4 Golf Course. By acceptance of a deed to any Unit, each Owner

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acknowledges and agrees that owning property adjacent to a golf course has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's Unit or other portion of the Community or arising from the design, construction, operation, maintenance and/or use of the golf course; (b) the entry by golfers onto an Owner's Unit or other portion of the Community utilized by the Owner to retrieve golf balls and/or other acts or omissions of persons using the golf course; (c) overspray in connection with the watering of the roughs, fairways and greens on the golf course; (d) noise from golf course maintenance and operation equipment (including, without limitation, compressors, blowers, fans, mulchers, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the golf course; (f) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (g) the existence of water hazards, ponds, and/or lakes on the golf course. Additionally, each Owner acknowledges that pesticides and chemicals may be applied to the golf course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water may be used for irrigation of the golf course.

Each Owner assumes such risks of owning property adjacent to a golf course and forever waives and relinquishes, and agrees not to institute any action or suit at law or in equity nor to institute or prosecute, any claim, demand or compensation against the Founder, or any successor Founder; the Trust or its Members (in their capacity as such); the owner(s) of the Private Amenities or their successors, successors-in-title, or assigns; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner of the foregoing for or on account of any damages, loss, or injury either to person or property, or both, resulting directly or indirectly from the design, construction, operation, maintenance and/or use of the golf course. Each Owner hereby agrees to take any necessary steps to maintain adequate hazard and other insurance policies to protect such Owner and such Owner's family, guests, invitees, agents and employees against all such risks associated with the golf course.

16.5 Rights of Access and Parking. There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between the entrance to the Community and the Private Amenities and over those portions of the Community (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities shall have the right to park their vehicles on the roadways located within the Community at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenities to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

16.6 Covenant to Share Costs. The Trust may enter into a contractual arrangement or Covenant to Share Costs with any Private Amenity obligating the

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Private Amenity or the Trust to contribute funds for, among other things, shared property or services and/or a higher level of Common Area maintenance.

16.7 Architectural Control. Neither the Trust, nor any committee thereof, shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Community which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least fifteen (15) days prior written notice of its intent to approve or permit the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) days to approve or disapprove the proposal in writing delivered to the appropriate committee or Trust, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the fifteen (15) day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Areas.

16.8 Use Restrictions. Upon request of the owner of any Private Amenity, the Trust shall enforce its use restrictions and rules against any Owner or occupant violating such regulations within such Private Amenity, including but not limited to the exercise of the Trust's self-help rights for violation of sign and pet restrictions.

16.9 Limitations on Amendments. In recognition of the fact that the provisions of this Chapter are for the benefit of the Private Amenity, no amendment to this Chapter, and no amendment in derogation of any other provisions of this Charter benefiting any Private Amenity, may be made without the prior written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Founder.

16.10 Jurisdiction and Cooperation. It is Founder's intention that the Trust and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Community and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Trust shall have no power to promulgate use restrictions or rules affecting activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenities affected thereby.

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CHAPTER 17: DEVELOPMENT AGREEMENT AND DOCK COVENANTS

17.1 Encumbrance. All of the Community is encumbered by the Development Agreement and the Dock Covenants. By accepting the deed to a Unit, each Owner agrees to abide by the provisions of the Development Agreement and the Dock Covenants.

17.2 No Standing. Notwithstanding the above, however, by accepting the deed to a Unit, each owner, for itself and all subsequent Owners of the Unit, irrevocably agrees that the Owner:

(a) shall not be deemed a successor or assign of any party to the Development Agreement or Dock Covenant, as the same may be amended from time to time;

(b) shall have no right as a third party beneficiary or otherwise related to the Development Agreement or Dock Covenants, as the same may be amended from time to time, or other declarations and restrictions filed from time to time pursuant to the Development Agreement or the Dock Covenants;

(c) shall have no right of consent, approval or other action in connection with any amendment, modification, or termination of the Development Agreement or the Dock Covenant.

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CHAPTER 18: DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

18.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Founder, the Trust and its officers, directors and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Chapter (collectively, the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 10, which shall not be subject to review;

(c) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

(i) any suit by the Trust to collect assessments or other amounts due from any Owner;

(ii) any suit by the Trust to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Trust's ability to enforce the provisions of Chapter 11.

(iii) any suit between owners, which does not include Founder or the Trust as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2; and

(v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 18.2, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Chapter.

18.2 Dispute Resolution Procedures.

(a) The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written or authenticated electronic notice to each Respondent and to the Board stating plainly and concisely:

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(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim;

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, either by hand or electronically, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described herein (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Trust (if the Trust is not a party to the Claim) or to an independent agency providing dispute resolution services in the Beaufort County, South Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

18.3 Initiation of Litigation by Trust. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Trust shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast seventy-five (75%) percent of the total votes in the Trust, except that no such approval shall be required for actions or proceedings:

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(a) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;

(b) initiated to challenge ad valorem taxation or condemnation proceedings;

(c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(d) to defend claims filed against the Trust or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

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CHAPTER 19: PALMETTO BLUFF CLUB

By acceptance of a deed, each Owner shall automatically become a member of the Palmetto Bluff Club and shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference. Each Owner's obligations pursuant to the Palmetto Bluff Club Documents, including, without limitation, the obligation to pay club dues, user fees and other charges, shall be covenants running with the land with respect to the Owner's Unit. The Palmetto Bluff Club Documents establish a charge and continuing lien encumbering each Unit for the monetary obligation of the Owner or Owners of that Unit pursuant to the Palmetto Bluff Club Documents. The Palmetto Bluff Club Documents may be amended from time to time without the consent of the Owners. Founder shall provide each initial purchaser of a Unit with copies of the Palmetto Bluff Club Documents prior to or at the time of conveyance of the Unit. The Trust shall provide current copies of the Palmetto Bluff Club Documents to any Owner upon request.

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CHAPTER 20: GENERAL PROVISIONS

20.1 Duration.

(a) Unless terminated as provided herein, this Charter shall have perpetual duration. If South Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Charter shall automatically be extended at the expiration of such period for successive periods of ten (10) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Charter shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by South Carolina law, in which case such law shall control, this Charter may not be terminated within fifty (50) years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least seventy-five (75%) percent of the total Units within the Community and by the Founder, if the Founder owns any portion of the Community, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Charter without the consent of the holder of such easement.

20.2 Amendment.

(a) By Founder. In addition to specific amendment rights granted elsewhere in this Charter, until termination of the Founder Management Period, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, Founder may unilaterally amend this Charter at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition to amendments described above, Founder may unilaterally amend this Charter as to portions of the Community owned by the Founder.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written or authenticated electronic consent, or any combination thereof, of Owners representing fifty-one (51%) percent of the total Class "A" votes in the Trust and during the Development Period, the written consent of the Founder.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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(c) Validity and Effective Date. Any amendment to the Charter shall become effective upon recordation in the Public Records unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter. No amendment may remove, revoke, or modify any right or privilege of the Founder or the Class "B" Member without the written consent of the Founder, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Charter or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

20.3 Severability. Invalidation of any provision of this Charter, in whole or in part, or any application of a provision of this Charter by judgment or court order shall in no way affect other provisions or applications.

20.4 Non-Merger. Notwithstanding the fact that Founder is the current owner of the Community, it is the express intention of Founder that the easements established in the Charter for the benefit of the Community and Owners shall not merge into the fee simple estate of individual lots conveyed by Founder or its successor, but that the estates of the Founder and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Community shall be subject to the terms and provisions of this Charter, regardless of whether the instrument of conveyance refers to this Charter.

20.5 Grants. The parties hereby declare that this Charter, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Community. The grants of easements in this Charter are independent of any covenants and contractual agreements undertaken by the parties in this Charter and a breach of either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Charter.

20.6 Cumulative Effect; Conflict. The provisions of this Charter shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Neighborhood, and the Trust may, but shall not be required to, enforce the covenants, conditions, and provisions applicable to any Neighborhood; provided, however, in the event of a conflict between or among this Charter and such covenants or restrictions, and/or the provisions of any articles of incorporation, bylaws, Rules, policies, or practices adopted or carried out pursuant thereto, this Charter, the Bylaws, Articles, and use restrictions and rules of the Trust shall prevail over those of any Neighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Trust. Nothing in this Section shall preclude any Supplement or other recorded declaration, covenants and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Charter, and the Trust shall have the standing and authority to enforce the same.

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20.7 Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Trust or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Trust herein.

20.8 Repurchase Option. Founder hereby reserves unto itself and its successors and assigns the right and option to purchase any Unit within the Community which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer for such Unit, which is acceptable to such Owner and which is made in writing to such Owner by a third party. Upon the receipt of any such offer by an Owner, such Owner shall promptly submit a copy of the same to Founder, and Founder shall have a period of fifteen (15) days from and after the presentation of such offer to Founder in which to exercise its purchase option by giving such Owner written notice of such exercise. If Founder fails to respond or to exercise such purchase option within said fifteen (15) day period, Founder shall be deemed to have waived such purchase option. If Founder declines to exercise such option, Founder shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that Founder does not exercise its purchase option and such sale to a third party is not consummated on such terms within six (6) months of the date in which the offer is transmitted to Founder, the terms and limitations of this Section 20.8 shall again be imposed upon any sale by such Owner. If Founder shall elect to purchase such Unit, the transaction shall be consummated within sixty (60) days following delivery of written notice by Founder to such Owner of Founder's decision to so purchase such Unit.

20.9 Exhibits. The Exhibits attached to this Charter are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 20.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Charter which refer to such exhibits.

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IN WITNESS WHEREOF, the undersigned Founder has executed this Charter this 17th day of April, 2003.

PALMETTO BLUFF DEVELOPMENT, LLC,
a South Carolina limited liability company

Edward M. Kerr

Margaret B Lackey

By: William G. Peacher
William G. Peacher, Chief Operating Officer and General Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that William G. Peacher, Chief Operating Officer and General Manager of Palmetto Bluff Development, LLC, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 17th day of April, 2003.

Margaret B Lackey
Notary Public for South Carolina
My Commission Expires: 3/9/08

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EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being in Town of Bluffton, Beaufort County, South Carolina, containing 465.840 acres, more or less, designated as **HEADWATERS NORTH, a portion of PALMETTO BLUFF**. and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated January 28, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 92 at Page 117.

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EXHIBIT "B"

ALL that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 10.0 acres, more or less, and being a **PORTION OF THE DUCK POND TRACT at PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 47. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 3,159.58 acres, more or less, known as the **COOPER RIVER TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 48. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 847.63 acres, more or less, known as the **DUCK POND TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 49. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 5,021.96 acres, more or less, known as the **BIG HOUSE TRACT, a portion of PALMETTO BLUFF**, and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated July 1, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 88 at Page 161.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 1,490.25 acres, more or less, known as the **MAINLAND TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 50. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 3,571.25 acres, more or less, known as the **MAY RIVER TRACT at PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated September 25, 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 76 at Page 24. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

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LESS AND EXCEPT, all that certain piece, parcel or tract of land situate, lying and being in Town of Bluffton, Beaufort County, South Carolina, containing 465.840 acres, more or less, designated as **HEADWATERS NORTH, a portion of PALMETTO BLUFF**. and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated January 28, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 92 at Page 117.

ALSO, all those certain pieces, parcels or tracts of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 2,070.9 acres, more or less, and being shown as **TRACT "A" and TRACT "B" GARVEY HALL** on the plat thereof prepared by James M. Anderson, SC RLS #9213, dated February 8, 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 75 at Page 93.

ALSO, all that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 245.86 acres, more or less, and being shown as **PRITCHARD STATION** on the plat thereof prepared by James M. Anderson, SC RLS #9213, dated February 8, 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 75 at Page 93.

ALSO, any real property located within five (5) miles of any point on any boundary line of the property specifically described on this Exhibit "B".

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EXHIBIT "C"

DEFINITIONS

1. "Additional Property": All of that certain real property which is described on **Exhibit "B"** attached hereto, and which is subject to annexation to the terms of this Charter in accordance with Chapter 8.

2. "Annual Assessment": Assessments levied on all Units to fund Common Expenses as determined in accordance with Section 9.

3. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Trust has or assumes responsibility pursuant to the terms of this Charter, any Supplement or other applicable covenant, contract, or agreement.

4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Palmetto Bluff Preservation Trust, Inc., as filed with the Secretary of State of the State of South Carolina.

5. "Board of Stewards" or "Board": The body responsible for administration of the Trust, selected as provided in the Bylaws and serving as the board of directors under South Carolina corporate law.

6. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for subsequent sale to consumers or purchases one or more parcels of land within the Community for further subdivision, development, and resale in the ordinary course of such Person's business. Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder with respect to such Unit immediately upon occupation of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for subsequent sale to consumers.

7. "Bylaws": The Bylaws of Palmetto Bluff Preservation Trust, Inc., attached to the Charter as **Exhibit "D"** as they may be amended from time to time.

8. "Common Areas": All real and personal property, including easements, which the Trust owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners. The term also shall include the Exclusive Common Area, as defined below.

9. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Trust for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Charter, the Bylaws, and the Articles of Incorporation.

10. "Community": The real property described on **Exhibit "A"**, together with any Additional Property as is subjected to this Charter in accordance with Chapter 8.

11. "Community Enhancement Assessment": An assessment payable to the Trust upon the sale of a Unit as described in Section 9.8 herein.

12. "Community Internet": The community-wide internet system established

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by the Founder which shall serve as a site and repository of information, correspondence and administration procedures.

13. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board of Stewards and the Design Review Board.

14. "Covenant to Share Costs": Any agreement, contract or covenant between the Trust and an owner or operator of property adjacent to, in the vicinity of, or within the Community, including any Private Amenity, for the allocation of expenses that benefit both the Trust and the owner or operator of such property.

15. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to all or any portion of the Community promulgated and administered pursuant to Chapter 10.

16. "Design Review Board": The architectural review board described in Chapter 10.

17. "Development Agreement": The Development Agreement between Union Camp Corporation, a New Jersey corporation and the Town of Bluffton, South Carolina, dated November 23, 1998 and recorded in the Public Records, in OR Book 1113 at Page 1085.

18. "Development Period": The period of time during which the Founder owns any property which is subject to this Charter, any property which may be unilaterally subjected to this Charter, or any Private Amenity, or has the unilateral right to subject property to this Charter pursuant to Section 8.1.

19. "Dock Covenants": The Declaration of Covenants, Conditions and Restrictions for Palmetto Bluff by SP Forests, L.L.C., a Delaware limited liability company dated June 29, 2000 and recorded in the Public Records in OR Book 1312 at Page 98.

20. "Dwelling": An improved property intended for use as a single-family attached or detached dwelling or as a townhouse, condominium unit, or patio or cluster dwelling located within the Community.

21. "Environmental Management Plan": The Environmental Management Plan for Palmetto Bluff as it may be amended from time to time.

22. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods or Units, as more particularly described in Chapter 2.

23. "Family Compound": An unimproved property upon which more than one (1) Dwelling may be constructed. A Family Compound shall be deemed unimproved until the first Dwelling constructed thereon is sufficiently complete to reasonably permit habitation. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling. Notwithstanding the fact that more than one (1) Dwelling may be constructed on a Family Compound, a Family Compound shall only constitute one (1) Unit for all purposes of this Charter.

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24. "Foundation": The Palmetto Bluff Foundation, Inc., a South Carolina non-profit corporation as more fully described in Chapter 5.

25. "Founder": Palmetto Bluff Development, LLC, a South Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on **Exhibits "A"** or **"B"** for the purpose of development or sale, or both, and who is designated as the Founder in a recorded instrument executed by the immediately preceding Founder.

26. "Founder Management Period": The period of management of the Trust by the Founder as described in Chapter 3.

27. "Governing Documents": The Charter, Bylaws, Articles of Incorporation, all Supplements, all Design Guidelines, the Rules, any Covenants to Share Costs, or any of the above, as each may be amended from time to time.

28. "Live/Work Structures": Dwellings in which certain limited commercial and business activities may occur in accordance with the terms and conditions of Section 11.2.

29. "Lot": Any unimproved property upon which it is intended that a single Dwelling shall be constructed. A parcel of property shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling.

30. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty (50%) percent of the total eligible number.

31. "Master Plan": The land use plan or development plan for Palmetto Bluff as such plan may be amended from time to time. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Founder to subject such property to this Charter, nor shall the exclusion of Additional Property from the Master Plan bar its later annexation in accordance with Chapter 8.

32. "Member": A Person subject to membership in the Trust pursuant to Section 3.1.

33. "Membership Plan": The plan of membership for the Palmetto Bluff Club as adopted and amended by the Palmetto Bluff Club Owner.

34. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

35. "Mortgagee": A beneficiary or owner of a Mortgage.

36. "Neighborhood": A separately developed area within the Community, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units within such separately developed area may have common interests other than those common to all Members of the Trust. For example, and by way of illustration and not limitation, each single-family attached or detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing

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type with other features in common. Neighborhood boundaries may be established and modified as provided in Chapter 4.

37. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 9.4.

38. "Neighborhood Association": Any condominium association or other owners association having concurrent jurisdiction with the Trust over any Neighborhood.

39. "Neighborhood Common Areas": All real and personal property, including easements, which a Neighborhood owns, leases or holds possessory or use rights in or for the common use and enjoyment of the Owners in that particular Neighborhood.

40. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Trust for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplements applicable to such Neighborhood(s).

41. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale which defers passing of record title until the total purchase price is paid in full, the purchaser (rather than the fee owner) will nevertheless be considered the Owner.

42. "Palmetto Bluff Club": The club with diverse recreational and social facilities established for the use and enjoyment of all Owners subject to the Palmetto Bluff Club Documents.

43. "Palmetto Bluff Club Documents": The Membership Plan and other membership documents which control the use, enjoyment and administration of the Palmetto Bluff Club.

44. "Palmetto Bluff Club Owner": Palmetto Bluff Club, LLC, a South Carolina limited liability company.

45. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

46. "Private Amenity": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Community, designated by the Founder and which are owned and operated in whole or in part, by Persons other than the Trust for recreational or other purposes on a club membership, daily fee, use fee, public, or private basis or otherwise, and may include, without limitation, any golf course(s) so located and all related and supporting facilities and improvements.

47. "Public Records": The Office of the Register of Deeds for Beaufort County, South Carolina.

48. "Rental Areas": Those areas within the Community in which leasing or rentals of less than six (6) months duration are allowed and are designated, as such, by the Founder.

49. "Rules": The Rules established by the Board in accordance with

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Chapter 11 as the same are amended from time to time.

50. "Special Assessment": Assessments levied in accordance with Section 9.6.

51. "Specific Assessment": Assessments levied in accordance with Section 9.7.

52. "Supplement": An instrument filed in the Public Records which subjects additional property to this Charter, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to any declaration of covenants, conditions and restrictions, and any declaration of condominium filed by the Founder.

53. "Trust": Palmetto Bluff Preservation Trust, Inc., a South Carolina non-profit corporation, its successors or assigns.

54. "Unit": A portion of the Community, whether a Lot, Family Compound or Dwelling, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.

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EXHIBIT "D"

BY-LAWS

OF

PALMETTO BLUFF PRESERVATION TRUST, INC.

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CHAPTER 1

NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 Name. The name of the corporation is Palmetto Bluff Preservation Trust, Inc. (the "Trust").

1.2 Principal Office. The principal office of the Trust shall be located in Beaufort County, South Carolina. The Trust may have such other offices, either within or outside South Carolina, as the Board of Stewards may determine or as the affairs of the Trust may require.

1.3 Definitions. Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Charter for Palmetto Bluff, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, as it may be amended (the "Charter"), unless the context indicates otherwise. The term "majority" as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

CHAPTER 2

MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 Membership. The Trust shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Charter. The provisions of the Charter pertaining to membership are incorporated by this reference.

2.2 Place of Meetings. Meetings of the Trust shall be held at the principal office of the Trust or at such other suitable place convenient to the Members as the Board may designate.

2.3 Annual Meetings. The first meeting of the Trust, whether a regular or special meeting, shall be held at a time designated by the Board. The Board shall schedule subsequent regular annual meetings to occur during the third quarter of the Trust's fiscal year, on such date and at such time and place as the Board shall determine.

2.4 Special Meetings. The President may call special meetings if so directed by a majority of the Board.

2.5 Notice of Meetings. The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In addition, notice shall include the items on the agenda for the meeting, including the general nature of any proposed amendment to the Charter or By-Laws, any budget changes, and any proposals to remove a steward or officer. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 10.5, not less than 10 nor more than 60 days before the date of such meeting.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is

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called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment; notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings. The quorum for such a reconvened meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting. The voting rights of the Members set forth in the Charter are specifically incorporated by this reference.

2.9 Proxies. On any matter as to which a Member is entitled personally to cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of South Carolina law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Trust prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) transfer of title to any Unit for which it was given; (b) receipt by the person presiding over a Trust meeting of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Quorum. Except as otherwise provided in these By-Laws or in the Charter, the presence of Members representing a majority of the total Class "A" votes in the Trust shall constitute a quorum at all meetings of the Trust membership.

2.11 Conduct of Meetings. The President shall preside over all meetings of the Trust. The Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

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2.12 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Trust. Such consents shall be filed with the minutes of the Trust and shall have the same force and effect as a vote of the Members at a meeting.

CHAPTER 3

BOARD OF STEWARDS: SELECTION, MEETINGS, POWERS

3.1 Governing Body; Qualifications. The affairs of the Trust shall be governed by a Board of Stewards, each of whom shall have one vote. Except with respect to stewards appointed by the Founder, stewards shall be Owners or residents. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Palmetto Bluff. No more than one eligible person from any Unit may serve on the Board at any time. If a Member is not a natural person, any officer, steward, or partner, or any other representative designated in writing by the Member, shall be eligible to serve as a steward unless the Member otherwise specifies by written notice to the Trust; provided, no Member may have more than one such representative serving on the Board at a time, except in the case of stewards appointed by the Founder.

3.2 Number of Stewards. The Board shall consist of three to seven stewards, as provided in Section 3.3.

3.3 Selection of Stewards; Term of Office.

(a) Initial Board. The initial Board shall consist of three stewards appointed by the Founder, who shall serve until their successors are appointed or elected as provided in this Section 3.3.

(b) Stewards During Founder Management Period. Except as otherwise provided in this Section (b), the Founder shall be entitled to appoint, remove, and replace the members of the Board in its sole discretion until termination of the Founder Management Period.

(c) Stewards After the Founder Management Period. Within 90 days after termination of the Founder Management Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect all of the Stewards. The initial Board after the termination of the Founder Management Period shall be increased to seven Stewards. The initial term of office for three (3) Stewards shall be fixed at three (3) years; the term of office of three (3) Stewards shall be fixed at two (2) years and the term of office of one (1) Steward shall be fixed at one (1) year. At the expiration of the initial term of office of each Steward, his/her successor shall be elected to serve a term of three (3) years. The Stewards shall hold office until their successors have been elected and hold their first meeting. Stewards shall be subject to removal in accordance with Section 3.5.

3.4 Nomination and Election Procedures.

(a) Nomination of Candidates. At least 30 days prior to any election of stewards by the Class "A" Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a member of the Board of Stewards, and three or more Class "A" Members or representatives of Class "A" Members. The

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Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class "A" Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written ballot. Cumulative voting shall not be permitted. The candidates receiving the greatest number of votes shall be elected to the open positions.

3.5 Removal of Stewards and Vacancies. Any steward elected by Class "A" votes 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 steward. Any steward whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a steward by the Class "A" Members, a successor shall be elected by the Class "A" Members entitled to elect the steward so removed to fill the vacancy for the remainder of the term of such steward.

Any steward elected by Class "A" votes who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Trust, may be removed by a majority of the stewards present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

Except as provided below, in the event of the death, disability, or resignation of a steward, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members entitled to fill such stewardship may elect a successor for the remainder of the term.

This Section shall not apply to stewards appointed by the Founder, nor to any steward serving as Founder's representative. The Founder shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a steward appointed by or elected as a representative of the Founder.

3.6 Organizational Meetings. The first meeting of a newly elected Board shall be held immediately following each annual meeting of the membership.

3.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the stewards shall determine.

3.8 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two stewards.

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3.9 Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each steward by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the steward or to a person at the steward's office or home who would reasonably be expected to communicate such notice promptly to the steward; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the steward's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Trust. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each steward not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any steward who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10 Telephonic Participation in Meetings. Members of the Board or any committee which the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11 Quorum of Board. At all Board meetings, a majority of the stewards shall constitute a quorum for the transaction of business, and the votes of a majority of the stewards present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Charter. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some stewards, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the stewards present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.13 Open Meetings; Executive Session.

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(a) After the termination of the Founder Management Period, all Board meetings shall be open to all Members but attendees other than stewards may not participate in any discussion or deliberation unless a steward requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than stewards, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.14 Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Board members, and such consent shall have the same force and effect as a unanimous vote.

3.15 Powers. The Board shall have all of the powers and duties necessary for the administration of the Trust's affairs and for performing all responsibilities and exercising all rights of the Trust as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Trust all acts and things except those which the Governing Documents or South Carolina law require to be done and exercised exclusively by the membership generally. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16 Duties. Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses; and

(b) levying and collecting such assessments from the Owners; and

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard; and

(d) designating, hiring, and dismissing personnel necessary to carry out the Trust's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties; and

(e) depositing all funds received on behalf of the Trust in a bank depository which it shall approve, and using such funds to operate the Trust; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks; and

(f) making and amending Rules in accordance with the Charter; and

(g) opening bank accounts on behalf of the Trust and designating the signatories required; and

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Charter and these By-Laws; and

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(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Trust; and

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate; and

(k) paying the cost of all services rendered to the Trust; and

(l) keeping books with detailed accounts of the Trust's receipts and expenditures; and

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Trust as provided in Section 9.4; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Palmetto Bluff; and

(o) indemnifying a steward, officer or committee member, or former steward, officer or committee member of the Trust to the extent such indemnity is required by South Carolina law, the Articles, and these By-Laws; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Charter.

CHAPTER 4

OFFICERS

4.1 Officers. Officers of the Trust shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of president and Secretary. The Secretary shall arrange for the preparation, execution, certification, and recordation of any amendments to the Charter on behalf of the Trust.

4.2 Election and Term of Office. The Board shall elect the Trust's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Resignation, Removal and Filling of Vacancies.

(a) Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(b) The Board may remove any officer whenever in its judgment the best interests of the Trust will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

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4.4 Powers and Duties. The Trust's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Trust. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

CHAPTER 5

COMMITTEES

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

CHAPTER 6

STANDARDS OF CONDUCT; LIABILITY AND INDEMNIFICATION

6.1 Standards for Stewards and Officers. The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents. In performing their duties, stewards and officers shall act as fiduciaries and shall be insulated from liability as provided for stewards of corporations under state law and as otherwise provided by the Governing Documents. Stewards and officers shall discharge their duties as stewards or officers, and as members of any committee to which they are appointed, in a manner that the steward or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A Board member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the South Carolina Nonprofit Corporation Act.

6.2 Liability.

(a) A steward shall not be personally liable to the Trust, any Member, or any other Person for any action taken or not taken as a steward if the steward has acted in accordance with Section 7.1.

(b) Pursuant to the business judgment rule, a steward also shall not be personally liable for any action taken or not taken as a steward if the steward:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the Trust's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all stewards have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Trust's affairs.

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(c) The officers, stewards and committee members of the Trust shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and stewards shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Trust (except to the extent that such officers or stewards may also be Members of the Trust).

6.3 Indemnification. Subject to the limitations of South Carolina law, the Trust shall indemnify every officer, Board member, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Stewards) to which he or she may be a party by reason of being or having been an officer, steward or committee member, except that the Trust shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Trust, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the South Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Trust; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, stewards or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive to any other rights to which any present or former officer, steward, or committee member may be entitled. The Trust shall, as a Common Expense, maintain adequate general liability and officers' and stewards' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4 Advancement of Expenses. In accordance with the procedures and subject to the conditions and limitations set forth in the South Carolina Nonprofit Corporation Act, the Board may authorize the Trust to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, steward or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, steward, or committee member of the Trust.

CHAPTER 7

MANAGEMENT AND ACCOUNTING

7.1 Compensation of Stewards and Officers. Stewards and officers shall not receive any compensation from the Trust for acting as such unless approved by a majority of the total Class "A" votes in the Trust at a regular or special meeting of the Trust. Any Steward or officer may be reimbursed for expenses incurred on behalf of the Trust upon approval of a majority of the other

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stewards. Nothing herein shall prohibit the Trust from compensating a steward or officer, or any entity with which a steward or officer is affiliated, for services or supplies furnished to the Trust in a capacity other than as a steward or officer pursuant to a contract or agreement with the Trust, provided that such steward's or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested steward.

7.2 **Right of Founder to Disapprove Actions.** So long as the Class "B" membership exists, the Founder shall have a right to disapprove any action, policy or program of the Trust, the Board and any committee which, in the sole judgment of the Founder, would tend to impair rights of Founder under the Charter or these By-Laws, or interfere with development or construction of any portion of Palmetto Bluff, or diminish the level of services being provided by the Trust.

(a) Notice. The Founder shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Trust, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Trust, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Founder shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Founder, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Founder, acting through any officer or steward, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Trust. The Founder shall not use its right to disapprove to reduce the level of services which the Trust is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3 **Managing Agent.** The Board may employ for the Trust a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Founder or its affiliate may be employed as managing agent or manager.

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The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Trust shall not be bound, either directly or indirectly, by any management contract executed during the Founder Management Period unless such contract contains a right of termination which may be exercised by the Trust, with or without cause and without penalty, at any time after termination of the Founder Management Period upon not more than 90 days written notice.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Trust, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Trust. Any financial or other interest which the managing agent may have in any firm providing goods or services to the Trust shall be disclosed promptly to the Board.

7.4 **Right to Contract.** The Trust shall have the right to contact with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trust, condominiums, cooperatives, or Neighborhood and other owners' or residents' associations, within and outside Palmetto Bluff. Any common management agreement shall require the consent of a majority of the total number of stewards on the Board.

7.5 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Trust shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

CHAPTER 8

ENFORCEMENT PROCEDURES

The Trust shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1 **Notice and Response.** Prior to the imposition of any sanction, the Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within ten (10) days of the notice.

If a timely challenge is not made, the sanction stated in the notice shall be imposed, provided that if the alleged violator cures the alleged violation and notifies the Board in writing within such ten (10) day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Board. Such proof shall be deemed adequate if a copy of the notice,

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together with a statement of the date and manner of delivery, is entered by the officer, steward, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2 Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board, shall contain a written statement of the results of the hearing, including the decision of the Board and the sanction, if any, to be imposed.

CHAPTER 9

MISCELLANEOUS

9.1 Fiscal Year. The Trust's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2 Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Trust proceedings when not in conflict with South Carolina law or the Governing Documents.

9.3 Conflicts. If there are conflicts among the provisions of South Carolina law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of South Carolina law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board and committees. The Board shall provide for such inspection to take place at the Trust's office or at such other place within Palmetto Bluff as the Board shall designate.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records; and

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) Inspection by Stewards. Every steward shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Trust and the physical properties owned or controlled by the Trust. The right of inspection by a steward includes the right to make a copy of relevant documents at the Trust's expense.

9.5 Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Charter or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended

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recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Trust, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Trust or its managing agent, or at such other address as the Trust shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Founder, at the principal address of the Founder as it appears on the Secretary of State's records, or at such other address as the Founder shall designate by notice in writing to the Trust pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6 Amendment.

(a) By Founder. Prior to termination of the Founder Management Period, the Founder may unilaterally amend these By-Laws. So long as the Class "B" membership exists, the Founder may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class "A" votes in the Trust, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in Chapter 20 of the Charter shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change

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of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Founder without the written consent of the Founder or the assignee of such right or privilege.

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CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Palmetto Bluff Preservation Trust, Inc., a South Carolina non-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Trust, as duly adopted at a meeting of the Board of Stewards thereof held on the 16th day of April, 2003.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Trust this 16th day of April, 2003.

Secretary

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EXHIBIT "E"

INITIAL RULES

The following rules shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to Chapter 11 of the Charter.

1. Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by the Board of Stewards.

(a) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, water, or air quality within the Community or which result in unreasonable levels of sound, water, or light pollution;

(b) Any activities which are in violation of the Environmental Management Plan;

(c) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of a Lot or Family Compound, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 10 of the Charter. This shall include satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Founder and/or the Trust shall have the right, without obligation, to erect an aerial, satellite, dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Trust and require such exterior apparatus.

(d) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except as may be permitted by Founder on specifically designated Units. Dogs, cats, or other usual and common household pets may be permitted in a Unit, however, those pets which are permitted to roam free, or, in the Board's discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside a Dwelling. Pets shall be registered, licensed, and inoculated as required by law;

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(e) Any activity which emits foul or obnoxious odors outside a Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, unreasonably to disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not preclude normal and customary use or power tools, lawn mowers, and other yard maintenance equipment);

(f) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(g) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures;

(h) Any noxious or offensive activity which, in the reasonable determination of the Board, tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(i) Outside burning of trash, leaves, debris, or other materials;

(j) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(k) Use and discharge of firecrackers and other fireworks;

(l) Dumping grass clippings leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping provided care is taken to minimize runoff;

(m) Accumulation of rubbish, trash, or garbage except in approved and sealed containers;

(n) Obstruction or rechanneling drainage flows after location and installation of drainage swales or storm drains, except that Founder and the Trust shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(o) Swimming, boating, use of personal floatation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Community except those uses that are incident to the use and enjoyment of the Palmetto Bluff Club or as allowed in lakes, ponds, streams or other bodies of water by the Founder. The Founder or its designee shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and to draw water from lakes, ponds, and streams within the Community for purposes of irrigation and such other purposes as the Founder or its designee shall deem desirable. The Trust shall not be responsible for any loss, damage, or injury to any person or property arising out o the authorized or unauthorized use of bodies of water within or adjacent to the Community;

(p) Discharge of firearms; provided that the Board shall have no obligation to take action to prevent or stop such discharge and provided that the Founder shall have the right to establish a gun club or hunting club, or both, within the Community;

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(q) On-site storage of gasoline, propane, or other fuels, except that a reasonable amount of fuel may be stored at a Unit for reasonable, day-to-day usage and emergency purposes. The storage of propane shall only be in underground storage facilities. The Trust, however, shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. Nothing contained herein shall be deemed as a limitation on the Founder, its successors and assigns from storing and dispensing fuels from boat launches and boat storage facilities within the Community;

(r) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis;

(s) Capturing, trapping, or killing of wildlife within the Community except in circumstances posing an imminent threat to the safety of persons within the Community.

(t) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area without prior approval pursuant to Chapter 10, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed;

(u) Except for the use of certain electric carts as allowed by the Trust, operation of motorized vehicles other than maintenance equipment on pathways or trails maintained by the Trust and operation of "all-terrain vehicles" or motorized bikes within the Community;

(v) Hunting, except as the Trust may expressly authorize. The Trust may approve periodic management hunts in accordance with the Environmental Management Plan. Additionally, nothing contained herein shall be construed as prohibiting the Founder or an affiliate of founder from establishing a hunting and/or gun club within the Community;

(w) Pruning of landscape to create a vista for a Unit without the express written permission of the Design Review Board and the Trust; and

(x) Erecting mailboxes unless the Board has authorized disbursed mail delivery. All mail shall be deposited and received at a central community facility operated by the Trust unless and until the Trust agrees upon a different method for the handling of mail.

2. Prohibited Conditions. The following shall be prohibited in the Community:

(a) Cutting or harvesting timber other than for construction purposes as approved by the Design Review Board, except by the Trust, its designees and assigns, or upon the Trust's express written or authenticated electronic permission; and

(b) Plants, animals, devices, or other things whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

3. Siting of Dwellings and other Improvements. To assure that buildings and other structures will be located so that there will be maximum privacy and minimum impact on the natural environment of the Community, the location of any building or other structure shall be limited to a "building envelope" as designated on a recorded plat or in the Design Guidelines. No buildings

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or other structures shall be located outside the designated building envelope for a particular Unit. Any other improvements to a Unit to be performed outside the designated building envelope may only be commenced upon the express written or authenticated electronic approval of the Design Review Board.

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EXHIBIT 2

STATE OF SOUTH CAROLINA	)	FIFTY-SEVENTH SUPPLEMENT TO
	)	COMMUNITY CHARTER FOR
COUNTY OF BEAUFORT	)	PALMETTO BLUFF

WHEREAS, on or about April 17, 2003, **PALMETTO BLUFF DEVELOPMENT, LLC**, a South Carolina limited liability company ("Founder") executed that certain Community Charter for Palmetto Bluff which was duly recorded, on April 17, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1747 at Page 2090 ("Charter"); and

WHEREAS, the Charter constitutes the set of covenants, conditions, restrictions, affirmative obligations and easements which guide, control and direct the development and utilization of that certain planned unit development which is more particularly known as "Palmetto Bluff" which is more particularly described on Exhibits "A" and "B" attached to the Charter. The real property described on Exhibit "A" of the Charter constitutes the lands which have been subjected to the operation and control of the Charter (the "Land Initially Submitted"), and the real property described on Exhibit "B" of the Charter constitutes those additional properties which may be submitted to the operation and control of the Charter (the "Additional Property"); and

WHEREAS, pursuant to the provisions of Section 20.2 of the Charter, the Founder may unilaterally amend the Charter for any purpose and desires to amend certain provisions of the Charter by the execution of this Fifty-Seventh Supplement to the Community Charter for Palmetto Bluff (the "Fifty-Seventh Supplement"); and

WHEREAS, in order to accomplish the foregoing, Founder executes this Fifty-Seventh Supplement.

NOW, THEREFORE, Founder, pursuant to the terms and provisions of the Charter, hereby amends and supplements the Charter as follows:

3. Chapter 19 is hereby deleted and replaced with the following:

"CHAPTER 19: PALMETTO BLUFF CLUB

By acceptance of a deed, each Owner: (i) shall automatically become a member of the Palmetto Bluff Club; (ii) shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference; and (iii) acknowledges and agrees that mandatory membership in the Palmetto Bluff Club enhances the value of the Unit that Owner acquires because the availability of recreational amenities owned by Palmetto Bluff Club are for all Owners within the Community.

Each Owner's obligations pursuant to the Palmetto Bluff Club Documents, including, without limitation, the obligation to pay a joining fee, club dues, user fees and other charges, shall be covenants running with the land with respect to the Owner's Unit. The Palmetto Bluff Club Documents establish a charge and continuing lien encumbering each Unit for the monetary obligation of the Owner or Owners of that Unit pursuant to the Palmetto Bluff Club Documents. The Palmetto Bluff Club Documents may be amended from time to time without the consent of the Owners. Founder shall provide each initial purchaser of a Unit with copies of the Palmetto Bluff Club Documents prior to or at the time of conveyance of the Unit. The Trust shall provide current copies of the Palmetto Bluff Club Documents to any Owner upon request."

4. All other covenants, conditions, restrictions, terms and provisions as contained in the Charter shall remain in full force and effect.

IN WITNESS WHEREOF, Founder executes this Fifty-Seventh Supplement this 12th day of June, 2017.

SIGNED, SEALED and DELIVERED
in the Presence of

Sean M. H

Margaret B Huckey

PALMETTO BLUFF DEVELOPMENT, LLC,
a South Carolina limited liability company

By: _____ (SEAL)
David N. O'Donoghue
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that David N. O'Donoghue, President of PALMETTO BLUFF DEVELOPMENT, LLC, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 12th day of June, 2017.

Margaret B Huckey (SEAL)
Notary Public for South Carolina
My Commission Expires: 3/17/18

The within Supplement was prepared by John P. Carroll, Nexsen Pruet, LLC, P. O. Box 23526, Hilton Head Island, SC 29925.

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EXHIBIT 3

DECLARATION OF RECREATIONAL COVENANT FOR PALMETTO BLUFF

THIS DECLARATION OF RECREATIONAL COVENANT ("Declaration") is made this 17th day of April, 2003, by PALMETTO BLUFF DEVELOPMENT, LLC, a South Carolina limited liability company, its successors-in-title, and assigns (the "Founder").

WHEREAS, Founder is the developer of the planned community located in Beaufort County, South Carolina and known as Palmetto Bluff. Founder has executed and filed a Community Charter for Palmetto Bluff recorded, on April 17, 2003, in Book 1747, Page 2090 in the Office of the Register of Deeds for Beaufort County, South Carolina (such Charter, as it may be amended or supplemented from time to time, is referred to in this Declaration as the "Residential Charter").

WHEREAS, Founder is the owner of the real property described on **Exhibit "A"** (as **Exhibit "A"** may be amended from time to time) to this Declaration (the "Residential Property"), which is all or a portion of the property submitted to the Residential Charter.

WHEREAS, Founder is also the owner of other real property which will be described from time to time by amending this Declaration by attaching a revised **Exhibit "B"** to such amendment (the "Club Property"), which it intends to develop with recreational and social facilities to be operated as the Palmetto Bluff Club (the "Club"). Additionally, the Founder has developed the Palmetto Bluff Club Membership Plan (the "Plan") which provides for the operation and administration of the Club. All terms and conditions of the Plan are incorporated herein by reference.

WHEREAS, Founder's plan for development of the Residential Property is based upon Founder's desire to establish a residential community with a significant social and recreational component that draws together the owners of homes and homesites within the Residential Property ("Residential Units") and creates a sense of belonging and inclusiveness within the Palmetto Bluff community. In furtherance of this goal, Founder has organized Palmetto Bluff Preservation Trust, Inc., a South Carolina nonprofit corporation (the "Trust"), as a mandatory membership association to administer and enforce the Residential Charter and to operate and maintain certain subdivision improvements and infrastructure for the benefit of the Residential Property. Further, Founder has established the Club to administer this Declaration and to operate and maintain social and recreational facilities within Palmetto Bluff for the benefit of the owners of the Residential Property. By this Declaration, Founder desires to provide for issuance of a Community Membership (as described below) in the Club for each Residential Unit and to establish the obligation of the owner(s) of each Residential Unit to pay such periodic dues for Community Membership as the Club may establish from time to time in accordance with this Declaration.

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Article I
Declaration of Intent and Binding Effect

Founder, as the owner of Residential Property and the Club Property as expanded from time to time, hereby declares that all of the Residential Property and all of the Club Property shall be held, sold, and conveyed subject to the covenants, conditions and easements contained herein, which shall run with the title to all the Residential Property and the Club Property. This Declaration shall be binding upon all persons or entities having any right, title, or interest in any portion of the Residential Property or the Club Property, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of the owners of each portion of the Residential Property and the Club Property, except as otherwise expressly provided or limited herein. Upon the execution of this Declaration, Founder intends to convey the Club Property to Palmetto Bluff Club, LLC, a South Carolina limited liability company and an affiliate of Founder. By recording a deed or deeds to the Club Property, Palmetto Bluff Club, LLC shall automatically become the successor Founder hereunder.

Article II
Community Membership

2.1 Issuance of Memberships. Founder, the Club, or the owner or operator of the Club Property if other than Founder or the Club ("Club Operator"), shall cause a membership ("Community Membership") to be issued to the owner(s) of each Residential Unit ("Owner") entitling the Owner to the use and enjoyment of the Club Property in accordance with the Plan.

All privileges of Community Membership shall be limited to operating hours and subject to payment of such charges for food and beverage service as the Club Operator may establish. Such privileges shall also be subject to such membership policies and rules as the Club Operator may establish and modify from time to time.

Nothing herein shall obligate Club Operator or the owner of the Club Property to offer or maintain food and beverage service nor shall anything herein dictate the level of service or hours of operation of any food and beverage service provided.

2.2 Term of Memberships; Covenant to Maintain. The Owner(s) of each Residential Unit shall maintain the Community Membership issued for their Residential Unit pursuant to Section 2.1 in good standing as long as they hold title to the Residential Unit. Such Community Membership shall automatically terminate, as to the Owner of each Residential Unit, when such person ceases to be the owner of record title to the Residential Unit; however, a former Community Member shall remain obligated for all charges incurred on account of such membership prior to such termination. Upon transfer of title to a Residential Unit and termination of the Community Membership held by the previous Owner, the Club Operator shall issue a new Community Membership to the new Owner(s).

2.3 No Ownership Interest. No Owner, by virtue of ownership of a Residential Unit or by virtue of holding a Community Membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator, but only

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the privilege of using and enjoying the Club's facilities as a Community Member in accordance with the Club's Bylaws and the Club's rules, which are subject to change from time to time.

Article III
Obligation to Pay Membership Fees

3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, minimum usage fees and other costs in accordance with the Plan. The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club.

3.2 Payment. Each Owner of a Residential Unit, by accepting a deed to such Residential Unit, is deemed to covenant and agree to pay the dues and minimum usage fees charged by Club Operator for Community Membership and any other charges incurred by such Owner and the authorized users of the membership ("Membership Fees") in accordance with the Plan. All such Membership Fees, together with interest, late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of the Owner or Owners of the Residential Unit. Upon a transfer of title to a Residential Unit, the grantee shall be jointly and severally liable with the grantor for any Membership Fees due at the time of conveyance.

The Club Operator's failure to establish Membership Fees or to notify Owners of the Membership Fees shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Membership Fees.

3.3 Lien for Membership Fees. Subject to any limitations imposed by South Carolina law, the Membership Fees shall also constitute a lien on the Residential Unit against which they are levied from the time such Membership Fees become due until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except any lien of the Trust and the lien or charge of any recorded first mortgage (meaning a recorded first mortgage with first priority over other mortgages) made in good faith and for value, and those deemed by South Carolina law to be superior. Club Operator may enforce such lien, when any Membership Fee is delinquent, by suit, judgment, and foreclosure in the same manner as the lien of any recorded first mortgage of record.

Club Operator may bid for the Residential Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Residential Unit. Club Operator may sue for unpaid Membership Fees and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Residential Unit shall not affect the above-described lien or relieve such Residential Unit from the lien for any subsequent Membership Fees, except that the sale or transfer of any Residential Unit pursuant to foreclosure of the first mortgage shall extinguish the lien as to any Membership Fees due prior to the foreclosure.

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3.4 Founder's Residential Units Excluded. The granting of a Community Membership and the obligation for Membership Fees pursuant to this Declaration shall not apply to any Residential Unit owned by Founder.

3.5 Independent Covenant. The obligation to pay the amounts provided for herein shall be mandatory and shall be a separate and independent covenant on the part of each Owner of a Residential Unit. No Owner may exempt himself or herself from liability for Membership Fees by non-use of Club facilities, abandonment of his Residential Unit, or any other means. No diminution or abatement of Membership Fees or set-off shall be claimed or allowed for any alleged failure of the Club Operator to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

3.6 Recordkeeping; Audit. Club Operator shall cause to be maintained full and accurate books of account with respect to the expenses described in Section 3.1. Such books and records shall be made available for inspection and copying by the owners and mortgagees of Residential Units upon reasonable request during normal business hours. The requesting party shall pay all copying charges for requested copies. If any Owner of a Residential Unit desires to have the records audited, it may do so at its expense and Club Operator shall cooperate by making available to the auditors the records, including all supporting material, for the year in question.

Article IV
General

4.1 Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the addresses specified below unless the Club Operator or Owner of a Residential Unit has specified, by written notice in accordance with this Section, a different address for delivery of notices, in which case the notice shall be addressed to such different address:

(a) if to the Club Operator:

Palmetto Bluff Club
145 Palmetto Bluff Road
Bluffton, SC 29910

(b) if to the Owner of a Residential Unit, at the address of the Residential Unit.

All such notices shall, for all purposes, be deemed delivered and received (a) upon personal delivery to the addressee, or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

4.2 Amendment. So long as Founder owns any portion of the property subject to the Residential Charter, or has an option unilaterally to submit additional property to the Residential Charter in accordance with its terms, Founder may unilaterally amend this Declaration to withdraw from its coverage property described on **Exhibits "A"** or **"B"**, to substitute a different

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parcel or parcels of property for that previously described on **Exhibit "B"**, or to include additional property on **Exhibits "A"** or **"B"**; provided, if the Founder is not the owner of the property withdrawn, substituted or added, the consent of the owner shall be required. Otherwise, this Declaration may be amended only by an instrument signed by the Club Operator and by Owners of a majority of the Residential Units and by Founder, so long as Founder has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina.

4.3 Duration; Termination. This Declaration may be terminated only by an instrument signed by the Club Operator and by Owners of a majority of the Residential Units and by Founder, so long as Founder has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina. Unless terminated as provided herein, this Declaration shall have perpetual duration. If South Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall run for a period of 20 years and shall automatically be extended at the expiration of such period for successive periods of 20 years each. If any provision of this Declaration is judicially determined to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.4 Construction; Severability. This Declaration shall be governed by and construed under South Carolina law. Invalidation of any provision of this Declaration, in whole or in part, by judgment or court order shall not affect other provisions. Should any conflict arise between the terms and conditions of this Declaration and the terms and conditions of the Plan, the terms and conditions of the Plan shall prevail.

4.5 Waiver. No failure of Founder, the Club Operator, or the Owner of any Residential Unit to exercise any right or power under this Declaration or the Plan or to insist upon strict compliance with this Declaration or the Plan and no custom or practice at variance with the terms of this Declaration or the Plan shall constitute a waiver of the right thereafter to demand exact compliance with the terms of this Declaration or the Plan.

4.7 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

4.8 Assignment. The Founder and the Club Operator shall have the absolute right to assign all of their respective rights and obligations hereunder or portions thereof to the Trust.

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IN WITNESS WHEREOF, the Founder has executed this Declaration as of the date first above written.

WITNESSES:

FOUNDER:
PALMETTO BLUFF DEVELOPMENT, LLC, a South Carolina limited liability company

By: /s/ William G. Peacher
William G. Peacher, Chief Operating Officer and General Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that William G. Peacher, Chief Operating Officer and General Manager of PALMETTO BLUFF DEVELOPMENT, LLC, a South Carolina limited liability company, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 17th day of April, 2003.

Notary Public for South Carolina
My Commission Expires: 3/9/08

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EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being in Town of Bluffton, Beaufort County, South Carolina, containing 465.840 acres, more or less, designated as **HEADWATERS NORTH, a portion of PALMETTO BLUFF**. and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated January 28, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 92 at Page 117.

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EXHIBIT "B"

ALL those certain pieces, parcels or tracts of land situate, lying and being in Beaufort County, South Carolina, now or hereafter designated as property of Palmetto Bluff Club lying within the real property areas more particularly described as follows:

ALL that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 10.0 acres, more or less, and being a **PORTION OF THE DUCK POND TRACT at PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 47. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 3,159.58 acres, more or less, known as the **COOPER RIVER TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 48. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 847.63 acres, more or less, known as the **DUCK POND TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 49. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 5,021.96 acres, more or less, known as the **BIG HOUSE TRACT, a portion of PALMETTO BLUFF**, and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated July 1, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 88 at Page 161.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 1,490.25 acres, more or less, known as the **MAINLAND TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated March 19, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 86 at Page 50. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

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ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 6,363.68 acres, more or less, and being known as the **MANAGED FOREST TRACT, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated July 27, 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 75 at Page 188. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

ALSO, all that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 3,571.25 acres, more or less, known as the **MAY RIVER TRACT at PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated September 25, 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 76 at Page 24. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.

LESS AND EXCEPT, all that certain piece, parcel or tract of land situate, lying and being in Town of Bluffton, Beaufort County, South Carolina, containing 465.840 acres, more or less, designated as **HEADWATERS NORTH, a portion of PALMETTO BLUFF**. and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated January 28, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 92 at Page 117.

FURTHER, LESS AND EXCEPT all that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, containing 173.033 acres, more or less, more or less, designated as **HEADWATERS SOUTH, a portion of PALMETTO BLUFF** and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated January 13, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 92 at Page 118.

EXHIBIT 4

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PALMETTO BLUFF

PALMETTO BLUFF CLUB

MEMBERSHIP PLAN

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PALMETTO BLUFF CLUB

MEMBERSHIP PLAN OVERVIEW

MISSION STATEMENT

It is our desire and intent to provide members and their guests a club experience and environment at Palmetto Bluff Club. Practices and policies will be established by the Club which are designed to promote a quality experience for all members, and superior club operations.

MEMBERSHIP OPPORTUNITY

This Membership Plan describes the membership opportunities in Palmetto Bluff Club (the "Club"). The Club is a recreation and social club, located within the club and resort community of Palmetto Bluff, Bluffton, South Carolina, featuring exceptional dining, swimming, fitness and other recreational facilities. The Montage Palmetto Bluff includes a variety of recreational, dining, meeting and other facilities to which Club members may have access. Details regarding access to Montage Palmetto Bluff facilities will be published from time to time, as further described herein.

MEMBERSHIP CATEGORIES

The Club offers the following categories of membership:

- Community Membership;
- May River Membership; and
- Founding Membership.

The use privileges associated with each category of membership are more fully described in this Membership Plan.

By acceptance of a deed, every Owner of a residence or homesite within Palmetto Bluff shall become a "Community Member" of the Club and shall automatically assume and agree to be bound by all of the terms and conditions of this Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein, while he or she remains an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined herein) and the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant").

SPECIAL MEMBERSHIP BENEFITS

In addition to exceptional Club Facilities, membership in the Club offers a number of attractive benefits. A brief description of some of these current benefits follows and they are described in greater detail in this Membership Plan:

For Member Use Only. Proprietary and Confidential Information

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- **Vertical Family Privileges.** A Member's spouse or Significant Other (as defined herein) and their children, parents, grandparents, grandchildren, and great-grandchildren of the member and spouse (or Significant Other) and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia are entitled to use privileges while they are on property with or without the member on site. Vertical Family privileges will discontinue if the family member purchases Community property and acquires a membership.

- **No Assessments.** Members are not subject to either operating or capital assessments.

- **Preferred Pricing.** Members are entitled to receive preferred pricing on food and beverage purchases and other items at the Club and Resort as shall be published by the Club from time to time.

- **Legacy Transfer.** Members can request a one-time transfer of their membership through the Club to their adult child or grandchild (or if the member has no children, to another family member) who acquires title to the residence or homesite in Palmetto Bluff without the payment of a Membership Joining Fee, as provided herein.

- **Inheritability.** Upon the death of a member, the membership can be transferred to his or her spouse or one-time to his or her adult child or grandchild (or if the member has no children, to another family member) who acquires title to the residence or homesite in Palmetto Bluff without the payment of a Membership Joining Fee, as provided herein.

- **Club Concierge.** A Club concierge service is available to assist members with on property reservations and requests.

- **Club Newsletter.** Members will receive a periodic newsletter containing information about events and activities at the Club and other items of interest.

- **Members Only Website.** The Club's website located at members.palmettobluff.com provides members with access to important up to date club information. Members can log on and view details about upcoming events and activities, staff profiles, facility photos and descriptions, tournament results and much more. Website access is granted to the Primary and Spouse (or registered Significant Other) on the membership; Vertical Family members do not have access.

- **Internet Access.** Members will enjoy complimentary high-speed internet access while at the Club.

"Palmetto Bluff" consists of club and resort community of Palmetto Bluff, Bluffton, South Carolina, including all current future residential, club and resort development therein.

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CAREFULLY REVIEW ALL MEMBERSHIP DOCUMENTS

Every person who desires to obtain a membership, or owns or purchases a residence or homesite within Palmetto Bluff should carefully read this Membership Plan and all of the referenced documents and should seek professional advice to evaluate these documents.

RELY ON INFORMATION IN THIS MEMBERSHIP PLAN AND THE REFERENCED DOCUMENTS

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS NOT CONTAINED IN THIS MEMBERSHIP PLAN AND THE REFERENCED DOCUMENTS HEREIN (COLLECTIVELY, "MEMBERSHIP DOCUMENTS") AND, IF GIVEN OR MADE, SUCH INFORMATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE CLUB. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF MEMBERSHIP CONTAINED IN THE MEMBERSHIP PLAN, RULES AND REGULATIONS AND MEMBERSHIP AGREEMENT AND OTHER PRINTED MATERIALS, THE MEMBERSHIP PLAN, RULES AND REGULATIONS AND MEMBERSHIP AGREEMENT SHALL GOVERN.

BEFORE ACCEPTING A DEED TO A RESIDENCE OR HOMESITE, EACH PERSON HAS A RIGHT TO CONSULT AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS MEMBERSHIP PLAN. BY ACCEPTANCE OF A DEED TO A RESIDENCE OR HOMESITE, EACH PERSON OR ENTITY ACKNOWLEDGES THAT HE OR SHE HAD THE RIGHT TO SEEK SUCH AN OPINION. THE COMPANY IS RELYING ON EACH PERSON OR ENTITY CONFIRMING IN ADVANCE OF ACQUIRING A RESIDENCE OR HOMESITE THAT THIS MEMBERSHIP PLAN IS VALID, FAIR AND ENFORCEABLE.

MEMBERSHIPS ARE OFFERED ONLY FOR RECREATIONAL PURPOSES

MEMBERSHIPS AT THE CLUB ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING MEMBERS THE RECREATIONAL USE OF THE CLUB FACILITIES. MEMBERSHIPS SHOULD NOT BE VIEWED AS AN INVESTMENT AND NO MEMBER SHOULD EXPECT TO DERIVE ANY ECONOMIC PROFITS FROM MEMBERSHIP AT THE CLUB OR ACCESS TO THE CLUB FACILITIES.

NO FEDERAL OR STATE AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS MEMBERSHIP PLAN.

MEMBERSHIP AGREEMENT

Prior to or contemporaneous with the acquisition of a homesite or residence, all persons must mail or deliver to the Membership Office a fully completed and signed Membership Agreement. Membership privileges, charging and amenity access are not permitted until a Membership Agreement is fully executed.

MEMBERSHIP COORDINATOR

All inquiries regarding membership in the Club or this Membership Plan and referenced documents should be directed to the Membership Coordinator at: Palmetto Bluff Club or by calling (843) 706-6568. You may call or visit the Membership Office. No appointment is necessary. You may also visit our website at www.palmettobluff.com or members.palmettobluff.com.

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Amended and Restated June 19, 2017

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PALMETTO BLUFF CLUB

MEMBERSHIP PLAN

GENERAL DESCRIPTION OF MEMBERSHIP PLAN

CLUB PROPERTY

Palmetto Bluff Club, LLC (the "Company") or an affiliate will own certain real property (the "Club Property") within Palmetto Bluff. The Company will provide diverse recreational and social facilities (the "Club Facilities") on the Club Property. The Company hereby declares that the Club Property and Club Facilities shall be subject to the terms and conditions set forth in this Membership Plan for the Palmetto Bluff Club (the "Club"), so that the residents of Palmetto Bluff and other members of the Club, their family members and guests, guests of the Montage Palmetto Bluff and other persons as determined by the Company from time to time, shall have access to and use of the Club Facilities.

THE CHARTER AND THE TRUST

All residences and homesites within Palmetto Bluff have been submitted to that certain Community Charter for Palmetto Bluff (the "Charter"). Community governance and maintenance within Palmetto Bluff will be the responsibility of Palmetto Bluff Preservation Trust, Inc., a South Carolina not-for-profit corporation (the "Trust") in accordance with the Charter. This Membership Plan has been incorporated into the Charter by reference in Chapter 19 thereof. The terms "Unit" and "Owner" shall have the same meaning in this Membership Plan as in the Charter.

A PERSONA ACQUIRING A RESIDENCE OR HOMESITE WITHIN PALMETTO BLUFF MUST BECOME A MEMBER OF THE CLUB

Any Owner of a residence or homesite within Palmetto Bluff must become a member of the Club and should carefully read this Membership Plan and the documents referenced herein.

MEMBERSHIP

This Membership Plan describes the terms, conditions and privileges of membership in the Club. The provisions of this Membership Plan do not grant any ownership rights in the Club Property or Club Facilities in favor of any member but, rather, grant a non-exclusive license to use the Club Facilities subject to full compliance with all obligations imposed by this Membership Plan.

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THIS MEMBERSHIP PLAN SHALL BE A COVENANT RUNNING WITH THE LAND WITHIN PALMETTO BLUFF

By acceptance of a deed, every Owner of a residence or homesite within Palmetto Bluff shall become a "Community Member" of the Club and shall automatically assume and agree to be bound by all of the terms and conditions of this Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein, while he or she remains an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter and the Article III of the Recreational Covenant.

CONSOLIDATION OF CONTIGUOUS HOMESITES

If a member owns two or more contiguous homesites and enters into and records a Consolidation Agreement with Palmetto Bluff Development, LLC, Palmetto Bluff Preservation Trust, Inc. and the Company in the public records of Beaufort County, South Carolina, which prohibits the conveyance of the homesites separately, within ninety (90) days of the closing of the acquisition of the additional homesite(s), the member shall only be required to acquire and maintain one Community Membership. The member shall otherwise be required to acquire and maintain separate Community Memberships. If the member acquires two or more Community Memberships for contiguous homesites and thereafter records a Consolidation Agreement, ninety (90) days after the closing of the acquisition of the additional homesite(s), the member shall only be required to maintain and pay Club Dues with respect for one homesite, but the Club shall not refund any Membership Joining Fee.

USE OF CLUB FACILITIES

CLUB FACILITIES

The Company will provide certain recreational and social facilities within Palmetto Bluff, which will be and shall remain the property of the Company, subject to the provisions hereof. A list of the Club Facilities already available follows:

- Canoe Club Fitness Room, Locker Rooms and Movement Studio;
- Canoe Club Pool Complex and Pool Grill;
- Canoe Club Restaurant;
- May River Grill;
- Club Concierge;
- Moreland Art/Pottery Studio, Bowling Alley and Game Room;
- Moreland Canteen and Cole's Restaurant/Smokehouse;

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- Moreland Fitness Cardio Studio and Strength Studio;
- Moreland Family Pool and Lap Pool;
- Recreational Kids Club Programs;
- River House Fitness Room;
- The Lodge Event Room;
- The Lodge Freshwater Dock;
- The Lodge Fitness Room, Locker Rooms and Sauna;
- The Lodge Pool; and
- Wilson Lawn and Racquet Club (Tennis, Bocce, Croquet, and Basketball).

As additional phases of Palmetto Bluff are developed, the Company may construct additional Club Facilities. The Company reserves the absolute right to make alterations, improvements or changes to the Club Facilities, including construction of additional Club Facilities and/or the removal or modification thereof. Use of the Club Facilities will be controlled by this Membership Plan and the Club's Rules and Regulations, as they may be amended from time to time.

MONTAGE PALMETTO BLUFF

Montage Palmetto Bluff includes a variety of recreational, dining, meeting and other facilities to which Club members may have certain access privileges. Details regarding access to Montage Palmetto Bluff facilities will be published from time to time by the Company and the Club and Montage Palmetto Bluff reserve the right to limit access by members, their families and guests to the Montage Palmetto Bluff facilities.

The Club will permit guests of Montage Palmetto Bluff, including those staying in Montage Palmetto Bluff managed lodging facilities and guests of lodging facilities managed by an affiliate of the Club, including rental residences managed by either, and any future lodging facilities provided at Palmetto Bluff ("Resort/Hotel Guests"), to use the Club Facilities in accordance with an Access Agreement, which is available for inspection in the Membership Office, and as may be amended by the Club, in its sole and absolute discretion, from time to time. The operator of the Montage Palmetto Bluff will pay to the Club a "Daily Access Fee" for every room night rented at the Montage Palmetto Bluff and other lodging facilities, which shall entitle each Resort/Hotel Guest and his or her approved guests to use the Club Facilities in accordance with the terms of this Membership Plan. The Club and Montage Palmetto Bluff reserve the right to limit access by Resort/Hotel Guests to the Club Facilities. Access to the Club Facilities by rental guests of members arranged through an outside party other than Montage

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Palmetto Bluff or an affiliate (collectively, "Outside Party") shall be governed by the Outside Party Home Rental Guidelines (copy available at the Membership Office) established by the Company or an affiliate of the Company from time to time, and may be modified, restricted or terminated by the Company in its sole and absolute discretion.

MEMBERSHIPS

A. MEMBERSHIPS ELIGIBILITY

OWNERS OF RESIDENCES AND HOMESITES

Each and every Owner of a residence or homesite within Palmetto Bluff shall automatically assume and agree to be bound by the terms, conditions and privileges of this Membership Plan. Prior to or at the time an individual or entity purchases within Palmetto Bluff, such individual or entity shall complete and execute a Membership Agreement and join the Club as a "Community Member".

The Club may issue a limited number of "Founding Memberships" to purchasers of real estate in Palmetto Bluff and such memberships will be on such terms and conditions as the Club determines in its sole and absolute discretion. If a Founding Member no longer owns a residence or homesite in Palmetto Bluff, the member may continue his or her membership, which will terminate on the same basis as a May River Membership, except that if the Founding Member owns a residence or homesite in Palmetto Bluff, the membership may not be terminated as long as he or she owns the residence or homesite.

OTHER PERSONS

A person who does not own a residence or homesite within Palmetto Bluff, but who is a member in good standing of the Palmetto Bluff Golf Club, may enroll for membership in the Club and become a "May River Member".

Each person who desired to become a May River Member must mail or deliver to the Membership Office a fully completed and signed Membership Agreement, along with a check for the required Membership Joining Fee and the required Club Dues. In the event the agreement is not acted upon favorably, the Membership Joining Fee will be fully refunded, without interest.

Those persons who execute a Membership Agreement to become a May River Member shall be bound by the terms, conditions and privileges of this Membership Plan and any additional terms and conditions solely applicable to the May River Members as determined by the Club from time to time.

A May River Membership in the Club will terminate at the same time that the member's membership in Palmetto Bluff Golf Club terminates.

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COMPANY MEMBERSHIPS

The Club may issue a limited number of Company memberships in the Palmetto Bluff Club to such persons as the developer of Palmetto Bluff determines appropriate from time to time. These Company Memberships will be available on such terms and conditions as the Palmetto Bluff Club determines as appropriate at the time of the granting of the membership privileges. Company Members will not be required to own a residence or homesite in Palmetto Bluff. The developer of Palmetto Bluff may direct the Club to appoint, change and/or terminate a Company Member at any time. This provision may not be amended without the consent of the developer of Palmetto Bluff and will remain in effect following any sale of the Club Facilities to a third party or to the members.

MEMBERS AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE MEMBERSHIP DOCUMENTS

Each member agrees to be bound by the terms and conditions of the Membership Documents, as they may be modified from time to time.

B. MEMBERSHIP PRIVILEGES

GENERALLY

Each member shall have such non-exclusive rights and privileges to use the Club Facilities as shall from time to time be granted by the Club's Rules and Regulations. Many of the Club Facilities will be available without the payment of a User Fee; however, the Club reserves the right to charge a User Fee on a per use basis for access to certain of the Club Facilities. Please consult the current Schedule of Dues, Fees and Charges to determine which Club Facilities require the payment of User Fees.

MEMBERSHIP PRIVILEGES PRIOR TO CLOSING

The Club may allow the initial purchaser of a residence or homesite in Palmetto Bluff to use the Club Facilities as a member prior to the closing on his or her residence or homesite. The person will be required to pay the applicable membership joining fee, dues, fees and other charges established by the Club from time to time. In the event the purchaser does not timely close on the residence or homesite or the contract is voided, the Club may terminate the membership privileges by returning to the person the membership joining fee and the unused portion of any dues, fees and charges paid by the person in advance for the remainder of the membership year.

USE OF PRIVILEGES FOR FAMILY MEMBERS AND SIGNIFICANT OTHERS

A membership allows vertical family privileges to the member's spouse or Significant Other and the children, parents, grandparents, grandchildren, and great-grandchildren of the member and spouse (or Significant Other) and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham

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County, Georgia (collectively, "Family Members"). Family Members do not include any other family members, including siblings, nieces and nephews. Family Members must be registered with the Club. The member shall initially provide the Club with a list of persons to be designated as Family Members and shall update the list at least once a year. Family Members will be entitled to use the Club Facilities on the same basis as the member while they are on property with or without the member on site, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. The Club reserves the right to modify or restrict privileges and benefits of family members and establish such rules, terms and conditions with respect thereto as it may determine from time to time.

A "Significant Other" is an unmarried person who resides with an unmarried member and who has been designated by the member as such in an agreement with the Club. Such a designation may be permitted annually in the Club's discretion. A Significant Other may be changed only once during any calendar year. The Club may terminate the privileges of any or all Significant Others in its discretion.

Family Members and Significant Others will be allowed to use the Club Facilities without the payment of Daily Membership Fees, but will be subject to the same User Fees as members. Charges by Family Members and Significant Others will be paid by the member, unless the member notifies the Club that certain Family do not have charge privileges. The Club reserves the right to establish such fees and other rules and require the member and any designated user to submit such information and forms as the Club deems appropriate.

All other individuals will be treated as guests.

GUEST USE OF THE CLUB FACILITIES MAY BE RESTRICTED

In order to ensure reasonable access to the Club Facilities by all members and their Family Members, guest use of the Club Facilities may be restricted and Members may be charged Daily Membership Fees for guests' use of the Club Facilities. Members shall ensure that their guests use the Club Facilities in compliance with the Club's Rules and Regulations and upon payment of any applicable Daily Membership Fees, User Fees and charges by the sponsoring member. Guests must be registered by the sponsoring member with the Club. The Club reserves the right to charge sponsoring members a Daily Membership Fee for each guest and to require identification by each guest. The sponsoring member is responsible for all fees and charges incurred by guests and for the deportment of, and any damages caused by, guests. Guests are not permitted to have guests. A member's rental guest may not be an unaccompanied guest of the member, as set forth in the Rules and Regulations. Guest privileges may be restricted, denied, withdrawn or revoked at any time for reasons considered sufficient by the Club in its sole and absolute discretion.

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A TENANT LEADING A COMMUNITY MEMBER'S RESIDENCE IN PALMETTO BLUFF MAY USE THE CLUB FACILITIES

A Community Member who leases his or her residence in Palmetto Bluff for a period of at least six months in compliance with the terms of the Charter will be entitled to designate his or her tenant as the beneficial user of the membership. During the period when a tenant is designated as the beneficial user of a membership, the member will continue to pay Club Dues, but shall not be entitled to use the Club Facilities as a member. A member will be responsible for his or her tenant's deportment as well as all charges incurred by the tenant that remain unpaid after customary billing and collection. A tenant who is designated as a beneficial user of the membership under this provision shall be entitled to the same use privileges as the member, except that the Club may restrict the tenant's access to certain events and activities. The maximum period of time that a tenant may have privileges under this provision, whether the tenant rents one or more residences in Palmetto Bluff and whether the tenancies are consecutive, is three (3) years.

MULTIPLE OWNERS OF PROPERTY

In the event a residence or homesite is owned by more than one person (other than spouses or Significant Others), it is anticipated that only one membership will be reserved for the residence or homesite. If more than one owner desires membership privileges, the multiple owners of the property must agree to acquire and maintain one membership, designate one of the owners as the "primary member" and designate any additional owners who desire membership privileges as "additional members." The primary member and each additional member must be a significant owner of the residence or homesite as determined by the Club in its sole and absolute discretion. The primary member will have membership privileges and must pay Club Dues and each additional member under the membership may elect on an annual basis to receive membership privileges upon payment of Club Dues. There will be only one Membership Joining Fee for the membership to be paid by the primary member, and additional members will pay no additional Membership Joining Fees. The membership privileges associated with a multiple owners of property situation will be limited to four individuals or families and will only count as one membership. The primary member and each additional member shall be responsible for any unpaid Club Dues, User Fees and charges of any of the multiple owners under the membership. The primary member and any additional member under the membership may apply to the Club to substitute another owner of the residence or homesite for the additional member upon submission of such information and forms as the Club shall require and payment of the transfer fee established by the Club, before the end of any year for the succeeding year. The multiple owners must provide such proof of their significant ownership of the residence or homesite either at the time of initial application for membership or any time thereafter, as the Club shall request from time to time.

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A MEMBERSHIP MAY BE HELD IN THE NAME OF AN ENTITY

If a residence or homesite is held in the name of a partnership, company, trust or other form of multiple ownership ("Entity"), the Entity must designate one individual ("Entity Member") who will have the right to use the Club Facilities, and in the case of an Entity that owns a residence or homesite in Palmetto Bluff, the Entity may designate up to three additional individuals ("Additional Users"). The primary member must notify the club of any additional users prior to the membership year as additional users may not be added after the beginning of the year. The Club may permit the Entity to change the Entity Member and any Additional Users prior to the start of each membership year in accordance with the Rules and Regulations of the Club and upon payment of the redesignation fee established by the Club. Each designated user must submit a Membership Agreement and will be subject to the approval of the Club. Each designated user must be a bona fide owner, director, officer, partner, shareholder or employee of the entity, or a beneficiary, trustee or settlor of the entity if the membership is held in the name of a trust, and must pay the required Club Dues, User Fees and charges. There will be only one Membership Joining Fee for the membership and Additional Users will pay no additional Membership Joining Fees. No one other than the Entity Member and Additional Users and their Family Members and/or Significant Other shall be entitled to use the Club Facilities under the membership.

The Entity and each designated user are jointly and severally liable for all amounts due or incurred by such designated user, whenever incurred. The Club may establish, from time to time, the rules governing the designated user of a membership, including a limit on the number of times the designated user may be changed.

C. MEMBERSHIP JOINING FEES

MEMBERS SHALL PAY MEMBERSHIP JOINING FEE

A Community or May River Member joining under this amended and restated Membership Plan must pay a non-refundable Membership Joining Fee at the time of enrollment in the Club, unless waived by the Company in its sole and absolute discretion. The Membership Joining Fee due for a Community Membership must be paid at the time that the Owner acquires the homesite or residence within Palmetto Bluff. The amount of the Membership Joining Fee will be set forth in the individual's Membership Agreement. There are certain exceptions to the requirement of each owner of a homesite or residence being required to pay a Membership Joining Fee, including (i) an owner consolidating contiguous homesites pursuant to the "Consolidation of Contiguous Homesites" section above, (ii) a member's adult child or grandchild acquiring Palmetto Bluff property and receiving a transfer of the parent's/grandparent's membership pursuant to the "Transfer During Member's Lifetime" or "Transfer of Membership upon Death of Member" sections below, and (iii) a member selling a Palmetto Bluff property and acquiring a new Palmetto Bluff property pursuant to the "Transfer of New Property Within Community" section below. Membership Joining Fees and other amounts paid to the Club are the property of the Club and may be used for any purpose determined appropriate by the Club.

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D. MEMBERSHIP DUES AND CLUB EXPENSES

MEMBERSHIP YEAR OF THE CLUB

The Club's membership year commences January 1 and ends on December 31.

PAYMENT OF CLUB DUES

Each member will pay Club Dues at the beginning of each membership year. Club Dues will be prorated based upon the number of days remaining in the payment period at the time the member joins if after the beginning of the membership year. There shall be no refund of prepaid Club Dues by the Club. However, prepaid Club Dues may be prorated between a Community Member selling a homesite or residence and the new Community Member purchasing such homesite or residence. Inactive status is not permitted. Abatement of membership dues will not be permitted for any reason except as approved by the Club and as determined by the Club in its sole and absolute discretion. The Club will not provide any relief for single members and members who own multiple homesites will be required to pay Club Dues for each homesite unless they legally combine the homesites.

ESTABLISHMENT OF DUES, FEES AND CHARGES

The Club will determine the amount of dues ("Club Dues"), fees and charges to be payable by members each year. The current Club Dues, fees and charges for use of the Club Facilities are indicated on the Schedule of Dues, Fees and Charges. The amount of Club Dues, fees and other charges is subject to change from time to time by the Club.

Written notice of the Club Dues shall be given to each member not less than thirty (30) days in advance of the due date of the first installment of Club Dues for a particular membership year.

NO ASSESSMENTS

Members will not be subject to any liability for capital or operating assessments for the costs and expenses of ownership or operation of the Club or the Club Facilities. Annual increases in Club Dues shall not be deemed an assessment for purposes of this provision. The Club budget and the calculation of the dues may include a reserve for capital replacements and improvements and this shall not be deemed an assessment for purposes of this provision.

CLAIM OF LIEN

Each Community Member, by acceptance of a deed or instrument of conveyance for the acquisition of title to a residence or homesite, shall be deemed to have covenanted and agreed that the Club Dues, User Fees and other amounts due and payable by the Community Member under the Membership Documents, together with interest, late fees, costs and reasonable attorney's fees at all levels of proceedings, shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or

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homesite owned by the Community Member. The claim of lien shall also cover any additional amounts which accrue thereafter until satisfied. Such lien may be enforced by the Trust or the Club. The lien created by this Membership Plan is superior to the lien of the Trust for assessments pursuant to the Charter. The lien is established in Chapter 19 of the Charter and the Recreational Covenant.

E. RESIGNATION AND TRANSFER OF MEMBERSHIP

RESIGNATION OF MEMBERSHIP

A Community Member's membership shall continue until the Community Member ceases to be the record owner of fee simple title to a residence or homesite. All Club Dues, User Fees, and other charges will be due upon the sale of a Member's Community Residence. Community Members with multiple properties will be required to pay all such dues, fees, and other charges upon the sale of the Community Residence, regardless if other Community properties are still owned by the Community Member.

In no event may a Community Member waive or otherwise escape liability for Club Dues, User Fees and other charges provided in this Membership Plan by the non-use, or the waiver of the right to use, the Club Facilities or by abandonment of a residence or homesite.

A May River Member who desires to resign his or her membership must give the Club written notice that the membership is resigned.

Members who own a residence or homesite in Palmetto Bluff will be responsible for Club Dues and will continue to have use privileges through the date on which the member no longer owns a residence or homesite or, in the case of a May River Member or Founding Member who does not own a residence or homesite in Palmetto Bluff, the date the resignation or termination of the May River Membership or Founding Membership is effective.

TRANSFER DURING MEMBER'S LIFETIME

A member can request the one-time transfer of his or her membership to his or her spouse or an adult child or grandchild (or if the member has no children, another family member) without the payment of any additional Membership Joining Fee, subject to payment of a transfer fee, if any, as established by the Club from time to time. The adult child, grandchild or other family member to whom a membership is to be transferred under this provision is subject to approval by the Club and must acquire title to the residence or homesite in Palmetto Bluff, including acquiring title with others as tenants in common, if transfer of Community Membership.

TRANSFER OF MEMBERSHIP UPON DEATH OF MEMBER

Upon the death of a member, the membership will be transferred to the member's surviving spouse without the payment of any additional Membership Joining Fee. If there is no surviving spouse or the surviving spouse does not desire to continue the

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membership, the membership will be deemed to have been resigned, except that one time per membership, one adult child or grandchild of the member (or if the member has no children, another family member of the member) may acquire the membership without the payment of any additional Membership Joining Fee, subject to payment of a transfer fee, if any, as established by the Club from time to time. The spouse, adult child, grandchild or other family member to whom a membership is to be transferred under this provision must, if membership is a Community Membership, own or acquire title to the deceased member's residence or homesite in Palmetto Bluff, including acquiring title with others as tenants in common, and in the case of a non-spouse family member, is subject to approval by the Club. The transfer of the membership pursuant to this provision must occur within ninety (90) days of the death of the member unless such period is extended by the Club.

TRANSFER TO NEW PROPERTY WITHIN COMMUNITY

If a member sells his or her residence or homesite in Palmetto Bluff, and purchases another residence or homesite within Palmetto Bluff, the member may continue his or her membership without having to pay an additional Membership Joining Fee, subject to the following deadlines for sale of the old residence or homesite and acquisition of the new residence or homesite:

(a) If the member sells a residence or homesite before purchasing a new Palmetto Bluff property, the member must (i) submit to the Club before or at the closing on the sale of the prior property a signed notice of intent to transfer the membership to a new property, and (ii) be under contract to purchase the new property within ninety (90) days of the closing on the sale of the prior property. The Club membership and charging privileges will be suspended during the period of the sale of the current lot until another Palmetto Bluff homesite is under contract to be purchased by the member.

(b) If the member purchases a new Palmetto Bluff property before selling the prior Palmetto Bluff property, the member must: (i) submit to the Club before or at the closing on the purchase of the new property a signed notice of intent to transfer the membership to the new property, and (ii) close on the sale of the prior property within twenty four (24) months of closing on purchase of the new property.

SEPARATION AND DIVORCE

In the event of the separation of a married member, both spouses shall continue to have the use privileges of membership and ownership of the membership shall remain unchanged unless otherwise provided by agreement between the parties or by court order.

A member may terminate the privileges of a Significant Other in any circumstance, including but not limited to separation of the member and the Significant Other, by notifying the Club in writing.

In the case of divorce of a married member, the membership shall belong to the spouse

entitled to the use and occupancy of the residence or homesite, unless otherwise

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provided by agreement between the parties or by court order.

THE CLUB WILL NOT BECOME INVOLVED IN DISPUTES

In no case will the Club become involved in disputes between separated or divorced spouses or among the heirs of members. In the case of such disputes, the Club may (but will not be required to) at any time, in its discretion, suspend all of the privileges associated with the membership in question until the dispute is resolved and the Club receives evidence, satisfactory to it, of the resolution of the dispute. During the dispute, all Club Dues and charges must continue to be paid. The Club may require any evidence it deems necessary to determine eligibility for use privileges and may permanently suspend the use privileges of any person in order to prevent abuses of the intent of this Membership Plan.

PLEDGE OF MEMBERSHIPS

A member may not assign, pledge or use his or her membership as collateral for a loan or any obligation other than a loan secured by a mortgage on a Community Member's residence or homesite.

USE OF CLUB FACILITIES

CLUB'S RULES AND REGULATIONS

The Club shall have the right at all times to adopt rules and regulations, governing the use of the Club Facilities ("Rules and Regulations"). Any person entitled to use the Club Facilities shall comply with the provisions of the Club's Rules and Regulations.

THE COMPANY, AND ITS AFFILIATES, AGENTS AND ASSIGNEES, WILL HAVE THE RIGHT TO USE THE CLUB FACILITIES FOR ANY BUSINESS PURPOSE

The Company and its affiliates, agents and assignees have the right to use the Club Facilities for all of their business purposes, including use by prospective residence or homesite purchasers, residential sales brokers and other individuals, whether or not accompanied by a representative. The Company may designate employees and other persons to use the Club Facilities from time to time. Such use by business invitees or employees of the Company may be on a reduced rate or complimentary basis.

The Company will have the right to hold events at the Club, without compensation to the Club or its members on the dates and times selected by the Company.

Members may schedule private parties at the Club. The sponsoring member will obtain approval from, and make reservations with, the Club prior to any party. The member of the Club sponsoring the private party will be responsible for all costs of the party and any damage caused.

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CLUB OPERATIONS

MANAGEMENT AND CONTROL OF THE CLUB FACILITIES AND OPERATION OF THE CLUB

The Company is responsible for governing and administration of the Club Facilities and has the authority to: set Membership Joining Fees and Club Dues consistent with the provisions of this Membership Plan, User Fees and charges; interpret and amend the Membership Documents, and control the management and affairs of the Club Facilities. The Company may engage a professional management company to manage the Club and the Club Facilities. The Company reserves the right, from time to time, to establish various advisory Club committees.

DAMAGE ND DESTRUCTION TO THE CLUB FACILITIES

In the event of damage to any of the Club Facilities by partial or total destruction by fire, windstorm or any other casualty covered by the Company's insurance policy, such insurance proceeds shall be paid to the Company. If the Company elects to reconstruct the damaged Club Facilities, the insurance proceeds shall be available for the purpose of reconstruction or repair of the Club Facilities; provided, however, the Company shall have the right to change the design in its sole and absolute discretion. There shall be no abatement in payments of Club Dues during casualty or reconstruction. After all reconstruction or repairs have been made, if there are any insurance proceeds left over, then and in that event, the excess shall be the sole property of the Company.

ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

Membership in the Club permits the member to use the Club Facilities in accordance with this Membership Plan and the Rules and Regulations. Members of the Club will not be entitled to vote or otherwise become involved in the management or operation of the Club. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or the Company and does not provide the member with an equity or ownership interest or any other property interest in the Club or the Company or the Club Facilities.

THE COMPANY MAY MODIFY THE MEMBERSHIP DOCUMENTS

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify this Membership Plan and Rules and Regulations, to reserve memberships, to add, issue, modify, establish any type, category or class of membership or dues categories, to establish rules governing access and use of the Club Facilities, and to convert the Club into a member-owned club. All use privileges will be subject to the terms and conditions of this Membership Plan and Rules and Regulations and the other Membership Documents, all of which may be amended from time to time by the Company in its sole and absolute discretion.

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Where this Membership Plan refers to the Club taking action or having certain rights, the Company or its designees shall take such action and have such rights.

DISPOSITION OF CLUB FACILITIES AND PROGRAM CHANGES

THE COMPANY RETAINS THE RIGHT TO DISCONTINUE OPERATION OF ANY OR ALL OF THE CLUB FACILITIES OR TO SELL OR OTHERWISE DISPOSE OF THE CLUB FACILITIES

The Company retains the right to discontinue operation of any or all of the Club Facilities, to sell, lease, renovate or remodel or otherwise dispose of the Club Facilities in any manner and to any person (subject to the members' right of first offer), to convert the Club into a member-owned club and to make any other changes to the Membership Documents, the terms and conditions of memberships or the Club Facilities available for use by members.

MEMBERS SHALL HAVE A RIGHT OF FIRST OFFER

If the Company desires to sell the Club Facilities or a significant portion thereof, the Company shall, prior to soliciting offers from the general market, give notice of intention to sell to the members and shall form an acquisition committee composed of members of the Club to pursue a possible sales transaction with the Company and the members acquisition committee shall have a sixty (60) day exclusive period from receipt of the notice to make an offer to purchase the Club Facilities or applicable portion thereof from the Company. If the members acquisition committee fails to make an offer to the Company within such sixty (60) day exclusive period, or the Company does not accept the offer made by the members acquisition committee in its sole and absolute discretion, or if a transaction is agreed upon and not ultimately consummated, then the Company may solicit and accept offers for the Club Facilities or applicable portion thereof from the general market upon any terms and conditions deemed acceptable to the Company at any time in its sole and absolute discretion. The members shall not be precluded from making additional offers to the Company once the sixty (60) day exclusive period has expired. The right to make additional offers, however, is not intended to create a right of first refusal or an additional right of first offer in favor of the members. A purchaser of the Club Facilities or portion thereof shall acquire title subject to the terms and provisions of the Membership Plan then existing.

The foregoing provisions concerning the presentation of an offer to the members shall not apply to the sale or transfer of any or all of the Club Facilities to an affiliated entity or to an equity conversion.

ARBITRATION/MEDIATION

This "Arbitration/Mediation" provision shall apply only to members who acquire their membership on or after June 19, 2017. Subject to the provisions of below paragraph, any and all controversies, disputes or claims relating directly or indirectly to, or arising

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directly or indirectly from this Membership Plan, including, but not limited to, the breach or alleged breach of this Membership Plan, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless the member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to below paragraph) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Plan nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Plan or the breach or alleged breach of this Membership Plan, (ii) the existence of an arbitration proceeding under this Membership Plan or (iii) the results of any arbitration proceeding under this Membership Plan; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this paragraph, nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

No party may commence an arbitration pursuant to above paragraph or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Plan, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Plan shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

Exhibit 5

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29 October 2021

via email to: pmelton@southstreetpartners.com
South Street Partners, LLC
c/o Patrick Melton
701 East Bay Street
Suite 518
Charleston, SC 29403

via certified U.S. Mail to:
Palmetto Bluff Golf Club, LLC
c/o CT Corporation System
2 Office Park Court, Ste. 103
Columbia, SC 29223

via email to: info@hendersonpark.com
Henderson Park
42-44 Grosvenor Gardens
London, SWIW OEB, UK

via email to: vstieglitz@nexsenpruet.com
Val H. Stieglitz, Esquire
Nexsen Pruet
1230 Main St., Ste. 700
Columbia, SC 29201

As attorney for:
Palmetto Bluff Development, LLC
Palmetto Bluff Company, LLC f/k/a Crescent Communities, LLC
PBLH, LLC
Palmetto Bluff Club, LLC
The Palmetto Bluff Preservation Trust, Inc.
and its Board of Stewards
Montage Hotels & Resorts, LLC
Montage Palmetto Bluff, LLC
Montage Technical Services Advisor, LLC
Palmetto Bluff Real Estate Company, LLC

Re: Palmetto Bluff—Notice of Claims and Demand for Resolution and Mediation

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Dear Sirs and Madams,

This Firm represents numerous owners of residential property within the Palmetto Bluff community, including but not limited to those identified on the enclosed list. This letter is in follow-up to the Notice of Claims from G. Trenholm Walker, Esq. to you, via letter dated July 29, 2020, and the negotiations and mediation that occurred in the wake of that correspondence.[1]

Many of our clients own property within Designated Rental Areas ("DRAs") in Palmetto Bluff. As further set forth in Mr. Walker's correspondence, you have acted improperly to suppress our clients' ability to rent their property short-term, and to give an oppressive, competitive advantage to certain other property owners renting short-term, and you have made material misrepresentations to our clients surrounding their ability to rent their respective properties short-term. These improper actions by you violate the governing documents and constitute unfair trade practices, breaches of fiduciary duty, civil conspiracy, and antitrust violations, *inter alia*. Our clients have worked in good faith with you to try to resolve these matters, to no avail thus-far, including by participating in an unproductive mediation and several other fruitless discussions.

All of our clients are currently members of the Palmetto Bluff Club (the "Club"). You have wielded the Club as a tool to accomplish the improper actions discussed in Mr. Walker's letter (and at the mediation of this matter). Despite our clients' membership in the Club—and the ever-increasing dues which they pay for that membership—it is your position that their right to use its facilities can be restricted to exclude any use by their short-term rental guests and tenants.

Like every other purchaser of a residence within the Palmetto Bluff community, our clients became members of the Club because they believed it was required of them. The governing documents suggest that Club membership is tied to the land, and that ownership in Palmetto Bluff comes with appurtenant, reciprocal easement rights and obligations in and to the Club. Like every other purchaser of a residence within the Palmetto Bluff community, our clients were informed during that purchase and conveyance that:

[1] Mr. Walker's letter is enclosed, and its Notice of Claims is incorporated herein by reference.

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> By acceptance of a deed, every Owner of a residence or homesite within Palmetto Bluff shall become a "Community Member" of the Club and shall automatically assume and agree to be bound by all of the terms and conditions of this Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein, while he or she remains an owner of a residence or homesite.

(Palmetto Bluff Membership Plan, "Membership Plan Overview"). Our clients therefore paid the applicable "Membership Joining Fee" at the time of transfer. **Importantly, however, the above requirement is unenforceable, unlawful, and void under the statutory and common law of South Carolina.** Among other things, the provision constitutes an unreasonable restraint on the alienation of property, it does not touch and concern the land, it impairs the marketability of title, and it unlawfully requires the payment of a significant fee to a for-profit, third-party business (*i.e.*, the Club) as a condition of conveyance.

In addition, there has been a breach of the Right of First Offer provisions of the Membership Plans. Summarized, before a significant portion of the Clubs' facilities may be sold, a series of mandatory steps must be taken to offer sale to the Members, on terms specified in both the Palmetto Bluff Club Membership Plan and the Palmetto Bluff Golf Club Membership Plan. There is no question that those mandatory steps were not followed here, causing (*inter alia)* damages to my clients and the right to be put in the position had the contract been followed—*e.g.*, purchase of the facilities at the amount of the previous sale.

Below is a list of certain of the issues my clients may pursue. Of note, some of these were articulated in the previous demand letter; we include them here for a thoroughness, not because they are required to be re-noticed. If the negotiations are unsuccessful, our clients will have no alternative but to file suit to pursue their available claims, including *inter alia*:[2]

- Class-action litigation on behalf of every purchaser of a residence within the Palmetto Bluff community for declaratory judgment, injunction, and actual damages associated with your violations of South Carolina's statutory and common law prohibitions on real property transfer fee covenants, including those in S.C. Code § 27-1-70 *et seq.*;

[2] Our clients reserve the right to pursue all legal and equitable relief warranted by the facts and the law.

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- Class-action litigation on behalf of all Owners, including those within Designated Rental Areas, for violation of South Carolina's Unfair Trade Practices Act, S.C. Code § 39-5-10 *et seq.*;

- Breach of covenants in the nature of contract, including violation of easement obligations and the imposition by you of improper assessments;

- Breach of fiduciary duties;

- For an accounting and damages as to improper and incorrect dues calculation;

- Breach of contract, including breach of the right of first offer provisions in the Membership Plans for both the Palmetto Bluff Club and the Palmetto Bluff Golf Club;

- Violation of South Carolina's Homeowners Association Act, rendering your governing documents unenforceable;

- Tortious interference with contract and with prospective contractual relations, including for your unlawful interference with our clients' vested right to rent their property short-term;

- Misrepresentation and fraud, including but not limited to the false representation made to every purchaser of property at Palmetto Bluff that membership in a for-profit Club in which they will have no legal or property interest is a required condition of property ownership;

This list is not in any way a limitation on our clients' claims. Our clients and other interested persons reserve the right to pursue and assert any further claims that may be or become colorable under applicable law.

The resolution that our clients propose includes access for their short-term rental tenants to the "Club Facilities," as defined in the Membership Plan, as well as full use of the privileges going with Community Membership, including any access rights by Community Members to Montage Palmetto Bluff facilities. It is our clients' expectation that such short-term tenants will have the same beneficial use of the Community Membership as any other tenant leasing a residence in Palmetto Bluff. If legal action commences, our clients reserve the right to purse all additional legal and equitable remedies and damages allowed by law, including without limitation rescission, injunctive relief, specific performance, and reimbursement of attorneys' fees and costs.

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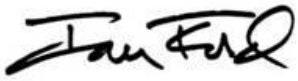
This Notice of Claim shall be understood to be a request for meeting and mediation as described in any applicable dispute resolution provisions, including without limitation Chapter 18 of the Charter, which requires mediation within sixty (60) days of any new claims noticed.

This list is not in any way a limitation on our clients' claims. Our clients and other interested persons reserve the right to pursue and assert any further claims that may be or become colorable under applicable law.

It is our clients' desire that we resolve these matters without further delay and expense. Our clients continue to believe that a viable solution to the claims in both the original Notice, as well as the one above, can be achieved amicably.

With kind regards, I am,

Very truly yours,



Ian S. Ford

Ian.Ford@FordWallace.com

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Claimants

Jeff Kimball
Darrel Whatley
MMP Properties
Scott Hoyne
Patti Bottomy
Courtland Williams
Tom & Leslie Sullivan
Greir Camp, LLC
Matthew Lynch
Jamison Monroe
Michael Giaquinto
MKM 22 Westerwald, LLC
Salt Works LLC
Mike Addy
Manuel Valdes
Joann Mancuso
Melanie Hall
Mae Rogers
Collins Fowler Properties SC LLC
Mike McGuire
Jennifer Albero
Panos Bethanis
Chris Leigh-Jones
Mike Mackinnon
Bruce Becker
Chris Breitweiser
Dorothy Gorham
Doug Locke
Glenn Steinberg
Todd Kugler
Sabre & Lee Esler
Neil & Stacey Clayton
Allan & Meg Biggers
Mike and Lisa Rintoul
14 Westerwald Partners
Fae Manor 1, LLC
PB Escape, LLC
Ted Riley

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WALKER GRESSETTE FREEMAN LINTON LLC

G. Trenholm Walker
Thomas P. Gressette, Jr.
Ian W. Freeman
John P. Linton, Jr.
Charles P. Summerall, IV
Jennifer S. Ivey

G. TRENHOLM WALKER
Direct: 843.727.2208
Email: Walker@WGFLLAW.com

July 29, 2020

Certified Mail, Return Receipt Requested

Palmetto Bluff Development, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Palmetto Bluff Company, LLC f/k/a
Crescent Communities, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

PBLH, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Palmetto Bluff Club, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

The Palmetto Bluff Preservation Trust, Inc.
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Board of Stewards of The Palmetto Bluff Preservation Trust, Inc. c/o The Palmetto Bluff Preservation Trust, Inc.
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Montage Hotels & Resorts, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Montage Palmetto Bluff, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Montage Technical Services Advisor, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Palmetto Bluff Real Estate Company, LLC
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Re: Independent Short Term Rentals (STR) in Designated Rental Areas (DRA) at Palmetto Bluff
WGFL File: 8254-001

Dear Sirs/Madams:

This firm represents the enclosed list of members (hereinafter "Claimants") who own improved properties in DRAs at Palmetto Bluff. I am writing to provide their Notice of Claims according

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to certain procedures specified in the Community Charter for Palmetto Bluff (the "Charter") and the Palmetto Bluff Club Membership Plan (the "Plan"). In providing this Notice of Claims, the Claimants are not agreeing or conceding that the referenced dispute resolution procedures are legally enforceable or valid as to them or that all the above parties come within their scope. Claimants do not waive their rights to contest the validity and enforceability of the dispute resolution procedures as to them, and expressly reserve all rights to contest their validity and application including, but not limited, to their rights to litigate these claims in a civil action, instead of arbitration, without any prior mediation or other negotiations.

The Claims arise from the concerted efforts of the above parties (hereinafter collectively "Respondents") to engage in conduct, including enacting changes to the Governing Documents, that is in violation of other provisions of the Governing Documents and the applicable law, that is unreasonable and oppressive, that is intended in fact and in effect to suppress the STR activity of Clients who are not participants in the Founder Designated Rental Program and give the Founder Designated Rental Program an improper competitive advantage, that violates express representations made to some or all of the Claimants at the time they purchased their Palmetto Bluff STR properties in a DRA, and that is intended to suppress and gain competitive advantage over the Claimants' independent STRs by forcing them to incur significantly more expenses and suffer diminished revenue in their STR activities. The conduct in question includes, but is not limited to, the daily resort fee charged to STR rentals outside the Founder Designated Rental Program, the Outside Party Home Rental Guidelines of the Club, the pending Supplement to the Charter, and the pending new Rules that all impose extreme restrictions and limitations on independent STR rentals. The conduct giving rise to the Claims will further include misrepresentations made to the Claimants at the time of their purchase of their respective properties.

If litigated or arbitrated, the Claims may take the legal forms of breach of the Governing Documents, breach of contract, breach of fiduciary duty, civil conspiracy, violation of the South Carolina Unfair Trade Practices Act, violation of state and/or federal antitrust statutes, tortious interference with a contract and prospective contractual relations, negligent misrepresentation, and fraud. This enumeration of the legal bases for the Claims is not meant to be all inclusive but to provide examples of some of the causes of action that support claims under these circumstances.

The Claimants intend to pursue all available legal and equitable remedies that are warranted by the facts and law, including but not limited to damages, rescission, injunctive relief, specific performance, and reimbursement of attorneys' fees and costs.

Without waiver of their rights and remedies and specifically reserving all of them, the Claimants' immediate proposed resolution is the rescission of certain of the Club's Outside Party Home Rental Guidelines, the elimination of the daily resort fee for STR rentals that are outside of the Founder Designated Rental program, the elimination of certain of the provisions and requirements within the draft of the Supplement to the Community Charter circulated to the membership in February 2020, the elimination of certain of the new Rules contained in the draft

of E-2 circulated to the membership in February 2020, and/or, in the alternative, the withdrawal of the enactment of the draft Supplement and draft new Rules. This identification of Claimants' proposed immediate resolution is in the nature of a settlement proposal and protected inadmissible settlement communication and is put forth to comply with the provisions of Article 18 of the Charter.

As specified in Article 18, the Claimants express their desire to meet with the Respondents to discuss good faith ways to resolve the Claims. Because of the prevailing coronavirus pandemic, its accompanying risks, the CDC's recommendations, and the mandatory safety enactments of local, state, and national government, Claimants request that Respondents and Claimants confer at the outset on whether to adjust the provision specifying a meeting within the next 30 days or the use of reasonable alternatives for accomplishing the meeting.

This Notice of Claim shall be understood to be a request for mediation as to the Palmetto Bluff Club, LLC described in the dispute resolution provisions in the Club Membership Plan.

We look forward to hearing from your representatives at your earliest convenience.

Sincerely yours,

WALKER GRESSETTE FREEMAN & LINTON, LLC

G. Trenholm Walker

Enclosure

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Client

10 North Drayton LLC
Bob & Arlene Flick
Chris Leigh-Jones
Collins Fowler Properties SC LLC
Courtland Williams
Cynthia Key
Dave & Darby Mingey
Greir Camp, LLC
Jamison Monroe
Jeff & Debbie Kimball
Jenny Albero
Joann Mancuso
Leslie Sullivan
Lori & Darrell Whatley
Mae Rogers
Manuel Valdes
Matthew Lynch
Melanie Zimmer
Michael Giaquinto
Mike Addy
Mike McGuire
MMP Properties
Panos Bethanis
Patti Bottomy
Rob Ingraham
Salt Works, LLC
Scott Hoyne

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EXHIBIT 6

LOTS WITHIN SHORT TERM RENTAL AREA

PALMETTO BLUFF

short-term rental area guide

WILSON

FEBRUARY 4, 2020

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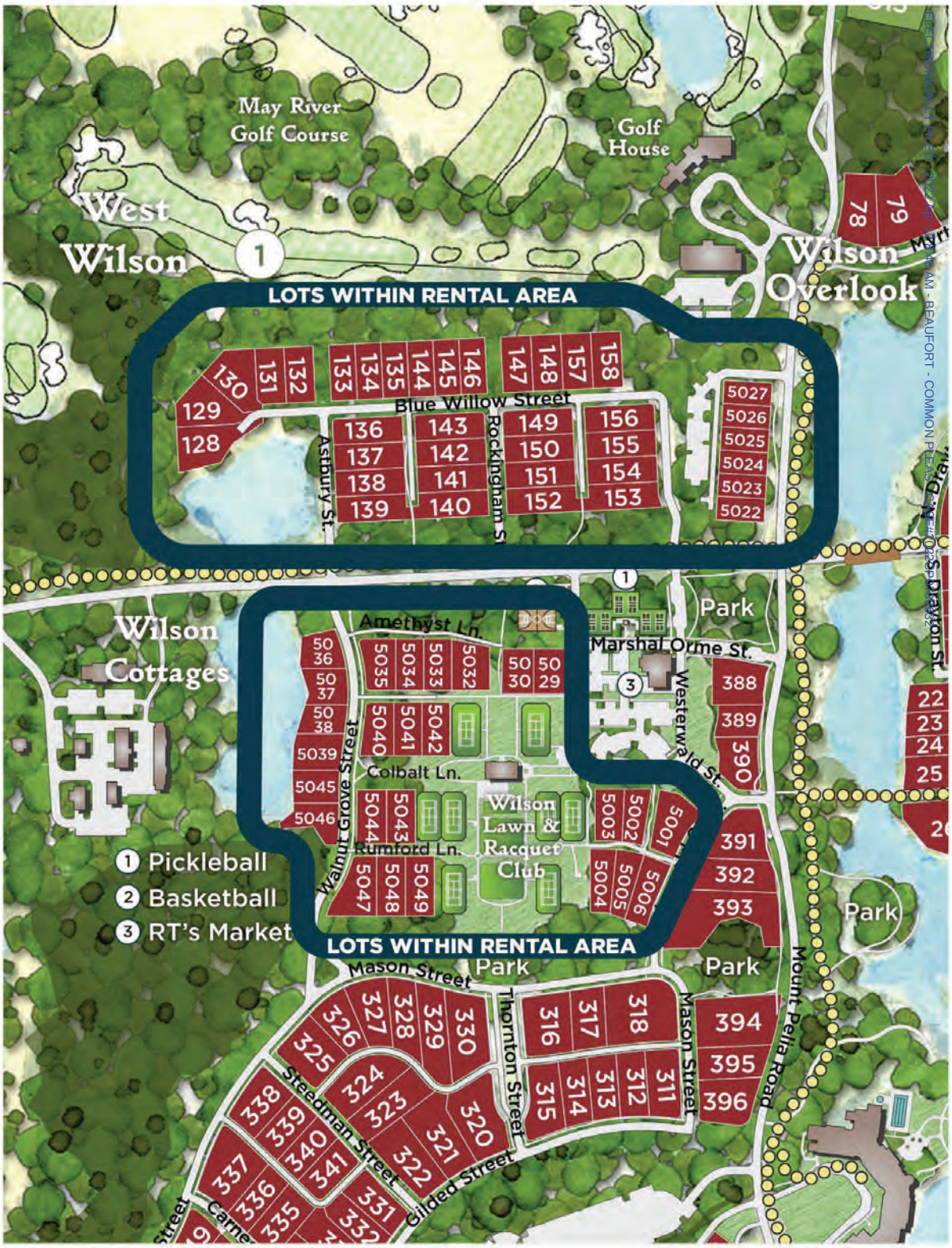

PALMETTO BLUFF

short-term rental area guide

WEST WILSON | WILSON OVERLOOK | WILSON COTTAGES

FEBRUARY 4, 2020

PALMETTO BLUFF

short-term rental area guide

MORELAND

FEBRUARY 4, 2020

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ELECTRONICALLY FILED - 2022 Oct 05 6:05 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE CIRCUIT COURT
315 Corley CW, LLC; 368 Mount Pelia, LLC; Bridge Charleston Investments B, LLC; Bridge Charleston Investments C, LLC; Bridge Charleston Investments E, LLC; Bridge Charleston Investments H, LLC; Anne Bosler and Dylan Hart, as Trustee of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets, LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West, LLC; One Rumford Lane, LLC; Salt Works, LLC; and TTJR, LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, vs. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC[1]; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards; Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners, LLC; John Does 1-25, Defendants.	Case No. 2022-CP-07-00632 **ANSWER TO PLAINTIFFS' COMPLAINT ON BEHALF OF DEFENDANTS**

COME NOW Defendants Palmetto Bluff Development, LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Real Estate Company, LLC, PBLH, LLC, Montage Palmetto Bluff, LLC, Palmetto Bluff Preservation Trust, Inc., Palmetto Bluff Preservation Trust Board of Stewards, Jordan Phillips, Mark Polites, Gray Ferguson, Henry Armistead, and South Street Partners, LLC

[1] Defendant PLBH, LLC is improperly named in the caption of the Complaint filed in this action, but properly named in the body of the Complaint as PBLH, LLC

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(hereinafter, the "PB Defendants"), by and through their undersigned counsel and subject to, without waiving, and reserving all rights pursuant to SCRCP 59(e), and all appellate rights with respect to the Court's Order dated September 15, 2022 herein, granting Plaintiffs' Motion to Stay Arbitration and for Special Proceedings and denying Defendants' Motion to Dismiss or, in the Alternative, to Compel Arbitration and Stay, and hereby answer Plaintiffs' Complaint as follows:

INTRODUCTION

Plaintiffs, who represent a small minority—less than 1%—of Palmetto Bluff property owners, seek to manipulate their Palmetto Bluff membership privileges to the detriment of their neighbors and fellow Club members. Seeking a different deal than the one they agreed to when they bought their properties at Palmetto Bluff, this group of highly sophisticated vacation-home owners who elect to use their homes as short-term rentals wants the Court to believe the entire Palmetto Bluff development is a "hoax," that the Club is run for the benefit of guests at a hotel, and that the entire community is unlawful and should be dismantled.

Plaintiffs' solution would destroy the structure of the community and end the Club itself, directly harming the investments of the "class" they claim to represent—the other 1,307 property owners and fellow Club Members in this special community. Voiding all governing Palmetto Bluff documents would leave no community standards, no Club governance, and no collection of dues, which would mean there would be neither maintenance, upkeep, nor upgrades in Club facilities and operations, and no Club personnel to maintain the amenities and provide services to Club members. And Plaintiffs' vision of transforming every short-term renter into a Club member would harm every aspect of the community and permanently alter its character. Plaintiffs seek to deprive their fellow homeowners of the benefits of the Palmetto Bluff community and the Palmetto Bluff Club—benefits that all owners paid for, on terms to which all owners agreed—all to aid

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Plaintiffs' pursuit of near-term, personal profits derived from financially manipulating their Club memberships. Moreover, Plaintiffs remedy of converting the Club into a homeowners association would require all homeowners to pay for new amenities and cover the operating deficit of the Club via substantial assessments.

Plaintiffs' action relies on false premises. Both Plaintiffs' Introduction (which Defendants deny in full, to the extent any response is necessary) and the numbered paragraphs of Plaintiffs' Complaint (addressed below) repeatedly contradict the documents filed with their pleading and others incorporated by reference.

These sophisticated Plaintiffs, with substantial business and real estate experience, knew full well what they were doing.

- Plaintiffs chose to invest in Palmetto Bluff and to abide by the rules all other owners live within. Like many resort real estate developments, Palmetto Bluff is designed around a private membership club with multiple dining and recreational facilities—the Palmetto Bluff Club—and a resort hotel now known as the Montage Palmetto Bluff.
- No Plaintiff was forced to buy property at Palmetto Bluff; anyone who did not want to become a Club member did not have to purchase property at Palmetto Bluff.
- Each buyer of property in Palmetto Bluff agrees to become a member of the Club; that agreement is recorded as a covenant running with the land. See Complaint, Ex.1, ch. 19; Ex. 2; Complaint, Ex. 3 ¶ 2.3.
- Owners agree to be bound by the Club's governing documents, which owners also agree can be changed as conditions change, without the consent of the owners. Complaint, Ex. 1, ch. 19; Complaint, Ex. 3 ¶ 2.3.

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While Plaintiffs claim certain governing documents regarding the amenities and structure at Palmetto Bluff were "hidden," everything they claim was "hidden" was in fact either expressly disclosed or was made readily available to them. Plaintiffs' claims ignore what the governing documents say, in favor of what Plaintiffs wish they said.

- Before buying their properties, each Plaintiff had complete, free, and easy access to review the Community Charter, covenants, the Club Plan, and the Club Rules and Regulations.
- The documents are crystal clear regarding (1) the differing structures of the Preservation Trust, which is a community organization, and the private Club, and (2) the nature of Club membership which, unlike owners' dwellings located in Rental Areas, cannot be "rented out" short-term.
- There was nothing secret or hidden about the fact it is Palmetto Bluff Club, LLC that owns Club property, and not the Preservation Trust or the homeowners.
- Each Plaintiff knew that the Club was an intrinsic part of the Palmetto Bluff community and acknowledged that the amenities available only to Club members enhanced the value of property in Palmetto Bluff. The Complaint omits any reference to or copy of a supplement to the Community Charter that was recorded in 2003—long before any Plaintiff bought in Palmetto Bluff. This supplement includes language (also in Ex. 2 to the Complaint) under which each owner "agrees that mandatory membership in the Palmetto Bluff Club enhances the value of the Unit that Owner acquires because the availability of recreational amenities owned by Palmetto Bluff Club are for all Owners within the Community."
- Each Plaintiff knew that the Club was a private entity different from the Preservation Trust, and that Club membership gave them just that—membership in a private club, not

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ownership of Club property. The Recreational Covenant recorded as a public record in 2003 (Complaint, Ex 3) plainly states "[n]o Owner, by virtue of ownership of a Residential Unit or by virtue of holding a Community Membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator, but only the privilege of using and enjoying the Club's facilities as a Community Member in accordance with the Club's Bylaws and the Club's rules, which are subject to change from time to time." Complaint, Ex. 3, ¶2.3. Nothing in the Community Charter, the Recreational Covenant, or any other written document contradicts these clear terms.

- Nor is the Palmetto Bluff Club structure unlawful. Private clubs are legal, and clubs that follow the common model of requiring membership from all residents in a club-centered community are lawful as well. Plaintiffs might desire a different structure, but they agreed to the one they have, willingly, knowingly, voluntarily, and in the face of transparent, clear disclosures.
- Each Plaintiff agreed that nonmember access to the Club could be changed as conditions change.

Property owners, including most of the Plaintiffs, who live in designated Rental Areas have a right to rent their homes on a short-term basis. **No Club or Community document gives any Plaintiff the right to rent out their Club membership along with their homes, or to transform their renters into Club members. And no Club or Community document gives short-term renters a right of access to Club amenities.** Yet those are the "rights" this Complaint seeks to enforce.

- On the contrary, the Club Documents—to which Plaintiffs agreed (see Complaint, Ex. 1, ch. 19; Complaint, Ex. 2, pg. 1; Complaint, Ex. 3, §2.1, Complaint, Ex. 4, pg. 1) clearly

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limit access by nonmembers in general and by rental guests in particular. Access to Club facilities by nonmember guests is restricted and subject to change. The Membership Plan explains under a bold heading that "guest use of the Club Facilities may be restricted" and that fees for guest use may be charged. Complaint, Ex. 4, p. 6. The Membership Plan also plainly states "Guest privileges may be restricted, denied, withdrawn or revoked at any time for reasons considered sufficient by the Club in its sole and absolute discretion." *Id*. From the point each Plaintiff purchased their properties, they knew guest privileges could be restricted – even revoked – by the Palmetto Bluff Club, for any reason.

- The Club Rules and Regulations confirm that guest privileges may be limited in the sole discretion of the Club. The Rules and Regulations are incorporated by reference in the Complaint, Ex. 1, ch. 19 and Ex. 2 (incorporating "Palmetto Bluff Club Documents" by reference).
- In fact, the majority the property purchasers involved with the Plaintiffs signed a written waiver agreement when purchasing their property wherein they expressly acknowledged the Club has the right to restrict access to the Club Facilities for guests renting homes within the Community whether long term or short term.
- Plaintiffs also assert that the Defendants are favoring Montage hotel guests and Montage program renters. But the Club announced that, as of May 1, 2022, neither Montage guests nor short-term renters would have access to most Club facilities. Access to Club facilities are now limited to Club members and those who qualify as guests. Plaintiffs are well aware that the restrictions on Club access implemented May 1, 2022, apply equally to all short-term renters and hotel guests—including Montage hotel guests or Montage program renters.
- Short-term rental guests have no inherent right of access to Club facilities at all.

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- The Club Documents make clear that the right of some property owners to rent their properties short-term does not carry with it any right to rent out their Club membership.
- On the contrary, the same Club Documents forbid Plaintiffs and all other Palmetto Bluff owners from using Club Facilities or Club property for commercial activity or financial gain. But most of the Plaintiffs nonetheless hoped to exploit their Club memberships at a profit. Complaint ¶ 132.14
- Despite the Complaint's rhetoric, all Plaintiffs who own properties in designated Rental Areas still have the right to rent their homes on a short-term basis. Plaintiffs simply will no longer be able to manipulate their Palmetto Bluff Club memberships for their financial benefit to the detriment of their fellow Club members.

The Complaint relies on additional false assertions.

- Plaintiffs assert that Club dues are excessive, but in fact the developer has subsidized the Club for years, to the tune of tens of millions of dollars, while the Club dues are actually below market compared to other clubs in South Carolina.
- Despite Plaintiffs' baseless assertions regarding mediation, partners of South Street Partners as well as the CEO of South Street's majority investor and joint venture partner in Palmetto Bluff, attended the mediation in person. By contrast, none of the current Plaintiffs attended mediation.

Plaintiffs knew all of the facts underlying—and contradicting—their Complaint, or could have discovered them with a minimal pre-filing investigation. Instead, they made inflammatory and false or misleading allegations, seemingly in hopes of prolonging their ability to commodify their membership in the private Club. Yet each Plaintiff signed a verified Complaint that reads as

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if none of these documents existed—not even the documents the Plaintiffs attached to their own Complaint.

To address what it believes is broad community sentiment regarding what the Club experience should be, the Club is invoking its founding principles as a private club for the benefit of its members and their families, rather than a commodity to be exploited by a minority that seems to view their Club membership as a way to turn a profit, and whose renters accounted for much of the club facilities' overcrowding about which the Plaintiffs complain. In contrast, the relief Plaintiffs seek would destroy the very community they claim to represent and would destroy property values for all Palmetto Bluff owners.

In addition to the above, Defendants would allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Complaint not specifically admitted herein is hereby denied by each and every Defendant.

1. The allegations of Paragraph 1 are denied to the extent Plaintiffs contend 315 Corley CW, LLC is the sole owner of 315 Corley Street. Upon information and belief, 315 Corley Street is owned by 315 Corley CW, LLC, and 315 Corley KW, LLC. Thus, upon information and belief, 315 Corley KW, LLC is a necessary party to this action.

2. The allegations of Paragraph 2 are admitted.

3. The first and second sentences of Paragraph 3 are admitted. As to the third sentence of Paragraph 3, this Plaintiff was provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to her obligations, including Club membership. Thus, the PB Defendants crave reference to the Charter, supplements thereto, and

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specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

4. The first and second sentences of Paragraph 4 are admitted. As to the third sentence of Paragraph 4, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, supplements thereto, and specifically the Fifty Seventh Supplement to the Charter for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

5. The first and second sentences of Paragraph 5 are admitted. As to the third sentence of Paragraph 5, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, supplements thereto, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its

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supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

6. The first and second sentences of Paragraph 6 are admitted. As to the third sentence of Paragraph 6, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

7. The first and second sentences of Paragraph 7 are admitted. As to the third sentence of Paragraph 7, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

8. The first and second sentences of Paragraph 8 are denied to the extent Plaintiffs contend Geoffrey J. Block ("Mr. Block") is the sole owner of 8 Anson Park Road. Upon information and belief, 8 Anson Park Road is owned by Mr. Block and his wife, Kimberly W.

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Block ("Mrs. Block"). Thus, upon information and belief, Mrs. Block is a necessary party to this action. As to the third sentence of Paragraph 8, this Plaintiff, and his wife, were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

9. The first and second sentences of Paragraph 9 are admitted. As to the third sentence of Paragraph 9, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

10. The first and second sentences of Paragraph 10 are admitted. As to the third sentence of Paragraph 10, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty

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Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

11. The allegations of Paragraph 11 are admitted.

12. The first and second sentences of Paragraph 12 are admitted. As to the third sentence of Paragraph 12, this Plaintiff was provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to his obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

13. The first and second sentences of Paragraph 13 are admitted. As to the third sentence of Paragraph 13, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the

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Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

14. The first and second sentences of Paragraph 14 are admitted. As to the third sentence of Paragraph 14, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

15. The first and second sentences of Paragraph 15 are admitted. As to the third sentence of Paragraph 15, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

16. The first and second sentences of Paragraph 16 are admitted. As to the third sentence of Paragraph 16, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations.

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Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

17. The first and second sentences of Paragraph 17 are admitted. As to the third sentence of Paragraph 17, these Plaintiffs were provided clear, written, and recorded documents explaining the investment in Palmetto Bluff, and signed agreements related to their obligations. Thus, the PB Defendants crave reference to the Charter, its supplements, and specifically the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith. Moreover, the PB Defendants further crave reference to any and all Palmetto Bluff Club Documents that were explicitly referenced in the Charter or its supplements, including the Fifty Seventh Supplement to the Charter, for their terms, meaning, and effect, and deny any allegations in this Paragraph that are inconsistent therewith.

18. The allegations of Paragraph 18 are admitted. The allegations of Paragraph 18.1 are admitted insofar as Founder owns real property in Beaufort County, South Carolina. The PB Defendants deny that the real property referenced by Plaintiffs in Paragraph 18.1 is the subject of this lawsuit.

19. The allegations of Paragraph 19 are admitted. The allegations of Paragraph 19.1 are admitted insofar as Palmetto Bluff Club owns real property in Beaufort County, South Carolina. The PB Defendants deny that the real property referenced by Plaintiffs in Paragraph 19.1 is the subject of this lawsuit.

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20. The allegations of Paragraph 20 are admitted. The allegations of Paragraph 20.1 are admitted insofar as Defendant Palmetto Bluff Preservation Trust owns real property in Beaufort County, South Carolina. The PB Defendants deny that the real property referenced by Plaintiffs in Paragraph 20.1 is the subject of this lawsuit. The allegations of Paragraph 20.2 is admitted to the extent Palmetto Bluff Preservation Trust is controlled by its Board of Stewards. The allegations of Paragraphs 20.2.1 and 20.2.2 are admitted. The allegations of Paragraph 20.2.3 are denied. The allegations of Paragraph 20.2.4 are admitted.

21. The allegations of Paragraph 21 are admitted. The allegations of Paragraph 21.1 are denied.

22. The allegations of Paragraph 22 are admitted.

23. The allegations of Paragraph 23 are admitted. The allegations of Paragraph 23.1 are admitted insofar as Montage Palmetto Bluff, LLC manages real property in Beaufort County, South Carolina. The PB Defendants deny that the real property referenced by Plaintiffs in Paragraph 23.1 is the subject of this lawsuit.

24. The allegations of Paragraphs 24, 24.1, and 24.2 are denied; Plaintiffs have misnamed this Defendant herein, which should be referred to as South Street Partners NC, LLC.

25. The allegations of Paragraph 25 are denied. The allegations of Paragraphs 25.1 through 25.3 are denied.

26. The allegations of Paragraph 26 are neither admitted nor denied, as the same do not apply to the PB defendants. To the extent a response is required, the PB Defendants deny the allegations of Paragraph 26.

27. The allegations of Paragraph 27 are denied.

28. The allegations of Paragraph 28 are denied.

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29. The allegations of Paragraph 29 are denied.

30. As to Paragraph 30, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 30 are denied.

31. As to Paragraph 31, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 31 are denied.

32. The allegations of Paragraph 32 are admitted.

33. As to Paragraph 33, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 33 are denied. Moreover, the PB Defendants aver proper venue is in the American Arbitration Association.

34. As Plaintiffs' allegations in Paragraph 34 are ambiguous and unclear in their wording, the PB Defendants are unable to form a belief as to the allegations of Paragraph 34 and therefore deny the same.

35. The PB Defendants lack sufficient information upon which to form a belief as to the allegations of Paragraph 35, and therefore deny the same and demand strict proof thereof.

36. The allegations of Paragraph 36 are admitted, though are incomplete as written, as Palmetto Bluff is also a recreational preserve enriched by wilderness and wildlife, unspoiled rivers, and salt marshes.

37. The allegations of Paragraph 37 are denied. The PB Defendants admit the Founder undertook to develop the Palmetto Bluff community in or around 1998. The PB Defendants further admit the Founder created and filed a Community Charter for Palmetto Bluff in or around 2003 and crave reference to said document for its terms, meaning, and effect.

38. As to Paragraph 38, the PB Defendants admit that Plaintiffs contend the referenced issues are "at issue" in this litigation, but deny this to be the case.

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39. As to Paragraph 39, the PB Defendants deny the absence of enforceable arbitration or other requirements, admit that arbitration of the claims herein has, in fact, commenced before the American Arbitration Association, which is the proper forum for this dispute, and deny that the PB Defendants refused to "meaningfully negotiate the concerns of the Plaintiffs," when the Plaintiffs, upon information and belief, actually failed to attend the only "live" negotiation session, and the PB Defendants in fact made compromise offers in said session.

40. As to Paragraph 40, the PB Defendants admit that Plaintiffs contend the referenced documents "are the subject of this lawsuit," but deny that the said documents provide the basis for any claim herein.

41. The allegations of Paragraph 41 are admitted.

42. As to Paragraph 42, the PB Defendants admit the referenced language appears in the Charter, along with additional language not set forth; and that the Charter reflects the Founder's vision.

43. As to Paragraph 43, the PB Defendants crave reference to the Charter and related documents for their terms, meaning, and effect concerning these allegations, admit that the Preservation Trust is the homeowners' association for the community, with duties as set forth in the referenced documents, and deny any allegations in this Paragraph that are inconsistent therewith.

44. The allegations of Paragraph 44 are admitted.

45. The allegations of Paragraph 45 are admitted.

46. As to Paragraph 46, the PB Defendants crave reference to the Charter for its terms, meaning and effect concerning these allegations, and deny any allegations in this Paragraph that are inconsistent therewith.

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47. As to Paragraph 47, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in this Paragraph that are inconsistent therewith.

48. As to Paragraph 48, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in this Paragraph that are inconsistent therewith.

49. As to Paragraph 49, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, admit the quoted language appears in the Charter, and deny any allegations in this Paragraph that are inconsistent therewith.

50. As to Paragraph 50, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in this Paragraph that are inconsistent therewith.

51. The PB Defendants neither admit nor deny Paragraph 51, as the same does not set forth an allegation requiring a response.

52. The allegations of Paragraph 52 are denied.

53. The allegations of Paragraph 53 are denied.

54. The allegations of Paragraph 54 are denied.

55. The allegations of Paragraph 55 are denied. Moreover, the Plaintiffs' assertion that the Charter omits any reference to the corporate form of the Palmetto Bluff Club is contradicted by the plain language in the Charter, Exhibit C, which states, among other things, that the Palmetto Bluff Club Owner is a South Carolina Limited Liability Company. *See* Complaint, Ex. 1, pg. 72, Para. 44.

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56. The allegations of Paragraphs 56 and 56.1 are denied. Moreover, the PB Defendants crave reference to the Charter, including Exhibit C to the Charter.

57. The allegations of Paragraph 57, 57.1, and 57.2 are denied.

58. The allegations of Paragraph 58 are denied.

59. The allegations of Paragraph 59 are admitted, as there is no legal requirement that Palmetto Bluff Club Documents be recorded with the Beaufort County Register of Deeds.

60. As to Paragraph 60, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 60 that are inconsistent therewith.

61. As to Paragraph 61, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 61 that are inconsistent therewith. The allegations of Paragraphs 61.1 and 61.2 are denied.

62. As to Paragraph 62, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 62 that are inconsistent therewith.

63. The allegations of Paragraph 63 and 63.1 are denied.

64. As to Paragraph 64, the PB Defendants crave reference to the Charter and all of the recorded Supplements thereto for their terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 64 that are inconsistent therewith.

65. As to Paragraph 65, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 65 that are inconsistent therewith.

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66. As to Paragraph 66, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 66 that are inconsistent therewith.

67. As to Paragraph 67, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 67 are denied.

68. As to Paragraph 68, the allegations merely state a legal conclusion, based upon facts assumed but not established, which do not require a response; to the extent so required, the allegations of Paragraph 68 are denied.

69. As to Paragraph 69, the PB Defendants crave reference to the Charter and the Palmetto Bluff Club Documents for their terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 69 that are inconsistent therewith.

70. As to Paragraph 70, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 70 that are inconsistent therewith.

71. As to Paragraph 71, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 71 are denied.

72. As to paragraph 72, the allegations merely state a legal conclusion, which do not require a response; to the extent so required, the allegations of Paragraph 72 are denied.

73. The allegations of Paragraph 73 are denied.

74. The allegations of Paragraph 74 are denied.

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75. The allegations of Paragraph 75 are denied. In further answer to the allegations of Paragraph 75, the PB Defendants crave reference to the documents described therein for their terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 75 that are inconsistent therewith. As to Paragraph 75.1, this Paragraph merely contains a conclusory legal assertion and does not require a response; to the extent a response is required, the PB Defendants crave reference to the documents described therein for their terms, meaning, and effect, and the PB Defendants deny any allegations in Paragraph 75.1 that are inconsistent therewith. The allegations of Paragraphs 75.2 and 75.3 are denied.

76. The allegations of Paragraph 76 are admitted.

77. The allegations of Paragraph 77 are admitted.

78. The allegations of Paragraph 78 are denied.

79. As to Paragraph 79, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 79 that are inconsistent therewith.

80. The allegations of Paragraph 80 are denied.

81. As to Paragraph 81, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 81 that are inconsistent therewith.

82. The allegations of Paragraph 82 are denied.

83. The allegations of Paragraph 83 are denied.

84. The allegations of Paragraph 84 are denied.

85. As to Paragraph 85, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations

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in Paragraph 85 that are inconsistent therewith. The allegations of Paragraph 85.1 are denied. The allegations of Paragraph 85.2 are denied. The allegations of Paragraph 85.3 are admitted. The allegations of Paragraph 85.4 are denied.

86. As to Paragraph 86, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 86 that are inconsistent therewith.

87. The allegations of Paragraph 87 are admitted.

88. The allegations of Paragraph 88 are denied. However, the PB Defendants admit Palmetto Bluff Club, LLC, operates the Palmetto Bluff Club.

89. The allegations of Paragraph 89 are denied.

90. The allegations of Paragraph 90 are denied.

91. As to Paragraph 91, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 91 that are inconsistent therewith.

92. As to Paragraph 92, the PB Defendants crave reference to the Recreational Covenants for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 92 that are inconsistent therewith.

93. As to Paragraph 93, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 93 that are inconsistent therewith.

94. As to Paragraph 94, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations

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in Paragraph 94 that are inconsistent therewith; further, this Paragraph merely states a legal conclusion, which does not require a response.

95. As to Paragraph 95, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 95 that are inconsistent therewith.

96. As to Paragraph 96, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 96 that are inconsistent therewith; further, this Paragraph merely states a legal conclusion, which does not require a response.

97. Paragraph 97 merely states a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 97 are denied.

98. Paragraph 98 merely states a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 98 are denied.

99. Paragraph 99 merely states a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 99 are denied.

100. Paragraph 100 merely states a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 100 are denied.

101. The allegations of Paragraph 101 are denied.

102. The allegations of Paragraph 102 are denied.

103. The allegations of Paragraph 103 are denied.

104. The allegations of Paragraph 104 are denied. The allegations of Paragraphs 104.1 and 104.2 are denied.

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105. As to Paragraph 105, the PB Defendants crave reference to the Charter for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 105 that are inconsistent therewith.

106. As to Paragraph 106, the PB Defendants crave reference to the Recreational Covenant for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 106 that are inconsistent therewith.

107. As to Paragraph 107, the PB Defendants admit neither the Palmetto Bluff Club Membership Plan, nor the Club's Rules and Regulations, have been recorded with the Beaufort County Register of Deeds, as there is no legal requirement that said documents be recorded.

108. As to Paragraph 108, the PB Defendants crave reference to the Palmetto Bluff Club Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 108 that are inconsistent therewith.

109. As to Paragraph 109, the PB Defendants crave reference to the Palmetto Bluff Club Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 109 that are inconsistent therewith.

110. The allegations of Paragraph 110 are denied.

111. The allegations of Paragraph 111 are denied.

112. The allegations of Paragraphs 112, 112.1, 112.2, 112.3, 112.4, 112.5, 112.6, 112.7, and 112.8 are denied.

113. As to Paragraph 113, the PB Defendants crave reference to the referenced documents for their terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 113 that are inconsistent therewith. Moreover, any and all allegations of a "deceptive narrative" are denied.

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114. The allegations of Paragraph 114 are denied.

115. As to Paragraph 115, the PB Defendants crave reference to the Palmetto Bluff Club Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 115 that are inconsistent therewith. As to Paragraphs 115.1, 115.2, and 115.3, the PB Defendants crave reference to the Palmetto Bluff Club Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraphs 115.1, 115.2, and 115.3 that are inconsistent therewith.

116. The allegations of Paragraph 116 are denied.

117. The allegations of Paragraph 117 are denied.

118. The allegations of Paragraph 118 are denied.

119. The allegations of Paragraph 119 are denied.

120. The allegations of Paragraph 120 are denied.

121. As to Paragraph 121, the PB Defendants crave reference to the Palmetto Bluff Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 121 that are inconsistent therewith.

122. The allegations of Paragraph 122 are denied.

123. The allegations of Paragraph 123 are denied.

124. As to Paragraph 124, the PB Defendants crave reference to the Palmetto Bluff Membership Plan for its terms, meaning, and effect concerning these allegations, and deny any allegations in Paragraph 124 that are inconsistent therewith.

125. The allegations of Paragraph 125 are denied.

126. The allegations of Paragraph 126 are denied.

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127. As to Paragraph 127, the PB Defendants admit the Palmetto Bluff Membership Plan contains a mandatory arbitration / mediation provision, and denies the remaining allegations of said Paragraph.

128. The allegations of Paragraph 128 are denied.

129. The allegations of Paragraphs 129, 129.1, 129.2, 129.3, 129.4, 129.5, 129.6, 129.6.1, 129.7, 129.8, 129.9, 129.10, 129.11, 129.11.1, 129.12, 129.13, 129.14, 129.15, 129.16, 129.17, 129.18, 129.19, 129.20, 129.21, 129.22, 129.22.1, 129.22.2, 129.22.3, 129.22.3.1, 129.22.4, 129.22.5, 129.22.6, 129.23, 129.24, 129.25, 129.26, 129.26.1, and 129.26.2 are denied.

130. The allegations of Paragraphs 130, 130.1, 130.2, 130.3, 130.4, and 130.5 are denied.

131. The allegations of Paragraph 131 are denied.

132. The allegations of Paragraphs 132, 132.1, 132.2, 132.3, 132.4, 132.5, 132.6, 132.7, 132.8, 132.9, 132.10, 132.11, 132.11.1, 132.11.2, 132.11.3, 132.11.4, 132.11.5, 132.12, 132.13, and 132.14 are denied.

133. As to Paragraph 133, the PB Defendants deny the existence or propriety of any class herein, and deny the class allegations of this Paragraph.

134. The allegations of Paragraph 134 are denied.

135. The allegations of Paragraph 135 are denied.

136. The allegations of Paragraph 136 are denied.

137. The allegations of Paragraph 137 are denied.

138. The allegations of Paragraph 138 are denied.

139. The allegations of Paragraph 139 are denied.

140. The allegations of Paragraph 140 are denied.

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141. As to Paragraph 141, the PB Defendants deny the existence or propriety of any class herein, and deny the class allegations of this Paragraph.

142. The allegations of Paragraph 142 are denied.

143. The allegations of Paragraph 143 are denied.

144. The allegations of Paragraph 144 are denied.

145. The allegations of Paragraph 145 are denied.

146. The allegations of Paragraph 146 are denied.

147. The allegations of Paragraph 147 are denied.

148. The allegations of Paragraph 148 are denied.

149. The PB Defendants neither admit nor deny Paragraph 149, as the same does not require a response.

150. The PB Defendants lack sufficient information upon which to form a belief as to Paragraph 150, and therefore deny the same and demand strict proof thereof.

151. The PB Defendants lack sufficient information upon which to form a belief as to the allegations of Paragraph 151, and therefore deny the same and demand strict proof thereof.

152. As to Paragraph 152, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 152 are denied.

153. The allegations of Paragraph 153 are denied.

154. The allegations of Paragraph 154 are denied.

155. As to Paragraph 155, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 155 are denied.

156. The allegations of Paragraph 156 are denied.

157. The allegations of Paragraph 157 are denied.

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158. The allegations of Paragraph 158 are denied.

159. The allegations of Paragraph 159 are denied.

160. Answering the allegations in Paragraph 160, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

161. As to Paragraph 161, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 161 are denied.

162. As to Paragraph 162, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 162 are denied.

163. The allegations of Paragraph 163 are admitted.

164. The allegations of Paragraph 164 are denied. The allegations of Paragraphs 164.1, 164.2, and 164.3 are denied.

165. The allegations of Paragraph 165 are denied.

166. As to Paragraphs 166, 166.1, 166.2, 166.3 166.4, 166.4.1, 166.4.2, 166.4.3, 166.4.4, 166.4.5, 166.4.6, 166.4.7, 166.4.8, and 166.5, the PB Defendants admit Plaintiffs seek the relief set forth therein, but deny that Plaintiffs are entitled to any such relief, and therefore deny the substance of the allegations.

167. As to Paragraph 167, the PB Defendants deny that Plaintiffs are entitled to any damages, fees, or costs herein.

168. Answering the allegations in Paragraph 168, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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169. As to Paragraph 169, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the PB Defendants admit Plaintiffs are asserting the referenced claim, but deny said Plaintiffs are entitled to any judgment or recovery herein.

170. The allegations of Paragraph 170 are denied. Moreover, the PB Defendants crave reference to the relevant documents in this lawsuit for their terms, meaning, and effect, and the PB Defendants deny any allegations in Paragraph 170 that are inconsistent therewith.

171. The allegations of Paragraph 171 are denied.

172. The allegations of Paragraph 172 are denied.

173. The allegations of Paragraph 173 are denied.

174. The allegations of Paragraph 174 are denied.

175. The allegations of Paragraph 175 are denied.

176. The allegations of Paragraph 176 are denied.

177. As to Paragraph 177, the PB Defendants deny that Plaintiffs are entitled to any damages, fees, or costs herein.

178. Answering the allegations in Paragraph 178, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

179. The allegations of Paragraph 179 are denied. The allegations of Paragraphs 179.1, 179.2, 179.3, 179.4, 179.5, 179.6, and 179.7 are denied.

180. The allegations of Paragraph 180 are denied.

181. The allegations of Paragraph 181 are denied. The allegations of Paragraphs 181.1, 181.2, 181.3, 181.3.1, 181.3.2, 181.3.3, 181.3.4, 181.4, 181.5, 181.6, 181.7, and 181.8 are denied.

182. The allegations of Paragraph 182 are denied.

183. The allegations of Paragraph 183 are denied.

184. The allegations of Paragraph 184 are denied.

185. Answering the allegations in Paragraph 185, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

186. The allegations of Paragraph 186 are denied. The allegations of Paragraph 186.1 are denied.

187. The allegations of Paragraph 187 is denied. The allegations of Paragraphs 187.1, 187.2, 187.3, and 187.4 are denied.

188. The allegations of Paragraph 188 are denied.

189. The allegations of Paragraph 189 are denied.

190. Answering the allegations in Paragraph 190, the PB Defendants reference all the proceeding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

191. The PB Defendants lack sufficient information upon which to form a belief as to the allegations of Paragraph 191, and therefore deny the same and demand strict proof thereof.

192. The allegations of Paragraph 192 are denied.

193. The allegations of Paragraph 193 are denied. The allegations of Paragraph 193.1 are denied.

194. The allegations of Paragraph 194 are denied.

195. The allegations of Paragraph 195 are denied.

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196. Answering the allegations in Paragraph 196, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

197. The allegations of Paragraph 197 are denied.

198. The allegations of Paragraph 198 are denied. The allegations of Paragraphs 198.1, 198.2, 198.3, and 198.4 are denied.

199. The allegations of Paragraph 199 are denied.

200. Answering the allegations in Paragraph 200, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

201. The allegations of Paragraph 201 are denied. The allegations of Paragraphs 201.1, 201.2, 201.3, 201.4, 201.5, and 201.6 are denied.

202. The allegations of Paragraph 202 are denied.

203. As to Paragraph 203, the allegations merely state a legal conclusion, which does not require a response; to the extent so required, the allegations of Paragraph 203 are denied.

204. The allegations of Paragraph 204 are denied.

205. The allegations of Paragraph 205 are denied.

206. The allegations of Paragraph 206 are denied.

207. Answering the allegations in Paragraph 207, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

208. The allegations of Paragraph 208 are denied.

209. The allegations of Paragraph 209 are denied.

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210. The allegations of Paragraph 210 are denied.

211. Answering the allegations in Paragraph 211, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

212. The allegations of Paragraph 212 are denied.

213. The allegations of Paragraph 213 are denied.

214. The allegations of Paragraph 214 are denied.

215. The allegations of Paragraph 215 are denied.

216. Answering the allegations in Paragraph 216, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

217. The allegations of Paragraph 217 are denied.

218. The allegations of Paragraph 218 are denied.

219. The allegations of Paragraphs 219 are denied. With respect to Paragraphs 219.1, 219.2, and 219.3, the PB Defendants crave reference to the referenced documents for their terms, meaning, and effect concerning these allegations, and the PB Defendants deny any allegations in these Paragraphs that are inconsistent therewith. The allegations of Paragraph 219.3.1 are denied.

220. The allegations of Paragraph 220 are denied.

221. The allegations of Paragraph 221 are denied.

222. The allegations of Paragraph 222 are denied.

223. Answering the allegations in Paragraph 223, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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224. The allegations of Paragraph 224 are denied. With respect to Paragraphs 224.1, 224.2, and 224.3, the PB Defendants crave reference to the referenced documents for their terms, meaning, and effect concerning these allegations, and the PB Defendants deny any allegations in these Paragraphs that are inconsistent therewith. The allegations in Paragraph 224.3.1 are denied.

225. The allegations of Paragraph 225 are denied.

226. The allegations of Paragraph 226 are denied.

227. Answering the allegations in Paragraph 227, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

228. The allegations of Paragraph 228 are denied.

229. The allegations of Paragraph 229 are denied.

230. Answering the allegations in Paragraph 230, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

231. The allegations of Paragraph 231 are denied.

232. The allegations of Paragraph 232 are denied.

233. The allegations of Paragraph 233 are denied.

234. Answering the allegations in Paragraph 234, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

235. The allegations of Paragraph 235 are denied.

236. The allegations of Paragraph 236 are denied.

237. The allegations of Paragraph 237 are denied.

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238. The allegations of Paragraph 238 are denied.

239. The allegations of Paragraph 239 are denied.

240. The allegations of Paragraph 240 are denied.

241. Answering the allegations in Paragraph 241, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

242. The allegations of Paragraph 242 are denied.

243. The allegations of Paragraph 243 are denied.

244. The allegations of Paragraph 244 are denied.

245. The allegations of Paragraph 245 are denied.

246. The allegations of Paragraph 246 are denied.

247. The allegations of Paragraph 247 are denied.

248. Answering the allegations in Paragraph 248, the PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

249. The allegations of Paragraph 249 are denied.

250. The allegations of Paragraph 250 are denied.

251. The allegations of Paragraph 251 are denied.

252. The allegations of Paragraph 252 are denied.

253. The allegations of Paragraph 253 are denied.

FOR A SECOND DEFENSE
(SCRCP 12(b)(8) - Another Action Pending In Another Forum / Mandatory Arbitration)

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254. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

255. This action should be dismissed pursuant to SCRCP 12(b)(8), because there is another action pending in another forum (American Arbitration Association Case No. 01-22-0001-5722, commenced by the Plaintiffs on April 14, 2022) between the same parties, making identical claims, and seeking identical relief. In the alternative, the Court should compel mandatory arbitration of the claims herein and this action should be stayed pending completion of the referenced arbitration.

FOR A THIRD DEFENSE
(Failure to Allege Facts Sufficient to Constitute a Cause of Action)

256. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

257. The Complaint, and each cause of action set forth therein, fails to state a claim upon which relief may be granted, and should, therefore, be dismissed pursuant to SCRCP 12(b)(6).

FOR A FOURTH DEFENSE
(Standing / Proper Party-in-Interest)

258. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

259. To the extent any Plaintiff lacks standing and / or is not the proper party-in-interest with respect to the claims asserted herein, said Plaintiff(s) claims are barred and they are barred from any recovery.

FOR A FIFTH DEFENSE
(Failure to Join Indispensable Parties)

260. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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261. Plaintiffs' complaint is barred by Plaintiffs' failure to join as a party to this action an indispensable party or parties in whose absence complete relief cannot be accorded among those already parties, thereby subjecting the PB Defendants to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations (the PB Defendants deny, however, they are liable to Plaintiffs in any manner). Specifically:

(a) The owners of each of the Plaintiff Limited Liability Companies should be joined as alter-egos, proper-parties, real-parties-in-interest, or indispensable parties herein;

(b) 315 Corley KW, LLC and Kimberley W. Block should be joined as parties to this litigation; and

(c) to the extent any Plaintiff seeks to assert a claim based upon misrepresentation or failure to disclose in connection with the purchase of their property, and the seller of their property was another private entity unaffiliated with any Defendant entity, then such a claim must be directed to that seller, and not to any Defendant;

FOR A SIXTH DEFENSE
(Failure to Properly Plead Fraud)

262. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

263. Plaintiffs have failed to plead fraud with specificity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure, and therefore, the fraud claim must be dismissed as a matter of law.

FOR A SEVENTH DEFENSE
(Statute of Limitations and/or Repose)

264. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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265. Plaintiffs' claims are barred, in whole or in part, by the applicable Statutes of Limitations and/or Repose.

FOR AN EIGHTH DEFENSE
(Statute of Frauds)

266. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

267. Plaintiffs' claims are barred by the applicable Statute of Frauds.

FOR A NINTH DEFENSE
(Parol Evidence Rule)

268. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

269. Plaintiffs' claims are barred by the parol evidence rule.

FOR A TENTH DEFENSE
(No Class Action)

270. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

271. This action does not qualify for certification as a class certification for one or more of the following reasons:

(a) The Plaintiffs represent only a small handful of the property owners (less than 1%) at Palmetto Bluff, and their claims are not so numerous that joinder is impractical;

(b) There are no common questions of law and fact with respect to the classes as proposed by the Plaintiffs;

(c) The claims of the Plaintiffs are not typical of the claims of the classes proposed by the Plaintiffs;

(d) The Plaintiffs cannot and will not fairly and adequately protect the interests of the classes they propose;

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(e) on information and belief, most Palmetto Bluff owners oppose turning short-term renters into members, oppose granting short-term renters access to Club amenities, and oppose disbanding the Club.

FOR AN ELEVENTH DEFENSE
(No Derivative Claim)

272. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

273. The claim for a Derivative Action herein should be dismissed because:

(a) Said claim is not available with respect to these Defendants;

(b) Inadequate demand has been made upon the proper derivative-party and / or there is no adequate excuse for failure to make such demand;

274. Plaintiffs cannot and will not fairly and adequately represent the interests of all relevant members or shareholders.

FOR A TWELFTH DEFENSE
(Absence of Impact on Public Interest)

275. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

276. Plaintiffs' claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*, should be dismissed as the alleged actions of the PB Defendants do not have an impact on the public interest. This is a purely private dispute, between private parties, concerning their private contractual relations, for which no claim is available under the South Carolina Unfair Trade Practices Act.

FOR A THIRTEENTH DEFENSE
(Conduct Not Unfair or Deceptive)

277. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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278. Plaintiffs' claims for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq*., should be dismissed because of the absence of any unfair or deceptive acts or practices by the PB Defendants.

FOR A FOURTEENTH DEFENSE
(No Justiciable Controversy)

279. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

280. Plaintiffs' claims for a Declaratory Judgment do not set forth a properly justiciable controversy and thus no such judgment should issue.

FOR A FIFTEENTH DEFENSE
(Palmetto Bluff Club is not an HOA)

281. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

282. Plaintiffs' Second Cause of Action, for violation of the South Carolina Homeowners Association Act, S.C. Code Ann. § 27-30-110 *et seq*., is barred because:

(a) The Palmetto Bluff Club is not an HOA; and

(b) No private right of action exists under the HOA Act.

FOR A SIXTEENTH DEFENSE
(Estoppel, Waiver, and/or Laches)

283. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

284. Plaintiffs' claims are barred, in whole or in part, by the doctrines of estoppel, waiver, and/or laches.

FOR A SEVENTEENTH DEFENSE
(Ratification)

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285. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

286. Plaintiffs have participated in, accepted, and enjoyed the benefits of the Palmetto Bluff community governing structure and operations of which they complain herein, have expressly and / or impliedly ratified the same, and such ratification bars the Plaintiffs from any recovery herein.

FOR AN EIGHTEENTH DEFENSE
(Consent)

287. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

288. Plaintiffs have participated in, consented, accepted, and enjoyed the benefits of the Palmetto Bluff community governing structure and operations of which they complain herein, and such consent bars the Plaintiffs from any recovery herein.

FOR A NINETEENTH DEFENSE
(No Misrepresentation/Omission)

289. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

290. Plaintiffs' claims are barred in whole or in part by the absence of any material misrepresentations or omissions made by the PB Defendants to Plaintiffs, upon which Plaintiffs could have reasonably or justifiably relied.

FOR A TWENTIETH DEFENSE
(No Reliance or Right to Rely)

291. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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292. Plaintiffs' claims are barred in whole or in part by Plaintiffs' lack of reliance on any alleged representations made by the PB Defendants (which are denied) and/or because Plaintiffs lacked the right to rely on such alleged representations.

(a) Specifically, the Plaintiffs are not entitled to recover based upon a right to rely on anything other than the purchase documents, documents referenced therein, and the governing documents of the Palmetto Bluff community.

(b) Moreover, the information furnished to the Plaintiffs by the PB Defendants, upon which they had a right to rely, was truthful. Plaintiffs have not been damaged by any reliance upon any information upon which they had a right to rely.

FOR A TWENTY-FIRST DEFENSE
(Justification)

293. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

294. Plaintiffs' claims are barred in whole or in part because, to the extent the PB Defendants engaged in any of the alleged acts or omissions, which it denies, it did so with legal justification.

FOR A TWENTY-SECOND DEFENSE
(No Breach of Contract or Duty)

295. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

296. Plaintiffs' claims are barred because no Defendant has breached any contract or duty with any Plaintiff.

FOR A TWENTY-THIRD DEFENSE
(Independent, Intervening, or Superseding Cause)

297. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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298. Any alleged damages purportedly sustained by Plaintiffs (which are expressly denied) were proximately caused by the acts, errors, or omissions of others, over whom the PB Defendants had no control, and for whose conduct the PB Defendants are not liable; and as such, the acts, errors or omissions of others are the intervening and superseding proximate causes of some or all of Plaintiffs' alleged damages, which therefore bars, in whole or in part, any recovery from the PB Defendants.

FOR A TWENTY-FOURTH DEFENSE
(Good Faith and Reasonable Manner)

299. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

300. At all times referenced, the PB Defendants acted in good faith and in a reasonable manner, and the Plaintiffs are therefore not entitled to any recovery herein.

FOR A TWENTY-FIFTH DEFENSE
(Comparative Negligence and/or Assumption of Risk)

301. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

302. The Plaintiffs are barred from any recovery herein based upon their own comparative negligence and / or assumption of the risk, in one or more of the following respects:

(a) Failing to read the relevant governing documents of the Palmetto Bluff community, which were readily available, prior to agreeing to purchase property in the community;

(b) Marketing their short-term rental properties to third-parties with promises, assurances, or representations that were inconsistent with and not supported by the relevant rules of the community.

303. Said comparative negligence accounts for 50% or more of any fault herein (all fault being specifically denied by the PB Defendants), thus barring Plaintiffs from any recovery

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herein; or, in the alternative, requiring any recovery by the Plaintiffs to be reduced by the percentage of their comparative fault. Said assumption of the risk bars Plaintiffs from any recovery.

FOR A TWENTY-SIXTH DEFENSE
(Unclean Hands)

304. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

305. Plaintiffs' claims are barred from all relief herein by the doctrine of unclean hands.

FOR A TWENTY-SEVENTH DEFENSE
(Unjust Enrichment)

306. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

307. Plaintiffs' claims are barred by the doctrine of unjust enrichment.

FOR A TWENTY-EIGHTH DEFENSE
(Absence of Injury/ Damages)

308. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

309. Plaintiffs have not suffered any injury or legally cognizable damages as a result of any acts and/or omissions of the PB Defendants, or any matters alleged in the Complaint, and are therefore not entitled to any recovery herein.

FOR A TWENTY-NINTH DEFENSE
(Damages Sustained Due to the Acts of Other Plaintiffs)

310. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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311. Any damage sustained by any Plaintiff (which is specifically denied) was caused solely by the acts of one or more of the Plaintiffs, their agents or representatives, acting individually or in concert with third parties, and the Plaintiffs are therefore barred from any recovery or relief herein.

(a) Specifically, the Plaintiffs are entitled to no recovery against any PB Defendant for any diminution of real estate or rental values which they or their agents or representatives, or third parties acting in concert with them, have caused or contributed to by publicizing, disseminating, and circulating the groundless claims in their Complaint, and/or by communicating false, inaccurate, or derogatory information concerning the Palmetto Bluff community, Palmetto Bluff businesses, Montage businesses, and the individuals involved in those businesses, to other Palmetto Buff owners or prospective owners, media outlets, property managers, others, or via the website www.pbcommunityadvocates.com, in efforts to "drum up" controversy within the community and disparage the Defendants.

(b) To the extent that the above website publicizes and disseminates false, incomplete, or misleading information casting the Palmetto Bluff Community in a negative light, the individuals who established, own, maintain, operate, fund, and provide content for said website are responsible for any damages alleged by the Plaintiffs, not any PB Defendant. Further, to the extent such efforts negatively impact sales or other revenue-generating activity at Palmetto Bluff, said persons are responsible for said losses.

(c) To the extent that any Plaintiff, Plaintiff's agent, Plaintiff's representative, or any third party associated with any Plaintiff, individually or acting in concert with other Plaintiffs or their agents or representatives, participated in misappropriating and disseminating any confidential information, or information marked confidential, belonging to or received from any Defendant or any person associated with any Defendant, with the intent or effect of disparaging and damaging the reputation of the Palmetto Bluff Community or any Defendant, said persons are responsible for any losses Plaintiffs seek to recover in this action.

FOR A THIRTIETH DEFENSE
(Speculative or Duplicative Damages)

312. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

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313. Plaintiffs are not entitled to recover any damages which are speculative or duplicative in nature.

FOR A THIRTY-FIRST DEFENSE
(Failure to Mitigate / Avoid Damages)

314. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

315. Plaintiffs are barred from any recovery herein to the extent they failed to take reasonable measures to mitigate and / or avoid their purported damages (the existence of which are specifically denied) or avoid any injury.

FOR A THIRTY-SECOND DEFENSE
(No Attorney's Fees)

316. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

317. Plaintiffs are not entitled to an award of attorney's fees on any alleged claims and, therefore, Plaintiffs should be barred from any such recovery in this action.

FOR A THIRTY-THIRD DEFENSE
***(Punitive Damages*)**

318. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

319. Any claims for exemplary or punitive damages violate the PB Defendants' rights under the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and analogous provisions of any applicable State Constitutions or statutes.

320. Defendants request trial bifurcation on the issues of actual damages and punitive damages, pursuant to S.C. Code Ann. §15-32-520. Further, Defendants plead all defenses,

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limitations on damages, and other privileges codified at S.C. Code Ann. §15-32-520 and §15-32-530.

321. Defendants also plead S.C. Code Ann. § 15-33-135 in defense of Plaintiffs' claims for punitive damages.

FOR A THIRTY-FOURTH DEFENSE
(Offset / Quantum Meruit)

322. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though fully set forth herein.

323. In the event Plaintiffs are entitled to any damages herein (which is specifically denied), Defendants are entitled to a set-off for the fair market value of the benefits and privileges Plaintiffs have derived from use and enjoyment of the facilities and amenities in the Palmetto Bluff community pursuant to the community's governing documents, rules, and regulations, as well as the substantial appreciation in the value of their properties since their purchase dates

FOR A THIRTY-FIFTH DEFENSE
(Notice of Intent Under South Carolina Frivolous Civil Proceedings Sanctions Act)

324. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein as though fully set forth herein.

325. Plaintiffs are sophisticated persons with deep experience in business affairs. Reasonable investigations by the Plaintiffs would reveal that their claims herein are not warranted under existing law or the facts, and that a good faith or reasonable argument does not exist for the extension, modification, or reversal of existing law.

326. Pursuant to S.C. Code Ann § 15-36-10(D), Plaintiffs are hereby given notice of the PB Defendants' intent to seek sanctions as provided by S. C. Code Ann. §15-36-10, as warranted by circumstances herein.

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FOR A THIRTY-SIXTH DEFENSE
(Reservation of Right to Add Defenses)

327. The PB Defendants reference all the preceding and succeeding responses of their Answer and incorporate them herein by reference as though full set forth herein.

328. The PB Defendants reserve the right to allege additional defenses an additional facts and circumstances in support of its defenses as the facts become available.

WHEREFORE, having Answered and / or Moved in response to the Complaint herein, the Defendants, Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards; Jordan Phillips; Mark Polites, Gray Ferguson; Henry Armistead; South Street Partners, LLC; hereby pray that the Court dismiss the Complaint with prejudice, enter judgment for the above-named Defendants herein, award said Defendants their costs and attorneys' fees, and for such further relief as the Court deems just and proper.

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s/Val H. Steiglitz

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October 5, 2022

ELECTRONICALLY FILED - 2022 May 10 11:12 AM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS

CASE NO.: 2022-CP-07-00632

315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein,

Plaintiffs,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25,

Defendants.

PLAINTIFFS' MOTION TO STAY ARBITRATION AND APPLICATION FOR SUMMARY PROCEEDINGS ON THE INVALIDITY OF THE PURPORTED ARBITRATION CLAUSE

Plaintiffs 315 Corley CW LLC, 368 Mount Pelia LLC, Bridge Charleston Investments B LLC, Bridge Charleston Investments C LLC, Bridge Charleston Investments E LLC Bridge Charleston Investments H LLC, Anne Bosler and Dylan

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Hart as Trustees of the Bosler-Hart Trust, Geoffrey J. Block, R. Jeffrey Kimball and Deborah S. Kimball, Sebrina Leigh-Jones and Chris Leigh-Jones, Jennifer Albero, Live Oak Assets LLC, Matthew N. Lynch and Barbara A. Lynch, MKM 22 West LLC, One Rumford Lane LLC, Salt Works, LLC, and TTJR LLC, individually, derivatively, and as class representatives, will move before the Presiding Judge of the Court of Common Pleas for Beaufort County ten (10) days after service hereof, or at such a time as is convenient to the Court, for an order granting the Plaintiffs' Motion to Stay Arbitration and Application for Summary Proceedings on the Invalidity of the Arbitration Clause.

This Motion is made pursuant to, *inter alia*, South Carolina Code § 15-48-20(b). Defendants, including Defendant Palmetto Bluff Club LLC, threaten arbitration proceedings, presumably to decide some or all of the numerous substantive issues set forth in Plaintiffs' Verified Complaint, filed April 12, 2022, over which this Court has jurisdiction. This Court should stay any arbitration proceedings between the parties for numerous reasons, including, *inter alia*: (1) because there is no purported agreement to arbitrate as between certain Plaintiffs and certain Defendants, (2) because the purported arbitration agreement between certain Plaintiffs and Defendant Palmetto Bluff Club, LLC, is invalid under the law and at equity, and (3) because the purported arbitration agreement between certain Plaintiffs and Defendant Palmetto Bluff Club, LLC is unconscionable, void *ab initio*, and unenforceable.

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In addition to an Order staying arbitration, Plaintiffs respectfully apply to this Court for summary proceedings on the issue of whether a valid agreement to arbitrate exists between the parties to this litigation. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663, 667 (2007) ("[T]he trial court should determine the threshold validity of the arbitration provision.") ("Arbitration is available only when the parties involved contractually agreed to arbitrate.").

This motion is supported by the Plaintiffs' Verified Complaint and its exhibits, South Carolina case law, and other such materials as may be submitted to the Court, including, but not limited to, a Memorandum of Law, prior to the hearing on this motion.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian S. Ford
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May 10, 2022
Charleston, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to counsel for the Defendants in this matter by emailing and mailing a copy of the same to the attorneys listed below on May 10, 2022:

Val H. Stieglitz, Esq.
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202
Vstieglitz@nexsenpruet.com

Attorney for Defendants

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP070632

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE CIRCUIT COURT
315 Corley CW, LLC; 368 Mount Pelia, LLC; Bridge Charleston Investments B, LLC; Bridge Charleston Investments C, LLC; Bridge Charleston Investments E, LLC; Bridge Charleston Investments H, LLC; Anne Bosler and Dylan Hart, as Trustee of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets, LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West, LLC; One Rumford Lane, LLC; Salt Works, LLC; and TTJR, LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, vs. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards; Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners, LLC; John Does 1-25, Defendants.	Case No. 2022-CP-07-00632 **NOTICE OF MOTION AND DEFENDANTS' MOTION TO DISMISS – OR - IN THE ALTERNATIVE, TO COMPEL ARBITRATION AND STAY**

TO: PLAINTIFFS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE THAT Defendants Palmetto Bluff Development, LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Real Estate Company, LLC, PLBH, LLC, Montage Palmetto Bluff, LLC, Palmetto Bluff Preservation Trust, Inc., Palmetto Bluff Preservation Trust Board of Stewards; Jordan Phillips, Mark Polites, Gray Ferguson, Henry

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Armistead, and South Street Partners, LLC, hereby move the Court for an Order, pursuant to SCRCP 12(b)(8), dismissing this action on the grounds that another action is pending in another forum between the same parties, for the same claim (*See*, Demand, Answering Statement, and Counterdemand in American Arbitration Association Case No. 01-22-0001-5722, attached hereto as Exhibits "A," "B," and "C," respectively). Pursuant to SCRCP 12(a), the filing of this Motion to Dismiss stays the time for the above Defendants to serve a substantive Answer to the Complaint herein.

In the alternative, the above Defendants hereby move the Court for an Order compelling arbitration of all claims herein, and staying the instant action pending resolution of the said arbitration. This motion is based upon specific arbitration agreements between multiple parties (attached at Exhibit "D" hereto); the South Carolina Uniform Arbitration Act, S.C. Code Ann.§15-48-10, *et. seq.*, and law arising thereunder; the Federal Arbitration Act, 9. U.S.C. §1, *et. seq*., and law arising thereunder; the applicable law governing enforcement and application of arbitration agreements as to non-signatories. *See, e.g.*, *Pearson v. Hilton Head Hosp.* 400 S.C. 281, 733 SE2d 597 (Ct. App. 2012); *Wilson v. Willis*, 426 S.C. 326, 827 SE2d 167 (2019); *Gissel v. Hart*, 382 S.C. 235, 676 SE2d 320 (2009); and any affidavits or other evidentiary materials submitted herewith, at, or prior to the hearing hereon.

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s/Val Stieglitz
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Attorneys for Defendants

May 24, 2022

Exhibit A

315 Corley CW, LLC, *et al.* vs. Palmetto Bluff Development, LLC, *et al.*

Case No. 2022 - CP-07-632

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FORD WALLACE THOMSON LLC
ATTORNEYS AT LAW

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14 April 2022

American Arbitration Association
www.ADR.org

Re: Palmetto Bluff Club, LLC—Filed written demand

Dear American Arbitration Association:

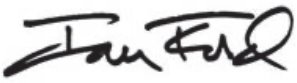
Enclosed, please find an executed AAA "Demand for Arbitration" form and a "Brief Description of Dispute," along with a copy of the lawsuit referenced on the form. The South Carolina Court of Common Pleas, Beaufort County, has jurisdiction over the matters set forth in the lawsuit and over all parties and their property.

Please note, as further explained within the enclosed form, that my clients are filing this "Demand for Arbitration" form with AAA out of an abundance of legal caution, for the purpose of preserving and not waiving my clients' rights and claims. My clients deny that arbitration is required, and they deny that AAA or an arbitrator has jurisdiction over the parties and the disputes.

We request that the matter be put on hold while the lawsuit is pending.

With kind regards, I am,

Very truly yours,



Ian S. Ford

Ian.Ford@FordWallace.com

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Mediation: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box ☐. There is no additional administrative fee for this service.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: **Palmetto Bluff Club, LLC**

Address: **651 Old Moreland Rd.**

City: **Bluffton**	State: **South Carolina**	Zip Code: **29910**
Phone No.: **843-706-5515**	Fax No.:	

Email Address:

Name of Representative (if known): **Val H. Stieglitz, Esq.**

Name of Firm (if applicable): **Nexsen Pruet**

Representative's Address: **1230 Main Street, Suite 700**

City: **Columbia**	State: **South Carolina**	Zip Code: **29201**
Phone No.: **803.253.8262**	Fax No.: **803.727.1496**	

Email Address: **VStieglitz@nexsenpruet.com**

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

Please see Enclosure: "Brief Description of the Dispute"

Dollar Amount of Claim: $ **Both non-monetary and monetary, which are undetermined at this time**

Other Relief Sought: ☑ Attorneys Fees ☑ Interest ☑ Arbitration Costs ☑ Punitive/Exemplary
☑ Other: **Declaratory judgment**

Amount enclosed: $ **2,200**

In accordance with Fee Schedule: ☑ Flexible Fee Schedule ☐ Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Please put this matter on hold. A lawsuit has been filed in the Court of Common Pleas, County of Beaufort, South Carolina, which has jurisdiction over the matter and the parties (copy attached). This written arbitration demand is being filed at this time out of an abundance of legal caution, to preserve all rights.

Hearing locale: **N/A**

(check one) ☐ Requested by Claimant ☐ Locale provision included in the contract

Please visit our website at www.adr.org/support to file this case online.
AAA Customer Service can be reached at 800-778-7879.

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COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

Estimated time needed for hearings overall: N/A	hours or	days
Type of Business: Claimant: Individual property owners	Respondent: Club	
Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? The action is centered on real property in Beaufort County, South Carolina.		
Signature (may be signed by a representative): Ian Ford	Date:	
Name of Claimant: Please see Enclosure: 315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments C LLC; Bridge Charleston		
Address (to be used in connection with this case): 715 King Street		
City: Charleston	State: South Carolina	Zip Code: 29403
Phone No.: 843-277-2011	Fax No.:	
Email Address: Ian.Ford@FordWallace.com ; Ainsley.Tillman@FordWallace.com		
Name of Representative: Ian S. Ford; Ainsley F. Tillman		
Name of Firm (if applicable): Ford Wallace Thomson LLC		
Representative's Address: 715 King St.		
City: Charleston	State: South Carolina	Zip Code: 29403
Phone No.: 843-277-2011	Fax No.:	
Email Address: Ian.Ford@FordWallace.com ; Ainsley.Tillman@FordWallace.com		
To begin proceedings, **please file online at www.adr.org/fileonline**. You will need to upload a copy of this Demand and the Arbitration Agreement, and pay the appropriate fee.		

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Brief Description of the Dispute

Named "Claimants" deny that this matter is subject to arbitration, and they deny that the AAA has jurisdiction over them, over their property, and/or over the disputes discussed herein. At this time, jurisdiction over the claims between the parties resides with the South Carolina Court of Common Pleas, County of Beaufort, in which the attached lawsuit (the "Lawsuit") has been filed by several classes of plaintiffs, as well as certain individual plaintiffs, including but not limited to the named "Claimants."

The objections include that (1) no valid arbitration clause exists, and no binding arbitration agreement exists; (2) the particular disputes are outside the scope of any purported arbitration provision; (3) there is no jurisdiction to arbitrate; and (4) AAA and any purported arbitrator(s) have no jurisdiction or authority over the parties or over the disputes alleged. These are matters for the court to decide, specifically the Court of Common Pleas in Beaufort County, South Carolina, in the Lawsuit. All such objections are preserved and are not waived.

Within the Lawsuit, the civil causes of action against named "Respondent" Palmetto Bluff Club LLC are a component of much broader class-action and derivative shareholder claims against numerous other defendants who are not respondents; those causes of action include (among others) Declaratory Judgment as to real property interests, Violation of the South Carolina Unfair Trade Practices Act, Breach of Fiduciary Duty, Interference with Contractual Relationships, Civil Conspiracy, Misrepresentation, Unjust Enrichment, Violation of the South Carolina Homeowners Act, Equitable Title, Conversion, Fraud, and Breach of Contract. In addition, the Lawsuit's causes of action must be decided by the Court before any purported arbitration could proceed.

The reason for this filing with the AAA is because—on information and belief—Palmetto Bluff Club LLC may argue that certain claims within the Lawsuit, by certain plaintiffs, are subject to a purported statute of limitations provision requiring an arbitration demand to be filed within 60 days of a mediation. This provision is invalid, unenforceable, and it violates South Carolina law, including S.C. Code § 15-3-140 as well as other law going to the unconscionability of any such provision. **Nonetheless, out of an abundance of legal caution to preserve their rights, this written notice is hereby provided solely for the purpose of preserving and not waiving any and all claims, including those that may survive after the conclusion of the Lawsuit.**

Form, Page 2:

Named "Claimants": 15 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC

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PALMETTO BLUFF

PALMETTO BLUFF CLUB

MEMBERSHIP PLAN

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PALMETTO BLUFF CLUB

MEMBERSHIP PLAN OVERVIEW

MISSION STATEMENT

It is our desire and intent to provide members and their guests a club experience and environment at Palmetto Bluff Club. Practices and policies will be established by the Club which are designed to promote a quality experience for all members, and superior club operations.

MEMBERSHIP OPPORTUNITY

This Membership Plan describes the membership opportunities in Palmetto Bluff Club (the "Club"). The Club is a recreation and social club, located within the club and resort community of Palmetto Bluff, Bluffton, South Carolina, featuring exceptional dining, swimming, fitness and other recreational facilities. The Montage Palmetto Bluff includes a variety of recreational, dining, meeting and other facilities to which Club members may have access. Details regarding access to Montage Palmetto Bluff facilities will be published from time to time, as further described herein.

MEMBERSHIP CATEGORIES

The Club offers the following categories of membership:

- Community Membership;
- May River Membership; and
- Founding Membership.

The use privileges associated with each category of membership are more fully described in this Membership Plan.

By acceptance of a deed, every Owner of a residence or homesite within Palmetto Bluff shall become a "Community Member" of the Club and shall automatically assume and agree to be bound by all of the terms and conditions of this Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein, while he or she remains an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined herein) and the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant").

SPECIAL MEMBERSHIP BENEFITS

In addition to exceptional Club Facilities, membership in the Club offers a number of attractive benefits. A brief description of some of these current benefits follows and they are described in greater detail in this Membership Plan:

For Member Use Only. Proprietary and Confidential Information

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Where this Membership Plan refers to the Club taking action or having certain rights, the Company or its designees shall take such action and have such rights.

DISPOSITION OF CLUB FACILITIES AND PROGRAM CHANGES

THE COMPANY RETAINS THE RIGHT TO DISCONTINUE OPERATION OF ANY OR ALL OF THE CLUB FACILITIES OR TO SELL OR OTHERWISE DISPOSE OF THE CLUB FACILITIES

The Company retains the right to discontinue operation of any or all of the Club Facilities, to sell, lease, renovate or remodel or otherwise dispose of the Club Facilities in any manner and to any person (subject to the members' right of first offer), to convert the Club into a member-owned club and to make any other changes to the Membership Documents, the terms and conditions of memberships or the Club Facilities available for use by members.

MEMBERS SHALL HAVE A RIGHT OF FIRST OFFER

If the Company desires to sell the Club Facilities or a significant portion thereof, the Company shall, prior to soliciting offers from the general market, give notice of intention to sell to the members and shall form an acquisition committee composed of members of the Club to pursue a possible sales transaction with the Company and the members acquisition committee shall have a sixty (60) day exclusive period from receipt of the notice to make an offer to purchase the Club Facilities or applicable portion thereof from the Company. If the members acquisition committee fails to make an offer to the Company within such sixty (60) day exclusive period, or the Company does not accept the offer made by the members acquisition committee in its sole and absolute discretion, or if a transaction is agreed upon and not ultimately consummated, then the Company may solicit and accept offers for the Club Facilities or applicable portion thereof from the general market upon any terms and conditions deemed acceptable to the Company at any time in its sole and absolute discretion. The members shall not be precluded from making additional offers to the Company once the sixty (60) day exclusive period has expired. The right to make additional offers, however, is not intended to create a right of first refusal or an additional right of first offer in favor of the members. A purchaser of the Club Facilities or portion thereof shall acquire title subject to the terms and provisions of the Membership Plan then existing.

The foregoing provisions concerning the presentation of an offer to the members shall not apply to the sale or transfer of any or all of the Club Facilities to an affiliated entity or to an equity conversion.

ARBITRATION/MEDIATION

This "Arbitration/Mediation" provision shall apply only to members who acquire their membership on or after June 19, 2017. Subject to the provisions of below paragraph, any and all controversies, disputes or claims relating directly or indirectly to, or arising

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directly or indirectly from this Membership Plan, including, but not limited to, the breach or alleged breach of this Membership Plan, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless the member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to below paragraph) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Plan nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Plan or the breach or alleged breach of this Membership Plan, (ii) the existence of an arbitration proceeding under this Membership Plan or (iii) the results of any arbitration proceeding under this Membership Plan; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this paragraph, nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

No party may commence an arbitration pursuant to above paragraph or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Plan, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Plan shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

Exhibit B

315 Corley CW, LLC, *et al.* vs. Palmetto Bluff Development, LLC, *et al.*

Case No. 2022-CP-07-632

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

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SCHAERR JAFFE LLP

May 16, 2022

Sarah Burris Clayton, Esq.
SarahClayton@ADR.org
American Arbitration Association
South Park Tower
6000 Fairview Road, Suite 1200
Charlotte, NC 28210

315 Corley CW LLC et al. v. Palmetto Bluff Club LLC, Case No. 01-22-0001-5722

Answer of Palmetto Bluff Club, LLC

Dear Ms. Clayton:

Respondent Palmetto Bluff Club, LLC, through counsel, submits the following answer to the claimants' demand:

Unhappy that their resales of Club membership privileges are about to end, a tiny minority—barely 1%—of Palmetto Bluff property owners have sued and sought arbitration, asserting in lurid terms that the entire Palmetto Bluff development is a hoax, that the Club is run for the benefit of guests at the Montage Palmetto Bluff hotel, and that the entire community is unlawful and should be dissolved, with Club facilities presumably to be held in common by the 1200 current Club members.

But the Complaint that Claimants attach to their arbitration demand is at odds with the facts, including the documents incorporated by reference. Everything about Palmetto Bluff that Claimants claim was hidden was in fact revealed; Claimants just want the arbitrators to give them a different deal than the one they agreed to when they bought Palmetto Bluff property. Respondent thus denies all allegations in Claimants' demand.

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Four Embarcadero Center, Suite 1400
San Francisco, CA 94111

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- Each Claimant agreed to become a Club member upon purchasing a home or home site in Palmetto Bluff, as is common in exclusive communities.
- Each Claimant knew that the Club was an intrinsic part of the Palmetto Bluff community and freely acknowledged that the exclusive amenities available only to Club members enhanced the value of property in Palmetto Bluff.
- Each Claimant knew that the Club was a private entity different from the Community Trust, and that Club membership gave them just that—membership in a private club, not ownership of Club property.
- Before buying their properties, each Claimant agreed to be bound by the Community Charter, the Club Plan, and the Club Rules and Regulations.
- Each Claimant agreed that nonmember access to the Club could be changed as conditions change.
- The Club documents make clear that the right of some Plaintiffs to rent their properties short-term does not carry with it any right to rent out their Club membership, as renters do not qualify as guests of members.
- Yet each Claimant signed on to a verified Complaint that proceeds as if none of those documents existed—not even the documents attached to the Complaint.
- Claimants assert that Respondent is favoring Montage hotel guests and Montage program renters, but Claimants are well aware that the imminent restrictions on Club access apply equally to all short term renters and hotel guests.

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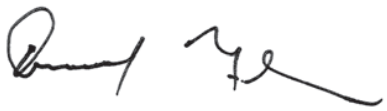
- Claimants assert that Club dues are excessive, but in fact the developer has had to subsidize the Club for years, and the dues are actually below market—as a minimal prefiling investigation would have shown.
- Claimants assert that Respondent and the other defendants named in the court complaint failed to negotiate in good faith, but they know full well that Respondent and defendants made a concrete offer that Claimants declined.

By this collection of falsehoods, Claimants seek to deprive their fellow property owners of the benefits of the Palmetto Bluff community and the Palmetto Bluff Club—benefits that all owners paid for on terms to which all owners agreed. If successful, Claimants would destroy the structure of the community and end the Club itself, harming the property values of the class they claim to represent to aid Claimants' pursuit of near-term profits from renting out their Club memberships.

Although Claimants contest arbitrability, Rule 7 of the Commercial Rules vests the panel with authority to determine arbitrability. It should do so here after appropriate briefing.

Very truly yours,



Donald M. Falk

Cc: All counsel

Exhibit C

315 Corley CW, LLC, *et al.* vs. Palmetto Bluff Development, LLC, *et al.*

Case No. 2022-CP-07-632

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SCHAERR JAFFE LLP

May 23, 2022

Sarah Burris Clayton, Esq.
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American Arbitration Association
South Park Tower
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Charlotte, NC 28210

315 Corley CW LLC et al. v. Palmetto Bluff Club LLC, Case No. 01-22-0001-5722

Counterdemand of Palmetto Bluff Club, LLC, Palmetto Bluff Development, LLC, Palmetto Bluff Real Estate Company, LLC, PLBH, LLC, Montage Palmetto Bluff, LLC, Palmetto Bluff Preservation Trust, Inc., Palmetto Bluff Preservation Trust Board of Stewards, Jordan Phillips, Mark Polites, Gray Ferguson, Henry Armistead, and South Street Partners NC, LLC.

Dear Ms. Clayton:

Respondent and counterclaimant Palmetto Bluff Club, LLC, and counterclaimants Palmetto Bluff Development, LLC, Palmetto Bluff Real Estate Company, LLC, PBLH, LLC, Palmetto Bluff Preservation Trust, Inc., Palmetto Bluff Preservation Trust Board of Stewards, Jordan Phillips, Mark Polites, Gray Ferguson, Henry Armistead (all of 11 Village Park Square, Bluffton, SC 29910), Montage Palmetto Bluff, LLC (77 Mount Pelia Rd, Bluffton, SC 29910), and South Street Partners NC, LLC (2820 Selwyn Avenue, Suite 500, Charlotte, NC 28209-1791), through counsel, submit the following counterdemand for arbitration against all Claimants in this matter. The Claimants in this matter are: 315 Corley CW, LLC; 368 Mount Pelia, LLC; Bridge Charleston Investments B, LLC; Bridge Charleston Investments C, LLC; Bridge Charleston Investments E, LLC; Bridge

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San Francisco, CA 94111

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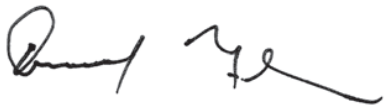
Charleston Investments H, LLC; Anne Bosler and Dylan Hart, as Trustee of the Bosler-Hart Trust; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Live Oak Assets, LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West, LLC; One Rumford Lane, LLC; Salt Works, LLC; and TTJR, LLC. Claimants' Demand includes the agreements under which Claimants agreed to arbitrate. Jennifer Albero and Geoffrey J. Block do not appear to be listed as Claimants. Based on the timing of certain events, respondent and counterclaimants believe that Block signed an agreement similar to the agreement attached to Claimants' Demand. Counterclaimants demand arbitration against Block on that basis, and against both Albero and Block based on the inextricable linkage between their claims against the Respondent and Counterclaimants in the Circuit Court action referenced below, and the arbitration agreements attached as Exhibit B. Arbitration with respect to nonsignatories has been well-recognized in case law applicable to the circumstances presented in this matter.

Claimants have commenced an arbitration and attached a Complaint filed in the Circuit Court for Beaufort County, South Carolina, but their arbitration demand did not name all the plaintiffs and defendants named in the Circuit Court Complaint. The remaining defendants named in that Complaint, the counterclaimants here, demand arbitration of the same dispute because the claims against the remaining defendants are inextricably intertwined with the claims against Palmetto Bluff Club LLC and bear a significant relationship to one or more contracts containing arbitration agreements that

SCHAERR JAFFE LLP

require arbitration in this forum. In addition, Claimants' arbitration demand suggests that not all claims in the Complaint are arbitrable. Counterclaimants adopt the answer of Palmetto Bluff Club LLC and demand arbitration of all claims between the parties, including all claims raised in the Complaint. Rule 7 of the Commercial Rules vests the panel with authority to determine whether the full dispute here is arbitrable.

Very truly yours,



Donald M. Falk

Cc: All counsel

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Exhibit D

315 Corley CW, LLC, *et al.* vs. Palmetto Bluff Development, LLC, *et al.*

Case No. 2022-CP-07-632

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PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ.

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I. LEGAL OWNER INFORMATION

PERSONAL

Club Member Account Number: _____ Lot Number: 5500

Member's Name Michael J McGuire Birth Date [redacted]

Spouse's Name Jennifer Chaffin McGuire Birth Date [redacted]

Anniversary Date 09/20/1997

Alma Mater NC State University Spouse's Meredith College

Palmetto Bluff Address 427 Old Landing Road

Primary/Mailing Address 18710 Peninsula Cove Lane Cornelius NC 28031

Billing Address 18710 Peninsula Cove Lane Cornelius NC 28031

Club Communications
Address 18710 Peninsula Cove Lane Cornelius NC 28031

Telephone:
Local Residence ( ) Cell Phone (704) 577-2993

E-mail Address mike@ame-pc.com Fax Number (704) 295-7543

Spouse E-mail Address jcmdesignnc@gmail.com Spouse Cell (704) 258-6015

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25:

Name	Birth Date	Charge Privileges
[redacted]	[redacted]	Yes ☑ No ☐
[redacted]		Yes ☑ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Other family members not listed above who will have vertical family privileges:

Name	Relationship	Charges Billed to Member Account
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

BUSINESS

Member's Company Name AME Consulting Engineers Title President/Owner

Business Address 705 East Morehead Street Charlotte NC 28202

Telephone (704) 295-4263 Years in Present Employment 12 ☐ Retired

Fax Number (704 295-7543 E-mail Address mike@ame-pc.com Website www.ame-pc.com

Spouse's Company Name Studio B Designs Title Owner

Spouse's Business Address 18710 Peninsula Cove Lane Cornelius NC 28031

Telephone (704) 258-6015 Years in Present Employment 8 ☐ Retired

Fax Number ( ) E-mail Address jcmdesignnc@gmail Website

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II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $10,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, effective June 19, 2017 ("Rules and Regulations"), and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club.

I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give

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a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to

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arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☐ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: January 1, 2018

mike mcguire
My Signature

Michael J McGuire
Printed Name

Dated: January 1, 2018

jennifer mcguire
Spouse's Signature

Jennifer C McGuire
Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: _____
Authorized Representative

Printed Name: Corey Ferguson

Dated: 6/7, 2019

PALMETTO BLUFF CLUB
(843) 706-6568

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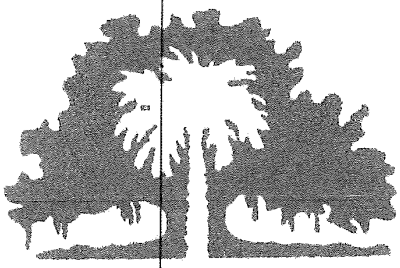

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ.

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

Club Member Account Number: _____ Lot Number: 555 7

Member's Name MATTHEW LYNCH Birth Date [redacted]

Spouse's Name BARBARA LYNCH Birth Date [redacted]

Anniversary Date SEPTEMBER 29, 2007

Alma Mater WENTWORTH INSTITUTE OF TECHNOLOGY Spouse's SOUTHERN NEW HAMPSHIRE UNIV.

Palmetto Bluff Address 323 CORLEY STREET

Primary/Mailing Address 3 WESTMORELAND RD HINGHAM MA 02043

Billing Address 3 WESTMORELAND RD HINGHAM MA 02043

Club Communications Address 3 WESTMORELAND RD HINGHAM MA 02043

Telephone:
Local Residence ( ) N/A Cell Phone (617) 839-6024

E-mail Address LDCORP @ COMCAST.NET Fax Number ( )

Spouse E-mail Address BARBIELYNCH @ GMAIL.COM Spouse Cell (603) 231-1497

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25:

Name	Birth Date	Charge Privileges
[redacted]	[redacted]	Yes ☒ No ☐
[redacted]		Yes ☒ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Other family members not listed above who will have vertical family privileges:

Name	Relationship	Charges Billed to Member Account
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

BUSINESS

Member's Company Name LYNCH DEVELOPMENT CORP. Title PRESIDENT

Business Address 97 CHAPEL ST UNIT 1 NEEDHAM MA 02492

Telephone (617) 839-6024 Years in Present Employment 14 ☐ Retired

Fax Number ( ) E-mail Address JDCORP@COMCAST.NET Website N/A

Spouse's Company Name BREAKWATER BLUE Title OWNER

Spouse's Business Address 3 WESTMORELAND RD HINGHAM MA 02043

Telephone (603) 231-1497 Years in Present Employment 4 ☐ Retired

Fax Number ( ) E-mail Address BARBIELYNCH@GMAIL.COM Website BREAKWATERBLUE.COM

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $10,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, effective June 19, 2017 ("Rules and Regulations"), and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club.

I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

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VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an

arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☒ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: JAN 16, 2018

My Signature

MATTHEW LYNCH

Printed Name

Dated: Jan 16, 2018

Barbara G. Lynch

Spouse's Signature

Barbara A. Lynch

Printed Name

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: _____
Authorized Representative

Printed Name: _____

Dated: _____, 20__

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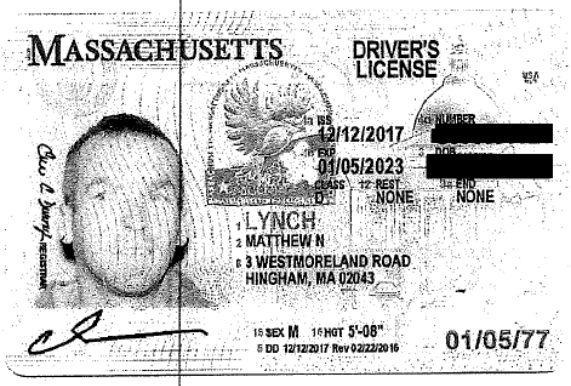

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ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Last Name: O'Keefe|Casey Lot: 5540

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20190731085650126
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

Primary Member's Name: Rob O'Keefe Birth Date: [redacted]

Spouse's Name: Lynn Ann Casey Birth Date: _____

Anniversary Date: Oct 2

Alma Mater: Cornell University Spouse's Alma Mater: Fairfield University

Palmetto Bluff Address: 790 Old Moreland Rd Lot Number: 5540

Full Time Residence: ☐ Part Time Residence: ☑ Vacation Home: ☑ Lot: ☐

Primary Home Mailing Address: 2613 24th St. N., Arlington VA 22207

Primary Billing Address: 2613 24th St. N., Arlington VA 22207

Preferred Club Contact Primary: Mail: Billing: ☑ PB: ☐ Home Phone: ☐ Cell Phone: ☑ Email: ☑

Telephone:
Home Phone: 703-465-8481 Fax Number: _____

Primary E-mail Address: rfo2050@gmail.com Primary Cell: 703-587-8652

Spouse E-mail Address: lac@arcaspicio.com Spouse Cell: 703-798-4016

By providing your email address, you are giving the Palmetto Bluff Club permission to send you emails.

Initial: RFO E-Signed Initial: LAC E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

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Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
[redacted]	[redacted]	Yes ☑ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Vertical Family Members:

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes ☑ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: RJ E-Signed Initial: LAC E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

BUSINESS

Primary Member's Company Name: Arc Aspicio

Title: President

Business Address: _____

Telephone: _____ Years in Present Employment: _____ ☐ Retired

E-mail Address: _____

Website: www.arcaspicio.com

Spouse's Company Name: Arc Aspicio

Title: CEO

Spouse's Business Address: _____

Telephone: _____ Years in Present Employment: _____ ☐ Retired

E-mail Address _____

Website: _____

Initial: RFO E-Signed Initial: LAC E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

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ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $10,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

RFO
Initial: E-Signed

LAC
Initial: E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: RFO E-Signed Initial: LAC E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: RFO E-Signed Initial: LAC E-Signed

Doc ID: 20190731085650126
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

❑ Member

❑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

❑ Entity (separate Addendum to be completed)

Dated: 10/18/2019, 20__

E-Signed : 10/18/2019 03:58 PM EDT
Robert O'Keefe
rfo@arcaspicio.com
IP: 199.47.103.30
Sertifi Electronic Signature
DocID: 20190731085650126

My S

Robert O'Keefe

Printe

Dated: 10/18/2019, 20__

E-Signed : 10/18/2019 08:05 PM EDT
Lynn Ann Casey
lac@arcaspicio.com
IP: 173.73.145.180
Sertifi Electronic Signature
DocID: 20190731085650126

Spou

Lynn Ann Casey

Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By:

E-Signed : 10/19/2019 02:18 PM EDT
Gray Ferguson
gray.ferguson@palmettobluffclub.com
IP: 64.203.244.248
Sertifi Electronic Signature
DocID: 20190731085650126

Printed Name: Gray Ferguson

Title: _____

Dated: 10/19/2019, 20__

Doc ID: 20190731085650126
Sertifi Electronic Signature

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For Club Use Only

Club Member Account Number: _____ **Lot Number:** _____

Folio Number: _____ **Customer ID:** _____

Member Agreements
memberagreements@palmettobluffclub.com

Doc ID: 20190731085650126
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Last Name Kimball Lot Number 26

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

Primary Member's Name: R. Jeffrey Kimball Birth Date: [redacted]

Spouse's Name: Deborah Kimball Birth Date: [redacted]

Anniversary Date: Aug 18, 1973

Alma Mater: The Pennsylvania State University Spouse's Alma Mater: The Pennsylvania State University

Palmetto Bluff Address: 14 Parkman St, Bluffton, SC 29910 Lot Number: 26

Full Time Residence: ____ Part Time Residence: X Vacation Home: ____ Lot: _____

Primary Home Mailing Address: 19 The Trillium Pittsburgh, Pa 15238

Primary Billing Address: 19 The Trillium Pittsburgh, PA 15238

Preferred Club Contact Primary: Mail: Billing: ____ PB: ___ Home Phone: ___ Cell Phone: ___ Email: X

Telephone:
Home Phone: _____ Fax Number: _____

Primary E-mail Address: rjeffreykimball@gmail.com Primary Cell: 814-244- 4916

Opt-in text messaging – service provider name: Verizon

Spouse E-mail Address: deborahkimball@me.com Spouse Cell: 814-241-4991

Opt-in text messaging – service provider name: Verizon

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

BUSINESS

Primary Member's Company Name: R. Jeffrey Kimball Certified ScalingUp/Gazelles Coach

Title: Owner and President

Business Address: 19 The Trillium Pittsburgh , PA 15238

Telephone: 814-244-4916 Years in Present Employment: 8 ❑ Retired

E-mail Address: rjeffreykimball@gmail.com

Website: https://www.rjeffreykimball.com

Spouse's Company Name: _____

Title: _____

Spouse's Business Address: _____

Telephone: _____ Years in Present Employment: _____ ❑ Retired

E-mail Address_____

Website: _____

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $20,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: RJK E-Signed Initial: DSK E-Signed

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 01/31/2020, 20__

R. Jeffrey Kimball
rjeffreykimball@gmail.com
Member's Signature

R. Jeffrey Kimball
Printed Name

Dated: 02/01/2020, 20__

Deborah Sullivan-Kimball
deborahkimball@me.com
Spouse's Signature

Deborah Kimball
Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: Gray Ferguson
gray.ferguson@palmettobluffclub.com
Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 02/03/2020, 20__

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

For Club Use Only

Club Member Account Number: _____ **Lot Number:** _____

Folio Number: _____ **Customer ID:** _____

Chelsea Hudson
_____
memberagreements@palmettobluffclub.com

Doc ID: 20200131123136983
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Last Name Mingey Lot Number 5005

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

Primary Member's Name: Dave Mingey Birth Date: [redacted]

Spouse's Name: Darby Mingey Birth Date: [redacted]

Anniversary Date: October 4

Alma Mater: Boston College Spouse's Alma Mater: Boston College

Palmetto Bluff Address: 22 Westerwald St Lot Number: 5005

Full Time Residence: ____ Part Time Residence: ____ Vacation Home: X Lot: _____

Primary Home Mailing Address: 334 Pelhamdale Avenue Pelham, NY 10803

Primary Billing Address: P.O. Box 8096 Pelham NY 10803

Preferred Club Contact Primary: Mail: Billing: X PB: ___ Home Phone: ___ Cell Phone: ___ Email: ___

Telephone:
Home Phone: _____ Fax Number: _____

Primary E-mail Address: davemingey@mac.com Primary Cell: 917.710.5266

Opt-in text messaging – service provider name: Verizon

Spouse E-mail Address: darby.mingey@gmail.com Spouse Cell: 917.733.0778

Opt-in text messaging – service provider name: AT&T

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
[redacted]	[redacted]	Yes ■ No ❑
		Yes ❑ No ❑
		Yes ❑ No ❑
		Yes ❑ No ❑

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes ❑ No ❑
				Yes ■ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑
				Yes ❑ No ❑

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

BUSINESS

Primary Member's Company Name: U.S. Olympic & Paralympic Properties

Title: Head of Partnerships

Business Address: 295 Madison Avenue, 21st Floor Ny, NY 10017

Telephone: 917.710.5266 Years in Present Employment: 1 ❑ Retired

E-mail Address: dmingey@teamusa2028.org

Website: _____

Spouse's Company Name: Kinneret Group

Title: Chief of Staff

Spouse's Business Address: 126 East 56th Street, 16th Floor NY, NY 10022

Telephone: 917.733.0778 Years in Present Employment: 2 ❑ Retired

E-mail Address Darby.mingey@gmail.com

Website: _____

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $10,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: DCM E-Signed Initial: DMM E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

❑ Member

■ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

■ Entity (separate Addendum to be completed)

Dated: 02/12/2020, 20__

David C. Mingey
davemingey@mac.com
Member's Signature
Dave Mingey

Dated: 02/13/2020, 20__

Darby M Mingey
darby.mingey@gmail.com
Spouse's Signature
Darby Mingey
Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: Gray Ferguson
gray.ferguson@palmettobluffclub.com
Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 02/16/2020, 20__

Doc ID: 20200102125219835
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

For Club Use Only

Club Member Account Number: _____ **Lot Number:** _____

Folio Number: _____ **Customer ID:** _____

CH
E-Signed

Doc ID: 20200102125219835
Sertifi Electronic Signature

E-Signed: 02/13/2020 08:57 AM EST

Chelsea Hudson

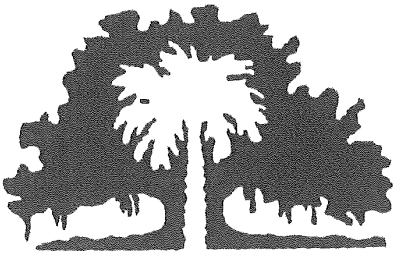
memberagreements@palmettobluffclub.com
IP: 64.203.244.248 Sertifi Electronic Signature

DocID: 20200102125219835

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Last Name Kugler Lot Number 37



PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20200915104629526
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PER SO N A L

Primary Member's Name: Todd Birth Date: [redacted]

Spouse's Name: Beth Birth Date: [redacted]

Anniversary Date: 04-16-93

Alma Mater: _____ Spouse's Alma Mater: _____

Palmetto Bluff Address: 10 N Drayton St, Bluffton, SC 29910 Lot Number: 37

Full Time Residence: ☐ Part Time Residence: ☐ Vacation Home: ☑ Lot: ☐

Preferred Mailing Address: 2292 Mackenzie CT

Primary E-mail Address: tkugler88@gmail.com

Primary Billing E-mail Address (*if different*): above

Primary Cell Phone: 727-510-0677 Home Phone: 727-726-3844

Opt-in text messaging – service provider name: At&T

Spouse E-mail Address: rosykug6@gmail.com Spouse Cell: 727-501-2187

Opt-in text messaging – service provider name: AT&T

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: TK E-Signed Initial: BRK E-Signed

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase. Children under the age of 4 will not be issued a member access card or charging privileges.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
[redacted]	[redacted]	Yes ☑ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes ☐ No ☑
				Yes ☐ No ☑
				Yes ☑ No ☐
				Yes ☑ No ☐
				Yes ☐ No ☑
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: TK E-Signed Initial: BRK E-Signed

Doc ID: 20200915104629526
Sertifi Electronic Signature

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BUSINESS

Primary Member's Company Name: Nationwide Title Clearing Inc.

Title: CFO

Business Address: 2100 Alt 19 North , Palm Harbor, FL 34683

Telephone: 727-771-4000 Years in Present Employment: 17 ☐ Retired

E-mail Address: todd_kugler@nwtc.com

Website: NWTC.com

Spouse's Company Name: above

Title: Accounts Payable

Spouse's Business Address: rosy_kugler@nwtc.com

Telephone: above Years in Present Employment: 10 ☐ Retired

E-mail Address above

Website: above

Initial: TK E-Signed Initial: BRK E-Signed

Doc ID: 20200915104629526
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $20,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: TK E-Signed Initial: BRK E-Signed

Doc ID: 20200915104629526
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: JK E-Signed Initial: BRK E-Signed

Doc ID: 20200915104629526
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: JK E-Signed Initial: BRK E-Signed

Doc ID: 20200915104629526
Sertifi Electronic Signature

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This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 09/27/2020, 20__

Todd Kugler
tkugler88@gmail.com
Member's Signature

Todd Kugler

Dated: 09/27/2020, 20__

Beth R Kugler
rosybeth@tampabay.rr.com
Spouse's Signature

Beth Kugler
Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: Gray Ferguson
gray.ferguson@palmettobluffclub.com
Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 10/01/2020, 20_

Doc ID: 20200915104629526
Sertifi Electronic Signature

Chelsea Hudson
memberagreements@palmettobluffclub.com

For Club Use Only

Club Member Account Number: _____ **Lot Number:** _____

Folio Number:_____**Customer ID:** _____

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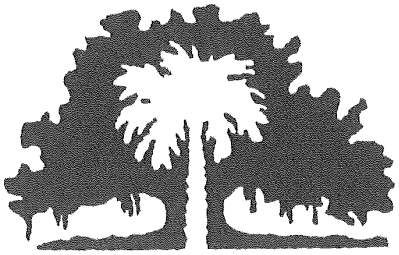
Hart

Last Name_____ **Lot Number**_____



PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

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ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

Primary Member's Name: Dylan Hart Birth Date: [redacted]

Spouse's Name: Annie Bosler Birth Date: [redacted]

Anniversary Date: June 15

Veteran Status (if applicable): No

Alma Mater: University of California Los Angeles and University of Southern California Spouse's Alma Mater: Carnegie Melon University and University of Southern California

Palmetto Bluff Address: 753 Old Moreland Lot Number:

Full Time Residence: ____ Part Time Residence: ____ Vacation Home: yes Lot: ____

Preferred Mailing Address: 2024 BROADVIEW Dr. Glendale CA 91208

Primary E-mail Address: dylanskyehart@gmail.com

Primary Billing E-mail Address (*if different*):

Primary Cell Phone: 3233634368 Home Phone: 2132000144

Opt-in text messaging – service provider name: sprint

Spouse E-mail Address: bosler@gmail.com Spouse Cell: 213.200.0144

Opt-in text messaging – service provider name: sprint

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: DS Initial: AB

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Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase. Children under the age of 4 will not be issued a member access card or charging privileges.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
[redacted]	[redacted]	Yes [X] No [ ]
		Yes [ ] No [ ]
		Yes [ ] No [ ]
		Yes [ ] No [ ]

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews. Vertical Family privileges will discontinue if the family member purchases Community property and acquires a membership.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes [X] No [ ]
				Yes [X] No [ ]
				Yes [X] No [ ]
				Yes [X] No [ ]
				Yes [ ] No [ ]
				Yes [ ] No [ ]
				Yes [ ] No [ ]
				Yes [ ] No [ ]
				Yes [ ] No [ ]
				Yes [ ] No [ ]

Initial: DS _____ Initial: DS AB

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

BUSINESS

Primary Member's Company Name: Silver Bells Music Inc.

Title: President

Business Address: 2024 BROADVIEW DR. Glendale CA 91208

Telephone: 3233634368 Years in Present Employment: 20 years ☐ Retired

E-mail Address: dylanskyehart@gmail.com

Website: www.dylanskyehart.com

Spouse's Company Name: Silver Bells Music Inc.

Title: Vice President

Spouse's Business Address: 2024 Broadview Dr Glendale CA 91208

Telephone: 2132000144 Years in Present Employment: ☐ Retired

E-mail Address: bosler@gmail.com

Website: www.anniebosler.com

Initial: DS Initial: DS

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $20,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: Initial:

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VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: DS _____ Initial: BB _____

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ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: SB Initial: DS AB

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☒ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 1/14/2022, 20__

DocuSigned by:
E19B5813EA7348D...
Member's Signature

Dylan Hart
Printed Name

Dated: 1/14/2022, 20__

DocuSigned by:
Annie Bosler
EA7CBC6B0B0A482...
Spouse's Signature

Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: DocuSigned by:
Gray Ferguson
31AFC98C8885493...
Authorized Representative

Printed Name: _____

Title: _____

Dated: 1/17/2022, 20_

PALMETTO BLUFF CLUB
843.706.6568

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For Club Use Only

Club Member Account Number: _____ Lot Number: _____

DS
ES

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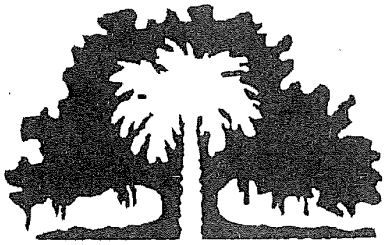
Last Name Leigh-Jones Lot Number 5513



PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20201026140134437
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PER SO N A L

Primary Member's Name: SOBRINA LUTCH - [illegible] Birth Date: [redacted]

Spouse's Name: CHRIS Birth Date: [redacted]

Anniversary Date: _____

Alma Mater: _____ Spouse's Alma Mater: _____

Palmetto Bluff Address: 852 Old Moreland Rd Lot Number: 5513

Full Time Residence: ☐ Part Time Residence: ☐ Vacation Home: ☐ Lot: ☐

Preferred Mailing Address: 95 BROAD ST, CHARLESTON SC, 29401

Primary E-mail Address: SOBRINALJ@LUXURYSIMPLIFIED.COM

Primary Billing E-mail Address (*if different*): _____

Primary Cell Phone: 843 801 4783 Home Phone: _____

Opt-in text messaging – service provider name: _____

Spouse E-mail Address: CHRISLJ@LUXURYSIMPLIFIED.COM Spouse Cell: 281 630 3513.

Opt-in text messaging – service provider name: _____

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: _____ Initial: _____

Doc ID: 20201026140134437
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase. Children under the age of 4 will not be issued a member access card or charging privileges.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: _____ Initial: _____

Doc ID: 20201026140134437
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial:_____ Initial: _____

Doc ID: 20201026140134437
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: _____ Initial: _____

Doc ID: 20201026140134437
Sertifi Electronic Signature

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☐ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 26 Oct, 20 20

Member's Signature

Clinton-Jones

Printed Name

Dated:_____, 20__

Spouse's Signature

Sebrina Leigh-Jones

Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: Gray Ferguson
gray.ferguson@montage.com
Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 10/26/2020, 20_

PALMETTO BLUFF CLUB
843.706.6568

Active 40008606v12

Doc ID: 20201026140134437
Sertifi Electronic Signature

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Chelsea Hudson
memberagreements@palmettobluffclub.com

For Club Use Only

Club Member Account Number: 177001704 Lot Number: 5513

Folio Number: 2512 Customer ID: 14503

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Doc ID: 20201026140134437
Sertifi Electronic Signature

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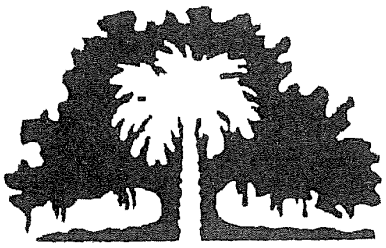
Last Name Leigh-Jones Lot Number 5527



PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Doc ID: 20201026140357454
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PER SO N A L

Primary Member's Name: Sebrina Leon-Jones Birth Date: [redacted]

Spouse's Name: CHRIS Birth Date: [redacted]

Anniversary Date: _____

Alma Mater: _____ Spouse's Alma Mater: _____

Palmetto Bluff Address: 8 Hannah Lane Lot Number: 5527

Full Time Residence: ☐ Part Time Residence: ☐ Vacation Home: ☑ Lot: ☐

Preferred Mailing Address: ~~8~~ 95 Broad St, Charleston SC 29401

Primary E-mail Address: SEBRINALJ@luxurysimplified.com

Primary Billing E-mail Address (*if different*): —

Primary Cell Phone: 843 801 4583 Home Phone: _____

Opt-in text messaging – service provider name: _____

Spouse E-mail Address: CHRISLJ@luxurysimplified.com Spouse Cell: 281 630 3513

Opt-in text messaging – service provider name: _____

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: _____ Initial: _____

Active 40008606v13

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Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase. Children under the age of 4 will not be issued a member access card or charging privileges.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
[redacted]	[redacted]	Yes ☑ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial:_____ Initial: _____

Doc ID: 20201026140357454
Sertifi Electronic Signature

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BUSINESS

Primary Member's Company Name:_____

Title:_____

Business Address: _____

Telephone:_____Years in Present Employment:_____☐Retired

E-mail Address: _____

Website:_____

Spouse's Company Name: _____

Title:_____

Spouse's Business Address: _____

Telephone:_____Years in Present Employment:_____☐Retired

E-mail Address_____

Website: _____

Initial:_____Initial: _____

Doc ID: 20201026140357454
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $20,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: _____ Initial: _____

Doc ID: 20201026140357454
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial:_____ Initial: _____

Doc ID: 20201026140357454
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: _____ Initial: _____

Doc ID: 20201026140357454
Sertifi Electronic Signature

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This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 26 Oct, 2020

Member's Signature

Chris Leigh-Jones

Printed Name

Dated: _____, 20__

Spouse's Signature

Sebrina Leigh-Jones

Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

Gray Ferguson
gray.ferguson@montage.com

By: _____

Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 10/26/2020, 20_

Doc ID: 20201026140357454
Sertifi Electronic Signature

Chelsea Hudson
memberagreements@palmettobluffclub.com

For Club Use Only

Club Member Account Number: 177001704 **Lot Number:** 5527

Folio Number: 2512 **Customer ID:** 14503

Doc ID: 20201026140357454
Sertifi Electronic Signature

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Doc ID: 20201026140357454
Sertifi Electronic Signature

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Last Name Locke **Lot Number** 5044

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ

Active 40008606v13

Doc ID: 20200722114633924
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PER SO N A L

Primary Member's Name: Douglas Locke Birth Date: [redacted]

Spouse's Name: Patricia Locke Birth Date: [redacted]

Anniversary Date: 06-24-1989

Alma Mater: Umass Amherst Spouse's Alma Mater: Umass Amherst

Palmetto Bluff Address: 1 Rumford Ln Lot Number: 5044

Full Time Residence: ☐ Part Time Residence: ☑ Vacation Home: ☑ Lot: ☐

Preferred Mailing Address: PO Box 220 Boxford MA 01921

Primary E-mail Address: douglocke@comcast.net

Primary Billing E-mail Address (*if different*):

Primary Cell Phone: 978-337-9367 Home Phone:

Opt-in text messaging – service provider name:

Spouse E-mail Address: patlocke@comcast.net Spouse Cell: 978-578-6070

Opt-in text messaging – service provider name:

By providing your email address, you are giving the Palmetto Bluff Club permission to send communication by email.

Initial: DRL E-Signed Initial: PAL E-Signed

Doc ID: 20200722114633924
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase. Children under the age of 4 will not be issued a member access card or charging privileges.)

Unmarried children under age 25 living at home:

Name	Date of Birth	Charge Privileges
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐
_____	_____	Yes ☐ No ☐

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
[redacted]		[redacted]		Yes ☑ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: DRL E-Signed Initial: PAL E-Signed

Doc ID: 20200722114633924
Sertifi Electronic Signature

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BUSINESS

Primary Member's Company Name: Real Estate

Title: Owner

Business Address: PO Box 220 Boxford MA 01921

Telephone: 978-337-9367 Years in Present Employment: 35 ☐ Retired

E-mail Address: douglocke@comcast.net

Website: _____

Spouse's Company Name: Retired

Title: _____

Spouse's Business Address: _____

Telephone: _____ Years in Present Employment: _____ ☑ Retired

E-mail Address _____

Website: _____

Initial: DRL E-Signed Initial: PAL E-Signed

Doc ID: 20200722114633924
Sertifi Electronic Signature

ELECTRONICALLY FILED - 2022 May 24 12:31 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $20,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club. I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

Initial: DRL E-Signed Initial: PAL E-Signed

Doc ID: 20200722114633924
Sertifi Electronic Signature

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VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

Initial: DRL E-Signed Initial: PAL E-Signed

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Sertifi Electronic Signature

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VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

Initial: DRL E-Signed Initial: PAL E-Signed

Doc ID: 20200722114633924
Sertifi Electronic Signature

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This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 07/24/2020, 20__

Douglas Locke
douglocke@comcast.net
Member's Signature

Douglas Locke

Dated: 07/30/2020, 20__

Patricia A Locke
patlocke@comcast.net
Spouse's Signature

Patricia A Locke
Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: Gray Ferguson
gray.ferguson@palmettobluffclub.com
Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 07/30/2020, 20_

Doc ID: 20200722114633924
Sertifi Electronic Signature

For Club Use Only

Club Member Account Number: _____ **Lot Number:** _____

Folio Number:_____**Customer ID:** _____

Chelsea Hudson
_____
memberagreements@palmettobluffclub.com

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I. LEGAL OWNER INFORMATION

PERSONAL

Club Member Account Number:_____ Lot Number:_____

Member's Name Lynn Addy Birth Date [redacted]

Spouse's Name Mike Addy Birth Date [redacted]

Anniversary Date April 7

Alma Mater Columbia College Spouse's Univ. South Carolina

Palmetto Bluff Address 368 Mt. Pelia

Primary/Mailing Address 1850 Arundel Rd. Myrtle Beach, S.C. 29577

Billing Address "

Club Communications Address "

Telephone:
Local Residence ( ) Cell Phone (843) 340-7799

E-mail Address addylg@gmail.com Fax Number ( )

Spouse E-mail Address maddy@addysharbordodge.com Spouse Cell (843) 340-6932

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25:

Name	Birth Date	Charge Privileges
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑

Other family members not listed above who will have vertical family privileges:

Name	Relationship	Charges Billed to Member Account
[redacted]	[redacted]	Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

BUSINESS

Member's Company Name Addy's Harbor Dodge Title Sec.

Business Address 4849 Hwy 501 Myrtle Beach, S.C. 29579

Telephone (843) 945-3100 Years in Present Employment 27 ☐ Retired

Fax Number (843) 236-2272 E-mail Address addys@gmail.com Website

Spouse's Company Name Addy's Harbor Dodge Title Pres

Spouse's Business Address 4849 Hwy 501 Myrtle Beach, S.C. 29579

Telephone (843) 945-3099 Years in Present Employment 27 ☐ Retired

Fax Number (843) 236-2272 E-mail Address muddy@addysharbordodge.com Website

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II. ACQUISITION OF MEMBERSHIP

I hereby understand that by my acceptance of a deed for property within Palmetto Bluff I became a "Community Member" of the Palmetto Bluff Club (the "Club") and automatically assumed and agreed to be bound by all of the terms and conditions of the Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth in the Membership Plan, while I remain an owner of a residence or homesite. This covenant running with the land is set forth at Chapter 19 of the Charter (as defined in the Membership Plan) and Article III of the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 ("Recreational Covenant"). The amount of the Membership Joining Fee that I paid at the Closing of my property for the Community Membership acquisition of my property was $10,000.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

IV. NO REFUND OF MEMBERSHIP JOINING FEE

I shall not be entitled a refund of any portion of the Membership Joining Fee paid for the membership, whether after resignation, death, termination of membership or otherwise.

V. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, effective June 19, 2017 ("Rules and Regulations"), and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club.

I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities.

VI. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities. A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan, the Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an

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arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

☑ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 2/4/, 2018

My Signature

Lynn C. Addy

Printed Name

Dated: 2/4/, 2018

Spouse's Signature

Michael S. Addy

Printed Name

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: _____
Authorized Representative

Printed Name: Gray Ferguson

Dated: 12/23, 20 18

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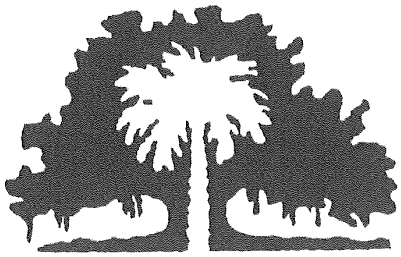

PALMETTO BLUFF

PALMETTO BLUFF CLUB
MEMBERSHIP AGREEMENT

(COMMUNITY MEMBERS)

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10, ET.SEQ.

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I. LEGAL OWNER INFORMATION

PERSONAL

Club Member Account Number: 177005190 Lot Number: 42

Member's Name Courtland Williams Birth Date [redacted]

Spouse's Name Kaitlyn Williams Birth Date [redacted]

Anniversary Date 07/28/07

Alma Mater Auburn University Spouse's Auburn University

Palmetto Bluff Address 22 North Drayton Street

Primary/Mailing Address 10 La Vista Court, Greenville, SC 29601

Billing Address 10 La Vista Court, Greenville, SC 29601

Club Communications Address 10 La Vista Court, Greenville, SC 29601

Telephone:
Local Residence ( ) Cell Phone (864) 906-8333

E-mail Address courtlandwilliams@yahoo.com Fax Number ( )

Spouse E-mail Address kaitlynwilliams@me.com Spouse Cell (864) 906-8334

Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. (Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.)

Unmarried children under age 25:

Name	Birth Date	Charge Privileges
[redacted]	[redacted]	Yes ☑ No ☐
		Yes ☐ No ☐
	[redacted]	Yes ☑ No ☐
		Yes ☐ No ☐

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Other family members not listed above who will have vertical family privileges:

Name	Relationship	Charges Billed to Member Account
[redacted]	[redacted]	Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☑ No ☐
		Yes ☑ No ☐
		Yes ☑ No ☐
		Yes ☑ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

BUSINESS

Member's Company Name Raymond James Financial Title First VP

Business Address

Telephone ( ) Years in Present Employment 16 ❑ Retired

Fax Number ( ) E-mail Address Website

Spouse's Company Name OH! Entertaining Title Owner

Spouse's Business Address

Telephone ( ) Years in Present Employment 2 ❑ Retired

Fax Number ( ) E-mail Address Website

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Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

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I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

VII. ARBITRATION

a) Subject to the provisions of subparagraph (b) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Agreement, including, but not limited to, the breach or alleged breach of this Membership Agreement, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules") then in effect (unless Member [and/or any person exercising such member's membership rights] and Palmetto Bluff Club, LLC, mutually agree otherwise), applying the substantive laws of South Carolina. The arbitration shall take place in Charleston, South Carolina, before a panel of three arbitrators selected in accordance with the Rules. The award rendered by the arbitrators shall be a reasoned award and shall be final. Any arbitration shall be limited to a party's actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration. The prevailing party shall be awarded reasonable attorney's fees and costs. Any judgment upon the award may be entered in and enforced by any court of competent jurisdiction, including the state court in Beaufort County, South Carolina. The party demanding arbitration of any controversy, dispute or claim hereunder shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to subparagraph (b) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Membership Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Membership Agreement or the breach or alleged breach of this Membership Agreement, (ii) the existence of an

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arbitration proceeding under this Membership Agreement or (iii) the results of any arbitration proceeding under this Membership Agreement; provided, however, that neither the filing of a civil action in a court of competent jurisdiction confirming and/or enforcing an arbitration award pursuant to this subparagraph (a), nor the filing of a civil action to compel arbitration hereunder (in the event of a party's refusal to arbitrate) shall be deemed a violation of this confidentiality provision or a waiver of any rights hereunder.

b) No party may commence an arbitration pursuant to subparagraph (a) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Membership Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this Membership Agreement shall send written notice, via certified mail, of a demand for mediation to the other party, setting forth the nature of the dispute. Within thirty (30) calendar days of receipt of this written demand by the receiving party, the parties shall conduct mediation, utilizing a neutral mediator agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted in Charleston, South Carolina pursuant to the laws of South Carolina relating to mediation. The parties shall equally split the costs of the mediation. In the event that a party seeks to commence arbitration or other proceeding concerning the dispute without participating in this required mediation process, said arbitration or proceeding shall be dismissed, and the party attempting to commence the proceeding shall pay all reasonable legal fees and costs incurred by the opposing party in connection therewith.

* * *

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

The Club may pledge or assign this Membership Agreement.

If the member is married, the signatures of both spouses are required.

The membership acquired hereunder shall be issued in the name of:

☐ Member

■ Member and spouse (if unmarried, separate forms available for Significant Other, if applicable)

☐ Entity (separate Addendum to be completed)

Dated: 03/26/2019, 20__

E-Signed : 03/26/2019 08:21 AM EDT
Courtland Williams
courtlandwilliams@yahoo.com
IP: 107.77.237.38
Sertifi Electronic Signature
DocID: 20190326064132144

My Sign

Courtland Williams

Printed N

Dated: 03/26/2019, 20__

E-Signed : 03/26/2019 01:55 PM EDT
Kaitlyn Williams
kaitlynwilliams@me.com
IP: 107.77.234.32
Sertifi Electronic Signature
DocID: 20190326064132144

Spouse's

Kaitlyn Williams

Printed Name

Doc ID: 20190326064132144
Sertifi Electronic Signature

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This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: _____
Au

E-Signed : 03/29/2019 01:39 PM EDT
Gray Ferguson
gray.ferguson@palmettobluffclub.com
IP: 64.203.244.248
Sertifi Electronic Signature
DocID: 20190326064132144

Printed Name: Gray Ferguson

Dated: 03/29/2019, 20__

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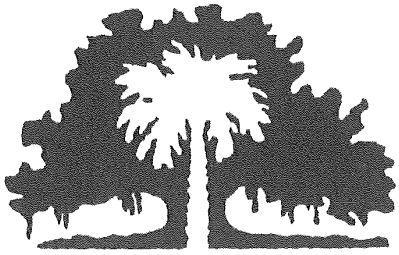

PALMETTO BLUFF

PALMETTO BLUFF CLUB
INTENT TO TRANSFER MEMBERSHIP

(COMMUNITY MEMBERS)

BOC 37429072v4

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I. LEGAL OWNER INFORMATION

PERSONAL

Primary Member's Name Roger Courtland Williams Jr Birth Date [redacted]

Spouse's Name Kaitlyn Williams Birth Date [redacted]

Anniversary Date: 07/28/07

Alma Mater Auburn University Spouse's Auburn University

Palmetto Bluff Address: 22 North Drayton Street Lot Number: 42

Full Time Residence ☐ Part Time Residence ☐ Vacation Home ☒ Lot ☐

Primary Home Mailing Address 10 La Vista Court

Primary Billing Address 10 La Vist Court

Preferred Club Contact: Mail: Billing:____PB____Home Phone____Cell Phone____Email X

Telephone:
Home Phone: 864-906-8333 Fax Number:

Primary E-mail Address: corleystreet@yahoo.com Primary Cell: 864-906-8333

Spouse E-mail Address: kaitlynwilliams@me.com Spouse Cell: 864-906-8334

Email Disclaimer:
By providing your email address, you are giving the Palmetto Bluff Club permission to send you emails.

Initial CW (DS) Initial KW (DS)

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Members' vertical family members (includes member's spouse or Significant Other and their children, parents, grandparents, grandchildren, and great-grandchildren and the spouses (or Significant Others) of such family members, who do not own a residence in Palmetto Bluff or reside on a permanent or temporary basis in Beaufort or Jasper County, South Carolina or Chatham County, Georgia) receive full family privileges as described in the Membership Plan, except that the Club may limit some or all preferred pricing to the member, spouse or Significant Other and unmarried children under the age of 25. Vertical Family Members do not include any other family members, including siblings, nieces and nephews. Indicate below whether Member directs the Club to have such family member's charges billed to the member's club account; if not, the family member will be required to pay for charges in cash or by credit card at time of purchase.

Unmarried children under age 25 living at home:

Name	Birth Date	Charge Privileges
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑
_____	_____	Yes ❑ No ❑

Vertical Family Members: *Children not listed above, parents, grandparents, grandchildren, great-grandchildren and the spouses (or Significant Others) of such family members. Vertical Family Members do not include any other family members, including siblings, nieces and nephews.*

Name	Date of Birth	Relationship	County, State	Charges Billed to Member Account
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑
_____		_____		Yes ❑ No ❑

Initial CW Initial KW

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TRANSFER OF MEMBERSHIP

I hereby understand that to continue my Community Membership, I must meet the requirements of one of the below. (Select transfer that applies.)

[X] ***Simultaneous Sale of Lot and Purchase of New Lot.***

I am selling my Palmetto Bluff property Lot 42 Address 22 N. Drayton St. and wish to transfer my Palmetto Bluff Community membership to the new property

Lot 5556 Address 311 Corley Street

[ ] ***Current Sale of Lot; Future Purchase of New Lot.***

I am selling my Palmetto Bluff property Lot_____Address_____) and wish to transfer my Palmetto Bluff Community membership to a new property, and understand I must be under contract to purchase the new property within ninety (90) days of the closing on the sale of the prior property. Club and charging privileges will be suspended during the period of the sale of the current lot until another Palmetto Bluff homesite is under contract to be purchased by the member.

[ ] ***Current Purchase of New Lot; Future Sale of Lot.***

I am purchasing a new Palmetto Bluff property

New Lot_____Address_____

and wish to transfer my Palmetto Bluff Community membership to this new property, and understand I must close on the sale of my prior property within twenty four (24) months of closing on purchase of the new property I will be responsible for paying applicable club dues and fees associated with both properties until the additional property has sold. Lot Intended to sell _____ Address_____)

[ ] *Consolidation of Newly Purchase Lot into Currently Owned Adjacent Lot.*

I am purchasing a new Palmetto Bluff property (New Lot_____Address_____,

and wish to consolidate this lot into my existing Lot Owned: Lot_____Address_____.

I understand that I must legally consolidate these properties within twenty four (24) months of closing on the purchase of the new property. I will be responsible for paying all applicable club dues and fees associated with both properties until the additional property has been consolidated. The joining fee on the new property will become due if not consolidated within this twenty four (24) month period. This consolidation is only available for the consolidation of a single adjacent lot.

Initial DS _____ Initial _____

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II. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership Club Dues, plus applicable sales tax and other taxes for the category of membership selected as well as any User Fees or other charges. The current amount of Club Dues for each membership category is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. If the Club bills any amounts to my credit card pursuant to the below authorization, the Club may pass through to me and I shall be responsible for payment of credit card fees. I acknowledge and agree that the obligation to pay Club Dues and other amounts shall be a charge and continuing lien in favor of the Club and the Trust encumbering each residence or homesite owned by me pursuant to the Charter and Recreational Covenant.

Credit or Debit Card Authorization. All members are required as a condition to enjoying membership privileges are required to complete the separate Credit Card Authorization Form, with each member having the option to authorize the Club to bill the credit card either (i) only if the member does not pay outstanding amounts due on his or her club account when due, or (ii) for all the member's Club Dues, User Fees and charges. Member shall submit a signed Credit Card Authorization Form with this Membership Agreement or promptly after submission of this Membership Agreement to the Club, indicating which option the Member elects.

In the event that any amounts owed to the Club are not paid on a timely basis regardless of which option I elect above, I understand that I may be charged a late payment charge in accordance with the Rules and Regulations.

III. MEMBERSHIP JOINING FEE

I may continue my membership without having to pay an additional Membership Joining Fee, subject to the above deadlines for sale (or consolidation) of the prior residence or homesite and acquisition of the new residence or homesite.

IV. MEMBERSHIP PLAN DOCUMENTS

I hereby acknowledge receipt of the Membership Plan, and Rules and Regulations, and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club.

I hereby irrevocably agree to fully substitute the membership privileges acquired pursuant to the Membership Plan and Rules and Regulations for any present or prior rights in or use of the Club Facilities. This Membership Agreement supersedes my prior membership agreement.

V. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club Facilities referred to in the Membership Plan in accordance with the Membership Plan and Rules and Regulations. Membership in the Club grants to the member a revocable license to use the Club Facilities, but does not give a member a vested or prescriptive right or easement to use the Club Facilities. Membership in the Club is not an investment in the Club or Palmetto Bluff Club, LLC (the "Company") and does not provide a member with an equity or ownership interest or any other property interest in the Company or Club or the Club Facilities.

Initial CW Initial KW

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A member only acquires a revocable license to use the Club Facilities in accordance with the terms and conditions of the Membership Plan and Rules and Regulations, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Plan,

The Rules and Regulations and this Membership Agreement are subordinate to the lien of any mortgage encumbering the Club Facilities from time to time.

The Company reserves the right, in its sole and absolute discretion, from time to time, to modify the Membership Plan and Rules and Regulations, to reserve memberships, to sell, lease, renovate or remodel, or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever (subject to the members' right of first offer), to add, issue, modify, establish any type, category or class of membership or dues categories, to discontinue operation of any or all of the Club Facilities, to convert the Club into a member-owned club, and to make any other changes to the Membership Documents, in the terms and conditions of the memberships or the Club Facilities available for use by members.

I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to me, my guests and my family sustained while using the Club Facilities or while involved in any event or activity incident to membership in the Club. I agree to release and hold the Company, any manager of the Club Facilities, their affiliates, their successors and assigns and their respective shareholders, partners, directors, officers, members, employees, representatives, agents and the members of the Club's committees harmless in accordance with the provisions of the Rules and Regulations of the Club.

* * *

Initial DS CW Initial DS KW

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This Intent to Transfer Membership shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of law.

If the member is married, the signatures of both spouses are required.

Dated: 1/13/2022, 20__

DocuSigned by:
Courtland Williams
FF0103504BB74E3...
Member's Signature

Roger Courtland Williams Jr

Printed Name

Dated: 1/14/2022, 20__

DocuSigned by:
Kaitlyn Williams
8C66CE68FF034E5...
Spouse's Signature

Printed Name

This Intent to Transfer Membership shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY

PALMETTO BLUFF CLUB, LLC

By: DocuSigned by:
Gray Ferguson
31AFD98C88B5493...
Authorized Representative

Printed Name: _____

Title: _____

Dated: 1/18/2022, 20_

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PALMETTO BLUFF CLUB

For Club Use Only

Club Member Account Number: _____ **LotNumber:** _____

New Property Lot_____Address_____Closing Date_____

DS
ES

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS CASE NO.: 2022-CP-07-00632
315 Corley CW LLC; 368 Mount Pelia LLC; Bridge Charleston Investments B LLC; Bridge Charleston Investments C LLC; Bridge Charleston Investments E LLC; Bridge Charleston Investments H LLC; Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West LLC; One Rumford Lane LLC; Salt Works LLC; and TTJR LLC; individually, derivatively, and as class representatives, as set forth herein, Plaintiffs, v. Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PBLH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards: Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25, Defendants.	**PLAINTIFFS BRIDGE CHARLESTON INVESTMENTS B LLC'S, GEOFFREY J. BLOCK'S AND JENNIFER ALBERO'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: VAL H. STIEGLITZ, ESQUIRE, AND THE DEFENDANTS ABOVE-NAMED

You will please take notice that Plaintiffs Bridge Charleston Investments B LLC, Geoffrey J. Block, and Jennifer Albero, individually and derivatively, will move before

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the Presiding Judge of the Court of Common Pleas for Beaufort County ten (10) days after service hereof, or at such a time as is convenient to the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Summary Judgment in their favor as to the following causes of action:

I. Plaintiffs' First Cause of Action, against all Defendants, for Declaratory Judgment, declaring that:

   a. The transfer fee covenant and mandatory Club membership are unlawful and are void *ab initio*.

   b. The transfer fee covenant and mandatory Club membership may not be enforced going forward.

   c. The Club Membership Plan, Membership Agreement, and associated documents are unlawful, invalid, unconscionable, and void.

II. Plaintiffs' Second Cause of Action, against Defendants Palmetto Bluff Development LLC, Palmetto Bluff Club, LLC, and Palmetto Bluff Preservation Trust, Inc., for Violation of the South Carolina Homeowners Association Act.

The grounds for this Motion are that no genuine question of material fact exists, and these Plaintiffs are entitled to judgment as a matter of law in their favor on each of the above-listed causes of action. This motion will be supported by the verified pleadings, affidavits, and other such materials as may be submitted to the Court prior to the hearing, including, but not limited to memoranda of law.

[signature block appears on next page]

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian S. Ford
Ian S. Ford (S.C. Bar No. 12463)
Ian.Ford@FordWallace.com
Ainsley F. Tillman (S.C. Bar No. 70551)
Ainsley.Tillman@FordWallace.com
Hunter H. James (S.C. Bar No. 78877)
Hunter.James@FordWallace.com
715 King Street
Charleston, SC 29403
(843) 277-2011
www.FordWallace.com

June 9, 2022
Charleston, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

315 Corley CW, LLC; 368 Mount Pelia, LLC; Bridge Charleston Investments B, LLC; Bridge Charleston Investments C, LLC; Bridge Charleston Investments E, LLC; Bridge Charleston Investments H, LLC; Anne Bosler and Dylan Hart, as Trustee of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live Oak Assets, LLC; Matthew N. Lynch and Barbara A. Lynch; MKM 22 West, LLC; One Rumford Lane, LLC; Salt Works, LLC; and TTJR, LLC; individually, derivatively, and as class representatives, as set forth herein,

Plaintiffs,

vs.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC; Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.; Palmetto Bluff Preservation Trust Board of Stewards; Jordan Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners, LLC; John Does 1-25,

Defendants.

Case No. 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO SCRCP 12(B)(8)

Defendants Palmetto Bluff Development, LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Real Estate Company, LLC, PLBH, LLC, Montage Palmetto Bluff, LLC, Palmetto Bluff Preservation Trust, Inc., Palmetto Bluff Preservation Trust Board of Stewards, Jordan Phillips, Mark Polites, Gray Ferguson, Henry Armistead, and South Street Partners, LLC ("Defendants") have moved to dismiss this action pursuant to Rule 12(b)(8), SCRCP, because an identical action,

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involving the identical parties, seeking the identical relief, is pending before the American Arbitration Association ("AAA"). Pursuant to the applicable case law, this action should, therefore, be dismissed.

I. THE PENDING AAA ACTION

On April 12, 2022, the Plaintiffs filed the Complaint in this action in the Beaufort County Circuit Court.

On April 14, 2022, the same Plaintiffs filed a Demand for Arbitration before the AAA, attaching to their Arbitration demand a copy of the very Complaint they had filed before this Court. A true and accurate copy is attached as Exhibit A to Defendants' Motion to Dismiss, which Defendants filed with the Court on May 24, 2022.

On May 10, 2022, the Plaintiffs filed a Motion to Stay Arbitration / to Conduct Further Proceedings.

On May 23, 2022, the Defendants (as Respondents in the arbitration) filed a Counter-Demand with the AAA. A true and accurate copy is attached as Exhibit C to Defendants' Motion to Dismiss, which Defendants filed with the Court on May 24, 2022.

On May 24, 2022, the Defendants filed this Motion to Dismiss under SCRCP 12(b)(8) or, in the alternative, to Compel Arbitration.

On June 7, 2022, the Defendants (as Respondents in the arbitration) filed a Counterclaim in the arbitration, seeking a Declaratory Judgment as to the claims asserted in the Complaint, which the Plaintiffs had filed in this Court as well as in the AAA filing. (See Exhibit "A hereto.")

The applicable law is quite clear, and mandates dismissal here, where there is complete identity between the parties and the claims in both the AAA forum and the Circuit Court.

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II. THE RULE 12(B)(8) CASE LAW MANDATES DISMISSAL

Rule 12(b)(8) mandates dismissal of an action when "there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (Ct. App. 2009); *see also Corbett v. City of Myrtle Beach, S.C.*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999) (finding dismissal proper under Rule 12(b)(8) where the action "involve[d] the same parties and [was] based upon the same facts and circumstances"). South Carolina courts "interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings," *Cap. City Ins.*, 382 S.C. at 106, 674 S.E.2d at 532. The present case is a shining exemplar of an action warranting dismissal under Rule 12(b)(8), having *complete* identity of parties and claims. It is unclear whether Plaintiffs intended for their initial AAA filing to be directed to just one of the Defendants, as they attached their Circuit Court Complaint to this filing. In any event, however, that filing was quickly followed by a Counter-demand on behalf of all Defendants, and a Counterclaim by all Defendants, such that complete identity of parties unquestionably exists at present.

South Carolina courts recognize that "substantial similarity" between the parties and claims is sufficient to satisfy Rule 12(b)(8). *See, e.g., Cap. City Ins.*, 382 S.C. at 106, 674 S.E.2d at 532 (stating the claim must be precisely "*or substantially the same*" in both proceedings); *Corbett*, 336 S.C. at 610, 521 S.E.2d at 281 (affirming dismissal under Rule 12(b)(8) despite one action being for wrongful death and survivorship and the other for negligent infliction of emotional distress, because both actions were "based upon the same facts and circumstances"); *Freemantle v. Preston*, 398 S.C. 186, 196 n. 4, 728 S.E.2d 40, 45 (2012) (holding the parties and claims were not

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"substantially similar" to warrant Rule 12(b)(8) dismissal). This case easily clears this bar. However, Defendants submit the more stringent requirement of "precisely the same" parties and claims is also present, leaving no doubt that the requirements of Rule 12(b)(8) are met. Indeed, the procedural posture of this action presents an even stronger case for dismissal than the cases in which dismissal under Rule 12(b)(8) was affirmed.[1]

For example, in *Corbett*, the plaintiff brought one action for wrongful death and survivorship as an individual and as personal representative of her husband's estate and brought a separate action for negligent infliction of emotional distress in her individual capacity arising from the same incident. Even though the capacities in which the suits were brought and specific claims were slightly different in the two cases, the Court still found dismissal proper under Rule 12(b)(8) based on the substantial similarity between the two actions. Moreover, in *Sladek v. Sladek*, the Court affirmed Rule 12(b)(8) dismissal where one action was filed by a mother against a father for violation of a divorce decree in family court and another action was filed by the daughter for an accounting and damages in circuit court. *See* No. 05-UP-210, 2005 WL 7083851 (S.C. Ct. App. March 21, 2005). Even though the named parties in the two actions were different and the daughter

[1] Additionally, this case is highly distinguishable from the cases in which Courts have reversed Rule 12(b)(8) dismissals. In *Cap. City Ins.*, one proceeding involved an employer suing an insurance company over a modifier applied to its worker's compensation policy, while the other action was brought by the insurance company against the employer for breach of contract and fraud. *See* 382 S.C. at 96-97, 674 S.E.2d at 527. Finding that the two actions did not involve the same claims, the Court stated that the two proceedings were "fundamentally and structurally different from each other" and reversed Rule 12(b)(8) dismissal. *Id.* at 106, 674 S.E.2d at 532. Also, in *Freemantle*, the Court rejected Rule 12(b)(8) dismissal where the only similarity was the relief sought in the two actions; the parties and claims were not the same in the two cases. *See* 398 S.C. at 196 n.4, 728 S.E.2d at 45. Finally, in *S.C. Pub. Int. Found. v. Richland Cnty.*, the Court similarly reversed Rule 12(b)(8) dismissal of a case brought by taxpayers against Richland County alleging unlawful use of a penny tax, where there was a pending suit by Richland County against the Department of Revenue ("DOR") for refusal to remit penny tax funds to the County. *See* 436 S.C. 271, 280, 871 S.E.2d 599, 604 (Ct. App. 2021). Although the Court acknowledged that the DOR has authority to police the subject of the penny tax, the Court ultimately found dismissal inappropriate because there was "no denying some of [the plaintiffs'] claims [were] different from the claims in the DOR litigation." *Id.* The grounds upon which reversal of a Rule 12(b)(8) dismissal in the foregoing cases was based are undeniably not present here. In contrast to these "reversal" cases, the parties and claims in the current action are identical to those in the AAA proceeding.

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could not obtain the damages she sought in family court, the Court found that the daughter was the "real party at interest" in both cases and the "gist" of the mother's action was the same as the daughter's – that the father mismanaged the daughter's trust funds. *See id.* at *2. The crux of the Court's decision was that "the *claims* in both matters were the same." *Id.* Certainly, the claims in the current case are the same as the pending AAA matter with the present case going even further to meet the precise requirements of Rule 12(b)(8) having identical parties as well. Consequently, there is no question that Rule 12(b)(8) applies here warranting dismissal of this case.

III. CONCLUSION

Based on the foregoing, the Court should dismiss this action pursuant to Rule 12(b)(8), SCRCP, as an action is currently pending before the AAA involving identical and / or substantially similar claims and parties.

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July 15, 2022