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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

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 II (Pages 490-965)**

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

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 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.

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL
ARBITRATION**

- AND -

**IN OPPOSITION TO PLAINTIFF'S
MOTION TO STAY ARBITRATION /
FOR SUMMARY PROCEEDINGS**

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 under SCRCP 12(b)(8). That motion has been separately

briefed. In the alternative, however, the Defendants have moved to compel arbitration, based upon a broad arbitration clause in both the Palmetto Bluff Club Membership Agreement and the Palmetto Bluff Club Membership Plan, and/or other applicable legal principles. The Plaintiffs have moved to stay arbitration, and for the Court to conduct summary proceedings declaring the arbitration clauses invalid. Accordingly, the Court is presented with competing motions regarding arbitration.

This brief addresses the arbitration issues raised by these competing motions. Pursuant to South Carolina law, as well as the Federal Arbitration Act (“FAA”), and in the event this action is not dismissed under SCRCP 12(b)(8):

- 1) The Defendants’ Motion to Compel Arbitration should be granted, and the Plaintiffs’ Motion to Stay / for Summary Proceedings should be denied; and
- 2) The arbitration panel should decide any remaining issues raised by these competing motions.

PROCEDURAL POSTURE

- a) The Plaintiffs filed this action in Circuit Court on April 12, 2022.
- b) On April 14, 2022, the Plaintiffs filed a demand for Arbitration with the American Arbitration Association (“AAA”), which attached, as an exhibit, the very Complaint they had filed in Circuit Court.
- c) On May 10, 2022, the Plaintiffs filed a Motion to Stay Arbitration and a Motion for Summary Proceedings in the Circuit Court.
- d) On May 23, 2022, the Defendants filed a Counter-Demand with the AAA. On June 7, 2022, the Defendants filed a Counterclaim in the AAA.

- e) On May 24, 2022, the Defendants filed a Motion to Compel Arbitration in the Circuit Court.

The AAA process is underway and proceeding, with the parties required to make their “strikes” of potential arbitrators by July 22, 2022. The next step will be to empanel a 3-arbitrator panel, and establish a schedule for discovery, motions, and a merits-arbitration.

THE ARBITRATION CLAUSE

When an individual agrees to purchase property at Palmetto Bluff, they also agree to join the Palmetto Bluff Club, which is a social / recreational association that provides a broad range of amenities and activities for Club members. Each of the Plaintiffs joined this Club when they bought property at Palmetto Bluff, and have used and benefited from the Club over the years. The Palmetto Bluff Club is the fulcrum of the Plaintiffs’ claims. When a person joins the Club, they sign a Membership Agreement.¹ Each Plaintiff signed a Membership Agreement.² (See, Affidavit of G. Ferguson, attached as Exhibit “A.”) The Membership Agreement contains an arbitration clause, properly noticed under South Carolina law, as follows, in relevant part:

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. (*Emphasis added.*)

Each Membership Agreement also states that each member (Plaintiffs herein):

¹ Copies attached at Exhibit D to Defendants’ Motion to Dismiss.

² The Ferguson Affidavit explains an anomalous scrivener’s error concerning execution by the Bridge Charleston Investment entities.

acknowledges receipt of the Membership Plan and agrees to be bound by all of its respective terms and conditions, as they may be amended from time to time.

The Palmetto Bluff Club operates pursuant to a Membership Plan. The Membership Plan contains the following arbitration clause, in relevant part:

Subject to the provisions of below paragraph, **any and all controversies, disputes or claims relating directly or indirectly to, or arising 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. *(Emphasis added.)*

As is evident, the arbitration clauses in the two documents are expansive and comprehensive, encompassing **all** claims directly or indirectly related to or arising from the Club Membership Agreement or the Club Membership Plan, or the breach thereof. The arbitration clauses are bilateral, binding both the members of the Club and the Club.

I. THE ARBITRATION PANEL IS THE PROPER FORUM TO DECIDE ALL ISSUES OF ARBITRABILITY. THE PARTIES AGREED THAT THE FACIAL CONFLICT BETWEEN S.C. CODE ANN. § 15-48-20 AND AAA RULE 7 MUST BE RESOLVED BY THE ARBITRATORS.

Plaintiffs are incorrect to suggest S.C. Code Ann. § 15-48-20 requires this Court—rather than the arbitration panel—to decide the arbitrability question. There is no question every individual Plaintiff, and the individual owners of the LLC-Plaintiffs, with the exception of Jennifer Albero and Geoffrey Block, have signed arbitration agreements with one or more Defendants,³

³ Albero and Block's Membership Agreements did not contain an arbitration clause, but did acknowledge being subject to the Membership Plan.

and that Plaintiffs' claims fall within the broad scope of these agreements. As further set forth below, Plaintiffs' claims clearly arise out of and directly relate to the documents containing the arbitration provisions. Indeed, the Plaintiffs attach the Membership Plan (with its arbitration clause) as an exhibit to their Complaint, and contend vigorously they are not receiving all the benefits they believe they are entitled to under the Membership Plan.

The plain terms of the arbitration clauses in both the Membership Agreement and the Membership Plan require **all** controversies or disputes related to the Membership Agreement and / or Plan to be resolved "in accordance with the Commercial Arbitration Rules of the American Arbitration Association." (See, e.g., Membership Plan at 15.) Parties to a contract may set the rules of arbitration by reference, including by referencing "the rules of a particular association," such as the AAA. *Shaw v. East Coast Builders of Columbia*, 291 S.C. 482, 484, 354 S.E.2d 392, 392 (1987) (quoting *First Baptist Church v. Creed & Sons, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 122-23 (1981)). "[W]here the rules or regulations referred to provide the arbitration, the reference is generally held to be sufficient to bind the parties to future arbitration." *Id.*

The AAA rules referenced in the arbitration agreements provide that the arbitrator is to decide both the scope of his / her own jurisdiction and "any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." See AAA Rule R-7, which provides as follows:

R-7. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

Subparagraphs (a) and (b) of Rule 7 plainly give the arbitrator the authority to “determine the existence or validity of a contract of which an arbitration clause forms a part.” *Id.* R-7(b). “By incorporating the AAA Rules into their agreement, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid.” *Terminix Int’l Co., LP v. Palmer Ranch Ltd. P’ship*, 432 F.3d 1327, 1332 (11th Cir. 2005) (emphasis added). In other words, the parties agreed that the arbitrators would decide the very issues Plaintiffs are raising in their Motion to Stay / For Summary Proceedings.

Although AAA Rule 7 and S.C. Code Ann. § 15-48-20 may facially conflict, the FAA resolves the conflict in favor of Rule 7. The United States Supreme Court has held that the FAA allows parties to agree to have an arbitrator decide “whether the parties have agreed to arbitrate,” and has specifically enforced such a “delegation provision” in the AAA Rules. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). In *Rent-A-Center, West, Inc. v. Jackson*, for example, the United States Supreme Court addressed whether a court may “decide a claim that an arbitration agreement is unconscionable, where the agreement explicitly assigns that decision to an arbitrator.” 561 U.S. 63, 65 (2010). The Court held that a court could not decide that issue unless the party claiming unconscionability “challenged the delegation provision specifically.” *Id.*

at 72. Otherwise, the FAA requires a court to “treat [the delegation provision] as valid . . . and must enforce it . . . , leaving any challenge to the validity of the Agreement as a whole for the arbitrator.” *Id.*; accord *Henry Schein*, 139 S. Ct. at 528. The delegation provision must be enforced even if a Court considers the argument leading to the dispute to be “wholly groundless.” *Henry Schein*, 139 S. Ct. at 531.

Here, Plaintiffs’ motion to stay arbitration does not specifically challenge the enforceability of the “delegation provision.” In fact, Plaintiffs ignore that provision altogether. Instead they challenge only the validity of the agreement to arbitrate. (See, Plaintiffs’ Motion, 3.) Under *Henry Schein*, that issue *can* be sent to arbitration. Rule 7 *does* send that issue to the arbitrator. Under *Henry Schein* and *Rent-A-Center*, Plaintiffs’ failure to specifically challenge the delegation provisions of Rule 7 means that the validity of Plaintiffs’ agreement to arbitrate *must* be left to the arbitrator.

Plaintiffs cite the South Carolina Supreme Court’s decision in *Simpson v. MSA of Myrtle Beach, Inc.*, which declined to apply a delegation clause because the party resisting arbitration “challenged the validity of the entire arbitration clause on grounds of unconscionability[.]” 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). *Simpson* is “out of sync,” however, with our Court’s numerous more recent rulings that unmistakably favor arbitration. It is not possible to square the fifteen-year-old holding in *Simpson* with subsequent and more recent decisions from our appellate courts concerning the importance of upholding arbitration clauses. Further, State-law based impediments to arbitration are specifically disfavored under the FAA. See *Doctor’s Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (“Courts may not, however, invalidate arbitration agreements under state laws applicable only to arbitration provisions.”). *Id.* at 688 (arbitration-specific typeface requirement preempted as “threshold limitation[] placed specifically and solely

on arbitration provisions.”); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-49 (2006) (reaffirming *Prima Paint* and its application to state court proceedings); *see also*, *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 854 (7th Cir. 2002) (“[The FAA] forbids a state to discriminate against arbitration clauses; the state must give them the same respect it gives ordinary contracts.”) In fact, State-law based procedures that impede arbitration are superseded by the FAA. *See Kilgore v. KeyBank, Nat. Ass’n*, 673 F.3d 947, 956 (9th Cir. 2012) (“[A] state statute or judicial rule that applies only to arbitration agreements, and not to contracts generally, is preempted by the FAA.”) *See also Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1367 (11th Cir. 2005) (“The FAA preempts State law to the extent it treats arbitration agreements differently than other contracts.”) Under all the prevailing authority, the Court should direct this case, and all issues concerning arbitrability and validity, to the arbitration panel (which is shortly due to be empaneled).

This result makes even more sense upon examining how completely the factual and commercial setting of *Simpson* differs from the factual and commercial setting of the case at bar. The *Simpson* case involved an unsophisticated individual, with no bargaining power, making a consumer purchase of a necessity of modern life (a car). Here, in stark contrast, we have extremely sophisticated, highly-educated, and high-income individuals, with significant bargaining power, who operate very successfully in the worlds of finance, money, investments, and real estate, and who spent hundreds of thousands of dollars to make an entirely discretionary luxury and lifestyle purchase, that can hardly be considered a “necessity.” (See Exhibit “B”, compiling public-record materials showing the striking sophistication of the Plaintiff group.) These Plaintiffs cannot seriously claim to stand in the same shoes as the Plaintiff in *Simpson*; in fact, they stand at the

complete other end of the spectrum from the Plaintiff in *Simpson*.⁴ The factors that caused the Court in *Simpson* to find the arbitration clause invalid compel the exact opposite result here.

Moreover, the later decisions in *Henry Schein* and *Rent-A-Center* abrogate *Simpson* in the face of the delegation clause at issue here. As the Court of Appeals recently acknowledged, under current law “the court still retains the right and duty to determine whether the delegation is valid and enforceable” only “as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole.” *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). The arbitration clause in *Doe* did not “delegate the decision of whether the Agreement was valid and enforceable,” which “remove[d] the Agreement from the reach of *Rent-A-Center*.” *Id.* at 609.

Here, in contrast, the arbitration clauses plainly delegate to the arbitrator the authority to determine the existence and validity of an arbitration agreement and to determine the existence and validity of the underlying contract. *See Henry Schein*, 139 S. Ct. at 528. Accordingly, “the FAA requires [this Court] to honor that agreement” and leave both the existence of a contract *and* the existence of an arbitration agreement to the arbitrator. *Doe*, 430 S.C. at 609. That conclusion holds even if a Court finds some ambiguity in the Membership Agreement or Membership Plan’s arbitration language, or the AAA rules which the agreements incorporate by reference. “The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of

⁴ For example, it appears that one of the LLC-owner-Plaintiffs in this action, Michael Addy, was / is President of Addy Dodge, the company attempting to enforce the arbitration agreement in *Simpson*. Mr. Addy cannot credibly contend he did not understand arbitration agreements, when the Court found his company used them in all its consumer transactions.

arbitrable issues should be resolved in favor of arbitration.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (citations omitted).

Thus, the arbitration panel is the proper forum to decide any and all issues regarding the validity and enforceability of the arbitration agreements as to all Plaintiffs, including the issues raised by the Plaintiffs’ in opposition to arbitration.

II. INDEPENDENT OF WHETHER THE ARBITRATORS SHOULD DECIDE ISSUES OF ARBITRABILITY, THIS COURT SHOULD COMPEL ARBITRATION OF THE PLAINTIFFS’ CLAIMS.

If this Court nonetheless addresses the validity and scope of the arbitration agreements at issue here, it should compel arbitration of the Plaintiffs’ claims.

A. The Plaintiffs’ claims plainly fall within the arbitration clauses:

The arbitration clauses at issue are broad in scope and apply to “**any and all** controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from” the Membership Agreement or Membership Plan. A cursory review of the Complaint shows that its allegations relate to these plans, and therefore fall within the scope of the arbitration agreements. In fact, the Plaintiffs even attached the Club Membership Plan—including its arbitration clause—as an exhibit to their Complaint. And, the Complaint itself features numerous explicit and colorful allegations illustrating how central the Club is to their claims. For example:

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.

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.

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:
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
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.
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.
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.

Further underlining the pivotal role of the Club and its Membership Plan to the Complaint is the letter from Plaintiffs’ Counsel to Defense Counsel, which the Plaintiffs attached to their Complaint at Exhibit 5, stating:

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.

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 pursue 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.

These references, in the body of the Complaint and in the exhibits thereto, demonstrate that the Palmetto Bluff Club is at the core of Plaintiffs' claims, such that the claims in this action fall squarely within the arbitration provisions of the Membership Agreement and Membership Plan.

B. South Carolina strongly favors enforcement of arbitration clauses:

Consistent with Federal policy, South Carolina law strongly favors the validity and enforceability of arbitration agreements. Section 15-48-10 of the South Carolina Code Annotated provides that "[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code Ann. § 15-48-10(a) (2013).⁵ This policy is so strong that, as a matter of law, any doubts are to be resolved in favor of arbitration. *See, e.g., AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986); *Landers v. Fed. Deposit Ins. Corp.*,

⁵ While Section 15-48-10 of the South Carolina Code Annotated is relevant to the extent it demonstrates a strong policy in South Carolina favoring enforcement of arbitration agreements, any provisions that impose special burdens on arbitration agreements are nonetheless preempted by the FAA, as set forth above. Thus, its provision that "[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" is likewise preempted and inapplicable to the arbitration agreements at issue. S.C. Code Ann. § 15-48-10(a) (2013); *Doctor's Associates*, 517 U.S. at 688. Nonetheless, the Membership Agreement, which specifically refers to and incorporates the Membership Plan, complies with such notice provisions.

402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013). *See also Hatcher v. Edward D. Jones & Co., L.P.*, 379 S.C. 549, 552, 666 S.E.2d 294, 296 (Ct. App. 2008) (“Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should ordinarily be ordered.”).

“Due to the strong South Carolina and Federal policy favoring arbitration, arbitration agreements are presumed valid.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013). “Such a presumption is strengthened when an arbitration clause is broadly written.” *Landers v. Federal Deposit Ins. Corp.*, 402 S.C. at 109, 739 S.E.2d at 213. “Therefore, unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute, arbitration must generally be ordered.” *Id.* (quoting *American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996)) (internal quotation marks omitted). “Although the intention of the parties is relevant, as a matter of policy, arbitration agreements are liberally construed in favor of arbitrability.” *Landers*, 402 S.C. at 108, 739 S.E.2d at 213 (citation omitted).

At bottom, the arbitration provisions at issue, in the Membership Agreement and Membership Plan, are broadly worded. Further, it is readily apparent from the face of the Complaint and its exhibits that Plaintiffs’ claims arise directly from, and pursuant to, the Membership Agreements and Membership Plan. Accordingly, the arbitration provisions at issue cover the dispute and are presumptively valid.

C. South Carolina law recognizes that nonsignatory Parties can be compelled to arbitration, and all claims against all parties here are subject to arbitration.

While, as previously noted, Plaintiffs Albero and Block did not sign arbitration agreements, South Carolina law clearly recognizes that nonsignatories can be compelled to arbitration. “[A]n arbitration agreement must be enforced notwithstanding the presence of other persons who are

parties to the underlying dispute but not to the arbitration agreement,” and such nonsignatory parties “do not defeat the arbitrable nature of [the] entire dispute.” *Hinson v. Jusco Co., Ltd.*, 868 F. Supp. 145, 149 (D.S.C. 1994) (citation omitted). Moreover, “[w]ell-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000). South Carolina courts have likewise recognized that a nonsignatory can be bound by an arbitration provision within a contract executed by other parties. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287-97, 733 S.E.2d 597, 599-605 (Ct. App. 2012) (reversing Circuit Court’s denial of motion to compel arbitration and discussing, with approval, the Fourth Circuit’s recognition that a nonsignatory may be compelled to arbitration).

South Carolina recognizes several ways a nonsignatory can be bound to an arbitration agreement, “including: 1) incorporation by reference; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel.” *Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (citing *Malloy v. Thompson*, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014)). *See also Campbell v. Anesthesia Management Solutions, LLC*, No. 5:20-CV-3538-SAL-TER, 2021 WL 4691692, at *4 (D.S.C. July 14, 2021) (recognizing that non-signatories may be bound, “[b]ecause traditional principles of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel.”). South Carolina courts have also followed Federal courts in recognizing that a third-party beneficiary of a contract containing an arbitration clause may be compelled into arbitration as a nonsignatory. *See Malloy*, 409 S.C. at 562, 762 S.E.2d at 692 (citing *Bridas S.A.P.I.C. v. Gov’t of Turkmenistan*, 345 F.3d 347 (5th Cir. 2003)).

(1) The Nonsignatory Plaintiffs Are Compelled to Arbitration Under the Doctrine of Equitable Estoppel.

The doctrine of equitable estoppel applies in two situations to compel a nonsignatory to arbitration: (1) when the nonsignatory's claims arise out of and relate directly to the written agreement containing the arbitration provision, and (2) when the nonsignatory receives a direct benefit from a contract containing an arbitration provision. *See Pearson*, 400 S.C. at 290-97, 733 S.E.2d at 601-05. *See also Kiawah Island Utility, Inc. v. Westport Insurance Co.*, No. 2:19-cv-1359-DCN, 2019 WL 5394200, at *3 (D.S.C. Oct. 22, 2019); *Am. Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 626-30 (4th Cir. 2006). Both situations are present here, and provide independent grounds on which the nonsignatory Plaintiffs can, and should, be compelled to arbitrate all their claims against all the Defendants.

i. *The Claims of the Nonsignatory Plaintiffs Arise Out of and Relate Directly to the Documents Containing the Arbitration Provisions*

“[A] nonsignatory should be estopped from denying it is bound by an arbitration clause when its claims against the signatory arise from the contract containing the arbitration clause.” *Am. Bankers*, 453 F.3d at 628 (citing *R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n*, 384 F.3d 157, 162 (4th Cir. 2004)) (internal quotation marks omitted). Here, the crux of Plaintiffs’ claims is that Defendants purportedly created a “scheme” to mandate all property owners become members of the Club and pay fees for Defendants’ own profit, and that the Club Membership Agreement, Membership Plan, and “associated documents” are purportedly unlawful and invalid. These claims clearly arise out of and directly relate to contracts containing arbitration provisions. Indeed, Plaintiffs’ claims rely upon the existence of such documents and a determination of Defendants’ alleged liability requires reference to and is dependent upon such documents.

Moreover, Plaintiffs' claims are, by their very nature, collective. Of Plaintiffs' sixteen causes of action, fifteen of them are brought on behalf of all Plaintiffs.

The nonsignatory Plaintiffs cannot bring claims based upon an alleged coordinated scheme by all the Defendants, allegedly injuring all Plaintiffs, and arising from the governing documents and associated contracts, yet only rely on the documents they actually signed in deciding the arbitrability of those issues. *See Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (applying to nonsignatories the proposition that “[w]hen each of a signatory’s claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory’s claims arise out of and relate directly to the written agreement, and arbitration is appropriate.”) (quoting *Goer v. Jasco Indus., Inc.*, 395 F.Supp.2d 308, 314 n.9 (D.S.C. 2005)).

Accordingly, the nonsignatory Plaintiffs’ claims against all Defendants arise pursuant to documents containing arbitration agreements, and they may therefore properly be compelled to arbitration. *See also J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 319 (4th Cir. 1988) (recognizing a “clear policy” in favor of arbitrating claims involving nonparties to an arbitration agreement if those claims are based on the same alleged facts underlying claims by or against a party to the agreement).

ii. *The Nonsignatory Plaintiffs Receive a Direct Benefit from the Documents Containing the Arbitration Provisions*

“When a signatory seeks to enforce an arbitration agreement against a non-signatory, [the nonsignatory is estopped] from claiming that [it] is not bound to the arbitration agreement when [it] receives a direct benefit from a contract containing an arbitration clause.” *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (citation omitted). This is because “[t]o allow [a plaintiff] to claim the benefit of [a] contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactments of the [FAA].” *Int’l Paper*, 206 F.3d at 418

(citation omitted). Here, as set forth above, the governing documents and contracts form part of the foundation of every claim asserted by the nonsignatory Plaintiffs, and they seek damages and other remedies pursuant thereto. Thus, the nonsignatory Plaintiffs seek to directly benefit from the existence of documents containing arbitration provisions—and indeed even bring a cause of action for breach of the Club Membership Agreement, Membership Plan, and “associated documents.” They cannot, on the one hand, rely upon those documents while, on the other, avoid the documents’ requirement that such disputes be arbitrated. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (reversing circuit court’s denial of defendant’s motion to compel arbitration, in part, because, even though the plaintiff did not have an arbitration agreement with the hospital, the plaintiff sought damages under multiple contracts, one of which contained an arbitration provision with another defendant, and thus the plaintiff sought a benefit under the contract).

In addition to the nonsignatory Plaintiffs seeking to benefit from the contracts containing the arbitration provisions in this action, the nonsignatory Plaintiffs have also received, and continue to receive, benefits under those contracts in the form of Club membership privileges. (See Ferguson Affidavit, Exhibit “A.”) Specifically, all Plaintiffs, including the nonsignatory Plaintiffs, have used Club amenities and participated in Club activities since joining the Club – and, in fact, also claim in their Complaint that they are unable to use the Club facilities as much as they wish. Having embraced the benefits they received thereunder (and demanded even more benefits), they cannot, despite their nonsignatory status, attempt to repudiate the arbitration clause that is part of the document which has provided them use of the Club. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (reversing circuit court’s denial of defendant’s motion to compel arbitration, in part, because, even though the plaintiff did not have an arbitration agreement with the hospital, he knowingly accepted benefits under a contract between the hospital and another

defendant which contained an arbitration provision). To permit otherwise would be contrary to equity, as well as to South Carolina law and the FAA.

(2) The Nonsignatory Plaintiffs Are Compelled to Arbitration Because of Their Relationship to the Signatories.

To the extent any of the nonsignatory Plaintiffs may attempt to avoid arbitration on the grounds that some of the arbitration agreements were signed by individuals, and not by the Plaintiff LLCs themselves, such argument also fails. It is well-established that a nonsignatory may be bound to an arbitration agreement under traditional agency and contract principles. *See Pearson*, 400 S.C. at 288-97, 733 S.E.2d at 600-05. Here, the Plaintiff LLCs are alter egos, agents, beneficiaries, and/or successors or assigns of the individuals who signed the agreements. They allege the Defendants are all “bundled together” through either an “amalgamation” or “conspiracy” theory. Courts recognize that, where such a relationship exists, the nonsignatory party is bound by the arbitration agreement. *See Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994) (holding nonsignatory bound by arbitration agreement based on its parental status to signatory); *Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997) (holding nonsignatory agents and employees of signatory bound by arbitration clause).

(3) All Defendants May Rely Upon and Enforce the Arbitration Provisions.

While the Defendant party to the Membership Agreements and Membership Plan is the Club, as a matter of law, all Defendants may rely upon and enforce the arbitration provisions therein. Our courts have maintained that a nonsignatory defendant may rely upon an arbitration agreement to which it is not a party where the facts and claims against it and the signatory parties are “closely intertwined,” and where the claims against the nonsignatory defendant are “similar to and dependent upon” the claims subject to arbitration. *See Long v. Silver*, 248 F.3d 309, 320 (4th Cir. 2001). *See also Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (defendant who was not a

signatory to arbitration agreement with plaintiff could invoke arbitration provisions where the claims against both defendants arose from the same set of facts and plaintiff did not distinguish between the defendants).

Here, Plaintiffs' Complaint alleges that the Palmetto Bluff entities are an "amalgamated", "single business enterprise," and that the remaining Defendants have joined in the alleged "conspiracy," which is based upon alleged misuse of Club agreements. Thus, not only do the Plaintiffs lump all of the Palmetto Bluff entities together, but Plaintiffs' claims against all of the Defendants arise under and are intertwined with the Club agreements. Accordingly, all Defendants may invoke the arbitration provisions in the Club agreements. To hold otherwise would render the arbitration proceedings against the Club meaningless and effectively thwart the strong State and Federal policy in favor of arbitration.

D. The Federal Arbitration Act, which applies here, also requires that arbitration be compelled:

Section 2 of the Federal Arbitration Act ("FAA") contains language substantially similar to the South Carolina statute, providing that a "written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (2013).

"Unless the parties have contracted to the contrary, the FAA applies in Federal or State Court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). The FAA provides that:

A written provision in any maritime transaction **or a contract evidencing a transaction involving commerce** to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (*Emphasis added.*)

9 U.S.C. § 2.

Here, the documents containing the arbitration agreements and the allegations forming the basis of Plaintiffs' claims evidence transactions involving interstate commerce. Eight of the property owners in the Plaintiff-group are out-of-State residents, such that their purchases were obviously interstate transactions. (See, Affidavit of G. Ferguson, attached as Exhibit "A.") Further, the Plaintiffs assert that various governing documents at Palmetto Bluff are being used to restrict access to Palmetto Bluff Club amenities by short-term renters. These renters necessarily include individuals located outside of the State of South Carolina, and such rentals are, in fact, marketed nationwide. *Id.* As such, the Plaintiffs' purchases of properties at Palmetto Bluff, and their membership in the Club, also clearly touch commerce across State lines. Accordingly, the FAA governs the arbitration agreements and mandates arbitration of Plaintiffs' claims. Because there is a nexus between the arbitration agreements and interstate commerce, the FAA is applicable and Plaintiffs' claims must be submitted to arbitration. *See Soil Remediation Co. v. Nu-Way Environmental, Inc.*, 323 S.C. 454, 476 S.E.2d 149 (1996).

E. Plaintiffs do not raise any legitimate grounds for finding the arbitration agreements invalid, or staying arbitration:

Although the Plaintiffs claim the arbitration agreements are invalid, they make no credible evidentiary showing of the same, much less a showing sufficient to overcome the presumptive validity of the arbitration agreements. Instead of evidence, the Plaintiffs offer mere generalized assertions that the arbitration agreements are *unconscionable*, *void ab initio*, *invalid*, and

unenforceable. As a matter of law, however, this claim must be rejected. Nor do these assertions survive factual scrutiny.

(1) The Arbitration Agreements Are Not Unconscionable.

To establish the arbitration agreements are unconscionable, Plaintiffs must show both “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.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C 14, 25, 644 S.E.2d 663, 668 (2007). This is a two-prong test, and both prongs must be satisfied. *Marzulli v. Tenet South Carolina, Inc.*, No. 2015-002363, 2018 WL 1531507, at *3 (S.C. Ct. App. Mar. 28, 2018). Moreover, “[u]nconscionability is a narrow doctrine whereby. . . the inequality must be so gross as to shock the conscience.” *Brown v. Green Tree Services, LLC*, 585 F. Supp. 2d 770, 777 (D.S.C. 2008) (citation and internal quotation marks omitted). “The fact that a contract is one of adhesion does not make it unconscionable.” *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 901 (Ct. App. 1998). In fact, the Court has acknowledged that adhesion contracts “serve a very useful purpose in commerce,” including promotion of economic efficiency. *Id.* at 395-96, 498 S.E.2d at 902 (“Determining whether a contract is one of adhesion is merely the beginning point in the analysis [of unconscionability].”) Unconscionability “requires a greater showing.” *Id.* The Plaintiffs are unable to meet this standard.

In evaluating whether there was an absence of meaningful choice, the Court should consider the following: (1) the nature of the injuries suffered by the plaintiff; (2) whether the plaintiff is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause. *Simpson*, 373 S.C. at 25, 644

S.E.2d at 669. Further, “courts may consider whether the party asserting unconscionability spoke English, had the ability to consult an attorney, or faced other circumstances that made signing the contract in a particular instance grossly inequitable.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 575, 787 S.E.2d 498, 516 (2016). A finding of unconscionability should be made only in the most extreme circumstances:

Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.

Gladden v. Boykin, 402 S.C. 140, 145, 739 S.E.2d 882, 884–85 (2013). Where there is no allegation that the party “lacks the education to understand the terms of a contract or protect [his or] her own interests” and “the record demonstrates that [the party] directly engaged in sophisticated negotiations,” even if only an individual consumer, the evidence fails to support a lack of meaningful choice. *Id.* at 145-46, 739 S.E.2d at 885. Furthermore, “a person who can read is bound to read an agreement before signing it” and is presumed to have done so. *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365.

Here, it is undeniable that the Plaintiffs are all extremely sophisticated and experienced business people, who have amassed considerable wealth as a result of their business acumen. Attached as Exhibit B hereto are materials relating to the Plaintiffs drawn from public sources, a brief review of which will highlight the complete implausibility of any claim they were too unsophisticated to know what they were signing. Also significant is the fact that, as discussed above, the Plaintiffs have enjoyed and taken advantage of the benefits of the contract that contains the arbitration agreement. If they did not agree to the arbitration provisions, they did not need to buy a property in Palmetto Bluff.

Nor are the arbitration provisions “one sided” or “oppressive.” Rather, they apply equally to Plaintiffs and Defendants and their incorporation of the AAA’s rules for arbitration demonstrates that the arbitration agreements are geared towards achieving an unbiased decision by a neutral decision-maker. Accordingly, and as a matter of law, the arbitration agreements are not unconscionable. *See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999) (instructing courts in analyzing claims of unconscionability in the context of arbitration agreements to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker). *See also One Belle Hall Prop. Owners Ass’n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 65, 791 S.E.2d 286, 294 (Ct. App. 2016) (finding that arbitration provision facilitated “an unbiased decision by a neutral decisionmaker” where it required the purchaser to submit “‘every claim, controversy, or dispute of any kind whatsoever’ relating to [the at-issue product] or the [warranty agreement] to arbitration in accordance with the rules of the [AAA].”) (footnote omitted).

(2) The Arbitration Agreements Are Not Void *Ab Initio*.

Contracts are void *ab initio* “when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.” *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004); *see also Berkebile v. Outen*, 311 S.C. 50, 53 n. 2, 426 S.E.2d 760, 762 (1993). As examples, our Supreme Court has found that contracts involving illegal gambling machines are void *ab initio* as they “violate statutory law and public policy.” *See, e.g., White*, 360 S.C. at 372, 601 S.E.2d at 345; *Ward v. W. Oil Co.*, 387 S.C. 268, 279, 692 S.E.2d 516, 522 (2010). The Court of Appeals has also found that a contract provision that attempted to block a litigant from asserting any compulsory counterclaims, as required by the civil procedure rules, was void. *See Beach Co.*

v. Twillman, Ltd., 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct. App. 2002). Additionally, where a party procured life insurance with the predetermined intent to murder the insured to obtain the insurance proceeds and did in fact murder the insured for which the party was convicted, the Court found the life insurance policies were void *ab initio* as against public policy. See *Henderson v. Life Ins. Co. of Va.*, 176 S.C. 100, 179 S.E. 680, 685 (1935). There is nothing in the arbitration agreements at issue that is illegal or against public policy and, therefore, no basis to find them void *ab initio*.

(3) The Arbitration Agreements Are Not Invalid or Unenforceable.

When determining whether an arbitration provision is enforceable, the Court should only consider the arbitration provision itself. Specifically, “[u]nder the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole.” *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)). See also *One Belle Hall*, 418 S.C. at 64, 791 S.E.2d at 293. Therefore, challenges to other provisions of a contract that are not part of the arbitration clause are irrelevant to a determination of the validity and enforceability of the arbitration clause. See *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 260, 743 S.E.2d 868, 874 (Ct. App. 2013). Claims of misconduct surrounding execution of a contract, such as fraud or misrepresentation, are also premature when determining arbitrability as those are issues to be decided in arbitration. See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-49 (2006) (reaffirming *Prima Paint* and its application to state court proceedings); *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 553-57, 551, 606 S.E.2d 752, 757-59 (2004).

There are no grounds on which the arbitration provisions in the Membership Agreements or Membership Plan could be found to be invalid or unenforceable. Particularly in light of the strong State and Federal policy favoring the validity and enforceability of arbitration agreements, and the commercial setting of the arbitration provisions at issue, there is no basis for refusing enforcement.

F. Plaintiffs' request for a Stay of the AAA proceedings amounts to a request for injunctive relief, when none of the elements for an injunction have been established, or can be established.

Plaintiffs' request for this Court to stay the pending AAA arbitration proceeding, if granted, is the equivalent of enjoining the proceedings of another forum, which is itself not even present in connection with this motion. Enjoining the progress of another forum is a serious matter, yet the Plaintiffs have not demonstrated any of the three elements necessary for an injunction to issue. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009) ("Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; (3) there is an inadequate remedy at law." Further, the Plaintiffs would have to post an appropriate bond in connection with any injunctive relief. By fashioning their request as a "Stay," the Plaintiffs are simply attempting to obtain an injunction without having to meet any of the rigorous requirements for such relief.

The Court should decline to stay the arbitration proceedings, which would be the functional equivalent of an injunction, where the Plaintiffs have not demonstrated, and cannot demonstrate, any of the exacting elements necessary to obtain such relief.

CONCLUSION

For the foregoing reasons, and any others the Court may deem just and proper, the Court should grant Defendants' Motion to Compel Arbitration and deny Plaintiffs' Motion to Stay Arbitration and for Summary Proceedings.

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Attorneys for Defendants

July 15, 2022

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No.: 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "A"

AFFIDAVIT OF GRAY FERGUSON

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

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 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.

**AFFIDAVIT OF
GRAY FERGUSON**

PERSONALLY APPEARED BEFORE ME, Gray Ferguson, who, being duly sworn, deposes and says that:

1. My name is Gray Ferguson. I am over the age of 18 and am in all ways competent to make this Affidavit. The contents of this Affidavit are true and I have personal knowledge of them.

2. I am employed by Palmetto Bluff Investments, LLC, as Vice-President of Operations. I have held this position since January 1, 2022. Prior to assuming this position, I was employed by Montage Palmetto Bluff, as Palmetto Bluff Club General Manager, starting in September 2015. As a result of my experience in these capacities, I am familiar with and have knowledge concerning operations, activities, and policies of the Palmetto Bluff Club from September 2015 to the present. In addition to my continuing involvement with the operations of the Palmetto Bluff Club, I am also involved in the operations of the Preservation Trust.

3. I am named personally as a Defendant in the lawsuit referenced above. It is my wish and desire that the law firm of Nexsen Pruet, LLC, represent me in defense of the claims in this lawsuit. I do not wish for the Plaintiffs to deprive me of the counsel of my choice in this lawsuit.

4. One of the core governing documents at Palmetto Bluff is the Community Charter. This Charter is recorded in the public records of Beaufort County. Among other things, the Charter provides for the establishment of the Palmetto Bluff Club as detailed in the Declaration of Recreational Covenant and the Palmetto Bluff Club Governing Documents. Palmetto Bluff Club, LLC owns certain specified amenities at Palmetto Bluff, referred to in the Charter as “private amenities.” Among these private amenities are certain swimming pools, fitness centers, and dining facilities.

5. The Charter also provides for the establishment of the Palmetto Bluff Preservation Trust, which is a separately incorporated non-profit entity that functions as the homeowner’s association (“HOA”) for the Palmetto Bluff community, and which manages the “common areas” of the community. These “common areas” include, for example, walking trails, parks, playgrounds, and common gathering areas.

6. Pursuant to the Charter and Recreational Covenant, a person who buys property at Palmetto Bluff also agrees to become a member of the Palmetto Bluff Club. In 2017, the Club Operator instituted a joining fee, which was and is paid at the closing of a property purchase, in exchange for a license to use Club facilities. Before 2017, there was no joining fee. Consistent with the Recreational Covenant, the Palmetto Bluff Club Membership Plan states that the member is receiving a license—not an ownership interest—in the Club facilities:

The provisions of this Membership Plan do not grant any ownership rights in the Club property of Club facilities in favor of any member but, rather, grant a non-exclusive license to use Club facilities subject to full compliance with all obligations imposed by the Membership Plan.

7. At closing, the buyer makes two separate payments, for two separate and distinct items of value, to two separate entities: the buyer pays the sales price to the seller for the real estate, and pays the Club for the license.

8. As noted, the Charter also establishes the Preservation Trust as the community's HOA.

9. The Palmetto Bluff Club is not an HOA. For example:

(a) The Club has a very different mission from an HOA. The Palmetto Bluff Club Membership Plan states that: "It is our desire and intent to provide members and 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 club experience for all members, and superior club operations." Thus, the Club's mission differs materially from the purpose of the Preservation Trust.

(b) The Club has no involvement or participation in managing the common area property managed by the Preservation Trust.

(c) Club dues are not applied towards common elements managed by the Trust.

(d) Club amenities are owned separate from the community assets in the Preservation Trust, and separate from the community's common elements.

(e) The Preservation Trust, as HOA, is authorized by the Charter to levy assessments, which is a standard attribute of HOAs. The Club's Membership Plan, however, specifically protects members against the levying of assessments. No such assessments have been levied, to my knowledge.

(f) Every year that I have been at Palmetto Bluff, the Club's revenues have failed to cover its expenses. When an HOA fails to cover its expenses, it typically issues an assessment to all homeowners to cover the shortfall. The Club has never done this. Instead, the developer has made up the shortfall each year, in amounts well exceeding \$1,000,000 annually.

(g) The Club income statements, budget, and accounts are all maintained separate from the Preservation Trust.

10. An owner executes a Palmetto Bluff Club Membership Agreement upon becoming a member of the Palmetto Bluff Club. I have reviewed the records of the Palmetto Bluff Club maintained in the normal course of business, including the membership records. The following individual Plaintiffs and LLC-Plaintiff-Owners have signed the Palmetto Bluff Membership Agreement, true and accurate copies are attached as Exhibit D to Defendants' Motion to Dismiss, which Defendants filed with the Court on May 24, 2022:

- (a) Plaintiff Live Oak Assets, LLC: Signed by Michael and Jennifer McGuire.
- (b) Plaintiffs Matthew and Barbara Lynch: Signed by Matthew and Barbara Lynch.
- (c) Plaintiff Salt Works, LLC: Signed by Robert O' Keefe and Lynn Ann Casey.
- (d) Plaintiffs R. Jeffrey Kimball and Deborah Kimball: Signed by R. Jeffrey Kimball and Deborah Kimball.

(e) Plaintiff MKM 22 West, LLC: Signed by David and Darby Mingey.
 (f) Plaintiff TTJR, LLC: Signed by Todd and Beth Kugler.
 (g) Plaintiffs Dylan Skye Hart and Anne Bolser: Signed by Dylan Skye Hart and Anne Bolser.

- (h) Plaintiff Bridge Charleston Investments C, LLC: Signed by Chris Leigh-Jones.
- (i) Plaintiff Bridge Charleston Investments H, LLC: Signed by Chris Leigh-Jones.
- (j) Plaintiff One Rumford Lane, LLC: Signed by Douglas and Patricia Locke.
- (k) Plaintiff 368 Mount Pelia, LLC: Signed by Michael and Lynn Addy.
- (l) Plaintiff 315 Corley CW, LLC: Signed by Courtland and Kaitlyn Williams.

11. The following Plaintiffs also signed Membership Agreements, true and accurate copies of which are attached as Exhibit A to this Affidavit:

- (a) Plaintiff Jennifer Albero: Signed by Jennifer Albero.
- (b) Plaintiff Geoffrey Block: Signed by Geoffrey and Kimberly Block.

12. Mike and Lynn Addy, as evidenced in Exhibit D to Defendants' Motion to Dismiss filed with the Court on May 24, 2022, signed their Palmetto Bluff Club Membership Agreement on February 4, 2018. The Palmetto Bluff Club has been unable to locate the first page of this agreement. But, based on the date this agreement was signed, as well as the version number in the bottom left hand of each page, the first page of this Agreement would have had the following language: "THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48-10., ET SEQ."

13. Courtland and Kaitlyn Williams, owners of 315 Corley CW, LLC, as evidenced in Exhibit D to Defendants' Motion to Dismiss filed with the Court on May 24, 2022, signed their Palmetto Bluff Membership Agreement on March 26, 2019, for 22 North Drayton Street in

Palmetto Bluff. The Williams's subsequently sold 22 North Drayton Street, and as is relevant to this action, purchased 315 Corley Street in Palmetto Bluff. The Williams's, as evidenced in Exhibit D to Defendants' Motion to Dismiss filed with the Court on May 24, 2022, signed a Palmetto Bluff Club Intent to Transfer Membership Agreement on January 13 and 14, 2022. This Intent to Transfer Membership Agreement transferred their Palmetto Bluff Club Membership to 315 Corley Street.

14. Based upon information provided in their Membership Agreements, it appears the following Plaintiffs and Plaintiff –LLC-Owners are, or were, residents of States other than South Carolina at the time they became Club members:

(a) Plaintiff Live Oak Assets, LLC: Signed by Michael and Jennifer McGuire, whose primary residence is in Cornelius, North Carolina.

(b) Plaintiffs Matthew and Barbara Lynch: Signed by Matthew and Barbara Lynch, whose primary residence is in Hingham, Massachusetts.

(c) Plaintiff Salt Works, LLC: Signed by Robert O' Keefe and Lynn Ann Casey, whose primary residence is in Arlington, Virginia.

(d) Plaintiff R. Jeffrey Kimball and Deborah Kimball: Signed by R. Jeffrey Kimball and Deborah Kimball, whose primary residence is in Pittsburgh, Pennsylvania.

(e) Plaintiff MKM 22 West, LLC: Signed by David and Darby Mingey, whose primary residence is in Pelham, New York.

(f) Plaintiff TTJR, LLC: Signed by Todd and Beth Kugler, whose primary residence is in Clearwater, Florida.

(g) Plaintiff Dylan Skye Hart and Anne Bolser: Signed by Dylan Skye Hart and Anne Bolser, whose primary residence is in Glendale, California.

(h) Plaintiff One Rumford Lane, LLC: Signed by Douglas and Patricia Locke, whose primary residence is in Boxford, Massachusetts.

15. It is my understanding that the following Plaintiffs rent or market their Palmetto Bluff properties for short-term rentals through Internet platforms with a national reach, such as, for example, VRBO.

(a) 368 Mount Pelia, LLC advertises the home located at 368 Mount Pelia Road on www.VRBO.com and www.stayinpalmettobluff.com.

(b) Bridge Charleston Investments B, LLC advertises the home located at 454 Old Landing Road on www.Airbnb.com, www.vrbo.com, and www.luxurysimplifiedretreats.com.

(c) Bridge Charleston Investments E, LLC advertises the home located at 19 South Drayton Street on www.Airbnb.com, www.vrbo.com, and www.luxurysimplifiedretreats.com.

(d) Dylan Hart and Annie Bolser advertise the home located at 753 Old Moreland Road on www.VRBO.com, www.stayinpalmettobluff.com, and www.hometogo.com.

(e) R. Jeffrey Kimball and Deborah Kimball advertise the home located at 18 South Drayton Street on www.VRBO.com and www.palmettobluffluxuryrental.com.

(f) Live Oak Assets, LLC advertises the home located at 38 Blue Willow Street on www.VRBO.com and www.stayinpalmettobluff.com.

(g) Matthew and Barbara Lynch advertise the home located at 323 Corley Street on www.VRBO.com and www.propertyconciergeofbluffton.net.

(h) MKM 22 West, LLC advertises the home located at 22 Westerwald Street on www.VRBO.com and www.stayinpalmettobluff.com.

(i) One Rumford Lane, LLC advertises the home located at 1 Rumford Lane on www.VRBO.com and www.stayinpalmettobluff.com.

(j) TTJR, LLC advertises the home located at 10 North Drayton Street on www.VRBO.com and www.stayinpalmettobluff.com.

(k) Jennifer Albero previously advertised the home located at 18 South Drayton Street on www.vrbo.com.

16. The Palmetto Bluff Club Membership Agreement referenced in the tenth paragraph above contains an arbitration provision. That provision states, in pertinent part, that, subject to a requirement of mediation (which was fulfilled in January 2022),

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.

17. Bridge Charleston Investments B, LLC, also signed a Purchase and Sale Agreement that also contains arbitration language, a true and correct copy of which is attached as Exhibit B to this Affidavit. While this Purchase and Sale Agreement contains a scrivener's error and lists the purchaser of Lot 5512 as Bridge Charleston Investments A, LLC, the General Warranty Deed for Lot 5512 conveys the property to Bridge Charleston Investments B, LLC as the purchaser. *See* Ex. C.

18. Plaintiffs Matthew and Barbara Lynch also signed a Purchase and Sale Agreement that contains arbitration language, a true and correct copy of which is attached as Exhibit D to this Affidavit.

19. Based upon available records to-date in 2022, the individual Plaintiffs and LLC-Plaintiff-Owners have spent the following amounts utilizing Club amenities:

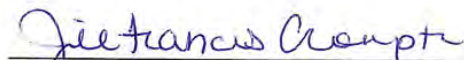
- (a) Plaintiff Live Oak Assets, LLC: \$13,987.58.
- (b) Plaintiffs Matthew and Barbara Lynch: \$4,928.50.
- (c) Plaintiff Salt Works, LLC: \$3,160.21.
- (d) Plaintiff R. Jeffrey Kimball and Deborah Kimball: \$11,120.70.
- (e) Plaintiff MKM 22 West, LLC: \$4,644.32.
- (f) Plaintiff TTJR, LLC: \$6,585.92.
- (g) Plaintiff Dylan Skye Hart and Anne Bolser: \$1,304.28.
- (h) Plaintiffs Sebrina and Chris Leigh-Jones: \$29,558.49.
- (i) Plaintiff One Rumford Lane, LLC: \$5,259.77.
- (j) Plaintiff 368 Mount Pelia, LLC: \$4,427.64.
- (k) Plaintiff 315 Corley CW, LLC: \$2,501.56.
- (l) Plaintiff Geoffrey Block: \$11,384.91.
- (m) Plaintiff Jennifer Alberro: \$666.02

SIGNATURE ON FOLLOWING PAGE

Affiant further sayeth not.


Gray Ferguson

SWORN and subscribed to before me
this 15 day of July, 2022.


Notary Public for South Carolina
My Commission Expires: June 1, 2030



Jill Frances Crompton
Notary Public, State of South Carolina
My Commission Expires June 1, 2030

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.

Case No.: 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "A" TO
AFFIDAVIT OF GRAY FERGUSON

MEMBERSHIP AGREEMENTS SIGNED BY
PLAINTIFF JENNIFER ALBERO AND PLAINTIFF
GEOFFREY BLOCK

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**Palmetto Bluff Club
Membership Agreement
(Community Members)**

Club Member Account Number: 30814

LEGAL OWNER INFORMATION

Specify names of all individuals and/or business entities in whose name title was issued as shown on the deed for a Unit in Palmetto Bluff.

Individual Owners:

Albero Jennifer A.
LAST NAME FIRST MI

LAST NAME FIRST MI

LAST NAME FIRST MI

Business Entity Owner

NAME OF BUSINESS ENTITY (ALSO COMPLETE AND ATTACH BUSINESS ENTITY OWNER INFORMATION PROFILE)

DESIGNATED OWNER INFORMATION

If more than one Legal Owner, designate one who will reside in the Palmetto Bluff home and be the Designated Owner. If the Legal Owner is a business entity, designate one person who will reside in the Palmetto Bluff home and be the Designated Owner.

DESIGNATED/PRIMARY OWNER:

Albero Jennifer A.
LAST NAME FIRST MI

Date of Birth: [REDACTED]

CO-OWNER/SPOUSE/SIGNIFICANT OWNER:

n/a
LAST NAME FIRST MI

Date of Birth: _____

Unmarried children between the ages of 11 through 24 (living with the Designated Owner, attending school on a full-time basis or active in the United States Military) may be issued a membership card with charging privileges (proof of age required). Children under 11 may have use privileges.

n/a
(Date of Birth) LAST FIRST MIDDLE (Signature)

(Date of Birth) LAST FIRST MIDDLE (Signature)

(Date of Birth) LAST FIRST MIDDLE (Signature)

PALMETTO BLUFF ADDRESS:

Wilson Village
Name of Community/Development/Condominium
18 South Drayton St.
Street Address Unit Number

(843) 797-0411 house phone
Telephone
917-215-8818 cell

Bluffton, SC 29910 () none
 City/State/Zip Fax
 E-MAIL ADDRESS: jennyalbero@gmail.com
 BUSINESS ADDRESS: _____
 _____ ☐ Retired
 Designated Owner's Company Name
 Type of Business: _____ Occupation: _____ Title: _____
 Business Telephone: () _____ Business Fax: () _____
 Please CHECK the appropriate box below for correct mailing instruction if other than Palmetto Bluff Address:
☒ Mail my BILLS to: _____ ☐ Mail my NEWSLETTER to: _____
Jennifer Albero
745 Post Rd Apt 303
Darien, CT 06820

Each undersigned party understands that the Club is owned and operated by Palmetto Bluff Club, LLC, a South Carolina limited liability company, d/b/a Palmetto Bluff Club ("Club"). Each undersigned party acknowledges receipt of the Membership Plan and agrees to be bound by all of its respective terms and conditions, as they may be amended from time to time. Each Legal Owner, the Designated Owner and the Designated Owner's Co-Owner/Spouse/Significant Other, if any, must sign below, agreeing that they shall be jointly and severally liable for all charges and other amounts from time to time owing to the Club, including all charges incurred by family members and guests.

<u>Jenny Albero</u>	Date: <u>6/14/2017</u>
Designated Owner Signature	
_____	Date: _____
Co-Owner/Spouse/Significant Other Signature	
_____	Date: _____
Legal Owner Signature	
_____	Date: _____
Legal Owner Signature	
_____	Date: _____
Legal Owner Signature	
_____	Date: _____
Legal Owner Business Entity Signature	
_____	Date: _____

Name	

Title	

**Palmetto Bluff Club
Membership Agreement
(Community Members)**

Club Member Account Number: _____ Lot Number: 508

LEGAL OWNER INFORMATION:

Specify names of all individuals and/or business entities in whose name title was issued as shown on the deed for a Unit in Palmetto Bluff.

Individual Owners:.

LAST NAME FIRST MI

LAST NAME FIRST MI

LAST NAME FIRST MI

Business Entity Owner/LLC

RLB Squared LLC
NAME OF BUSINESS ENTITY (ALSO COMPLETE AND ATTACH BUSINESS ENTITY OWNER INFORMATION PROFILE)

DESIGNATED OWNER INFORMATION:

If more than one Legal Owner, designate one who will reside in the Palmetto Bluff home and be the Designated Owner. If the Legal Owner is a business entity, designate one person who will reside in the Palmetto Bluff home and be the Designated Owner.

DESIGNATED OWNER: Block Geoffrey J.
LAST NAME FIRST MI

Date of Birth: _____

SPOUSE: Block Kimberly
LAST NAME FIRST MI

Date of Birth: 9/17/1974

active in the United States Military) may be issued a membership account number with charging privileges (proof of age required). Children under 11 may have use privileges.

MIDDLE (Signature)

MIDDLE (Signature)

MIDDLE (Signature)

PALMETTO BLUFF ADDRESS:

Name of Community Section/Development/Condominium
8 Anson Park Road 508 (717) 941-1980
Street Address Lot/Unit Number Telephone
Bluffton, SC 29910 ()
City/State/Zip Fax

E-MAIL ADDRESS: geoff@rlbsquared.net

BUSINESS ADDRESS: 269 Terrace Road Franklin Lakes, NJ 07417
RLB Squared LLC ☐ Retired
 Designated Owner's Company Name
 Type of Business: Real Investments Occupation: _____ Title: _____
 Business Telephone: () _____ Business Fax: () _____
 Please CHECK the appropriate box below for correct mailing instruction if other than Palmetto Bluff Address:
☒ Mail my BILLS to: 269 Terrace Road
Franklin Lakes, NJ 07417
☒ Mail my NEWSLETTER to: SAME

Each undersigned party understands that the Club is owned and operated by Palmetto Bluff Club, LLC, a South Carolina limited liability company, d/b/a Palmetto Bluff Club ("Club"). Each undersigned party acknowledges receipt of the Membership Plan and agrees to be bound by all of its respective terms and conditions, as they may be amended from time to time. Each Legal Owner, the Designated Owner and the Designated Owner's Spouse, if any, must sign below, agreeing that they shall be jointly and severally liable for all charges and other amounts from time to time owing to the Club, including all charges incurred by family members and guests.

[Signature]
 Designated Owner Signature

Date: 1/24/14

[Signature]
 Designated Owner Spouse Signature

Date: 1/24/14

 Legal Owner Signature

Date: _____

 Legal Owner Signature

Date: _____

 Legal Owner Signature

Date: _____

[Signature]
 Legal Owner Business Entity Signature

Date: 1/24/14

Kimberly W Block
 Name

Managing Member
 Title

Terms and Conditions of Membership

- A. Each Owner acknowledges receipt of and agrees, by taking title to a Unit in Palmetto Bluff, to be bound by the Membership Plan, as amended from time to time. Membership is subject to suspension for failure to abide by membership conditions. Each Owner further acknowledges and agrees to be responsible for all charges incurred which shall be due and payable no later than 30 days from the date of the monthly statement. Each Owner shall be responsible for all costs and expenses incurred by the Club in the collection of any amounts not paid when due, including, but not limited to court costs, collection fees and attorney's fees, whether at the trial level or on appeal. Such costs and expenses shall be due and payable upon demand.
- B. Each Owner acknowledges that the membership is not an investment in the Club, nor does it provide an equity or ownership interest in the Club or Club Facilities. Membership in the Club does not confer upon each Owner a vested right or prescriptive right or easement to use the Club Facilities. Each Owner acknowledges that a member only acquires a license to use the Club Facilities in accordance with the Membership Plan and the privileges associated with the membership. 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.
- C. The Club reserves the right, at any time or from time to time, in its sole and absolute discretion, to reserve memberships, to discontinue operation of any or all of the Club Facilities, to sell or otherwise dispose of the Club Facilities in any manner whatsoever and to any person whomsoever, to terminate any or all types of membership, to convert the Club into a member-owned club, and to make any other changes in the terms and conditions of membership or facilities available for use by members. Each Owner acknowledges that the Membership Plan may be terminated at any time by the Club.
- D. Each Owner covenants and agrees to indemnify and hold harmless the Club and their members, partners, shareholders, directors, officers, employees, representatives, affiliates and agents in accordance with the provisions of any applicable rules and regulations of the Club.
- E. Each Owner acknowledges that use of the Club Facilities may be restricted from time to time based on events, maintenance and other causes.

WPB 687576.1
1/6/03

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.

Case No.: 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "B" TO
AFFIDAVIT OF GRAY FERGUSON

BRIDGE CHARLESTON INVESTMENTS B, LLC'S SIGNED
PURCHASE AND SALE AGREEMENT SCRIVENER'S
ERROR

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT OR, IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

PALMETTO BLUFF
PURCHASE AND SALE AGREEMENT
(LOT WITHOUT DOCK)
(BLOCK L – 1)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this **7th** day of **April, 2015**, by and between MAY RIVER FOREST, LLC, a South Carolina limited liability company, whose address is 19 Village Park Square, Bluffton, South Carolina 29910 (the "Seller") and the following purchaser (the "Purchaser"):

NAME: BRIDGE CHARLESTON INVESTMENTS A, LLC,
MEMBER IS A LICENSED SOUTH CAROLINA REAL
ESTATE BROKER

ADDRESS: 95 Broad Street
Charleston, South Carolina 29401

TELEPHONE (CELL): 843-801-4583 281-630-3513

TELEPHONE (OFFICE): 843-853-6055

EMAIL: chrislj@luxurysimplifiedgroup.com

1. Real Property. Seller agrees to sell and Purchaser agrees to purchase the following described real estate in Palmetto Bluff (the "Community") in Beaufort County, South Carolina, as follows: **Lot 5512; 854 Old Moreland Road or 450 Old Landing Road**, Bluffton, South Carolina 29910, Block L-1 Moreland Landing, Palmetto Bluff, as shown on that certain plat prepared by Thomas & Hutton Engineering Co. and certified by Robert K. Morgan, III, P.L.S. (S.C. #26957), a copy of which is attached hereto as **Exhibit "A"** and incorporated herein (the "Property"). Such plat is (*check only one*):

- ☒ a final plat which has been recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the "Official Records") at Plat Book 140, Pages 124-128
- ☐ a preliminary plat only (attach Addendum "A-1," Acknowledgement of Preliminary Plat, which shall be incorporated herein by this reference).

This sale and conveyance of the Property shall be subject to all applicable restrictions, covenants, easements, options and affirmative obligations recorded as of the Closing date in the Official Records.

2. Palmetto Bluff Club. Purchaser acknowledges that certain social and recreational facilities constructed or to be constructed by Seller or an affiliate of Seller within the Community, consisting of all non-golf sports facilities, including tennis courts, a fitness center and a swim club (the "Club Facilities"), are to be owned by and operated by an affiliate of Seller as a privately-owned club to be known as Palmetto Bluff Club (the "Club"). Use of the Club Facilities shall be subject to such terms and conditions and payment of such fees, as provided for in the Palmetto Bluff Club Plan (the "Club Plan"). Membership in the Club is mandatory for all owners of property in the Community and shall be on a non-equity basis (which means that the members will have no ownership interest in the Club). Purchaser further acknowledges that the Club Plan is subject to change in accordance with its terms without prior notice.

Purchaser further understands and agrees that by purchasing the Property, Purchaser acquires and is required to maintain a membership in the Club (the "Club Membership") and pay the necessary assessments, annual dues, and other charges established by the Club from time to time. This may also include minimum usage fees and special assessments, if established. The Property shall be subject to that certain Declaration of Recreational Covenant for Palmetto Bluff recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 01747 at Page 2090, *et seq.*, as it may be amended and supplemented. As such, the Club will have lien rights against the Property to enforce payment of such dues and charges. A Club Membership entitles the member to use the Club Facilities.

Purchaser hereby acknowledges and agrees that mandatory membership in the Club for all purchasers in the Community enhances the value of the Property because of the availability of recreational amenities for all owners within the Community, including Purchaser.

PURCHASER ACKNOWLEDGES THE CONTENT OF THIS PARAGRAPH AND RECEIPT OF THE CLUB PLAN.

SLJ

(Purchaser's Initials)

(Purchaser's Initials)

3. May River Golf Club. Purchaser acknowledges that an 18-hole golf course, golf house and golf practice facilities have been constructed by an affiliate of Seller within the Community (the "Golf Facilities") and are owned and operated by an affiliate of Seller as a privately-owned club known as May River Golf Club (the "Golf Club"). The Golf Club offers memberships (the "Golf Memberships") entitling Golf Club members to use the Golf Facilities, as a separate amenity from the Club Facilities. Purchaser should contact the membership office of the Golf Club to obtain the current price of a Golf Membership. Golf Membership is subject to application and approval and payment of required membership fees and deposits. Ownership of the Property does not guarantee approval for or availability of a Golf Membership. Currently, the Golf Club is authorized to issue a total of three hundred twenty-five (325) Golf Memberships. There are not a sufficient number of Golf Memberships to assure availability of a Golf Membership for every lot in the Community, and the Golf Club may elect to sell Golf Memberships to persons who do not own property in the Community. Therefore, if Purchaser does not purchase a Golf Membership on or before Closing, there are no assurances that a Golf Membership will be available for purchase in the future.

Purchaser should contact the membership office of the Golf Club to obtain a copy of the May River Golf Club Plan and the exhibits thereto (the "Golf Club Plan"), which outline the current terms and conditions of membership in the Golf Club. Purchaser acknowledges that the Golf Club Plan is subject to change in accordance with its terms without prior notice.

As provided in the Golf Club Plan, when a total of three hundred twenty-five (325) Golf Memberships are sold, an affiliate of Seller will commence the design and development of a second 18-hole golf course (the "Second Golf Course") which will also be subject to the Golf Club Plan. An additional three hundred twenty-five (325) Golf Memberships shall be sold in conjunction with the Second Golf Course. Upon completion of the Second Golf Course, owners of Golf Memberships shall have access rights to both courses subject to the Golf Club Plan. As described above, even with the development of the Second Golf Course, there will not be a sufficient number of Golf Memberships to assure availability of a Golf Membership for each lot in the Community.

4. Golf Membership Approval. As described above, the issuance of such Golf Membership is contingent upon the Purchaser submitting the applicable membership application and approval of such application. If Purchaser intends to purchase a Golf Membership and Purchaser desires that the issuance of such Golf Membership be a contingency to close the transaction contemplated herein, Purchaser agrees to submit the applicable membership application within five (5) days of the execution of this Agreement by Seller. If, prior to Closing (as defined herein), the application is disapproved by the Golf Club, the Purchaser shall have the right to terminate this Agreement by notifying Seller and Escrow Agent in writing of such termination within five (5) days of receipt of notice of such disapproval. In such case, any deposits made hereunder shall be returned to Purchaser by Escrow Agent. This Agreement is /is not X contingent upon Purchaser being approved to purchase a Golf Membership.

5. Purchase Price.

5.1 The Purchase Price for the Property is Three Hundred Ninety Five Thousand DOLLARS (\$395,000.00), payable as follows:

5.1.1 \$10,000.00, as an initial earnest money deposit, the receipt of which is hereby acknowledged (to be held by the Escrow Agent hereinafter named);

5.1.2 \$29,500.00, as an additional earnest money deposit due seven (7) days after the date of this Agreement also to be held by the Escrow Agent pending Closing. Escrow Agent shall hold the earnest money deposits in a non-interest bearing account until Closing.

5.1.3 \$355,500.00, representing the balance of the Purchase Price, due and payable at Closing by cash, certified funds or wire transfer.

5.2 The Purchase Price, together with all of the Purchaser's closing costs and other costs provided herein, less the earnest money deposit will be paid to the Seller by cash or certified funds by Purchaser at Closing.

6. Financing. This Agreement ☐ is ☒ is not (check one box) contingent upon Purchaser obtaining financing in the amount of N/A DOLLARS (\$ N/A). Purchaser may select a lender of Purchaser's choice which lender is in the business of making real estate loans in Beaufort County. By suggesting a source of financing, Seller does not accept any responsibility for Purchaser's ability to qualify for such financing. If this Agreement is contingent upon obtaining financing, the timing of this financing contingency and the financing process is as follows:

6.1 Within N/A days from the date of this Agreement, Purchaser shall complete and submit to the lender of Purchaser's choice a mortgage loan application (or similar document), all information requested by such lender, pay the required application fees and execute all documents necessary to initiate the loan process.

6.2 Within N/A calendar days from the submission described in Section 6.1 above, Purchaser shall notify Seller in writing that Purchaser: (i) has obtained a commitment for such financing; or (ii) waives the financing contingency; or (iii) has been denied a commitment for such financing and desires a cancellation of the Agreement and refund of all money deposits in accordance with this Agreement.

Notwithstanding anything to the contrary stated in this Agreement, in the event of Purchaser's notification to Seller within the time period described in this Section 6.2 that financing has been denied and delivery by Purchaser to Seller of a letter from such lender stating the Purchaser's failure to qualify (collectively, a "Notice of Denial"), Seller will promptly cause a refund to Purchaser of all sums paid to date, at which time this Agreement shall terminate and no party shall have any further rights or remedies hereunder. In the event that Notice of Denial is not received by Seller within the above time frame, the financing contingency shall be deemed waived by Purchaser, Purchaser's obligation to purchase the Property shall no longer be contingent upon Purchaser's ability to obtain financing, and the earnest money deposit shall be nonrefundable.

THIS IS A LIMITED FINANCING CONTINGENCY - NO CANCELLATION FOR FAILURE TO OBTAIN FINANCING WILL BE ALLOWED AFTER THE CONTINGENCY PERIOD SET FORTH HEREIN.

7. Closing Date. Purchaser and Seller agree that the closing of this transfer (the "Closing") shall take place on or before **June 8, 2015** ("Closing Date"). Closing shall be held at the offices of the Escrow Agent, or such other place as Seller may designate. In no event will closing and delivery of the deed be in excess of one hundred eighty (180) days of the signing of this Agreement by Purchaser.

8. Conveyance of Property. At Closing, Seller shall convey marketable title to the Property to Purchaser in fee simple by limited warranty deed, free from encumbrances except such as are herein agreed to be assumed by Purchaser. If an owner's title commitment can be issued by an ALTA title insurance company, without any unusual or extraordinary exceptions, this shall constitute evidence of marketable title. If any defect is found in the title which cannot be corrected within thirty (30) days, the earnest money deposit will be returned to the Purchaser and this Agreement terminated.

9. Prorations. All Beaufort County property taxes, Community assessments, and other applicable charges shall be prorated as of the Closing Date.

10. Closing Expenses. Purchaser shall be responsible for paying Purchaser's share of the Beaufort County property taxes as described in Paragraph 9 above and the contribution to the Trust described in Paragraph 12.5. Purchaser shall also be responsible for Purchaser's own attorney fees, all costs related to Purchaser's financing, if any, Official Records recording fees for the deed, the cost of a title examination and title insurance, if any, and any and all charges, expenses, taxes and costs customarily paid by a purchaser in real estate transactions in Beaufort County, South Carolina, except as otherwise provided herein. Purchaser shall also be responsible for paying the South Carolina statutory recording fee (formerly documentary stamps) for the deed. Seller shall pay for its own attorney fees, the preparation of the deed, any real estate commissions, recording costs for mortgage releases, if any, and any and all charges, expenses, taxes and costs customarily paid by a seller in real estate transactions in Beaufort County, South Carolina, except as otherwise provided herein. In addition, Purchaser shall reimburse the Seller Three Thousand Nine Hundred Sixty Dollars (\$3,960.00) which is a portion of the amount paid or to be paid by Seller to Beaufort/Jasper Water and Sewer Authority for sewer treatment capacity for the Community.

11. Cooperating Brokerage. Purchaser warrants that Purchaser has had no dealings relating to the Property with any real estate agent or broker other than members of the Palmetto Bluff Real Estate Company, LLC sales staff, unless one is specifically identified in Paragraph 31 below.

12. Community Charter. It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to the recorded plat, all special easements as shown thereon, and applicable restrictions or covenants of record, including those general easements, equitable restrictions, limitations on use and affirmative obligations contained in the Community Charter for Palmetto Bluff recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 01747 at Page 2090, *et seq.*, and amendments and supplements thereto (as amended and supplemented, the "Community Charter"), copies of which have been provided to Purchaser prior to or simultaneously with the execution of this Agreement. Palmetto Bluff Development, LLC, a South Carolina limited liability company (the "Development Company") is the "Founder" under the Community Charter. The Community Charter includes, among other things, the following provisions:

12.1 No structure or improvement may be erected, placed or altered on the Property except in compliance with the Design Guidelines referenced in the Community Charter. Any proposed building plans must be submitted to and approved in writing by the Design Review Board, as also referenced in the Community Charter prior to commencement of construction. Purchaser agrees that the actual construction will have no material variation from the plans approved by the Design Review Board unless the Design Review Board shall have also approved these variations in writing. The Design Review Board may grant or deny approval of Purchaser's plans, in its sole discretion, including purely aesthetic considerations. The Design Guidelines also require that all contractors building homes in the Community must be approved and meet established criteria and minimum standards.

12.2 In order to provide for the preservation, maintenance, security and operation of common facilities within the Community, as well as to provide the owners of property within the Community with services for the use and benefit of said owners, there has been created the Palmetto Bluff Preservation Trust, Inc. (the "Trust"). All property owners in the Community automatically become members of the Trust upon ownership of property within the Community.

12.3 The Development Company has formed Palmetto Bluff Foundation, as a South Carolina non-profit corporation (the "Foundation"). The Foundation is exempt from federal income taxes under the Internal Revenue Code. The Foundation has been organized and operated for religious, charitable, scientific, literary and athletic and educational purposes. The function of the Foundation may include: (i) providing environmental education programs for adults and children; (ii) sponsoring and organizing environmental research; (iii) managing a conservation area for a particular species or type of ecosystem; (iv) publishing materials regarding the ecosystem or species in the area; (v) managing outreach programs regarding environmental issues; (vi) making grants to or for researchers of environmental issues; (vii) accepting title to land or conservation easements encumbering land for conservation purposes; (viii) entering into contracts to maintain and operate land for conservation, educational and scientific purposes; and (ix) establishing and operating a museum or park.

12.4 The Trust is granted the right to assess property within its jurisdiction in order to carry out the prescribed functions. Purchaser hereby acknowledges that it is aware of the right of the Trust to levy and enforce assessments and Purchaser hereby agrees to pay promptly all such assessments which are properly made against Purchaser by the Trust. The Community Charter provides for the following types of assessments.

12.4.1 Annual Assessments for Common Expenses as defined in the Community Charter. (Note: The Annual Assessment for the year 2015 has been set at \$3,500 for all Units as defined in the Community Charter.)

12.4.2 Neighborhood Assessments, if applicable.

12.4.3 Special Assessments to cover unbudgeted expenses.

12.4.4 Specific Assessments against a particular piece of property within the Community for any special services provided or to cover costs to bring such property into compliance with the governing documents.

12.4.5 Community Enhancement Assessment in the form of a transfer fee upon each subsequent transfer of title to a Unit in the Community. The amount of this transfer fee 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. One-half (1/2) of the Community Enhancement Assessments shall be paid to the Foundation. The remaining one-half (1/2) of the Community Enhancement Assessments shall be utilized by the Trust as provided in the Community Charter.

12.5 In order to provide funds for operating expenses and other expenses incurred by the Trust, Purchaser shall pay to the Trust at Closing a working capital contribution equal to one-fourth (1/4) of the Annual Assessment.

12.6 The Community Charter provides for an alternate dispute mechanism and procedure with regard to certain matters.

Purchaser acknowledges that the above provisions only represent a brief summary of the Community Charter. A complete review of the Community Charter is recommended by Seller.

PURCHASER ACKNOWLEDGES THE CONTENTS OF THIS PARAGRAPH 12 AND RECEIPT OF A COPY OF THE COMMUNITY CHARTER AND THE DESIGN GUIDELINES.

SLJ

(Purchaser's Initials)

(Purchaser's Initials)

13. Environmental Management Plan. The Development Company has developed an Environmental Management Plan (the "Environmental Plan") for the Community. The Environmental Plan provides for the maintenance and management of various environmental features and wildlife management within the Community. The Environmental Plan provides the Seller with certain rights to go on to the Property, common areas and other real property within the Community to perform such maintenance and management. Likewise, the Environmental Plan limits the maintenance and management of environmental features and wildlife management by owners of property within the Community, other than the Development Company. Upon request, Seller shall provide a copy of the Environmental Plan to the Purchaser.

14. Roll Back Taxes. Seller and Purchaser acknowledge that the Property may be subject to "roll back" taxes. Seller agrees to be responsible for all "roll back" taxes which may be due in the future. Seller has arranged with Fidelity National Insurance Company to provide an owners title insurance policy which shall not list such "roll back" taxes as an exception to the policy. Purchaser reaffirms that the cost of such policy shall be paid by Purchaser.

15. Additional Restrictions.

15.1 In accordance with Rule 30-12(4)(2)(h) of the Rules and Regulations of the Department of Health and Environmental Control - Coastal Division, a Dock Master Plan entitled "Palmetto Bluff Phase I Dock Master Plan", as most recently revised on February 27, 2003, has been filed in the Office of the Register of Deeds for Beaufort County, South Carolina, ("Official Records") in Plat Book 92 at Page 100, designating the location of docks to be constructed on Palmetto Bluff. Palmetto Bluff Development, LLC reserves the right, in its sole discretion, to modify the Dock Master Plan in accordance with the applicable rules and regulations of the Department of Health and Environmental Control - Coastal Division, and the laws of the State of South Carolina.

15.2 In accordance with the Beaufort County River Protection Overlay District ("RPOD") and various approvals by the Town of Bluffton for the Development of the Community, lots located on the May River are subject to setback requirements and specific criteria regarding the removal of vegetation and the establishment of a view corridor(s).

15.3 In addition to the RPOD restrictions referenced in Section 15.2 above, lots located on the May River are also subject to that certain Declaration of Covenants, Conditions and Restrictions for Palmetto Bluff ("Dock Covenants") recorded in the Official Records in Book 1312 at Page 98, as amended in Book 1745 at Page 421. The Dock Covenants prohibit an owner of a lot on the May River from constructing a dock or any other structure on the May River.

16. Utility Services. The Seller is responsible for providing water and sewer service lines, electrical lines, telephone lines, cablevision and internet lines to the Property. After the construction of such lines, Purchaser shall be responsible for arranging for utility services with the appropriate provider of such service. Any and all charges associated with availability, connection and usage fees are to be paid by Purchaser. Purchaser expressly acknowledges that, except for the Development Company, no wells may be drilled on the Property.

17. Condition of Property. The Property is being conveyed in an "as is" condition and Seller has made no commitments nor accepted any obligation for any work on the Property. It is understood, however, that prior to Closing, Seller shall have the right but not the obligation to improve the Property by removing any stumps or debris and to thin or remove underbrush and thin out small trees under six (6) inches in diameter to the degree necessary to permit tractor mowers to mow underbrush and weeds on the Property. Additionally, Purchaser acknowledges that the Property is located in an area of flat topography typical of the South Carolina coastal lowcountry. Lots within this area, as they are of low elevation and near water, may contain soil conditions which could necessitate the use of special construction techniques to build. It is recommended that Purchaser note these conditions to avoid any problems that could arise as a result thereof.

18. Moreland Landing. As described in Paragraph 1, the Property is located in Block L-1, Palmetto Bluff. Adjacent to or in close proximity to a portion of the lots in Block L-1 is a parcel of land commonly referred to as "Moreland Landing." Various facilities and improvements are located at Moreland Landing for which the Developer, or its related affiliated entities, intends to continue using for various activities such as parties, concerts, group functions, and as a boat landing. Vehicle parking for Moreland Landing will be located in the Moreland Landing area and within a platted area in Block L-1. The continued use of Moreland Landing will result in increased vehicular and pedestrian traffic and parking in the designated areas within Block L-1. The continued use of Moreland Landing may also result in increased noise levels and traffic within Block L-1 which some property owners may consider a nuisance.

19. Completion of Certain Facilities. If not already complete, Seller agrees to complete construction of paved roads and the utilities described in Paragraph 16 to the boundary of the Property, as well as the recreational facilities which Seller has committed to provide as described in the Property Report for the Palmetto Bluff subdivision dated September 3, 2014 (the

"Property Report"), within one (1) year after the estimated completion dates specified for such items in the Property Report, subject to delays beyond Seller's control resulting from Acts of God, strikes, material shortages, or other occurrences which are sufficient to constitute impossibility of performance under South Carolina law. In the event of such occurrences, Seller shall proceed to completion within a reasonable time after the abatement of the event causing delay.

20. Beaufort County Impact Fees. Beaufort County and the Town of Bluffton have ordinances which generally provide for the collection of certain fees at the time of building permit issuance for new residential construction. No fee is due at the time of Closing on the Property, but rather is due at the time of issuance of the building permit. Such fees and expenses will be the responsibility of Purchaser.

21. Seller Representations. By execution of this Agreement, Purchaser confirms that Seller has made no promises, representations or commitments in regard to the development of the Community, including, but not limited to, with respect to Club Facilities, Golf Club Facilities, roads, sewer, water and electric service which has induced the purchase of the Property except as stated in this Agreement, the Community Charter, the Club Plan and Golf Club Plan documentation referenced in Paragraph 2 and Paragraph 3 and the Property Report referenced in Paragraph 19 of this Agreement.

22. Golf Hazard Disclosure. Purchaser acknowledges that (i) the Property may be located adjacent, or in proximity, to a golf course; (ii) that golfers may come onto the Property to look for errant golf balls; (iii) that owning property adjacent, or in proximity, to a golf course involves certain risks; and (iv) that such risk may include golf balls being hit onto the Property and elsewhere outside the boundaries of the golf course with the potential of causing bodily injury or physical damage to Property. Purchaser hereby expressly assumes such risks and agrees that Seller, any companies or persons affiliated with Seller, the golf course architect and builders, and any entity owning or managing the aforesaid golf course shall not be liable to Purchaser or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage, arising from personal injury, destruction of Property, trespass or any other alleged wrong or entitlement to remedy based upon or related to the proximity of the golf course to the Property or to any other areas in Palmetto Bluff. Purchaser hereby agrees to indemnify and hold harmless Seller, any companies or persons affiliated with Seller, the golf course architect and builders, and any entity owning or managing the golf course against any and all claims of Purchaser's guests, invitees or licensees with respect to the above.

Nothing in this paragraph shall restrict or limit any power of Seller or any entity owning or managing the golf course to change the design of the golf course, and such changes, if any, shall not nullify, restrict or impair a Purchaser's covenants and duties contained herein.

23. No Offer of Gifts. Purchaser acknowledges that it has not been contacted by direct mail or by telephone with an offer of a gift, trip, or similar promotional item in connection with the marketing of the Property.

24. Affiliates of Seller. Unless specifically provided herein, Purchaser acknowledges that Seller shall be the sole party responsible for the performance of Seller's obligations under

this Agreement and acknowledges that no other person, firm or entity, including, without limitation, any entity affiliated with Seller, shall have any obligation or liability under this Agreement. Purchaser, therefore, waives all claims against all companies and persons affiliated with Seller for any loss, cost or damage arising out of Seller's performance or non-performance of its obligations to Purchaser in connection with this Agreement or any other instrument relating to Palmetto Bluff. **PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PALMETTO BLUFF REAL ESTATE COMPANY, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, IS AN AFFILIATE OF THE SELLER.**

25. Completion of Development. Purchaser acknowledges that as of the date of this Agreement and as of the date of the Closing, certain roads and utilities may not be complete and that there may be certain inconveniences until construction of such facilities is complete, and Purchaser hereby waives all claims with respect thereto.

26. Default and Remedies; Arbitration.

(a) Upon the failure of Purchaser to comply with the terms hereof within the stipulated time, and after receipt of notice of such failure with a twenty (20) day right to cure, it is understood and agreed by and between the parties hereto that Seller's sole remedy shall be to cancel this Agreement and retain all sums deposited hereunder as liquidated and agreed damages and this Agreement shall thereafter be of no further force or effect; provided, however, if the sums deposited by Purchaser prior to such breach exceeds 15% of the Purchase Price, Seller shall refund to Purchaser any portion of the Earnest Money in excess of (i) 15% of the Purchase Price, or (ii) the amount of damages incurred by Seller as a result of such breach, whichever is greater. It is understood by and between the parties hereto that upon failure by Seller to comply with the terms hereof, and after notice with a twenty (20) day right to cure, Purchaser's sole remedy shall be to cancel this Agreement and obtain a refund of the earnest money deposit together with interest thereon at the rate of eight percent (8%) per annum (prorated over the applicable period) as liquidated and agreed damages and this Agreement shall thereafter be of no further force and effect. The amounts identified above in this Paragraph as liquidated damages are not intended as a penalty and have been agreed upon by Seller and Purchaser after due deliberation and discussion, and the same constitute good faith estimates of the damages of the party which would be entitled thereto pursuant to this Agreement, the respective party's actual damages being difficult, if not impossible, to ascertain. In the event of breach of this Agreement by either party in the performance of their covenants or obligations hereunder after Closing, the non-breaching party may pursue any and all remedies available under South Carolina law, subject to subparagraph (b).

(b) Any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association currently in effect (unless the parties mutually agree otherwise). The award rendered by the arbitrator or arbitrators shall be final and any judgment upon the award rendered by the arbitrator or arbitrators shall be entered in a state court in the county in which the Property is located. The party demanding arbitration of any controversy, dispute or claim arising out of this Agreement or any breach or alleged breach of this Agreement shall file a written notice of such demand with the other party and with the American Arbitration Association. Such written notice shall be given no later than

sixty (60) days after the controversy, dispute, or claim arises or the breach or alleged breach of this Agreement occurs. Neither the parties to this Agreement nor the arbitrator or arbitrators may make any public disclosure of (i) the existence of any controversy, dispute or claim arising out of this Agreement or the breach or alleged breach of this Agreement, (ii) the existence of an arbitration proceeding under this Agreement or (iii) the results of any arbitration proceeding under this Agreement; provided, however, the filing of a civil action in a state court in the county where the Property is located, confirming an arbitration award pursuant to this Paragraph, shall not be deemed a violation of this confidentiality provision. The terms and provisions in this Paragraph shall survive the Closing of the sale and purchase of the Property as contemplated in this Agreement.

27. Escrow Agent. The Escrow Agent hereinabove referred to shall be Nexsen Pruet, LLC. The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing. The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its counsel fees, costs, disbursements and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims or demands arising out of this transaction. Upon the failure of Purchaser to comply with the requirements as set forth herein and pursuant to the above referenced Paragraph 26, Escrow Agent shall be empowered to dispose of the earnest money deposit as provided for in Paragraph 26 without incurring any liability. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, Escrow Agent shall have the option of depositing the earnest money deposit with the Clerk of Court for Beaufort County pending resolution of the disposition of said funds and upon depositing said funds, Escrow Agent shall bear no further responsibility. Purchaser acknowledges that Escrow Agent represents Seller and may also provide certain closing services to Seller.

28. Miscellaneous.

28.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Agreement shall be governed and construed in accordance with the laws of South Carolina. If either party is required to institute suit against the other party to enforce its rights under this Agreement, and if such party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto. All the undertakings contained herein which remain executory at closing shall survive the closing and shall remain in full force and effect. Purchaser may not assign its rights under this Agreement nor delegate its duties under this Agreement without the prior written consent of Seller. Seller may assign its rights hereunder and/or delegate its duties hereunder. The rights and obligations contained herein shall enure to

the benefit of and shall be binding on the respective parties hereto and their respective heirs, successors and assigns.

28.2 If Purchaser is a corporation, partnership, trust or limited liability company, Purchaser shall provide evidence that the persons executing this Agreement are authorized to act on behalf of the entity and that the undersigned individuals agree and confirm that the financing described in this Agreement will require the personal endorsement of the principals involved in the purchasing entity. The undersigned will supply all requested financial information to the permanent lender.

28.3 Time is of the essence with respect to all dates and obligations under this Agreement.

29. Counterparts. This Agreement and any amendments or addendums hereto may be executed in multiple counterparts, each of which shall have the force and effect of an original, and such counterparts together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each party and delivered to each other party. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a ".pdf" format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation or enforceability of a contract and each party hereto forever waives any such defense.

30. Electronic Execution of Certain Documents. To the extent that Purchaser and Seller agree to use or accept electronic records or signatures, then Purchaser and Seller agree that the words "execute," "execution," "signed," "signature," and words of the like import in this Agreement, in any amendments or other modifications hereof and in any other related documents in connection with the purchase of the Property (including any waivers and consents) shall be deemed to include electronic signatures, the electronic matching of Agreement terms and contract information on electronic platforms approved by Purchaser, or the keeping of records in electronic form, by Purchaser and Seller. Purchaser and Seller also acknowledge and agree that the use of electronic records or signatures, shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or the South Carolina Uniform Electronic Transactions Act.

31. Special Provisions, if any. 1) At closing, Seller to credit Purchaser \$11,735.00. (This amount is the total of the following: \$6900.00 which equals to one year dues and assessments excluding taxes; \$3960.00 which is equal to the BJWSA capacity fee; \$875.00 which is the amount of the Working Capital fee). 2) At closing, a referral fee will be paid to Luxury Simplified.

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH (7TH) DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THIS CONTRACT OR AGREEMENT MAY BE REVOKED AT YOUR OPTION FOR TWO (2) YEARS FROM THE DATE OF SIGNING.

IF APPLICABLE STATE LAW PROVIDES A LONGER REVOCATION PERIOD, YOU MAY CANCEL YOUR CONTRACT OR AGREEMENT AT ANY TIME DURING THE PERIOD PROVIDED BY APPLICABLE STATE LAW.

IN WITNESS WHEREOF, Purchaser hereto has caused this Agreement to be duly executed as of the 16 day of April, 2015.

WITNESSES:

PURCHASER:

Donna J. Grot

Shirley Light-Jones

IN WITNESS WHEREOF, Seller hereto has caused this Agreement to be duly executed as of the 21st day of April, 2015.

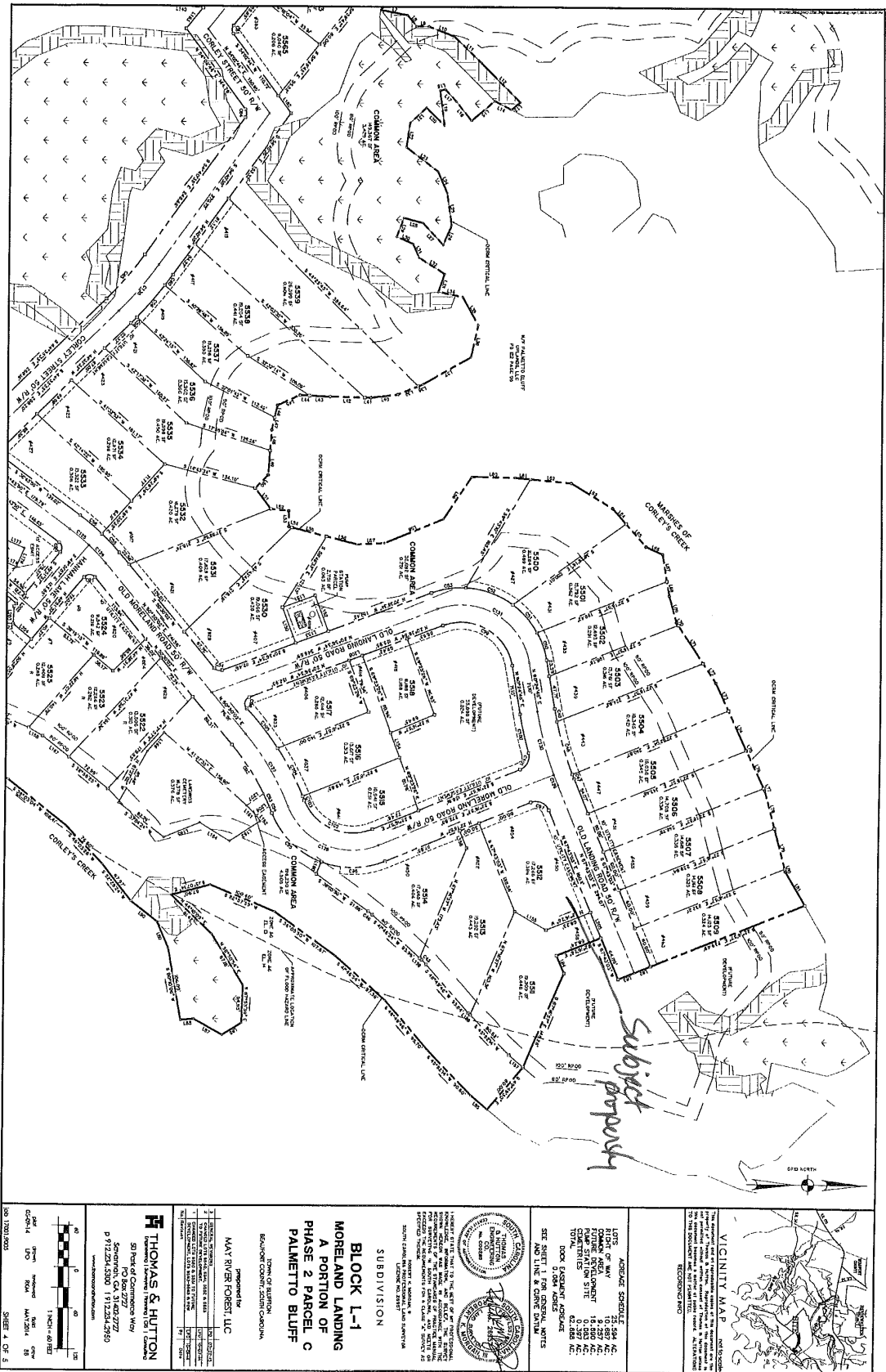
WITNESSES:

SELLER:

MAY RIVER FOREST LLC, a South Carolina limited liability company

mycunangle

By: [Signature]
Its: President



315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.

Case No.: 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "C" TO
AFFIDAVIT OF GRAY FERGUSON

BRIDGE CHARLESTON INVESTMENTS B, LLC'S
GENERAL WARRANTY DEED FOR LOT 5512

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

BEAUFORT COUNTY SC - ROD
BK 3406 Pgs 2580-2584
FILE NUM 2015030304
06/12/2015 04:07:36 PM
RCPT# 778399
RECORDING FEES 11.00
County Tax County 434.50
State Tax State 1,027.00

RECORDED
2015 Jul -01 10:55 AM

Sharon D. Burns
BEAUFORT COUNTY AUDITOR

ADD DMP Record 6/23/2015 01:38:34 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R614 052 000 0079 0000 00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That **MAY RIVER FOREST, LLC**, a South Carolina limited liability company (the "Grantor"), in the State aforesaid, for and in consideration of the sum of **THREE HUNDRED NINETY-FIVE THOUSAND and NO/100 (\$395,000.00) DOLLARS**, to it in hand paid at and before the sealing of these presents by **BRIDGE CHARLESTON INVESTMENTS B, LLC** (the "Grantee"), 95 Broad Street, Charleston, SC 29401, in the State aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, its Successors and Assigns, forever, the following described property, to-wit:

All that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, shown and designated as **LOT NUMBER 5512, BLOCK L-1, a portion of PALMETTO BLUFF, PHASE 2, PARCEL C**, and being more particularly shown and described on a plat thereof prepared by Robert K. Morgan, III, SC PLS #26957, dated May 9, 2014, last revised March 2, 2015 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 140 at Page 124. For a more detailed description, reference may be made to said plat of record.

TAX ID: R614-052-000-0079-0000

This being a portion of the same property conveyed to Grantor herein by Deed from Palmetto Bluff Uplands, LLC, dated July 15, 2008, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 2746 at Page 1312.

NPHH1:344605.1-DE-(JES) 033343-00458

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SAID PROPERTY is conveyed subject to all applicable covenants, conditions, restrictions and easements as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, including but not limited to, those described on Exhibit "A" attached hereto and incorporated herein.

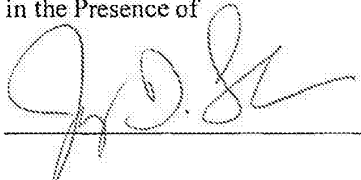
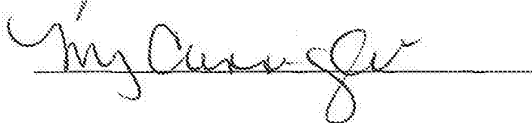
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the Property before mentioned unto the said Grantee, its Successors and Assigns, forever.

AND Grantor does hereby bind itself, its Successors and Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the Property unto the said Grantee, its Successors and Assigns, only against Grantor and its Successors and Assigns lawfully claiming or to claim the same, or any part thereof, by, through or under it.

IN WITNESS WHEREOF, MAY RIVER FOREST, LLC, has caused these Presents to be executed in its name by its duly authorized President, and its seal to be hereto affixed this 3rd day of June in the year of Our Lord Two Thousand Fifteen and in the Two Hundred Thirty-ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED
in the Presence of

MAY RIVER FOREST, LLC
a South Carolina limited liability company

By:  (SEAL)
Donald E. Killoren
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Donald E. Killoren, President of MAY RIVER FOREST, LLC, 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 3rd day of June, 2015.



Mary Cunningham (SEAL)
Notary Public for South Carolina
My Commission expires: 7-2-2023

This Deed was prepared by Edward M. Hughes, Nexsen Pruet, LLC, P. O. Box 23526, Hilton Head Island, SC 29925.

EXHIBIT "A"

1. Roll-back taxes as provided under Title 12, SC Code, as amended, including §12-43-220, et al.
2. The lien of the General Taxes for the year of 2015, and thereafter, not yet due or payable.
3. Terms and conditions of that certain Development Agreement by and between the Town of Bluffton and Union Camp Corporation, dated November 23, 1998, and recorded December 4, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1113 at Page 1085.
4. Covenants, restrictions and easements contained in that certain Declaration of Covenants, Conditions and Restrictions for Palmetto Bluff, dated June 29, 2000, and recorded July 13, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1312 at Page 98, as assigned in Book 1745 at Page 416 and amended in Book 1745 at Page 421.
5. Covenants, restrictions and easements contained in that certain Declaration of Restrictive Covenants, dated April 8, 2003, and recorded April 10, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1743 at Page 499.
6. Covenants, restrictions and easements contained in that certain Community Charter for Palmetto Bluff, dated April 17, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1747 at Page 2090, as amended in Book 1824 at Page 1562, Book 3154 at Page 3120, Book 3213 at Page 451 and Book 3357 at Page 1287.
7. Covenants, restrictions and easements contained in that certain Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1747 at Page 2185, as amended in Book 3357 at Page 1293.
8. All previous reservations, exceptions and conveyances of the oil, gas, associated hydrocarbons, minerals and mineral substances, and royalty and other mineral rights and interests, together with all mining and drilling rights and other rights, privileges and immunities relating thereto.
9. Easement in favor of South Carolina Power Company recorded May 25, 1937, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 54 at Page 47.
10. Easement in favor of South Carolina Electric & Gas Company recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1942 at Page 1059.

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11. 10' utility easement and environmental protection areas as shown on the plat prepared by Thomas & Hutton Engineering Co., dated May 9, 2014, last revised March 2, 2015 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 140 at Page 124.
12. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other Federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said State or Federal laws.

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.

Case No.: 2022-CP-07-00632

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "D" TO
AFFIDAVIT OF GRAY FERGUSON

MATTHEW AND BARBARA LYNCH PURCHASE
AND SALE AGREEMENT

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT OR, IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

PALMETTO BLUFF
PURCHASE AND SALE AGREEMENT
(LOT WITHOUT DOCK)
(MORELAND)

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this 7 day of December 2017, by and between MAY RIVER FOREST, LLC, a South Carolina limited liability company, whose address is 19 Village Park Square, Bluffton, South Carolina 29910 (the "Seller") and the following purchaser (the "Purchaser"):

NAME: Matthew N. Lynch & Barbara A. Lynch

ADDRESS: 3 Westmoreland Road
Hingham MA 02043

TELEPHONE (HOME): _____

TELEPHONE (OFFICE): _____

CELL NUMBER: _____

FAX NUMBER: _____

EMAIL ADDRESS: _____

1. Real Property. Seller agrees to sell and Purchaser agrees to purchase the following described real estate in Palmetto Bluff (the "Community") in Beaufort County, South Carolina, as follows: Lot 5557, Block L-1, Palmetto Bluff, as shown on that certain plat prepared by Thomas & Hutton Engineering Co., a copy of which is attached hereto as **Exhibit "A"** and incorporated herein (the "Property"). Such plat is (*check only one*):

- ☒ a final plat which has been recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the "Official Records") at Plat Book 141, Page 105.
- ☐ a preliminary plat only (attach Addendum "A-1," Acknowledgement of Preliminary Plat, which shall be incorporated herein by this reference).

The sale and conveyance of the Property shall be subject to all applicable restrictions, covenants, easements, options and affirmative obligations recorded as of the Closing date in the Official Records.

2. Palmetto Bluff Club. Purchaser acknowledges that certain social and recreational facilities constructed or to be constructed within the Community, consisting of non-golf sports facilities, including tennis courts, fitness centers and swimming pool facilities (the "Club Facilities"), are to be owned by and operated by an affiliate of Seller as a privately-owned club to be known as Palmetto Bluff Club (the "Club"). Use of the Club Facilities shall be subject to such terms and conditions and payment of such fees, as provided for in the Palmetto Bluff Club Membership Plan (the "Club Plan"), as may be amended and modified from time to time. The Club has recently published an amended Club Plan having an effective date of June 19, 2017. Membership in the Club is mandatory for all owners of property in the Community and shall be on a non-equity basis (which means that the members will have no ownership interest in the Club). Purchaser further acknowledges that the Club Plan as amended is subject to further change in accordance with its terms without prior notice.

Purchaser also understands and agrees that by purchasing the Property, Purchaser acquires and is required to maintain a membership in the Club (the "Club Membership") and pay a non-refundable Membership Joining Fee (as described in the Club Plan as amended), annual dues, and other charges established by the Club from time to time. The Membership Joining Fee shall be paid by the Purchaser at the Closing as described in Paragraph 6 herein. The Membership Joining Fee is currently Ten Thousand Dollars (\$10,000). The annual dues amount for the year 2017 has been set at Three Thousand Nine Hundred Dollars (\$3,900) plus applicable taxes for all Units as defined in the Community Charter as described in Paragraph 11 herein.

Purchaser further understands and agrees that the Club has the right to restrict access to the Club Facilities for guests renting homes within the Community whether long term rental guests or short term rental guests as provided in the Club Plan as modified. Additionally, rental guests renting through an affiliate of Seller may be granted different access rights to Club Facilities than rental guests renting directly through Purchaser and/or a third party rental management company. Purchaser should review these access restrictions as provided in the Club Plan, as amended.

The Property shall be subject to that certain Declaration of Recreational Covenant for Palmetto Bluff recorded in the Official Records in Book 1747 at Page 2090, *et seq.*, as it may be amended and supplemented. As such, the Club will have lien rights against the Property to enforce payment of such fees, dues and charges. A Club Membership entitles the member to use the Club Facilities.

Purchaser hereby acknowledges and agrees that mandatory membership in the Club for all purchasers in the Community enhances the value of the Property because of the availability of recreational amenities for all owners within the Community, including Purchaser.

PURCHASER ACKNOWLEDGES THE CONTENT OF THIS PARAGRAPH AND RECEIPT OF THE CLUB PLAN.

MNL
(Purchaser's Initials)

BAL
(Purchaser's Initials)

3. Palmetto Bluff Golf Club. Purchaser acknowledges that an 18-hole golf course, golf house and golf practice facilities have been constructed by an affiliate of Seller within the

Community (the "Golf Facilities") and are owned and operated by an affiliate of Seller as a privately-owned club known as Palmetto Bluff Golf Club (the "Golf Club"). The Golf Club offers memberships (the "Golf Memberships") entitling Golf Club members to use the Golf Facilities, as a separate amenity from the Club Facilities. Purchaser should contact the Membership Office of the Golf Club to obtain the current price of the Golf Memberships currently being offered. Golf Membership is subject to application and approval and payment of required joining fees and membership dues. Ownership of the Property does not guarantee approval for or availability of a Golf Membership. Therefore, if Purchaser does not purchase a Golf Membership on or before Closing, there are no assurances that a Golf Membership will be available for purchase in the future.

Purchaser should contact the Membership Office of the Golf Club to obtain a copy of the Palmetto Bluff Golf Club Plan and the exhibits thereto (the "Golf Club Plan"), which outline the current terms and conditions of the memberships in the Golf Club. Purchaser acknowledges that the Golf Club Plan is subject to change in accordance with its terms without prior notice. Purchaser further acknowledges that guests staying in Montage Palmetto Bluff and other lodging facilities managed by Montage Palmetto Bluff or an affiliate of Seller that may be developed within the Community (the "Resort Guests") shall have access to the Golf Facilities in accordance with the terms of the Golf Club Plan.

4. Purchase Price.

4.1 The Purchase Price for the Property is TWO HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$237,500.00), shall be paid as follows:

4.1.1 \$10,000.00, as an initial earnest money deposit, the receipt of which is hereby acknowledged (to be held by Escrow Agent hereinafter named);

4.1.2 \$13,750.00 as an additional earnest money deposit due seven (7) calendar days after the date of this Agreement also to be held by Escrow Agent pending Closing. Escrow Agent shall hold the earnest money deposits in a non-interest bearing account until Closing.

4.1.3 \$213,750.00, representing the remainder of the Purchase Price, due and payable at Closing.

4.2 The Purchase Price, together with all of the Purchaser's closing costs and other costs provided herein, less the earnest money deposit will be paid to the Seller by cash, certified funds or wire transfer by at Closing.

5. Financing. This Agreement and the obligations of both Seller and Purchaser under this Agreement ☒ **are** ☐ **are not (check one box)** contingent upon Purchaser obtaining financing in the amount of TWO HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$201,875.00). Purchaser may select a lender of Purchaser's choice which lender is in the business of making real estate loans in Beaufort County. By suggesting a source of financing, Seller does not accept any responsibility for Purchaser's ability to qualify for such financing. If this Agreement is contingent upon obtaining financing, the timing of this financing contingency and the financing process is as follows:

5.1 Within SEVEN (7) calendar days from the date of this Agreement, Purchaser shall complete and submit to the lender of Purchaser's choice a mortgage loan application (or similar document), all information requested by such lender, pay the required application fees and execute all documents necessary to initiate the loan process.

5.2 Within THIRTY (30) calendar days from the submission described in Paragraph 5.1 above, Purchaser shall notify Seller in writing that Purchaser: (i) has obtained a commitment for such financing; (ii) waives the financing contingency; or (iii) has been denied a commitment for such financing and desires cancellation of this Agreement and refund of all money deposits in accordance with this Agreement.

Notwithstanding anything to the contrary stated in this Agreement, in the event of Purchaser's notification to Seller within the time period described in this Paragraph 5.2 that financing has been denied and delivery by Purchaser to Seller of a letter from such lender stating the Purchaser's failure to qualify (collectively, a "Notice of Denial"), Seller will promptly cause a refund to Purchaser of all sums paid to date, at which time this Agreement shall terminate and no party shall have any further rights or remedies hereunder. In the event that Notice of Denial is not received by Seller within the above time frame, the financing contingency shall be deemed waived by Purchaser, Purchaser's obligation to purchase the Property shall no longer be contingent upon Purchaser's ability to obtain financing, and the earnest money deposit shall be nonrefundable.

THIS IS A LIMITED FINANCING CONTINGENCY - NO CANCELLATION FOR FAILURE TO OBTAIN FINANCING WILL BE ALLOWED AFTER THE CONTINGENCY PERIOD SET FORTH HEREIN.

6. Closing. Purchaser and Seller agree that the closing shall occur upon the transfer of title to the Property from Seller to Purchaser (the "Closing"). Closing shall occur on or before January 29, 2018. Closing shall be held at the offices of the Escrow Agent, or such other place as Seller may designate. In no event will closing and delivery of the deed be in excess of one hundred eighty (180) calendar days of the signing of this Agreement by Purchaser.

7. Conveyance of Property. At Closing, Seller shall convey marketable title to the Property to Purchaser in fee simple by limited warranty deed, free from encumbrances except such as are herein agreed to be assumed by Purchaser. If an owner's title commitment can be issued by an ALTA title insurance company, without any unusual or extraordinary exceptions, this shall constitute evidence of marketable title. If any defect is found in the title which cannot be corrected within thirty (30) calendar days, the earnest money deposit will be returned to the Purchaser and this Agreement terminated.

8. Prorations. All Beaufort County property taxes, Community assessments, and other applicable charges shall be prorated as of the date of Closing. Seller and Purchaser agree to enter into a Tax Proration Agreement at Closing. The tax proration for the Property will be recalculated based on the actual tax bill issued by Beaufort County. Should the actual tax responsibility for either the Seller or the Purchaser be greater than or less than ten percent (10%) of the estimated tax liability computed for the Closing, either the Seller or the Purchaser may be entitled to seek an adjustment of the tax proration made at Closing. The underpaying party will reimburse the overpaying party within twenty (20) days from receipt of written notice of such

adjustment. The written notice will be sent to the address shown on the settlement statement executed at Closing.

9. Closing Expenses. Purchaser shall be responsible for paying Purchaser's share of the Beaufort County property taxes as described in Paragraph 8 above and the contribution to the Trust described in Paragraph 11.5. Purchaser shall also be responsible for Purchaser's own attorney fees, all costs related to financing, if any, recording fees for the deed, the cost of a title examination and title insurance, if any, and any and all charges, expenses, taxes and costs customarily paid by a purchaser in real estate transactions in Beaufort County, South Carolina, except as otherwise provided herein. Purchaser shall also be responsible for paying the South Carolina statutory recording fee (formerly documentary stamps) for the deed. Seller shall pay for its own attorney fees, the preparation of the deed, any real estate commissions, recording costs for mortgage releases, if any, and any and all charges, expenses, taxes and costs customarily paid by a seller in real estate transactions in Beaufort County, South Carolina, except as otherwise provided herein. In addition, at Closing Purchaser shall reimburse the Seller Three Thousand Nine Hundred Sixty Dollars (\$3,960) which is a portion of the amount paid or to be paid by Seller to Beaufort/Jasper Water and Sewer Authority for sewer treatment capacity for the Community.

10. Cooperating Brokerage. Purchaser warrants that Purchaser has had no dealings relating to the Property with any real estate agent or broker other than members of the sales staff of Palmetto Bluff Real Estate Company, LLC, unless one is specifically identified in Paragraph 31 below.

11. Community Charter. It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to the recorded plat, all special easements as shown thereon, and applicable restrictions or covenants of record, including those general easements, equitable restrictions, limitations on use and affirmative obligations contained in the Community Charter for Palmetto Bluff recorded in the Official Records in Book 1747 at Page 2090, *et seq.*, and amendments and supplements thereto (as amended and supplemented, the "Community Charter"), copies of which have been provided to Purchaser prior to or simultaneously with the execution of this Agreement. Palmetto Bluff Development, LLC, a South Carolina limited liability company (the "Development Company") is the "Founder" under the Community Charter. The Community Charter includes, among other things, the following provisions:

11.1 No structure or improvement may be erected, placed or altered on the Property except in compliance with the Design Guidelines referenced in the Community Charter. Any proposed building plans must be submitted to and approved in writing by the Design Review Board, as also referenced in the Community Charter prior to commencement of construction. Purchaser agrees that the actual construction will have no material variation from the plans approved by the Design Review Board unless the Design Review Board shall have also approved these variations in writing. The Design Review Board may grant or deny approval of Purchaser's plans, in its sole discretion, including purely aesthetic considerations.

11.2 In order to provide for the preservation, maintenance, security and operation of common facilities within the Community, as well as to provide the owners of property within the Community with services for the use and benefit of said owners, there has been created the

Palmetto Bluff Preservation Trust, Inc. (the "Trust"). All property owners in the Community automatically become members of the Trust upon ownership of property within the Community.

11.3 The Development Company has formed Palmetto Bluff Foundation, as a South Carolina non-profit corporation (the "Foundation"). The Foundation is exempt from federal income taxes under the Internal Revenue Code. The Foundation has been organized and operated for religious, charitable, scientific, literary and athletic and educational purposes. The function of the Foundation may include: (i) providing environmental education programs for adults and children; (ii) sponsoring and organizing environmental research; (iii) managing a conservation area for a particular species or type of ecosystem; (iv) publishing materials regarding the ecosystem or species in the area; (v) managing outreach programs regarding environmental issues; (vi) making grants to or for researchers of environmental issues; (vii) accepting title to land or conservation easements encumbering land for conservation purposes; (viii) entering into contracts to maintain and operate land for conservation, educational and scientific purposes; and (ix) establishing and operating a museum or park.

11.4 The Trust is granted the right to assess property within its jurisdiction in order to carry out the prescribed functions. Purchaser hereby acknowledges that it is aware of the right of the Trust to levy and enforce assessments and Purchaser hereby agrees to pay promptly all such assessments which are properly made against Purchaser by the Trust. The Community Charter provides for the following types of assessments.

11.4.1 Annual Assessments for Common Expenses as defined in the Community Charter. (Note: The Annual Assessment for the year 2017 has been set at Three Thousand Six Hundred and Fifty Dollars (\$3,650) for all Units as defined in the Community Charter.)

11.4.2 Neighborhood Assessments, if applicable.

11.4.3 Special Assessments to cover unbudgeted expenses.

11.4.4 Specific Assessments against a particular piece of property within the Community for any special services provided or to cover costs to bring such property into compliance with the governing documents.

11.4.5 Community Enhancement Assessment in the form of a transfer fee upon each subsequent transfer of title to a Unit in the Community. The amount of this transfer fee 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. One-half (1/2) of the Community Enhancement Assessments shall be paid to the Foundation. The remaining one-half (1/2) of the Community Enhancement Assessments shall be utilized by the Trust as provided in the Community Charter.

11.5 In order to provide funds for operating expenses and other expenses incurred by the Trust, Purchaser shall pay to the Trust at Closing a working capital contribution equal to one-fourth (1/4) of the Annual Assessment.

11.6 The Community Charter provides for an alternate dispute mechanism and procedure with regard to certain matters.

Purchaser acknowledges that the above provisions only represent a brief summary of the Community Charter. A complete review of the Community Charter is recommended by Seller.

PURCHASER ACKNOWLEDGES THE CONTENTS OF THIS PARAGRAPH 11 AND RECEIPT OF A COPY OF THE COMMUNITY CHARTER AND THE DESIGN GUIDELINES.

MNL
(Purchaser's Initials)

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(Purchaser's Initials)

12. Environmental Management Plan. The Development Company has developed an Environmental Management Plan (the "Environmental Plan") for the Community. The Environmental Plan provides for the maintenance and management of various environmental features and wildlife management within the Community. The Environmental Plan provides the Development Company with certain rights to go on to the Property, common areas and other real property within the Community to perform such maintenance and management. Likewise, the Environmental Plan limits the maintenance and management of environmental features and wildlife management by owners of property within the Community, other than the Development Company. Upon request, Seller shall provide a copy of the Environmental Plan to the Purchaser.

13. Roll Back Taxes. Seller and Purchaser acknowledge that the Property may be subject to "roll back" taxes. Seller agrees to be responsible for all "roll back" taxes which may be due in the future. Seller has arranged with Fidelity National Insurance Company to provide an owners title insurance policy which shall not list such "roll back" taxes as an exception to the policy. Purchaser reaffirms that the cost of such policy shall be paid by Purchaser.

14. Additional Restrictions.

14.1 In accordance with Rule 30-12(4)(2)(h) of the Rules and Regulations of the Department of Health and Environmental Control - Coastal Division, a Dock Master Plan entitled "Palmetto Bluff Phase I Dock Master Plan", as most recently revised on February 27, 2003, has been filed in the Office of the Register of Deeds for Beaufort County, South Carolina, ("Official Records") in Plat Book 92 at Page 100, designating the location of docks to be constructed on Palmetto Bluff. Palmetto Bluff Development, LLC reserves the right, in its sole discretion, to modify the Dock Master Plan in accordance with the applicable rules and regulations of the Department of Health and Environmental Control - Coastal Division, and the laws of the State of South Carolina.

14.2 In accordance with the Beaufort County River Protection Overlay District ("RPOD") and various approvals by the Town of Bluffton for the Development of the Community, lots located on the May River are subject to setback requirements and specific criteria regarding the removal of vegetation and the establishment of a view corridor(s).

14.3 In addition to the RPOD restrictions referenced in Paragraph 14.2 above, lots located on the May River are also subject to that certain Declaration of Covenants, Conditions

and Restrictions for Palmetto Bluff ("Dock Covenants") recorded in the Official Records in Book 1312 at Page 98, as amended in Book 1745 at Page 421. The Dock Covenants prohibit an owner of a lot on the May River from constructing a dock or any other structure on the May River.

14.4 If Exhibit "A" depicts wetlands within or abutting the Property, the Property shall be sold subject to that certain Declaration of Restrictive Covenants (the "Wetlands Covenants") recorded in the Official Records. The Wetlands Covenants restrict the use of the "wetlands" and the "wetland buffers" described therein and depicted on Exhibit "A".

15. Utility Services; Roads. The Seller is responsible for providing water and sewer service lines, electrical lines, telephone lines, natural gas, cablevision, internet lines and asphalt or loose shell roads to the Property. After the construction of such lines, Purchaser shall be responsible for arranging for utility services with the appropriate provider of such service. Any and all charges associated with availability, connection and usage fees are to be paid by Purchaser. Purchaser expressly acknowledges that, except for the Development Company, no wells may be drilled on the Property.

16. Condition of Property. The Property is being conveyed in an "as is" condition and Seller has made no commitments nor accepted any obligation for any work on the Property. It is understood, however, that prior to Closing, Seller shall have the right but not the obligation to improve the Property by removing any stumps or debris and to thin or remove underbrush and thin out small trees under six (6) inches in diameter to the degree necessary to permit tractor mowers to mow underbrush and weeds on the Property. Additionally, Purchaser acknowledges that the Property is located in an area of flat topography typical of the South Carolina coastal lowcountry. Lots within areas of low elevation and near water, may contain soil conditions which could necessitate the use of special construction techniques to build. It is recommended that Purchaser note these conditions to avoid any problems that could arise as a result thereof.

17. Moreland Landing. As described in Paragraph 1, the Property is located in Block L-1, Palmetto Bluff. In close proximity to the Property are various parcels of land comprising areas commonly referred to as "Moreland Village" and "Moreland Landing." Various facilities and improvements are located in Moreland Village and Moreland Landing for which the Developer, or its related affiliated entities, has historically used and intends to continue using for activities such as parties, concerts, group functions, and as a boat landing. Vehicle parking for Moreland Landing will be located in the Moreland Landing area and within a platted area located in Moreland Village. The use of the Moreland Village and Moreland Landing will result in increased vehicular and pedestrian traffic and parking in the designated areas within Moreland Village. The continued use of Moreland Village and Moreland Landing may also result in increased noise levels and traffic which some property owners may consider a nuisance.

18. Completion of Certain Facilities. If not already complete, Seller agrees to complete construction of paved and loose shell roads and the utilities described in Paragraph 15 to the boundary of the Property, as well as the recreational facilities which Seller has committed to provide as described in the Property Report for the Palmetto Bluff subdivision dated November 17, 2017 (the "Property Report"), within one (1) year after the estimated completion dates specified for such items in the Property Report, subject to delays beyond Seller's control resulting from Acts of God, strikes, material shortages, or other occurrences which are sufficient to constitute

impossibility of performance under South Carolina law. In the event of such occurrences, Seller shall proceed to completion within a reasonable time after the abatement of the event causing delay.

19. Beaufort County Impact Fees. Beaufort County and the Town of Bluffton have ordinances which generally provide for the collection of certain fees at the time of building permit issuance for new residential construction. No fee is due at the time of Closing on the Property, but rather is due at the time of issuance of the building permit. Such fees and expenses will be the responsibility of Purchaser.

20. Seller Representations: Non Reliance; Integration; Modification. By executing this Agreement, Purchaser acknowledges and confirms the following:

20.1 Seller has made no promises, representations, statements or communications, written or oral, regarding any aspect of the development of the Community, including, but not limited to, the Club Facilities, Golf Club Facilities, roads, sewer, water, electric service or future development of the Community, upon which the Purchaser has relied, or which has induced the Purchaser to purchase of the Property, except as specifically stated in this Agreement, the Community Charter, the Club Plan and the Golf Plan documentation described in Paragraph 2, Paragraph 3 and Paragraph 11, and the Property Report referenced in Paragraph 18 of this Agreement (collectively the "Additional Documents"). The Purchaser is relying solely upon the information contained in this Agreement and the Additional Documents in deciding to enter into this Agreement.

20.2 Purchaser specifically disclaims any reliance upon any oral statement or representation made by any person associated with the Seller or any depictions, projections or representations in any materials or items other than this Agreement and the Additional Documents.

20.3 This Agreement constitutes the final, complete, sole and exclusive agreement between the Seller and Purchaser concerning matters hereof and the terms of the transaction contemplated herein. Any and all prior or inconsistent statements, representations or promises concerning the matters contained herein, in any form whatsoever, are superseded by this Agreement.

20.4 This Agreement may only be modified, altered or changed by a writing signed by both Seller and Purchaser. This Agreement may not be modified, altered or changed orally or through any purported course of conduct.

21. Golf Hazard Disclosure. Purchaser acknowledges that (i) the Property may be located adjacent, or in proximity, to a golf course; (ii) that golfers may come onto the Property to look for errant golf balls; (iii) that owning property adjacent, or in proximity, to a golf course involves certain risks; and (iv) that such risk may include golf balls being hit onto the Property and elsewhere outside the boundaries of the golf course with the potential of causing bodily injury or physical damage to Property. Purchaser hereby expressly assumes such risks and agrees that Seller, any companies or persons affiliated with Seller, the golf course architect and builders, and any entity owning or managing the aforesaid golf course shall not be liable to Purchaser or anyone claiming any loss or damage, including, without limitation, indirect, special or consequential loss

or damage, arising from personal injury, destruction of Property, trespass or any other alleged wrong or entitlement to remedy based upon or related to the proximity of the golf course to the Property or to any other areas in Palmetto Bluff. Purchaser hereby agrees to indemnify and hold harmless Seller, any companies or persons affiliated with Seller, the golf course architect and builders, and any entity owning or managing the golf course against any and all claims of Purchaser's guests, invitees or licensees with respect to the above.

Nothing in this paragraph shall restrict or limit any power of Seller or any entity owning or managing the golf course to change the design of the golf course, and such changes, if any, shall not nullify, restrict or impair a Purchaser's covenants and duties contained herein.

22. No Offer of Gifts. Purchaser acknowledges that it has not been contacted by direct mail or by telephone with an offer of a gift, trip, or similar promotional item in connection with the marketing of the Property.

23. Affiliates of Seller. Unless specifically provided herein, Purchaser acknowledges that Seller shall be the sole party responsible for the performance of Seller's obligations under this Agreement and acknowledges that no other person, firm or entity, including, without limitation, any entity affiliated with Seller, shall have any obligation or liability under this Agreement. Purchaser, therefore, waives all claims against all entities, companies and persons affiliated with Seller for any loss, cost or damage arising out of or related to Seller's performance or non-performance of its obligations to Purchaser in connection with this Agreement or any other instrument relating to Palmetto Bluff. **PURCHASER SPECIFICALLY ACKNOWLEDGES THAT PALMETTO BLUFF REAL ESTATE COMPANY, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, IS AN AFFILIATE OF THE SELLER.**

24. Completion of Development. Purchaser acknowledges that as of the date of this Agreement and as of the date of the Closing, certain roads and utilities may not be complete and that there may be certain inconveniences until construction of such facilities is complete, and Purchaser hereby waives all claims with respect thereto.

25. Palmetto Bluff Shooting Club; Events, and Other Activities. Purchaser acknowledges that firearm sports activities exist within the Community and in the surrounding areas outside the Community, including but not limited to, hunting, pistol range activity, and various recreational activities offered at the Palmetto Bluff Shooting Club facilities (the "Shooting Club"). On occasion, such activities may inherently cause noise levels to increase within the Community. In addition to firearm activities, other events and activities found within the Community may, on occasion, produce noise and increased vehicular and pedestrian traffic. Examples of such events and activities include, but are not limited to, the production of festivals, sporting events, events featuring live music, and the sponsorship of programming for the benefit of the Community and for charitable organizations. Purchaser acknowledges that events and activities of this nature are critical to preserving the characteristics and appeal of the Community and, therefore, waives any legal claim thereupon.

In May, 2017, a lawsuit was filed by seven (7) property owners, asserting that noise from the Shooting Club constitute a nuisance and seeking an injunction to close the Shooting Club. Seller

believes the lawsuit to be unfounded and is vigorously defending the lawsuit and the continued operation of the Shooting Club.

26. Default and Remedies Mandatory Mediation; Mandatory Arbitration.

(a) Upon the failure of Purchaser to comply with the terms hereof within the stipulated time, and after receipt of notice of such failure with a twenty (20) calendar day right to cure, it is understood and agreed by and between the parties hereto that Seller's sole remedy shall be to cancel this Agreement and retain all sums deposited hereunder as liquidated and agreed damages and this Agreement shall thereafter be of no further force or effect; provided, however, if the sums deposited by Purchaser prior to such breach exceeds fifteen percent (15%) of the Purchase Price, Seller shall refund to Purchaser any portion of the Earnest Money in excess of (i) fifteen percent (15%) of the Purchase Price, or (ii) the amount of damages incurred by Seller as a result of such breach, whichever is greater. It is understood by and between the parties hereto that upon failure by Seller to comply with the terms hereof, and after notice with a twenty (20) day right to cure, Purchaser's sole remedy shall be to cancel this Agreement and obtain a refund of the earnest money deposit together with interest thereon at the rate of eight percent (8%) per annum (prorated over the applicable period) as liquidated and agreed damages and this Agreement shall thereafter be of no further force and effect. The amounts identified above in this Paragraph as liquidated damages are not intended as a penalty and have been agreed upon by Seller and Purchaser after due deliberation and discussion, and the same constitute good faith estimates of the damages of the party which would be entitled thereto pursuant to this Agreement, the respective party's actual damages being difficult, if not impossible, to ascertain. In the event of breach of this Agreement by either party in the performance of their covenants or obligations hereunder after Closing, the non-breaching party may pursue any and all remedies available under South Carolina law, subject to subparagraph (b) and subparagraph (c) below.

(b) Subject to the provisions of subparagraph (c) below, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Agreement, including, but not limited to, the breach or alleged breach of this 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 the Seller and Purchaser 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, with the sole exception of the remedy set forth in subparagraph (a) above. No consequential, lost profits, dimension 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 (c) below) of the controversy, dispute or claim which is the subject of the notice. Neither of the parties to this Agreement nor the arbitrator may make any public disclosure of (i) the existence of any controversy, dispute or claim arising

out of this Agreement or the breach or alleged breach of this Agreement, (ii) the existence of an arbitration proceeding under this Agreement or (iii) the results of any arbitration proceeding under this 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 Paragraph 26, 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. The terms and provisions of this Paragraph 26 shall survive the closing of the purchase and sale of the Property, as contemplated herein.

(c) No party may commence an arbitration process pursuant to subparagraph (b) above or any other legal or equitable action of any nature whatsoever, relating directly or indirectly to or arising directly or indirectly from this Agreement, without first attempting to resolve their dispute through mediation. A party with a dispute relating to or arising from this agreement shall have 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 a mediation, utilizing a neutral mediation agreed upon by both parties, and make a good faith attempt to resolve their dispute. The mediation shall be conducted 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 an 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.

27. Escrow Agent. The Escrow Agent hereinabove referred to shall be Nexsen Pruet, LLC. The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing. The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its counsel fees, costs, disbursements and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims or demands arising out of this transaction. Upon the failure of Purchaser to comply with the requirements as set forth herein and pursuant to Paragraph 26 above, Escrow Agent shall be empowered to dispose of the earnest money deposit as provided for in Paragraph 26 without incurring any liability. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, Escrow Agent shall have the option of depositing the earnest money deposit with the Clerk of Court for Beaufort County pending resolution of the disposition of said funds and upon depositing said funds, Escrow Agent shall bear no further responsibility. Purchaser acknowledges that Escrow Agent represents Seller and may also provide certain closing services to Seller. The provisions of this Paragraph 27 shall survive Closing.

28. Miscellaneous.

28.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Agreement shall be governed and construed in accordance with the laws of South Carolina. If either party is required to institute suit against the other party to enforce its rights under this Agreement, and if such party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs,

expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement. All the undertakings contained herein which remain executory at closing shall survive the closing and shall remain in full force and effect. Purchaser may not assign its rights under this Agreement nor delegate its duties under this Agreement without the prior written consent of Seller. Seller may assign its rights hereunder and/or delegate its duties hereunder without the prior written consent of Purchaser. The rights and obligations contained herein shall inure to the benefit of and shall be binding on the respective parties hereto and their respective heirs, successors and assigns.

28.2 If Purchaser is a corporation, partnership, trust or limited liability company, Purchaser shall provide evidence that the persons executing this Agreement are authorized to act on behalf of the entity and that the undersigned individuals agree and confirm that the financing described in this Agreement will require the personal endorsement of the principals involved in the purchasing entity. The undersigned will supply all requested financial information to the permanent lender.

28.3 Time is of the essence with respect to all dates and obligations under this Agreement.

28.4 Purchaser acknowledges that if a boundary line of the Property extends to the water's edge of a lagoon or other water way, water may encroach on to the Property during periods of heavy rain.

28.5 By entering into this Agreement, both Seller and Purchaser acknowledge that each has received the "South Carolina Disclosure of Brokerage Relationships" form promulgated by the South Carolina Real Estate Commission, and that both Seller and Purchaser have each received "customer" or "client" service as described therein.

29. Counterparts. This Agreement and any amendments or addendums hereto may be executed in multiple counterparts, each of which shall have the force and effect of an original, and such counterparts together shall constitute one and the same instrument and shall become effective when counterparts have been signed by each party and delivered to each other party. In the event that any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. No party hereto shall raise the use of a facsimile machine or e-mail delivery of a ".pdf" format data file to deliver a signature to this Agreement or any amendment hereto or the fact that such signature was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation or enforceability of a contract and each party hereto forever waives any such defense.

30. Electronic Execution of Certain Documents. To the extent that Purchaser and Seller agree to use or accept electronic records or signatures, then Purchaser and Seller agree that the words "execute," "execution," "signed," "signature," and words of the like import in this Agreement, in any amendments or other modifications hereof and in any other related documents in connection with the purchase of the Property (including any waivers and consents) shall be

deemed to include electronic signatures, the electronic matching of Agreement terms and contract information on electronic platforms approved by Purchaser, or the keeping of records in electronic form, by Purchaser and Seller. Purchaser and Seller also acknowledge and agree that the use of electronic records or signatures, shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or the South Carolina Uniform Electronic Transactions Act.

31. Special Provisions, if any. Seller to credit Purchaser \$12,715 at closing.

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH (7TH) DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT.

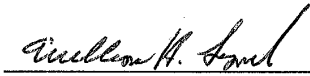
IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THIS CONTRACT OR AGREEMENT MAY BE REVOKED AT YOUR OPTION FOR TWO (2) YEARS FROM THE DATE OF SIGNING.

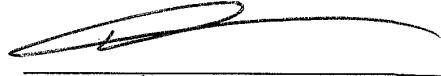
IF APPLICABLE STATE LAW PROVIDES A LONGER REVOCATION PERIOD, YOU MAY CANCEL YOUR CONTRACT OR AGREEMENT AT ANY TIME DURING THE PERIOD PROVIDED BY APPLICABLE STATE LAW.

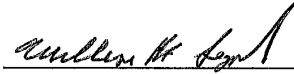
IN WITNESS WHEREOF, Purchaser hereto has caused this Agreement to be duly executed as of the 7 day of DECEMBER, 2017.

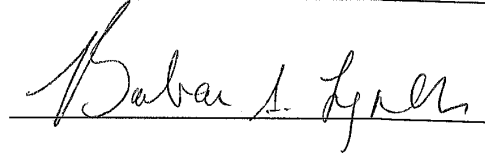
WITNESSES:

PURCHASER:







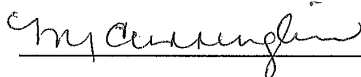


IN WITNESS WHEREOF, Seller hereto has caused this Agreement to be duly executed as of the 11th day of December, 2017.

WITNESSES:

SELLER:

MAY RIVER FOREST LLC, a South
Carolina limited liability company



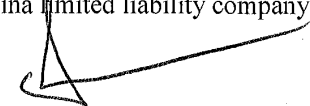
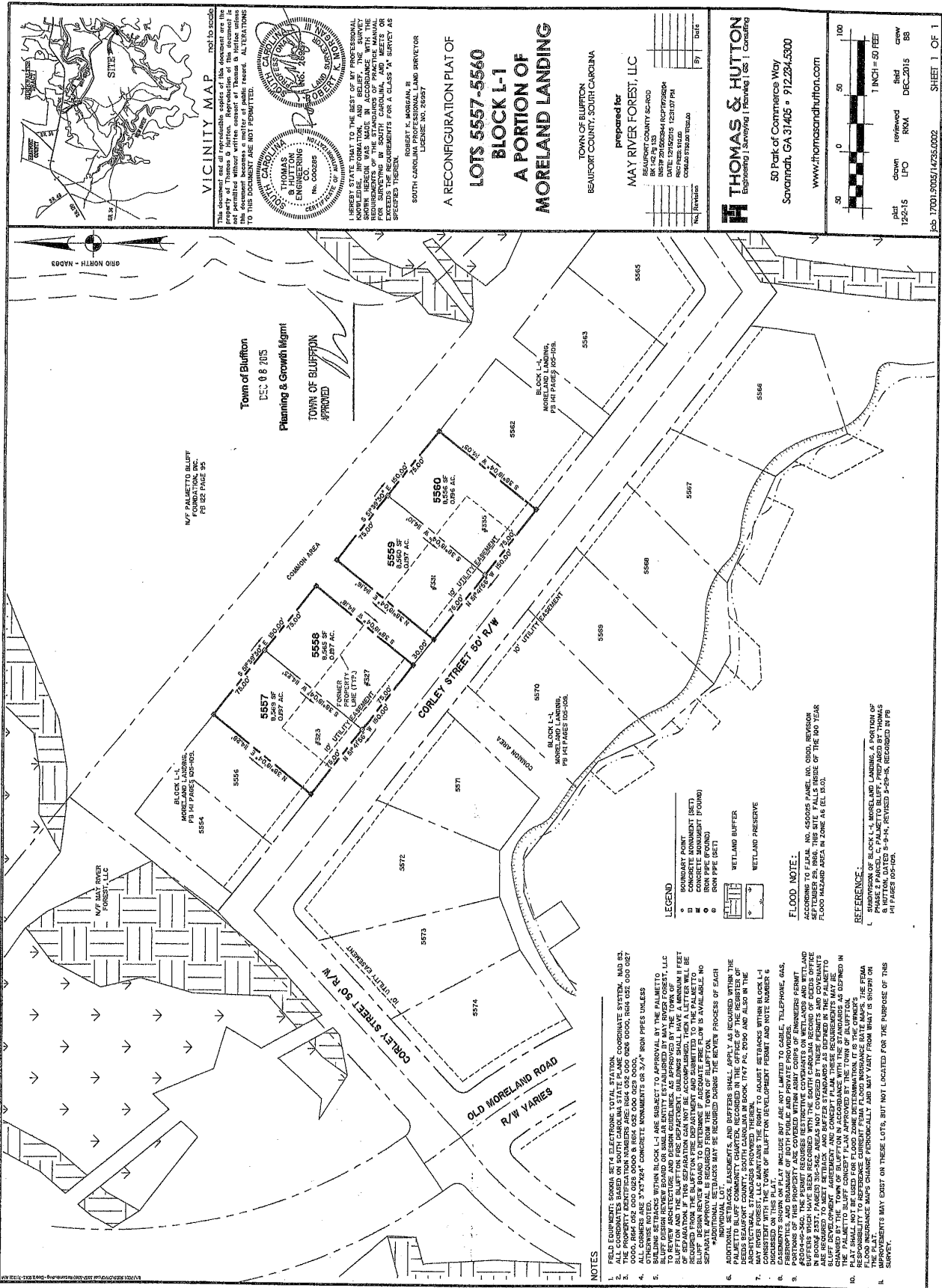
By: 
Its: PRESIDENT

Exhibit "A"

Plat of Property

(Attached)



315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No.: 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND IN
OPPOSITION TO PLAINTIFF'S MOTION TO STAY ARBITRATION/FOR SUMMARY PROCEEDINGS

EXHIBIT "B"

**PUBLIC-RECORD MATERIALS PROBATIVE OF THE
STRIKING "SOPHISTICATION" OF THE PLAINTIFF GROUP**

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff

Geoffrey Block

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Geoffrey J. Block (8 Anson Park Road East):

According to Mr. Block's LinkedIn profile (See Exhibit "B.1," attached, at 1), he is the founder and manager of RLB Squared, LLC ("RLB"). *Id.* RLB is a real estate investment and development company. *Id.* Mr. Block also appears to have experience in securities trading and investment counseling.

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EXHIBIT "B.1"

LINKEDIN PROFILE OF GEOFF BLOCK

Contact

www.linkedin.com/in/geoffblock
(LinkedIn)
about.me/geoffblock (Personal)
medium.com/@GeoffBlock
(Personal)
geoffblock.wordpress.com/ (Blog)

Geoff Block

RLB Squared Founder and Manager Geoff Block
Charleston, South Carolina Metropolitan Area

Summary

Geoff Block established RLB Squared, LLC, in Bluffton, South Carolina, in 2013 and continues to lead day-to-day operations at the real estate investment and development company as its manager. In this role, he oversees all employee activities and real estate transactions, such as the company's recent acquisition of a 147,077-square-foot Sharp Plaza office site in Mahwah, New Jersey, that includes the new headquarters of Jaguar Land Rover North America. Prior to founding RLB Squared with his wife Kim, Geoff Block served as an executive with Crown Growth Partners.

Mr. Block, who studied business at Tulane University in New Orleans, supports his alma mater by contributing to the Tulane University Business School and various university athletics programs. Beyond his activities as manager at RLB Squared, he engages with local youth as a volunteer football and wrestling coach and golf instructor. He is also a supporter of Community Foundation of the Lowcountry, a nonprofit benefitting families throughout the South Carolina counties of Beaufort and Jasper.

Experience

RLB Squared, LLC
Manager
2013 - Present (9 years)
Bluffton, SC, US

Education

Tulane University - A.B. Freeman School of Business
Bachelor's degree, Business · (1990 - 1994)

Plaintiff

Jennifer Albero

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Jennifer A. Albero (18 South Drayton Street):

According to Ms. Albero's LinkedIn Profile (See Exhibit "B.2," attached, at 1-2), she is the Senior Vice President of Westport Capital Partners, LLC ("Westport"). *Id.* at 1. According to Westport's LinkedIn Profile (See Exhibit "B.3," attached, at 1-2), Westport is an investment management company specializing in real estate and real-estate related investments on behalf of a diverse base of private and institutional investors. *Id.* at 1. According to Ms. Albero's LinkedIn profile, her specialties are: Cash Flow Forecasting, Investor Reporting, Investment Performance Tracking, REIT Compliance, Corporate Budgeting & Analysis, JV Partner Oversight, Accounting Technology Audit and Tax Management, Accounting Policies & Procedures, and HR and IT Management. Ex. B.2, attached, at 1. Her LinkedIn profile further asserts she has particular experience with real estate equity and debt investments of all asset classes (office, residential, hotel, and retail). *Id.*

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.2"

LINKEDIN PROFILE OF JENNIFER ALBERO

Contact

www.linkedin.com/in/jealbero
(LinkedIn)

Jennifer Albero

Senior Vice President
Bluffton

Summary

CPA, entrepreneurial finance and accounting leader possessing strong leadership, analytical, and communication skills. Particular experience with real estate equity and debt investments of all asset classes (office, residential, hotel and retail).

Specialties: Cash Flow Forecasting ◇ Investor Reporting ◇
Investment Performance Tracking
REIT Compliance ◇ Corporate Budgeting & Analysis ◇ JV Partner
Oversight ◇ Accounting Technology
Audit and Tax Management ◇ Accounting Policies & Procedures ◇
HR and IT Management

Experience

Westport Capital Partners LLC
Senior Vice President
February 2013 - Present (9 years 4 months)
Wilton, CT

Starwood Capital Group
Special Project Consultant
January 2012 - February 2013 (1 year 2 months)
Greenwich, CT

Engaged by mortgage REIT to develop financial reports for complex loan transaction. Short-term project.

Meadow Partners, LLC
Financial Controller
November 2009 - December 2011 (2 years 2 months)
New York, NY

Hired at firm inception to head finance, control and reporting. Designed and implemented accounting policies & procedures, accounting technology, and investor reporting packages (including fair value GAAP and GIPS compliant IRR calculations).

Latus Partners

Controller

January 2007 - June 2009 (2 years 6 months)

New York, NY

Hired by managing partner at fund inception to head finance, control and reporting. Designed and implemented accounting policies & procedures, accounting technology, and investor reporting packages.

UBS

Director and Controller

June 2000 - December 2002 (2 years 7 months)

New York, NY

Stockbridge Real Estate Funds - formerly a part of UBS.

Recruited by head of UBS real estate investment banking as an expert in real estate fund investor reporting. Designed and implemented investor reporting packages and distribution waterfall models for funds with aggregate asset value in excess of \$750M.

Starwood Capital Group

Senior Vice President and Controller

August 1993 - June 2000 (6 years 11 months)

Greenwich, CT

Recruited by CFO as one of first seven hires. Headed global investor reporting, fund consolidations and waterfall calculations for four funds with asset value in excess of \$3B. Supervised a staff of 12 accountants and asset managers in two offices. Promoted to controller in second year.

Education

Virginia Tech - Pamplin College of Business

BS, Accounting

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.3"

LINKEDIN PROFILE OF WESTPORT CAPITAL PARTNERS



WCP

Westport Capital Partners

Investment Management · Stamford, Connecticut · 640 followers

[See all 40 employees on LinkedIn](#)

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Visit website 

(More

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About

Posts

Jobs

People

Overview

Westport Capital Partners LLC is an investment management company specializing in real estate and real estate-related investments on behalf of a diverse base of private and institutional investors. Founded in 2005, the team has grown to 38 professionals with offices in Stamford, Connecticut and Los Angeles, California. The firm employs a value-driven approach to investing across all market cycles through a diverse range of opportunistic, core plus, platform/ infrastructure and liquid strategies. Westport has deep experience in sourcing, executing and managing a broad spectrum of real estate transactions worldwide, in numerous sectors and throughout the capital stack.

Website

<http://www.westportcp.com>

Industry

Investment Management

Company size

11-50 employees

40 on LinkedIn 

Headquarters

Stamford, Connecticut

Founded

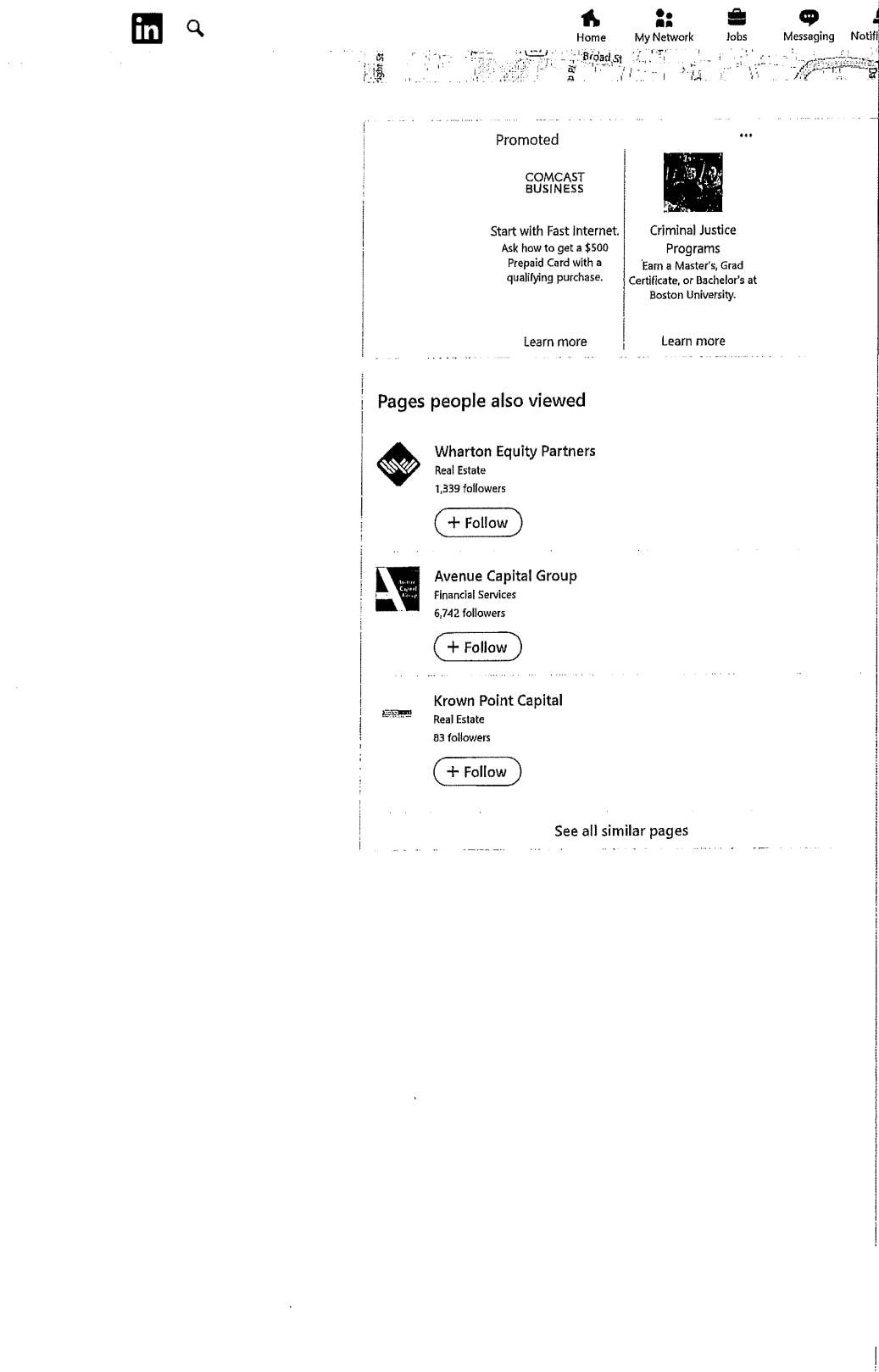
2005

Locations (1)

Primary

300 Atlantic Street, Suite 1110, Stamford, Connecticut 06901, US

Get directions 



315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Plaintiff Sebrina Leigh-Jones

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Sebrina Leigh-Jones (454 Old Landing Road, 852 Old Moreland Road, 19 Drayton Street, and 8 Hannah Lane):

According to Ms. Leigh-Jones's LinkedIn profile (See Exhibit "B.4," attached, at 1-4), she is the co-founder of Luxury Simplified. *Id.* at 1. Luxury Simplified, established in 2011, is a vertically integrated real estate, construction, and luxury vacation rental firm originally located in Charleston S.C., which expanded in 2020 into Bluffton, S.C. *Id.* According to the LinkedIn profile, the real-estate portfolio of Luxury Simplified contains over \$75 million in assets. *Id.*

Mrs. Leigh-Jones has a graduate degree from Harvard Business School, and is a graduate of Harvard Law School's Program on Negotiation (PON). *Id.* at 3.

Mrs. Leigh-Jones owns real estate through four Plaintiff-LLC's in this action: Bridge Charleston Investments B, LLC, Bridge Charleston Investments C, LLC, Bridge Charleston Investments E, LLC, and Bridge Charleston Investments H, LLC. Shortly prior to the filing of this lawsuit, Bridge Charleston E, LLC, as evidenced by a General Warranty Deed (See Exhibit "B.5," attached at 1-3) purchased 19 S. Drayton Street in Palmetto Bluff. *Id.*

EXHIBIT "B.4"

LINKEDIN PROFILE OF SEBRINA LEIGH-JONES

Contact

www.linkedin.com/in/sebrinaleighjones (LinkedIn)
www.luxurysimplified.com
(Company)

Top Skills

ETRM
Commodity Markets
Business Process

Languages

English

Honors-Awards

Professional Woman of the Year
Charleston 40 Most Progressive
Companies 2015

Sebrina Leigh-Jones

Chief Executive Officer at Luxury Simplified Retreats
Bluffton

Summary

Co-founder of Luxury Simplified, established in 2011 as a vertically integrated real estate, construction and luxury vacation rental firm originally located in Charleston SC, and expanded in 2020 into Bluffton, SC. As Broker-in-Charge of Luxury Simplified Real Estate and Founder/CEO of Luxury Simplified Retreats, built a successful team of Realtors and property management professionals operating at the top of their respective fields. Spearheaded steady and consistent growth of the Luxury Simplified Retreats portfolio to over \$75M in assets, while establishing the Luxury Simplified Retreats brand to be among the top asset management firms, and named as one of the 'Best Property Management Companies in the US,' as published by AirDNA. Currently representing a portfolio of nearly 100 luxury properties in travel destinations along the South Carolina coast, Luxury Simplified Retreats has amassed a team that delivers exceptional service at the highest level to both asset owners, and guests. These successes are the culmination of 17 years of successful corporate leadership experience in the international commodity trading sector, coupled with a background as a trained accountant. Adding to this is the completion of the graduate program in Marketing Management at Harvard University and an Advanced Revenue Management Certification at Cornell University.

Experience

Luxury Simplified Retreats
Chief Executive Officer
January 2016 - Present (6 years 5 months)
Charleston, South Carolina Area

Luxury Simplified Group
CoFounder Luxury Simplified Group
December 2011 - Present (10 years 6 months)

SolArc, Inc.

7 years 2 months

International Presales Manager

January 2009 - February 2011 (2 years 2 months)

Responsibilities included:

- Provide sales support through project plan development, estimation, and document authoring for RFP/RFI responses, sales proposals, and Statements of Work to meet the clients' desired business requirements
- Apply industry and software knowledge to help the sales and technical organizations to propose the most optimal solution for the potential customer and thereby allowing the presales team to effectively address and dispel customer objections to the proposed solution(s).
- Develop business networks across the organization and customer base in support of sales team objectives
- Inspect configuration and documentation of software solutions to meet customer and sales objectives.
- Review, plan, and present customized sales demonstrations to potential clients in Europe, Asia, and the Middle East
- Present monthly sales projections to executive management
- Recruit and train all international sales staff
- Successful sales record included the following clients: Barclays UK, USA, & Singapore, Vattenfall - Amsterdam, EOn - Dusseldorf, Merrill Lynch UK, Deutsche Bank UK

Sr Functional Consultant & Project Manager

January 2004 - January 2009 (5 years 1 month)

Responsibilities included:

- Plan, lead, manage, and coordinate Solarc's client project tasks, resources, deliverables, issues logs, scope logs, weekly time-sheets, project expense reports, monthly invoices, and all other administrative documentation as required
- Build trust and rapport with key stakeholders and facilitate executive level steering committee discussions
- Manage implementation and upgrade projects for the physical commodity trading solution, RightAngle
- Oversee budgeting and estimating, as well as the management of detailed project plans and overcome project issues as they arise
- Develop the post implementation go-live support environment, construct the transition plan from the project team to the support team
- Manage client escalations and follow through until successfully resolved

- Successful implementations included the following clients: Barclays UK, USA, & Singapore, Vattenfall - Amsterdam, EOn - Dusseldorf, Merrill Lynch UK, Deutsche Bank UK, ConocoPhillips UK & USA

Dynegy

IT Support Manager

2000 - 2004 (4 years)

Responsibilities include:

- Provide leadership to software support team and deliver a commercially-focused, expert support service to internal customers
- Establish and monitor support statistics, ensure timely, accurate and high quality completion of work
- Mentor and develop support team
- Act as an escalation point for both internal and external queries, and manage customer complaints
- Oversee the recruitment and appraisals of the support team
- Project manage various system implementations of commodity trading solution nationally and internationally

Ferrell North America

Accounting Manager

May 1995 - August 2000 (5 years 4 months)

Responsibilities include:

- Provide leadership to accounting staff and ensure timely and accurate accounting support to operation managers
- Oversee and present timely and accurate month-end financial statements to operating managers and CFO
- Mentor and develop various training programs for accounting staff
- Project manage the implementation of a new accounting software solution and oversee management and system support
- Oversee the recruitment and appraisals of the accounting team

Education

Harvard Business School

Graduate Degree, Marketing Management · (2014 - 2016)

Harvard Law School

Certified Negotiator, Program on Negotiation · (2013 - 2014)

University of St. Thomas (TX)
Bachelor's Degree, Accounting · (1994 - 2001)

Cornell University
Advanced Hospitality Revenue Management, Revenue Management

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.5"

SOUTH CAROLINA GENERAL WARRANTY DEED
FILED DECEMBER 16, 2021, BEAUFORT COUNTY,
SC, BETWEEN KENNETH F. BROWN, GRANTOR, AND
BRIDGE CHARLESTON INVESTMENTS E, LLC,
GRANTEE, IN THE AMOUNT OF \$2,375,000

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RETURN TO:
KPMG LLP & Davidson
8 State Street
Charleston, SC 29401

RECORDED
2022 Mar -11 11:37 AM

BEAUFORT COUNTY AUDITOR



BEAUFORT COUNTY SC - ROD
BK 4095 Pgs 1269-1272
FILE NUM 2021086621
12/16/2021 02:43:41 PM
REC'D BY pbaxley RCPT# 1069118
RECORDING FEES \$15.00
County Tax \$2,612.50
State Tax \$6,175.00

ADD DMP Record 3/7/2022 10:41:46 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R614	045	000	0151	0000	00

4-18
15
Kraus
Sub 72
28591

Prepared By:
Mikkelsen Law Firm, LLC
214 Bluffton Road
Bluffton, SC 29910

File Number: 2021.8055S
Parcel ID: R614-045-000-0151-0000
County: BEAUFORT

SOUTH CAROLINA GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that, Kenneth F. Brown, Jr. and Pamela H. Brown, (henceforth referred to as "Grantor"), for and in consideration of the sum of TWO MILLION THREE HUNDRED SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$2,375,000.00) paid by Bridge Charleston Investments E, LLC, a South Carolina limited liability company (henceforth referred to as "Grantee") of 50 Immigration St., Ste 204, Charleston, SC 29403, the receipt and sufficiency of which is hereby acknowledged, SUBJECT TO the matters set forth below, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Bridge Charleston Investments E, LLC, a South Carolina limited liability company, its successors and assigns, forever, the real estate (the "Premises") 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, designated as LOT 5, BLOCK A, PALMETTO BLUFF VILLAGE and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SCRLS #11079, dated August 11, 2003, and recorded September 10, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 95 at Page 61, as revised by Plat of Boyce L. Young, SCRLS #11079, dated August 11, 2003 and recorded May 25, 2004 in the Beaufort County ROD Office in Book 99 at Page 146.

This property is conveyed by the Grantor and accepted by the Grantee subject to all applicable covenants, conditions, restrictions, easements, affirmative obligations, previously reserved or conveyed rights, titles and interests, etc., which constitute covenants running with the land and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

The property conveyed herein is the same property conveyed to Grantor by Deed of Robert S. Glenn, Jr. dated January 7, 2019 and recorded January 14, 2019 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3729 at Page 3087.

SOUTH CAROLINA WARRANTY DEED

File No.: 2021.8055S

Page 1 of 3

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee, and Grantee's successors and assigns, forever.

And, **SUBJECT TO** the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's successors and assigns against Grantor and Grantor's successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

THE REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

SOUTH CAROLINA WARRANTY DEED

File No.: 2021.8055S

Page 2 of 3

IN WITNESS WHEREOF, Grantor has caused this General Warranty Deed to be executed under seal this 9th day of December, 2021.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

GRANTOR:

(2) [Signature]
WITNESS (signature)
ANDREA M. GOODMAN
Witness Print Name Above

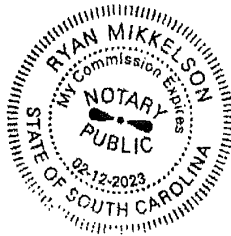
(1) [Signature] (SEAL)
Kenneth F. Brown, Jr.
Pamela H. Brown (SEAL)
Pamela H. Brown

(3) [Signature]
NOTARY PUBLIC (signature)
Ryan Mikkelsen
Notary Print Name Above

STATE OF SC)
COUNTY OF Beaufort)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 9th day of December, 2021 by **Kenneth F. Brown, Jr. and Pamela H. Brown.**



(4) [Signature] (L.S.)
(Notary Public signs and affixes seal)
Print Name: Ryan Mikkelsen
Notary Public for SC
Commission Expires: 2/12/23

SOUTH CAROLINA WARRANTY DEED

File No.: 2021.8055S

Page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being located at 19 S. Drayton St., Bluffton, Beaufort County, South Carolina bearing County Tax Map No. R614 045 000 0151 0000, which was transferred by Kenneth F. Brown, Jr. and Pamela H. Brown to Bridge Charleston Investments E, LLC on December 13, 2021.

3. Check one of the following: The deed is

- (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____
(if exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$2,375,000.00.
(b) The fee is computed on the fair market value of the realty which is _____.
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$2,375,000.00
(b) Place the amount listed in item 5 above here (if no amount is listed, place zero here): _____
(c) Subtract Line 6(b) from Line 6(a) and place result here: \$2,375,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$9,787.50.00

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney.

9. _____ DEED OF DISTRIBUTION-ATTORNEY'S AFFIDAVIT: Estate of _____ Deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____ Deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Attorney
Responsible Person Connected with the Transaction

Attorney
Print or Type Name Here

SWORN to and subscribed before me this

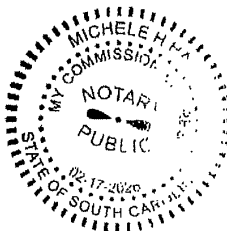
15 day of Dec 20 21

Notary Public for SC

My Commission Expires: 2/17/2024

Notary (L.S.): _____

Notary (printed name): Michael H. H.



315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Chris Leigh-Jones

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Chris Leigh-Jones (454 Old Landing Road, 852 Old Moreland Road, 19 Drayton Street, and 8 Hannah Lane)

According to Mr. Leigh-Jones's LinkedIn profile (See Exhibit "B.6," attached, at 1-3), he is the co-owner of Luxury Simplified. *Id.* at 1. As noted, Luxury Simplified, established in 2011, is a vertically integrated real estate, construction, and luxury vacation rental firm originally located in Charleston S.C., that expanded in 2020 into Bluffton, S.C. Ex. B.4, attached, at 1. The real-estate portfolio of Luxury Simplified contains over \$75 million in assets. *Id.*

According to Mr. Leigh-Jones's LinkedIn Profile, he also oversees a philanthropic fund owned by the Leigh-Jones family. Ex. B.6, attached, at 1. Investments are made through this philanthropic fund through a variety of organizations throughout the world. *Id.* Also, according to an article in Garden & Gun (See Exhibit "B.7," attached, at 1-4), Mr. Leigh-Jones also maintains a collection of expensive and rare century-old cars. *Id.*

Mr. Leigh-Jones owns real estate through four Plaintiff-LLC's in this action: Bridge Charleston Investments B, LLC, Bridge Charleston Investments C, LLC, Bridge Charleston Investments E, LLC, and Bridge Charleston Investments H, LLC. Shortly prior to the filing of this lawsuit, Bridge Charleston E, LLC, as evidenced by a General Warranty Deed (See Exhibit "B.5," attached at 1-3) purchased 19 S. Drayton Street at Palmetto Bluff. *Id.*

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.6"

LINKEDIN PROFILE OF CHRIS LEIGH-JONES

Contact

www.linkedin.com/in/chrisleighjones (LinkedIn)

Top Skills

Maritime
Start-ups
Engineering

Publications

A Practical Guide of Marine Fuel Oils

Patents

A novel viscometer for fuels and oils

Chris Leigh-Jones

Co owner at Luxury Simplified
Bluffton

Summary

I tried retirement after a long working life, it was boring so I went back to work. We have renovated some 30 odd historic homes in downtown Charleston, built holiday homes on Folly Beach. I focus now on a large workforce housing project in downtown Charleston and building our short term rental portfolio in Palmetto Bluff. Used to build ships, then engines, then engineering companies and now its vintage cars and workforce houses. Trying my hand at boat building now with a 78 foot Explorer Yacht. Life's too short for those that live it!

Experience

Luxury Simplified & Luxury Simplified Retreats

Co owner

January 2020 - Present (2 years 5 months)

Charleston, South Carolina, United States

Stepped away from Day/Day involvement as time caught up with me. Looking after special projects to keep my hand in, have a particular interest in building workforce housing.

Bridge Charleston Investments LLC

Owner

2012 - Present (10 years)

USA & Europe

Chris oversees a philanthropic fund owned by the Leigh-Jones family.

Investments are made through either Bridge Charleston Investments LLC (USA), Cerrig Llwyd (UK & Europe) or Bridge Trust (IoM).

US investments have been used to create the Luxury Simplified Group based in Charleston SC. The focus is on historic building regeneration and real estate investments. A socially aware company supporting local skills and craftsmen and operated on democratic principles.

LWS Creative (prev. Local Web Solutions)

Investor

January 2009 - Present (13 years 5 months)

UK

Innovative communication agency focused on web and media marketing for SME and startup enterprises.

Luxury Simplified Construction Inc

Co Owner

January 2014 - January 2020 (6 years 1 month)

LS Construction is the construction arm of the Luxury Simplified Group based in Charleston SC. We oversee ongoing renovation and specialist construction in and around the downtown Charleston area, mainly within BAR jurisdiction. Our in-house investment portfolio covers 40 recently renovated historic properties, 3 downtown and 3 Island VRBO properties, 2 event spaces plus a substantial land bank of around 50 building and investment opportunities in downtown Charleston's historic districts.

Kittiwake Developments Ltd

Co Owner

1990 - 2012 (22 years)

UK, USA, Germany, France, India, Malaysia

Kittiwake develop and market niche instrumentation aimed at early stage fault detection for critical plant and equipment. Over a 22 year period we built a group of companies that became a leading player in their niche. In July 2012, the company was incorporated in to the filtration division of Parker Hannifin Plc.

Krystallon

Owner

January 2005 - July 2010 (5 years 7 months)

Development company for novel exhaust gas cleaning equipment to reduce SOx and particulates from marine diesel engines. 5 years as MD at Krystallon before completing a 100% equity sale to Hamworthy PLC.

With Don Gregory (Environment and Sustainability Director at BP Marine), started EGCSA - Exhaust Gas Cleaning System Manufacturers Association.

International Bunker Industry Association

Chairman

2000 - 2002 (2 years)
London & Singapore

Chairman of the IBIA - International Bunker Industry Association providing education and worldwide representation for marine fuel and energy trading entities.

Ricardo Consulting Engineers
Senior Engineer
1989 - 1993 (4 years)

Research and consultancy in to design and emissions control of large industrial and marine diesel engines.

Education

University of Newcastle-upon-Tyne
Master of Philosophy (M.Phil.), Naval Architecture and Marine Engineering · (1986 - 1989)

South Shields Marine & Technical College
Extra First Class Engineers Certificate, marine engineering · (1985 - 1986)

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.7"

JUNE/JULY 2020 ISSUE OF GARDEN & GUN
ARTICLE, A COLLECTION OF CLASSICALLY COOL
RACE CARS BY ALLSTON MCCRADY

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

GARDEN@GUN

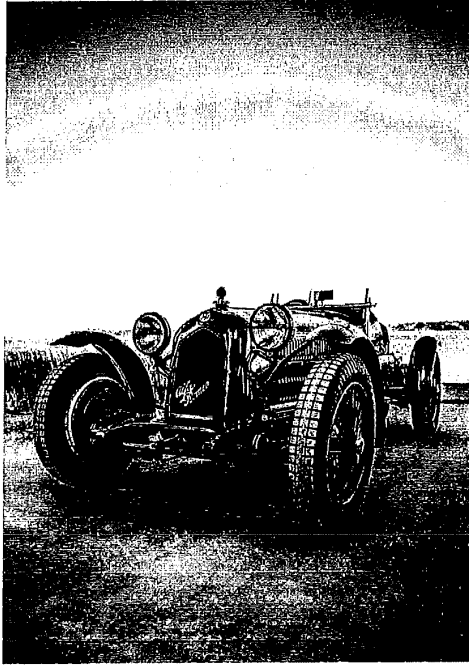


PHOTO: FREDRIK BRODEN

A 1933 Alfa Romeo 8c Monza restored by Chris Leigh-Jones.

COLLECTIONS

A Collection of Classically Cool Race Cars

Century-old automobiles restore the joy of youth to a Lowcountry do-it-yourselfer

By **ALLSTON MCCRADY**

June/July 2020

On a sunny spring day, Chris Leigh-Jones takes his 1933 Alfa Romeo Monza for a spin. Stretches of new asphalt thread through the community of Palmetto Bluff, a twenty-thousand-acre expanse of estuaries and woodlands in coastal Bluffton, South Carolina. Leigh-Jones fits snugly in the low-slung body of the bullet-like classic, his short hair to the wind, no cap, no goggles, working the center throttle left-handed and scanning the road ahead as he hugs turns, always prepared to brake if need be for a crossing deer...or alligator. In the distance, a group of cyclists comes to a stop, turning to appreciate the whizzing of the supercharged engine. As Leigh-Jones accelerates, the throaty, rumbling crescendo vibrates through the pines. The cyclists grin and wave. One pumps a fist high in approval.



PHOTO: FREDRIK BRODEN

Leigh-Jones at the wheel.

The Alfa Romeo is one of a handful of beauties in Leigh-Jones's collection of nearly century-old cars, all of which took him years to assemble. He has a self-professed "sweet spot for making stuff"—building a model train, restoring sailboats, even constructing houses. Ten years ago, while flipping through the pages of an antique car magazine, his eyes locked on an image of a 1936 Jaguar SS100. The model invoked the Dinky Toys of his youth (Britain's equivalent of Hot Wheels) in remote Wales. "My memory was effectively mugged, as happens with people when they grow up," he explains of his obsession with vintage racers from the 1930s. "In my childhood mind, a 'proper' racing car had to have wire wheels, a long bonnet [hood], and no roof. For me, that's a racing car." He ordered the advertised kit, spent many a late night putting together parts, and created a vehicle that "went like the clappers" (Welsh for "drove like hell"). Next, he took on a cream-colored 1926 Bugatti T37, a long and slender replica with a rear tank tapered like a bee's stinger. "You wouldn't take that to Pebble Beach—you'd be laughed at. But I'm fine with it. It took me two and a half years to build. She's a complete ballerina, though not too good in a crosswind."

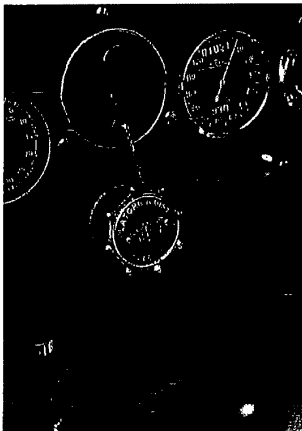


PHOTO: FREDRIK BRODEN

The Alfa Romeo 8c Monza's dashboard.

Leigh-Jones met his Texas-born wife, Sebrina, sixteen years ago on a blind date at a black-tie Guildhall event in London, followed by late-night dancing on the Embankment. The couple shared a passion for restoring old structures, which eventually drew them to Charleston, where they cofounded a construction and restoration company. Forty-odd projects later, Sebrina discovered the relatively untapped wilds of Palmetto Bluff. The couple purchased a lot near the

May River and began working with architect H. Pearce Scott to design a home with a detached “barn” for the car collection, with Leigh-Jones constructing both himself.



PHOTO: FREDRIK BRODEN

A 1930 Bentley restored with an engine from a World War II armored car.

“One of Chris’s passions is taking materials and building something new and unique,” Sebrina says. “The cars are the same. They’re a labor of love.” Her husband insists he is practical, not a purist. “I’m not the type who would make a nut-and-bolt perfect restoration,” he stresses. “I’m more the type who has a pile of parts and a picture in his head and can generally employ anything to hand.”

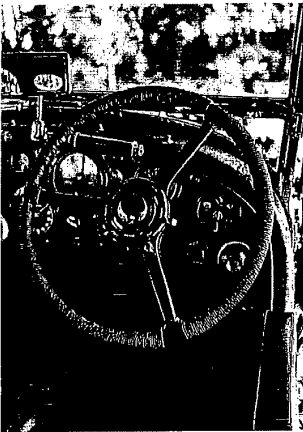


PHOTO: FREDRIK BRODEN

The Bentley’s dashboard, with switches from a 1920s-era biplane.

There’s the Bentley, for instance, a 1930 model that started out as less than half a car. “A chap in Kentucky rang me up one day with a sad tale, getting divorced, wanting to sell a chassis and rear axle in a hurry,” Chris says. A colleague offered up a 1946 Rolls-Royce B81 engine taken from an armored car. Leigh-Jones likens operating the two-ton Bentley, nicknamed Roger, to driving a bus. Then there’s his favorite, his magnum opus: the bloodred Alfa Romeo Monza, over four years in the making. He spent sleepless nights scouring the internet for parts, sourced from fourteen countries. “They only made a hundred and eighty of this model,” he explains, “so parts are like hens’ teeth.”



PHOTO: FREDRIK BRODEN

The hood from a 1926 Bugatti, which took Leigh-Jones two and a half years to restore.

Now, as he guns the cars on quiet roads, even their lack of safety features appeals to him. “The older vehicles have nothing you expect on a modern vehicle to keep you safe,” he says—no seat belt, no cage, no roof—“so driving them involves trying not to die. They are quite terrifying at speed. But heck, you do feel alive in the summer sun!”

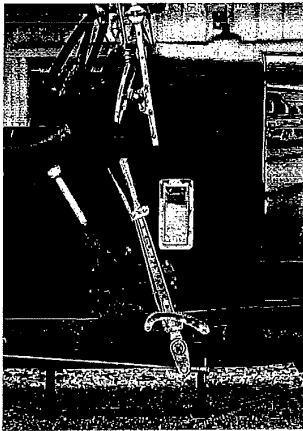


PHOTO: FREDRIK BRODEN

The Bentley's gearshift and hand brake.

This article appears in the June/July 2020 issue of Garden & Gun. [Start your subscription here](#) or [give a gift subscription here](#).

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff TTJR, LLC

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

TTJR, LLC (10 North Drayton Street):

Todd and Beth Kugler initially purchased the residence currently owned by TTJR, LLC (See Exhibit "B.8," attached, at 1-4), then quit-claim deeded the residence to TTJR, LLC, (See Exhibit "B.9," attached, at 1-4). According to Mr. Kugler's LinkedIn profile (See Exhibit "B.10," attached, at 1), he is the Chief Financial Officer at Nationwide Title Clearing, LLC ("NTC"). *Id.* According to NTC's LinkedIn Profile (See Exhibit "B.11," attached, at 1-3), it is now one of the leading post-closing service providers for residential mortgage lenders, servicers, and investors across the United States. *Id.* at 1. Mr. Kugler, in his LinkedIn Profile, avers he has a deep experience in the financial services industry and is skilled in negotiation, managerial finance, strategic planning, business development, and financial planning. Ex. B.10, attached, at 1.

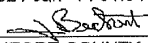
315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.8"

SOUTH CAROLINA GENERAL WARRANTY DEED
FILED OCTOBER 22, 2020, BEAUFORT COUNTY, SC
BETWEEN 10 NORTH DRAYTON, LLC, GRANTOR,
AND TODD KUGLER AND BETH R. KUGLER,
GRANTEE, IN THE AMOUNT OF \$1,587,500.00

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

RECORDED
2021 Jan -14 01:54 PM


BEAUFORT COUNTY AUDITOR

Prepared By:
Mikkelsen Law Firm, LLC
214 Bluffton Road
Bluffton, SC 29910

File Number: 2020.4322DR
Parcel ID: R614 045 000 0099 0000
County: BEAUFORT

BEAUFORT COUNTY SC - ROD
BK 3924 Pgs 3164-3166
FILE NUM 2020060945
10/22/2020 03:00:40 PM
RCPT# 999460
RECORDING FEES 15.00
County Tax County 1,746.25
State Tax State 4,127.50

ADD DMP Record 12/30/2020 09:17:52 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R614	045	000	0099	0000	00

SOUTH CAROLINA GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that, 10 North Drayton, LLC, a **Limited Liability Company**, (henceforth referred to as "Grantor"), for and in consideration of the sum of **ONE MILLION FIVE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,587,500.00)** paid by Todd Kugler and Beth R. Kugler (henceforth referred to as "Grantee") of 2292 Mackenzie Ct., Clearwater, FL 33765, the receipt and sufficiency of which is hereby acknowledged, **SUBJECT TO** the matters set forth below, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Todd Kugler and Beth R. Kugler**, and their heirs and assigns, forever, the real estate (the "Premises") 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, designated as LOT 37, BLOCK A, PALMETTO BLUFF VILLAGE and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SCRLS #11079, dated August 11, 2003, and recorded, September 10, 2003, and recorded, September 10, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 95 at Page 61, last revised May 17, 2004, in Plat Book 99 at Page 146.

This property is conveyed by the Grantor and accepted by the Grantee subject to all applicable covenants, conditions, restrictions, easements, affirmative obligations, previously reserved or conveyed rights, titles and interests, etc., which constitute covenants running with the land and recorded in the Office of the Register of Deeds for Beaufort, South Carolina.

The property conveyed herein is the same property conveyed to Grantor by Deed of Louis J. Douglass IV and Stephanie B. Douglass dated October 12, 2017 and recorded October 17,

SOUTH CAROLINA GENERAL WARRANTY DEED

File No.: 2020.4322DR

Page 1 of 3

ELECTRONICALLY FILED - 2022 JUL 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

2017 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3614 at Page 2601.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee, and their heirs and assigns, forever.

And, **SUBJECT TO** the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

THE REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, Grantor has caused this General Warranty Deed to be executed under seal this 5 day of October, 2020.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

(2)

(1)

10 North Drayton, LLC, a Limited Liability Company

By: Louis Joseph Douglass, IV (SEAL)
Louis Joseph Douglass, IV

[Signature]
WITNESS (signature)

Amos Grantnam
Witness Print Name Above

(3) [Signature]
NOTARY PUBLIC (signature)

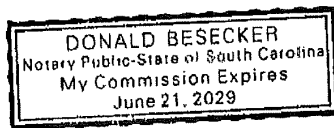
Donald Beisecker
Notary Print Name Above

STATE OF SC

COUNTY OF Beaufort

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 5 day of October, 2020 by Louis Joseph Douglass, IV, Member of 10 North Drayton, LLC, a Limited Liability Company.



(4) [Signature] (SEAL)
Notary Public for SC
Commission Expires: 6-21-29

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.9"

**QUIT-CLAIM DEED FILED AUGUST 24, 2021,
BEAUFORT COUNTY, SC, BETWEEN TODD KUGLER
AND BETH R. KUGLER, GRANTORS TO TTJR, LLC, A
FLORIDA LIMITED LIABILITY COMPANY, GRANTEE**

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - Case No. 2022CP0700632

RECORDED
2021 Dec -02 02:07 PM

BEAUFORT COUNTY SC - ROD
BK 4052 Pgs 3157-3160
FILE NUM 2021060696
08/24/2021 03:24:47 PM
RCPT# 1051782
RECORDING FEES 15.00

ADD DMP Record 12/1/2021 12:04:50 PM
BEAUFORT COUNTY TAX MAP REFERENCE

BEAUFORT COUNTY AUDITOR

Dist	Map	SMap	Parcel	Block	Week
R614	045	000	0099	0000	00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

QUIT-CLAIM DEED

NOW THEREFORE, know all men by these presents that Todd Kugler and Beth R. Kugler, hereinafter referred to as the "Grantors", in the State aforesaid for consideration of Ten and NO/100 (\$10.00) Dollars, intend to convey their interest to:

TTJR, LLC, a Florida Limited Liability Company
2292 Mackenzie Court
Clearwater, Florida 33765

Hereinafter referred to as the "Grantee". The Grantors have remised, released, and forever quit-claimed, and by these presents do remise, release and forever quit-claim unto the said Grantee, its successors and assigns forever, the following described property, to wit:

TAX MAP NUMBER: R614-045-000-0099-0000

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, designated as LOT 37, BLOCK A, PALMETTO BLUFF VILLAGE and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SCRLS #11079, dated August 11, 2003, and recorded September 10, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 95 at Page 61, and last revised May 17, 2004, and recorded May 28, 2004, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 99 at Page 146. For a more specific reference as to metes and bounds, reference is herewith made to said plat of record.

This conveyance is made subject to all easements, restrictions, covenants and conditions of record and otherwise affecting the property.

The property conveyed herein is the same property conveyed to Grantors by Deed of 10 North Drayton, LLC, a South Carolina limited liability company, dated October 5, 2020, and recorded October 22, 2020, in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3924 at Page 3164.

This Deed was prepared in the office of Mikkelson Law Firm, LLC, 214 Bluffton Road, Bluffton, South Carolina 29910, without the benefit of title examination.

TOGETHER with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining;

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, its successors and assigns forever; subject however to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

WITNESS Grantor's hand and seal this 18 day of August, 2021.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

(2) [Signature]
WITNESS (Sign Name Above)

(1) [Signature] (L.S.)
TODD KUGLER

Nicole Santos
WITNESS (Print Name Above)

(3) [Signature]
NOTARY (Sign Name Above)

Star Hillman
NOTARY (Print Name Above)

STATE OF Florida)
COUNTY OF Pinellas)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 18 day of August, 2021 by TODD KUGLER.



(4) [Signature]
Print Name: Star Hillman
Notary Public for Florida, Todd Kugler
Commission Expires: 5/29/2022

WITNESS Grantor's hand and seal this 18 day of August, 2021.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

(2) [Signature]
WITNESS (Sign Name Above)

(1) Beth R. Kugler {L.S}
BETH R. KUGLER

Nicole Santos
WITNESS (Print Name Above)

(3) Star Hillman
NOTARY (Sign Name Above)

Star Hillman
NOTARY (Print Name Above)

STATE OF Florida)
COUNTY OF Pinellas)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 18 day of August, 2021 by BETH R. KUGLER.



Star Hillman
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG222794
Expires 5/29/2022

(4) Star Hillman
Print Name: Star Hillman
Notary Public for Beth R. Kugler
Commission Expires: 5/29/2022

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT “B.10”

LINKEDIN PROFILE OF TODD KUGLER

Contact

www.linkedin.com/in/todd-kugler-bb69347 (LinkedIn)

Top Skills

Strategic Planning
Business Strategy
Business Development

Todd Kugler

NTC, a Covius Solution
Clearwater

Summary

Experienced Chief Financial Officer with a demonstrated history of working in the financial services industry. Skilled in Negotiation, Managerial Finance, Strategic Planning, Business Development, and Financial Planning. Strong finance professional graduated from Delphian School.

Experience

NTC - A Covius Solution
CFO
July 2003 - Present (18 years 11 months)

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT “B.11”

LINKEDIN PROFILE OF NTC – A COVIUS SOLUTION

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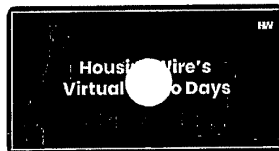
Videos

About

Nationwide Title Clearing, LLC. (NTC) was founded in 1991 and is now one of the leading post-closing service providers for residential mortgage lenders, servicers and investors across the United States. NTC's mission is to deliver Life of Loan services with the highest level of accuracy partnered with the mortgage banking industry to protect h... see more

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Ad

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Notifi

School alumni that work here



Drew Johnson · 2nd

Director of Marketing, husband and experienced sales and marketing leader



Stephanie Ashley Lindstrom · 3rd+

Business Analyst/Scrum Master at Nationwide Title Clearing

Connect



Messaging



315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff 315 CORLEY CW, LLC

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff 315 Corley CW, LLC (315 Corley Street):

Courtland Williams own 315 Corley CW, LLC, (See Exhibit "B.12," attached, at 1-9). According to Mr. Williams's LinkedIn profile (See Exhibit "B.13," attached, at 1-2), he is the Regional Director of the Southern Division of Raymond James & Associates. *Id.* at 1. According to Raymond James's website (See Exhibit "B.14," attached, at 1), Mr. Williams is a graduate of the Raymond James Senior Leadership Program and has served on the firm's Branch Manager Advisory Council, AMP Advisory Council, Raymond James Trust Advisory Council, and the Change Management Advisory Council. *Id.*

Shortly prior to the filing of this lawsuit, Mr. and Mrs. Williams, as evidenced by a General Warranty Deed (See Exhibit "B.15," attached, at 1-3) purchased 315 Corley Street at Palmetto Bluff. *Id.*

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.12"

**PALMETTO BLUFF CLUB INTENT TO TRANSFER
MEMBERSHIP – ROGER COURTLAND WILLIAMS, JR.
DATED JANUARY 13, 2022**

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PALMETTO BLUFF

**PALMETTO BLUFF CLUB
INTENT TO TRANSFER MEMBERSHIP
(COMMUNITY MEMBERS)**

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 Spouse's Auburn University
Alma Mater Auburn University Lot Number: 42
Palmetto Bluff Address: 22 North Drayton Street
Full Time Residence ☐ Part Time Residence ☐ Vacation Home ☒ Lot ☐
Primary Home Mailing Address 10 La Vista Court
Primary Billing Address 10 La Vista Court
Preferred Club Contact: Mail: Billing: ☐ PB ☐ Home Phone ☐ Cell Phone ☐ Email ☒
Telephone: 864-906-8333 Fax Number:
Home Phone: 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  Initial 

Active 42203269v4

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  Initial 

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.)

**Simultaneous Sale of Lot and Purchase of New Lot.**

42

22 N. Drayton St.

I am selling my Palmetto Bluff property Lot _____ Address _____
and wish to transfer my Palmetto Bluff Community membership to the new property
5556 311 Corley Street
Lot _____ Address _____

**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 

Initial 

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  Initial 

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 

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__

Roger Courlland Williams Jr

DocuSigned by:
Courtland Williams
Member's Signature

Dated: 1/14/2022, 20__

Printed Name: _____
DocuSigned by:
Kaitlyn Williams
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
Authorized Representative

Printed Name: _____

Title: _____

Dated: 1/18/2022, 20__

DocuSign Envelope ID: EC7A53FE-575C-4C80-99C0-7B157D8BF98A

PALMETTO BLUFF CLUB

For Club Use Only

Club Member Account Number: _____ LotNumber: _____

New Property Lot _____ Address _____ Closing Date _____

bs
ES

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.13"

LINKEDIN PROFILE OF COURTLAND WILLIAMS

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Contact

www.linkedin.com/in/courtland-williams-4bb4617 (LinkedIn)
www.raymondjames.com/upstatesc
(Company)
www.raymondjames.com
(Company)

Top Skills

Wealth Management
Retirement Planning
Investments

Courtland Williams

Regional Director - Raymond James & Associates
Greenville

Summary

At Raymond James, it's still about the advisors and placing clients first. Our core values are more than just words.

Client-first, conservatism, independence, and integrity – those are the values by which we conduct ourselves every day. It's what we've always done, and we do it right. And that's why I'm proud to represent our firm as Regional Director of the Southern Division.

I'd love to talk to you about opportunities for experienced financial advisors and ambitious trainees seeking to build or further their careers in an open, positive workplace environment. Come discover how working with a local partner can play a positive role in the financial well-being of your family, career, business and community.

Get to know us at www.raymondjames.com/upstatesc

Raymond James financial advisors may only conduct business with residents of the states and/or jurisdictions for which they are properly registered. Therefore, a response to a request for information may be delayed. Please note that not all of the investments and services mentioned are available in every state. Investors outside of the United States are subject to securities and tax regulations within their applicable jurisdictions that are not addressed on this site. Contact your local Raymond James office for information and availability.

Please follow this link to additional disclosures: <http://raymondjames.com/smrja.htm>

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Experience

Raymond James & Associates
Regional Director, Complex Manager and Advisor
2003 - Present (19 years)
Greenville, SC

I began my financial services career in 2003 with Morgan Keegan in Birmingham, and after seven successful years as both an advisor and manager, moved to Greenville in 2011 to manage the firm's offices there. When Raymond James acquired Morgan Keegan in 2012, I continued as branch and then complex manager for RJA's upstate SC branches. In 2019, I was appointed Regional Director for the Southern Division, covering Alabama, Mississippi, South Carolina and Tennessee.

I am a graduate of the Raymond James Senior Leadership Program, and have served on the firm's Branch Manager Advisory Council, AMP Advisory Council, Raymond James Trust Advisory Council and the Change Management Advisory Council.

Morgan Keegan & Company
Branch Manager and Advisor
January 2011 - April 2012 (1 year 4 months)
Greenville, SC

Morgan Keegan & Company
7 years 1 month
Assistant Branch Manager and Advisor
January 2007 - January 2010 (3 years 1 month)
Birmingham, AL

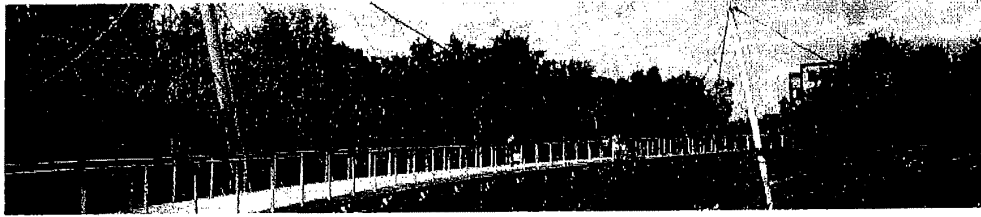
Financial Advisor
January 2003 - January 2007 (4 years 1 month)
Birmingham, AL

Education

Auburn University, College of Business
Bachelor's degree, Marketing

EXHIBIT "B.14"

RAYMOND JAMES FINANCIAL ADVISORS PROFILE REGARDING COURTLAND WILLIAMS

ABOUT
USABOUT
RAYMOND JAMESPROFESSIONAL
OPPORTUNITIESIN THE
COMMUNITY

Asheville Branch
82 Patton Avenue, Suite 211
Asheville, NC 28801-3336

T: 828.552.8745
T: 833.980.2936
F: 844.288.3862

Map & Directions

Greenville – Downtown Branch
101 Falls Park Drive, Suite 600
Greenville, SC 29601

T: 864.370.2050
T: 800.922.2364

Map & Directions

Greenville – Haywood Road
Branch
112 Haywood Road
Greenville, SC 29607

T: 864.289.2100
T: 888.384.2100
F: 864.289.2111

Map & Directions

Spartanburg Branch
349 East Main Street
Suite 201
Spartanburg, SC 29302

T: 864.580.5222
T: 877.205.3768
F: 864.580.5236

Map & Directions

**COURTLAND WILLIAMS**

Regional Director
Senior Vice President, Investments
Downtown Branch



Courtland Williams derives great satisfaction from helping his clients and their families thrive across multiple generations by providing sound financial planning. In addition to serving as a trusted financial advisor, Courtland is the Regional Director for the Southern Division of Raymond James & Associates (RJA).

He began his financial services career in 2003 with Morgan Keegan in Birmingham, and after seven successful years as both an advisor and manager, moved to Greenville in 2011 to manage the firm's offices there. When Raymond James acquired Morgan Keegan in 2012, Courtland continued as branch and then complex manager for RJA's upstate SC branches. In 2019, he was appointed

Tennessee

He is a graduate of the Raymond James Senior Leadership Program, and has served on the firm's Branch Manager Advisory Council, AMP Advisory Council, Raymond James Trust Advisory Council and the Change Management Advisory Council.

Originally from Tuscaloosa, Alabama, Courtland earned a bachelor's degree in marketing from Auburn University, where he was a member of the Sigma Nu fraternity. Today, he lives in Greenville with his wife, Kalllyn, and children, Roger and Noelle.

He is a member of the United Way Palmetto Society, the Greenville Museum of Art, and the Greenville Associate Reform Presbyterian Church. When not busy helping his clients, Courtland enjoys golf, tennis, reading, and spending time with his family.

Raymond James is not affiliated with the above organizations and/or charitable causes.

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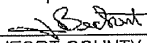
EXHIBIT "B.15"

SOUTH CAROLINA GENERAL WARRANTY DEED
FILED FEBRUARY 2, 2022, BEAUFORT COUNTY, SC
BETWEEN JANET D. MOZLEY, GRANTOR, AND 315
CORLEY CW, LLC AND CORLEY KW, LLC, GRANTEE
IN THE AMOUNT OF \$495,000.00

ADD DMP Record 4/26/2022 09:08:38 AM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R614 052 000 0125 0000 00

Prepared By:
Mikkelson Law Firm, LLC
214 Bluffton Road
Bluffton, SC 29910

RECORDED
2022 Apr -27 08:15 AM


BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 4111 Pgs 1559-1561
FILE NUM 2022007075
02/02/2022 03:13:03 PM
RCPT# 1075570
RECORDING FEES 15.00
County Tax County 544.50
State Tax State 1,287.00

File Number: 2021.9106S
Parcel ID: R614 052 000 0125 0000
County: BEAUFORT

SOUTH CAROLINA GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that, **Janet D. Mozley**, (henceforth referred to as "Grantor"), for and in consideration of the sum of **FOUR HUNDRED NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$495,000.00)** paid by **315 Corley CW, LLC, a South Carolina Limited Liability Company** and **315 Corley KW, LLC, a South Carolina Limited Liability Company** (henceforth referred to as "Grantee") of **10 La Vista Court, Greenville, SC 29601**, the receipt and sufficiency of which is hereby acknowledged, **SUBJECT TO** the matters set forth below, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **315 Corley CW, LLC, a South Carolina Limited Liability Company** and **315 Corley KW, LLC, a South Carolina Limited Liability Company**, its successors and assigns, their heirs and assigns, forever, the real estate (the "Premises") described as follows:

ALL that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, shown and designated as Lot Number 5556, Block L-1, Moreland Landing, a Portion of Phase 2, Parcel C, Palmetto Bluff and being more particularly shown and described on a plat thereof prepared by Robert K. Morgan, III, SC PLS #26957, dated May 9, 2014, last revised May 29, 2015, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 141 at Page 105. For a more detailed description, reference may be mad to said plat of record.

This property is conveyed by the Grantor and accepted by the Grantee subject to all applicable covenants, conditions, restrictions, easements, affirmative obligations, previously reserved or conveyed rights, titles and interests, etc., which constitute covenants running with the land and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

SOUTH CAROLINA WARRANTY DEED

File No.: 2021.9106S

Page 1 of 3

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The property conveyed herein is the same property conveyed to Grantor by Deed of May River Forest, LLC dated February 17, 2021 and recorded March 24, 2021 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3988 at Page 2438.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

TO HAVE AND TO HOLD all and singular the Premises unto Grantee, its successors and assigns, forever.

And, **SUBJECT TO** the matters set forth above, Grantor does hereby bind Grantor and Grantor's heirs, successors and assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular the Premises unto Grantee and Grantee's heirs, successors and assigns against Grantor and Grantor's heirs, successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

THE REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

SOUTH CAROLINA WARRANTY DEED

IN WITNESS WHEREOF, Grantor has caused this General Warranty Deed to be executed under seal this 25 day of January, 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GRANTOR:

(2) [Signature]
WITNESS (signature)

Gregg E. Litchfield
Witness Print Name Above

(3) [Signature]
NOTARY PUBLIC (signature)

Tara Luke Watkins
Notary Print Name Above

(1) [Signature]
Janet D. Mozley

STATE OF Georgia
COUNTY OF Cobb

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 25th day of January, 2022 by Janet D. Mozley.



(4) [Signature] (L.S.)
(Notary Public signs and affixes seal)
Print Name: Tara Luke Watkins
Notary Public for Cherokee County, Georgia
Commission Expires: 3/24/2024

SOUTH CAROLINA WARRANTY DEED

Plaintiffs
R. Jeffrey
Kimball and
Deborah S.
Kimball

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiffs R. Jeffrey Kimball and Deborah S. Kimball (14 Parkman Street):

According to Mr. Kimball's website at www.kpexconsulting.com/about/bios/r-jeffrey-kimball, he is the former CEO of L. Robert Kimball and Associates, a family engineering and architectural firm. (See Exhibit "B.16," attached, at 1-2). According to his website, Mr. Kimball, while serving as the CEO of L. Robert Kimball and Associates, led a team of over 500 talented individuals, helped the firm to earn the reputation of being an industry leader, maintained solid client relationships through difficult economic times, and cultivated an organization-wide allegiance to the company's core values. *Id.* at 1.

According to the website, Mr. Kimball's business and leadership experiences include: Mergers and Acquisitions, including the Negotiation of Sale and Documentation for a Private to Publicly Traded Company; Strategic Planning and Execution; Reporting and Documentation; Government Relations; Brand Development and Strategic Marketing Plan Implementation; Federal, State and Local Government Contracting; EEOC Compliance, Human Resources Oversight; Federal Security and Secure Facility Clearance; Captive Insurance Company Management; and Deferred Compensation. *Id.*

As noted in a recent press release (See Exhibit "B.17," attached, at 1-2). Mr. Kimball's current engagements include assisting clients with identifying and implementing new business ventures, plan development and execution, and assisting with strategic initiatives and business relationships. *Id.* at 1.

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EXHIBIT "B.16"

KPEX CONSULTING PROFILE REGARDING R.
JEFFREY KIMBALL



ABOUT KPEX SERVICES MENTAL TOUGHNESS ARTICLES AND RESOURCES EVENTS CONTACT OTHER INFORMATION

R. JEFFREY KIMBALL

Jeff Kimball is the former CEO of L. Robert Kimball and Associates, a family engineering and architectural firm that included third-generation employees. For over forty years, he grew with the company, helped them expand from a small-town operation to a sought after nationwide leader, and eventually oversaw the firm through its successful sale to a publicly traded company. For 17 years, he was the leader of a team of over 500 talented individuals, helping the firm to earn the reputation of being an industry leader, maintain solid client relationships through difficult economic times, and cultivate an organization-wide allegiance to your company's core values. He is also a member of the World President's Organization (WPO) / YPO Gold.

Jeff has served on community, economic development, educational, and private for-profit boards. He now helps leaders of local, national, and international businesses boil down seemingly complex issues into actionable business growth strategies. His process focuses on the key areas of strategic planning, organizational alignment, change management, process improvement, and performance monitoring.

Mr. Kimball's business and leadership experience includes: Mergers and Acquisitions including the Negotiation of Sale and Documentation for a Private to Publicly Traded Company; Strategic Planning and Execution; Reporting and Documentation; Government Relations; Brand Development and Strategic Marketing Plan Implementation; Federal, State and Local Government Contracting; EEOC Compliance, Human Resources Oversight; Federal Security and Secure Facility Clearance; Captive Insurance Company Management; and Deferred Compensation. In addition to government contracting, Mr. Kimball has had experience with electric utilities, oil and gas field development, mining, and commercial and industrial development.



Jeff's Approach

Simplify the Complex

As the team's facilitator my value is to listen to all participants and help condense many ideas into concise thoughts. This is critical to being able to achieve clarity of goals and communicate the plan to the entire organization.

Set the Right Priorities

Knowing the long term goals and vision for the organization are important. Knowing what to do next in order to achieve these goals is essential. Every quarter it is necessary to define the top priorities for the organization in order to continue to make progress toward your collective goals.

Choose Metrics that Drive Results

Fortunately what gets measured gets done. The right metrics allow you to create the desired behaviors necessary to achieve your priorities.

Establish a Rhythm

Establish a rhythm to measure progress, remove obstacles and instill accountability. Annually reset your strategy. Quarterly make corrections and react to changing conditions. Monthly keep the team aligned and focused on

priorities. Weekly measure progress against agreed upon metrics. Daily change tactics and remove obstacles.

Align Your Team

Communicating the plan in simple terms with absolute clarity is essential to organizational alignment. If the organization understands the top priority and can see how they can contribute, much can be accomplished.

Services & Account

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Recent Journals

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- Motivational Momentum
- Serenity Now!
- Body Image 101
- Audition Tips

Upcoming Workshops



KPEX Consulting

5350 Ellsworth Avenue, Suite 304
Pittsburgh, PA 15232
info@kpexconsulting.com
(412) 404-8878

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.17"

NOVEMBER 6, 2012, ARTICLE - R. JEFFREY
KIMBALL, FORMER L.R. KIMBALL CEO, LAUNCHES
CONSULTING BUSINESS TO HELP CLOSELY HELD
BUSINESS ACCELERATE GROWTH

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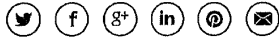
HOME **NEWS CENTER** BLOG

Monday, May 23, 2022

🔍 📄 🌐

R. Jeffrey Kimball, Former L.R. Kimball CEO, Launches Consulting Business to Help Closely Held Businesses Accelerate Growth

Share Article



R. Jeffrey Kimball's new business helps leadership teams develop strategies, align their organizations, and drive plan execution with actionable metrics.

PITTSBURGH, PA (PRWEB) NOVEMBER 06, 2012

R. Jeffrey Kimball, former CEO of L.R. Kimball, recently launched a consulting business aimed at helping the leaders of mid-sized closely held businesses accelerate growth.

Jeff leverages a proven methodology, The Execution Maximizer™, and over 20 years of leadership experience to help business leaders define their vision, develop their strategy, and execute on their plan. His approach relies heavily on organizational alignment, process improvement, and using actionable metrics to drive plan execution.

"As a former CEO, I know firsthand the value of a consultant. It's not easy to both lead and facilitate a planning session and be a critical observer. Having a partner to help my team be accountable, measure progress, and adjust our plan was invaluable," said Jeff. He now works with CEOs and business leaders to implement the same methodology that he used to accelerate growth in his own organization.

Jeff served as President and CEO of L.R. Kimball, a professional services firm that employed over 500 people and specialized in architecture, engineering, and communications technology. He continues to assist the Kimball organization as President Emeritus. Under his leadership, the company earned the reputation of being an industry leader, and achieved "Best Places to Work" status. "Seeing your business start to grow, or accelerate growth, is extremely rewarding. I'm excited to help other business leaders achieve those results and realize their vision."

Jeff's current engagements include assisting clients with identifying and implementing new business ventures, plan development and execution, and assisting with strategic initiatives and business relationships.

As part of his new website, Jeff launched a blog in which he writes about the challenges of growing a business and how to overcome them.

About R. Jeffrey Kimball - Business Growth Consultant

R. Jeffrey Kimball (rjeffreykimball.com) helps leaders of mid-sized closely held businesses boil down seemingly complex issues into actionable business growth strategies. His process focuses on the key areas of strategic planning, organizational alignment, change management, process improvement and performance measurement, and is reinforced by the proven methodology of The Execution Maximizer™.

About The Execution Maximizer™

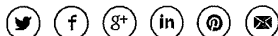
The Execution Maximizer™ (theexecutionmaximizer.com) is a proprietary methodology that helps CEOs and executive teams get from their vision to real execution and results. Our trained and licensed advisors help CEOs implement tools, habits and our process in privately-owned, family-owned and closely held businesses and not-for-profit organizations. Our affiliates are proven resources who have a track record providing services to clients in areas such as people selection and leadership development, process decomposition, mapping and documentation, virtual CFO and finance activities, compensation, information technology, one-on-one leadership coaching, and team development.



R. Jeffrey Kimball - Business Growth Consultant

Seeing your business start to grow, or accelerate growth, is extremely rewarding. I'm excited to help other business leaders achieve those results and realize their vision.

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Contact Author

R. JEFFREY KIMBALL

R. Jeffrey Kimball

814-244-4916

Email >

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Plaintiff

MKM 22 West,

LLC

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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff MKM 22 West, LLC (22 Westerwald St.):

Dave and Darby Mingey own MKM 22 West, LLC, (See Exhibit "B.18," attached, at 1-10). According to Mr. Mingey's LinkedIn profile (See Exhibit "B.19," attached, at 1-3), he serves as the Head of Partnership Management & Activation for the U.S. Olympic & Paralympic Properties Group, the joint-venture created by Los Angeles 2028 and the United States Olympic & Paralympic Committee. *Id.* at 1. Mr. Mingey is, according to his LinkedIn profile, a successful entrepreneur who, among other things, launched a start-up in Brooklyn that quickly grew to produce several million in annual revenue before being sold to a private equity group. *Id.* Throughout Mr. Mingey's business and marketing career, he has held leadership positions within the marketing, communications, media, social impact, sponsorship, and sales sectors of the sports and entertainment industry. *Id.*

Mr. Mingey, in his LinkedIn Profile, describes having skills and expertise in the following areas: Leadership, Brand/Product Marketing, Strategic Planning, P&L Management, Start-Ups, Agency Management, Integrated Marketing, Media, Digital/Content, Strategic Alliances, Sponsorships, Event Operations, Media Relations, Internal Communications, Crisis Management, Organization Development, Contracts, Negotiations, Sports & Entertainment Industry. *Id.* at 1-2.

Mrs. Mingey, according to her LinkedIn profile (See Exhibit "B.20," attached, at 1-2), while working for Nike, Inc., oversaw a portfolio of over \$20 million in wholesale bookings per year for major department stores such as Macy's, Bloomingdales, and Dillard's. *Id.* at 1.

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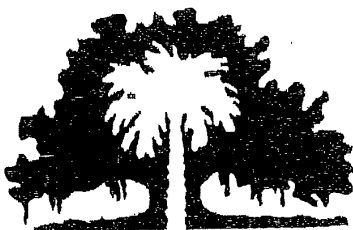
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EXHIBIT "B.18"

PALMETTO BLUFF CLUB MEMBERSHIP AGREEMENT
– DAVE AND DARBY MINGEY DATED FEBRUARY 12,
2020

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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

Active 40008606v11

Doc ID: 20200102125219835
Sertifi Electronic Signature

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: Fax Number:
Home Phone:
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 Initial: DCM
E-Signed E-Signed

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:

<u>Name</u>	<u>Date of Birth</u>	<u>Charge Privileges</u>	
		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.

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship</u>	<u>County, State</u>	<u>Charges Billed to Member Account</u>	
				Yes ☐	No ☐
				Yes ☒	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐
				Yes ☐	No ☐

Initial: DCM Initial: DCM
 E-Signed E-Signed

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

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.

DCM DCM
Initial: E-Signed Initial: E-Signed

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.

DCM DCM
Initial: E-Signed Initial: E-Signed

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: DCM E-Signed

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

Gray Ferguson
By: gray.ferguson@palmettobluffclub.com

Authorized Representative

Printed Name: Gray Ferguson

Title: Club General Manager

Dated: 02/16/2020, 20__

PALMETTO BLUFF CLUB
843.706.6568

For Club Use Only

Club Member Account Number: _____ Lot Number: _____

Folio Number: _____ Customer ID: _____

CH

E-Signed

E-Signed: 02/13/2020 08:57 AM EST
Chelsea Hudson
memberagreements@palmettobluffclub.com
IP: 64.203.244.248
Certifi Electronic Signature
DocID: 20200102125219835

EXHIBIT “B.19”

LINKEDIN PROFILE OF DAVE MINGEY

Contact

www.linkedin.com/in/daveminge
(LinkedIn)

Top Skills

Public Relations
Strategic Communications
Sports Management

Honors-Awards

Sports Business Journal's 40 Under
40 Award
Johnson & Johnson James E. Burke
Global Marketing Award
U.S. Department of Defense Joint
Civilian Service Medal
Nike Alberto Salazar Award
Time Inc. Presidential Award

Dave Mingey

Senior VP - Head of Partnership Management & Activation U. S.
Olympic and Paralympic Properties
New York

Summary

My career has afforded me the opportunity to work as a brand-side marketer, agency leader, property executive and U.S. Government envoy. Additionally, I've been fortunate to find success as an entrepreneur, launching a start-up in Brooklyn that quickly grew to produce several million in annual revenue before being sold to a private equity group. I've been professionally involved in most major sporting events, including multiple Olympic & Paralympic Games, FIFA World Cups, Super Bowls and IAAF World Championships. Periodically quoted by international media as an expert voice on the sports and entertainment industry, I've greatly enjoyed serving as a guest lecturer at various colleges and universities. I've also had the pleasure of presenting at notable international conferences, including the World Congress of Sport, SXSW and Leaders Sports Business Summit.

Currently, I serve as the Head of Partnership Management & Activation for the U.S. Olympic & Paralympic Properties group, the joint-venture created by Los Angeles 2028 and the United States Olympic & Paralympic Committee. Previous to this I was a Managing Director at CSM Sports & Entertainment, the London-based global marketing agency. I arrived at CSM after it purchased GlideSlope, an internationally lauded boutique consulting firm I founded in 2010. Before GlideSlope, I led highly impactful global marketing and communications campaigns for several of the world's biggest brands. Throughout my career I've held leadership positions within the marketing, communications, media, social impact, sponsorship and sales sectors of the sports and entertainment industry.

Skills & Expertise -- Leadership, Brand/Product Marketing, Strategic Planning, P&L Management, Start-Ups, Agency Management, Integrated Marketing, Media, Digital/Content, Strategic Alliances, Sponsorships, Event Operations, Media Relations, Internal

Communications, Crisis Management, Organization Development,
Contracts, Negotiations, Sports & Entertainment Industry

Experience

United States Olympic and Paralympic Properties
Head of Partnership Management & Activation
April 2019 - Present (3 years 2 months)
Greater New York City Area

CSM Sport & Entertainment
Managing Director
2017 - 2019 (2 years)
Greater New York City Area

Responsible for the oversight of the Consulting unit for CSM North America, while also serving as a member of the Executive Committee and Head of Corporate Communications. My chief role was leading the agency's team of marketing consultants in providing innovative advisory products and services to clients, helping them leverage sport and entertainment as a business-driving tool. Our portfolio includes many of the biggest and most recognizable brands in the world and our marketing expertise stretches across the various sectors of the global B2C, B2B and B2G business landscapes.

GlideSlope
President & Founding Partner
2010 - 2017 (7 years)
New York, NY

Prior to its acquisition by CSM, GlideSlope was a unique team of management advisors that focused solely on the business of global sport. Through neutral and objective counsel, GlideSlope helped its international clients seize opportunity for growth, address challenges and affect change. Leveraging data and analytics to craft strategic recommendations, we guided executives in the best way to use sport as a marketing tool to drive bottom-line growth.

PepsiCo
Vice President, Marketing
2009 - 2010 (1 year)
Purchase, NY

Johnson & Johnson

Director of Olympic Marketing
2005 - 2009 (4 years)
New Brunswick, NJ

Sirius XM Radio Inc.
Director of Sports Marketing
2004 - 2005 (1 year)
New York, NY

Nike
Director, Special Marketing Projects
August 2004 - October 2004 (3 months)
New York, NY

Nike
6 years 4 months
Director of U.S. Media Relations
December 2002 - February 2004 (1 year 3 months)
New York, NY

Senior Manager, U.S. Communications
August 2001 - December 2002 (1 year 5 months)
New York, NY

Communications Manager
November 1997 - July 2001 (3 years 9 months)
Beaverton, OR

Sports Illustrated
Senior Publicist
January 1994 - October 1997 (3 years 10 months)
New York, NY

Education

Boston College
Bachelor of Arts (B.A.), English

Queen Mary, U. of London

St. Joseph's Prep

EXHIBIT “B.20”

LINKEDIN PROFILE OF DARBY MINGEY

Contact

www.linkedin.com/in/darby-mingey-3b7073156 (LinkedIn)

Top Skills

Retail Partnerships
Account Management
Business Reviews

Honors-Awards

Strategic Department Sales Team of the Year Award
North America Sales Team of the Year Award

Darby Mingey

Chief Of Staff at Kinneret Group, LLC
New York

Summary

Experience

Kinneret Group, LLC
Chief Of Staff
September 2018 - Present (3 years 9 months)
NY NY

Nike
17 years 8 months

Strategic Account Manager
June 2014 - January 2018 (3 years 8 months)
Greater New York City Area

Oversaw a portfolio of +\$20 million in wholesale business bookings/year for major department stores that have included Macy's, Bloomingdales, and Dillard's. Originally, I was recruited into this division to help grow the Young Athletes apparel business, then moved onto other parts of the business to help deliver superior performance in hitting sales targets each season through a collaborative cross-team approach within Nike US Sales.

Additionally, I serviced client accounts by working on current in-store seasons, monitoring / course-correcting inventory levels, solving shipping / logistical issues, conducting quarterly business review appointments, delivering seasonal product presentations, formulating distribution recommendations, and working with marketing to ensure initiatives are set up correctly within stores to sustain / grow footwear and apparel business.

Additional Nike Experience
June 2000 - June 2014 (14 years 1 month)
Greater New York City Area

STRATEGIC ACCOUNT EXECUTIVE (Footlocker Inc.), 6/2004-6/2014

SALES REPRESENTATIVE (New York Tri-State Area), 6/2000-6/2004

- * Grew Bloomingdales wholesale footwear business +\$1 million in <1 year by lobbying internal product category team as to why customer should get enhanced distribution.
- * Skyrocketed annual business for new Nike Girls' apparel at Macy's to \$5.5 million by exploding door distribution from 0-400+.
- * Gained 2% gross margin over prior year for Dillard's women's business by working with client to sell more items at full price vs. discounts.
- * Engineered +5% sales lift within Q1 after refreshing previously stale retail environment at Macy's.
- * Grew Nike "Fly Zone" locations from 1 to 15 stores within 1.5 years.
- * Sparked 10% sales boost over previous year by training account base to use Nike.net to enter and manage orders
- * Replaced #1 best-selling vendor in children's apparel at Macy's.

Education

Boston College

Bachelor of Arts - BA, English

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Salt Works, LLC

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Salt Works, LLC (790 Old Moreland Road):

Lynn Ann Casey and Robert O'Keefe own Salt Works, LLC, (See Exhibit "B.21," attached, at 1-9). According to Ms. Casey's LinkedIn profile (See Exhibit "B.22," attached, at 1-3), she is an Entrepreneur, Founder, CEO, and Innovator. *Id.* at 1. Ms. Casey founded Arc Aspicio in 2004. *Id.* Arc Aspicio is a management, strategy, and technology consulting firm that takes a mission-oriented approach to complex client challenges. *Id.* Ms. Casey's LinkedIn profile states that she has worked on more than one hundred projects in all consulting disciplines. *Id.* Ms. Casey has certificates and/or degrees from the Massachusetts Institute of Technology, University of Virginia Darden School of Business, and Harvard Business School. *Id.*

According to Mr. O'Keefe's LinkedIn profile (See Exhibit "B.23," attached, at 1-3), he is the President and Chief Technology of Arc Aspicio. *Id.* at 1. Mr. O'Keefe's LinkedIn Profile states he "visualizes the big picture from multiple perspectives and asks pertinent, probing questions driven by curiosity." *Id.* Mr. O'Keefe has certificates and/or degrees from Cornell University, the Harvard Kennedy School of Government, and Harvard Business School. *Id.*

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.21"

PALMETTO BLUFF CLUB MEMBERSHIP AGREEMENT
– ROB O'KEEFE AND LYNN ANN CASEY DATED
OCTOBER 18, 2019

ELECTRONICALLY FILED - 2022 Jul 15 5:36 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

BOC 37396144v8

Doc ID: 20190731085650126
Sertifi Electronic Signature

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: 703-466-8481 Fax Number: _____
Home Phone: _____ 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 Initial: LAC
E-Signed _____ E-Signed _____

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:

<u>Name</u>	<u>Date of Birth</u>	<u>Charge Privileges</u>
		Yes ☒ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐
		Yes ☐ No ☐

Vertical Family Members:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship</u>	<u>County, State</u>	<u>Charges Billed to Member Account</u>
				Yes ☒ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐
				Yes ☐ No ☐

Initial: RF Initial: LAC
 E-Signed E-Signed

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 Initial: LAC
E-Signed E-Signed

BOC 37398144v8

Doc ID: 20190731085650126
Seriff Electronic Signature

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 *LAC*
Initial: E-Signed Initial: E-Signed

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 Initial: LAC
E-Signed E-Signed

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 Initial: LAC
E-Signed E-Signed

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@arcaspico.com
IP: 199.47.103.30
Certifi Electronic Signature
DocID: 20190731085650126

My
Robert O'Keefe

Dated: 10/18/2019, 20__

E-Signed : 10/18/2019 08:05 PM EDT
Lynn Ann Casey
lac@arcaspico.com
IP: 173.73.145.180
Certifi Electronic Signature
DocID: 20190731085650126

Spouse
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

E-Signed : 10/19/2019 02:18 PM EDT
Gray Ferguson
gray.ferguson@palmettobluffclub.com
IP: 64.203.244.248
Certifi Electronic Signature
DocID: 20190731085650126

By: Gray Ferguson

Printed Name: _____

Title: _____

Dated: 10/19/2019, 20__

PALMETTO BLUFF CLUB
843.706.6568

For Club Use Only

Club Member Account Number: _____ Lot Number: _____

Folio Number: _____ Customer ID: _____

Member Agreements

memberagreements@palmettobluffclub.com

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.22"

LINKEDIN PROFILE OF LYNN ANN CASEY

Contact

www.linkedin.com/in/lynnanncasey
(LinkedIn)
www.arcaspicio.com (Company)
www.arcaspicio.com/newsletter
(Other)
www.vasculitisfoundation.org
(Other)

Top Skills

Program Management
Strategy
Management Consulting

Languages

English (Native or Bilingual)

Lynn Ann Casey

Entrepreneur, Founder, CEO, Innovator
Arlington

Summary

Lynn Ann founded Arc Aspicio in 2004. A global thought leader in homeland security and strategy, Lynn Ann is known for innovation, and execution to achieve results.

Arc Aspicio is a management, strategy, and technology consulting firm that takes a mission-oriented approach to complex client challenges. Focused on innovation, Arc Aspicio provides services in strategy, design, human capital, operations, analytics and visualization, technology and information sharing. The company is known for a strong, collaborative culture that values gratitude, provides leadership opportunities, and explores the future. Our teams take a human-centered approach to working with clients and are flexible and responsive within dynamic Government client environments where missions evolve and new priorities arise sometimes even daily. We thrive on these situations and promote continuous improvement and new ideas. And, #welovedogs! Follow us on Twitter @arcaspicio or learn more at www.arcaspicio.com. Never doubt that a small group of thoughtful, talented consultants can make our nation more secure and prosperous.

Lynn Ann is passionate about executive education and learning, art, writing, innovation, strategy, and the weather in South Carolina.

Awards

- CEO Report 2018 Washington D.C. Corporate Culture Award Winner
- Nominee for Professional Services Innovation Award in 2018 (Northern Virginia Chamber of Commerce)
- One of Consulting Magazine's Fastest Growing Firms (2015 and 2016) and one of Consulting Magazine's Seven Jewels to Watch
- Department of Homeland Security Small Business Achievement Award in 2010
- Greater Washington GovCon Award winner for Program of the Year 2014 (Human Trafficking)

Experience

Arc Aspicio LLC

17 years 9 months

Chief Executive Officer

September 2004 - Present (17 years 9 months)

Washington DC-Baltimore Area

Lynn Ann Casey is passionate about consulting and homeland security. Lynn Ann founded Arc Aspicio in 2004 to enhance the future of our nation, solve challenges, and enhance homeland security in the U.S. and globally.

Arc Aspicio is a management, strategy, and technology consulting firm that takes a mission-oriented approach to complex client challenges. Focused on innovation, Arc Aspicio provides services in strategy, design, human capital, operations, analytics and visualization, technology and information sharing. The company is known for a strong, collaborative culture that values gratitude, provides leadership opportunities, and explores the future. Our teams take a human-centered approach to working with clients and are flexible and responsive within dynamic Government client environments where missions evolve and new priorities arise sometimes even daily. We thrive on these situations and promote continuous improvement and new ideas. And, #welovedogs! Follow us on Twitter @arcaspicio or learn more at www.arcaspicio.com.

Come work with us! www.arcaspicio.com/careers

Arc Aspicio, Industry Co-Chair for EAGLE II Small Business

February 2015 - December 2015 (11 months)

Act as a liaison for all EAGLE II Small Business contract holders, supporting the use of the IT Services vehicle across DHS.

Vasculitis Foundation

Board Director

June 2004 - June 2007 (3 years 1 month)

Provided strategic advice to grow and mature the organization.

Accenture

Business Architect and Capture Strategist

October 1990 - August 2004 (13 years 11 months)

Strategist and Business Architect for clients including the Department of Homeland Security (DHS). Extensive business and systems integration experience with the Government. 14 years of experience consulting for the Government on results-focused projects. Led successful pursuit of the the \$10 billion US-VISIT program at DHS.

Fairfield University - The Mirror

Editor in Chief

June 1989 - May 1990 (1 year)

Editor in Chief of Fairfield University's independent, student-run campus newspaper. Responsible for driving weekly newspaper content, editing all articles, growing advertising revenue, managing staff and enhancing technology infrastructure.

Education

Harvard Business School

HBS Alumni, Owner President Management Program, Entrepreneurship, Strategy, Talent, Organizational Change · (2012 - 2014)

University of Virginia Darden School of Business

Certificate, Student-centered Case Method · (2018 - 2018)

Massachusetts Institute of Technology

Neuroscience of Leadership · (2015 - 2015)

Fairfield University

BA, English, Sociology, Law Enforcement · (August 1986 - June 1990)

Academy of the Holy Angels

Diploma · (1982 - 1986)

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EXHIBIT "B.23"

LINKEDIN PROFILE OF ROB O'KEEFE

Contact

www.linkedin.com/in/okeeferob
(LinkedIn)
www.arcaspicio.com (Company)
twitter.com/arcaspicio (Other)
www.arcaspicio.com/newsletter.html (Other)

Top Skills

Technology Integration
Mobile Technology
Cloud Computing

Rob O'Keefe

Entrepreneur, Bitcoin, Data Analytics, Technology Leader
Arlington

Summary

Rob is the President and Chief Technology Officer of Arc Aspicio, improving mission performance through business process and technology.

Arc Aspicio is a management, strategy, and technology consulting firm that takes a mission-oriented approach to complex client challenges. Focused on innovation, Arc Aspicio provides services in strategy, design, human capital, operations, analytics and visualization, technology and information sharing. The company is known for a strong, collaborative culture that values gratitude, provides leadership opportunities, and explores the future. Our teams take a human-centered approach to working with clients and are flexible and responsive within dynamic Government client environments where missions evolve and new priorities arise sometimes even daily. We thrive on these situations and promote continuous improvement and new ideas. And, #welovedogs! Follow us on Twitter @arcaspicio or learn more at www.arcaspicio.com.

Arc Aspicio is an award-winning Great Place to Work!

=====

Rob applies ingenuity and innovation to solve challenging business problems by applying new technologies.

- Visualizes the big picture from multiple perspectives and asks pertinent, probing questions driven by curiosity
- Communicates effectively with non-technical and technical audiences to understand their needs
- Creates visionary ideas and translates them into tactical solutions that reflect the latest trends and technologies

Expert in aligning technology with business to create solutions that drive change and improve financial and operational performance.

Lead multi-year, multi-project deployments at major organizations to successfully deploy new applications and business functions.

Specialties: IT Strategy • Technology Vision • Block Chain and Bitcoin • IT Governance • Technology Evaluation • eCommerce • Enterprise Architecture • Software • Business Applications

Experience

Arc Aspicio

President and Chief Technology Officer (CTO)

June 2006 - Present (16 years)

Washington D.C.

Mr. O'Keefe is the President and Chief Technology Officer (CTO) of Arc Aspicio, a global business focused on Design Thinking, strategy consulting, and leadership within the areas of Homeland Security, Border Management, Transportation Security and Revenue Administration. Mr. O'Keefe focuses on Design Thinking, business and technical architecture, business strategy, and information technology modernization. Driving technology change programs to achieve client successes.

Mr. O'Keefe is helping customers to define technology requirements, select new technologies and implement those technologies. Focus on Homeland Security related technologies such as biometrics, service oriented architecture, enterprise integration and fusion.

New Dominion Angels

Member

April 2019 - Present (3 years 2 months)

McLean, VA

Accenture

Partner

October 1994 - April 2006 (11 years 7 months)

Leading major technology implementations, IT Strategy, IT Governance.

Consulting to CIO's about current technology subjects. Web Services, Service

Oriented Architecture, IT Management, execution, IT alignment with business, are areas of focus.

James Martin and Co.

Senior Consultant

January 1991 - October 1994 (3 years 10 months)

Leading software development projects using advanced software development tools and architectures. Business change consultant, aligning new technology implementations to business direction and strategy.

Andersen Consulting

Consultant

May 1989 - December 1990 (1 year 8 months)

Software development, customization and installation of ERP software (Payroll, HR, Finance)

Education

Harvard Business School

Certificate, Leading Professional Service Firms - LPSF (Executive Program) · (2013 - 2013)

Harvard Kennedy School of Government

Certificate, Senior Executives in National and International Security · (2012 - 2012)

Cornell University

BS, Operations Research and Industrial Engineering · (1989 - 1989)

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiffs

Dylan Skye

Hart and Annie

Bolser

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiffs Dylan Hart and Anne Bolser (753 Old Moreland Road)

According to Mr. Hart's website at www.dylanskyehart.com, he is a freelance musician who has recorded films with many great composers, including John Williams, Hans Zimmer, John Powell, Randy Newman, Alexandre Desplat, James Newton Howard, Bruce Broughton, Davie Newman, and Alan Silvestri. (See Exhibit "B.26," attached, at 1-4). Mr. Hart has also recorded albums and appeared on television with music legends Lady Gaga, John Legend, Michael Buble, Sting, Stevie Wonder, Wu-Tang Clan, M83, Gladys Night, Yo-Yo Ma, Neil Young, and the Beatles. *Id.* at 1. Mr. Hart has toured with John Williams's *Star Wars in Concert*, Eden Espinosa of *Wicked*, and The Who, doubling on horn, trumpet, trombone, Wagner tuba, and mellophone. *Id.* Mr. Hart performs regularly with the Los Angeles Philharmonic, Los Angeles Chamber Orchestra, Pacific Symphony, and San Diego Symphony. *Id.*

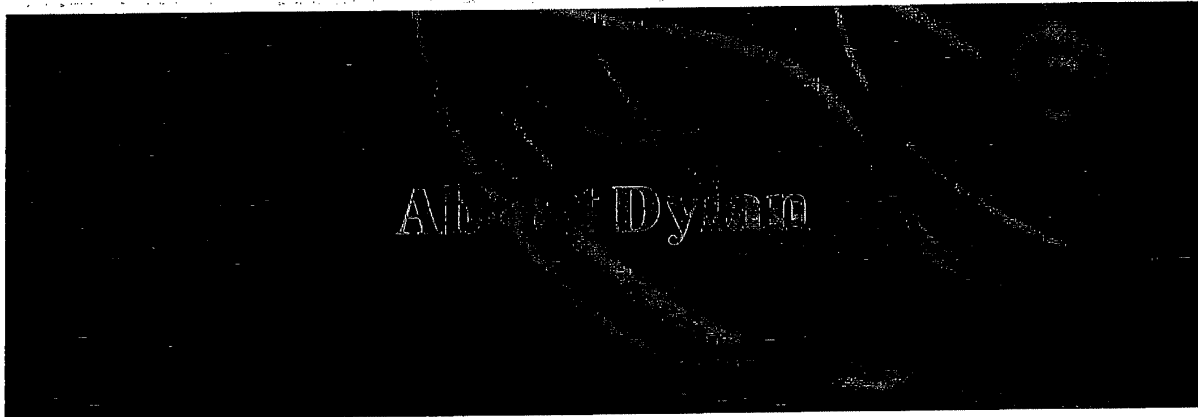
According to Ms. Bolser's website at www.anniebolser.com, she is a freelance horn player. (See Exhibit "B.27," attached, at 1-2). Ms. Bolser has toured with John Williams's *Star Wars in Concert* and with Josh Groban, and performed on *Dancing with the Stars*, *The Ellen Show*, and PBS's *Live from Lincoln Center*. *Id.* at 1. Ms. Bolser has shared the stage with Ringo Starr and Paul McCartney on CBS's *The Beatles: The Night That Changed America*. *Id.* And, Ms. Bolser has performed with Ariana Grande and Chance the Rapper at The Grammy's, P-Diddy at The American Music Awards, and Wu-Tang Clan at Coachella. *Id.*

Shortly prior to the filing of this lawsuit, Mr. Hart and Ms. Bolser, as evidenced by a General Warranty Deed (See Exhibit "B.28," attached, at 1-3) purchased 753 Old Moreland Road at Palmetto Bluff. *Id.*

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.24"

DYLAN SKYE HART WEBSITE



PRESS KIT

HOLLYWOOD HORN RECORDING ARTIST

You may not know Dylan Skye Hart by name, but you have heard him play horn. Proud Latino and Los Angeles native, Dylan is a busy freelance musician. Depending on the day, he can be found recording for video games, motion pictures, theme parks, or television shows.

He has recorded films with many great composers including John Williams, Hans Zimmer, John Powell, Randy Newman, Alexandre Desplat, James Newton Howard, Bruce Broughton, David Newman, and Alan Silvestri. Some movie titles on which Dylan can be heard playing principal horn include: *Star Wars IX: The Rise of Skywalker*, *Jungle Cruise*, *Onward*, *It 2*, *Call of the Wild*, *Ready Player One*, *Deadpool 2*, *Star Wars VIII: The Last Jedi*, *X-Men Apocalypse*, *Suicide Squad*, and *The Jungle Book*. Dylan has also recorded albums and appeared on television with music legends Lady Gaga, John Legend, Michael Bublé, Sting, Stevie Wonder, Wu-Tang Clan, M83, Gladys Night, Yo-Yo Ma, Neil Young, and The Beatles. His solos can be heard on his namesake Bob Dylan's albums *Shadows in the Night* and *Fallen Angel*.

Dylan has toured with John Williams' *Star Wars in Concert*, Eden Espinosa of *Wicked*, and The Who, doubling on horn, trumpet, trombone, Wagner tuba, and mellophone. In the orchestral world, Dylan is principal horn of the Hollywood Bowl Orchestra and recently won a one-year position as associate principal horn of the Minnesota Orchestra. He also performs regularly with the Los Angeles Philharmonic, Los Angeles Chamber Orchestra, Pacific Symphony, and San Diego Symphony. Dylan is a member of the Los Angeles Horn Quartet and Modern Brass Quintet.

In addition, Dylan co-produced the 75-minute film documentary entitled *IM1: Hollywood Horns of the Golden Years* which recounts the history of the Los Angeles film studios told through the eyes of the legendary horn players of the golden era. In addition, he translated and published a book for musicians called *In Tune*:

Exercises to Improve a Musician's Performance and Quality of Life. Dylan is known for making French horn music videos as seen on his YouTube Channel and specializes in giving masterclasses on a variety of topics ranging from physics and anatomy to motivation and mental health.

As an alumnus of the University of Southern California, he studied with Vincent DeRosa, James Thatcher, and Richard Todd. Dylan currently teaches horn at California State University, Long Beach. When not performing, Dylan, a "foodie", enjoys cooking, playing ice hockey and soccer, golfing, and hanging out with his wife and fellow hornist Annie Bosler.

Dylan owns several vintage Conn 8Ds and currently plays on a C-series that his friend and fellow instrument junky Noah Gladstone helped him find.

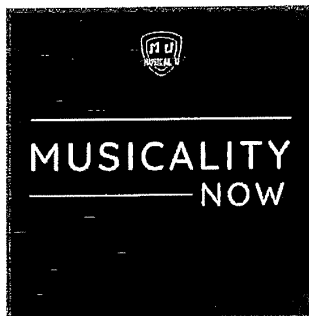
Podcast Spotlight

INTERVIEWS WHERE DYLAN HAS BEEN THE FEATURED GUEST



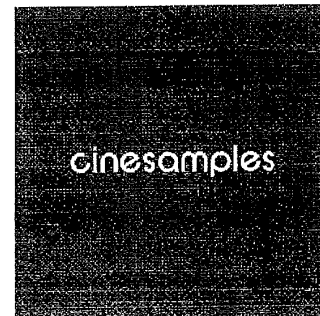
L.A. Studio Legends
WITH DYLAN HART

[LISTEN NOW](#)



Getting Out Of Your
Own Way
WITH DYLAN HART

[LISTEN NOW](#)



Composer's
Workshop
WITH DYLAN HART

[LISTEN NOW](#)

Gallery





SKYE

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.25"

ANNIE BOSLER WEBSITE



Teaching Research Performances Blog About Contact Annie

About Annie

Annie wears many hats in her career as a Los Angeles freelance horn player. When she's not performing, Annie pursues her passion for teaching, research, & special projects.



Dr. Annie Bosler wears many hats in her career as a Los Angeles freelance horn player. She has toured with John Williams' *Star Wars in Concert* and with Josh Groban, and performed on *Dancing with the Stars*, *The Ellen Show*, and PBS's *Live from Lincoln Center*.

Annie shared the stage with Ringo Starr and Paul McCartney on CBS's *The Beatles: The Night That Changed America*. She performed with Ariana Grande and Chance the Rapper at The Grammy's, P-Diddy at The American Music Awards, and Wu-Tang Clan at Coachella. Annie can be heard on many motion pictures, video games, theme park rides, and TV shows as well as seen playing horn on Fox's TV show *Glee*.

Named a TED Educator in 2017, Dr. Bosler co-wrote *How to practice...for just about anything*. The video went viral receiving over 50 million views on social media. In May of 2015, Annie also gave a TEDx talk about facial rehabilitation and brain plasticity entitled *Elissa's Song: The Power of Face Exercises*. She specializes in wind pedagogy, specifically teaching facial anatomy and symmetry as it relates to the embouchure, injury rehabilitation, creative ways to educate beginning students, and audition preparation for high school and college students.

Having taught in the Colburn School for Performing Arts for nearly a decade, Annie has a 100% track record of helping students get into a school of their dreams. She co-authored *College Prep for Musicians* a book for high school students, parents, teachers, and counselors. Also, Annie produced and directed *1Mi: Hollywood Horns of the Golden Years*, a one-of-a-kind documentary film about the history of Los Angeles studio musicians told through the eyes of the legendary Hollywood horn



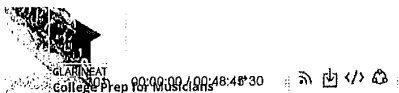
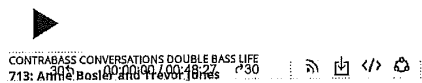
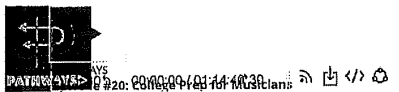
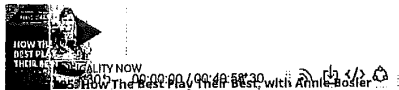
Download Press Kit

players. In 2022, Annie has enjoyed working as a writer for Tianjin Juilliard's Music Discovery curriculum and is excited to publish a book called *In Tune: Exercises to Improve a Musician's Performance and Quality of Life*.

Annie is professor of horn at California State University, Northridge. She served as the secretary/treasurer of the International Horn Society Executive Board for five years. In addition, she cohosted the largest International Horn Symposium, bringing over 1,000 musicians to Los Angeles in 2015. Annie holds a BFA from Carnegie Mellon University where she played varsity tennis, and a MM and DMA from the University of Southern California. She is married to studio hornist Dylan Skye Hart. She has a love for teaching, writing, producing film projects, Instagram, agriculture, traveling, playing tennis, and watching college football. For more information, visit 1Mhollywoodhorns.com, IHSLA2015.com, and collegeprepformusicians.com.

Member of: International Horn Society (IHS), Performing Arts Medical Association (PAMA), International Women's Brass Conference (IWBC), College Music Society (CMS), American Federation of Musicians (AFM), Recording Musicians Association (RMA)

Listen to Annie Featured in Podcasts



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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.26"

WARRANTY DEED FILED ON JANUARY 26, 2022
BEAUFORT COUNTY, BETWEEN ROBERT P.
PETRIE, GRANTOR, TO DYLAN SKYE HART AND
ANNA JANE BOLSDER, GRANTEE IN THE
AMOUNT OF \$1,975,000.00

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

After recording return to:
Hale and Hale, P.A.

1533 Fording Island Road, Ste 294
Hilton Head Island, SC 29926

File # 9721-01.11

Prepared without benefit of
title examination by:

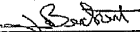
Smith Law, LLC

Brandon W. Smith, Attorney at Law
Post Office Drawer 1023
Beaufort, South Carolina 29901
File No: RE-21-11973

ADD DMP Record 4/20/2022 02:54:57 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R614 052 000 0233 000 00

BEAUFORT COUNTY SC - ROD
BK 4108 Pgs 2451-2453
FILE NUM 2022005275
01/26/2022 09:51:31 AM
RCPT# 1074350
RECORDING FEES 15.00
County Tax County 2,172.50
State Tax State 5,135.00

RECORDED
2022 Apr -21 09:10 AM


BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT, **Robert P. Petrie** (hereinafter the "**Grantor**"), in the State aforesaid, for and in consideration of the sum of ONE MILLION NINE HUNDRED SEVENTY FIVE THOUSAND AND 00/100 Dollars (\$1,975,000.00) and no other valuable consideration to him in hand paid at and before the sealing of these presents by **Dylan Skye Hart and Anna Jane Bosler** (hereinafter the "**Grantee**"), of 753 Old Moreland Road, Bluffton, SC 29910, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents does grant, bargain, sell and release subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Dylan Skye Hart and Annie Jane Bosler, as joint tenants with rights of survivorship, and not as tenants in common, the following described property, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, designated as LOT NUMBER 5591, BLOCK L-1A, MORELAND LANDING, PALMETTO BLUFF, and being more particularly shown and described on a plat thereof prepared by Robert K. Morgan, III, SC PLS #26957, dated July 18, 2018, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 149 at Page 176. Said Lot 5591 formerly shown as Lots 5591 and 5592, Block L-1A, on the plat recorded in Plat Book 142 at Page 135. For a more detailed description, reference may be made to said plats of record. TMP #R614-052-000-0233-000

This property is conveyed by the Grantor and accepted by the Grantee subject to all applicable covenants, conditions, restrictions, easements, affirmative obligations, etc., as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being the same property conveyed to Robert P. Petrie by deed from May River Forest II, LLC dated 08/15/2018 and recorded with Beaufort County Register of Deeds Office on 09/05/2018 in Book 3698, Page 376.

This Deed was prepared in the Law Offices of Smith Law, LLC, Post Office Drawer 1023, Beaufort, South Carolina 29901, by Brandon W. Smith, Esquire.

Tax Map Reference No: R614-052-000-0233-0000

ELECTRONICALLY FILED - 2022 JUL 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

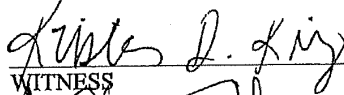
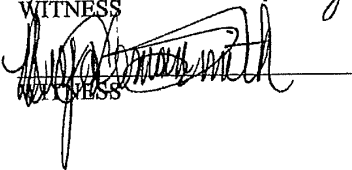
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Dylan Skye Hart and Annie Jane Bosler, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns forever.

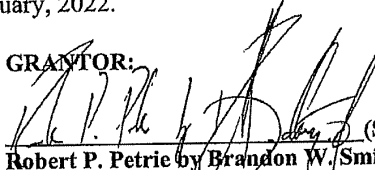
And **Grantor** does hereby bind himself and his heirs, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said **Grantee**, their heirs and assigns, against him and his heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the **Grantor** has hereunto set Grantor's hand and seal and caused these presents to be executed this 13th day of January, 2022.

WITNESSES:


WITNESS

WITNESS

GRANTOR:

 (SEAL)
Robert P. Petrie by Brandon W. Smith, his
Attorney-In-Fact

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF BEAUFORT

I, the undersigned Notary Public, do certify that **Robert P. Petrie by Brandon W. Smith, his Attorney-In-Fact** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal the 13th day of January, 2022.


Notary Public for South Carolina
My commission expires: 8/21/2022

Mary Coleman Smith
Notary Public, State of South Carolina
My Commission Expires Aug. 21, 2022

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Live Oak Assets, LLC

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff Live Oak Assets, LLC (38 Blue Willow Street):

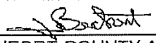
Michael J. McGuire purchased the residence currently owned by Live Oak Assets, LLC, (See Exhibit "B.27," attached, at 1-4), and subsequently quit-claim deeded the residence to Live Oak Assets, LLC, (See Exhibit "B.28," attached, at 1-3). According to Mr. McGuire's LinkedIn profile (See Exhibit "B.29," attached, at 1-2), he is the President of AME Consulting Engineers, PC. Mr. McGuire has designed and managed "thousands" of complex engineering projects for both the public and private sector. at 1.

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.27"

WARRANTY DEED FILED ON JUNE 2, 2020,
BEAUFORT COUNTY, BETWEEN GEORGE
MARSHALL BUTLER, SR. AND GEORGE
MARSHALL BUTLER, JR, GRANTORS, TO
MICHAEL J. MCGUIRE, GRANTEE IN THE
AMOUNT OF \$1,170,000.00

RECORDED
2020 Jun -12 09:24 AM

BEAUFORT COUNTY AUDITOR

ADD DMP Record 6/11/2020 12:05:51 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R614 045 000 0477 0000 00

BEAUFORT COUNTY SC - ROD
BK 3869 Pgs 1843-1846
FILE NUM 2020028689
06/02/2020 11:36:05 AM
RCPT# 977803
RECORDING FEES 15.00
County Tax County 1,287.00
State Tax State 3,042.00

Prepared By and Return to:
Thomas C. Davis, Esquire
1001 Craven Street
Beaufort, SC 29902
File No.: P-26374-20CG

(Please do not write above this line - Reserved for the Register of Deeds)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **George Marshall Butler, Sr. and George Marshall Butler, Jr.** (hereinafter called "Grantors"), for and in consideration of the sum of One Million One Hundred Seventy Thousand and 00/100 Dollars (\$1,170,000.00) to the Grantors in hand paid at and before the sealing of these presents by **Michael J. McGuire** (hereinafter called "Grantee"), 38 Blue Willow, Bluffton, SC 29910, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth below, unto the Grantee, his heirs and assigns, in fee simple, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, his heirs and assigns forever, in fee simple.

AND THE GRANTORS do hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the premises unto the Grantee, his heirs and assigns, against themselves and their heirs and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

WITNESS their hand(s) and seal(s) this 21st day of May, 2020.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

[Signature]
1st Witness
Christy Spivey
2nd Witness

[Signature]
George Marshall Butler, Sr.

STATE OF Georgia)
COUNTY OF Monroe)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that George Marshall Butler, Sr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this
21st day of May, 2020.

[Signature]
Notary Public for _____

Kornie E. Dekle
Print or Type Name of Notary

My Commission Expires: 1/5/21



WITNESS their hand(s) and seal(s) this 21st day of May, 2020.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF:

[Signature]
1st Witness
Christy Spruiell
2nd Witness

[Signature]
George Marshall Butler, Jr.

STATE OF Georgia)
COUNTY OF Monroe)

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that George Marshall Butler, Jr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this
21st day of May, 2020.

[Signature]
Notary Public for _____

Konnie E. Dekle
Print or Type Name of Notary

My Commission Expires: 1/5/21

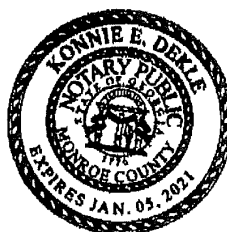


EXHIBIT "A"

ALL that certain piece, parcel of lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, designated as Lot Number One Hundred Fifty-Seven (157), and being more particularly shown and described on a plat entitled "Block C, A Portion of Palmetto Bluff Village" prepared by Boyce L. Young, SCRLS #11079, dated January 12, 2005, and recorded at the office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107 at Page 104.

This property is conveyed subject to all applicable covenants, conditions, restrictions and easements filed of record at the office of the Register of Deeds for Beaufort County, South Carolina.

This is the same real property acquired by George Marshall Butler, Jr. and Lewis Samuel James, IV, by deed from May River Forest, LLC, recorded December 27, 2005, in Book 2292 at Page 278; thereafter Lewis Samuel James, IV, conveyed his interest to George Marshall Butler, Sr. by deed dated August 24, 2007, in Book 2617 at Page 549, at the office of the Register of Deeds for Beaufort County, South Carolina.

This instrument was prepared by Thomas C. Davis, Esquire, of the law firm of Harvey & Battey, P.A., 1001 Craven Street, Beaufort, South Carolina 29902.

BEAUFORT COUNTY TAX MAP REFERENCE: R614 045 000 0477 0000

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.28"

**QUIT-CLAIM DEED FILED MARCH 2, 2022, BEAUFORT
COUNTY, BETWEEN MICHAEL J. MCGUIRE, GRANTOR,
AND LIVE OAK ASSETS, LLC, GRANTEE**

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT-CLAIM DEED

NOW THEREFORE, know all men by these presents that **Michael J. McGuire**, hereinafter referred to as the "Grantor", in the State aforesaid for consideration of Ten and NO/100 (\$10.00) Dollars, intends to convey their interest to:

Live Oak Assets, LLC
18710 Peninsula Cove Lane
Cornelius, NC 28031

Hereinafter referred to as the "Grantee". The Grantor has remised, released, and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee, **Live Oak Assets, LLC**, his heirs and assigns forever, the following described property, to wit:

TAX MAP NUMBER: R614 045 000 0477 0000

ALL that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, designated as Lot Number One Hundred Fifty-Seven (157), and being more particularly shown and described on a plat entitled "Block C, A Portion of Palmetto Bluff Village" prepared by Boyce L. Young, SCRLS #11079, dated January 12, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107 at Page 104.

This conveyance is made subject to all easements, restrictions, covenants and conditions of record and otherwise affecting the property.

This being the same property conveyed to Grantor by Deed of Michael J. McGuire dated June 19, 2020, and recorded June 26, 2020 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3877 at Page 3206.

This Deed was prepared in the office of Mikkelson Law Firm, LLC, 214 Bluffton Road, Bluffton, South Carolina 29910, without the benefit of title examination.

TOGETHER with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining;

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantee, his heirs and assigns forever; subject however to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

PAGE LEFT INTENTIONALLY BLANK

WITNESS Grantor's hand and seal this 28 day of FEBRUARY, 2022.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

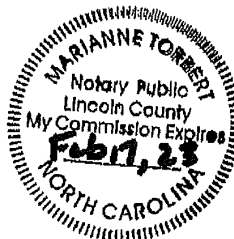
GRANTOR:
MICHAEL J. MCGUIRE

(2) William E. Brown (1) Michael J. McGuire {L.S}
WITNESS (Sign Name Above) MICHAEL J. MCGUIRE

William E. Brown
WITNESS (Print Name Above)

(3) Marianne Torbert
NOTARY (Sign Name Above)

Marianne Torbert
NOTARY (Print Name Above)



STATE OF N. Carolina)
COUNTY OF Lincoln County)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 28th day of February, 2022 by MICHAEL J. MCGUIRE.

(4) Marianne Torbert
Print Name: Marianne Torbert
Notary Public for Lincoln County
Commission Expires: 2/17/23

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.29"

LINKEDIN PROFILE OF MIKE MCGUIRE

Contact

www.linkedin.com/in/mike-mcguire-8aa37518 (LinkedIn)
www.ame-pc.com (Company)

Top Skills

CAD
Engineering
AutoCAD

Certifications

Professional Engineer - NC, SC, GA
Model Law Engineer (MLE)
LEED Accredited Professional

Mike McGuire

President at AME Consulting Engineers, PC
Charlotte Metro

Experience

AME Consulting Engineers, PC (Voted 2016 Best Places to Work!)
President/Mechanical Engineer
January 2006 - Present (16 years 5 months)

With more than 24 years of experience as a Mechanical Engineer, Mike has designed and managed thousands of complex engineering projects for both the public and private sector. Serving as a Mechanical Engineer of Record, LEED Accredited Professional, and Project Manager, he is responsible for the preparation of specifications and plans, determining design calculations, and meeting project schedules.

Areas of Speciality:

- 2-pipe and 4-pipe chiller/boiler/central station VAV air handler
- 2-pipe chiller/boiler with fan coil units
- Central Plant Systems
- Smoke Pressurization Systems
- Decoupled Dedicated Outdoor Air systems with Demand Control Ventilation strategy
- Packaged RTU & split system DX with Energy Recovery
- PTAC/VTAC
- IR Heating Systems

PACE Collaborative
Mechanical Engineer
October 2003 - January 2006 (2 years 4 months)

Controls Southeast, inc
Engineer
1999 - 2003 (4 years)

Conbraco Industries
PD Engineer
1996 - 1999 (3 years)

Education

North Carolina State University

Bachelor of Science in Mechanical Engineering (BSME), Mechanical Engineering · (1988 - 1993)

University of North Carolina at Charlotte

Master of Science in Mechanical Engineering (MSME), Heat Transfer and Fluid Mechanics · (1999 - 2004)

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff

368 Mount

Pelia, LLC

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315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

Plaintiff 368 Mount Pelia, LLC (368 Mount Pelia Road):

Michael S. Addy and Lynn G. Addy own 368 Mount Pelia, LLC. (See Exhibit "B.30," attached, at 1-6), According to Mr. Addy's LinkedIn profile (See Exhibit "B.31," attached, at 1), he has been President of Addy's Harbor Dodge, Inc. in Myrtle Beach, S.C., since 1990. *Id.* This automobile dealership was the defendant in *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 664 S.E.2d 663 (2007).

ELECTRONICALLY FILED - 2022 Jul 15 3:36 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

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Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.30"

PALMETTO BLUFF MEMBERSHIP AGREEMENT
LYNN ADDY AND MICHAEL ADDY DATED
FEBRUARY 4, 2018

ELECTRONICALLY FILED - 2022 Jul 15 5:36 PM - BEAUFORT - COMMON PLEAS | CASE#2022CP0700632

I. LEGAL OWNER INFORMATION

PERSONAL

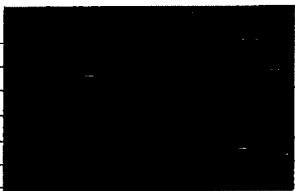
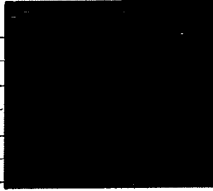
Club Member Account Number: _____ Lot Number: _____
 Member's Name Lynn Addy Birth Date [REDACTED]
 Spouse's Name Mike Addy Birth Date [REDACTED]
 Anniversary Date April 7
 Alma Mater Columbia College Spouse's Univ. South Carolina
 Palmetto Bluff Address 368 Mt. Pelia
 Primary/Mailing Address 1850 Arundel Rd. Myrtle Beach, S.C. 29577
 Billing Address "
 Club Communications Address "
 Telephone:
 Local Residence () Cell Phone (843) 340-7799
 E-mail Address addy1g@gmail.com Fax Number ()
 Spouse E-mail Address maddy @addysharberdodge.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:

<u>Name</u>	<u>Relationship</u>	<u>Charges Billed to Member Account</u>	
		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 Sr.
 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 addy@smc.com Website
 Spouse's Company Name Addy's Harbor Dodge Title Prod
 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 maddy@addysharbor-dodge.com Website

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

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 B. Addy
Printed Name

Dated: 2/4/, 2018

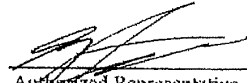
[Signature]
Spouse's Signature

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, 2018

PALMETTO BLUFF CLUB
(843) 706-6568

BOC 37396144v8

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No. 2022-CP-07-00632
MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION

EXHIBIT "B.31"

LINKEDIN PROFILE OF MIKE ADDY

Contact

www.linkedin.com/in/mike-addy-40485ab (LinkedIn)

Top Skills

Business Development

Marketing

Mike Addy

President at Addy's Harbor Dodge
Myrtle Beach

Experience

Addy's Harbor Dodge
President
October 1990 - Present (31 years 8 months)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

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 Trustee of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Alberio; 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.

**MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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") submit this Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment. For the reasons stated below, the Court should deny the Plaintiffs' Motion.

FACTUAL HISTORY

The below facts are taken from the Complaint and the Affidavit of Grey Ferguson filed in this action.

This is a complex case with intricate facts involving 21 Plaintiffs and 12 Defendants, allegedly spanning a 20-year time period. The Complaint contains 253 Paragraphs and covers 83 pages. Attached to the Complaint are 110 pages of exhibits, which comprise only a fraction of the documents relevant to this action, recorded and otherwise. The relief Plaintiffs are seeking would dismantle the governing structure of the Palmetto Bluff Community in Bluffton, one of South Carolina's premier and most-lauded residential / recreational communities. While Plaintiffs represent less than 1% of the property owners in Palmetto Bluff, their Motion, if successful, would jeopardize the investments of the other 99% of Palmetto Bluff property owners in this showcase community. The Plaintiffs are all highly-sophisticated business people who tout their business acumen in other settings, but claim in this action to have somehow been hoodwinked by the agreements they made when purchasing their lots at Palmetto Bluff. Having enjoyed and taken advantage of the benefits of these agreements, the Plaintiffs now object to living by these agreements and want to rewrite them.

The Defendants vigorously contest the Plaintiffs' claims, and look forward to bringing forth through discovery the complete and true facts regarding the issues in dispute.

UNIQUE PROCEDURAL POSTURE

The Defendants are entitled to answer the Complaint. In a textbook-case of "jumping the gun," the Plaintiffs have filed this Motion for Partial Summary Judgment *before* the Defendants have even answered, *before* the proper forum has been determined, and *before* a single scrap of discovery has taken place. This is completely contrary to the applicable procedural rules, which are designed to insure the Court has a complete record before being asked to make dispositive

determinations. Here, the allegations and claims in this 253-Paragraph Complaint are so generalized and boundless that the Defendants expect it would require months to develop the record properly. At the current stage of proceedings there is simply no basis in fact, law, logic, equity, or the procedural rules, for the Court to even consider summary judgment at this time, much less grant it.

- a) The Plaintiffs filed this action in Circuit Court on April 12, 2022.
- b) On April 14, 2022, the Plaintiffs filed a demand for Arbitration with the American Arbitration Association (“AAA”), which attached, as an exhibit, the very Complaint they had filed in Circuit Court.
- c) On May 10, 2022, the Plaintiffs filed a Motion to Stay Arbitration and a Motion for Summary Proceedings in the Circuit Court.
- d) On May 23, 2022, the Defendants filed a Counter-Demand with the AAA. On June 7, 2022, the Defendants filed a Counterclaim in the AAA.
- e) On May 24, 2022, the Defendants filed a Motion to Dismiss or to Compel Arbitration in the Circuit Court. That Motion to Dismiss or Compel Arbitration remains pending.
- f) Plaintiffs filed this Motion for Partial Summary Judgment on June 9, 2022.
- g) The parties have served no written discovery requests and have not noticed any depositions in this action.

Where the Defendants have not even answered, the forum has not been determined, and no discovery has taken place, summary judgment is not ripe and the Court should deny Plaintiffs’ Motion for Partial Summary Judgment.

STANDARD OF REVIEW

Summary judgment is proper when “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114–15, 410 S.E.2d 537, 545 (1991). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. The court then applies the standard set out in Rule 56(c). *Id.* at 115, 410 S.E.2d at 545. Under Rule 56(c), the party seeking summary judgment has the responsibility of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *see also, Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 392 S.E.2d 460 (1990).

ARGUMENT

The Court should deny Plaintiffs’ Motion for Partial Summary judgment for four reasons. First, the Motion is premature on its face, filed before Defendants have even answered the Complaint. Second, full and fair discovery will develop facts contradicting Plaintiffs’ assertions and undermining their claims for judgment. Third, there are genuine issues of material fact, even at this stage, that preclude summary judgment. Fourth, the record contains no facts that connect specific Defendants to specific allegedly actionable conduct, sufficient to enter judgment.

1. THE PLAINTIFFS’ MOTION IS PREMATURE.

No Defendant has filed or served an answer to the Complaint. The parties have not conducted any discovery. The proper forum is unknown. The Court has before it only the hyperbolic allegations in Plaintiffs’ Complaint. In such a posture, where the issues are not even joined, it is not possible for the Court to ascertain whether a genuine issue of material fact exists – much less to make a dispositive ruling. Put simply, the Plaintiffs are asking the Court to take an action on a blank record, which it is supposed to take only upon a complete record. The granting

of summary judgment is subject to specific standards, set forth in SCRCP 56(c), which provides as follows:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56(c), SCRCP. The rule obviously contemplates that the issues be joined, responsive pleadings filed, and factual development to have taken place through discovery, before a summary judgment motion is ripe. This view has been upheld in numerous cases. This approach makes sense because without a full record of the parties' claims, defenses, and essential facts, the Court cannot even make the assessment it is required to make under Rule 56(c).

Plaintiffs' motion, therefore, requests this Court to make new procedural rules that would invite every Plaintiff to move for Summary Judgment before the Defendant answers, and before the facts of the claims are presented in the record through discovery.

Because summary judgment is a drastic remedy, it "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). And, where there is "minimal evidence" about the nature of the dispute between the parties, and the parties have not had an opportunity to conduct significant discovery, summary judgment is premature. *Gary v. Askew*, 423 S.C. 47, 49, 813 S.E.2d 717, 718 (2018). The unavailability of summary judgment at this stage is based on the South Carolina Supreme Court's long-standing rule that "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman, supra*, 306 S.C. at 112, 410 S.E.2d at 543. For this reason alone, the Court should deny Plaintiffs' Motion for Partial Summary Judgment.

Every Plaintiff would like to be awarded summary judgment before the Defendant answers. That is not how our civil procedure works, however.

2. THE PLAINTIFFS' MOTION OVERLOOKS THRESHOLD ISSUES OF MATERIAL FACT WHICH WILL IMPACT THEIR CLAIMS, ONCE DEVELOPED IN DISCOVERY.

Even a cursory review of the claims on which the Plaintiffs seek summary judgment highlights the substantial number of material facts as-yet to be determined, and potential affirmative defenses yet to be pled, which would necessarily affect the viability of the claims and require examination with respect to each separate Plaintiff. For example, the Plaintiffs seek summary judgment on their First Cause of Action, which seeks a declaration that the “automatic Club membership” aspect of purchasing property at Palmetto Bluff violates S.C. Code Ann. § 27-1-70. This issue is, however, in no way ripe for summary judgment. Listed below are just a few of the threshold fact questions and affirmative defenses that would have a critical impact on this claim, and the other claims raised by the Plaintiffs’ Motion:

a) Defendants can and will assert the defense of the applicable Statute of Limitations.

The automatic-membership feature attacked in Plaintiffs’ First Cause of Action has existed since Palmetto Bluff was developed in 2003. Plaintiff Albero purchased her property in 2017, almost five (5) years ago. Plaintiff Bridge Charleston Investments B, LLC, purchased its property in 2015, almost seven (7) years ago. Plaintiff Geoffrey Block purchased his lot in 2014, over eight (8) years ago. (See, Affidavit of Ferguson, Exhibit “A” to Defendants’ Brief in Opposition to Plaintiffs’ Motion to Stay / Defendants’ Motion to Compel Arbitration, specifically incorporated herein.) Moreover, in Plaintiffs’ Second Cause of Action, they allege the Defendants should have recorded “homeowners’ association” governing documents for the Palmetto Bluff Club but failed to do so for years. Complaint, ¶¶ 173, 176. Based on the very face of these allegations, the

Defendants have statute of limitation-related defenses to raise in their answer – but this presumes they do, indeed, get to answer.

b) Defendants can and will assert the defenses of Estoppel / Waiver / Ratification:

Defendants are entitled to plead and prove the affirmative defenses of waiver, estoppel, and / or ratification, all of which are questions of fact. *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 404, 826 S.E.2d 874, 880 (Ct. App. 2019). The Movants are seeking to invalidate all rules and procedures of the Palmetto Bluff Club, turning it into a club-without-rules. However, the Movants have all utilized and enjoyed the benefit of Club membership since they became owners at Palmetto Bluff. This year alone, Plaintiff Block has spent over \$11,000 enjoying Club amenities and activities; the Owner of Plaintiff Charleston Bridge Investments B, LLC, has spent almost \$30,000 so far this year. (Affidavit of Gray Ferguson, filed with Defendants’ Motion to Compel Arbitration and incorporated herein.) Their robust usage of the Club clearly gives rise to defenses of waiver, estoppel, and / or ratification – which will be fully developed in discovery.

c) Defendants can and will raise standing and proper-party issues:

The Plaintiffs may also lack standing and may not be proper parties. For example, as part of their attack of the “automatic-joining” feature of Palmetto Bluff Club membership, the Plaintiffs assert wrongful imposition of a joining fee. However, none of the Movants paid a joining fee, having joined the Club before a joining fee existed. (See Affidavit of Gray Ferguson.) In addition, it is also uncertain at this stage whether all the LLC-Plaintiffs are proper-parties, in that the purported transfer-fee allegedly occurs at the closing of a purchase of real estate at Palmetto Bluff. Yet some of LLC-Plaintiffs did not purchase any real estate at all; one or more individuals made the purchase, then later conveyed the real estate to the LLC-Plaintiff. In such a scenario, the individual purchasers may be proper or necessary parties.

Consider, further, that neither the transfer-fee statute nor the “HOA” statute upon which the Movants’ motion is premised provide private rights of action. Finally, note that the Plaintiffs’ Motion is fatally inconsistent: the Second Cause of Action seeks a holding that the Palmetto Bluff Club is actually a HOA; the “transfer-fee” statute, however, upon which the First Cause of Action motion is premised, provides an exception for HOAs. In order for the Movants to be right about their “transfer-fee” claim, they have to be wrong about their “HOA” claim; and vice versa.

The point is that at this stage, the Court cannot simply assume that these defenses will not be raised and could not be proven. Discovery will establish what claims and defenses can and cannot be sent to the trier of fact.

d) Defendants can and will assert the defenses of sophisticated parties, benefit of the bargain, and consent:

The Movants assert in their Motion that the automatic-joining arrangement is void ab initio and unconscionable. In so arguing, of course, they are underlining the prematurity of their Motion as these claims depend upon inherently factual issues. There is no record at this stage upon which the Court could make a dispositive finding that any contract that is the subject of the Complaint is illegal in nature. Any such finding would require a fully-developed factual record – and not simply an assumption. And, a substantial question exists concerning what documents or contracts, precisely, the Plaintiffs contend should be voided: the Community Charter? The Recreational Covenant? The deeds to their properties, which expressly incorporate the Charter and covenants? These are all unanswered questions.

Similarly, “unconscionability” requires a claimant to show both of the following: (1) the “absence of meaningful choice on the part of one party due to one-sided contract provisions” and (2) “terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Lackey*, 330 S.C. at 395, 498 S.E.2d at 902 (quoting *Fanning*

v. Fritz's Pontiac–Cadillac–Buick Inc., 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996)). In evaluating whether there was an absence of meaningful choice, the Court considers such factors as:

- i. The nature of the injuries suffered by the plaintiff;
- ii. Whether the plaintiff is a substantial business concern;
- iii. The relative disparity in the parties' bargaining power;
- iv. The parties' relative sophistication;
- v. Whether there is an element of surprise in the inclusion of the challenged clause; and
- vi. The conspicuousness of the clause.

Simpson, 373 S.C. at 25, 644 S.E.2d at 669. Further, “courts may consider whether the party asserting unconscionability spoke English, had the ability to consult an attorney, or faced other circumstances that made signing the contract in a particular instance grossly inequitable.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 575, 787 S.E.2d 498, 516 (2016). A finding of unconscionability should be made only in the most extreme circumstances:

Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.

Gladden v. Boykin, 402 S.C. 140, 145, 739 S.E.2d 882, 884–85 (2013). Where there is no allegation that the party “lacks the education to understand the terms of a contract or protect [his or] her own interests” and “the record demonstrates that [the party] directly engaged in sophisticated negotiations,” even if only an individual consumer, the evidence fails to support a lack of meaningful choice. *Id.* at 145–46, 739 S.E.2d at 885. Furthermore, “a person who can read is bound to read an agreement before signing it” and is presumed to have done so. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Here, there is no allegation that Plaintiffs lacked the education or ability to read and understand the at-issue agreements. Quite to

the contrary, Plaintiffs are highly sophisticated and experienced business people who have amassed considerable wealth as a result of their business acumen. (See Exhibit B to Memorandum in Support of Defendants’ Motion to Compel Arbitration.) The proposition that they did not understand the “automatic-joining” feature of Palmetto Bluff is ludicrous, and runs completely counter to the manner in which they present themselves outside this lawsuit. More importantly for the instant motion, however, is the fact that the “ab initio” and “unconscionability” prongs of Movants’ Motion raise inherently factual questions, which are especially not appropriate for summary judgment when no discovery record exists and the defense has not even answered.

3. IN ADDITION TO AN INCOMPLETE RECORD ON BASIC THRESHOLD ISSUES, GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE “TRANSFER-FEE” AND “HOA” ISSUES THAT ARE THE SPECIFIC SUBJECTS OF THE PLAINTIFFS’ MOTION.

a) The “Transfer Fee” Claim:

The Movants’ “transfer-fee” statute claim involves a statute that has never been addressed, interpreted, or applied by any reported case. It comes before this Court as a matter of first impression in South Carolina – and the Movants ask this Court to decide this matter of first impression *before* the defense has even answered, and without a developed evidentiary record. Standing alone, this is sufficient reason to deny the motion.

However, there are also obvious specific questions of fact involved in Plaintiffs’ Motion relating to the alleged “transfer-fee,” which require development through discovery. For example, there is no record from which the Court can even determine whether the Club joining mechanism actually constitutes a “transfer-fee” as contemplated by the statute. Before making this determination, it would be necessary for the Court to engage in a careful process of statutory construction, applying established principles of statutory construction, and with a complete factual record of how the “joining arrangement” actually works – rather than simply accepting the

Plaintiffs' claim that it constitutes an "illegal" transfer fee covenant. The actual arrangement has existed for some 20 years, and was fully disclosed in public documents and documents signed by the Plaintiffs. As noted, the Movants have gladly accepted the benefits of the joining arrangement. A reasonable reading suggests the statute envisions a real estate buyer being required to make a payment to third-parties as a form of additional consideration for acquiring the real estate. The Palmetto Bluff joining arrangement, however, involves two separate transactions, in which the buyer pays the seller full consideration to acquire real estate, and also agrees to pay the Club separate consideration for a license to use Club facilities. (See, G. Ferguson Affidavit; Affidavit of M. Norton, attached as Exhibit "A" hereto.)

The key point is that all the facts relating to the joining fee issue will be brought forth in discovery – at which time the Movants are free to renew their motion. They are not, however, entitled to ask the Court simply to assume their interpretation of the statute is correct and, on the basis of that assumption, become the first South Carolina Court to rule on the meaning of the statute.¹

Further, the transfer-fee statute provides an exception for fees paid to an "association," specifically permitting such mandatory joining fees. S.C. Code Ann. § 27-1-70. The Plaintiffs' motion simply assumes that the Club could not, as a matter of law, qualify as an association, even though the Complaint pleads the Club is an association. Once again, however, there is no case law on this statute. It is impossible to make a dispositive ruling on whether the "association" exemption may apply here.

Another clear question of fact arises from the statute's statement concerning its public policy objective:

¹ While no South Carolina case has addressed the statute at issue, *Dye v. Diamante*, 510 S.W.3d 759 (Ark. 2017) affirmed dismissal of a class action challenge to a mandatory golf club membership fee.

the public policy of this State favors the transferability of interests in real property free from **unreasonable** restraints on alienation and covenants or servitudes that do not touch and concern the property.

S.C. Code Ann. § 27-1-70(B)(1) (emphasis added).

Questions of “reasonableness” are always questions of fact. Discovery will illuminate whether: 1) the joining arrangement here is really a “transfer-fee” or not; 2) whether the “association” exemption applies; and 3) whether the joining arrangement constitutes an “unreasonable” restraint on alienation.

Of additional interest is the fact that the Plaintiffs’ own Complaint creates a question of fact. The statute concerns payment of “a fee or charge to a third person.” According to the Plaintiffs’ Complaint, however, the Club is not a third-person, but is actually just one part of an “amalgamated” entity that encompasses all the Palmetto Bluff entities. For example, Plaintiffs allege the Club is part of a single business enterprise with other Defendants, comprising the “Developer”. Complaint, ¶ 25. Plaintiffs further allege that “justice, equity, and fundamental fairness require that accountability be placed on the single business enterprise.” *Id.* ¶ 25.3. Plaintiffs assert the Defendants are all probably “just an amalgamated single business enterprise”. *Id.* p. 8. In carrying out the allegedly fraudulent scheme, Plaintiffs allege the Developer and its “amalgamated entities,” including the Club, harmed Plaintiffs. *Id.* ¶ 129.20.

Based upon these allegations that are repeated in the Complaint, and assuming the joining payment is actually a “fee or charge” as contemplated by the statute, and assuming the joining payment is actually part of the consideration for the real estate purchase, and assuming no exemption applies, and assuming the Movants have standing to bring this claim, and assuming it has been brought within the correct statute of limitation (all of which the Defendants contest), the Court would still have to determine whether there is any “third-party” payment here at all. Under

the Plaintiffs' own theory, as set forth in the Complaint, the payment is simply to the Palmetto Bluff "amalgamation," and not a true third-party.

Additionally, the Plaintiffs' request to bar future enforcement of the joining arrangement constitutes a request for a permanent injunction. However, because injunctions are widely-held to be among the most drastic of remedies, a movant is required to make specific factual showings on all elements of injunctive relief, and a Court may only apply injunctive relief that is narrowly-tailored.

Based on the above it is clear the Court will require a fully developed record on these matters before even considering a motion for summary judgment. No such fully developed record exists at present.

b) The "HOA" Claim:

The Plaintiffs also move for summary judgment on their Second Cause of Action, alleging violation of the South Carolina Homeowners' Association Act. The essence of this claim (as can be gleaned from the Complaint, at any rate) is that the Palmetto Bluff Club is actually an HOA (and therefore subject to HOA statute requirements for filing documents). Plaintiffs claim the Defendants violated the Act by failing to record certain documents required by the Act.

The crux of Plaintiffs' claims rests on whether the Club qualifies as a "homeowners' association" under the HOA Act. The Plaintiffs offer no evidence on this point. They simply assert, in conclusory fashion, that "the verbiage used deceptively suggests that the Club is a secondary homeowners association." Complaint ¶ 56. The Complaint also alleges "the Club is a homeowners' association" Complaint ¶ 131. Plaintiffs later allege the Club was held out "as an entity developed to manage and maintain planned Community amenities," and Defendants required Plaintiffs to pay dues and assessments related to Club Property. Complaint ¶ 170. Plaintiffs claim this meets the definition of a homeowners' association. Complaint ¶ 171.

The Homeowners Association Act defines a homeowners' association as "entity developed to ***manage and maintain a planned community or horizontal property regime.***" S.C. Code Ann. § 27-3-120(6). Plaintiffs do not allege that is the purpose of the Club. Rather, Plaintiffs allege the Club was formed to "manage and maintain planned Community ***amenities.***" Complaint ¶ 170 (emphasis added). First, Plaintiffs' description is clearly different from the statutory definition of a homeowners' association. Second, the description contradicts the exhibits attached to Plaintiffs' own Complaint (for example, the Recreational Covenant) wherein the purpose of the Club is described as being to operate and maintain social and recreational facilities for Club members. No document states the Club was formed to manage a planned community or a horizontal property regime. By contrast, the Palmetto Bluff Preservation Trust, Inc. (the "Trust") was formed to "be the primary entity responsible for administering the Community." Complaint, Ex. 1 at ¶ 5.1(a). The Affidavit of Gray Ferguson, which has been filed in connection with Defendants' Motion to Compel Arbitration and incorporated herein, also explains how the Club is not a homeowners' association, was not designed as one, and does not act as one.

The Complaint not only fails to allege sufficient facts to show the Club is a homeowners' association under the Act; it contains facts which actually *contradict* the claim that the Club is a homeowners' association. And, the Ferguson Affidavit previously referenced and incorporated precludes summary judgment on the proposition that the Club is a homeowners' association, and therefore should have made record filings required of HOAs.

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence . . . to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). And, because the Court must take the facts in the light most favorable to the Defendants as the non-

moving parties, the motion for summary judgment on the Plaintiffs' Second Cause of Action must be denied. *Id.* at 329–30, 673 S.E.2d at 802 (“In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.”)

4. THE PLAINTIFFS' MOTION FAILS TO SHOW EACH DEFENDANT'S ROLE IN OR CONNECTION TO THE CAUSES OF ACTION ALLEGED IN THE COMPLAINT, YET SEEKS A JUDGMENT AGAINST EACH DEFENDANT.

Plaintiffs seek summary judgment against all of the Defendants, both the individuals and the entities, as to the First Cause of Action. Motion for Summary Judgment at 2. However, Plaintiffs' Motion, and the Complaint on which it is based, fails to show how each Defendant is responsible for the acts complained of in the Complaint.

As to the first cause of action, Plaintiffs complain the membership fee set forth in the Community Charter violates South Carolina law. *See, e.g.*, Complaint ¶ 164.1. The Defendant Trust, however, created by the Community Charter, could have had no role in creating the alleged transfer fee covenant because the Trust was created at the same time as the alleged covenant. Nor is there any record demonstrating how the individual Defendants – Jordan Phillips, Mark Polites, Gray Ferguson, or Henry Armistead (none of who had any association with Palmetto Bluff at the time) – acted in recording or designing the Community Charter and its allegedly defective transfer fee covenant. Nor is there any evidence to support the contention that Defendant Montage Palmetto Bluff has anything to do with the transfer-fee issue. All the Court has is a shotgun-Complaint, with no attempt to link a specific purported wrong to specific persons or entities responsible for the alleged wrong. Once again – discovery will bring to light who is connected to what. Until that time, the Court simply lacks a record on which to make a dispositive ruling.

As to the Second Cause of Action, Plaintiffs complain that some of the Corporate Defendants failed to record certain documents related to the creation of the Club as a homeowners' association. Complaint ¶ 174. It has already been noted that the issue of whether the Palmetto Bluff Club actual is or was an HOA, subject to the cited statute, is a contested question of fact yet to be determined. Additionally, there is no evidentiary record establishing how or why any of the named Defendants had any legal duty to record such documents. The Act on which Plaintiffs' claims are based is silent. Section 27-30-130 simply states "to be enforceable, a homeowners' association's governing documents must be recorded . . .," but does not set forth who is required to record them. Because Plaintiffs have not proven Palmetto Bluff Club, LLC and the Trust had an obligation to record any governing documents, the Court should deny the Motion for Summary Judgment on the Second Cause of Action as well.

s/Val Stieglitz

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Attorneys for Defendants

July 15, 2022

315 Corley CW, LLC, et al. v. Palmetto Bluff Development, LLC, et al.
Case No.: 2022-CP-07-00632

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

EXHIBIT "A"

AFFIDAVIT OF MATTHEW J. NORTON

ELECTRONICALLY FILED - 2022 Jul 15 5:44 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

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 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.

AFFIDAVIT OF MATTHEW J. NORTON

PERSONALLY APPEARED before me, Matthew J. Norton, who, being duly sworn,

attests that:

1. I am a partner at the law firm of K&LGates, LLP and have practiced real estate law in South Carolina since 1991. My office is located in Charleston, South Carolina, and I am a

practice area leader for my law firm's global real estate practice area, which numbers over 130 real estate lawyers residing in 47 offices across five continents.

2. I concentrate my practice in the areas of real estate related transactions and financings and commercial and residential real estate development, with a particular focus on resort and hospitality transactions and development projects.

3. I am included in Chambers and Partners USA: America's Leading Lawyers, Woodward/White's The Best Lawyers in America, South Carolina Super Lawyers, and have maintained a Martindale Hubbell AV Rating since 2001. I have authored the South Carolina chapter of the *Chambers Real Estate USA Regional Guide* since 2019.

4. I am also very active in the Urban Land Institute, one of the leading real estate industry groups in the United States. I am a member of the South Carolina Governance Committee and am Vice Chair of the ULI Recreational Development Council, a national product council that includes some of the most influential people involved in the resort real estate industry in the country, and I am one of less than ten working attorneys in this group.

5. I am very familiar with the resort real estate development practice in South Carolina and have worked on over 20 resort, golf, and planned community projects throughout South Carolina over my 31 year career.

6. I am familiar with the Palmetto Bluff development, particularly as a premier real estate and luxury resort development. I have reviewed the sample Palmetto Bluff Club Membership Agreement and Palmetto Bluff Club Membership Plan filed in this case, along with the Community Charter for Palmetto Bluff and Declaration of Recreational Covenant for Palmetto Bluff that are recorded in the Office of the Beaufort County Register of Deeds.

7. I understand that the Palmetto Club Membership Plan, Community Charter, and Recreational Covenant require purchasers of residential lots in Palmetto Bluff to join the Palmetto Bluff Club (“Club”), pay a joining fee, and pay membership dues to the Club thereafter. I also understand purchasers of residential lots did not pay a joining fee prior to 2017.

8. I understand that Palmetto Bluff Club, LLC owns certain social and recreational amenities at Palmetto Bluff, and that the Club members, under a license which they acquire upon joining the Club, use and enjoy these amenities as incident of their membership in the Palmetto Bluff Club.

9. Based on my knowledge and experience, it is common, in South Carolina and other parts of the United States where resort real estate communities are found, for the developer of a premier resort real estate community, such as Palmetto Bluff, to establish a club or other social and recreational entity, such as Palmetto Bluff Club, and then have owners in the community join that club to use and enjoy the social and recreational amenities. It is also common for resort developers to require purchasers to pay an initiation fee, or “joining fee” to the club, along with requiring mandatory, ongoing participation in the payment of club dues, thereby creating the ongoing funds necessary to operate the club. The governance structure of a premier resort can vary, but the structure used at Palmetto Bluff and the principle of creating a mandatory membership club that requires a real estate purchaser to join a social / recreational club that owns and operates the resort’s amenities is common. At Palmetto Bluff, in addition to buying real estate, the purchaser is acquiring a club membership in the Palmetto Bluff Club, which provides separate value to the purchaser – i.e. the license to use the amenities at the resort – and the joining fee and ongoing Club dues paid by the owner to the Club are not part of the consideration for the purchase of the real estate.

10. As mentioned, requiring real estate purchasers to join mandatory membership clubs that own and operate the resort's amenities is not only common, but the practice has been a long-standing one in South Carolina, is considered reasonable and necessary for the ongoing operation and viability of these premier resort communities, and is currently being used at many resort communities in South Carolina. If the court were to find that mandatory membership clubs were illegal, this would have an extremely negative and disruptive effect on the ongoing economic stability and viability of these well-established resort communities.

Further, your Affiant sayeth not.


Matthew J. Norton

SWORN and subscribed to before me
this 15 day of July, 2022.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 6/1/2026

ANDREA TURPIN
Notary Public, State of South Carolina
My Commission Expires 6/1/2026

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' MEMORANDUM IN
SUPPORT OF MOTION
TO STAY ARBITRATION AND
APPLICATION FOR SUMMARY
PROCEEDINGS ON THE
INVALIDITY OF THE PURPORTED
ARBITRATION CLAUSE**

**AND IN OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS OR IN THE
ALTERNATIVE, TO COMPEL
ARBITRATION AND STAY**

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 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, submit this memorandum in support of Plaintiffs' Motion to Stay Arbitration and Application for Summary Proceedings on the Invalidity of the Purported Arbitration Clause, and in opposition to Defendants' Motion to Dismiss or in the Alternative to Compel Arbitration and Stay.

This case involves twenty-one (21) Plaintiffs and twelve (12) Defendants. Defendants seek to force the entire case into private arbitration because one of the Defendants (*i.e.*, Palmetto Bluff Club, LLC—the “Club”) claims to have a contract with seven (7) of the Plaintiffs that contains an arbitration clause. As discussed below, that one Defendant's purported arbitration agreement with some of the Plaintiffs is invalid. Moreover, there is no dispute that Plaintiffs have never entered into any arbitration agreement whatsoever with the other eleven (11) Defendants. There also is no dispute that **fourteen (14) of the Plaintiffs have no arbitration agreement whatsoever with the Club, or with any Defendant at all.** The burden is on Defendants to produce agreements by the Plaintiffs to arbitrate,

and they have failed to do so. Arbitration should be denied on those grounds alone.

Any dispute over arbitration is solely between (a) the Club, alone, and (b) the seven Plaintiffs for which the Club has produced an alleged agreement to arbitrate. For reasons discussed below, the Club's purported arbitration clause as to those seven Plaintiffs is unlawful and unenforceable. The entire case should remain where Plaintiffs filed it: in the Beaufort County Court of Common Pleas.

LEGAL STANDARD

This case involves the development of real estate in Beaufort County, South Carolina. As a threshold matter, the law is clear that 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.").

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) (emphasis added); *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)).¹

ARGUMENT

I. No arbitration agreement – of any sort – exists among 32 of the parties.

There is absolutely no dispute that the following parties to this lawsuit have never entered into an agreement to arbitrate among each other. In other words, although it is their burden to do so, Defendants have not produced any arbitration agreement whatsoever signed by the following parties:

NO ARBITRATION AGREEMENT WHATSOEVER

Plaintiffs	18. Salt Works, LLC
1. 315 Corley CW, LLC	19. TTJR, LLC
2. 368 Mount Pelia, LLC	20. Jennifer Albero
3. Bridge Charleston Investments B, LLC	21. Geoffrey J. Block
4. Bridge Charleston Investments C, LLC	Defendants
5. Bridge Charleston Investments E, LLC	22. Palmetto Bluff Development, LLC

¹ To be clear, Plaintiffs challenge the arbitration provision as a whole as well as its individual parts, including the so-called “delegation provision” which purports to give the arbitrator(s) the authority to decide whether the arbitration clause is valid. Under South Carolina law—including S.C. Code § 15-48-20 and *Simpson*—the Court decides whether an arbitration clause is valid.

6. Bridge Charleston Investments H, LLC	23. Palmetto Bluff Real Estate Company, LLC
7. Anne Bosler as Trustee of the Bosler-Hart Trust	24. PLBH, LLC
8. Dylan Hart, as Trustee of the Bosler-Hart Trust	25. Palmetto Bluff Preservation Trust, Inc.
9. R. Jeffrey Kimball	26. Palmetto Bluff Preservation Trust Board of Stewards
10. Deborah S. Kimball	27. Jordan Phillips
11. Sebrina Leigh-Jones	28. Mark Polites
12. Chris Leigh-Jones	29. Gray Ferguson
13. Live Oak Assets, LLC	30. Henry Armistead
14. Matthew N. Lynch	31. Montage Palmetto Bluff, LLC
15. Barbara A. Lynch	32. South Street Partners NC, LLC
16. MKM 22 West, LLC	
17. One Rumford Lane, LLC	

The South Carolina Supreme Court has emphasized that “a presumption *against* arbitration arises where the party resisting arbitration is a nonsignatory to the written agreement to arbitrate. . . .” *Wilson v. Willis*, 426 S.C. 326, 337, 827 S.E.2d 167 (2019) (emphasis in original; internal citations omitted). “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) (emphasis added). Here, there is no contract to arbitrate among the above parties, and Plaintiffs’ motion to stay arbitration should be granted for that reason alone.

Defendants' attempt to boot-strap 32 nonsignatory parties into a different party's purported arbitration agreement should be denied. 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 dramatically 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 literally dozens of nonsignatory litigants—who never signed arbitration agreements with each other—into an arbitration.

II. No arbitration agreement—of any sort—exists between 14 Plaintiffs and the Club.

Defendants argue that *all* Plaintiffs should be compelled to arbitrate all claims because the Club's documents, in some instances, contain an (invalid) arbitration clause. But 14 Plaintiffs have never signed an arbitration agreement with the Club:

NO ARBITRATION AGREEMENT WITH CLUB

1. 315 Corley CW, LLC	8. Live Oak Assets, LLC
2. 368 Mount Pelia, LLC	9. MKM 22 West, LLC
3. Bridge Charleston Investments B, LLC	10. One Rumford Lane, LLC

4. Bridge Charleston Investments C, LLC	11. Salt Works, LLC
5. Bridge Charleston Investments E, LLC	12. TTJR, LLC
6. Bridge Charleston Investments H, LLC	13. Jennifer Albero
7. Sebrina Leigh-Jones	14. Geoffrey J. Block

Again, there is a presumption against arbitration for nonsignatories (*Wilson*, 426 S.C. at 337) and “a party cannot be required to submit to arbitration any dispute which he has not agreed to submit.” *Zabinski*, 346 S.C. at 596. The above Plaintiffs have not agreed to submit their claims against the Club to arbitration—**their names are nowhere in Defendants’ proffered arbitration agreements.** Defendants’ demand to arbitrate with these 14 Plaintiffs should be denied because no agreement exists with the Club or any other Defendant.

Defendants attempt to gloss over this fact by asserting the startling proposition that Plaintiff limited-liability companies can be held responsible for agreements signed by persons on their individual behalf. This is specious, and Defendants cite no applicable law for ignoring a company’s corporate form in this context. “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 above 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.

III. The Club’s purported arbitration agreement is unlawful and unenforceable.

This leaves seven Plaintiffs with whom the Club claims to have a signed arbitration agreement with the Club; however, those agreements are invalid:

1. Anne Bosler and Dylan Hart as Trustees of the Bosler-Hart Trust;²
2. R. Jeffrey Kimball and Deborah S. Kimball;
3. Chris Leigh-Jones; and
4. Matthew N. Lynch and Barbara A. Lynch.

A. The arbitration provision is eclipsed by the Community Charter, which allows filing “in any court.”

The Club’s purported arbitration provision is within low-level 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

² 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 personally, which is legally different and not applicable here. For purposes of this discussion, Bosler and Hart are included simply for thoroughness, without waiver or concession of any such points.

own dispute resolution provisions. The Community Charter's dispute resolution procedures control over those in the Palmetto Bluff Club Documents.

Defendants acknowledge that the Community Charter is one of the core governing documents at Palmetto Bluff, and it is the founding document of the Club. (Aff. of Gray Ferguson ¶ 4). The Community Charter "is intended to serve as a framework for community governance" at Palmetto Bluff. (Compl. Ex. 1, pp. 1-3). The Charter has a table identifying for homeowners the various "Governing Documents" within the Palmetto Bluff community:

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

(Compl. Ex. 1, p. 3). Listed last are the “Palmetto Bluff Club Documents,” which by definition include the “Membership Plan” and “Membership Agreement” which the Defendants have attached as Exhibit D to their Motion. The Community Charter identifies the “Palmetto Bluff Club Documents” as hierarchically subservient to the Community Charter, specifically stating that **the 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**. . . .

Compl. Ex. 1, p. 4 § 1.3 (Community Charter) (emphasis added). The Membership Plan is identified as one of the subservient documents. *Id.* at p. 3, Table 1.1.

The Community Charter has an alternative 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. . . .

Id. 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.” The conflicting language within the Club’s document is

inapplicable in the face of the explicit Dispute Resolution provision of the controlling Charter.

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

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.

Compl. Ex. 1, p. 15. 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. Exhibit 1 (deeds). As such, the clear language of the Club's clause excludes them from mandatory arbitration, as a matter of law.

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

On the face of the seven alleged arbitration agreements which Defendants have put forth, there are simple, straight-forward reasons that this Court should deny the Defendants' Motion to Compel arbitration; there also are more complicated reasons to deny the motion. This section will start with the simple ones, which alone are grounds to deny the Defendants' Motion and order this case to proceed in circuit court.

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

The first simple reason to deny Defendants’ motion is that the Defendants have waived arbitration under the clear terms of the very agreements which Defendants seek to enforce against Plaintiffs. (Def. Exhibit D). The 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.

(Def. Ex. D p. 6, *e.g.* (emphasis added)).

Defendants unequivocally breached this 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, under the clear, 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.”).

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

The second simple reason to deny Defendants' motion is the lack of conspicuous notice of the alleged arbitration clause. South Carolina law 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 very 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).

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

policies, procedures, rules, resolutions, and guidelines, all of which are foisted on purchasers as part of the real estate closing process.³ As discussed above, the “Palmetto Bluff Club Documents” are low-level documents within the community, which are subservient to the Community Charter. (Compl. Ex. 1, p. 3). Defendants’ Exhibit D to its Motion shows that 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 became⁴ 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.” (Def. Ex. D, p. 5, *e.g.*). An arbitration clause hidden 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.⁵

As such, very simply, the purported arbitration provision runs afoul of the SCUAA’s conspicuous notice provision, and this Court should not enforce it.

³ If the documents are given to purchasers at all. (See Affidavit of J. Kimball ¶ 13, stating “Other than the documents Nexsen Pruet told me I had to sign, Nexsen Pruet did not provide me with a copy of the governing documents at closing or at any other time.”).

⁴ Remarkably, “became” is in the past tense. This is because the Club’s asserted “agreement” is to be signed at or after closing, **after** the Club contends that the buyer has already “automatically” become a member by acceptance of a deed (*see infra*).

⁵ In addition, the Club’s Membership Plan for years did not have the mandatory language, and therefore is unenforceable. Realizing its error, the Club later added the language, but too late to purport to bind the previous signatories.

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

Arguendo, even if the arbitration provision that the Club asserts 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 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 v. D.R. Horton, Inc.*, 742 S.E.2d 37, 403 S.C. 10 (Ct. App. 2013) (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 v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993).

The test for determining whether an arbitration agreement is unconscionable has two prongs. Courts will look to see (1) whether there is an absence of meaningful choice, and (2) whether the terms are oppressive and one-sided. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016) (“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, the Club’s own Exhibit D leaves 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.” (Def. Ex. D, p. 5, § II) (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.

Notably, the alleged governing documents for the Palmetto Bluff community are many hundreds of pages long. They include a Community Charter which has been amended and supplemented at least seventy-one (71) times, and a separate recreational covenant which has been amended and supplemented at least sixty (60) times. Troublingly, these hundreds of pages of documents purport to incorporate the “Palmetto Bluff Club Documents” (which contain the asserted arbitration “agreement”), but 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.” At real estate closings for properties at Palmetto Bluff—or, often, after the closing is done—the Club interjects “Membership Agreements” like the ones it has attached to its motion as Exhibit D. 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.” The agreement ostensibly memorializes something “automatic” that occurs “by acceptance of a deed.”⁶

There is no opportunity whatsoever to negotiate these “automatic” provisions. Elsewhere within the hundreds of pages of fine print, 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.” (Compl. Ex. 1: 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.” (Compl. Ex. 4: 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

⁶ The illegitimacy of this “automatic” requirement to “join” a for-profit endeavor is also discussed in Plaintiffs’ Memorandum in Support of Motion for Summary Judgment, filed contemporaneously herewith.

a fully completed and signed Membership Agreement. (*Id.*, Plan, p. iii).

- Any Owner of a residence or homesite within Palmetto Bluff **must become a member of the Club**. (*Id.*, 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. (*Id.*, 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**. (*Id.*, Plan, p. 2).

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.

In addition to unequal bargaining power and “take it or leave it” terms, courts also are to consider “whether the parties were represented by independent counsel.” *Smith*, 417 S.C. at 42, 790 S.E.2d at 1. Particularly problematic here is that the arbitration agreement that Club now seeks to enforce was interjected into the real estate closing process by Nexsen Pruet, which represented certain Plaintiffs in their closings but failed to disclose that it also represented the Club and the Developer. (*See* Aff. of J. Kimball; Aff. of L. Casey). Thus, not only was there a lack of independent attorney advice at real estate closings, but there was also no disclosure by Nexsen Pruet of its conflict in representing a buyer, whom it was telling to sign documents it had drafted on behalf of its other clients.⁷

⁷ As attested in the affidavits of R. Jeffrey Kimball and Lynn Ann Casey, filed contemporaneously herewith, Nexsen Pruet simply instructed its plaintiff clients to sign

Because the Club's asserted arbitration "agreement" is a classic contract of adhesion under South Carolina law, this Court should find it to be unconscionable.

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 hidden within the hundreds of pages of public record, it is reasonable to conclude that no fair or honest person would accept them—if they even knew they existed. **Significantly, the Club does not believe itself to be bound by any agreement to arbitrate and believes that it may run to this courthouse whenever it wishes. Attached as Exhibit 2 is a sheaf of liens and court foreclosure actions that the Club has filed against members and their property. These are only some examples of instances in which the Club has**

a waiver agreement and other documents "requiring" "mandatory" membership in the Club, as part of the real estate transaction.

enforced its Membership Plan outside of the arbitration it now purports is required.

This Court should find 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.

(Def. Ex. D, p. 5, *e.g.*). This provision is nearly identical to similar 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.* Plaintiffs here have a cause of action against Defendants pursuant to SCUTPA. The *Simpson* Court found, “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 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.

Id. at 671. This Court should hold that the Club's attempt to strip its members of statutory remedies within a "mandatory" and "automatic" "agreement" renders the provision unconscionable.⁸

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 . . .

(Def. Ex. D, p. 6). As discussed above, this vast capacity for alteration of the arbitration clause is unreasonable and oppressive, and it demonstrates a lack of mutuality that a reasonable person (given the choice) (which Plaintiffs were not) would find unfair and unreasonable. This Court should find that 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 inflict a draconian 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

⁸ 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 contracts asserted by Defendants do not contain a severability clause. Thus, as a matter of law, the entire agreement should be found invalid and unenforceable.**

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.

(Def. Ex. D, p. 6). This attempted short-circuit of South Carolina law (which the Defendants have themselves breached) is *per se* invalid and illegal, and further grounds for this Court's decision to deny Defendants' Motion. *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 . . ."). This Court should find that 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 whim of the Club. As discussed above, the Club claims it—and only it—has the unfettered freedom to employ the courts when it so wishes. This remarkable one-sidedness 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. (*See* Ex. 2); *see also* Comp. Ex. 3:

Declaration of Recreational Covenant for Palmetto Bluff, § 3.3, Lien for Membership Fees) (Club “may enforce such lien . . . by suit, judgment, and foreclosure.”). This Court should find that 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 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. The Club’s attempt to strip members of this statutory right is unconscionable and unlawful.

In sum, the purported arbitration clause is saturated with unlawful provisions, which have metastasized to make the entire provision unenforceable. Moreover, the Club’s asserted arbitration clause deliberately does not contain a severability provision, although, as the drafter, the Club certainly could have included one. Therefore, this Court should find 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 should strike the arbitration clause⁹ entirely and deny Defendants’ Motion to Compel.

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

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.

The purported arbitration clause states that it applies to controversies relating to the Club Membership Plan. *See* Compl. Ex. 4 at pp. 15–16. The Club is a recreational and social organization, and the Membership Plan “describes the terms, conditions and privileges of membership in the Club.” *Id.* at p. 1. Membership involves use of the pool, restaurants, pottery studio, bowling alley, and fitness facilities, *inter alia*. *Id.* at pp. 2–3.

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

⁹ (A clause which—again—exists within a contract between only one of the twelve Defendants and only seven of the twenty-one Plaintiffs) (and which contract fails the conspicuous notice test of the SCUAA).

- 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 and Montage are 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.
 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.

IV. Defendants' Motion to Dismiss should be denied.

Defendants argue that this lawsuit should be dismissed because, they claim, an identical action is pending before the American Arbitration Association ("AAA"). Plaintiffs filed this lawsuit *first* in this Court, asserting all claims against multiple defendants. (*See* Compl., filed Apr. 12, 2022). Later, certain (not all) Plaintiffs made certain filings with the AAA for preservation purposes only, for the purpose of preserving their rights under the Club's 60-day limitations period.

Within those AAA filings, Plaintiffs unequivocally denied that the matter was subject to arbitration and denied that the AAA had jurisdiction. The filings reference claims *only* against the Club for only *some claims*. Plaintiffs made it abundantly clear that:

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.”

Exhibit 3 (AAA filing Apr. 14, 2022 (emphasis in original)). Plaintiffs also incorporate the arguments and citations above, and in their other filings and arguments to this Court. As such, jurisdiction resides in this Court and should remain in this Court, and Defendants’ motion to dismiss should be denied.

CONCLUSION

For the reasons set forth above, the Court should (i) grant Plaintiffs’ Motion, (ii) order that arbitration is not required for these claims or parties, (iii) hold that the purported arbitration agreements are invalid, (iv) stay the arbitration currently asserted before the American Arbitration Association, and (v) deny Defendants’ Motion to Dismiss or in the Alternative, to Compel Arbitration and Stay.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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July 17, 2022

Charleston, South Carolina

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BEAUFORT COUNTY AUDITOR

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REC'D BY pbaxley RCPT# 853736
RECORDING FEES \$10.00
County Tax \$1,237.50
State Tax \$2,925.00

PREPARED WITHOUT BENEFIT OF
TITLE EXAMINATION BY:

EXHIBIT 1

SMITH LAW, LLC
BRANDON W. SMITH, ATTORNEY AT LAW
POST OFFICE DRAWER 1023
BEAUFORT, SOUTH CAROLINA 29901
FILE NO: RE17-9436

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT, **Brian W. Church and Dallas W. Church** (hereinafter the "**Grantor**"), in the State aforesaid, for and in consideration of the sum of One Million One Hundred Twenty Five Thousand and 00/100 Dollars (\$1,125,000.00) and no other valuable consideration to them in hand paid at and before the sealing of these presents by **Jennifer A. Alberio** (hereinafter the "**Grantee**"), of 745 Post Road, Apt. 303, Darien, CT 06820, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents does grant, bargain, sell and release subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Grantee, her heirs and assigns, forever, the following described property, to-wit:

All that certain piece, parcel or lot of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, designated as Lot 15, Block A, Palmetto Bluff Village and being more particularly shown and described on the plat thereof prepared by Boyce L. Young, SC RLS #11079, dated August 11, 2003, and recorded on September 10, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 95 at Page 61, last revised May 17, 2004, and recorded May 28, 2004, in Plat Book 99 at Page 146.

This property is conveyed by the Grantor and accepted by the Grantee subject to all applicable covenants, conditions, restrictions, easements, affirmative obligations, etc., as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being the same property conveyed to the Grantor by deed of Charles M. Tarver and Susan S. Tarver recorded November 3, 2014, in Deed Book 3357 at Page 1940 in said Office of the Register of Deeds for Beaufort County, South Carolina.

This Deed was prepared without benefit of title examination in the Law Offices of Smith Law, LLC, Post Office Drawer 1023, Beaufort, South Carolina 29901, by Brandon W. Smith, Esquire.

Tax Map Reference No: R614 045 000 0175 0000

ADD DMP Record 7/6/2017 04:58:34 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist-----Map-----SMap-----Parcel-----Block-----Week-----
R614 045 000 0175 0000 00

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, her heirs and assigns forever.

And Grantor does hereby bind themselves and their heirs, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, her heirs and assigns, against them and their heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the **Grantor** has hereunto set Grantor's hand and seal and caused these presents to be executed this 5 day of JUNE, 2017.

WITNESSES:

[Signature]
Signature of 1st Witness

Brian W. Church
Brian W. Church

[Signature]
Signature of Notary Public | 2nd Witness

Dallas W. Church
Dallas W. Church

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do certify that **Brian W. Church and Dallas W. Church** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal the 5 day of JUNE, 2017.

[Signature]
Notary Public for New York
My Commission Expires: 02/29/2020

JAZZMYNE TERRY
Notary Public: State of New York
No. 01TE837472
Qualified in New York County
Commission Expires February 29, 2020

SAID PROPERTY is conveyed subject to all applicable covenants, conditions, restrictions and easements as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, including but not limited to, those described on Exhibit "A" attached hereto and incorporated herein.

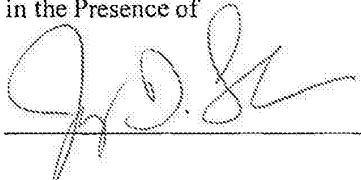
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the Property before mentioned unto the said Grantee, its Successors and Assigns, forever.

AND Grantor does hereby bind itself, its Successors and Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the Property unto the said Grantee, its Successors and Assigns, only against Grantor and its Successors and Assigns lawfully claiming or to claim the same, or any part thereof, by, through or under it.

IN WITNESS WHEREOF, MAY RIVER FOREST, LLC, has caused these Presents to be executed in its name by its duly authorized President, and its seal to be hereto affixed this 3rd day of June in the year of Our Lord Two Thousand Fifteen and in the Two Hundred Thirty-ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED and DELIVERED
in the Presence of





MAY RIVER FOREST, LLC
a South Carolina limited liability company

By:  (SEAL)
Donald E. Killoren
Its: President

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Donald E. Killoren, President of MAY RIVER FOREST, LLC, 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 3rd day of June, 2015.



Mary Cunningham (SEAL)
Notary Public for South Carolina
My Commission expires: 7-2-2023

This Deed was prepared by Edward M. Hughes, Nexsen Pruet, LLC, P. O. Box 23526, Hilton Head Island, SC 29925.

EXHIBIT "A"

1. Roll-back taxes as provided under Title 12, SC Code, as amended, including §12-43-220, et al.
2. The lien of the General Taxes for the year of 2015, and thereafter, not yet due or payable.
3. Terms and conditions of that certain Development Agreement by and between the Town of Bluffton and Union Camp Corporation, dated November 23, 1998, and recorded December 4, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1113 at Page 1085.
4. Covenants, restrictions and easements contained in that certain Declaration of Covenants, Conditions and Restrictions for Palmetto Bluff, dated June 29, 2000, and recorded July 13, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1312 at Page 98, as assigned in Book 1745 at Page 416 and amended in Book 1745 at Page 421.
5. Covenants, restrictions and easements contained in that certain Declaration of Restrictive Covenants, dated April 8, 2003, and recorded April 10, 2003, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1743 at Page 499.
6. Covenants, restrictions and easements contained in that certain Community Charter for Palmetto Bluff, dated April 17, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1747 at Page 2090, as amended in Book 1824 at Page 1562, Book 3154 at Page 3120, Book 3213 at Page 451 and Book 3357 at Page 1287.
7. Covenants, restrictions and easements contained in that certain Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1747 at Page 2185, as amended in Book 3357 at Page 1293.
8. All previous reservations, exceptions and conveyances of the oil, gas, associated hydrocarbons, minerals and mineral substances, and royalty and other mineral rights and interests, together with all mining and drilling rights and other rights, privileges and immunities relating thereto.
9. Easement in favor of South Carolina Power Company recorded May 25, 1937, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 54 at Page 47.
10. Easement in favor of South Carolina Electric & Gas Company recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 1942 at Page 1059.

NPHH1:344605.1-DE-(JES) 033343-00458

11. 10' utility easement and environmental protection areas as shown on the plat prepared by Thomas & Hutton Engineering Co., dated May 9, 2014, last revised March 2, 2015 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 140 at Page 124.
12. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other Federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said State or Federal laws.

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10 Pgs
Novit
3542

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RECORDED
2016 Dec -27 09:52 AM


BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3536 Pgs 696-699
FILE NUM 2016066181
12/08/2016 12:52:44 PM
REC'D BY pbaxley RCPT# 832729
RECORDING FEES \$10.00

N&S/RMD/kl

Prepared by:

Robert M. Deeb, Jr., Esquire

Novit & Scarminach, P.A.

Post Office Drawer 14

Hilton Head Island, Sc 29938

ADD DMP Record 12/15/2016 10:02:13 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R614	045	000	0334	0000	00

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GENERAL WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **RLB SQUARED, LLC** (the "Grantor"), in the State aforesaid, for and in consideration of a reduction in the Grantees' interest in the Grantor, being a family partnership, and no other valuable consideration to Grantor in hand paid at and before the sealing of these presents by **KIMBERLY W. BLOCK AND GEOFFREY J. BLOCK** (the "Grantees") address **6 Anson Park Road, Bluffton, South Carolina 29910**, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said **KIMBERLY W. BLOCK AND GEOFFREY J. BLOCK**, as joint tenants with rights of survivorship, and not as tenants in common, the following described property:

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bluff, Bluffton Township, Beaufort County, South Carolina, designated as LOT NUMBER FIVE HUNDRED NINE (509) ANSON PARK, containing 0.904 acres, more or less, and being more particularly shown and described on a plat entitled "A Boundary Survey & Proposed Lot Consolidation of Lots 509 & 508 Anson Park Road East, A Portion of Plat 5, Palmetto Bluff, Town of Bluffton, Beaufort County, South Carolina" prepared by William J. Smith, S.C.R.L.S. #26960 dated April 4, 2014 and recorded in the Beaufort County Register of Deeds Office on June 13, 2014 in Plat Book 138 at Page 181. For a more complete description as to the courses, metes and bounds of said Lot 509, reference is made to said plat of record.

-1-

Beaufort County TMP # R614 045 000 0334 0000

Said conveyance is made subject to all applicable covenants, restrictions, easements, etc. of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

The property conveyed herein is the same property conveyed to the within Grantor by Deeds from Jewell E. Steele and Odell Steele, Jr. dated January 28th, 2014, and recorded February 3, 2014 in the Beaufort County Register of Deeds Office in Book 3301 at Page 1507 and Bushwood Estates, LLC dated March 20, 2014 and recorded April 24, 2014 in the Beaufort County Register of Deeds Office in Book 3316 at Page 3363.

This deed was prepared in the law offices of Novit & Scarminach, P.A., Post Office Drawer 14, Hilton Head Island, SC 29938, by Robert M. Deeb, Jr., Esquire.

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned said **KIMBERLY W. BLOCK AND GEOFFREY J. BLOCK**, their heirs and assigns, forever, in fee simple, together with everything contingent remainder and right of reversion.

AND the Grantor does hereby bind itself, its successors and assigns to warrant and forever defend all and singular the said Premises unto the Grantees, their heirs and assigns, against Grantor, its successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this 7 day of DECEMBER, 2016.

WITNESSES:

RLB SQUARED, LLC

Kari Lee
Witness #1

Geoffrey J. Block (SEAL)
By: Geoffrey J. Block
Its: MANAGER

Lauren B. O'Brien
Notary Public

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF BEAUFORT)

I, the undersigned Notary Public, do hereby certify that RLB Squared, LLC by Geoffrey J. Block its MANAGER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 7 day of DECEMBER, 2016.

Lauren B. O'Brien (SEAL)
Notary Public for South Carolina
My Commission Expires: 8-9-2021

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STATE OF SOUTH CAROLINA) BEAUFORT COUNTY ROD
) **AFFIDAVIT OF TRUE CONSIDERATION and**
COUNTY OF BEAUFORT) **CLAIM FOR EXEMPTION for RECORDING FEES**

PERSONALLY appeared before me the undersigned, who is duly sworn, deposed, and says that the following is a true and correct statement concerning the CONSIDERATION for the conveyance set forth below, and concerning any EXEMPTION claimed by the Filer under the laws of the State of South Carolina, the Town of Hilton Head, or as otherwise provided by law.

GRANTOR NAME: **RLB SQUARED, LLC**

GRANTEE NAME: **KIMBERLY W. BLOCK AND GEOFFREY J. BLOCK**

GRANTEE MAILING ADDRESS: 6 Anson Park Road, Bluffton, South Carolina 29910

DATE OF CONVEYANCE: December 7, 2016

TRUE CONSIDERATION: Distribution of family partnership interest; no cash

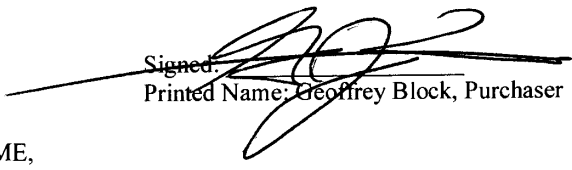
TAX DISTRICT/MAP/PARCEL NO.: R614 045 000 0334 0000

(NOTE: This information must appear on any Deed, and any Plat, whether attached or filed separately.)

TATE RECORDING FEE EXEMPTION – 12-24-40, sub-par # 9
(Per S.C. Code Sect. 12-24-40. Note Subparagraph No.)

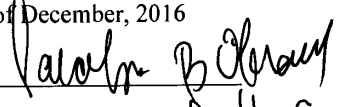
TOWN OF HILTON HEAD ISLAND TRANSFER FEE EXEMPTION Sub-par # NA
(Per Town Ordinance 90-26, et seq. Note Subparagraph No.)

OTHER EXEMPTION – Please Cite Federal, State or other Code as applicable, and describe Exemption below:

Signed: 

Printed Name: Geoffrey Block, Purchaser

SWORN TO BEFORE ME,
this 1 day of December, 2016

SIGNED: 

Notary Public for the State of: South Carolina

My Commission Expires: 8-8-2021

EXHIBIT 2

Beaufort County Register of Deeds

Party Name: palmetto bluff club Document Type:

BTL,BTLS,BTLW,MLMISC,MECHP,MLR,MLA,MLPAREL,RELCB,MLSAT,MECH,SC,SCMISC,SCEX,SCPAREL,SCSAT,SCWD,TT

Total Number of Records: 266

Search Time: 07/12/2022 16:16:03

Verified as of 07/08/2022

Name	Cross Party	Date	Type	Instr#	Book	Page	Legal	Consideration
* PALMETTO BLUFF CLUB LLC	OAKES, WILLIAM R T JR	10/26/2007	MECH	2007078922	35	1209	LT 9 HEADWATERS PALMETTO BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	GREENBACK PROPERTIES LLC	10/26/2007	MECH	2007078923	35	1212	LT 639 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	HAYES, PENELOPE S	10/26/2007	MECH	2007078927	35	1224	LT 857 PALMETTO BLUFF MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	SOUTHERN TRADITIONS CUSTOM HOMES INC	10/26/2007	MECH	2007078928	35	1227	LT 637 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PB EXECUTIVE SUITES & CORPORATE RENTALS LLC	10/26/2007	MECH	2007078929	35	1230	LT 439 PALMETTO BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	10/26/2007	MECH	2007078930	35	1233	LT 456 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	SCOTT DEVELOPMENT CORP	10/26/2007	MECH	2007078931	35	1236	LT 516 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	INVICTUS DEVELOPMENT LLC	10/26/2007	MECH	2007078932	35	1239	LT 437 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	OAKES, WILLIAM R T JR	02/01/2008	MLR	2008006633	37	515	BK35P1209	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	05/22/2008	MLMISC	2008031810	39	1265	LT 635 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	GREENBACK PROPERTIES LLC	05/22/2008	MLR	2008031807	39	1261	BK1212P1214	\$0.00
* PALMETTO BLUFF CLUB LLC	THROWER, ROBERT WADE	06/27/2008	MLMISC	2008041175	40	2309	LT 324 BLK E PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	HAYES, PENELOPE S	06/27/2008	MLMISC	2008041176	40	2312	LT 857 PALMETTO BLUFF MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	HAYES, PENELOPE S	06/27/2008	MLMISC	2008041177	40	2315	LT 857 PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PB EXECUTIVE SUITES & CORPORATE RENTALS LLC	06/27/2008	MLMISC	2008041178	40	2318	LT 439 PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PB EXECUTIVE SUITES & CORPORATE RENTALS LLC	06/27/2008	MLMISC	2008041179	40	2321	LT 439 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	INVICTUS DEVELOPMENT LLC	06/27/2008	MLMISC	2008041180	40	2324	BK35P1239 LT 437 PALMETTO BLUFF MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	06/30/2008	MLMISC	2008041334	40	2355	LT 456 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2008	MECH	2008047520	41	1707	LT 632 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2008	MECH	2008047521	41	1710	LT 806 MAYRIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	07/28/2008	MECH	2008047522	41	1713	LT 842 MAY RIVER FOREST PALMETTO BLUFF PLT 8A BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	07/28/2008	MECH	2008047523	41	1716	LT 841 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	08/04/2008	MECH	2008049351	41	2275	LT 818 MAY RIVER FOREST PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	08/04/2008	MECH	2008049352	41	2278	LT 448 MAY RIVER FOREST PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	SCOTT DEVELOPMENT CORP	04/10/2009	MLR	2009020000	48	2041	LT 516 ANSON PARK PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	04/10/2009	MLR	2009020001	48	2043	LT 635 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	INVICTUS DEVELOPMENT LLC	06/04/2009	MLMISC	2009031889	50	221	LT 437 MAY RIVER REST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	ODAR, DONNA M	06/04/2009	MLMISC	2009031890	50	224	LT 55 BLK A PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	GEIGER, TED L	06/04/2009	MLMISC	2009031891	50	227	LT 202 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	THROWER, ROBERT WADE	06/04/2009	MLMISC	2009031892	50	230	LT 324 PALMETTO BLUFF	\$0.00

ELECTRONICALLY FILED - 2022 Jul 17 3:01 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

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ELECTRONICALLY FILED - 2022 Jul 17 3:01 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

Name	Cross Party	Date	Type	Instr#	Book	Page	Legal	Consideration
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	06/04/2009	MLMISC	2009031893	50	233	LT 632 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	06/04/2009	MLMISC	2009031894	50	236	LT 806 MAY RIVER REST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	06/04/2009	MLMISC	2009031895	50	239	LT 841 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	06/04/2009	MLMISC	2009031896	50	242	LT 842 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	06/04/2009	MLMISC	2009031897	50	245	LT 456 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PB EXECUTIVE SUITES & CORPORATE RENTALS LLC	06/04/2009	MLMISC	2009031898	50	248	LT 439 PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	06/04/2009	MLMISC	2009031899	50	251	LT 818 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	06/04/2009	MLMISC	2009031900	50	254	LT 448 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	HAYES, ROBERT H	06/04/2009	MLMISC	2009031901	50	257	LT 857 PALMETTO BLUFF BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	JONES, WM JARELL	06/30/2009	MLMISC	2009038218	51	984	LT 78 BLK B PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	ANTHONY, STEPHEN G SR	06/30/2009	MLMISC	2009038219	51	987	LT 602 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	ANTHONY, STEPHEN G SR	06/30/2009	MLMISC	2009038220	51	990	LT 431 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	COLLINS, ALAN B	06/30/2009	MLMISC	2009038221	51	993	LT 198 BLK B PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	COLLINS, ALAN B	06/30/2009	MLMISC	2009038222	51	996	LT 822 MAY RIVER FOREST BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	THOMPSON, KAREN F	06/30/2009	MLMISC	2009038223	51	999	LT 412 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	THOMPSON, KAREN F	06/30/2009	MLMISC	2009038224	51	1002	LT 637 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	KELLY, P BRENDAN III	06/30/2009	MLMISC	2009038225	51	1005	LT 114 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2009	MLR	2009044997	52	392	BK41P1710	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2009	MLR	2009044998	52	394	BK50P236	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2009	MLR	2009045000	52	398	BK50P233	\$0.00
* PALMETTO BLUFF CLUB LLC	DEEPWATER DREAMS LLC	07/28/2009	MLR	2009045002	52	402	BK41P1707	\$0.00
* PALMETTO BLUFF CLUB LLC	BEST CUSTOM HOMES LLC	08/20/2009	MLMISC	2009049427	52	1495	LT 284 BLK G2 POR OF PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	DUKES, MARVIN H III AS M I E	11/19/2009	MLR	2009066562	54	2165	BK41P1716	\$0.00
* PALMETTO BLUFF CLUB LLC	KISER & ASSOCIATES INC	11/30/2009	MECH	2009068041	55	266	LT 344 BLK E PALMETTO BLUFF VLG	\$0.00
* PALMETTO BLUFF CLUB LLC	CLARK CUSTOM BUILDERS INC	11/30/2009	MECH	2009068043	55	272	LT 4 HEADWATERS PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	MORRIS, JAY L	11/30/2009	MLMISC	2009068040	55	263	LT 299 BLK G2 PALMETTO BLUFF VLG	\$0.00
* PALMETTO BLUFF CLUB LLC	APY, MICHAEL A	11/30/2009	MLMISC	2009068042	55	269	LT 337 BLK E PALMETTO BLUFF VLG	\$0.00
* PALMETTO BLUFF CLUB LLC	HIGGINS, KEITH D	12/03/2009	MLMISC	2009068817	55	459	LT 141 BLK C PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	02/11/2010	MLR	2010007329	56	1600	BK41P2275 BK50P251	\$0.00
* PALMETTO BLUFF CLUB LLC BY M I E	CRANE, MARK A	04/23/2010	MLR	2010021063	58	694	BK50P242	\$0.00
* PALMETTO BLUFF CLUB LLC	THROWER, ROBERT WADE	06/02/2010	MLR	2010028183	59	869	BK50P230	\$0.00
* PALMETTO BLUFF CLUB LLC	THROWER, ROBERT WADE	06/02/2010	MLR	2010028184	59	871	BK40P2309	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	06/07/2010	MLR	2010029022	59	1204	BK41P1713	\$0.00
* PALMETTO BLUFF CLUB LLC	BALL, W GORDON	08/02/2010	MLMISC	2010039886	61	1718	LT 389 BLK D PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	WAGNER, MARK S	08/02/2010	MLMISC	2010039887	61	1721	LT 248 BLK G1 PALMETTO BLUFF VLG BLUFFTON TOWNSHIP	\$0.00

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Name	Cross Party	Date	Type	Instr#	Book	Page	Legal	Consideration
* PALMETTO BLUFF CLUB LLC	FLIP LLC	08/02/2010	MLMISC	2010039888	61	1724	LT 455 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	INVICTUS PROPERTIES LLC	08/12/2010	MLMISC	2010041977	61	2386	LT 802 PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	YESTERMORROW TOWN BUILDERS INC	08/12/2010	MLMISC	2010041978	61	2389	LT 242 BLK G1 POR PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CONIFER HOLDINGS LLC	08/12/2010	MLMISC	2010041979	61	2392	LT 9 HEADWATERS PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CROWLEY, WILLIAM C	08/12/2010	MLMISC	2010041980	61	2395	LT 94 BLK B PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	CROWLEY, WILLIAM C	08/12/2010	MLMISC	2010041981	61	2398	LT 816 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	ODAR, DONNA M	09/17/2010	MLR	2010049155	62	2421	BK50P224	\$0.00
* PALMETTO BLUFF CLUB LLC	DUKES, MARVIN H III AS M I E	11/18/2010	MLR	2010061426	64	1875	BK50P227	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	11/19/2010	MLR	2010061756	64	2112	BK41P2278	\$0.00
* PALMETTO BLUFF CLUB LLC	CRANE, MARK A	12/01/2010	MLR	2010063496	64	2557	BK50P239	\$0.00
* PALMETTO BLUFF CLUB LLC	CONIFER HOLDINGS LLC	04/06/2011	MLR	2011017097	67	1181	BK61P2392	\$0.00
* PALMETTO BLUFF CLUB LLC	BEST CUSTOM HOMES LLC	04/06/2011	MLR	2011017099	67	1183	BK52P1495	\$0.00
* PALMETTO BLUFF CLUB LLC	CERBONE, MICHAEL	04/20/2011	MLMISC	2011019665	67	2078	LT 841 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	CERBONE, MICHAEL D	04/20/2011	MLMISC	2011019666	67	2081	LT 842 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	DRALLE, BRIAN MICHAEL	05/11/2011	MLMISC	2011023061	68	390	LT 114 BLK B POR OF PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	BC REAL ESTATE VENTURES LLC	05/12/2011	MLMISC	2011023280	68	525	LT 422 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	ATLANTIC PRIVATE EQUITY GROUP LLC	05/12/2011	MLMISC	2011023281	68	528	LT 615 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	ATLANTIC PRIVATE EQUITY GROUP LLC	05/12/2011	MLMISC	2011023282	68	531	LT 505 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	BLUFF HIDEWAY LLC	05/12/2011	MLMISC	2011023283	68	534	LT 171 BLK F PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	05/12/2011	MLMISC	2011023284	68	537	LT 247 PALMETTO BLUFF BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	FARRELL, PATRICIA R	05/12/2011	MLMISC	2011023285	68	540	LT 708 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	HOWELL PROPERTIES LLC	05/12/2011	MLMISC	2011023286	68	543	LT 279 BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	FURER, ARLEEN	05/12/2011	MLMISC	2011023287	68	546	LT 852 PALMETTO BLUFF BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	KELLEY, CAREY ANN	05/12/2011	MLMISC	2011023288	68	549	LT 393 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	KRISTOFF, PATRICIA V TRUSTEE	05/12/2011	MLMISC	2011023289	68	552	LT 142 BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	LEFEVER MATTSON INC	05/12/2011	MLMISC	2011023290	68	555	LT 13 BLK A PALMETTO BLUFF VILLAGE BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	LICH, MARVIN E	05/12/2011	MLMISC	2011023291	68	558	LT 269 BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	LUBAN, MARK A TRUSTEE	05/12/2011	MLMISC	2011023292	68	561	LT 636 PALMETTO BLUFF BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	LUBAN, MARK A	05/12/2011	MLMISC	2011023293	68	564	LT 519 ANSON PARK MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	MALPHRUS, J TODD	05/12/2011	MLMISC	2011023294	68	567	LT 825 PALMETTO BLUFF BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	05/12/2011	MLMISC	2011023295	68	570	LT 283 BLK G2 PALMETTO BLUFF VLG BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	MARSHEDGE LLC	05/12/2011	MLMISC	2011023296	68	573	LT 1228 BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	05/12/2011	MLMISC	2011023297	68	576	LT 33 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	PALMETTO BLUFF LOT 258 LLC	05/12/2011	MLMISC	2011023298	68	579	LT 258 POR PALMETTO BLUFF VLG	\$0.00

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* PALMETTO BLUFF CLUB LLC	PALMETTO ROUNDTABLE LLC	05/12/2011	MLMISC	2011023299	68	582	LT 150 POR PALMETTO BLUFF VLG	\$0.00
* PALMETTO BLUFF CLUB LLC	SCHEIDER, JAMES P JR	05/12/2011	MLMISC	2011023300	68	585	LT 320 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SHAMROCK TGJMS LP	05/12/2011	MLMISC	2011023301	68	588	LT 811 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	05/12/2011	MLMISC	2011023302	68	591	LT 809 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	05/12/2011	MLMISC	2011023303	68	594	LT 304 MAYS BEND BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	05/12/2011	MLMISC	2011023304	68	597	LT 15 BLK A PALMETTO BLUFF VLG	\$0.00
* PALMETTO BLUFF CLUB LLC	TRAVAGLIONE, RAYMOND M	05/12/2011	MLMISC	2011023305	68	600	LT 167 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SHIVERY, GINA O TRUSTEE	05/12/2011	MLMISC	2011023306	68	603	LT 527 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	MARC LLC	05/12/2011	MLMISC	2011023307	68	606	LT 176 BLK F PALMETTO BLUFF VLG BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	MURPHY, MICHAEL J	05/18/2011	MLMISC	2011024466	68	1293	LT 99 BLK B PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MURPHY, MICHAEL J	05/23/2011	MLR	2011025169	68	1600	BK68P1293	\$0.00
* PALMETTO BLUFF CLUB LLC	YESTERMORROW TOWN BUILDERS INC	07/21/2011	MLR	2011036335	70	2003	BK61P2389	\$0.00
* PALMETTO BLUFF CLUB LLC	PALMETTO BLUFF LOT 258 LLC	07/21/2011	MLR	2011036336	70	2004	BK68P579	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	08/02/2011	MLPAREL	2011038487	71	248	BK68P576 LT 33 BLK A PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	ATLANTIC PRIVATE EQUITY GROUP LLC	08/02/2011	MLR	2011038489	71	250	BK68P528/ LT 615 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	08/24/2011	MLR	2011042452	71	1764	BK68P591	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	08/24/2011	MLR	2011042453	71	1765	BK68P597	\$0.00
* PALMETTO BLUFF CLUB LLC	TARVER, CHARLES M	08/24/2011	MLR	2011042454	71	1766	BK68P594	\$0.00
* PALMETTO BLUFF CLUB LLC	MARC LLC	08/24/2011	MLR	2011042458	71	1770	BK68P606	\$0.00
* PALMETTO BLUFF CLUB	CERBONE, MICHAEL	09/28/2011	MLR	2011049002	72	1719	BK67P2078	\$0.00
* PALMETTO BLUFF CLUB	TRAVAGLIONE, RAYMOND M	09/28/2011	MLR	2011049004	72	1721	BK68P600	\$0.00
* PALMETTO BLUFF CLUB	MORRIS, JAY L	10/11/2011	MLR	2011051310	72	2300	BK55P263	\$0.00
* PALMETTO BLUFF CLUB LLC	BLUFF HIDEAWAY LLC	11/16/2011	MLR	2011058599	73	2230	BK68P534	\$0.00
* PALMETTO BLUFF CLUB LLC	LUBAN, MARK A TRUSTEE	11/22/2011	MLR	2011059538	74	16	BK68P561	\$0.00
* PALMETTO BLUFF CLUB LLC	LUBAN, MARK A	11/22/2011	MLR	2011059541	74	19	BK68P564	\$0.00
* PALMETTO BLUFF CLUB LLC	CERBONE, MICHAEL D	12/08/2011	MLR	2011062055	74	1014	BK67P2081	\$0.00
* PALMETTO BLUFF CLUB LLC	WAGNER, MARK S	12/08/2011	MLR	2011062056	74	1015	BK61P1721	\$0.00
* PALMETTO BLUFF CLUB LLC	LEFEVER MATTSON INC	12/15/2011	MLR	2011063464	74	1357	BK68P555	\$0.00
* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET	12/29/2011	MLMISC	2011066020	74	2008	LT 643 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	LICH, MARVIN E	02/23/2012	MLR	2012010243	76	1704	BK68P558	\$0.00
* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET	03/06/2012	MLR	2012012613	76	2336	BK74P2008	\$0.00
* PALMETTO BLUFF CLUB LLC	ATLANTIC PRIVATE EQUITY GROUP LLC	08/01/2012	MLR	2012043403	80	1541	BK68P531	\$0.00
* PALMETTO BLUFF CLUB LLC	DRALLE, BRIAN MICHAEL	08/23/2012	MLR	2012048311	81	1735	BK68P390	\$0.00
* PALMETTO BLUFF CLUB LLC	BALL, W GORDON	09/06/2012	MLMISC	2012051871	82	232	LT 389 BLK D PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	THOMPSON, KAREN F	09/06/2012	MLMISC	2012051872	82	235	LT 412 MAY RIVER FOREST PALMETTO BLUFF BLUFFTON	\$0.00

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* PALMETTO BLUFF CLUB LLC	RHANGOS BROTHERS LLC	09/06/2012	MLMISC	2012051873	82	238	LT 391 BLK D PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	RHANGOS BROTHERS LLC	09/06/2012	MLMISC	2012051874	82	241	LT 117 BLK B PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	KELLEY, CAREY ANN	09/06/2012	MLMISC	2012051875	82	244	LT 393 BLK D POR PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	APY, MICHAEL A	09/06/2012	MLMISC	2012051876	82	247	LT 430 MAY RIVER FOREST PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	GREENBACK PROPERTIES LLC	09/06/2012	MLMISC	2012051877	82	250	LT 639 MAY RIVER FOREST PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	09/06/2012	MLMISC	2012051878	82	253	LT 635 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	BERTONI, GARY B	09/06/2012	MLMISC	2012051879	82	256	LT 237 BLE F POR PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	09/06/2012	MLMISC	2012051880	82	259	LT 283 BLK G2 PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	09/06/2012	MLMISC	2012051881	82	262	LT 247 BLK G1 PALMETTO BLUFF BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	HOWELL PROPERTIES LLC	09/06/2012	MLMISC	2012051882	82	265	LT 279 BLK G1 PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	STABI, THOMAS	09/06/2012	MLMISC	2012051883	82	268	LT 137 WEST VILLAGE PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	JONES, WM JARELL	09/06/2012	MLMISC	2012051884	82	271	LT 78BLK B PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	FOTIA, FRANK III	09/06/2012	MLMISC	2012051885	82	274	LT 827 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	STEPHENS, DONALD L	09/06/2012	MLMISC	2012051886	82	277	LT 313 BLK E PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	FARRELL, PATRICIA R	09/06/2012	MLMISC	2012051887	82	280	LT 708 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	09/06/2012	MLMISC	2012051888	82	283	LT 456 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	TRAVAGLIONE, RAYMOND M	09/06/2012	MLMISC	2012051889	82	286	LT 167 BLK E PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	09/06/2012	MLMISC	2012051890	82	289	LT 328 BLK E PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	VILLAGE POINT DEVELOPERS LLC	09/06/2012	MLMISC	2012051891	82	292	LT 90 BLK B PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SCHEIDER, JAMES P JR	09/06/2012	MLMISC	2012051892	82	295	LT 320 BLK E PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARC LLC	09/06/2012	MLMISC	2012051893	82	298	LT 176 BLK F PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MURPHY, MICHAEL J	09/06/2012	MLMISC	2012051894	82	301	LT 277 BLK F PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MURPHY, MICHAEL J	09/06/2012	MLMISC	2012051895	82	304	LT 165 BLK F PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	CLARK CUSTOM BUILDERS INC	09/06/2012	MLMISC	2012051896	82	307	LT 4 HEADWATERS PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	FOTIA, FRANK III	10/05/2012	MLR	2012058006	82	2245	BK82P274	\$0.00
* PALMETTO BLUFF CLUB LLC	ATLANTIC PRIVATE EQUITY GROUP LLC	10/18/2012	MLR	2012060942	83	954	BK68P435 BK68P531	\$0.00
* PALMETTO BLUFF CLUB LLC	SHAMROCK TGJMS LIMITED PARTNERSHIP	01/30/2013	MLR	2013005555	87	644	BK68P588	\$0.00
* PALMETTO BLUFF CLUB LLC	VILLAGE POINT DEVELOPERS LLC	02/18/2013	MLR	2013009236	87	1990	BK82P292	\$0.00
* PALMETTO BLUFF CLUB LLC	RHANGOS BROTHERS LLC	02/27/2013	MLR	2013011295	87	2508	BK82P241	\$0.00
* PALMETTO BLUFF CLUB LLC	RHANGOS BROTHERS LLC	02/27/2013	MLR	2013011296	87	2509	BK82P238	\$0.00
* PALMETTO BLUFF CLUB LLC	CLARK CUSTOM BUILDERS INC	03/20/2013	MLR	2013015636	88	1051	BK82P307	\$0.00
* PALMETTO BLUFF CLUB LLC	CLARK CUSTOM BUILDERS INC	03/20/2013	MLR	2013015638	88	1053	BK55P272	\$0.00
* PALMETTO BLUFF CLUB LLC	FLIP LLC	09/03/2013	MLR	2013050961	92	2241	BK61P1724	\$0.00
* PALMETTO BLUFF CLUB LLC	BALL, W GORDON	09/06/2013	MLMISC	2013052156	93	47	LT 389 BLK D PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00

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* PALMETTO BLUFF CLUB LLC	APY, MICHAEL A	09/06/2013	MLMISC	2013052157	93	50	LT 430 MAY FOREST RIVER BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	09/06/2013	MLMISC	2013052158	93	53	LT 283 BLK G2 PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	GREENBACK PROPERTIES LLC	09/06/2013	MLMISC	2013052159	93	56	LT 639 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	09/06/2013	MLMISC	2013052160	93	59	LT 635 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	BERTONI, GARY B	09/06/2013	MLMISC	2013052161	93	62	LT 237 BLK F POR OF PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SCHEIDER, JAMES P JR	09/06/2013	MLMISC	2013052162	93	65	LT 320 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	09/06/2013	MLMISC	2013052163	93	68	LT 247 BLK G1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	HOWELL PROPERTIES LLC	09/06/2013	MLMISC	2013052164	93	71	LT 279 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	STEPHENS, DONALD L	09/06/2013	MLMISC	2013052165	93	74	LT 313 BLK E PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	09/06/2013	MLMISC	2013052166	93	77	LT 328 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARC LLC	09/06/2013	MLMISC	2013052167	93	80	LT 176 BLK F PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	09/06/2013	MLMISC	2013052168	93	83	LT 456 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARSHEDGE LLC	12/04/2013	MLR	2013069886	95	2302	BK68P573	\$0.00
* PALMETTO BLUFF CLUB LLC	KRISTOFF, PATRICIA V TRUSTEE	02/14/2014	MLR	2014007048	97	599	BK68P552	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	06/05/2014	MLR	2014026052	99	1367	BK93P83	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	07/18/2014	MLR	2014034166	100	2470	BK82P253	\$0.00
* PALMETTO BLUFF CLUB LLC	TUCKLEE INVESTMENTS LLC	07/18/2014	MLR	2014034167	100	2471	BK93P59	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	08/28/2014	MLR	2014041507	102	48	BK68P576	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	08/28/2014	MLR	2014041508	102	49	BK82P289	\$0.00
* PALMETTO BLUFF CLUB LLC	MISCHLER LAWSON DEVELOPMENT COMPANY LLC	08/28/2014	MLR	2014041509	102	50	BK93P77	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	09/19/2014	MLMISC	2014045280	102	1476	LT 247 BLK G1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SCHEIDER, JAMES P JR	09/19/2014	MLMISC	2014045281	102	1480	LT 320 BLK E POR PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET	09/19/2014	MLMISC	2014045282	102	1483	LT 643 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	O NEIL, DANIEL L	09/19/2014	MLMISC	2014045283	102	1486	LT 401 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MOREHOUSE, DEAN F	09/19/2014	MLMISC	2014045284	102	1489	LT 35 BLK A PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SOTOLONGO, SERGIO E	09/19/2014	MLMISC	2014045285	102	1492	LT 415 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	09/19/2014	MLMISC	2014045286	102	1495	LT 283 BLK G2 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	BERTONI, GARY B	09/19/2014	MLMISC	2014045287	102	1498	LT 237 BLK F PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	GREENBACK PROPERTIES LLC	09/19/2014	MLMISC	2014045288	102	1501	BK82P250/ LT 639 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	KELLEY, CAREY ANN	09/19/2014	MLMISC	2014045289	102	1504	LT 393 BLK D RESIDENTIAL PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	BALL, W GORDON	09/19/2014	MLMISC	2014045290	102	1507	LT 389 BLK D PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	COOPER, ROLANDO	09/19/2014	MLMISC	2014045291	102	1510	BK1747P2185/ LT 58 WILSON ROW PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	ANTAL, MARK ALLEN	09/19/2014	MLMISC	2014045292	102	1513	LT 369 BLK H PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	ANTAL, MARK ALLEN	10/27/2014	MLR	2014052449	103	1254	BK102P1513	\$0.00
* PALMETTO BLUFF CLUB LLC	JOHNSON, HENRY T	11/07/2014	MLR	2014055265	103	2429	BK93P83	\$0.00

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* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET	11/10/2014	MLR	2014055312	103	2439	LT 643 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	SOTOLONGO, SERGIO E	02/20/2015	MLR	2015008611	106	374	BK102P1492	\$0.00
* PALMETTO BLUFF CLUB LLC	COOPER, ROLANDO	03/30/2015	MLR	2015014853	106	2274	BK102P1510	\$0.00
* PALMETTO BLUFF CLUB LLC	MARC LLC	04/17/2015	MLR	2015018629	107	1006	BK82P298 BK93P80	\$0.00
* PALMETTO BLUFF CLUB LLC	SCHEIDER, JAMES P JR	07/08/2015	MLR	2015035388	109	1564	BK68P585	\$0.00
* PALMETTO BLUFF CLUB LLC	PALMETTO ROUNDTABLE LLC	07/28/2015	MLR	2015039215	109	2547	BK68P582	\$0.00
* PALMETTO BLUFF CLUB LLC	MOREHOUSE, DEAN F	08/18/2015	MLMISC	2015043143	110	1215	LT 35 BLK A POR PALMETTO BLUFF VILLAGE BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	O NEIL, DANIEL L	08/18/2015	MLMISC	2015043144	110	1218	LT 401 MAY RIVER FOREST BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	08/18/2015	MLMISC	2015043145	110	1221	LT 247 BLK G-1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	08/18/2015	MLMISC	2015043146	110	1225	LT 283 BLK G2 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	TWILLMANN, ROBERT D	08/18/2015	MLMISC	2015043147	110	1229	LT 5344 BLK K-2 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET M	08/18/2015	MLMISC	2015043148	110	1232	LT 643 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	O NEIL, DANIEL L	09/18/2015	MLR	2015048812	111	16	BK110P1218	\$0.00
* PALMETTO BLUFF CLUB LLC	MOREHOUSE, DEAN F	01/05/2016	MLR	2016000414	112	1533	BK102P1489	\$0.00
* PALMETTO BLUFF CLUB LLC	SC DEPARTMENT OF REVENUE	04/01/2016	SC	2016015858	114	866	337650	\$0.00
* PALMETTO BLUFF CLUB LLC	O NEIL, DANIEL L	08/03/2016	MLR	2016040669	117	1276	BK102P1486	\$0.00
* PALMETTO BLUFF CLUB LLC	TWILLMANN, ROBERT D	08/03/2016	MLR	2016040670	117	1277	BK110P1229	\$0.00
* PALMETTO BLUFF CLUB LLC	PODD, WILLIAM S	08/03/2016	MLR	2016040671	117	1278	BK50P254	\$0.00
* PALMETTO BLUFF CLUB LLC	CROWLEY, WILLIAM C	08/03/2016	MLR	2016040672	117	1279	BK61P2398	\$0.00
* PALMETTO BLUFF CLUB LLC	INVICTUS PROPERTIES LLC	08/03/2016	MLR	2016040673	117	1280	BK61P2386	\$0.00
* PALMETTO BLUFF CLUB LLC	FARRELL, PATRICIA R	08/03/2016	MLR	2016040674	117	1281	BK68P540	\$0.00
* PALMETTO BLUFF CLUB LLC	FARRELL, PATRICIA R	08/03/2016	MLR	2016040675	117	1282	BK82P280	\$0.00
* PALMETTO BLUFF CLUB LLC	FURER, ARLEEN	08/03/2016	MLR	2016040676	117	1283	BK68P546	\$0.00
* PALMETTO BLUFF CLUB LLC	BC REAL ESTATE VENTURES LLC	08/03/2016	MLR	2016040677	117	1284	BK68P525	\$0.00
* PALMETTO BLUFF CLUB LLC	STABI, THOMAS	08/03/2016	MLR	2016040678	117	1285	BK82P268	\$0.00
* PALMETTO BLUFF CLUB LLC	SC DEPARTMENT OF REVENUE	08/03/2016	SCSAT	2016041020	117	1533	BK114P866	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	10/19/2016	UC1S	2016056863	10	580	1.352 ACRES BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	WILMINGTON TRUST NATIONAL ASSOCIATION	10/19/2016	UC1S	2016056865	10	585	1.352 AC PAR RR2 POR PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	10/19/2016	UC1S	2016056867	10	590	PAR WF-1 BLUFFTON TOWNSHIP	\$0.00
* PALMETTO BLUFF CLUB LLC	WILMINGTON TRUST NATIONAL ASSOCIATION	10/19/2016	UC1S	2016056869	10	595	1.99 ACRES PAR WF-1 WILSON FITNESS POOL & CANOE CL	\$0.00
* PALMETTO BLUFF CLUB LLC	THOMPSON, KAREN F	11/14/2016	MLR	2016061699	119	1186	BK51P999	\$0.00
* PALMETTO BLUFF CLUB LLC	KELLY, P BRENDAN III	01/04/2017	MLR	2017000499	120	258	BK51P1005	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	05/02/2017	MECH	2017022935	122	1145	LT 247 BLK G1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SALT MARSH AT 56 LLC	05/02/2017	MECH	2017022937	122	1150	LT 255 BLK G-1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	05/02/2017	MLMISC	2017022936	122	1149	LT 283 BLK G2 PALMETTO BLUFF VILLAGE	\$0.00

7/8

7/12/22, 4:17 PM

Name	Cross Party	Date	Type	Instr#	Book	Page	Legal	Consideration
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T	10/17/2017	MLMISC	2017056499	126	675	LT 247 BLK G1 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	SALT MARSH AT 56 LLC	10/17/2017	MLMISC	2017056500	126	679	LT 255 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	10/17/2017	MLMISC	2017056501	126	682	LT 283 BLK G2 PALMETTO BLUFF VILLAGE	\$0.00
* PALMETTO BLUFF CLUB LLC	BAIRD, GORDON ANDREW	10/17/2017	MLMISC	2017056502	126	686	LT 636 MAY RIVER FOREST BLUFFTON	\$0.00
* PALMETTO BLUFF CLUB LLC	SALT MARSH MARKETING GROUP LLC	10/17/2017	MLMISC	2017056503	126	689	LT 513 ANSON PARK MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	MANNING, BRIAN	10/17/2017	MLMISC	2017056504	126	692	LT 847 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	07/05/2018	UCTS	2018036035	11	406	BK10P580	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	07/05/2018	UCTS	2018036036	11	408	BK10P590	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	07/09/2018	UCTS	2018036709	11	427	BK10P580	\$0.00
* PALMETTO BLUFF CLUB LLC	WILMINGTON TRUST NATIONAL ASSOCIATION TRUSTEE	07/09/2018	UCTS	2018036710	11	429	BK10P585	\$0.00
* PALMETTO BLUFF CLUB LLC	JPMORGAN CHASE BANK NA	07/09/2018	UCTS	2018036711	11	431	BK10P590	\$0.00
* PALMETTO BLUFF CLUB LLC	WILMINGTON TRUST NATIONAL ASSOCIATION	07/09/2018	UCTS	2018036712	11	433	BK10P595	\$0.00
* PALMETTO BLUFF CLUB LLC	MATHUR, SUMEET	07/24/2018	MLR	2018040092	133	1618	BK110P1232	\$0.00
* PALMETTO BLUFF CLUB LLC	SALT MARSH AT 56 LLC	08/01/2019	MLR	2019041298	140	1062	BK122P1150 & BK126P679	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	09/30/2019	MLMISC	2019052411	141	584	LT 283 BLK G2 PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057789	141	1637	BK68P537	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057790	141	1639	BK82P262	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057791	141	1641	BK93P68	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057792	141	1643	BK102P1476	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057793	141	1645	BK110P1221	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057794	141	1647	BK122P1145	\$0.00
* PALMETTO BLUFF CLUB LLC	DONKERBROOK, LANCE T TRUSTEE	10/25/2019	MLR	2019057795	141	1649	BK126P675	\$0.00
* PALMETTO BLUFF CLUB LLC	MARINO, MICHAEL A	06/04/2020	MLR	2020029208	144	2057	BK141P584	\$0.00
* PALMETTO BLUFF CLUB LLC	226 DAVIES LLC	12/21/2020	MECH	2020076112	146	647	LT 5734 BLK L2 MORELAND LANDING PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	GRANT, HOWARD S	12/21/2020	MECH	2020076113	146	650	LT 629 MAY RIVER FOREST PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	SPACHMAN, BRIAN S	12/21/2020	MECH	2020076114	146	653	LT 864 MAY RIVER FOREST	\$0.00
* PALMETTO BLUFF CLUB LLC	KUCHMENT, MIKHAIL	12/21/2020	MECH	2020076115	146	656	LT 289 PALMETTO BLUFF VILLAGE PALMETTO BLUFF	\$0.00
* PALMETTO BLUFF CLUB LLC	SALT MARSH MARKETING GROUP LLC	01/04/2021	MLR	2021000281	146	768	BK126P689	\$0.00

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

Palmetto Bluff Club, LLC and Palmetto Bluff
Preservation Trust, Inc.,

Case No. 2019-CP-_____

Plaintiffs,

SUMMONS

vs.

(Non-Jury)

Michael A. Marino and Mary A. Marino,

(Foreclosure of Assessment Liens)
(Equitable Principle of Superior Diligence)
(Debt Collection)

Defendants.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned attorneys at their offices located at 400 Main Street, Suite 100A, Hilton Head Island, South Carolina 29926, within thirty (30) days after the date of such service, exclusive of the day of service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiffs will move for a general Order of Reference of this cause to the Master-in-Equity or Special Referee for this County, which Order shall, pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with any appeal directly to the South Carolina Court of Appeals.

s/ Jeffrey D. Locker

Jeffrey D. Locker

Suzanne G. Grigg

NEXSEN PRUET LLC

400 Main Street, Suite 100A (29926)

P.O. Drawer 23526

Hilton Head Island, South Carolina 29925

Phone: (843) 682-1572

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JLocker@nexsenpruet.com

SGrigg@nexsenpruet.com

October 1, 2019

Hilton Head Island, South Carolina

Attorneys for Plaintiff Palmetto Bluff Club, LLC
and Plaintiff Palmetto Bluff Preservation Trust,
Inc.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

PALMETTO BLUFF CLUB, LLC, a South Carolina limited liability company, and PALMETTO BLUFF PRESERVATION TRUST, INC., a South Carolina non-profit corporation,

Plaintiffs,

vs.

MICHAEL A. MARINO and MARY A. MARINO,

Defendants.

IN THE CIRCUIT COURT

Case No. 2019-CP-07-_____

VERIFIED COMPLAINT
(Non-Jury)
(Foreclosure of Assessment Liens)
(Equitable Principle of Superior Diligence)
(Debt Collection)

Plaintiff Palmetto Bluff Club, a South Carolina non-profit corporation (the "Club") and Plaintiff Palmetto Bluff Preservation Trust, Inc., a South Carolina non-profit corporation (the "Trust" and together with the Club, the "Plaintiffs") would show unto this Court as follows:

1. The Club is a limited liability company organized and existing under the laws of the State of South Carolina and doing business in Beaufort County, South Carolina.
2. The Trust is a non-profit corporation organized and existing under the laws of the State of South Carolina, and doing business in Beaufort County, South Carolina.
3. Upon information and belief, Defendants Michael A. Marino and Mary A. Marino (collectively, the "Defendants") are residents of Myrtle Beach, South Carolina with a last known address of 406 Pinecrest Drive, Myrtle Beach, SC 29577.
4. The real property described herein, which is the subject of this action, is situated and located in Beaufort County, South Carolina.

5. This Court has jurisdiction over this matter and venue is proper in Beaufort County, South Carolina.

6. This foreclosure action is not against “property arising out of a loan owned or guaranteed by FNMA or FreddieMac or held by a servicer who has signed an agreement to participate in HMP.”

7. The provisions of Administrative Order No. 2011-05-02-01 are not applicable in this case because: (1) the indebtedness due and owing to the Plaintiffs by the Defendants is not secured by real property that is an “owner-occupied dwelling” as defined by Administrative Order No. 2011-05-02-01; and (2) the Plaintiffs are property owners associations, and, therefore, neither of the Plaintiffs offer any form of foreclosure intervention for consideration as contemplated by the Administrative Order.

8. **THIS IS AN ATTEMPT TO COLLECT A CONSUMER DEBT OWED BY THE DEFENDANTS TO THE PLAINTIFFS AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. FURTHER, THE NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT IS ATTACHED HERETO AS EXHIBIT “A” AND IT IS INCORPORATED HEREIN BY REFERENCE.**

9. Defendants are currently the owner of certain real property located in Beaufort County, South Carolina, which is the subject of this action. The real property, known as Lot 283, Block G-2, Palmetto Bluff Village, 7 Hardaway Street, Bluffton, Beaufort County, South Carolina (hereinafter, the “Subject Property”), is described as follows:

All that certain piece, parcel or lot of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, designated as LOT NUMBER TWO HUNDRED EIGHTY-THREE (283), BLOCK G2, PALMETTO BLUFF VILLAGE, and being more particularly shown and described on a plat thereof prepared by Boyce L. Young, SCRLS #11079, dated June 20, 2005 and recorded

in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 113 at Page 105.

DERIVATION: Being the same property conveyed to Michael A. Marino and Mary A. Marino from May River Forest, LLC by Deed dated August 17, 2006, and recorded August 22, 2006, in Book 2428 at Page 2159, in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS #: R614-047-000-0048-0000.

Address: Lot 283, Block G2, Palmetto Bluff Village, 7 Hardaway Street, Bluffton, South Carolina 29909.

10. The Club filed those certain Notice and Certificate of Liens (collectively, the “Club Liens”) against Defendants on the Subject Property with the Beaufort County Register of Deed’s Office (the “ROD”) for unpaid assessments due and owing to the Club by the Defendants, as the owner of the Subject Property. The Club Liens were recorded on May 12, 2011 in Book 68 at Page 570, on September 6, 2012 in Book 82 at Page 259, on September 6, 2013 in Book 93 at Page 53, on September 19, 2014 in Book 102 at Page 1495, on August 18, 2015 in Book 110 at Page 1225, on May 2, 2017 in Book 122 at Page 1149, on October 17, 2017 in Book 126 at Page 682 and on September 30, 2019 in Book 141 at Page 584. The amount of the Club Liens are subject to change as further assessments become due and owing and as interest accrues, pursuant to that certain Declaration of Recreational Covenant for Palmetto Bluff (the “Recreational Covenant”), recorded in the ROD on April 17, 2003, in Deed Book 1747, at Page 2185 (as amended). True copies of the Club Liens are attached hereto as Exhibit “B” and are incorporated herein by reference. Subsequent to recordation of the Club Liens, further assessments are now due and owing (the “Subsequent Club Accruals”), resulting in a new combined amount now due and owing to the Club, as of August 8, 2019, in the approximate amount of \$46,595.25.

11. The Trust filed those certain Notice and Certificate of Liens (collectively, the “Trust Liens”), against Defendants on the Subject Property with the ROD for unpaid assessments due and

owing by the Defendants to the Trust. The Trust Liens were recorded on May 12, 2011 in Book 68 at Page 477, on September 6, 2012 in Book 82 at Page 337, on September 6, 2013 in Book 93 at Page 22, on September 19, 2014 in Book 102 at Page 1458, on August 18, 2015 in Book 110 at Page 1208, on April 12, 2017 in Book 121 at Page 1813, on October 17, 2017 in Book 126 at Page 705 and on September 30, 2019 in Book 141 at Page 588. The amount of the Trust Liens are subject to change as further assessments become due and owing and as interest accrues, pursuant to that certain Community Charter for Palmetto Bluff (the "Community Charter" and together with the Recreational Covenant, the "Declarations"), recorded in the ROD on April 17, 2003, in Deed Book 1747, at Page 2090 (as amended). True copies of the Trust Liens are attached hereto as Exhibit "C" and are incorporated herein by reference. Subsequent to recordation of the Trust Liens, further assessments are now due and owing (the "Subsequent Trust Accruals"), resulting in a new combined amount now due and owing to the Trust, as of August 8, 2019, in the approximate amount of \$43,507.85.

12. Collectively, hereinafter, the Club Liens, Subsequent Club Accruals, the Trust Liens and the Subsequent Trust Accruals shall be referred to herein as the "Liens."

13. The Plaintiffs are the owners and the holders of the Liens and the Defendants are liable to the Plaintiffs for the amount due and owing on the Liens. Further, the Defendants are liable to the Plaintiffs for any amount that have accrued subsequent to the calculation of the amounts shown in the Liens.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Liens)

14. The allegations set forth above are reasserted and realleged as if repeated verbatim herein.

15. The Plaintiffs' Liens, filed in Beaufort County, are liens attached to the Subject Property owned by the Defendants.

16. Upon information and belief, Bank of America ("BOA") holds a mortgage lien on the Subject Property, granted by the Defendants to BOA on or about August 17, 2006. Foreclosure and sale of the Subject Property will be made subject to BOA's mortgage lien for any balance remaining due and owing to BOA by the Defendants.

17. The Liens are valid enforceable liens against the Subject Property.

18. The Plaintiffs are informed and believe that they are entitled to foreclose their Liens against the Subject Property, and to have the Subject Property sold at a foreclosure sale at a date and time to be determined by the Court.

19. Upon information and belief, the Subject Property has not been taken for taxes, fines or assessments, pursuant to any statute, or seized by virtue of an execution or attachment against the property of the Plaintiffs or the Defendants.

20. Proceeds from the sale of the Subject Property should be paid to the parties claiming an interest in the Subject Property after a determination by the Court of the order of priority.

21. The Plaintiffs are entitled to judgment of foreclosure barring the Defendants and all persons claiming by or through the Defendants from all right, title and interest in or to the Subject Property, and each and every part thereof.

FOR A SECOND CAUSE OF ACTION
(Equitable Principle of Superior Diligence)

22. The allegations set forth above are reasserted and realleged as if repeated verbatim herein.

23. The Plaintiffs assert that they are entitled to priority in the foreclosure sale proceeds over any other party who may claim an interest in the sales proceeds, under the equitable principle of superior diligence.

24. The Plaintiffs would show unto the Court that, but for their actions to foreclose their Liens against the Subject Property, the Subject Property would not be liquidated through this foreclosure action for the benefit of the lien creditors. The Plaintiffs have undertaken the expense of obtaining title work on the Subject Property, and the attorneys' fees and costs associated with such research and review, and with the preparation and commencement of this action.

25. The Plaintiffs have performed a title search in the Beaufort County records for the Subject Property, and the Plaintiffs are informed and believe that there are no other lienholders of record who may claim an interest in the Subject Property or the proceeds realized from the sale of the Subject Property.

26. However, to the extent any other party appears and claims an interest in the sales proceeds, the Plaintiffs assert that they are entitled to priority in payment of the sales proceeds realized at foreclosure sale under the equitable principle of superior diligence, before any other party who may claim an interest in the sales proceeds.

FOR A THIRD CAUSE OF ACTION
(Debt Collection)

27. The allegations set forth above are reasserted and realleged as if repeated verbatim herein.

28. As set forth hereinabove, unpaid assessments are due and owing to the Plaintiffs from the Defendants for assessments that accrued and as evidenced by the Liens, and for all further amounts that have accrued subsequent to the recordation of the Liens.

29. In addition, the foregoing amounts are exclusive of attorneys' fees and costs incurred in the preparation, filing and prosecution of this action to collect the unpaid assessments, to which the Plaintiffs are entitled to recover.

30. The Plaintiffs have provided timely and proper notice of their claims for the unpaid assessments to the Defendants and demand has been made for payment thereof from the Defendants.

31. Despite the Plaintiffs' demands, the Defendants continue to refuse to pay the balances due and owing to the Plaintiffs, pursuant to the Declarations.

32. The Plaintiffs are entitled to judgment against the Defendants in the amounts of \$46,595.25 and \$43,507.85, respectively, for a total combined Judgment amount of \$90,103.10, as of August 8, 2019, for the unpaid assessments due and owing to the Plaintiffs, plus any subsequent accruals and attorneys' fees and costs incurred in the enforcement of the Plaintiffs' rights.

WHEREFORE, the Plaintiffs pray:

(a) That the amounts due upon the Liens, to include accrued interest, be ascertained and determined under the direction of the Court, together with attorneys' fees and the costs of this action;

(b) For a judgment of foreclosure of their Liens as to the Subject Property for the amounts so found to be due and owing to the Plaintiffs, together with reasonable attorneys' fees and the costs of this action;

(c) For a determination of priority in the sales proceeds as to all claimants, with the Plaintiffs being given priority over all other claimants, under the equitable principle of superior diligence;

(d) That the Subject Property be sold pursuant to an Order of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

- (i) First, applied to the costs and expenses of this action;
- (ii) Second, to the payment and discharge of the properly perfected liens in the order or priority as determined by the Court, plus attorneys' fees and costs in this action; and,
- (iii) Third, that the surplus, if any, be distributed according to law.

(e) That the Defendants and all persons whomsoever claiming by or through the Defendants be forever barred of all right, title and interest of, in and to the Subject Property, and each and every part thereof;

(f) That an Order be entered directing and empowering the Sheriff of Beaufort County, South Carolina to place the successful purchaser at the foreclosure sale, or its agent or assign, in possession of the property herein described should the same become necessary; and

(g) For such other and further relief as the Court may deem just and proper.

s/ Jeffrey D. Locker

Jeffrey D. Locker
Suzanne Taylor Graham Grigg
NEXSEN PRUET LLC
400 Main Street, Suite 100A (29926)
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Hilton Head Island, South Carolina 29925
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October 1, 2019

Hilton Head Island, South Carolina

Attorneys for Plaintiff Palmetto Bluff Club, LLC, a
South Carolina limited liability company and
Plaintiff Preservation Trust, Inc., a South Carolina
non-profit corporation



Beaufort County Fourteenth Judicial Circuit Public Index



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Headwaters Trust Inc VS William R T Oakes Jr

Case Number:	2008CP0700657	Court Agency:	Beaufort County Common Pleas	Filed Date:	02/25/2008
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:			
Disposition:	Judgment	Disposition Date:	04/10/2009	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	2008CP0700657	Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Haight,, Ehrick K. Jr.	Minor Haight & Arundell Pc P.O. Drawer 6067 Hilton Head Island SC 29938				Defendant Attorney		10/14/2008
☒ Headwaters Trust Inc					Plaintiff		04/22/2009
☒ Oakes, William R T Jr					Defendant		04/22/2009
Palmetto Bluff Club Llc					Plaintiff		04/22/2009
Palmetto Bluff Preservation Trust Inc					Plaintiff		04/22/2009
☒ Tibbals, Jeffrey S	Nexsen Pruet, LLC P.O. Box 486 Charleston SC 29402				Plaintiff Attorney		02/29/2008

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Palmetto Bluff Preservation Trust Inc VS Atlantic Private Equity Group Llc

Case Number:	2012CP0701596	Court Agency:	Beaufort County Common Pleas	Filed Date:	04/24/2012
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:			
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	10/18/2012	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atlantic Private Equity Group Llc					Defendant		04/24/2012
☒ Kirkland, Samuel Lee	PO Box 1938 Bluffton SC 29910				Plaintiff Attorney		05/22/2012
☒ Palmetto Bluff Club Llc					Plaintiff		04/24/2012
Kirkland, Samuel Lee	PO Box 1938 Bluffton SC 29910				Plaintiff Attorney		05/22/2012
☒ Palmetto Bluff Preservation Trust Inc					Plaintiff		11/09/2012

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Palmetto Bluff Club LLC VS Brian Michael Dralle , defendant, et al

Case Number:	2011CP0704577	Court Agency:	Beaufort County Common Pleas	Filed Date:	11/02/2011
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Dukes, Marvin H III		
Disposition:	Ended by Non Jury	Disposition Date:	06/26/2012	Disposition Judge:	Dukes, Marvin H III
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Dralle, Brian Michael					Defendant		11/02/2011
Hughes, Edward M.	PO Box 23526 Hilton Head Island SC 299253526				Defendant Attorney		06/22/2012
Locker, Jeffrey D.	PO Box 23526 Hilton Head Island SC 299253526				Plaintiff Attorney		06/22/2012
Palmetto Bluff Club LLC					Plaintiff		08/30/2012
Palmetto Bluff Club LLC					Plaintiff		08/30/2012
Locker, Jeffrey D.	PO Box 23526 Hilton Head Island SC 299253526				Plaintiff Attorney		06/22/2012
Palmetto Bluff Development LLC					Defendant		11/02/2011
Palmetto Bluff Preservation Trust Inc					Defendant		11/02/2011

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

2016 JAN -5 AM 10:28

Palmetto Bluff Preservation Trust, Inc.,

Case No. 2015-CP-07-1774

Plaintiff,

vs.

W. Gordon Ball,

Defendant.

**AFFIDAVIT OF
STATEMENT OF ACCOUNT**

PERSONALLY APPEARED BEFORE ME, Donald E. Killoren, who after being duly sworn, states that he/she is President for Palmetto Bluff Preservation Trust, Inc. ("Trust"), that he/she is authorized to make this affidavit, and that the following itemized statement of account of Trust, as to W. Gordon Ball, is correct within the affiant's knowledge as of the date below:

TRUST ASSESSMENTS:

Total Trust Assessments Due as of January 4, 2016	\$ 24,050.00
Accrued Interest at 1.0% per annum (through January 4, 2016)	\$ 10,256.97
Other: <i>Lien Filing Fees</i>	\$ 750.00
TOTAL DEBT ON TRUST ASSESSMENTS AS OF JANUARY 4, 2016 (EXCLUSIVE OF ATTORNEYS' FEES AND COSTS)	\$ 35,056.97

PALMETTO BLUFF CLUB, LLC ("CLUB") DUES:

Total Club Dues Due as of January 4, 2016	\$ 23,722.50
Accrued Interest at 1.0% per annum (through January 4, 2016)	\$ 8,453.87
Other: <i>(describe)</i>	\$ 750.00
TOTAL DEBT ON CLUB DUES AS OF JANUARY 4, 2016 (EXCLUSIVE OF ATTORNEYS' FEES AND COSTS)	\$ 32,926.37

<u>TOTAL DEBT ON TRUST ASSESSMENTS AND CLUB DUES AS OF JANUARY 4, 2016 (EXCLUSIVE OF ATTORNEYS' FEES AND COSTS)¹:</u>	\$ 67,983.34

Palmetto Bluff Preservation Trust, Inc.

¹ Total Debt does not include an amount for attorneys' fees and expenses in this case. A separate Affidavit of Attorneys' Fees is being filed contemporaneously herewith.

By: 
Name: Donald E. Killoren
Its: President

SWORN and subscribed to before me
this 4th day of January 2016.
Martha G. Widgen (L.S.)
Notary Public for South Carolina
My commission expires: 9/26/2024

Martha G Widgen
Notary Public, State of South Carolina
My Commission Expires Sept. 26, 2024

14 April 2022

American Arbitration Association
www.ADR.org

Re: Palmetto Bluff Club, LLC – Filed written demand

Dear American Arbitration Association:

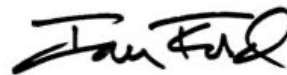
Enclosed, please find an executed AAA “Demand for Arbitration” form and a “Brief Description of Dispute,” along with a copy of the lawsuit referenced on the form. The South Carolina Court of Common Pleas, Beaufort County, has jurisdiction over the matters set forth in the lawsuit and over all parties 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 Jul 17 3:01 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

ELECTRONICALLY FILED - 2022 Jul 17 3:01 PM - BEAUFORT - COMMON PLEAS - CASE#2022CP0700632

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 I				
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.				

Please visit our website at www.adr.org/support to file this case online.
AAA Customer Service can be reached at 800-778-7879.

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

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' MEMORANDUM
IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiffs Bridge Charleston Investments B LLC, Geoffrey J. Block, and Jennifer Albero, individually and derivatively (“Plaintiffs”), submit this memorandum in support of their Motion for Partial Summary Judgment. Plaintiffs seek summary judgment on their causes of action for certain declaratory judgments, pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure.

Rule 56(a), SCRPC, specifically allows a claimant to move for summary judgment “at any time after the expiration of 30 days from the commencement of the action” on “all or any part of” his claims. Plaintiffs seek partial summary judgment at this early stage of litigation on questions of law, only, for the purpose of efficiency and economy going forward. This motion can be decided by this Court strictly on the instruments of record pertaining to the property, as well as on the applicable provisions of South Carolina law.

There are no disputed facts as to these clear questions of law:

1. 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?
2. Whether the covenants’ requirement of mandatory membership in a for-profit Club is unlawful?
3. Whether the Club’s unrecorded governing documents are unlawful and unconscionable?
4. Additionally, whether the for-profit Club is nonetheless subject to the South Carolina Homeowners’ Association Act, making the Club’s unrecorded governing documents unenforceable?

This is a complex case. A decision by the Court on these exclusively legal questions will give an important framework to this litigation as it moves forward into discovery.

LEGAL STANDARD

Summary judgment early in a case is not premature on questions of law, and it is specifically contemplated by Rule 56, SCRCP. The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 226 S.E.2d 703 (1976) (finding summary judgment was proper on plaintiff's motion made 33 days after filing complaint, despite lack of discovery). The standard is set forth "in Rule 56(c), SCRCP: summary judgment is proper 'when there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003) (summary judgment was proper four months after complaint was filed). "[W]hen plain, palpable, indisputable facts exist on which reasonable minds cannot differ, Summary Judgment should be granted." *Hedgepath v. AT&T*, 348 S.C. 340 at 355, 559 S.E.2d 327 at 336 (Ct. App. 2001).

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). "Determining the proper interpretation of a statute is a question of law." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "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).

In South Carolina, there is a 20-year statute of limitations for an action upon a sealed instrument. S.C. Code § 15-3-520.

BACKGROUND

Plaintiffs incorporate by reference their Complaint and respectfully request that this Court would take a moment to read it. **For purposes of this Motion for Partial Summary Judgment, the following facts are undisputed, being matters of public record:**

Plaintiffs hold title to certain residential real property within the Palmetto Bluff development, as set forth in the Complaint. Their deeds are attached as Exhibit 1.

The Community Charter for Palmetto Bluff

In 2003, Defendant Palmetto Bluff Development, LLC (the "Founder") recorded the Community Charter for Palmetto Bluff (the "Charter") with the Office of the Beaufort County Register of Deeds. (Compl. Exhibit 1). The Charter is the Founder's declaration of covenants, restrictions, and easements for Palmetto Bluff development, and it "is intended to serve as a framework for community governance." (Id. p. 1). All residential property within Palmetto Bluff is subject to the Charter. Commercial property is not subject to the Charter.

The Charter establishes the homeowners' association for Palmetto Bluff, which is the Palmetto Bluff Preservation Trust (the "Trust"). Each owner of residential property becomes a member of the Trust, which is a mutual benefit nonprofit corporation under South Carolina law. *See generally* S.C. Code § 33-31-101 *et seq.* 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. (*Id.* p. 2). The Trust holds title to the common property, in which each residential owner has an interest by virtue of membership in the Trust. The common property is subject to the Charter. Residential property owners are bound to pay assessments to the Trust, to maintain the common property.

So far, so good. There is no legal problem with the Trust owning common property for the common benefit of residential owners and assessing them for its maintenance. Those assessments touch and concern land bound by the Charter (*i.e.*, the residential property and common property), in which residential owners have a real property interest in common with the other owners. (*See Compl. Ex. 1* pp. 5-8, Ch. 2: Property Rights).

But, deep into the Charter — on page 55 of its numerous provisions — the Founder runs afoul of the law. Chapter 19 of the Charter is an apparently stand-alone provision that introduces Palmetto Bluff Club (the "Club"), which — although the Charter does not mention it — is a separate, for-profit commercial entity located on a separate parcel of land from the residential and common property subject to the Charter:

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.

(Compl. Ex. 1, p. 55). By this provision, the Charter purports to obligate residential owners to join a separate, for-profit club on separate property not subject to the Charter. This requirement is purportedly mandatory (“shall”) and “automatic” upon “acceptance of a deed” to residential property.

Neither the Founder nor the Club has ever recorded the “Palmetto Bluff Club Documents” with the Beaufort County Register of Deeds, although the Charter states that it incorporates them by reference. Some of the Club Documents¹ are attached to the

¹ The Club has copious rules, guidelines, procedures, policies, agreements, and other purported governing documents, all of which ostensibly can be—and are—changed unilaterally

Complaint as Exhibit 4; they are included within this summary judgment motion for the purpose of demonstrating their illegality.

When a person “automatically” “joins” the Club, he purportedly gains no ownership interest in the Club or its property whatsoever. Although the Club refers to residential owners as its “members,” this term is misleading – “membership” in the Club is not like membership in a non-profit, mutual-benefit corporation like the Trust.² According to the Club, **no one has any ownership interest in the Club, except the Club.**³ Club “members” allegedly **do not** get an easement in the Club property; instead, they are issued a revocable personal license, which purportedly can be changed, limited, restricted, or terminated at any time – unilaterally – in the sole discretion of the Club. (Compl. Exhibit 4, p. 1 “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.”) (emphasis added).⁴

at any time in the sole discretion of the Club without notice to. The Club recently announced a unilateral, material change to its “guidelines” on use of the Club amenities by guests and renters.

² The Nonprofit Corporation Act, which governs the Trust, defines members and their rights.

³ Automatic “Membership” in the Club does not equate to membership in the limited liability company Palmetto Bluff Club LLC.

⁴ The Club owns certain amenities (restaurants, swimming pools, pickleball courts, etc.). Elsewhere in the Charter, the Club’s amenities are identified as “Private Amenities.” (Compl. Ex. 1, p. 48, Ch. 16; and p. 65 ¶ 46). According to the Charter, a “Private Amenity” is “real property [and improvements] located adjacent to, in the vicinity of, or within the Community . . . which are owned and operated . . . by persons other than the Trust for recreational purposes on a club membership, daily fee, use fee, public, or private basis or otherwise . . .” (Id. p. 65 ¶ 45). The Charter makes clear that residential owners have “no ownership interest in or right to use any Private Amenity,” and that the Club “shall have the right, from time to time in [its] sole and

The Charter states that on accepting a deed, residential owners “shall automatically assume and agree to be bound by all the terms and conditions of the Palmetto Bluff Club Documents.” (*Id.*) The Palmetto Bluff Club Documents which purportedly “automatically” bind residential owners are a mystery . . . they are not attached to the Charter, and they have never been recorded with the Beaufort County Register of Deeds. According to the Charter, the Founder is to provide a copy of the Club Documents “at the time of conveyance,” at which point (according to the Charter), the documents *already* “automatically” bind the purchaser who has joined the Club “by acceptance of a deed.” The Club Documents set the amount of “dues, fees, and other charges” which must be paid. Notably, the Club Documents ostensibly “may be amended from time to time without the consent of the Owners.” (*Id.*)

In other words, the Charter purportedly mandates that anyone accepting a deed to residential property automatically joins a nearby for-profit club and must pay fees to

absolute discretion and without notice, to amend or waive the terms and conditions of use . . . 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.” *Id.* p. 48, § 16.1) (emphasis added).

See also, Def. Mtn. to Compel Arbitration, Ex. D. § VI. “Membership in the Club grants to the member a **revocable license** to use the Club Facilities, but **does not give a members 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 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.” (emphasis added).

the Club, in an undisclosed amount which is subject to unilateral change at the whim of the Club.⁵

The Declaration of Recreational Covenant for Palmetto Bluff

Next, and also in 2003, the Founder recorded the Declaration of Recreational Covenant for Palmetto Bluff (the “Recreational Covenant”) with the Office of the Beaufort County Register of Deeds. (Complaint, Exhibit 3). The Recreational Covenant states that it “shall run with the title to all Residential Property.” Troublingly, it purportedly incorporates and refers often to all “terms and conditions” of the “Palmetto Bluff Membership Plan,” although the **Plan has never been recorded with the Register of Deeds**, and although the Plan purportedly can be amended unilaterally at any time without notice to the residential owners. Again, according to the Recreational Covenant, membership in the Club purportedly is automatic and mandatory, with memberships automatically issued by the Club “in accordance with the [unrecorded] Plan” to each owner of residential property in Palmetto Bluff. (Compl. Ex. 3, § 2.1). Among other things, the Plan purports to require the payment of “Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein” *as a condition of membership*. (Compl. Ex. 4, p. 2).

The Recreational Covenant purports to subject residential Owners to the financial

⁵ A brief pause for an analogy: Owner of Tract A, a house, also owns Tract B, Planet Fitness. Wanting to ensure Planet Fitness’s financial success forever, Owner conveys Tract A subject to a requirement that its residents must join Planet Fitness and pay monthly dues to maintain a membership there for so long as they own Tract A, pursuant to Planet Fitness’s rate schedule, which can change at any time, and regardless of whether the owner of Tract A likes to work out.

obligation to pay membership “assessments, annual dues, minimum usage fees and other costs in accordance with the Plan” for so long as they own residential property in Palmetto Bluff, regardless of their use or non-use of the Club amenities. (§ 3.1). The Recreational Covenant also 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.

Significantly, in exchange for the obligation to pay substantial fees, dues, and “other costs,” Owners of residential property are ostensibly given no real interest whatsoever in the Club Property or its facilities. 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.” (Compl. Ex. 3) (emphasis in original). 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.” (Id.)

Other “Governing Documents”

The ostensible “automatic” and mandatory membership requirement, including the obligation to pay dues and fees to the for-profit Club, which purportedly runs with the land and binds future property transferees, is echoed in numerous other purported “governing documents” for the Palmetto Bluff Community:

- Membership in the Club is mandatory for all owners of property in the Community and shall be on a non-equity basis. Purchaser further understands and agrees that **by purchasing the Property, Purchaser is required to pay a joining fee in the amount of Twenty Thousand (\$20,000) Dollars and is required to maintain a membership in the Club (the “Club Membership” and pay the necessary assessments, annual dues, and other charges established by the Club from time to time.** (Waiver Agreement, ¶ 1) (emphasis added).
- **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 and owner of a residence or homesite. This covenant running with the land** is set forth at Chapter 19 of the Charter and the Declaration of Recreational Covenant for Palmetto Bluff. (Compl. Ex. 4, 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. (Compl. Ex. 4, p. iii).
- Any Owner of a residence or homesite within Palmetto Bluff must become a member of 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 (Compl. Ex. 4, p. 1) (emphasis added).
- **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 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 and owner of a residence or homesite. (Compl. Ex. 4, 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. (Compl. Ex. 4, p. 2).

- The Membership **Joining Fee for a Community Membership must be paid at the time that the Owner acquires the homesite or residence** within Palmetto Bluff. (Compl. Ex. 4, p. 8) (emphasis added).
- 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. (Id.)

It bears repeating that the Club Documents ostensibly “may be amended from time to time without the consent of the Owners.” (Compl. Ex. 1, p. 55).

In Practice

Defendants enforce these purported mandatory, automatic membership provisions as part of real estate closings, by requiring all prospective purchasers to execute a “Waiver Agreement” and purported “Membership Agreement,” and to pay “Joining Fees” and dues, as conditions of closing. (See Plaintiff’s Memorandum in Support of Motion to Disqualify Nexsen Pruet; Affidavit of J. Kimball; Affidavit of L. Casey). According to the plain language of the Charter it is only *after* a person has become an “Owner,” defined as the record title holder to a parcel of residential property, that the person can then “request” “current copies of the Palmetto Bluff Club Documents.” (Compl. Ex. 1, p. 55.).

ARGUMENT

The causes of action on which Plaintiffs seek summary judgment are entirely questions of law, which can be decided without discovery or testimony, based on the unambiguous documents, statutory law, public policy, and the common law of South Carolina. As a matter of law, there is no statute of limitations issue here: the Plaintiffs’ deeds, the Community Charter, the Recreational Covenant, and the Waiver Agreement – on which these declaratory judgments are sought – are all instruments of record, and there is no question of fact that they were each signed and sealed within the past 19 years.⁶ In South Carolina, there is a 20-year statute of limitations for an action upon a sealed instrument. S.C. Code § 15-3-520.

The Charter and the Recreational Covenant are recorded instruments which encumber Plaintiffs’ title, and Plaintiffs seek a determination from this Court⁷ as to the validity and enforceability of certain provisions within those instruments of record, as against their title. South Carolina’s Uniform Declaratory Judgments Act is designed for this purpose:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

⁶ Both the Charter and the Recreational Covenant have been amended or supplemented as recently as January 2022.

⁷ The Declaratory Judgment Act confines jurisdiction to decide and render declaratory judgments to “Courts of record within their respective jurisdictions.” S.C. Code § 15-53-20. Although Defendants argue that these questions should be shunted to an arbitrator, the AAA does not have the authority to render judgments binding title and future purchasers.

S.C. Code § 15-53-30. Similarly, Rule 56(a) permits “[a] party seeking . . . to obtain a declaratory judgment . . . [to move] at any time after the expiration of 30 days from commencement of the action . . . for a summary judgment in his favor upon all or any part thereof.”

This Court should grant judgment as a matter of law in favor of Plaintiffs on the following issues of law, pursuant to Rule 56, SCRPC.

I. The covenant within the Charter, the Recreational Covenant, and the Palmetto Bluff Club Documents requiring transferees to pay fees to a for-profit endeavor as part of the real estate transfer, violates South Carolina’s statutory prohibition against transfer fee covenants.

South Carolina has a statutory prohibition against real property transfer fee covenants, which the Palmetto Bluff documents violate. S.C. Code § 27-1-70 (the “Statute”). The Statute sets forth the public policy of the State, which “favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes which do not touch and concern the property.” S.C. Code § 27-1-70(B)(1).⁸ Both the Statute and the provisions within Defendants’ documents are unambiguous, and this Court can decide this question as a matter of law. *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667, 669 (2018) (“Determining the proper interpretation of a statute is a question of law . . .”).

⁸ Although there is a great deal of common law on this matter, including what it means for a covenant to “touch and concern” the land, it is important that this code section expressly identifies transfer fee covenants as not touching and concerning the land. (*See infra*, II).

Pursuant to the Statute, a “transfer” means the conveyance of property; a “transfer fee” is a fee or charge “imposed by a transfer fee covenant.” S.C. Code § 27-1-70(A). The definition of a “transfer fee covenant” contains four elements:

“Transfer fee covenant” means [1] **a provision in a document, whether recorded or not** and however denominated, [2] **which purports to run with the land** or bind current owners or successors in title to specified real property located in this State, and [3] **which obligates a transferee or transferor of all or part of the property to pay a fee or charge** [4] **to a third person upon transfer** of an interest in all or part of the property, or in consideration for permitting this transfer.

S.C. Code § 27-1-70(A)(4) (emphasis added). The Palmetto Bluff governing documents are loaded with provisions which meet each element of this definition, as set forth above on pages 5 and 8-11. Those documents – both recorded and not – are mirrors of precisely what the Statute prohibits: they contain [1] provisions [2] which purport to run with the land and to bind successors in title, and [3] they purport to obligate future property transferees to pay fees and charges [4] to the for-profit Club upon the transfer of an interest in the property. When residential property is transferred from one owner to the next in Palmetto Bluff, the Defendants include line items for “Joining Fees” and “Dues” to the Club, and they require “Waiver Agreements” and “Membership Agreements” as consideration for permitting the transfer. (*See* Aff. of Jeffrey Kimball; Aff. of L. Casey). Moreover, the provisions purport to bind successors in title to continue to pay “Joining Fees, Club Dues, User Fees and other charges” to the Club, as a condition of ownership and transfer. (*See supra* pp. 5, 8-11).

While the Statute identifies exceptions to the definition of a transfer fee covenant, a purported covenant requiring transferees to pay fees to a for-profit country club is not

among them. For example, the Statute excepts payments to a homeowner's association, so long as the association is a nonprofit or a 501(c) organization.⁹ But the Club is unequivocally not a non-profit or tax-exempt corporation.¹⁰ The Club is a for-profit limited liability company industriously running restaurants, hosting events, and operating country club amenities in a resort where it can—quite literally—charge whatever it likes.

The Legislature expressly recognizes that an obligation to pay money to a third-party entity, which purports to run with the land, does not actually touch and concern the land. S.C. Code § 27-1-70. The money paid to a for-profit third party does not go back into commonly-owned land. Here, the Joining Fees and Dues which must be paid as a condition of closing, go directly into the Developer's and the Club's pockets: "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." (Compl. Ex. 4, p. 8).

The Statute states that a transfer fee covenant violates public policy because it "impairs the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the

⁹ The reason for this exception? Assessments to be paid to a nonprofit association that holds title to common areas, in which its members have a common interest, legitimately do touch and concern the land—because that money goes right back into the common property.

¹⁰ Notably, the Developer's declaration of "Member Dues and Fees," specifies that taxes must be paid on the \$20,000 "joining fee" and \$4,615 annual dues to the Club (which amounts are increased unilaterally and without notice to the members). Also notably, no taxes are required on the annual assessment to the Trust, which is a non-profit HOA. (Exhibit 2, "Palmetto Bluff Member Dues and Fees for 2021").

amount of the transfer fee.” S.C. Code § 27-1-70(B)(2). It is easy to see why such covenants violate public policy—Palmetto Bluff is the perfect example. Palmetto Bluff’s transfer fee covenants ostensibly require each successive owner to join the Club for whatever fee the Club might be charging (the “Joining Fee” purportedly may be increased at any time in the Club’s “sole discretion”) and to pay whatever other “dues, fees, and charges” that the Club chooses to impose (the fees purportedly may be increased at any time in the Club’s “sole discretion.”). (Ex. 2). These uncertain, unpredictable, but ostensibly required fees are unreasonable and indefinite. *See Vickery v. Powell*, 225 S.E.2d 856, 267 S.C. 23 (1976) (indefinite covenants are not enforceable). **The reasonableness of such a provision is not a question of fact. The Statute specifically declares that transfer fee covenants violate public policy because they are—*per se*—an unreasonable restraint on alienation of title.** S.C. Code § 27-1-70(B)(2).

More disturbing: Palmetto Bluff’s “transfer fee covenant” requirement is in exchange for something that—buried within the documents’ fine print—the Developer and the Club ostensibly can restrict, limit, or take away entirely if they choose. (*See Compl. Ex. 1*, p. 48 § 16.1) (Club has “the right, from time to time in [its] sole and absolute discretion and without notice, to amend or waive the terms and conditions of use . . . 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.”). The Legislature recognized that reasonable buyers would hesitate to buy into such an arrangement, and so it made

transfer fee covenants unlawful. No one wants to buy property with an unpredictable future.

Notably, in addition to specific provisions within the Charter and other governing documents identified above, **the entire “Recreational Covenant” is an unlawful transfer fee covenant**, which this Court should hold is unenforceable under the Statute. (Compl. Ex. 3). In a nutshell, the [1] “Recreational Covenant,” which is a recorded document [2] purports to run with the land, and [3] it requires transferees of residential property to pay a veritable panoply of fees [4] to the for-profit Club upon transfer of an interest in residential property.¹¹ Here is some pertinent language from the Recreational Covenant: “Founder . . . hereby declares . . . [1] [that this Recreational Covenant] [2] **shall run with title** to all the Residential Property . . . [4] Upon transfer of title to a Residential Unit . . . the Club Operator shall issue a new Community Membership to the new Owner(s) . . . in accordance with the Plan [the Plan requires payment to the Club of dues and a joining fee] . . . [3] Each Owner of a Residential Unit, is deemed to **covenant and agree to pay the dues . . . and any other charges . . .** [4] **Upon transfer of title to a Residential Unit**, the grantee shall be jointly and severally liable with the grantor for Membership Fees due at the time of conveyance . . .”. (Compl. Ex. 3). Because it meets each and every one of the four elements within the Statute’s definition of a “transfer fee covenant,” the Recreational Covenant is unenforceable, as a matter of law.

¹¹ **“‘Transfer fee covenant’ means [1] a provision in a document, whether recorded or not and however denominated, [2] which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and [3] which obligates a transferee or transferor of all or part of the property to pay a fee or charge [4] to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer.”** S.C. Code § 27-1-70(A)(4) (emphasis added).

The Statute states that real property transfer fee covenants are unenforceable and against public policy. As a matter of law, the provisions of Palmetto Bluff's governing documents, which purport to run with the land and bind successive owners, and which require successive owners to pay fees to a for-profit entity, are unenforceable, pursuant to the Statute. This Court should grant summary judgment to Plaintiffs on this issue.

II. **Mandatory "membership" in a for-profit Club is unlawful.**

The constellation of Palmetto Bluff governing documents purport to obligate residential owners to join the Palmetto Bluff Club. The springboard for this requirement is Chapter 19 of the Community Charter. (*See supra* and Compl. Ex. 1, p. 55). As discussed in Argument I, the purported covenant to pay fees to the Club is an unenforceable transfer fee covenant. In addition to the unlawfulness of the fees themselves, the Charter's requirement to join and pay ongoing dues to a for-profit entity does not touch and concern the land, and it violates public policy. *White v. JM Brown Amusement Co., Inc.*, 360 S.C. 366, 601 S.E.2d 342 (2004) ("courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.").

The Community Charter is the Developer's declaration of covenants, conditions, restrictions, and easements for the Palmetto Bluff community. "Restrictive covenants affecting real property cannot be properly and fully understood without resort to property law." *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014).

In the common law of real property, there is a distinction between (1) personal and (2) real interests in real estate. Personal interests are referred to as licenses, or interests “in gross.” Real interests are referred to as appurtenances, or “real” interests.

An appurtenant or “real” interest is one that “touches and concerns the land.” *Epting v. Lexington Water Power Co.*, 177 S.C. 308 (1935) (real “covenant must relate to the reality demised, having for its object something annexed to or inherent in, or connected with the land.”). Appurtenant interests run with the land, meaning they are bound to the land, and not to the person. *Kinard*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014) (real covenants “‘run with the land,’ meaning that they are enforceable by and against later grantees.”).

In contrast, a license is an authority “to do one or more acts on another’s land, without possessing any interest therein.” *Paine Gayle Props., LLC v. CSX Transp., Inc.*, 400 S.C. 568, 735 S.E.2d 528 fn.6 (S.C. App. 2012) (emphasis added), citing *Main v. Thomason*, 535 S.E.2d 918, 342 S.C. 79, 92 fn.5 (2000) (interest was a mere license because respondent was not given any ownership interest in appellant’s property). Licenses and interests in gross are personal and revocable: they cannot be transferred or assigned. *Brasington v. Williams*, 143 S.C. 223, 141 S.E. 375, 382 (1927) (license is a “mere personal privilege . . . incapable of transfer . . . and . . . not, therefore assignable or inheritable.”).

A nutshell summary of hundreds of years of property law: “real” property interests involve a possessory interest in property, and they run with the land; “licenses” are personal, non-possessory, and they do not run with the land.

Here, many of the covenants within Palmetto Bluff's Community Charter are indeed real covenants, which touch and concern the land. The Charter runs with the common areas within Palmetto Bluff, which are owned by the Trust and include things like the roads, landscaping, biking and walking trails, village squares, and other community property. Chapter 2 of the Charter explains that every residential owner has a possessory interest in the common property: "every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the designated Common Areas . . . Such Common Areas are appurtenant to the title to each Unit." (Compl. Ex. 1, p. 5). The covenant to pay assessments to the Trust comes in exchange for the appurtenant easement rights to the common property, and therefore touches and concerns the land. This motion for summary judgment does not pertain to those real covenants.

In stark contrast, "membership" in the Club **"do[es] not grant any ownership rights in the Club Property or Club Facilities** in favor of any member but, rather, grants a **non-exclusive license** to use the Club Facilities subject to full compliance with all obligations imposed by this Membership Plan." (Compl. Ex. 4, Plan, p. 2; *see also* Charter, Compl. Ex. 1 p. 48 § 16. 1, "Neither membership in the Trust nor ownership or occupancy of a Unit shall confer any ownership interest in [the Club Property] . . ."). Moreover, the dues charged by the Club do not return to the land—they expressly are not for the maintenance or benefit of common property:

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.

(Compl. Ex. 4, p. 8) (emphasis added). The Club is a for-profit limited liability company.

As a matter of law, the purported requirement to “join” and pay dues to the Club in exchange for a mere revocable license is not a real covenant. It fails the “touch and concern” test because no appurtenant or possessory interest in property is given (a license is personal and non-transferrable; it does not run with the land nor inhere in the land) and because the dues charged do not return to the land.¹²

The facts in *Midsouth Golf LLC v. Fairfield Habourside II Condominium Association, Inc.*, are analogous to the facts in this case. 652 S.E.2d 378 (N.C. App. 2007). *Midsouth Golf* involved the levy of a “Recreational Amenities Charge” on subdivision homeowners. The property supported by the amenity charge was owned by a third party. Homeowners had no property interest in the recreational amenities, but they had a revocable license to use the amenities on terms set by the separate owner of that property. Homeowners were also subject to assessments to support common properties owned by the homeowners’ association in which homeowners had an easement of use that was appurtenant to their lots.

The *Midsouth Golf* court held that assessments to pay a recreational amenity charge did not touch and concern the homeowners’ land because no real property interest in the

¹² The Founder is aware that Chapter 19 is unlawful, and it is aware that it does not touch and concern the land. 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.” (Compl. Exhibit 2, 57th Supplement to Community Charter). This additional language, **which still does not convey any real interest in the Club property** does not magically transform a strictly personal license into a real covenant.

amenities was attached to their lots. On the other hand, the obligation to pay assessments to support common properties did touch and concern their land because an easement to use the common properties was attached to and appurtenant to their lots. The *Midsouth Golf* court stated, “Defendants do not have any easement rights in the recreational amenity charge; they only have easement rights in the common areas, or parks within Fairfield Harbour. . . . We find this to be a key distinction and hold that, in the present case, the covenant to pay amenity fees does not touch and concern Defendant’s properties.” *Id.* Courts in several other states have held the same, in the same circumstances.¹³

As discussed above, and regardless of what other states have held, the South Carolina Legislature specifically found that covenants which do not touch and concern the land are against public policy, because they impair the marketability of title and constitute unreasonable restraints on the alienation of property. S.C. Code § 27-1-70(B). More importantly, **the Legislature declared that fees paid to a third-party (other than a homeowners’ association) do not touch and concern the land.** *Id.* The Charter’s purported “mandatory” and “automatic” requirement that owners pay dues to for-profit

¹³ See, e.g., *Ebbe v. Senior Estates Golf and Country Club*, 61 Or.App. 398, 407, 657 P.2d 696, 701-02 (1983) (payment of an initiation fee for membership into a golf club did not touch and concern land when membership was mandatory for initial purchasers, but neither mandatory nor guaranteed for subsequent purchasers); *Carnegie at One Tower Drive, LLC v. Carnegie Heights Condominium Association*, Case No. NC-2016-0235 (R.I. Super. 2018) (“the affirmative covenant in paragraph five does not touch and concern the land because it is a requirement for initial Tower unit owners to purchase memberships in the Golf Club which [is] not upon, connected with, or attached to the [Tower units] in any way . . . because the covenant in question concerned payment of fees for a Golf Club membership and the initial Tower unit owners did not have any easement rights to the Golf Club facilities, the covenant did not touch and concern the land and thus is a personal covenant between the contracting parties.”).

entity in exchange for a mere license, which may be revoked or terminated unilaterally at any time without notice, is *per se* against public policy. “Freedom of contract is subordinate to public policy; agreements that are contrary to public policy are illegal.” *Branham v. Miller Elec. Co.*, 237 S.C. 540, 545, 118 S.E.2d 167, 170 (1961) (emphasis added); *see also Ward v. W. Oil Co.*, 387 S.C. 268, 275 n.5, 692 S.E.2d 516, 520 n.5 (2010) (refusing to enforce an illegal contract because to do so “would violate statutory law and, in turn, public policy”), *Berkebile v. Outen*, 311 S.C. 50, 53–54, 426 S.E.2d 760, 762 (1993) (stating “[a]n illegal contract has always been unenforceable”), *Batchelor v. American Health Ins. Co.*, 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy – as expressed in constitutional provisions, statutes, or judicial decisions – are void).

The obligation within the governing documents of Palmetto Bluff, ostensibly binding owners to pay fees to a for-profit Club on “adjacent” property in exchange for a mere personal, revocable license are unlawful and void; they violate the public policy of this State which is opposed to covenants that do not touch and concern the land. This Court should grant summary judgment to Plaintiffs on this issue, as a matter of law.

III. The Palmetto Bluff Club’s unrecorded, indefinite, and ever-changing governing documents are unlawful, unconscionable, and void.

As discussed above, the governing documents for the Palmetto Bluff Club are not of record. And yet, the Developer and the Club contend that a purchaser of property, “by acceptance of a deed” “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 may be amended from time

to time without the consent of the [residential property] Owners.” (Compl. Ex. 1, p. 55). *After* a person has become an “Owner” of residential property, “current copies of the Palmetto Bluff Club Documents” will be provided “upon request.” (Id.)

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). 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, or those that violate public policy. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993).

The test for determining whether a contract is unconscionable has two prongs. Courts will look to see (A) whether there is an absence of meaningful choice, and (B) whether the terms are oppressive and one-sided. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016) (“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, the provisions of the governing documents themselves leave no question that there is no meaningful choice here—mere “acceptance of a deed” for property within Palmetto Bluff ostensibly means that a person “**shall automatically** assume and agree to be bound by all the terms and conditions of the Palmetto Bluff Club Documents.” (*Supra* pp. 5, 8-11) (emphasis added). The use of the word “shall” indicates as a matter of law that the provision is mandatory. *Southern Atl. Fin. Serv. v. Middleton*,

356 S.C. 444, 590 S.E.2d 27 (2003), *citing Collins v. Doe*, 352 S.C. 462, 574 S.E.2d 739 (2002) (use of words such as “shall” or “must” indicates a mandatory requirement); *see also, Ex Parte Tolbert*, 206 S.C. 300, 34 S.E.2d 49 (1945) (“Taken literally, the word ‘shall’ is mandatory.”). The Club’s governing documents are 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.

Notably, the alleged governing documents for the Palmetto Bluff community are many hundreds of pages long. They include a Community Charter which has been amended and supplemented at least eighty-one (81) times, and a separate recreational covenant which has been amended and supplemented at least sixty-eight (68) times. Troublingly, these hundreds of pages of documents purport to incorporate the “Palmetto Bluff Club Documents,” but the Club has never recorded a copy of its 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.

At real estate closings for properties at Palmetto Bluff—or, often, after the closing is done—the Club interjects contractual “Membership Agreements,” which “agreements” are “mandatory;” the Club states that “all persons **must** mail or deliver to the Membership Office a fully completed and signed Membership Agreement.” (Compl. Ex. 4). The “agreement” ostensibly memorializes something “automatic” and mandatory that occurs “by acceptance of a deed.” (Compl. Ex. 1, p. 55). There is no opportunity whatsoever to negotiate these mandatory “automatic” provisions. Elsewhere within the hundreds of pages of fine print, 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.” (Compl. Ex. 1, 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.” (Compl. Ex. 4, 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. (Compl. Ex. 4, Plan, p. iii).
- Any Owner of a residence or homesite within Palmetto Bluff **must become a member of the Club**. (Compl. Ex. 4, 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. (Compl. Ex. 4, 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**. (Compl. Ex. 4, Plan, p. 2).

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 Palmetto Bluff Club Documents are classic contracts of adhesion under South Carolina law, this Court should find them to be unconscionable.

B. Oppressive and one-sided terms

The second prong of the unconscionability analysis is a determination of whether the purported contract 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 the law and public policy, and limitation on statutory remedies. *Simpson*, 644 S.E.2d at 663, 373 S.C. at 14. Here, the Palmetto Bluff Club Documents (purport to) strip members of statutory remedies, violate South Carolina’s statutory prohibition against real property transfer fee covenants, and are 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, many of which are not public record, it is reasonable to conclude that no fair or honest person would accept them—if they even knew they existed.

This Court should find that the unrecorded Palmetto Bluff Club Documents are oppressive, unreasonable, unfair, one-sided, and unconscionable as a matter of law, including for the following reasons:

1. As discussed above in Argument 1, the Club documents violate South Carolina statutory law and public policy;
2. As discussed above in Argument 2, the obligations contained in the Club documents do not touch and concern the land;
3. For the reasons discussed within Plaintiffs’ Memorandum in Support of Motion to Stay Arbitration, filed contemporaneously herewith; and
4. The Club documents contain one-sided provisions allowing unilateral amendment without notice or consent:

The Club, and only the Club, claims it may change the deal whenever it likes:

The Palmetto Bluff Club Documents may be amended from time to time without the consent of the Owners. (Compl. Ex. 1, p. 55).

Each member agrees to be bound by the terms and conditions of the Membership Documents, as they may be modified from time to time. (Compl. Ex. 4, Plan, p. 5).

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. (Compl. Ex. 4, Plan, p. 6).

The Club may terminate the privileges of any or all Significant Others in its discretion. (Id.).

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.).

The Club will determine the amount of dues ("Club Dues"), fees, and charges to be payable by [automatic, mandatory] members each year . . . The amount of Club Dues, fees, and other charges is subject to change from time to time by the Club. (Id. at p. 9).

In no event may a Community member waive or otherwise escape liability for Club Dues, User Fees and other charges . . . by the non-use or waiver of the right to use the Club Facilities or by the abandonment of a residence or homestead. (Id. at p. 10).

The Club shall have the right at all times to adopt rules and regulations governing the use of the Club Facilities. (Id. at p. 13).

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 . . . all of which may be amended from time to time by the Company in its sole and absolute discretion. (Id. at p. 14).

This vast capacity for one-sided alteration of the governing documents is unreasonable and oppressive, and it demonstrates a lack of mutuality that a reasonable person – (given the choice) (which Plaintiffs were not) – would find unfair and unreasonable.

Moreover, this purported unilateral amendment power is unlawful. Contract law is clear that a contract can only be altered by both parties to the contract, not by one party alone. *See Lee v. Univ. of S.C.*, 407 S.C. 512, 757 S.E.2d 394 (2014) (noting that once a contractual bargain is formed, and the obligations are set, that the contract can only be altered by mutual agreement and for further consideration), *citing* 17A Am.Jur.2d Contracts § 507 (“[O]ne party to a contract may not unilaterally alter its terms.”); *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 405, 581 S.E.2d 161 (2003) (“We cannot find anything in *Fleming* or elsewhere that allows a party to alter the terms of a bilateral contract by unilateral modification. It is well established that ‘[a] written contract may be modified by a subsequent agreement of the parties, provided the subsequent agreement contains all the requisites of a valid contract,’” *quoting Florence City-County Airport Comm’n v. Air Terminal Parking Co.*, 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984)). This Court should find that the presence of terms ostensibly permitting unfettered change to the governing documents by one side renders the Club’s Governing Documents unconscionable and unenforceable.

The Club’s unrecorded and ever-changing Governing Documents, which include copious rules, guidelines, agreements, fee schedules, and policies, are saturated with unlawful provisions, which have metastasized to make them unenforceable. Moreover, the Club’s documents deliberately do not contain a severability provision, although, as the drafter, the Club certainly could have included one. Therefore, this Court should find that the above unfair and oppressive provisions render the entire “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 is a question of law, and Plaintiffs respectfully request that this Court would grant summary judgment in their favor on this issue.

IV. Additionally, or alternatively, the for-profit Club is nonetheless subject to the South Carolina Homeowners’ Association Act, and therefore the Club’s unrecorded governing documents are unenforceable.

As discussed above, the Palmetto Bluff documents are many hundreds of pages long, and they have been amended more than a hundred times. The documents contain misleading terms, which a layperson could easily misunderstand to suggest that the Club is akin to a secondary homeowners’ association. For example, the Charter never once mentions the corporate form of the Club, which is a for-profit limited liability company. The Charter, which is the Developer’s declaration for the Palmetto Bluff community, gives lip service to the idea that the Club amenities are for the benefit of the residential owners, and it purports to require homeowners within the community to pay dues and assessments to the Club. Moreover, Defendants themselves suggest—in opposition to Plaintiffs’ transfer fee covenant argument—that Club might “qualify as an association.”¹⁴

In 2019, the Legislature enacted the South Carolina Homeowners’ Association Act (the “HOA Act”), which regulates homeowners’ associations and their governing

¹⁴ See *Defendants’ Memorandum in Opposition to Motion for Summary Judgment*, p. 11; Defendants contend this is a question of fact under the transfer fee Statute—but it is not. The Statute expressly defines “association” as a “nonprofit,” and there is no question of fact that a for-profit entity does not meet the definition. See S.C. Code § 27-1-70(A)(1). The HOA Act, however, does not define homeowners’ associations by their corporate form.

documents. 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 to the Club.

Therefore, the Club fits the HOA Act's definition of a homeowners' association:

"Homeowners association" or "association" means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration

S.C. Code § 27-30-120, Definitions.

The South Carolina Homeowners Association Act required that the Club's governing documents (including its bylaws, rules, and regulations) must have been recorded on or before January 10, 2019, in order to remain enforceable. S.C. Code § 27-30-130 ("Enforceability of governing documents"). 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.

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, as a matter of statutory law. Plaintiffs respectfully request that this Court would grant them a declaratory judgment on this issue, pursuant to the HOA Act.

CONCLUSION

This is a complex case, involving numerous causes of action – several of which will be fact intensive. Similarly, the determination of damages will involve issues of fact. Plaintiffs seek partial summary judgment, in the form of declaratory judgments, at the outset of this case on the above discrete questions of law, for the purpose of efficiency and economy going forward. Because the provisions of the governing documents discussed above are unambiguous, and because statutory law is clear, Plaintiffs respectfully request that this Court would grant summary declaratory judgments in their favor on each of the above issues.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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July 17, 2022
 Charleston, South Carolina

2021 ANNUAL FEE *schedule*

EFFECTIVE JANUARY 1, 2021

Palmetto Bluff Club Joining Fee	\$ 20,000
Standard Community Assessments and Club Dues	
Palmetto Bluff Preservation Trust	
<i>Annual Assessments</i>	\$ 4,382
Palmetto Bluff Club	
<i>Annual Dues</i>	\$ 4,615*
<i>With taxes</i>	\$ 4,961
Total (with taxes)	\$ 9,343
Additional Neighborhood Assessments	
Anson Park	
<i>billed annually, paid to Palmetto Bluff Preservation Trust</i>	
Unimproved	\$ 685
Improved	\$ 463
Headwaters Trust	
<i>billed annually, paid to Headwaters Trust</i>	\$ 10,000
Longfield	
<i>billed annually, paid to Palmetto Bluff Preservation Trust</i>	
All Properties	\$ 840
The Point Trust	
<i>billed annually, paid to Palmetto Bluff Preservation Trust</i>	
Unimproved	\$ 692
Improved	\$ 417
West Wilson Village	
<i>billed quarterly, paid to Palmetto Bluff Preservation Trust</i>	
Landscape/Exterior	\$ 2,295
Wilson Village	
<i>billed quarterly, paid to Palmetto Bluff Preservation Trust</i>	
Small Landscape/Exterior	\$ 2,437
Medium Landscape/Exterior	\$ 3,023
Large Landscape/Exterior	\$ 3,609
Wilson Cottages	\$ 1,917
Boat House Row Residential	
<i>billed annually, paid to Palmetto Bluff Preservation Trust</i>	
BHR1	\$ 20,632
BHR2	\$ 21,843
BHR3	\$ 22,449
BHR4	\$ 21,238

*Add an additional 5% S.C. State and 2.5% County Admissions Tax
All rates are subject to change without prior notice.



PALMETTO BLUFF

19 Village Park Square | Bluffton, SC 29910 | 843.706.6400 | palmettobluff.com

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

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 Alberro; 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.

**ADDITIONAL PLAINTIFFS'
MOTION FOR
PARTIAL SUMMARY JUDGMENT**

TO: VAL H. STIEGLITZ, ESQUIRE, AND THE DEFENDANTS ABOVE-NAMED

You will please take notice that Plaintiffs 315 Corley CW LLC, 368 Mount Pelia 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, 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, individually, derivatively, and as class representatives (“Plaintiffs”), **hereby join in Plaintiffs Bridge Charleston Investments B LLC, Geoffrey J. Block, and Jennifer Albero’s Motion for Summary Judgment, filed on June 9, 2022.**

Plaintiffs adopt and fully incorporate herein all arguments made by Plaintiffs Block, Albero, and Bridge Charleston Investments B, LLC, including those made within their Motion, supporting affidavits, and any memorandum of law filed by them.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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July 17, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

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' RESPONSE TO
DEFENDANTS' MEMORANDUM
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PURSUANT
TO RULE 12(B)(8)**

Plaintiffs hereby respond to Defendants' arguments within Defendants' Memorandum in Support of Defendants' Motion to Dismiss, filed July 15, 2022 ("Defendants' Memo").

Defendants are wrong that *arbitration filings*—made after the commencement of this action—compel dismissal pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.

First, Rule 12(b)(8) only applies when “another action is pending.” An arbitration does not constitute an “action” under the rules. The Rules of Civil Procedure apply to “South Carolina Courts” as to “suits of a civil nature.” (Rule 1, SCRCP). **The rules specifically define what constitutes an “action”:**

RULE 2: “There shall be one form of action to be known as ‘civil action.’”

It is clear from this definition, and from the rules in general, that an “action” is one commenced in a “trial court of civil jurisdiction.” Rule 81, SCRCP (“Applicability”); *see also*, Rule 3 (“Commencement of Action”). **Filings with the American Arbitration do not meet this definition, and they therefore do not constitute an “action” under Rule 12(b)(8).** This Court may stop reading here and deny Defendants’ motion to dismiss because it is made pursuant to a rule that clearly does not apply.

In addition to the fact that there is no other “action” between these parties, Defendants gloss over the determinative fact that the arbitration filings were made later, after the commencement of this lawsuit. This civil action was commenced first, invoking the jurisdiction of this Court first—before any arbitration filings were made, by any party. Rule 12(b)(8) operates to dismiss an action that is subsequently filed, when another action is already pending. *See* James F. Flanagan, *South Carolina Civil Procedure* pp. 105-106 (3d ed. 2010) (noting “the second action could be refiled at the conclusion of the first.”). Rule 12(b)(8) is based on the legal principle of the “first-filed rule,” which allows that

“when two courts have concurrent jurisdiction over a dispute involving the same parties and issues, as a general proposition, the forum in which the first-filed action is lodged has priority.” 15 Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3854, Westlaw (database updated Apr. 2016); *Black’s Law Dictionary* 780 (11th ed. 2019) (“first-to-file rule” “The principle that, when two suits are brought by the same parties, regarding the same issues, in two courts of proper jurisdiction, the court that first acquires jurisdiction usu. retains the suit, to the exclusion of the other court.”). South Carolina case law provides that once a case is filed in a specific court, that court retains jurisdiction: “Our supreme court found that because the jurisdiction of a court attaches to the person and subject matter of the litigation, any subsequent happenings ‘will not ordinarily operate to oust the jurisdiction already attached.’” *Meehan v. Meehan*, 407 S.C. 471, 756 S.E.2d 398, 402 (Ct. App. 2014); *cf. Gilley v. Gilley*, 327 S.C. 8, 11, 488 S.E.2d 310 (1996) (“The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached.”)

Plaintiffs’ initial filing of the summons and complaint in circuit court commenced a civil action, pursuant to the rules, on April 12, 2022. *See* Rule 3, SCRCPP. Plaintiffs’ civil action was pending at the time that Defendants later made their arbitration demands, on May 23, 2022. Rule 12(b)(8) does not apply to dismiss a circuit court case when a Defendant later lodges a proceeding in a different forum. If the rule worked that way,

any defendant could get a case dismissed simply by filing in a different venue at a later date.

Finally, Rule 12(b)(8) is construed and applied “narrowly” and according to a stringent test that requires “**identity** of parties, causes of action and relief.” *Capital City Ins. Co. v. Bp Staff, Inc.*, 674 S.E.2d 524, 382 S.C. 92 (Ct. App. 2009) (holding, “we interpret the rule narrowly”). This Court should be aware that Defendants misrepresent the arbitration filings, attempting to cram the facts into a “narrow” shoe that does not fit. Defendants mis-identify the parties and claims at issue in arbitration, which are different from those in this civil action. For example, Defendants state that on “April 14, the same Plaintiffs filed a Demand for Arbitration before the AAA.” (Def. Memo. p. 2). Not at all. Here is an important excerpt from Plaintiffs’ filings with the AAA, which Defendants conspicuously leave out:

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.

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.**

Defendants disingenuously state, “It is unclear whether Plaintiffs intended for their initial AAA filing to be directed to just one of the Defendants” Def. Memo. p. 3. But Plaintiffs made perfectly clear that their claim was directed only at Palmetto Bluff Club, LLC, and that it was only to be considered by AAA “after the conclusion of the Lawsuit.”:

Name of Respondent: Palmetto Bluff Club, LLC		
Address: 651 Old Moreland Rd.		
City: Bluffton	State: South Carolina	Zip Code: 29910

Moreover, Defendants omit that there are three Plaintiffs who were entirely uninvolved in the initial arbitration filings (Plaintiffs Albero, Block, and Bridge Charleston B, LLC), and one Plaintiff whom Defendants have never called into arbitration at all (Bridge Charleston B, LLC).

In other words, even if this Court goes on to interpret the case law pertaining to Rule 12(b)(8), the facts of this case do not meet the stringent test “that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).” *Capital City Ins. Co. v. Bp Staff, Inc.*, 674 S.E.2d 524, 382 S.C. 92 (S.C. App. 2009) (rule traditionally applied “only . . . when there

was identity of parties, causes of action and relief”) (holding, “we interpret the rule narrowly”).

For these reasons, including because a later-filed arbitration does not constitute a “pending” “action” under Rule 12(b)(8), SCRCPP, in addition to those stated within Plaintiffs’ Memorandum in Support of Motion to Stay Arbitration and other filings, this Court should deny Defendants’ Motion to Dismiss.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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July 19, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

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 Trustee of the Bosler-Hart Trust; Geoffrey J. Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina Leigh-Jones and Chris Leigh-Jones; Jennifer Alberro; 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.

**DEFENDANTS' MOTION TO ALTER
OR AMEND ORDER GRANTING
PLAINTIFFS' MOTION TO STAY
ARBITRATION, DENYING
DEFENDANTS' MOTION TO COMPEL
ARBITRATION, AND DENYING
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"), by and through their undersigned counsel, respectfully move the Court, pursuant to Rule 59(e), SCRCP, to reconsider, alter or amend its Order entered September 15, 2022, granting Plaintiffs'

Motion to Stay Arbitration and Application for Summary Proceedings on the Invalidity of the Purported Arbitration Clause (“Plaintiffs’ Motion to Compel Arbitration”), and denying Defendants’ Motion to Dismiss (“Defendants’ Motion to Dismiss”) or, in the Alternative, to Compel Arbitration and Stay (“Defendants’ Motion to Compel Arbitration”) (the “Order”). This Motion is made on the following grounds.

LEGAL STANDARD

The decision to grant or deny a Rule 59(e) motion lies within the sound discretion of the trial court. *See Pollard v. City of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). Courts have generally recognized four basic grounds upon which a motion under Rule 59(e) may be granted: (1) where the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) where newly discovered or previously unavailable evidence comes to light after the judgment; (3) where the motion is necessary to prevent manifest injustice to the moving party; or (4) where there is an intervening change in the controlling law. 11 Charles A. Wright *et al.*, *Federal Practice and Procedure* § 2810.1, at 124-27 (2d ed. 1995).

Rule 59(e) also allows parties to move for “reconsideration of issues and arguments,” and “a motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “When an issue or argument has been raised to but not ruled upon by the circuit court, a party must file a Rule 59(e) motion in order to preserve it for appellate review.” *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011) (citing *Elam*, 361 S.C. at 24, 602 S.E.2d at 780). “Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented ... There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention

to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Elam*, 361 S.C. at 21–22, 602 S.E.2d at 778–79. Courts should “freely allow[] a motion for reconsideration” because it provides the Court with “the opportunity promptly to correct their own alleged errors.” *Id.* at 22, 602 S.E.2d at 779 (quoting *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 837 (7th Cir. 1999)).

**ARGUMENT AS TO PLAINTIFFS’ MOTION TO STAY ARBITRATION AND
DEFENDANTS’ MOTION TO COMPEL ARBITRATION**

A. The Transactions at Issue Involve Interstate Commerce Such that the FAA Applies.

The Court states in its Order that “[t]he development of real property does not involve interstate commerce, and therefore the South Carolina Uniform Arbitration Act (“SCUAA”) applies.” (Order at 6.) However, the issues in this case do not involve the development of real estate; rather, they pertain to certain Palmetto Bluff governing documents, including but not limited to Plaintiffs’ claims that various such documents are being used to restrict access to Palmetto Bluff Club amenities by short-term renters. These renters necessarily include individuals located outside of the State of South Carolina and such rentals are marketed nationwide. The Court’s Order cites a case in which the Supreme Court held that “[t]he rental of real estate is unquestionably [an activity affecting interstate commerce.]” (Order at 6-7 (quoting *Russell v. U.S.*, 471 U.S. 858, 862 (1985).) However, and despite recognizing that Plaintiffs have alleged “Defendants’ acts interfere with Plaintiffs’ short-term rental of their properties,” (Order at 6), the Court does not explain why the interstate marketing and rental of real estate fails to involve interstate commerce here. Applying *Russell*, the Court should conclude that the claims at issue pertain to the rental of real estate, which affects interstate commerce.

The Court relies on one case for the proposition that “[t]he development of real property does not involve interstate commerce,” at that case is readily distinguishable from the case at hand.

(Order at 6 (citing *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012).) The *Bradley* case does not hold that, as a matter of law, real estate transactions can never involve interstate commerce. In *Bradley*, the only agreement at issue was a purchase and sale agreement, and the only transaction at issue was the purchase by a South Carolina resident of completed, residential real estate located in South Carolina. The Court explained that the sale at issue focused entirely on the commodity—the land—in one state. Here, by contrast, the agreements and transactions at issue are not “strictly for the purchase of a completed residential dwelling.” Indeed, the *Bradley* court indicated that, even in the narrow context of such real estate transactions, there may be circumstances where sufficient evidence of a nexus to interstate commerce exists. Thus, reliance on *Bradley* is not only misplaced, but, in applying *Bradley*, the Court should have considered whether the allegations and arguments before it showed a nexus to interstate commerce—which they undoubtedly do.

The *transactions* at issue also involve interstate commerce. Under the Federal Arbitration Act (the “FAA”), “[a] written provision in ... a contract evidencing a transaction involving interstate commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Here, the documents containing the arbitration agreements arise pursuant to Plaintiffs’ purchases of their respective properties within Palmetto Bluff and affect interstate commerce. Specifically, eight of the property owners in the Plaintiff-group are out-of-state residents, such that their purchases were interstate transactions. (See Defendants’ Memorandum in Support of Motion to Compel Arbitration and in Opposition to Plaintiffs’ Motion to Stay Arbitration (“Defendants’ Mot. to Compel Memo.”) at Ex. A.)

Plaintiffs' purchases of properties at Palmetto Bluff, and their membership in the Club, clearly touch and concern commerce across state lines.

"Unless the parties have contracted to the contrary the FAA applies in Federal or State Court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Moreover, "interstate commerce" is broadly interpreted under the FAA. *See Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 273-74 (1995) ("The initial interpretive question focuses upon the words 'involving commerce.' These words are broader than the often-found words of art 'in commerce.' They therefore cover more than 'only persons or activities within the flow of interstate commerce.' ... [The] phrase—'affecting commerce'—normally signals Congress' intent to exercise its Commerce Clause powers to the full ... [and] the word 'involving' is broad and is indeed the functional equivalent of 'affecting.'") (citations and some internal quotation marks omitted). Because the evidence before the Court demonstrates a nexus between Plaintiffs' claims and interstate commerce, and between the transactions and arbitration agreements at issue and interstate commerce, the FAA, not the SCUAA, applies.

B. The Arbitration Panel, Not the Court, Should Decide Issues of Substantive Arbitrability.

AAA Rule R-7, referenced in and incorporated into the arbitration agreements, provides that the arbitrator, not the Court, is to decide both the scope of his/her own jurisdictions and "any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." AAA Rule R-7(a). It further provides "[t]he arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part." *Id.* R-7(b). "By incorporating the AAA Rules into their agreement, the

parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid.” *Terminix Int’l Co., LP v. Palmer Ranch Ltd. P’ship*, 432 F.3d 1327, 1332 (11th Cir. 2005).

To the extent AAA Rule R-7 and S.C. Code Ann. § 15-48-20 may facially conflict, the FAA resolves the conflict in favor of Rule R-7. The United States Supreme Court has held that the FAA allows parties to agree to have an arbitrator decide “whether the parties have agreed to arbitrate,” and has specifically enforced such a “delegation provision” in the AAA Rules. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). Unless the party claiming unconscionability specifically challenges the “delegation provision,” the FAA requires a court to “treat [the delegation provision] as valid ... and must enforce it ..., leaving any challenge to the validity of the Agreement as a whole for the arbitrator.” *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 65 (2010); accord *Henry Schein*, 139 S. Ct. at 528. Under *Henry Schein* and *Rent-A-Center*, Plaintiffs’ failure to specifically challenge the delegation provisions of Rule R-7 means that the validity of Plaintiffs’ agreement to arbitrate must be left to the arbitrator. The Court’s Order does not consider either the delegation provision in the AAA Rules or Plaintiffs’ failure to challenge it.

The *Simpson* case, relied upon by Plaintiffs, is inapplicable. *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 373 S.E.2d 14 (2007). There, the Court declined to apply a delegation clause because the party resisting arbitration “challenged the validity of the entire arbitration clause on grounds of unconscionability.” *Simpson*, 373 S.C. at 24, 644 S.E.2d at 668. *Simpson* does not apply here because its factual and commercial setting is nothing like this case. *Simpson* involved an unsophisticated individual, with no bargaining power, making a consumer purchase of a necessity of modern life (a car). Here, in stark contrast, Plaintiffs are (or are owned and/or

controlled by) extremely sophisticated, high-income individuals, with significant bargaining power, and who spent hundreds of thousands of dollars to make a discretionary luxury and lifestyle purchase that can hardly be considered a “necessity.” (See Ex. B to Defendants’ Mot. to Compel Memo.) The factors that caused the Court in *Simpson* to find the arbitration clause invalid constrain the exact opposite result here.

Simpson is out of sync with our Courts’ numerous more recent rulings that unmistakably favor arbitration. Indeed, the FAA preempts State-law impediments to arbitration. See *Doctor’s Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996) (“Courts may not, however, invalidate arbitration agreements under state laws applicable only to arbitration provisions.”) Preemption also applies “when a doctrine normally thought to be generally applicable, such as ... unconscionability, is ... applied in a fashion that disfavors arbitration,” and thus “stand[s] as an obstacle to the accomplishment of the FAA’s objectives.” *AT&T Mobility LLC v Concepcion*, 563 U.S. 333, 341, 342 (2011). And the later decisions in *Henry Schein* and *Rent-A-Center* abrogate *Simpson* in the face of the delegation clause at issue here. As the Court of Appeals recently acknowledged, under current law “the court still retains the right and duty to determine whether the delegation is valid and enforceable” only “as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause specifically, rather than the arbitration agreement as a whole.” *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020) (holding the arbitration clause did not “delegate the decision of whether the Agreement was valid and enforceable,” which “remove[d] the Agreement from the reach of *Rent-A-Center*.”)

Thus, under the FAA, the Court was required to leave the issue of the existence of an arbitration agreement to the arbitrator. That conclusion holds even if the Court found some

ambiguity in the Membership Agreement or Membership Plan's arbitration language, or the AAA rules that the agreements incorporate by reference. "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985) (citations omitted). Accordingly, all issues concerning arbitrability, including questions as to the validity of the arbitration provisions, should be directed to the arbitration panel.

C. The Arbitration Agreements Are Valid and Enforceable.

(1) The Arbitration Agreements Are Not Subject to the Conspicuous Notice Requirements of the SCUAA or, if They Are, They Satisfy Such Requirements

For the reasons set forth above, Plaintiffs' claims and the transactions and arbitration agreements at issue involve interstate commerce, such that the FAA, not the SCUAA, applies. Thus, any provisions of the SCUAA imposing special burdens on arbitration agreements, including its conspicuous notice provisions, are preempted by the FAA and are inapplicable to the arbitration agreements at issue. That specifically includes arbitration-specific notice or typeface requirements. *See Doctor's Associates*, 517 U.S. at 688.

But even if the SCUAA's conspicuous notice requirements applied (which they do not), the Membership Agreement, which specifically refers to and incorporates the Membership Plan, complies with those requirements. The Court acknowledges "Defendants have produced Membership Agreements with this Notice on the first page," but states "Plaintiffs contend this is insufficient under the Act." (Order at 17.) The Court's Order goes on to hold that, although the proper arbitration notice appeared on the first page of the Membership Agreements, it nonetheless fails the SCUAA's requirement that the notice appear on the first page where the contract at issue is "buried within hundreds of pages of real estate closing documents." (Order at 18.) This holding is unsupported by law and imposes additional requirements from those plainly set forth in the

SCUAA. Nowhere does the SCUAA say that the required notice must appear on the first page of the first document or contract exchanged in a transaction—just the first page of the contract containing the arbitration provision. This extra-textual requirement imposed by the Court goes against the strong State and Federal policies favoring the enforceability of arbitration agreements. And the spurious additional requirement makes no sense here because the Plaintiffs actually signed the Membership Agreements, precluding any contention that the notice was “buried” and thus undiscoverable.

(2) The Arbitration Agreements are Not Unconscionable

i. Plaintiffs Did Not Lack Meaningful Choice

The Court’s Order states that the Plaintiffs lacked meaningful choice in agreeing to the arbitration provisions because the agreements are ones of adhesion. (Order at 19-22.) It is well-established under South Carolina law, however, that “[t]he fact that a contract is one of adhesion does not make it unconscionable.” *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 901 (Ct. App. 1998). Unconscionability “requires a greater showing” than mere contracts of adhesion. *Id.* at 395-96, 498 S.E.2d at 902. *See also Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) (holding that adhesion contract conditioning employment on acceptance of arbitration policy was not unconscionable). In fact, our Courts have acknowledged that adhesion contracts “serve a very useful purpose in commerce,” including promotion of economic efficiency. *Id.*

While the Order recognizes that “modern real estate developments are filled with mandatory covenants, including covenants that require payments of fees, charges, and assessments,” it appears to suggest that the “adhesive” nature of the arbitration agreements is exacerbated by the number of supplements and amendments to the Community Charter. (Order at

20.) But the arbitration provisions at issue are in the Membership Plan and Membership Agreement, not the Community Charter—and, although the Community Charter incorporates the Palmetto Bluff Club Documents, the Order recognizes that “Plaintiffs have produced no evidence these supplements and amendments impact Plaintiffs’ claims.” (*Id.*) Nor can they, because as a matter of law, when determining the validity and enforceability of an arbitration provision, the Court may only consider the arbitration provision itself. *See Munoz*, 343 S.C. at 540, 542 S.E.2d at 364 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)); *see also One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418 S.C. 51, 64, 791 S.E.2d 286, 293 (Ct. App. 2016); *Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 260, 743 S.E.2d 868, 874 (Ct. App. 2013). Any challenges to other provisions of a contract that are not part of the arbitration clause are irrelevant to a determination of the validity and enforceability of the arbitration clause.

A court must also consider certain factors in determining whether there was an absence of meaningful choice. These include: (1) the nature of the injuries suffered by the plaintiff; (2) whether the plaintiff is a substantial business concern; (3) the relative disparity in the parties’ bargaining power; (4) the parties’ relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the clause. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669. Further, a finding of unconscionability should be made only in the most extreme circumstances:

Courts should not refuse to enforce a contract on grounds of unconscionability even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter’s evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.

Gladden v. Boykin, 402 S.C. 140, 145, 739 S.E.2d 882, 884-85 (2013). *See also* *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 (“a person who can read is bound to read an agreement before signing it”); *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“[e]very contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it”); *Towles*, 338 S.C. at 39, 524 S.E.2d at 845 (“the law does not impose a duty to explain a document’s contents to an individual when the individual can learn the contents from simply reading the document”).

Here, the Defendants’ affidavits and documents show the Plaintiffs are all extremely sophisticated and experienced business people (or LLCs owned and/or controlled by such individuals), who have amassed considerable wealth as a result of their business acumen. (*See* Ex. B to Defendants’ Mot. to Compel Memo.) Also significant is the fact that the Plaintiffs have enjoyed and taken advantage of the benefits of the contracts that contains the arbitration agreements. Finally, if they did not want to agree to the arbitration provisions, they did not need to buy a property in Palmetto Bluff. Many other properties are available, including in Lowcountry luxury developments.

ii. The Terms are Not Oppressive or One-Sided

The Court’s Order concludes the arbitration agreements are oppressive and one-sided because they “strip[] members of statutory remedies, purport[] to alter the statute of limitations, and [are] capable of unilateral amendment in the Club’s ‘sole and absolute discretion.’” (Order at 22.) However, controlling legal precedent holds that the incorporation of the AAA’s rules for arbitration demonstrates that the arbitration agreements are not oppressive, but are geared towards achieving an unbiased decision by a neutral decision-maker. *See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999) (instructing courts in analyzing claims of unconscionability in

the context of arbitration agreements to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker); *One Belle Hall*, 418 S.C. at 65, 791 S.E.2d at 294 (finding that arbitration provision facilitated “an unbiased decision by a neutral decisionmaker” where it required the purchaser to submit ‘every claim, controversy, or dispute of any kind whatsoever’ relating to [the at-issue product] or the [warranty agreement] to arbitration in accordance with the rules of the [AAA].”) (footnote omitted).

First, a (perceived) limitation on remedies available pursuant to state statutes (such as Plaintiffs’ claims under the South Carolina Unfair Trade Practices Act and South Carolina Declaratory Judgment Act) does not provide grounds upon which arbitration provisions may be invalidated. “[I]n cases where it is uncertain how the arbitrator will construe remedial limitations, the proper course is to compel arbitration.” *Rowe v. AT&T, Inc.*, No. 6:13-cv-01206-GRA, 2014 WL 172510, at *11 (D.S.C. Jan. 15, 2014) (citing *Pacificare Health Sys., Inc. v. Book*, 538 U.S. 401 (2003)). The plaintiff in *Rowe* made the same argument advanced by Plaintiffs here, similarly relying on *Simpson*. There, the District Court rejected the argument and held that the “Court will not speculate that the arbitration agreement deprives Plaintiff of all remedies or creates illusory remedies; instead, Plaintiff must first pursue her remedies through arbitration.” *Id.*

Even if the limitation on remedies were unconscionable, it could and should be severed and the agreement to arbitrate enforced. *See Huskins v. Mungo Homes, LLC*, No. 2018-000889, 2022 WL 1760628, *6 (S.C. Ct. App. Jun. 1, 2022) (holding a court may sever an unconscionable provision from an arbitration clause, even if the arbitration clause does not contain a severability provision). *See also* S.C. Code Ann. § 36-2-302(1) (2003) (“If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the

court ... may enforce the remainder of the contract without the unconscionable clause as to avoid any unconscionable result.”)

Nor does a perceived alteration to the statute of limitations invalidate the arbitration provisions because, as the Court itself recognized, “the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days.” (Order at 24.) Nonetheless, Court’s Order states that the 60-day statute of limitations language “provides further grounds for [its] decision.” *Id.* at 24-25.

Similarly, while the Order invokes the fact that the Club may unilaterally amend the arbitration provisions, there is no evidence to suggest that it has amended the provisions in an oppressive or one-sided manner, or so as to be oppressive or one-sided. Moreover, the mere fact that the Club may amend the “Membership Plan and Rules and Regulations,” without more, is insufficient to find them unconscionable, particularly where, as here, the provision permitting such amendment is not contained within or specific to the arbitration provisions themselves. *See Hill v. Peoplesoft USA, Inc.*, 412 F.3d 540, 544 (4th Cir. 2005) (holding that a provision allowing one party the unilateral right to amend did not invalidate an arbitration provision where the provision of the right to amend was not contained within the arbitration provision itself, because the court may only look to the four corners of the arbitration provision in determining its validity). *See also Noffz v. Austin Maintenance & Construction, Inc.*, No. 8:16-208-MGL-KFM, 2016 WL 4385872, at *4 (D.S.C. Jul. 25, 2016) (rejecting plaintiff’s argument that an arbitration provision was unenforceable due to a provision allowing unilateral amendment where such provision was not in the arbitration provision itself); *Hicks v. Brookdale Senior Living Communities, Inc.*, 2018 WL 4560591, at * (D.S.C. Mar. 13, 2018) (“the reservation of [the unilateral discretion to alter or amend the terms of an agreement] [does] not invalidate an arbitration agreement where, like here,

the reservation was contained in a separate policy and was not directed specifically to the arbitration agreement.”)

The Order appears to imply that the arbitration provision may be oppressive or one-sided because “the Club frequently pursues collection of dues and charges from its members outside of arbitration.” *Id.* at 22. But that does not invalidate the arbitration provisions. The Order acknowledges that “[t]here is no evidence that a property owner ever demanded these collection actions be arbitrated” —let alone evidence that the arbitration provision would not be enforced based on a demand under those circumstances. *Id.*

Thus, there is no evidence to support that the arbitration provisions are oppressive or one-sided, or that they have been enforced in an oppressive or one-sided manner. And controlling legal authority does not support a finding that, merely because a party *can* amend arbitration provisions, in and of itself, is sufficient to find them unconscionable as a matter of law.

Particularly in light of the exacting standard for unconscionability, more is required. “Due to the strong South Carolina and Federal policy favoring arbitration, arbitration agreements are presumed valid.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013). The evidence before the Court is insufficient to overcome that presumption.

(3) Defendants are Not Outside of the Limitations Period in the Arbitration Agreements

As the Court itself determined, “the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days” pursuant to the notice provision in the arbitration provisions. (Order at 24.) This conclusion by the Court contradicts the Order’s ruling that the Defendants “have waived arbitration of their claims” under the sixty-day limitation period. Moreover, Plaintiffs *did* file a demand for arbitration within sixty days of mediation. No

provision requires Defendants to make a like demand where a demand has already been made. In fact, Defendants' AAA demand is merely a request that Plaintiffs' claims be arbitrated.

Because "arbitration agreements are liberally construed in favor of arbitrability," *Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013), any doubt as to whether a claimant would be barred from bringing a claim for arbitration after the sixty-day period, or as to whether Plaintiffs' arbitration demand satisfied the sixty-day limitation for both parties, must be resolved in favor of arbitration. *See Mitsubishi*, 473 U.S. at 626. The Order fails to do so.

(4) The Community Charter Does Not Invalidate the Arbitration Provisions in the Membership Plan and Membership Agreements

The Community Charter's dispute resolution provisions are not in conflict with the arbitration provisions of the Membership Agreements and Membership Plan. Specifically, the Community Charter provides that, if the parties are unable to settle a claim at mediation, "[t]he Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, *as appropriate*." Community Charter § 18.2(c) (emphasis added). Pursuant to the arbitration provisions set forth in the Membership Agreements and Membership Plan, the appropriate mechanism for resolution of claims arising pursuant to such agreements is mandatory arbitration. It is a basic principle of contract interpretation that provisions in related documents (here, the governing documents) should be read so as to give effect to all of their provisions and to be consistent with each other, such that none is rendered meaningless. *See, e.g., M & M Group, Inc. v. Holmes*, 379 S.C. 468, 476, 666 S.E.2d 262, 266 (Ct. App. 2008); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995). That principle has added force in the arbitration context, where arbitration agreements are presumptively valid and enforceable, and arbitration should generally be ordered unless no interpretation of the arbitration clause covers the asserted

dispute. *See Landers*, 402 S.C. at 109, 739 S.E.2d at 213; *Cape Romain Contractors*, 405 S.C. at 125, 747 S.E.2d at 466.

The Order makes no attempt to reconcile the documents' dispute resolution provisions. Because the dispute resolution provisions of the Community Charter and the arbitration provisions of the Membership Plans and Agreements are capable of an interpretation which would give meaning to all such provisions, they are not in conflict and the Community Charter does not "eclipse" the arbitration provisions.

D. The Arbitration Agreements Are Enforceable Against the Nonsignatory Parties.

The Order concludes that the Court cannot compel any party to arbitration who has not executed an arbitration agreement. (Order at 8.) While it is true that arbitration is a matter of contract, overwhelming legal authority holds that a nonsignatory may be compelled to arbitrate in certain circumstances. "Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000). South Carolina courts have recognized that a nonsignatory can be bound by an arbitration provision within a contract executed by other parties. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287-97, 733 S.E.2d 597, 599-605 (Ct. App. 2012) (reversing Circuit Court's denial of motion to compel arbitration and discussing, with approval, the Fourth Circuit's recognition that a nonsignatory may be compelled to arbitration).

Specifically, one of the ways South Carolina Courts have recognized a nonsignatory can be bound to an arbitration agreement is through the doctrine of equitable estoppel. *See Wilson v. Willis*, 426 S.C. 326, 338, 827 S.E.2d 167, 174 (2019) (citing *Malloy v. Thompson*, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014)). *See also Campbell v. Anesthesia Management Solutions*,

LLC, No. 5:20-CV-3538-SAL-TER, 2021 WL 4691692, at *4 (D.S.C. July 14, 2021). The doctrine of equitable estoppel applies in two situations to compel a nonsignatory to arbitration: (1) when the nonsignatory's claims arise out of and relate directly to the written agreement containing the arbitration provision, and (2) when the nonsignatory receives a direct benefit from a contract containing an arbitration provision. *See Pearson*, 400 S.C. at 290-97, 733 S.E.2d at 601-05. *See also Kiawah Island Utility, Inc. v. Westport Insurance Co.*, No. 2:19-cv-1359-DCN, 2019 WL 5394200, at *3 (D.S.C. Oct. 22, 2019); *Am. Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 626-30 (4th Cir. 2006). Both situations are present here.

(1) Plaintiffs' Claims Arise Out of and Relate Directly to the Documents Containing the Arbitration Provisions

The nonsignatory Plaintiffs cannot bring claims based upon an alleged coordinated scheme by all the Defendants, allegedly injuring all Plaintiffs, and arising from the governing documents and associated contracts, yet only rely on the documents they actually signed in deciding the arbitrability of those issues. *See Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (applying to nonsignatories the proposition that “[w]hen each of a signatory’s claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory’s claims arise out of and relate directly to the written agreement, and arbitration is appropriate.”) (quoting *Goer v. Jasco Indus., Inc.*, 395 F.Supp.2d 308, 314 n.9 (D.S.C. 2005)).¹

“[A] nonsignatory should be estopped from denying it is bound by an arbitration clause when its claims against the signatory arise from the contract containing the arbitration clause.” *Am. Bankers*, 453 F.3d at 628 (citing *R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n*, 384

¹ Plaintiffs argue, and the Order adopts, that *Pearson* does not apply because it involved only three parties bringing claims under different sources of law. Neither Plaintiffs nor the Order provide any authority for the proposition that the number of parties to an action or the types of claims at issue have any bearing upon whether a nonsignatory may be bound to an arbitration agreement.

F.3d 157, 162 (4th Cir. 2004)) (internal quotation marks omitted). Here, the crux of Plaintiffs' claims is that Defendants purportedly created a "scheme" to mandate all property owners become members of the Club and pay fees for Defendants' own profit, and that the Club Membership Agreement, Membership Plan, and "associated documents" are purportedly unlawful and invalid. These claims clearly arise out of and directly relate to the Club Membership Agreement and Membership Plan, which contain arbitration provisions. Indeed, Plaintiffs' claims rely upon the existence of the Club documents and require reference to those documents.

Accordingly, the nonsignatory Plaintiffs' claims against all Defendants arise pursuant to documents containing arbitration agreements, and they may therefore properly be compelled to arbitration. *See also J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 319 (4th Cir. 1988) (recognizing a "clear policy" in favor of arbitrating claims involving nonparties to an arbitration agreement if those claims are based on the same alleged facts underlying claims by or against a party to the agreement).

(2) Plaintiffs Receive a Direct Benefit from the Documents Containing the Arbitration Provisions

"When a signatory seeks to enforce an arbitration agreement against a nonsignatory, [the nonsignatory is estopped] from claiming that [it] is not bound to the arbitration agreement when [it] receives a direct benefit from a contract containing an arbitration clause." *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (citation omitted). This is because "[t]o allow [a plaintiff] to claim the benefit of [a] contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactments of the [FAA]." *Int'l Paper*, 206 F.3d at 418 (citation omitted). Here, the governing documents and contracts form part of the foundation of every claim asserted by the nonsignatory Plaintiffs, and they seek damages and other remedies pursuant thereto. Thus, the nonsignatory Plaintiffs seek to directly benefit from the existence of

documents containing arbitration provisions—and indeed even bring a cause of action for breach of the Club Membership Agreement, Membership Plan, and “associated documents.” They cannot, on the one hand, receive a benefit from those documents while, on the other, avoid the documents’ requirement that such disputes be arbitrated. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (reversing denial of motion to compel arbitration where, even though the plaintiff did not have an arbitration agreement with the hospital, he sought damages under multiple contracts, one of which contained an arbitration provision with another defendant, and thus the plaintiff sought a benefit under the contract containing the arbitration provision).

The nonsignatory Plaintiffs have received, and continue to receive, benefits under those contracts in the form of Club membership privileges, which Plaintiffs not only use but which run with the land, such that any nonsignatory LLC Plaintiffs to which signatories transferred title their property are receiving benefits of the Membership Agreements and Plan, as well. (*See Ex. A to Defendants’ Mot. to Compel Memo.*) All Plaintiffs, including the nonsignatory Plaintiffs, have used Club amenities and participated in Club activities since joining the Club – and, in fact, also claim in their Complaint that they are unable to use the Club facilities as much as they wish. Having embraced the benefits they received under the contracts providing them use of the Club (and demanded even more benefits), the nonsignatory Plaintiffs cannot rely on their nonsignatory status to repudiate the arbitration clauses in those very contracts. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605. To permit otherwise would be contrary to equity, as well as to South Carolina law and the FAA.

(3) The Nonsignatory Plaintiffs Should Be Compelled to Arbitrate Because of Their Relationship to the Signatories and to Defendants

The Court’s Order states that certain LLC Plaintiffs cannot be bound by the arbitration agreements which were signed by the company’s members or shareholders because Defendants

did not offer “proof sufficient to pierce the corporate veil.” (Order at 27.) This fundamentally misunderstands Defendants’ argument and misapplies the applicable law. Defendants have not argued that the corporate veil should be pierced—indeed, veil piercing is not applicable here. Defendants are not arguing that the corporate form should be disregarded so as to hold its individual members or shareholders liable. Rather, the LLC Plaintiffs are bound by the arbitration agreements under agency principles and/or based on their status as assignees.

i. The Nonsignatory Plaintiffs are Bound by the Arbitration Provisions Under Agency Law

To the extent some of the LLC Plaintiffs purchased the property, but the membership documents containing the arbitration provisions were signed by principals and/or agents of the LLC, the LLC Plaintiffs are bound by the arbitration agreements that their principals and/or agents signed, especially where, as here, the documents containing the arbitration agreements run with the land owned by the LLC Plaintiffs. *See Pearson*, 400 S.C. at 288-97, 733 S.E.2d at 600-05 (nonsignatory may be bound to an arbitration agreement under traditional agency principles). Indeed, the Court itself recognizes that the corporate Plaintiffs “appear to be limited liability companies formed by the signatories to one or more of the agreements to arbitrate.” (Order at 9) (emphasis added.) Based on the relationship of the signatories to the nonsignatory LLC Plaintiffs, the signatories had actual or apparent authority to bind the respective LLC Plaintiffs to the arbitration agreements. *See Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982) (“The test to determine agency is whether or not the purported principal has the *right to control* the conduct of his alleged agent) (emphasis original). Courts recognize that, where a close relationship between the signatory and nonsignatory, and the claims at issue, exists, the nonsignatory party is bound by the arbitration agreement. *See Hinson v. Jusco Co.*, 868 F. Supp. 145 (D.S.C. 1994) (holding nonsignatory bound by arbitration agreement based on its parental

status to signatory); *Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997) (holding nonsignatory agents and employees of signatory bound by arbitration clause).

The nonsignatory LLC Plaintiffs are also bound by agency principles to the arbitration provisions in the Membership Agreements and Plan because of their relationship as the property owner to Defendants and to the Club. The Membership Agreements are prefaced by the statement, contained in Section II, that “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....” Thus, the plain language of the Membership Agreements represents and establishes an intention that they be signed by the deed holder. The nonsignatory LLC Plaintiffs, in having their principals and/or agents sign the agreements, placed such individuals in a position to contractually bind the LLC property owner. *See Fernander*, 278 S.C. at 143, 293 S.E.2d at 426 (“agency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal”).

Furthermore, the agency relationship is apparent from Plaintiffs’ own allegations. Indeed, a central allegation in Plaintiffs’ Complaint is that “all prospective purchasers [are required] to execute a purported ‘Membership Agreement’ as a condition of closing.” (Compl. at ¶ 89.) The LLC Plaintiffs are the purchasers and property owners; and, as Plaintiffs themselves allege, the Membership Agreements are signed by the purchasers. Thus, where they are signed by the principal and/or agent of the LLC Plaintiffs, the individuals are signing on behalf of the purchasers—that is, the respective LLC Plaintiffs. Moreover, because the LLC Plaintiffs retained benefits under the Membership Agreements, as set forth above, the LLC Plaintiffs ratified the execution of the Membership Agreements by their principals and/or agents on their behalf. *See Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989) (holding

that, even if an agent lacked actual or apparent authority to enter into a transaction on behalf of the principal, the principal's conduct in retaining its benefits ratifies the transaction).

The LLC Plaintiffs' stake in this controversy is as property owners, and the execution of the Membership Plan and Agreements are purported "conditions of closing" required of the purchasers. Thus, the agency relationship is supported by the evidence and applicable law, as well as by Plaintiffs' own admission.

ii. The Nonsignatory Plaintiffs are Bound by the Arbitration Provisions as Assignees

To the extent some of the properties were purchased by individuals, and subsequently transferred to LLC Plaintiffs which they formed, the LLC Plaintiffs are bound by the membership documents containing the arbitration provisions as assignees of the signatories. As an initial matter, as set forth in the governing documents, by acceptance of a deed, each owner assumes and agrees to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, including the Membership Agreements and Membership Plan. And, as specifically set forth in the Membership Agreements, the Membership Plan, and the Community Charter, the terms and conditions of the Membership Plan and other membership documents, including the Membership Agreements, are covenants running with the land. Thus, the arbitration provisions are made applicable to and binding upon the LLC Plaintiffs by virtue of their ownership of the respective properties.

Moreover, however, arbitration provisions transfer with, and become binding upon, assignees of contracts containing such provisions. *See PTA-FLA, Inc. v. Huawei Technologies USA, Inc.*, No. 3:14-cv-01312-TLW, 2014 WL 3100458, at *10 (D.S.C. Jul. 2, 2014). As the subsequent owner of the property, the LLC Plaintiffs assumed the rights and obligations set forth in the Membership Agreements and Membership Plan, including the arbitration provisions.

Furthermore, by its very terms, the arbitration provisions apply to disputes brought, not merely by members, but by anyone “exercising such member’s membership rights.” Accordingly, the nonsignatory LLC Plaintiffs which were formed by signatories, and received their respective properties from such signatories, are bound by the arbitration provisions as assignees of the Membership Agreements and Membership Plan.

(4) All Defendants May Rely Upon and Enforce the Arbitration Provisions

While the Club is party to the Membership Agreements and Membership Plan, as a matter of law, all Defendants may rely upon and enforce the arbitration provisions therein. Our courts have maintained that a nonsignatory defendant may rely upon an arbitration agreement to which it is not a party where the facts and claims against it and the signatory parties are “closely intertwined,” and where the claims against the nonsignatory defendant are “similar to and dependent upon” the claims subject to arbitration. *See Long v. Silver*, 248 F.3d 309, 320 (4th Cir. 2001). *See also Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (defendant who was not a signatory to arbitration agreement with plaintiff could invoke arbitration provisions where the claims against both defendants arose from the same set of facts and plaintiff did not distinguish between the defendants).

Here, Plaintiffs’ Complaint alleges that the Palmetto Bluff entities are an “amalgamated”, “single business enterprise,” and that the remaining Defendants have joined in the alleged “conspiracy,” which is based upon alleged misuse of Club agreements. Thus, not only do the Plaintiffs lump all of the Palmetto Bluff entities together, but Plaintiffs’ claims against all of the Defendants arise under and are intertwined with the Club agreements. Accordingly, all Defendants may invoke the arbitration provisions in the Club agreements. To hold otherwise would render

the arbitration proceedings against the Club meaningless and effectively thwart the strong State and Federal policy in favor of arbitration.

(5) All Parties Subject to Arbitration Must Be Sent to Arbitration, Even if Others are Not

Finally, even if less than all of the Plaintiffs or Defendants are subject to mandatory arbitration (which is denied), the arbitration agreements must nonetheless be enforced against those parties subject to them. “[A]n arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement,” and such nonsignatory parties “do not defeat the arbitrable nature of [the] entire dispute.” *Hinson v. Jusco Co., Ltd.*, 868 F. Supp. 145, 149 (D.S.C. 1994) (citation omitted).

E. The Arbitration Agreements are Not Void *Ab Initio*.

The Arbitration Agreements are not void *ab initio*. Contracts are void *ab initio* “when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.” *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004); *see also Berkebile v. Outen*, 311 S.C. 50, 53 n. 2, 426 S.E.2d 760, 762 (1993). As examples, our Supreme Court has found that contracts involving illegal gambling machines are void *ab initio* as they “violate statutory law and public policy.” *See, e.g., White*, 360 S.C. at 372, 601 S.E.2d at 345; *Ward v. W. Oil Co.*, 387 S.C. 268, 279, 692 S.E.2d 516, 522 (2010). The Court of Appeals has also found that a contract provision that attempted to block a litigant from asserting any compulsory counterclaims, as required by the civil procedure rules, was void. *See Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct. App. 2002). Additionally, where a party procured life insurance with the predetermined intent to murder the insured to obtain the insurance proceeds and did in fact murder the insured for which the party was convicted, the Court found the life insurance policies were void *ab initio* as

against public policy. *See Henderson v. Life Ins. Co. of Va.*, 176 S.C. 100, 179 S.E. 680, 685 (1935). There is nothing in the arbitration agreements at issue that is illegal or against public policy and, therefore, no basis to find them void *ab initio*.

F. Plaintiffs' Claims are Within the Scope of the Arbitration Agreements.

The Court's Order recognizes that Plaintiffs make "numerous allegations and Claims related to access to the Club," but states that "many allegations in the Complaint are not related to the Membership Plan or Agreement," and are thus outside the scope of their arbitration provisions. (Order at 28.) However, the arbitration clauses at issue are broad in scope and apply to "*any and all* controversies, disputes or claims *relating directly or indirectly* to, or *arising directly or indirectly from*," the Membership Agreement or Membership Plan. "A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly and is capable of an expansive reach." *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 95, 749 S.E.2d 139, 153-54 (Ct. App. 2013). "Thus, a claim is within the scope of an arbitration clause that purports to cover all related disputes, so long as a significant relationship exists between the claim and the contract containing the arbitration agreement." *Id.* at 95, 749 S.E.2d at 154. And the clause here is even broader, as it encompasses all indirect relationships as well.

All claims here relate at least indirectly to the Membership Agreement or Membership Plan. Plaintiffs' claims reduce to contentions that the Club is improperly structured, that Club membership should not run with the land, and the Club should be managed differently. Plaintiffs attached the Membership Plan, including its arbitration provision, as an exhibit to their Complaint, and the allegations in the Complaint demonstrate that the Palmetto Bluff Club is at the core of Plaintiffs' claims. Moreover, a dispute about the scope of an arbitration agreement must be resolved in favor of arbitration, "unless it may be said with positive assurance that the arbitration

clause is not susceptible of an interpretation that covers the asserted dispute.” *Mey v. DIRECTV, LLC*, 971 F.3d 284, 292 (4th Cir. 2020) (quoting *Warrior v. Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)). The Order makes no finding that the arbitration provisions are not susceptible of an interpretation that covers Plaintiffs’ claims, and to limit the scope of the arbitration agreements would go against State and Federal policy favoring arbitration. Finally, because the Court concedes that many of Plaintiffs’ claims relate to the Palmetto Bluff Club, it is clear that at least those claims should be referred to arbitration.

**AS TO DEFENDANTS’ MOTION TO DISMISS
PURSUANT TO SCRPC 12(b)(8)**

The Court’s Order provides that this lawsuit should not be dismissed pursuant to Rule 12(b)(8), SCRPC, because the arbitration action “is not identical to this civil action,” “[a]n arbitration is not an ‘action’ under the Rules of Civil Procedure,” and “a later-filed arbitration proceeding does not fulfill the terms of Rule 12(b)(8), SCRPC.” (Order at 30-31.) However, the Order does not cite to any legal authority in support of its rulings. Nor does it address the legal authority provided by Defendants that South Carolina courts recognize that “substantial similarity” between the parties and claims is sufficient to satisfy Rule 12(b)(8). *See, e.g., Corbett v. City of Myrtle Beach, S.C.*, 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999) (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 “substantially similar” to warrant Rule 12(b)(8) dismissal). Thus, the law does not require a pure identity of parties and claims.

Nor does the law hold that an arbitration cannot be an “action” for purposes of Rule 12(b)(8), SCRPC. To the contrary, what little case law exists interpreting Rule 12(b)(8) provides

for dismissal where an administrative proceeding is pending between the same or substantially similar parties for the same or substantially similar claims. *See Unisys Corp. v. South Carolina Budget and Control Bd. Div. of General Services Information Technology Management Office*, 346 S.C. 158, 176-77, 551 S.E.2d 263, 273 (2001). Because an administrative proceeding may be considered an “action” for purposes of Rule 12(b)(8), so too may an arbitration proceeding.

Further, the first-to-file rule, which the Order appears to invoke, is inapplicable under the circumstances presented here. Indeed, it will almost always be the case that a defendant will demand arbitration of claims, and an arbitration action will be thereby initiated, only after the plaintiff has initiated an action in court which the defendant believes is subject to arbitration. Under the FAA, the applicable standard is that “dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable.” *Choice Hotels Intern., Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001). *See also St. Andrews Townhomes Homeowners’ Ass’n, Inc. v. Beazer Homes USA, Inc.*, No. 4:09-cv-00382-TLW-TER, 2010 WL 985385, at *2 (D.S.C Mar. 12, 2010) (declining to retain jurisdiction, and dismissing the case, where it appeared from the record that all claims were subject to binding arbitration). Here, all claims have in fact been submitted to arbitration, such that dismissal of this action is proper.

To the extent it is relevant at all that Plaintiffs filed the within action first, it is only to the extent that they might be prejudiced. *See, e.g., American Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 95 (4th Cir. 1996) (holding that a delay in commencing arbitration proceedings after litigation has been commenced may waive a litigant’s right to arbitration only if the party opposing arbitration has suffered actual prejudice). Plaintiffs have not alleged that they would be prejudiced by pursuing their claims through arbitration, despite having first filed their claims in this Court. Nor can they. As the record reflects, Defendants promptly made a demand

for arbitration, and both proceedings are in their very early stages. Accordingly, the timing of the arbitration proceeding, as it relates to the filing of this action, is immaterial to Defendants' Motion to Dismiss.

CONCLUSION

For the foregoing reasons, and any others the Court may deem just and proper, the Court should reconsider, alter, or amend its Order entered September 15, 2022, granting Plaintiffs' Motion to Stay Arbitration, and denying Defendants' Motions to Dismiss and to Compel Arbitration.

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Attorneys for Defendants

September 26, 2022

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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 Alberio; Live Oak Assets LLC; Mathew 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,

Civil Action No.: 2022-CP-07-00632

**DEFENDANTS' MOTION FOR CASE
ASSIGNMENT TO THE BUSINESS
COURT PROGRAM**

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 Philips; Mark Polites; Gray Ferguson; Henry Armistead; South Street Partners LLC; John Does 1-25,

Defendants.

1. As counsel for Defendants who have appeared in this action, we move for an order of the Chief Business Court Judge assigning this case to the Business Court Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program.

(Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

- ☐ Title 33—South Carolina Business Corporation Act of 1988;
☐ Title 35—South Carolina Uniform Securities Act of 2005;
☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
☒ Other Appropriate Matter determined by the Chief Justice.

Please see a description of the claims herein, included at Attachment “A.”

3. Indicate whether the non-moving party or parties ☐ consents, ☐ does not oppose, ☐ opposes; ☒ position on assignment is unknown.

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Attorneys for Defendants

October 7, 2022

Pursuant to the Court's Form for Motion for Case Assignment to the Business Court Program (SCCA BC Form 101), below please find a description of the claims in Plaintiff's¹ Complaint against Defendants²:

Factual Background

Plaintiffs are owners of residential property within the Palmetto Bluff Community. Plaintiffs assert individual, derivative, and class claims relating to the creation, development, and operation of the Palmetto Bluff community. Defendants include the developer, numerous entities and individuals allegedly engaged in the development, management, and operation of the community, including sales of real property within Palmetto Bluff, as well as a wholly separate entity that operates and manages a hotel in the community.

The Palmetto Bluff Community is subject to express covenants, restrictions, and governing documents ("Governing Documents"). Plaintiffs argue the Governing Documents violate various South Carolina laws in multiple ways, including, but not limited to, : allegedly imposing an automatic, mandatory obligation requiring residential property owners to join the Palmetto Bluff Club, which Plaintiffs claim is a for-profit entity. Plaintiffs contend certain documents and provisions within the Governing Documents are unlawful in that they purportedly tie membership dues and fees paid to the Palmetto Bluff Club to ownership of property in Palmetto Bluff, which they claim violates South Carolina's prohibition on unlawful transfer fee covenants.

Contested Issues and Grounds for Business Court Assignment

- The Complaint in this case is 253 paragraphs and 83 pages long, and Defendants have raised 35 affirmative defenses.
- Resolution of Plaintiffs' claims and Defendants' defenses thereto will require construction of lengthy covenants and restrictions to which all Plaintiffs agreed.
- Plaintiffs bring purported class action and derivative claims, which will generate their own intensive discovery and motion practice, as well as potential interlocutory appeals.

¹ 315 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 Alberio; 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 (collectively, "Plaintiffs").

² 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; and John Does 1-25 (collectively, "Defendants").

- Plaintiffs assert many novel claims that have never before been decided in South Carolina.
- Plaintiffs' claims and Defendants' defenses thereto require construction of South Carolina's transfer fee statute (S.C. Code § 27-1-70), as to which no case authority exists and will be a matter of first impression in South Carolina.
- Plaintiffs' claims and Defendants' defenses thereto require a determination whether a private club constitutes a homeowners' association under the South Carolina Homeowners Association Act (S.C. Code § 27-30-110, *et seq.*), which is also a matter of first impression in South Carolina.
- Plaintiffs' claims and Defendants' defenses thereto involve complex business relationships, including, but not limited to: the relationships among the various Palmetto Bluff entities, and whether certain Plaintiff LLCs are alter-egos of individual property purchasers, the resolution of which will require application of the State's LLC Act and principles of alter-ego and veil-piercing, which will have important substantive ramifications for the case.
- Plaintiffs' claims and Defendants' defenses thereto turn on issues of agency and ratification under limited liability company statutes.
- Plaintiffs' claims and Defendants' defenses thereto require exploration of complex issues of real estate valuation.
- Plaintiffs attack the dues structure and operations of the Defendant Palmetto Bluff Club, which will require an examination of dues, costs, and operations of other private clubs to which Plaintiffs' belong, many of which are expected to be out-of-State, requiring out-of-State discovery.
- Plaintiffs bring claims under the South Carolina Unfair Trade Practices Act (S.C. Code § 39-5-10, *et seq.*), the resolution of which will require examination of lengthy covenants and restrictions across numerous governing documents, as well as of the dues structure and operations of the Palmetto Bluff Club and other Defendants. And the exact relationship of each Defendant to the specific improper practices alleged in the Complaint.
- Extensive fact and expert discovery is anticipated, including a large number of depositions, in light of the numerous and complex issues raised and the number of parties in the case.
- Expert testimony regarding customary practices in structuring and operating premier real estate developments and resorts is anticipated.
- Extensive motion practice and a lengthy trial are anticipated.

All Parties' Respective Attorneys and Filings

- **Plaintiffs** – Represented by Ian S. Ford, Ainsley F. Tillman, and Hunter H. James at Ford Wallace Thomson LLC. Plaintiffs filed a (1) Summons and Verified Complaint; (2) Motion to Stay Arbitration and Application for Summary Proceedings on the Invalidity of the Purported Arbitration Clause, and supporting Memorandum; (3) Motion to Disqualify Nexsen Pruet LLC as Counsel for Defendants, and supporting Memorandum; (4) Memorandum in Opposition to Defendants' Motion to Dismiss or in the Alternative to Compel Arbitration and Stay; and (5) Response to Defendants' Memorandum in Support of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(8). Plaintiffs Bridge Charleston Investments B LLC, Geoffrey J. Block and Jennifer Albero also filed a Motion for Partial Summary Judgment, and supporting Memorandum. The remaining Plaintiffs filed a Motion joining their Motion for Partial Summary Judgment. Plaintiffs R. Jeffrey Kimball and Lynn Ann Casey also filed Affidavits.
- **Defendants** - Represented by Val H. Stieglitz, Robert "Bruce" Wallace, and Alexandra H. Austin at Nexsen Pruet, LLC, and Donald Falk (Of Counsel) at Schaerr Jaffe, LLC. The PB Defendants filed a (1) Motion to Dismiss or, in the Alternative, to Compel Arbitration and Stay, and supporting Memorandum;³ (2) Memorandum in Support of Defendants' Motion to Dismiss Pursuant to SCRCP 12(b)(8); (3) Memorandum in Support of Defendants' Motion to Compel Arbitration and in Opposition to Plaintiff's Motion to Stay Arbitration/for Summary Proceedings; (4) Memorandum in Opposition to Plaintiffs' Motion for Partial Summary Judgment; (5) Memorandum in Opposition to Plaintiffs' Motion to Disqualify Nexsen Pruet; (6) Motion to Alter or Amend Order Granting Plaintiffs' Motion to Stay Arbitration, Denying Defendants' Motion to Compel Arbitration, and Denying Defendants' Motion to Dismiss Pursuant to SCRCP 12(b)(8);⁴ and (7) Answer.

The Circuit Court (1) granted Plaintiffs' Motion to Stay Arbitration and Application for Summary Proceedings on the Invalidity of the Purported Arbitration Clause; (2) denied the PB Defendants' Motion to Dismiss or, in the Alternative, to Compel Arbitration and Stay; (3) denied Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as Counsel for Defendants; (4) denied Plaintiffs Bridge Charleston Investments B LLC, Geoffrey J. Block and Jennifer Albero Motion for Partial Summary Judgment, in which the remaining Plaintiffs joined. The only pending motion before the Circuit Court is the PB Defendants Motion to Alter or Amend Order Granting Plaintiffs' Motion to Stay Arbitration, Denying Defendants'

³ Defendants' Motion for Case Assignment to the Business Court Program is made without prejudice to or waiver of their position that all claims in this case are subject to mandatory, binding arbitration, or their right to compel the same, as well as their rights to seek appellate review of any Order as to which such review is permissible.

⁴ Defendants' Motion for Case Assignment to the Business Court Program is made without prejudice to or waiver of their SCRCP 59(e) Motion to Alter or Amend Order Granting Plaintiffs' Motion to Stay Arbitration, Denying Defendants' Motion to Compel Arbitration, and Denying Defendants' Motion to Dismiss Pursuant to SCRCP 12(b)(8), filed September 26, 2022, which is currently pending before the Circuit Court.

Motion to Compel Arbitration, and Denying Defendants' Motion to Dismiss Pursuant to SCRCP 12(b)(8), filed September 26, 2022. Defendants answered the Complaint on October 5, 2022.

Plaintiffs' Causes of Action

- Declaratory Judgment (S.C. Code § 15-53-10, *et seq.*) – All Plaintiffs vs. All Defendants
- Violation of the South Carolina Homeowners Association Act (S.C. Code § 27-30-110, *et seq.*) – All Plaintiffs vs. Palmetto Bluff Development LLC, Palmetto Bluff Club, LLC, Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards
- South Carolina Unfair Trade Practices Act (S.C. Code § 39-5-10, *et seq.*) – Individual Plaintiffs vs. All Defendants
- 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
- Interference with Contractual Relationships – STR Class and Individual Plaintiffs vs. All Defendants
- Civil Conspiracy – All Plaintiffs vs. All Defendants
- Negligent Misrepresentation – All Plaintiffs vs. All Defendants
- Quantum Meruit and Unjust Enrichment – All Plaintiffs vs. All Defendants
- Promissory Estoppel – STR Class and Individual Plaintiffs vs. Palmetto Bluff Development, LLC, Palmetto Bluff Club, LC, PBLH, LLC, and Palmetto Bluff Preservation Trust, Inc., and its Board of Stewards
- In the Alternative, Equitable Title in Common – All Plaintiffs vs. Palmetto Bluff Development, LLC and Palmetto Bluff Club, LLC
- In the Alternative, Equitable Common Interest – All Plaintiffs vs. Palmetto Bluff Development, LLC and Palmetto Bluff Club, LLC
- In the Alternative, Equitable Easement Appurtenant – All Plaintiffs vs. Palmetto Bluff Development, LLC and Palmetto Bluff Club, LLC
- Money Had and Received and Conversion – All Plaintiffs vs. All Defendants
- Constructive Fraud – All Plaintiffs vs. All Defendants
- Fraud and Misrepresentation – All Plaintiffs vs. All Defendants

- 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

Conclusion

Due to the foregoing, and the fact that Plaintiffs' claims and the Defendants' defenses involve a myriad of complex business, corporate, real property, and commercial issues, the resolution of which requires a forum with the flexibility to establish case-management procedures tailored to this large and multifaceted case, under the guidance of an experienced Business Court Judge, Defendants submit that the interests of justice will be served by assigning this case to the South Carolina Business Court Program.

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 Albergo; 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' MEMORANDUM IN
OPPOSITION TO
DEFENDANTS' MOTION TO
ALTER OR AMEND THIS COURT'S
ORDER GRANTING PLAINTIFFS'
MOTION TO STAY
ARBITRATION, DENYING
DEFENDANTS' MOTION TO
COMPEL ARBITRATION, AND
DENYING DEFENDANTS'
MOTION TO DISMISS PURSUANT
TO SCRCP 12(b)(8)**

Plaintiffs oppose Defendants' Motion to Alter or Amend Order Granting Plaintiffs' Motion to Stay Arbitration, Denying Defendants' Motion to Compel Arbitration, and Denying Defendants' Motion to Dismiss (the "Order"), which motion was filed on September 26, 2022. This Court should deny Defendants' Motion.

Defendants' arguments blow right past the key fact that **there is no agreement to arbitrate whatsoever between 32 of the parties to this litigation.** Arbitration is a matter of contract, and here . . . there is not one. Defendants' legal arguments are simply inapplicable to the vast majority of litigants, who never consented to arbitrate *anything*. Moreover, Rule 59 SCRCP does not permit Defendants' motion to alter a non-final order, and the motion is procedurally improper.

As to the merits of Defendants' arguments (about the arbitration clause hidden within one solitary defendant's mandatory membership documents, which bear the signature of only five¹ of the twenty-one plaintiffs):

- New S.C. Supreme Court ruling: A newly-published decision by the South Carolina Supreme Court contradicts practically all of the arguments in the body of Defendants' Motion to Reconsider.²
- Defendants' own edits: Defendants' arguments are built entirely on language that *Defendants themselves* interjected into this Court's proposed order, in an effort to

¹ Four of those five (Jeffrey Kimball and Debra Kimball, Matthew Lynch and Barbara Lynch) are husband/ wife pairs, co-owning the property that is the subject of this lawsuit.

² See *Damico v. Lennar Carolinas, LLC*, Appellate Case No. 2020-001048, Opinion No. 28114 (filed Sept. 14, 2022), *petition for rehearing pending*:
<https://www.sccourts.org/opinions/HTMLFiles/SC/28114.pdf>

weaken this Court's rulings. If this Court decides to alter anything in its Order, it should be to reject each one of Defendants' subversive "suggested edits" which Defendants now rely on to assail the Order. (See Exhibit 1, Redlined Changes, proposed by Defendants).³

- Improper new arguments: Defendants improperly raise new arguments in their Motion to Reconsider, which this Court should disregard.
- No severability clause: Defendants argue that unconscionable provisions of the arbitration agreement should be severed. But Defendants did not include a severability clause in those agreements—which they drafted. This Court should not **blue-pencil in** a severability clause in order to **blue-pencil out** unconscionable terms.
- Improper motion: For the reasons discussed below, Defendants' arguments do not meet the legal standard necessary to alter or amend the rulings—including because this Court made no manifest errors of law or fact.
- Reconsideration: If this Court *does* decide to reconsider its previous rulings, Plaintiffs respectfully submit that the Court should (a) strike Defendants' language from the Order on which they now rely to criticize it, and (b) grant Plaintiffs'

³ Plaintiffs urge this Court to carefully read Exhibit 1 to see that Defendants' edits in every instance undermine the Order, in many places attempting to neuter it by changing legitimate findings of law into indecision and uncertainty. For example, on page 4, Defendants have attempted to convert findings of law on the clear and unambiguous language of the contracts (which Defendants did not argue is ambiguous) into mere allegations ("Plaintiffs contend"), which they then argue in their Motion to Reconsider are not sufficient to support the rulings the Order goes on to make.

motion to disqualify and motion for partial summary judgment, which have been fully briefed and are part of the record.

LEGAL STANDARD

Rule 59(e) of the South Carolina Rules of Civil Procedure permits a party to file a “motion to alter or amend a *judgment*” within 10 days after it has been entered. Rule 59, SCRPC (emphasis added). As Defendants point out, ordinarily a Rule 59 Motion is not granted except in the case of manifest error of law or fact.

Here, Defendants’ Rule 59 Motion is improper because it pertains to a non-final order, and not to a judgment. Rule 59 is found within Section VII (Judgment) of the South Carolina Rules of Civil Procedure. Section VII begins with the definition of a “Judgment,” which does not encompass this Court’s Order here:

“Judgment” as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.

Rule 54(a), SCRPC. There is no ruling within this Court’s Order which “finally determines” the rights of any party. Instead, the Order: (1) stays the arbitration proceedings filed by the Defendants, (2) denies Defendants’ motion to dismiss, and (3) finds two other motions not to be ripe. Although the SCUAA sometimes gives parties the right to appeal a court’s decision to stay arbitration, this is a matter of statutory privilege—it is not based on finality of the decision. Accordingly, Defendants’ Rule 59 motion is procedurally improper and should be denied on that basis alone.

ARGUMENT

This section will be long, to address Defendants' arguments. The Cliff Notes version is that the Order is legally sound and should not be reconsidered.

I. A recent S.C. Supreme Court Decision supports the Order.

Shortly before this Court filed its Order, the South Carolina Supreme Court decided *Damico v. Lennar Carolinas, LLC, Spring Grove Plantation Development, Inc.*, Op. No. 28114, filed Sept. 14, 2022. As here, the *Damico* case involves the validity of an arbitration clause in a dispute between homeowners and a developer, Lennar Carolinas. Lennar asserted an arbitration clause that it had put into purchase contracts, warranty agreements, community covenants, as well as the buyers' deeds. Our Supreme Court found Lennar's asserted arbitration clauses to be unconscionable and unenforceable, for many of the same reasons that this Court cited in its Order in this case. Whereas the SCUAA indubitably applies to the claims at issue in this Palmetto Bluff litigation, *Damico* was decided under the less stringent requirements of the FAA—and our Supreme Court nonetheless found the arbitration clause invalid.⁴

⁴ *Damico* involves homebuyers who contracted with Lennar to build new homes to their specifications. The FAA applies on the specific facts in *Damico* because out-of-state subcontractors and materials were used, rendering the contract one involving interstate commerce. But, as the *Damico* Court noted, the law makes an important distinction between contracts for homes to be constructed using out-of-state materials (interstate commerce) and pre-built homes which are constructed and sold by the developer (as in Palmetto Bluff) (intrastate commerce):

This Court has continued to adhere to the view that the development of real estate is an inherently intrastate transaction. *See Zabinski*, 346 S.C. at 595, 553 S.E.2d at 117-18 ("The development of land within South Carolina borders is the quintessential example of a purely intrastate activity.").

Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 730 S.E.2d 312 (2012); *see also Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020) (reversed on other grounds) ("In general, the development and sale of residential real estate is an intrastate activity that does not implicate

The *Damico* Court makes the following holdings, which contradict the arguments made by Defendants in their Motion to Reconsider:

“[A]s a matter of policy, we find severing terms from an unconscionable contract of adhesion (in this case, an arbitration provision) discourages fair, arms-length transactions.” (p. 2).

“[T]he sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar. Given that Lennar has sold thousands of homes in the Carolinas, whereas Petitioners will likely only purchase, at best, a handful of homes in their entire lifetime, we find it fair to characterize Lennar as significantly more sophisticated than Petitioners in home buying transactions.”⁵ (p. 15).

“This is not even to mention the fact that Lennar attempted to insert an arbitration agreement in Petitioners’ deeds, characterizing the arbitration agreement as an ‘equitable servitude’ that runs with the land in perpetuity. **We find these and other terms of the contracts to be absurd, factually incorrect, and grossly oppressive.**” (pp. 17-18) (emphasis added).

“In particular, when a contract of adhesion is at issue, ‘there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration.’” (p. 20, *citing Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 669, 373 S.C. 14, 26 (2007)).

Each of these holdings supports this Court’s Order. This Court should heed the *Damico* decision and deny the Defendants’ Motion to Reconsider.

the FAA, but here the transaction also involved the construction of residential homes. As *Bradley* acknowledged, “our appellate courts have consistently recognized that contracts for construction are governed by the FAA.”).

⁵ Palmetto Bluff’s Development Plan with the Town of Bluffton calls for approximately 4,000 residential lots, almost 900 of which have already been sold by the developer.

II. Each of the arguments made by Defendants is wrong and/or unpreserved, or both.

A. “The development of land within South Carolina borders is the quintessential example of a purely intrastate activity”⁶ and the SCUAA applies.

Defendants’ argument that the FAA applies to the transactions at issue here would have this Court violate what is now black-letter law: “that the development of real estate is an inherently **intrastate** transaction.” *Bradley*, 398 S.C. 447, 730 S.E.2d 312 (emphasis added). This lawsuit seeks to invalidate and reform unlawful covenants and restrictions imposed on the Plaintiffs’ real property in South Carolina by the Defendant Palmetto Bluff Development LLC, **in the course of its development of Palmetto Bluff community** in Bluffton, South Carolina. Those unlawful covenants and restrictions which ostensibly encumber Plaintiffs’ real property and impair its marketability now are being unlawfully abused by the Developer and the other Defendants, *inter alia* to restrict access to amenities within the development. In the course of developing the Palmetto Bluff community, the Developer also developed the Palmetto Bluff Club, which is the Developer’s for-profit entity which unlawfully extracts significant dues and fees from the Plaintiffs based on covenants imposed by the Developer in the course of development.

The arbitration clause that Defendants assert? Why, it’s buried in real covenants which the Defendant Developer imposed on Plaintiffs’ real property **in the course of development of Palmetto Bluff**, and in the Club’s membership documents which the Defendant Developer and Defendant Club drafted and enforce as mandatory.

⁶ *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 553 S.E.2d 110 (2001).

In short, the allegations and arguments involved in this case depend upon and revolve around land located in South Carolina and its appurtenances, including the validity and enforceability of real property covenants, restrictions, encumbrances, obligations, interests, and rights. South Carolina real estate, and the construction of deeds and instruments running with it, are classically intrastate—invoking the SCUAA. Our Supreme Court has expressly rejected Defendants’ arguments about the import of some plaintiffs being out-of-state residents. *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1993), *overruled on other grounds by Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539 n. 3, 542 S.E.2d 360, 363 n. 3 (2001) (“Although the contracting parties are domiciled outside of South Carolina and transactions incident to the sale were conducted in foreign jurisdictions, there is no evidence in the record that the express terms of the contract involved interstate commerce.”).

If this Court is waffling even a little as to whether the SCUAA or the FAA applies, Plaintiffs respectfully recommend that it review the cases dealing with the question as it relates to real property, including the following: *Mathews*, 312 S.C. 404, 440 S.E.2d 880, *overruled on other grounds by Munoz v. Green Tree Financial Corp.*, 343 S.C. at 539 n.3, 542 S.E.2d at 363 n.3 (2001) (“In the present case, **the object of the contract was the sale of real estate situated in South Carolina**. Although the contracting parties are domiciled outside of South Carolina and transactions incident to the sale were conducted in foreign jurisdictions, there is no evidence in the record that the express terms of the contract involved interstate commerce.” (emphasis added)); *Bradley*, 730 S.E.2d at 317, *quoting Saneii v. Robards*, 289 F. Supp. 2d 855 (W.D. Ky. 2003) (“Notwithstanding its congenial

effects on interstate commerce, the sale of residential real estate is inherently intrastate. Contracts strictly for the sale of residential **real estate focus entirely on a commodity – the land – which is firmly planted in one particular state.** The citizenship of immediate parties (the buyer and the seller) or their movements to or from that state are incidental to the real estate transaction. Those movements are not part of the transaction itself. **All of the legal relationships concerning the land are bound by state law principles.** Single residential real estate transactions of this type have no substantial or direct connection to interstate commerce. For all these reasons, logic suggests that such transactions are not among those considered as involving interstate commerce.”) (emphasis added).

In sum: Defendants’ argument that this lawsuit – against the Developer, about the development of Palmetto Bluff and the ramifications of covenants imposed on real property in South Carolina by the Developer in the course of development – is somehow not about the development of real property in South Carolina, is nonsense.

Importantly, the only grounds for Defendants’ argument stems from words and a case citation the *Defendants themselves* suggested that this Court include in its Order. See Ex. 1, pp. 6-7.⁷ Defendants’ changes were subversively suggested to weaken this Court’s rulings when the Defendants appeal the Order. This Court should remove them in

⁷ Defendants seize on limited paragraphs within the Complaint – applicable to only one out of three classes of Plaintiffs and only some individual Plaintiffs – pertaining to short term rentals, and thus Defendants proclaim that this entire case is about short-term rentals. But this Court can read the Complaint: the short-term rental provisions are within the community covenants and plans, to which Plaintiffs’ real property was subjected **during development.** Plaintiffs’ arguments about short-term rental revolve around the validity and enforceability of covenants ostensibly running with the land. Defendants are now breaching those covenants, contrary to their representations during development. This is a real property case about development of South Carolina real estate, and the SCUAA applies.

response to Defendants' Motion to Reconsider, and file the Order as proposed by Plaintiffs. (*See* Ex. 1).

B. This Court decides issues of substantive arbitrability.

Defendants' Motion incorrectly argues that the American Arbitration Association (AAA), not this Court, should make the decision about whether or not this case must be arbitrated. Defendants' arguments are a repetition of the ones they made in their previous filings and at the hearing. Those arguments are, still, based on the wrong law, and they contradict South Carolina statutory law and case law.

As an initial matter, Defendants' argument is based on the FAA which, as discussed above, is not the applicable law here. Instead, the SCUAA applies, and South Carolina law vests this Court with the decision about arbitration. *See, e.g., Bradley*, 398 S.C. at 447, 730 S.E.2d at 312 (holding FAA did not apply because "the development of real estate is an inherently intrastate transaction.").

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*, 644 S.E.2d 663, 373 S.C. 14 (emphasis added).⁸ This holding is echoed and supported by South Carolina statute:

On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and

⁸ *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)).

summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

S.C. Code § 15-48-20 (emphasis added). In sum, the Court was correct in its initial ruling, and Defendants’ repetition of its argument does not change that correctness.

C. The scant few arbitration agreements Defendants put forth are unenforceable and unconscionable as a matter of law.

(1) The purported arbitration agreements (which do not exist as to 32 parties) must comply with South Carolina law.

As discussed above, the SCUAA applies to this real property dispute over land located in South Carolina and its encumbrances and appurtenances in South Carolina. As discussed above, our Supreme Court has definitively decided that by no stretch of the imagination do South Carolina real property disputes involve interstate commerce sufficient to invoke the FAA.

The SCUAA requires that a contract provide conspicuous notice on its first page—in UNDERLINED CAPITAL LETTERS—that it is subject to arbitration. S.C. Code Ann. § 15-48-10(a) (2005). Again, **this discussion feels absurd considering that there is actually no contract at all containing an arbitration clause, as between 32 of the parties to this litigation**, on which a notice might or might not be furnished.

Defendants’ argument on this point hinges on words that *they asked this Court to put in its Order*: “Defendants have produced Membership Agreements with this Notice on the first page.” This sneaky language does not tell the whole truth. What the

Defendants have produced is four Club Membership Agreements signed by Plaintiffs to this action⁹ with notice on what appears to be the first page.

As already argued, discussed, and decided by this Court correctly in its Order, the membership agreements are but one component of a vast constellation of purported “Governing Documents” for the Palmetto Bluff Community. The Club Documents (of which the “membership agreements” are a part) are designated as subservient to other community documents, including the Community Charter – they are expressly identified by the Defendants themselves as being at the bottom of a stack of hundreds of pages of covenants and restrictions purportedly binding the Plaintiffs’ property. In other words, the ostensible “first page” of the membership agreement is in reality hundreds of pages in.

Put another way: Defendants are arguing that Plaintiffs’ disputes about the construction and enforceability of the Community Charter and the Recreational Covenant should be forced into arbitration because of a clause in a different, subservient document. But the Charter and the Recreational Covenant unquestionably contain no arbitration provision at all. For Defendants to compel arbitration of disputes about the validity and enforceability of the Community Charter and Covenants, those instruments must conform to the SCUAA. **The SCUAA requires:**

Notice that the 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.

⁹ As discussed above, Defendants produced membership agreements by non-parties to this action, which are completely irrelevant, and it is disingenuous for Defendants to argue about whatever words might appear on the first pages of those agreements.

S.C. Code § 15-48-10. Neither the Community Charter nor the Recreational Covenant (nor the numerous other superior community governing documents) contain any arbitration provision whatsoever, let alone on the first page.

This Court should not reconsider its Order as it pertains to the application of the SCUAA and its conspicuous notice provision, **except that it should remove the Defendants' language, which they now challenge.** (See Exhibit 1, p. 16).

(2) The purported arbitration agreements are unconscionable.

Again, Defendants' arguments here largely repeat—often verbatim—their previous arguments and add nothing new to the analysis. Those arguments have been carefully considered by the Court and properly rejected. To the extent Defendants assert “new” points, those generally attack *language that Defendants themselves added to the Order*. For example, Defendants attack their own words from the Order, including:

- “Plaintiffs have produced no evidence these supplements and amendments impact Plaintiffs’ claims . . .” (see Ex. 1, p. 20) and
- “the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days” (see Ex. 1, p. 24) (quoted twice in Defendants’ Motion with disfavor, on pages 13 and 14) and
- “[t]here is no evidence that a property owner ever demanded these collection actions be arbitrated.” (see Ex. 1, p. 22).

(Mot. pp. 10, 13, 14). This is all language that the *Defendants demanded be inserted*, and Plaintiffs respectfully request that, if the Court deems fit to alter its Order, it remove Defendants' edits, which Defendants now apparently contend are wrong.

Defendants continue, incorrectly, to emphasize the purported "sophistication" of the Plaintiffs. The South Carolina Supreme Court in *Damico* has put this issue to bed in the developer/homebuyer context, and this Court should again reject the argument. *See supra* at Part I (*Damico*: "[T]he sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar. . . .").

The Motion argues that the Court should simply ignore the unlawful remedy limits of the arbitration clause, or punt it to AAA (Defendants' universal fallback position). This argument is directly contrary to the South Carolina Supreme Court's ruling against such clauses: "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. *See Simpson*, 644 S.E.2d at 670. 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.* The *Simpson* Court also declined to "sever" the clause (as Defendants demand here) and instead ruled that the entire clause was unenforceable. This Court was correct to follow our Supreme Court's directive in this Order.¹⁰

¹⁰ The Club Membership Documents containing an arbitration provision do not contain a severability clause. This is significant, because the Club drafted the documents and presumably could have included such a clause if it considered it important. It did not, and this Court should not blue-pencil a severability clause into the contract, in order to blue-pencil unconscionable provisions out. *See Damico* at p. 6, pp. 20-23 ("We further decline to sever the unconscionable terms from the remainder of the arbitration provisions for two reasons. First, doing so would

Defendants admit “the fact that the Club may unilaterally amend the arbitration provisions” but then argue that . . . it’s fine. (Mot. p. 13.) Defendants cite no South Carolina state court law for this startling assertion, and instead appear to reach for FAA precedent. This Court properly found that—when taken along with the many other problems—the presence of a term permitting unfettered change to the arbitration clause by one side renders the clause unconscionable and unenforceable.

Defendants complain about their own inserted language—“the record does not support a conclusion that a potential claimant would be barred from bringing a claim after sixty days” —because, they claim, it is contradicted by the statement that Defendants “have waived arbitration of their claims” (part of which Defendants also inserted). The Court’s Order is clear that this is true *only if the provision is valid*—“**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.’”(Order p. 14 (emphasis added)). As argued at the hearing and in Plaintiffs’ briefing, if the arbitration provision is *invalid*, Defendants may not bring arbitration claims. If the provision is *valid*, Defendants are barred by their own sixty-day limitations period. There is no contradiction in those alternatives.

Finally, the Motion makes a new argument about the Community Charter. Defendants have waived this argument and it can be disregarded. In any event,

require us to blue-pencil the agreement regarding a material term of the contract, a result strongly disfavored in contract disputes. Second, as a matter of policy, we find severing terms from an unconscionable contract of adhesion (in this case, an arbitration provision) discourages fair, arms-length transactions.”)

Defendants' Motion neither mentions nor addresses the Charter's language that 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. . . .

Compl. Ex. 1, p. 52 § 18.1(a) (Community Charter; emphasis added). Here, parties mediated the dispute in conformance with this provision. As such, the Community Charter allows filing "in any court." To the extent Defendants argue that there is ambiguity or question, the language is construed against the contract drafter—the Defendants. As such, the Court's ruling was correct.

D. The flea does not wag the dog.

In Section D of their Motion, Defendants ask this Court to reconsider its decision not to enforce, as against 32 non-signatory parties, the scant arbitration clauses that one single defendant (the Club) has mustered. **What the Defendants are urging the Court to do is shocking, far-fetched, and unsupported by the law.** Each of the Plaintiffs in this case has requested a jury trial, as to each of their claims against each of the individual Defendants. The Plaintiffs' claims against the Defendants primarily arise out of the real covenants of record, running with Plaintiffs' land, which contain terms going to the relationship between the parties to this lawsuit. The covenants do not contain an arbitration clause.¹¹

¹¹ As a reminder, the only arbitration clause Defendants have unearthed is buried in low-level unrecorded membership documents for the Palmetto Bluff Club.

One reason that courts take so seriously questions about the enforceability of arbitration clauses is because they operate to strip litigants of their right to a trial by jury. Like any other instance in which there is an argument about the waiver of a jury trial, it is critical that such waiver be done intentionally and knowingly, and that it be strictly construed. *see North Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 416 S.E.2d 637, 307 S.C. 533 (1992) (“Trial by jury is a substantial right and any waiver thereof must be strictly construed.”); *Broome v. Watts*, 319 S.C. 337, 461 S.E.2d 46 (1995). In the context of arbitration, the requisite intent and knowledge *might* be found within a signed contract, voluntarily entered by a party. **But let’s pause there:** Defendants have not produced such a contract as to 32 parties to this litigation, and yet they want to bootstrap those parties into arbitration with one another on the strength of the few agreements they can muster, as between other people, in a different context, with a different scope, pertaining to only one defendant.

Through that lens, it is outrageous for Defendants to suggest that the 32 parties to this lawsuit—among whom the Defendants admit there is no arbitration agreement whatsoever—nonetheless should be shunted into private arbitration, with limited remedies, without a jury of their peers, on the strength of only a few signed membership contracts with a single Defendant, which few contracts themselves are unconscionable and contracts of adhesion. As our Supreme Court recently stated in *Damico*: “In particular, when a contract of adhesion is at issue, ‘there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration.’” *Damico*, Op. No. 28114, p. 12. This Court correctly found that the few arbitration agreements introduced

by Defendants are unenforceable—and certainly an unenforceable contract cannot be enforced against *non-signatories*. Moreover, it is unfathomable that Plaintiffs who never signed a contract containing a jury trial waiver could be found to have knowingly and voluntarily waived the right.

Significantly, the scant case law which Defendants cite in Section D of their Motion involves very different facts and law; in particular, all involve interstate commerce and the operation of the FAA. Under the SCUAA and South Carolina law, a party may not be compelled into arbitration absent his express agreement.

(1) Plaintiffs' claims arise out of the Community Charter and the Recreational Covenant—neither of which contain an arbitration provision.

Defendants initially make the untenable—and untrue—argument that Plaintiffs' claims arise only out of the Palmetto Bluff Club membership documents.

First, as this Court correctly found in its Order, this is inaccurate: the Club Documents are expressly subservient to the higher-level governing documents which specifically permit litigation in a court of law.¹² If the Plaintiffs are bound at all by the Club Documents (a key question in this litigation), it is only because of the higher-level covenants which purport to bind the Plaintiffs to mandatory membership in a for-profit Club. Therefore, Plaintiffs' claims arise out of the higher-level community documents, which are of record and purport to bind their property.

¹² See Order, p. 13 for the Developer's own chart and language, delineating the Community Charter as controlling over the Club Documents including the Membership Agreement.

Moreover, this argument by the Defendants ignores the fact that *the Defendants themselves drafted all of the Palmetto Bluff governing documents, and they did not choose to include arbitration provisions within them:*

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

Presumably, if the Defendants desired arbitration for all disputes arising under all of these governing documents, then they could have included within each one of them a legally compliant arbitration provision saying so. But they elected not to.

Second, the Defendants' claim about non-signatories being bound by an arbitration clause buried in low-level documents which Plaintiffs never signed or consented to (and may not even have known about, because they are not of record), is illogical and contrary to law, particularly the SCUAA. The entire body of law on

arbitrability boils down to the question: Did you—or did you not—sign a valid agreement to arbitrate your dispute? If you did not, that is the end of the analysis. See S.C. Code § 15-48-10 *et seq.*

Here, the Order correctly finds that the Plaintiffs did not sign a valid agreement to arbitrate. Defendants have failed to demonstrate a manifest error of fact or law which would warrant reconsideration of the Order.

(2) Plaintiffs are burdened by the unconscionable and invalid terms in the documents containing the arbitration provisions.

In Section D(2) of their Motion to Reconsider, the Defendants make an argument that our Supreme Court has recently rejected as “absurd.” Defendants argue:

The nonsignatory Plaintiffs have received, and continue to receive, benefits under those contracts in the form of Club membership privileges, which Plaintiffs not only use but **which run with the land**, such that any nonsignatory LLC Plaintiffs to which signatories transferred title their property are receiving benefits of the Membership Agreements and Plan, as well.

(Mot. at p. 19). This Court correctly found in its Order that non-signatories cannot be forced into arbitration based on language hidden in documents to which their deeds are ostensibly subject. Our Supreme Court agrees:

This is not even to mention the fact that Lennar attempted to insert an arbitration agreement in Petitioners’ deeds, characterizing the arbitration agreement as an ‘equitable servitude’ that runs with the land in perpetuity. **We find these and other terms of the contracts to be absurd, factually incorrect, and grossly oppressive.**

Damico, at pp. 15-16 (emphasis added).

This Court should not reconsider its Order, which is legally correct.

(3) Defendants' new arguments are procedurally improper, unsupported by any evidence, and wrong.

In Section D(3) of their Motion to Reconsider, Defendants urge this Court to decide Defendants' new arguments about agency and assignment.¹³ (Mot. at pp. 19-22). Defendants have not raised these arguments before, nor have they supported them with any evidence showing any connection (other than arguments of counsel, which are not evidence) between the non-signatory corporations and the individuals entering into membership agreements. A Rule 59 Motion is not a "second bite of the apple" to make new arguments, which Plaintiffs did not previously have a chance to oppose. In any event, Defendants have not put forth sufficient evidence for this Court to find that certain Plaintiffs are "agents" or "assigns" of the few people who signed mandatory membership documents containing arbitration clauses (which this Court has correctly held to be unenforceable as a matter of law).¹⁴

Frankly, Defendants are asking this Court to step through the Looking Glass into an upside-down world where people who have never signed an arbitration agreement can be forced into arbitration against other people—who are also not subject to an arbitration agreement—based on sheer conjecture and exploited, inapplicable equitable

¹³ In their original filings with this Court, the Defendants made a single statement that the Plaintiffs are agents or assigns of signatories, which they did not support with any evidence other than conjecture. That cursory, unsupported argument did not preserve the question for review or reconsideration.

¹⁴ As one example, MKM 22 West LLC is a plaintiff whom Defendants want to force into arbitration, although MKM 22 West LLC's signature is nowhere on any document produced by Defendants. Defendants have introduced no evidence demonstrating that any signatory to a club membership agreement is a member of MKM 22 West LLC. Indeed, the corporate make-up of MKM 22 West LLC (and every other corporation) is not in the record.

principles. Importantly, the corporate composition of the numerous corporate Plaintiffs is not in this record. The record is silent as to who their members are and what connection (if any) the members might have to the few signatories to Club documents. If the Defendants were going to make agency and assignment arguments at the hearing on their Motion to Compel Arbitration (which they did not do), then Defendants had the burden of proof to show an agency relationship. They failed to meet it.

Defendants' arguments in this section are all the more surreal because the non-signatory Plaintiffs (who are the record owners of the real property that is the subject of this litigation) actually do have contracts with the non-signatory Defendants, including the Community Charter and the Recreational Covenant. **And those contracts—which Defendants drafted—indisputably do not contain arbitration clauses.** In fact, the Community Charter contemplates litigation, expressly allowing a party to “file suit in any court.” (Order, p. 12, citing Community Charter p. 52 § 18.1(a)).

In other words, the non-signatory Plaintiffs entered into contracts expressly permitting litigation in court with the non-signatory Defendants. Defendants are wrong to suggest to this Court that it should use equitable doctrines to supplant express contractual provisions. It is hornbook law that the equitable doctrines propounded by Defendants do not apply in the face of a contractual remedy. “The court will reserve its equitable powers for situations when there is no adequate remedy at law.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *see also Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 117, 580 S.E.2d 100, 108 (2003) (“The function of equity is to supplement the law, not to displace it.”); *see also Monteith v. Harby*, 190 S.C. 453, 3

S.E.2d 250, 251 (1939) (“The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law.”).

Not only is there no manifest error of law or fact sufficient to compel this Court to reconsider its Order, but to adopt the Defendants’ arguments would be manifestly erroneous and contrary to hornbook law. This Court should deny the motion.

(4) Defendants are looking at this backward and upside down.

The question before the Court is whether the Plaintiffs contractually consented to arbitrate their disputes with each of the Defendants. In Section D(4), Defendants argue that each of the Defendants can rely on an arbitration provision buried in the Club’s contract. This is backwards. In fact, the Plaintiffs are entitled to rely on their right to “file suit in any court,” which is found in the Community Charter and binds every party to this litigation.

Defendants, having drafted language permitting Plaintiffs to “file suit in any court”—and having tied that language to the Plaintiffs’ land within covenants and restrictions—cannot possibly rely on an arbitration provision in a lower-level, unrecorded document. The Charter itself says that the Charter controls over the Club documents. (Compl. Ex. 1, p. 4 § 1.3 (Community Charter): “If there are conflicts between or among any of the Governing Documents, then the Charter . . . shall control.”).

As grounds for reconsideration, Defendants threaten that if this Court requires Defendants to abide by the covenants (which they themselves drafted) it could “effectively thwart the strong State and Federal policy in favor of arbitration.” (Def. Mot.

p. 24). This argument would have the Court misunderstand the law, which does not “favor” arbitration at all:

Our courts’ statements that the law ‘favors’ arbitration were never intended to elevate a contractual right of arbitration above the procedural rules of the court or other contractual provisions. *See* Richard Frankel, *The Arbitration Clause As Super Contract*, 91 Wash. U. L. Rev. 531, 533 (2014) (“Much of this arbitration favoritism is attributable to lower-court misinterpretation of thirty-year-old dicta . . .”) . . . Therefore, when considered in the proper context, our statements that the law ‘favors’ arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy – federal or state – ‘favoring’ arbitration.

Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 432 S.C. 633, 638-639, 856 S.E.2d 150, 152-153 (2021) (some internal citations omitted) (this recent decision by our Supreme Court includes an interesting and thorough discussion by Justice Few of the history of arbitration law in this State).

Here, the controlling covenants say that Plaintiffs can “file suit in any court.” This Court should not reconsider its Order and change it to elevate an arbitration provision in a low-level, unrecorded document above superior contractual provisions. (*See also* Community Charter, p. 58: “Failure to comply [with the Governing Documents] shall be grounds for an action . . . for damages or injunctive relief, or for any other remedy available at law or in equity . . .”).

(5) This Court correctly found the arbitration clause to be invalid.

In Section D(5), Defendants argue that the few signed membership agreements it has produced should be enforced against the few people who signed them. For the reasons herein and in this Court’s Order, the Court correctly found those few arbitration agreements, which were signed by five Plaintiffs, to be invalid, unenforceable, and

unconscionable. This was the correct ruling, and Defendants present no manifest error warranting alteration of it. This Court should deny Defendants' Motion to Reconsider.

E. Defendants' "void ab initio" argument still fails.

Defendants repeat, almost verbatim, their argument about unlawful contracts involving "intent to murder" and illegal gambling machines. This misconstrues the Court's Order, which instead is based on unlawful terms and conditions that Defendants have inserted within a contract of adhesion related to the development of real property (*inter alia*). Since the development of real property is not, alone, an unlawful practice, Defendants' arguments here are off-base and incorrect. The Court should not modify its Order based on these incorrect arguments.

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

Defendants' Motion complains that "The Court's Order recognizes that Plaintiffs make 'numerous allegations and Claims related to access to the Club,' but states that 'many allegations in the Complaint are not related to the Membership Plan or Agreement,' and are thus outside the scope of their arbitration provisions." (Mot. at p. 25). *Again*, Defendants are complaining about language that they insisted be inserted into the Order. (See Exhibit 1, p. 27). With temerity, Defendants' Motion then states that "the Court **concedes** that many of Plaintiffs' claims relate to the Palmetto Bluff Club" (*Id.* at 26 (emphasis added)).

Plaintiffs suggest that the Court remove Defendants' incorrect edits, to which they now object, and not change the correct ruling by the Court. (*e.g.* Ex. 1, p. 27).

In addition, as discussed in Plaintiffs' initial memorandum and at the hearing, 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 entities' 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 and Montage are 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.
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. Defendants do not explain how these or numerous other claims purportedly relate to the Membership Agreement or Membership Plan, and thus Defendants have waived such arguments. 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. The Court was correct to so rule in its Order.

This Court should deny Defendants' Motion to Reconsider, which is procedurally improper and fails to identify any manifest error justifying a change to the Order.

**AS TO THIS COURT’S DENIAL OF DEFENDANTS’ MOTION TO DISMISS
PURSUANT TO SCRCP 12(b)(8)**

Defendants oddly claim that the “Order does not cite any legal authority in support of its rulings” on Defendants’ Motion to Dismiss. (Def. Mtn. p. 26). The South Carolina Rules of Civil Procedure are themselves ample “legal authority.” If this Court would like to amend its Order to include Rule 2’s definition of what constitutes and “action,”¹⁵ or Rule 81’s delineation of the Rules’ “Applicability,”¹⁶ or Rule 3’s authority as to the “Commencement of a Civil Action,”¹⁷ all of which are encompassed by Rule 12(b)(8)’s provision on when “another action is pending,”¹⁸ then it certainly could do so.

But Defendants are wrong that this Court was required to support its denial of a motion to dismiss with any findings of law or fact. The Rules state:

Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b) [governing involuntary dismissal].

Rule 52, SCRCP. This Court should not reconsider its denial of Defendants’ Motion to Dismiss, which correctly applied the law.

¹⁵ An arbitration filing with the AAA is not a “civil action” as identified by Rule 2, SCRCP and as contemplated by Rule 12(b)(8).

¹⁶ The Rules of Civil Procedure, including Rule 12(b)(8) do not encompass arbitration.

¹⁷ No other civil action has been commenced between the parties, and no other civil action is pending per Rule 12(b)(8). In any event, all Defendants’ arbitration filings were made after Plaintiffs initiated this lawsuit in civil court.

¹⁸ Rule 12(b)(8) operates to dismiss an action that is subsequently filed, when another action is already pending. *See* James F. Flanagan, South Carolina Civil Procedure pp. 105-106 (3d ed. 2010).

CONCLUSION

For the reasons set forth above, as well as in Plaintiffs' previous filings, this Court should deny Defendants' Motion.

To address Defendants' concerns that the Order is not legally sound, this Court should remove from its Order all of the language which Defendants suggested that this Court add, which "suggestions" were designed to undermine the Order and are the primary grounds for Defendants' Motion. (See Exhibit 1).

Respectfully submitted,

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October 13, 2022
Charleston, South Carolina

EXHIBIT 1

to Plaintiffs' Opposition to Defendants' Motion to Reconsider

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

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.

[proposed]
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

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 DENIED.
- Plaintiffs' Motion to Disqualify Nexsen Pruet LLC as counsel is DENIED.

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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

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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.

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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.”

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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.

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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 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

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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 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

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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 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

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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 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)).

Defendants maintain that, because the arbitration agreement incorporates the Commercial Arbitration Rules of the American Arbitration Association, the agreement

delegates the question of arbitrability to the arbitrator. See, e.g., *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). The Court declines to follow *Henry Schein*.

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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 Fourteen (14) 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

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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.

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 fourteen 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. Defendants contend that is why 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.").

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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. 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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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."). ¶

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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.

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.

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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.").

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

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.

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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, and Jennifer Albero, 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.")

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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:

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

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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

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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.](#)

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

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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, 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 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

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.

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.

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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:

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- 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.

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

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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.

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

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.

(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 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.").

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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.”). Although the pursuit of these collections appears to be specifically exempted from the arbitration provision, such one-sidedness is unconscionable, and it would be deemed objectively unfair and oppressive by a reasonable person.

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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 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.

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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.

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.

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*.

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Despite the numerous allegations and Claims related to access to the Club, many

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

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]

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

315 Corley CW LLC *et al.*,

Plaintiffs,

v.

Palmetto Bluff Development, LLC *et al.*,

Defendants.

COURT OF COMMON PLEAS

CASE NO.: 2022-CP-07-00632

**OPPOSITION TO DEFENDANTS'
MOTION FOR CASE
ASSIGNMENT TO THE BUSINESS
COURT PROGRAM**

All Plaintiffs respectfully oppose Defendants' motion for case assignment to business court. This is not a business dispute. It is a real property dispute between homeowners and the developer at Palmetto Bluff. Such disputes regularly are heard in the Court of Common Pleas — particularly in Beaufort, where many planned communities exist and their disputes are litigated.

The issues here do not fall into the standard categories for Business Court cases set forth by the South Carolina Supreme Court, such as "Investment Securities," "Trusts, Monopolies, and Restraints of Trade," "Trade Secrets," etc. *See Order re: Amended Business Court Program*, 2019-01-30-01, at item 5 ("Jurisdiction of the Business Court"). Instead, the issues here pertain to the development of real property, and whether the covenants imposed by the developer on the homeowners are binding and lawful in each of their terms. For that reason, the homeowner Plaintiffs filed this case in the Court of Common Pleas in Beaufort and did not request a transfer to Business Court.

Defendants' motion is part of an ongoing campaign to get this case away from Plaintiffs' chosen forum—the community where they live. The parties already have

engaged in vigorous motions practice regarding Defendants' attempt to move this case to arbitration before the American Arbitration Association. After extensive briefing and lengthy oral argument, the Honorable R. Ferrell Cothran, Jr., denied Defendants' motion to compel arbitration and motion to dismiss. *See Exhibit 1* (Order 9/15/2022). Defendants have filed a motion to reconsider that ruling, which currently is pending before Judge Cothran. This motion is a continuation of that effort to forum-shop, when the case instead should be proceeding to discovery.

The Chief Business Court Judge has certain discretion on whether or not to assign a case to Business Court, and Plaintiffs respectfully request that this case remain where it was filed: in the Court of Common Pleas in Beaufort.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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October 20, 2022

Charleston, South Carolina

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

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, ... Respondents,

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.

NOTICE OF APPEAL

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

(collectively, "Appellants") appeal the Order dated September 15, 2022, granting Plaintiffs' Motion to Stay Arbitration and to Invalidate Purported Arbitration Clause, denying Defendants' Motion to Compel Arbitration, and denying Defendants' Motion to Dismiss (attached hereto as **Exhibit A**); the Amended Order dated November 2, 2022 (attached hereto as **Exhibit B**); and the Order dated November 8, 2022, denying Defendants' Motion to Alter or Amend (attached hereto as **Exhibit C**).

Appellants received written notice of the entry of the Order denying Defendants' Motion to Alter or Amend on November 8, 2022.

November 11, 2022

s/Val H. Stieglitz

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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

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 Respondents/Cross-Appellants,

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 Appellants/Cross-Respondents.

CROSS-NOTICE OF APPEAL

Respondents/Cross-Appellants 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 (collectively Cross-Appellants) cross-appeal certain portions of the Order dated September 15, 2022 (attached as Exhibit A), the Amended Order dated November 2, 2022 (attached hereto as Exhibit B), and the Order dated November 8, 2022 (attached hereto as Exhibit C).

Respondents received written notice of the entry of the Order denying Defendants' Motion to Alter or Amend on November 8, 2022, and received Appellants' notice of appeal on November 14, 2022.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ian Ford

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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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SC Court of Appeals

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 10, 2023

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