

22243

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2015-000002

The Callawassie Island Members Club, Inc.,

Respondent,

v.

Michael J. Frey and Grace I. Frey,

Defendants,

Of Whom Michael J. Frey is the Appellant.

RECORD ON APPEAL
Volume 1 of 4

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
THE CALLAWASSIE ISLAND	)	CIVIL ACTION NO. 2012-CP-07-03209
MEMBERS CLUB, INC.,	)	
Plaintiff,	)	
v.	)	<u>ORDER GRANTING SUMMARY</u>
MICHAEL J. FREY and GRACE	)	<u>JUDGMENT IN FAVOR OF PLAINTIFF</u>
I. FREY,	)	<u>AGAINST MICHAEL J. FREY</u>
Defendants.	)	

THIS MATTER came before the Court upon the motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), for summary judgment against the Defendants, Michael J. Frey and Grace I. Frey. Present before the Court on Monday, May 19, 2014, were Ehrick K. Haight, Jr., Esquire and William T. Young III, Esquire, Attorneys for the Plaintiff, and Brian D. McDaniel, Esquire, Attorney for the Defendants.

Defendant Grace I. Frey claims she signed the relevant membership documents in her capacity as spouse only and not as an applicant and/or purchaser in her own right; as additional discovery may be warranted with respect to this issue, this Court denies Plaintiff's motion for summary judgment with respect to Mrs. Frey at this time pending the completion of additional discovery, with leave to refile.

This is a breach of contract for indebtedness owed by the Defendants arising from their membership in CIMC. The Plaintiff's motion, made pursuant to Rule 56, SCRCP, is based upon the pleadings, including the verified Complaint, Plaintiff's Memorandum in Support of Motion for Summary Judgment, the relevant governing documents (as cited

therein), the Affidavits of Jeff Spencer, the Affidavits of Ehrick K. Haight, Jr. and the law applicable to the case. Defendants submitted a Memorandum in Opposition to Plaintiff's motion and tendered an Affidavit in support of their position. As this Court declines to grant Summary Judgment as against Defendant Grace I. Frey at this time, the following shall apply only to Defendant Michael J. Frey (hereinafter, "Defendant").

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E. 2d 801 (2009), Rule 56 (c), SCRCP.

Defendant argues that his membership was or should have been suspended, or terminated and that he should have been expelled because of non-payment under the terms of the General Club Rules dated August 8, 2001, and other documents. Whether this is true or not is irrelevant. It is clear under all of the relevant documents, from the time Defendant initially acquired his membership until the present, that the obligation to remain a member in good standing and pay dues, fees, assessments and other charges continues until the membership is re-issued to a new member. Moreover, this continuing obligation is consistent with S.C. Code Ann. §33-31-621 (e) (2006), which specifically recognizes a corporation's right to impose obligations on its members beyond termination of the membership as follows: "A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension."

By applying for a membership and purchasing same, Defendant became contractually bound by the 1994 Plan for the Offering of Memberships and the Exhibits thereto, which included the By-laws and the General Club Rules (collectively, the "1994 Plan"). Reading these documents as a whole and giving them their plain and ordinary meanings, the Defendant's

obligation to pay dues, fees and assessments until such time as his membership re-issues is clear and unambiguous. The following excerpts leave no room for contrary interpretation:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club **until his or her equity membership is reissued** (emphasis added) by the Club. (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendant acquired Membership*).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club. (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (emphasis added) by the Club. (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendant acquired Membership*).

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums). (*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendant acquired Membership*).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Although Defendant initially entered into these contractual obligations with the Callawassie Island Club, Inc. ("CIC"), Plaintiff has the right to enforce those obligations. Plaintiff's acquisition of the club assets was contemplated by the 1994 Plan; was voted upon and approved by the membership (of which Defendant was a part); and the transaction was closed in 2001. Thereafter, Defendant continued to use the club amenities; paid dues, fees and assessments to CIMC; and was issued a membership certificate evidencing his membership in CIMC. As the obligation to pay dues, fees and assessments until his membership was re-issued was evident in the 1994 Plan, which was in effect at the time he acquired his membership, Defendant's contention that the Plaintiff may have later failed to properly notice and/or meet the voting requirements for subsequent amendments is irrelevant.

Defendant asserts that various representations and warranties were made by CIC that contradict the plain reading of the governing documents. CIC is not a party to this action. Moreover, even if such representations or warranties were made by CIC, they would not avail Defendant as a defense to this action. The 1994 Plan exhorts prospective members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the 1994 Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The 1994 Plan makes clear that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership.

Plaintiff was not in existence at the time Defendant purchased his membership in 1995. Defendant, therefore, cannot establish the essential elements for a negligent

misrepresentation claim, namely, 1) a false representation made by CIMC to the Member; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Member; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation; as against this Plaintiff. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Defendant points to S.C. Code Ann. §33-31-620(a), of the South Carolina Nonprofit Corporations Act (the "Act"), for the proposition that imposing liability for continuing obligations following resignation is statutorily prohibited. The Defendant's argument ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes clear that members are to be held accountable for previously agreed-upon continuing obligations, even beyond resignation. Defendant agreed to be bound by the 1994 Plan, including the By-laws and General Club Rules attached thereto, all of which unambiguously and consistently obligate him to pay dues until his membership reissues. Furthermore, this Court can find no violation of the statutory provisions relied upon by Defendant.

Defendant, in further opposition to the summary judgment motion at issue, asserts that granting the motion is inappropriate because discovery has not yet been completed. However, a party opposing summary judgment on this basis "must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (Quoting Baughman v. American Tel. and Tel. Co., 306 S.C.

101, 112, 410 S.E.2d 537, 544 (1991)). Moreover, a failure of proof on an essential element of a claim renders all other facts immaterial. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Defendant has failed to demonstrate the likelihood that further discovery will uncover additional relevant evidence. Consequently, Defendant's argument must be rejected.

In the case at bar, CIMC's claim is premised upon a breach of contract. Because this Court has determined that the agreement between the parties is unambiguous, extrinsic evidence is inadmissible to determine the intent of the parties. See Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993). ("The construction of an unambiguous deed is a question of law, not fact. The terms of such a deed may not be varied or contradicted by evidence drawn from sources other than the deed itself.... Extrinsic evidence is admissible to resolve ambiguities but not to create them where none exist."). Accordingly, because Defendant would not be able to introduce any evidence beyond the contents of the documents at issue, any further discovery is unnecessary, superfluous, and would not defeat CIMC's motion for summary judgment. Likewise, Defendant's position on ongoing discovery also fails with regards to his counterclaims. Defendant's claim for negligent misrepresentation fails as a matter of law because CIMC did not exist at the time Defendant undertook his obligation. The instant matter presents a classic example of a failure of proof on an essential element, as it is impossible for CIMC to have made any representation to Defendant prior to its existence. Therefore, further discovery is unnecessary, as Defendant cannot satisfy an essential element of this claim.

The only remaining counterclaim relates to an accounting requested by Defendant. Defendant has presented no evidence to contradict the billing records submitted by CIMC.

Furthermore, because this Court has determined that the agreement unambiguously requires Defendant to remain liable for payment until his membership is transferred, this Court must also find that Defendant cannot demonstrate any right to an accounting, and grants summary judgment in favor of CIMC.

Based upon the foregoing, this Court finds the Plaintiff has established as a matter of law that pursuant to the terms and conditions of the 1994 Plan, the By-laws and General Club Rules (and all subsequent amendments thereto), that there is an unpaid balance due and owing for dues, fees, assessments and other charges, including interest at the contract rate of one and one-half (1.5%) percent per month, for which the Defendant is responsible. The Defendant has failed and refused to make payment in full for dues, assessments, interest and other charges and Defendant is indebted to the Plaintiff in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars, as contemplated by the 1994 Plan (and all subsequent amendments).

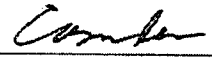
Based upon the pleadings, the relevant documents, and the affidavits submitted, it appears that there is no genuine issue as to the charges made on the account and the liability of the Defendant for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendant, as a matter of law, for the sum of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and

against the Defendant, Michael J. Frey, in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars², for a grand total of Sixty Seven Thousand Eight Hundred Seventy Six and 46/100 (\$67,876.46) Dollars.

AND IT IS SO ORDERED.


J. ERNEST KINARD, JR.
Presiding Judge


South Carolina

June 24, 2014

¹ This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

² The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE)
I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-3209

EXECUTION AGAINST PROPERTY

TO: THE BEAUFORT COUNTY SHERIFF:

Judgment was rendered on the 24th day of June, 2014, in an action in the Court of Common Pleas against Michael J. Frey, Defendant, and in favor of The Callawassie Island Members Club, Inc., Plaintiff, for the amount of Sixty-Seven Thousand Eight Hundred Seventy-Six and 46/100 (\$67,876.46) Dollars plus interest at the contract rate of one and one-half (1 ½ %) percent per month.

The said judgment against Michael J. Frey was filed and docketed in the Office of the Clerk of Court for Beaufort County on June 27, 2014 and the amount of Sixty-Seven Thousand Eight Hundred Seventy-Six and 46/100 (\$67,876.46) Dollars remains due and owing thereon together with interest at the contract rate since May 9, 2014.

You are therefore directed to satisfy the said judgment out of the personal property of the judgment debtor within your county, and if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtor on the day when the said judgment was so docketed in your county, or at any time

thereafter, and duly return this execution according to the law to the Clerk of Court of
Common Pleas for the County of Beaufort.

Given under my hand on the ____ day of July, 2014.

Clerk of Court of Common Pleas for
Beaufort County, South Carolina

Subscribed by:


Ehrick K. Haight, Jr.
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
THE CALLAWASSIE ISLAND	)	CIVIL ACTION NO. 2012-CP-07-03209
MEMBERS CLUB, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER DENYING DEFENDANTS' MOTION</u>
	)	<u>FOR RECONSIDERATION AND AFFIRMING</u>
MICHAEL J. FREY and GRACE	)	<u>SUMMARY JUDGMENT AGAINST</u>
I. FREY,	)	<u>DEFENDANT MICHAEL J. FREY</u>
	)	
Defendants.	)	

THIS MATTER came before the Court upon the motion of Defendants, Michael J. Frey and Grace I. Frey, for reconsideration of the order granting summary judgment as against Defendant Michael J. Frey filed July 7, 2014. Present before the Court on Monday, November 2, 2014, were Stephen P. Hughes, Esquire and Stacey S. Collins, Esquire, attorneys for the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC" or alternatively the "Club") and Ian S. Ford, Esquire and Neil D. Thomson, Esquire, attorneys for the Defendants.

Based on the motion, the memoranda filed by the respective parties, the arguments of counsel and a reading of the relevant governing documents, the Court makes the following findings of fact:

The governing documents, from the time the membership was initially acquired, clearly and unambiguously imposed a duty on members to remain in good standing until their membership reissued. As there is no question of fact regarding the interpretation,

legality or applicability of this obligation, the prior Order Granting Partial Summary Judgment in Favor of Plaintiff Against Michael J. Frey is hereby affirmed and all prior findings of fact set forth therein are incorporated herein by reference.

As for CIMC's authority to collect its attorneys' fees, which was raised for the first time at the hearing for reconsideration, Section 15.3.5 of the General Club Rules¹ states that "[i]f the Club commences any legal action to collect any amount owed, or to enforce the liability of a Member to the Club, the Member shall also be liable for all costs and expenses of the legal action, including without limitation, reasonable attorneys' fees required in connection with appellate proceedings." Similarly, Section 15.3.4 authorizes the collection of attorneys' fees "incurred by the Club incident to the collection of such Charges, or enforcement of such lien, whether or not legal proceedings are initiated (*emphasis added*)."² The Court notes that the Club's governing documents (from 1994 forward) consistently allowed the Board of Directors, to establish and determine the amount of "dues, fees and charges" under its By-laws.³ The Board also maintained the exclusive authority "to determine the interpretation or construction of these By-laws or any parts thereof, which may be in conflict or of doubtful meaning, and their decisions shall be final and conclusive."⁴ From the Complaint and Affidavits filed in this case, it is clear that the Club has consistently interpreted the term "Charges" to include attorneys' fees incurred in actions to collect for unpaid dues. Based on the foregoing, the award of attorneys' fees is likewise affirmed.

¹Dated January 1, 2014 and currently in force.

²Section 15.3.4, General Club Rules, January 1, 2014; see also Article 11, By-laws, January 1, 2014 and Article XIII), By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships.

³Article VI(2)(f), By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships and Article 6.2(e), By-laws dated January 1, 2014.

⁴Article 6.5, By-laws dated January 1, 2014; and also, Article VI, Section 5, By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships.

CIMC has leave to renew its motion for summary judgment as to Defendant Grace I. Frey and if such motion be filed and adequate notice given, said motion may be heard before me at my next term of court in Beaufort County.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the prior Order Granting Summary Judgment Against Michael J. Frey in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars, for a grand total of Sixty Seven Thousand Eight Hundred Seventy Six and 46/100 (\$67,876.46) Dollars⁵ is hereby re-affirmed and all findings of fact contained therein are likewise re-affirmed.

AND IT IS SO ORDERED.


J. ERNEST KINARD, JR.
Presiding Judge

Camden, South Carolina
~~November~~ 11, 2014.
~~December~~

⁵This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2012-CP-07-03209

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

MICHAEL J. FREY and GRACE I.
FREY,

Defendants.

ORDER

14 APR 10 PM 4:09
JUDITH E. JENSEN
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC), seeking a dismissal of certain counterclaims asserted by the Defendants. The Defendants, by way of an Amended Answer and Counterclaims, assert claims premised upon a breach of contract, negligent misrepresentation, breach of fiduciary duty, and violations of S.C. Code Ann. §§33-31-610, -611, -620, and -621.

CIMC filed a motion to dismiss or alternatively, for judgment on the pleadings, as to the counterclaims premised upon an alleged breach of fiduciary duty and violations of S.C. Code Ann. §§33-31-610, -611, -620, and -621. These claims are designated within the relevant pleadings as the second, third, fifth, and sixth causes of action.

The instant action was initially commenced by CIMC to recover dues, fees, and other funds it alleges the Defendants owe as members to CIMC¹. The

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

Defendants, in responding to the claim, have challenged the authority of CIMC to continue to assess dues, and have challenged other actions taken by CIMC upon the grounds that CIMC lacked authority to take the contested action. The basic contentions by the Defendants are that CIMC was taking action outside its authority, or that CIMC breached its fiduciary duty to the Defendants.

In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown teaches that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code §33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. Additionally, derivative actions against nonprofit corporations are permitted by S.C. Code Ann. §33-31-630, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. Rule 23(b)(1), SCRCP, establishes the requirements for a derivative action:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the

directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The Defendants' breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the Defendants' Amended Answer and Counterclaims is not a verified pleading. Therefore, these counterclaims are fatally defective and must be dismissed. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRCP, is properly dismissed pursuant to Rule 12(b)(6).") (Quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)).

Moreover, the Defendants' contention that they are entitled to assert the claims directly is unavailing. In support of this position, the Defendants rely upon Brown and the official comment to §33-31-304. However, Brown does not stand for such a proposition in this instance, because the Non-Profit Corporations Act explicitly limits challenges to corporate authority to claims which are asserted derivatively. Conversely, the Business Corporations Act does authorize direct claims, which is discussed in Brown. Finally, the Official Comment to §-304 cannot be construed as support for this argument, because under established South Carolina case law, as well as the specific South Carolina Reporters Comments (which takes into account South Carolina precedent), the claims the Defendants attempt to make must be asserted derivatively.

The Defendants further argue that CIMC's motion to dismiss should not result in striking of statutory defenses. This Court agrees, but notes that such defenses are not properly pled. Therefore, this Court requires the Defendants to amend their pleading, within 30 days of this Order, to properly assert such defenses. A failure to amend will result in the defenses being stricken.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that the Defendants' counterclaims, designated as their second, third, fifth, and sixth causes of action, must be dismissed as a matter of law. However, the Defendants may, within 30 days of the date of this Order, file a Second Amended Answer, and properly plead the statutory defenses which are alleged in those portions of the Amended Answer and Counterclaims. A failure to do so shall result in those defenses being stricken.

IT IS SO ORDERED!

Beaufort, South Carolina

January 28, 2014.

April 8

By: 
Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
THE CALLAWASSIE ISLAND,)
MEMBERS CLUB, INC.)
)
Plaintiff,)
)
vs.)
)
MICHAEL J. FREY)
GRACE FREY)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-07-3209

ORDER GRANTING DEFENDANT'S
MOTIONS TO COMPEL

DATE OF HEARING	:	June 2, 2014
PRESIDING JUDGE	:	J. Ernest Kinard, Jr.
PLAINTIFFS' ATTORNEY	:	William T. Young
DEFENDANTS' ATTORNEY	:	Brian McDaniel

THIS MATTER came before this Court for a motions hearing on the 2nd day of June 2014, in Beaufort County, South Carolina. The Hearing was held based on the Defendant's motion to compel discovery.

The Defendant served both Interrogatories and Requests for Production upon the Plaintiff on January 6, 2014. Those discovery requests were not answered within thirty days. On April 15, 2014 the Defendants filed a motion to compel responses. The Plaintiff thereafter provided responses to the discovery. The Defendants contend that the responses provided fail to fully respond and are incomplete for the reasons set forth at the hearing. Upon an itemized review of the discovery sought and considering oral arguments on the discovery in question, this Court makes the following findings:

As to **Interrogatory # 5** the Plaintiff will respond within 30 days with the scope of the Interrogatory being limited in time to the last 3 years.

As to **Interrogatory # 8** the Plaintiff will promptly provide the requested information or provide the Defendants with the information necessary for online access to the information for a period of 30 days.

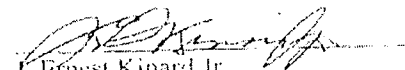
As to **Interrogatory # 10** and **Request for Production # 3** the Plaintiff shall provide the Defendant with the membership file of the Defendant or access thereto within 30 days.

As to **Request for Production # 7** the Plaintiff is directed to turn over all such materials in the custody or control of the Plaintiff. The Plaintiff is not, however, obligated to collect such communications from board members, and any such effort to obtain the documents and communications sought by the Defendants would be directed to such board members.

The Plaintiff is directed to provide a privilege log as to any documents or materials withheld pursuant to the attorney-client privilege.

THEREFORE, after a hearing in this matter it is hereby **ORDERED** that:
The Defendants' motion to compel is granted as specified and limited above.

IT IS SO ORDERED.


J. Ernest Kinard Jr.
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina
June 5, 2014

Exhibit A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-07-3209

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

MICHAEL J. FREY and GRACE I. FREY

2014 JUN 27 AM 9:09

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stacey S. Collins, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Callawassie Island Members Club, Inc.	Michael J. Frey	\$ 67,876.46
If applicable, describe the property, including tax map information and address, referenced in the order		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

Page 1 of 2

SCRPC Form 4C (10/2011)

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



Judge Code 017

Date 6/24/14

For Clerk of Court Office Use Only

This judgment was entered on the
appropriate attorney's box on this
appearing

day of _____, 2014 and a copy mailed first class or placed in the
day of _____, 2014 to attorneys of record or to parties (when

pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ehrick K. Haight, Jr., Esq.
Stacey S. Collins, Esq.
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

Stephen P. Hughes, Esq.
William T. Young, III, Esq.
Howell Gibson & Hughes, PA.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

ATTORNEY(S) FOR THE DEFENDANT(S)

Brian McDaniel, Esq.
Law Office of Brian McDaniel, LLC
P.O. Box 2085
Beaufort, SC 29901
(843) 379-5117

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE I.)
FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07- _____

COMPLAINT
(Non-Jury)

2012 SEP 11 AM 11:00
CLERK OF COURT

TO: THE DEFENDANT(S) ABOVE-NAMED:

The Plaintiff, The Callawassie Island Members Club, Inc., complaining of the Defendants, Michael J. Frey and Grace I. Frey, would respectfully show this Court as follows:

BACKGROUND

1. That the Plaintiff, The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as the "Club"), is a non-profit corporation organized and existing under the laws of the State of South Carolina, which owns and operates the golf, tennis, swimming and social facilities on Callawassie Island, South Carolina, for the use, recreation and enjoyment of its members and is subject to the jurisdiction of this Court.

2. That the Defendants, Michael J. Frey and Grace I. Frey, are citizens and residents of the State of New Jersey; own property in Beaufort County, South Carolina; have entered into a contract to be performed in whole or in part in Beaufort County; and are subject to the jurisdiction of this Court.

3. That the Defendants, for good and valuable consideration, executed that certain Application for Membership on or about September 29, 1995, a true and correct copy (with social security and account numbers redacted) of which is attached hereto as Exhibit "A-1" and in

conjunction with said Application for Membership did also enter into that certain Membership Purchase Agreement with the Plaintiff on or about September 29, 1995, a copy of which is attached hereto as Exhibit "A-2" (collectively referred to herein as the "Agreement"). The terms of which are incorporated herein by reference.

4. In accordance with the Agreement, the Defendants agreed to be bound by the terms and conditions of Plan for Offering of Memberships in the Callawassie Island Club, dated April 1994 and the exhibits thereto ("Membership Plan"), as the same may be amended from time to time.

5. In agreeing to be bound to the Membership Plan, the Defendants became obligated for the payment of dues, fees, assessments and other charges. The Membership Plan was subsequently amended and made part of a Plan for Offering of Memberships (the "Plan"), which was adopted by the Defendants by virtue of their membership with the Club.

6. On or around October 26, 1995, the Defendants, by deed recorded in Book 812 at Page 651, Beaufort County records, purchased Lot 16, Phase 11, Callawassie Island, and were bound by all applicable conditions, restriction, easements and affirmative obligations of record.

7. The Defendants, by virtue of their purchase and ownership of Lot 16, Phase 11, agreed to be bound by the terms and conditions of that certain General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which has been duly amended and adopted pursuant to its terms and since December 1, 2001, is known as the Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which is recorded in Book 1505 at Page 850, Beaufort County Records (hereinafter jointly referred to as the "Declaration").

8. Having purchased the property in 1995, the Defendants could have elected to decline a membership with the Club at the time; however, the Defendants purchased a

Club membership as permitted in the Declaration and consistent with the Agreement. The Defendants' purchase of the membership and their purchase and ownership of Lot 16, Phase 11, require them to remain members in good standing under the terms and conditions of the governing documents, including the Plan and the Declaration.

9. The Defendants received and enjoyed the benefits, rights and privileges of the membership under the governing documents, including the Plan and the Declaration, for many years until the Defendants' recent failure to pay membership dues, fees, assessments and other charges.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract on Membership #2774 for Lot 16, Phase 11)

10. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 9 of the Complaint above as if repeated verbatim.

11. That pursuant to the governing documents, including the Plan and the Declaration, all as amended, the Plaintiff has levied dues, fees, assessments, and other charges, including interest, for which the Defendants are responsible in the sum of Twenty-eight Thousand Six Hundred Seventy-one and 98/100 (\$28,671.98) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, up to and including July 31, 2012. A copy of the 'Member History' is attached hereto as Exhibit "B", the terms of which are incorporated herein by reference.

12. That the Plaintiff has performed all of its obligations to the Defendants in accordance with the applicable governing documents, including the Plan and the Declaration.

13. That the Plaintiff has demanded payment of the amount due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in

breach and default of the agreements and covenants under the applicable governing documents, including the Plan and the Declaration.

14. That upon information and belief, the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges and the costs of collection, including reasonable attorney's fees and interest at the rate of one and one-half (1.5%) percent per month, accruing to and past due as of the time of trial should be added to the Plaintiff's damages sought herein.

15. That the Plaintiff is entitled to judgment against the Defendants, jointly and severally, in the amount of in the sum of Twenty-eight Thousand Six Hundred Seventy-one and 98/100 (\$28,671.98) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges up to and including July 31, 2012, along with additional dues, fees, assessments and other charges which accrue, together with interest thereafter at the rate of one and one-half (1.5%) percent per month, plus the costs and disbursements of this action, including reasonable attorneys' fees.

FOR A SECOND AND ALTERNATIVE CAUSE OF ACTION
(Quantum Meruit)

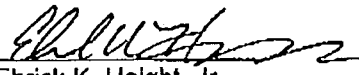
16. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 15 of the Complaint above as if repeated verbatim.

17. That in the alternative, the Plaintiff is entitled to a judgment in the sum of Twenty-eight Thousand Six Hundred Seventy-one and 98/100 (\$28,671.98) Dollars against the Defendants, as the Plaintiff provided club facilities on Callawassie Island for the use, recreation, enjoyment and benefit of the said Defendants, by conferring upon the Defendants all of the rights

and privileges as part of the Club membership, which were enjoyed by the Defendants, and that the Plaintiff expected fair and reasonable compensation for the membership dues, fees, assessments and other charges in the sum of Twenty-eight Thousand Six Hundred Seventy-one and 98/100 (\$28,671.98) Dollars, plus additional dues, fees, assessments and other charges which accrue, together with pre-judgment interest and costs, and to be compensated so that the Defendants will not be unjustly enriched, as the benefits were not conferred gratuitously.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and award judgment against the Defendants, jointly and severally, and in favor of the Plaintiff for unpaid dues, fees, assessments and other charges, including interest, plus the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

Ehrick K. Haight, Jr.
P. O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for Plaintiff

Hilton Head Island, South Carolina
This 12th day of September, 2012.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF BEAUFORT)

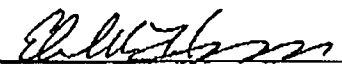
VERIFICATION

PERSONALLY appeared before me Jeff Spencer who, being duly sworn, deposes and says: that he is the General Manager of Callawassie Island Members Club, Inc. and that the foregoing Complaint has been read by him and that the allegations contained therein are true to his knowledge or based upon the corporate records, except those stated upon information and belief and as to those, he believes them to be true.

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.

By: 
JEFF SPENCER
ITS: GENERAL MANAGER

SWORN TO AND SUBSCRIBED before me
this 12th day of September, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/20/2017

2012 SEP 11 AM 11:07
CLERK OF COURT
JESSIE J. FREY, Notary Public
S.C.

THE CALLAWASSIE ISLAND CLUB
APPLICATION FOR MEMBERSHIP

PERSONAL

Name MICHAEL J. FREY
 Primary Residence 202 Cedar St Cedar Grove NJ 07009
STREET CITY STATE ZIP
 Telephone (201) 857-0921 Social Security # [REDACTED]
 Billing Address AS ABOVE
STREET CITY STATE ZIP
 Place of Birth NEW YORK, NY Date [REDACTED]
 Spouse's Name GRACE I. FREY
 Spouse's Place of Birth POLAND Date [REDACTED]
 Social Security # of Spouse [REDACTED]

Unmarried Children of Applicant under the age of twenty-five, living at home or attending school on a full-time basis:

Name	Date of Birth	Male	Female	School	Academic Year	Soc. Sec. Number
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]

BUSINESS/PROFESSION

Applicant's Occupation and/or Nature of Business or Profession INSURANCE SALES Years in Present Employment 11
 Title AGENT Telephone (201) 239-3434
 Address PO Box 189 Cedar Grove NJ 07009
 Spouse's Occupation and/or Nature of Business or Profession CUSTOMER SERVICE Years in Present Employment 8
 Title ASST TO AGENT Telephone (201) 239-3434
 Address 155 POMPTON AVE VERONA NJ 07044 (NOT MAILING ADDRESS)

11-1

MICHAEL J. FREY

PO Box 189
626 Pompton Avenue
Cedar Grove, NJ 07009
michaelfrey@optonline.net
Phone-973-239-3434
Fax -973-239-3199

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(Quantum Meruit)

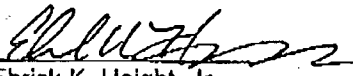
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WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and award judgment against the Defendants, jointly and severally, and in favor of the Plaintiff for unpaid dues, fees, assessments and other charges, including interest, plus the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 
Ehrick K. Haight, Jr.
P. O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for Plaintiff

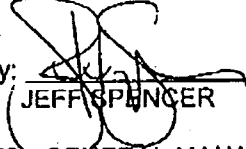
Hilton Head Island, South Carolina
This 12th day of September, 2012.

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF BEAUFORT)

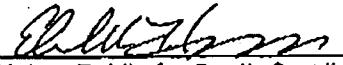
VERIFICATION

PERSONALLY appeared before me Jeff Spencer who, being duly sworn, deposes and says: that he is the General Manager of Callawassie Island Members Club, Inc. and that the foregoing Complaint has been read by him and that the allegations contained therein are true to his knowledge or based upon the corporate records, except those stated upon information and belief and as to those, he believes them to be true.

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.

By: 
JEFF SPENCER
ITS: GENERAL MANAGER

SWORN TO AND SUBSCRIBED before me
this 12th day of September, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/20/2017

2012 SEP 11 AM 11:07
CLERK OF COURT
JESSIE
SC.

THE CALLAWASSIE ISLAND CLUB
APPLICATION FOR MEMBERSHIP

PERSONAL

Name: MICHAEL J. FREY
 Primary Residence: 202 Cedar St Cedar Grove NJ 07009
STREET CITY STATE ZIP
 Telephone: (201) 857-0921 Social Security #: [REDACTED]
 Billing Address: AS ABOVE
STREET CITY STATE ZIP
 Place of Birth: New York, NY Date: [REDACTED]
 Spouse's Name: GRACE J. FREY
 Spouse's Place of Birth: POLAND Date: [REDACTED]
 Social Security # of Spouse: [REDACTED]

Unmarried Children of Applicant under the age of twenty-five, living at home or attending school on a full-time basis:

Name	Date of Birth	Male	Female	School	Academic Year	Soc. Sec. Number
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	[REDACTED]	[REDACTED]

BUSINESS/PROFESSION

Applicant's Occupation and/or Nature of Business or Profession: INSURANCE SALES Years in Present Employment: 11
 Title: AGENT Telephone: (201) 239-3438
 Address: PO Box 159 Cedar Grove NJ 07009
 Spouse's Occupation and/or Nature of Business or Profession: CUSTOMER SERVICE Years in Present Employment: 8
 Title: ASST TO AGENT Telephone: (201) 239-3438
 Address: 155 Pompton Ave VERONA NJ 07094 (NOT MAILING ADDRESS)

1-1

MICHAEL J. FREY

PO Box 189
626 Pompton Avenue
Cedar Grove, NJ 07009
michaelfrey@optonline.net
Phone-973-239-3434
Fax -973-239-3199

PRIMARY: WE WERE ADVISED AT PURCHASE THAT WE
HAD A CHOICE OF MEMBERSHIP FOR APPLICATION PROCESS,
I.E. GOLF OR SOCIAL
— NOT ADVISED THAT IT WAS NOT REQUIRED AT ALL!
— WE WERE ADVISED THAT THERE ARE A LIMITED NUMBER
OF GOLF MEMBERSHIPS — AND SPECIFICALLY — OUR
LOT WOULD HAVE LITTLE RE-SALE VALUE IF
WE CHOSE A SOCIAL MEMBERSHIP.

BEAR IN MIND THAT I HAD 3 GIRLS BORN IN 1984,
1986 + 1990. MY WIFE + I WERE THINKING
RETIREMENT — SHE LOVED THE LOW COUNTRY. I HAD
NOT PLAYED THE COURSE AT TIME OF DECISION/PURCHASE —
ALTHOUGH BOB SCOTT TOOK ME OUT FOR 9 HOLES THAT
AFTERNOON. I CAN PLAY BUT HAVE OTHER HOBBIES IN
FRONT OF GOLF. (SERIOUS HOBBIES IF IT MATTERS!)

I HAD ALWAYS CONSIDERED A COMPROMISE,
I WILL NOT PAY 18% INTEREST — NOT FOR THEIR
ATTORNEY.
AT THIS POINT THEY ARE IN THE POSITION TO MAKE ME
A SUBSTANTIAL OFFER JUST TO REMAIN — I AM NOT.

3. I hereby acknowledge that if I am accepted for membership and pay the required membership contribution, dues, fees and charges, I will be permitted to use the Club Facilities in accordance with the General Club Rules.

4. I hereby agree that I will be jointly and severally liable for all charges and expenses incurred by family members and guests at the Club. All charges will be billed to me on a monthly basis and will be deemed delinquent from the date of the statement if not paid within the customary billing and collection procedure of the Club.

5. This application will not be acted upon unless fully completed, signed and accompanied by a check for the required fees. Membership is conditioned upon approval by the Board of Directors of the Club, which approval will be at the Club's discretion.

6. I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership in the Club is voluntary and that any use or acceptance of any service or privilege incident to membership is undertaken with knowledge of the risk of possible injury. I hereby accept any and all risk of injury to myself, my guests and family members sustained while using the Club Facilities or involved in any event or activity incident to membership in the Club. In accepting this risk of injury I understand that I am releasing the Club and Callawassie Island Company, Ltd. and those employed by or affiliated with either of them from any and all loss, cost, claim, injury, damage or liability sustained or incurred by me, my guests and my family members resulting from or arising out of any conduct or event connected with membership in the Club and use of any of the Club Facilities.

Upon signing this Application, I authorize the disclosure and release of information to the Club for investigating my qualifications for membership and authorize those persons or entities herein to furnish information to the Club.

I understand that acceptance for membership in the Club is subject to approval by the Club and payment of the required membership contribution, dues, fees and charges (including any food and beverage minimums).

Date: Sept 27, 2012

Signed: Michael Frey

APPLICANT SIGNATURE

Date: Sept 27, 2012

Signed: Grace L. Frey

STAMP SIGNATURE

This Application for Membership shall not be binding on the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: _____

Date: _____

THE CALLAWASSIE ISLAND CLUB

P. O. Box 2297

Beaufort, South Carolina 29901

(803) 522-2700

THE CALLAWASSIE ISLAND CLUB MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership: Membership Contribution:

☒ Golf Membership

☐ Social Membership

The undersigned hereby submits an Application for Membership and a check in the amount of \$_____ made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan for the Offering of Memberships in the Callawassie Island Club dated April 1, 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully subordinate the membership privileges and good standing to the Membership Plan for any and all present and prospective use of the Club facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities referred to in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them, because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions regarding or relating to the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: Sept 24, 1995.

MICHAEL J. FREY
PLEASE PRINT NAME

GRACE I. FREY
PLEASE PRINT NAME

Michael J. Frey
APPLICANT
Grace I. Frey
APPLICANT'S SPOUSE

(over)

EXHIBIT A-2

Oct. 16. 2012 9:29AM

MICHAEL FREY

No. 4917 P. 4

01 - Callawassie Island Club
Member History Jul 31/09 - Jul 31/12

Pg 1

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009Main Phone : 201-857-0921
Alt. Phone :
Status : S
Unspent Min: \$500.00

Date	Ty	Chit/Inv	Description	Charges	Tax/Grat	Amount Due	Date	BusArea
	BF		Balance Fwd			3,610.61		
Jul31/09	DU	SJ7752/52	Monthly Dues	382.00	0.00	382.00	Paid	
Jul31/09	DU	SJ7752/52	Club Amenities	50.00	0.00	50.00	Paid	
Jul31/09	DU	SJ7752/52	Golf Course Re	50.00	0.00	50.00	Paid	
Jul31/09	DU	SJ7752/52	Golf Deficit A	7.00	0.00	7.00	Paid	
Jul31/09	LP	SJ7763/63	Finance Charge	54.19	0.00	54.19	Paid	
Aug31/09	DU	SJ7775/75	Monthly Dues	382.00	0.00	382.00	Paid	
Aug31/09	DU	SJ7775/75	Club Amenities	50.00	0.00	50.00	Paid	
Aug31/09	DU	SJ7775/75	Golf Course Re	50.00	0.00	50.00	Paid	
Aug31/09	DU	SJ7775/75	Golf Deficit A	7.00	0.00	7.00	Paid	
Aug31/09	LP	SJ7783/83	Finance Charge	62.34	0.00	62.34	Paid	
Sep30/09	DU	SJ7793/93	Monthly Dues	382.00	0.00	382.00	Paid	
Sep30/09	DU	SJ7793/93	Club Amenities	50.00	0.00	50.00	Paid	
Sep30/09	DU	SJ7793/93	Golf Course Re	50.00	0.00	50.00	Paid	
Sep30/09	DU	SJ7793/93	Golf Deficit A	7.00	0.00	7.00	Paid	
Sep30/09	LP	SJ7798/98	Finance Charge	70.62	0.00	70.62	Paid	
Oct31/09	DU	SJ7802/02	Monthly Dues	382.00	0.00	382.00	Oct31/09	
Oct31/09	DU	SJ7802/02	Club Amenities	50.00	0.00	50.00	Oct31/09	
Oct31/09	DU	SJ7802/02	Golf Course Re	50.00	0.00	50.00	Oct31/09	
Oct31/09	DU	SJ7802/02	Golf Deficit A	7.00	0.00	7.00	Oct31/09	
Oct31/09	LP	SJ7817/17	Finance Charge	79.02	0.00	79.02	Oct31/09	
Nov30/09	DU	SJ7829/29	Monthly Dues	382.00	0.00	382.00	Nov30/09	
Nov30/09	DU	SJ7829/29	Club Amenities	50.00	0.00	50.00	Nov30/09	
Nov30/09	DU	SJ7829/29	Golf Course Re	50.00	0.00	50.00	Nov30/09	
Nov30/09	DU	SJ7829/29	Golf Deficit A	7.00	0.00	7.00	Nov30/09	
Nov30/09	LP	SJ7844/44	Finance Charge	87.55	0.00	87.55	Nov30/09	
Dec31/09	DU	SJ7860/60	Monthly Dues	402.00	0.00	402.00	Dec31/09	
Dec31/09	DU	SJ7860/60	Club Amenities	50.00	0.00	50.00	Dec31/09	
Dec31/09	DU	SJ7860/60	Golf Course Re	50.00	0.00	50.00	Dec31/09	
Dec31/09	MH	SJ7878/78	Annual Food &	500.00	0.00	500.00	Dec31/09	
Dec31/09	LP	SJ7883/83	Finance Charge	96.20	0.00	96.20	Dec31/09	
Jan31/10	DU	SJ7896/96	Monthly Dues	402.00	0.00	402.00	Jan31/10	
Jan31/10	DU	SJ7896/96	Club Amenities	50.00	0.00	50.00	Jan31/10	
Jan31/10	DU	SJ7896/96	Golf Course Re	50.00	0.00	50.00	Jan31/10	
Jan31/10	DU	SJ7896/96	GNR Deficit As	191.67	0.00	191.67	Jan31/10	
Jan31/10	LP	SJ7904/04	Finance Charge	112.67	0.00	112.67	Jan31/10	

August 26, 2012 12:44pm

User: CRAIG Term: A4

EXIT B

Oct. 16, 2012 9:29AM

MICHAEL FREY

No. 4917 P. 5

01 - Callawassie Island Club
Member History Jul 31/09 - Jul 31/12

Pg 2

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009Main Phone : 201-857-0921
Alt. Phone :
Status : S
Unspent Min: \$500.00

Date	Ty	Chit/Inv	Description	Charges	Tax/Grat	Amount Due	Date	BusArea
Feb28/10	DU	SJ7917/17	Monthly Dues	402.00	0.00	402.00	Feb28/10	
Feb28/10	DU	SJ7917/17	Club Amenities	50.00	0.00	50.00	Feb28/10	
Feb28/10	DU	SJ7917/17	Golf Course Re	50.00	0.00	50.00	Feb28/10	
Feb28/10	DU	SJ7917/17	GNR Deficit As	191.67	0.00	191.67	Feb28/10	
Feb28/10	LP	SJ7924/24	Finance Charge	124.77	0.00	124.77	Feb28/10	
Mar31/10	DU	SJ7931/31	Monthly Dues	402.00	0.00	402.00	Mar31/10	
Mar31/10	DU	SJ7931/31	Club Amenities	50.00	0.00	50.00	Mar31/10	
Mar31/10	DU	SJ7931/31	Golf Course Re	50.00	0.00	50.00	Mar31/10	
Mar31/10	DU	SJ7931/31	GNR Deficit As	191.66	0.00	191.66	Mar31/10	
Mar31/10	LP	SJ7940/40	Finance Charge	137.05	0.00	137.05	Mar31/10	
Apr30/10	DU	SJ7950/50	Monthly Dues	402.00	0.00	402.00	Apr30/10	
Apr30/10	DU	SJ7950/50	Club Amenities	50.00	0.00	50.00	Apr30/10	
Apr30/10	DU	SJ7950/50	Golf Course Re	50.00	0.00	50.00	Apr30/10	
Apr30/10	LP	SJ7967/67	Finance Charge	149.51	0.00	149.51	Apr30/10	
May31/10	DU	SJ7972/72	Monthly Dues	402.00	0.00	402.00	May31/10	
May31/10	DU	SJ7972/72	Club Amenities	50.00	0.00	50.00	May31/10	
May31/10	DU	SJ7972/72	Golf Course Re	50.00	0.00	50.00	May31/10	
May31/10	LP	SJ7989/89	Finance Charge	159.28	0.00	159.28	May31/10	
Jun30/10	DU	SJ7996/96	Monthly Dues	402.00	0.00	402.00	Jun30/10	
Jun30/10	DU	SJ7996/96	Club Amenities	50.00	0.00	50.00	Jun30/10	
Jun30/10	DU	SJ7996/96	Golf Course Re	50.00	0.00	50.00	Jun30/10	
Jun30/10	LP	SJ8009/09	Finance Charge	169.20	0.00	169.20	Jun30/10	
Jul27/10	PY	8493/28	Ref. 8493 - Pa			-500.00		
Jul31/10	DU	SJ8021/21	Monthly Dues	402.00	0.00	402.00	Jul31/10	
Jul31/10	DU	SJ8021/21	Club Amenities	50.00	0.00	50.00	Jul31/10	
Jul31/10	DU	SJ8021/21	Golf Course Re	50.00	0.00	50.00	Jul31/10	
Jul31/10	LP	SJ8034/34	Finance Charge	171.76	0.00	171.76	Jul31/10	
Aug31/10	DU	SJ8042/42	Monthly Dues	402.00	0.00	402.00	Aug31/10	
Aug31/10	DU	SJ8042/42	Club Amenities	50.00	0.00	50.00	Aug31/10	
Aug31/10	DU	SJ8042/42	Golf Course Re	50.00	0.00	50.00	Aug31/10	
Aug31/10	LP	SJ8056/56	Finance Charge	181.87	0.00	181.87	Aug31/10	
Sep30/10	DU	SJ8080/80	Monthly Dues	402.00	0.00	402.00	Sep30/10	
Sep30/10	DU	SJ8080/80	Club Amenities	50.00	0.00	50.00	Sep30/10	
Sep30/10	DU	SJ8080/80	Golf Course Re	50.00	0.00	50.00	Sep30/10	

August 26, 2012 12:44pm

User: CRAIG Term: A4

1.000.00

Oct. 16. 2012 9:30AM

MICHAEL FREY

No. 4917 P. 6

01 - Callawassie Island Club
Member History Jul 31/09 - Jul 31/12

Pg 3

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009

Main Phone : 201-857-0921
Alt. Phone :
Status : S
Unspent Min: \$500.00

Date	Ty	Chit/Inv	Description	Charges	Tax/Grat	Amount	DueDate	BusArea
Sep30/10	LP	SJ8084/84	Finance Charge	192.13	0.00	192.13	Sep30/10	
Oct31/10	DU	SJ8105/05	Monthly Dues	402.00	0.00	402.00	Oct31/10	
Oct31/10	DU	SJ8105/05	Club Amenities	50.00	0.00	50.00	Oct31/10	
Oct31/10	DU	SJ8105/05	Golf Course Re	50.00	0.00	50.00	Oct31/10	
Oct31/10	LP	SJ8110/10	Finance Charge	202.54	0.00	202.54	Oct31/10	
Nov30/10	DU	SJ8139/39	Monthly Dues	402.00	0.00	402.00	Nov30/10	
Nov30/10	DU	SJ8139/39	Club Amenities	50.00	0.00	50.00	Nov30/10	
Nov30/10	DU	SJ8139/39	Golf Course Re	50.00	0.00	50.00	Nov30/10	
Nov30/10	LP	SJ8144/44	Finance Charge	213.11	0.00	213.11	Nov30/10	
Dec31/10	DU	SJ8177/77	Monthly Dues	450.00	0.00	450.00	Dec31/10	
Dec31/10	DU	SJ8177/77	Club Amenities	50.00	0.00	50.00	Dec31/10	
Dec31/10	DU	SJ8177/77	Golf Course Re	50.00	0.00	50.00	Dec31/10	
Dec31/10	IN	LEGAL/73	Legal fees	200.00	0.00	200.00	Dec31/10	
Dec31/10	MH	SJ8180/80	Annual Food &	500.00	0.00	500.00	Dec31/10	
Dec31/10	LP	SJ8179/79	Finance Charge	223.84	0.00	223.84	Dec31/10	
Jan31/11	DU	SJ8209/09	Monthly Dues	450.00	0.00	450.00	Paid	
Jan31/11	DU	SJ8209/09	Club Amenities	50.00	0.00	50.00	Paid	
Jan31/11	DU	SJ8209/09	Golf Course Re	50.00	0.00	50.00	Paid	
Jan31/11	DU	SJ8209/09	GNR Deficit As	191.67	0.00	191.67	Paid	
Jan31/11	DU	SJ8209/10	Monthly Dues	-450.00	0.00	-450.00	Paid	
Jan31/11	DU	SJ8209/10	Club Amenities	-50.00	0.00	-50.00	Paid	
Jan31/11	DU	SJ8209/10	Golf Course Re	-50.00	0.00	-50.00	Paid	
Jan31/11	DU	SJ8209/10	GNR Deficit As	-191.67	0.00	-191.67	Paid	
Jan31/11	DU	SJ8211/11	Monthly Dues	450.00	0.00	450.00	Jan31/11	
Jan31/11	DU	SJ8211/11	Club Amenities	50.00	0.00	50.00	Jan31/11	
Jan31/11	DU	SJ8211/11	Golf Course Re	50.00	0.00	50.00	Jan31/11	
Jan31/11	IN	LEGAL/03	Legal Costs	100.00	0.00	100.00	Jan31/11	
Jan31/11	LP	SJ8212/12	Finance Charge	245.95	0.00	245.95	Jan31/11	
Feb28/11	DU	SJ8234/34	Monthly Dues	450.00	0.00	450.00	Feb28/11	
Feb28/11	DU	SJ8234/34	Club Amenities	50.00	0.00	50.00	Feb28/11	
Feb28/11	DU	SJ8234/34	Golf Course Re	50.00	0.00	50.00	Feb28/11	
Feb28/11	LP	SJ8233/33	Finance Charge	259.39	0.00	259.39	Feb28/11	
Mar31/11	DU	SJ8267/67	Monthly Dues	450.00	0.00	450.00	Mar31/11	
Mar31/11	DU	SJ8267/67	Club Amenities	50.00	0.00	50.00	Mar31/11	
Mar31/11	DU	SJ8267/67	Golf Course Re	50.00	0.00	50.00	Mar31/11	
Mar31/11	IN	LEGAL/62	Legal Fees	67.50	0.00	67.50	Mar31/11	

August 26, 2012 12:44pm

User: CRAIG Term: A4

Oct. 16, 2012 9:30AM

MICHAEL FREY

No. 4917 P. 7

01 - Callawassie Island Club
Member History Jul 31/09 - Jul 31/12

Pg 4

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009Main Phone : 201-857-0921
Alt. Phone :
Status : S
Unspent Min: \$500.00

Date	Ty	Chit/Inv	Description	Charges	Tax/Grat	Amount Due	Date	BusArea
Mar31/11	LP	SJ8270/70	Finance Charge	271.53	0.00	271.53	Mar31/11	
Apr19/11	PY	8838/22	Ref. 8838 - Pa			-1,000.00		
Apr30/11	DU	SJ8295/95	Monthly Dues	450.00	0.00	450.00	Paid	
Apr30/11	DU	SJ8295/95	Club Amenities	50.00	0.00	50.00	Paid	
Apr30/11	DU	SJ8295/95	Golf Course Re	50.00	0.00	50.00	Paid	
Apr30/11	DU	SJ8295/96	Monthly Dues	-450.00	0.00	-450.00	Paid	
Apr30/11	DU	SJ8295/96	Club Amenities	-50.00	0.00	-50.00	Paid	
Apr30/11	DU	SJ8295/96	Golf Course Re	-50.00	0.00	-50.00	Paid	
Apr30/11	DU	SJ8297/97	Monthly Dues	450.00	0.00	450.00	Apr30/11	
Apr30/11	DU	SJ8297/97	Club Amenities	50.00	0.00	50.00	Apr30/11	
Apr30/11	DU	SJ8297/97	Golf Course Re	50.00	0.00	50.00	Apr30/11	
Apr30/11	LP	SJ8299/99	Finance Charge	269.86	0.00	269.86	Apr30/11	
May31/11	DU	SJ8314/14	Monthly Dues	450.00	0.00	450.00	May31/11	
May31/11	DU	SJ8314/14	Club Amenities	50.00	0.00	50.00	May31/11	
May31/11	DU	SJ8314/14	Golf Course Re	50.00	0.00	50.00	May31/11	
May31/11	LP	SJ8330/30	Finance Charge	282.16	0.00	282.16	May31/11	
Jun30/11	DU	SJ8351/51	Monthly Dues	450.00	0.00	450.00	Jun30/11	
Jun30/11	DU	SJ8351/51	Club Amenities	50.00	0.00	50.00	Jun30/11	
Jun30/11	DU	SJ8351/51	Golf Course Re	50.00	0.00	50.00	Jun30/11	
Jun30/11	LP	SJ8353/53	Finance Charge	294.64	0.00	294.64	Jun30/11	
Jul19/11	PY	2774/64	Ref. 2774 - Pa			-2,000.00		
Jul31/11	DU	SJ8380/80	Monthly Dues	450.00	0.00	450.00	Jul31/11	
Jul31/11	DU	SJ8380/80	Club Amenities	50.00	0.00	50.00	Jul31/11	
Jul31/11	DU	SJ8380/80	Golf Course Re	50.00	0.00	50.00	Jul31/11	
Jul31/11	LP	SJ8387/87	Finance Charge	277.29	0.00	277.29	Jul31/11	
Aug31/11	DU	SJ8409/09	Monthly Dues	450.00	0.00	450.00	Aug31/11	
Aug31/11	DU	SJ8409/09	Club Amenities	50.00	0.00	50.00	Aug31/11	
Aug31/11	DU	SJ8409/09	Golf Course Re	50.00	0.00	50.00	Aug31/11	
Aug31/11	LP	SJ8411/11	Finance Charge	289.70	0.00	289.70	Aug31/11	
Sep09/11	PY	8990/84	Ref. 8990 - Pa			-1,000.00		
Sep30/11	DU	SJ8429/29	Monthly Dues	450.00	0.00	450.00	Sep30/11	
Sep30/11	DU	SJ8429/29	Club Amenities	50.00	0.00	50.00	Sep30/11	
Sep30/11	DU	SJ8429/29	Golf Course Re	50.00	0.00	50.00	Sep30/11	
Sep30/11	LP	SJ8430/30	Finance Charge	287.30	0.00	287.30	Sep30/11	
Oct31/11	DU	SJ8454/54	Monthly Dues	450.00	0.00	450.00	Oct31/11	

August 26, 2012 12:44pm

User: CRAIG Term: A4

Oct. 16, 2012 9:30AM

MICHAEL FREY

No. 4917 P. 8

01 - Callawassie Island Club
Member History Jul 31/09 - Jul 31/12

Pg 5

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009

Main Phone : 201-857-0921
Alt. Phone :
Status : S
Unspent Min: \$500.00

Date	Ty	Chit/Inv	Description	Charges	Tax/Grat	Amount Due	Date	BusArea
Oct31/11	DU	SJ8454/54	Club Amenities	50.00	0.00	50.00	Oct31/11	
Oct31/11	DU	SJ8454/54	Golf Course Re	50.00	0.00	50.00	Oct31/11	
Oct31/11	LP	SJ8458/58	Finance Charge	299.86	0.00	299.86	Oct31/11	
Nov18/11	PY	9066/22	Ref. 9066 - Pa			-1,000.00		
Nov30/11	DU	SJ8480/80	Monthly Dues	450.00	0.00	450.00	Nov30/11	
Nov30/11	DU	SJ8480/80	Club Amenities	50.00	0.00	50.00	Nov30/11	
Nov30/11	DU	SJ8480/80	Golf Course Re	50.00	0.00	50.00	Nov30/11	
Nov30/11	LP	SJ8482/82	Finance Charge	297.59	0.00	297.59	Nov30/11	
Dec31/11	DU	SJ8508/08	Monthly Dues	472.00	0.00	472.00	Dec31/11	
Dec31/11	DU	SJ8508/08	Club Amenities	50.00	0.00	50.00	Dec31/11	
Dec31/11	DU	SJ8508/08	Golf Course Re	50.00	0.00	50.00	Dec31/11	
Dec31/11	LP	SJ8510/10	Finance Charge	310.30	0.00	310.30	Dec31/11	
Jan01/12	MH	SJ8511/11	Annual Food &	500.00	0.00	500.00	Jan01/12	
Jan31/12	DU	SJ8532/32	Monthly Dues	472.00	0.00	472.00	Jan31/12	
Jan31/12	DU	SJ8532/32	Club Amenities	50.00	0.00	50.00	Jan31/12	
Jan31/12	DU	SJ8532/32	Golf Course Re	50.00	0.00	50.00	Jan31/12	
Jan31/12	LP	SJ8529/29	Finance Charge	323.53	0.00	323.53	Jan31/12	
Feb29/12	DU	SJ8555/55	Monthly Dues	472.00	0.00	472.00	Feb29/12	
Feb29/12	DU	SJ8555/55	Club Amenities	50.00	0.00	50.00	Feb29/12	
Feb29/12	DU	SJ8555/55	Golf Course Re	50.00	0.00	50.00	Feb29/12	
Feb29/12	LP	SJ8557/57	Finance Charge	344.46	0.00	344.46	Feb29/12	
Mar31/12	DU	SJ8577/77	Monthly Dues	472.00	0.00	472.00	Mar31/12	
Mar31/12	DU	SJ8577/77	Club Amenities	50.00	0.00	50.00	Mar31/12	
Mar31/12	DU	SJ8577/77	Golf Course Re	50.00	0.00	50.00	Mar31/12	
Mar31/12	LP	SJ8579/79	Finance Charge	358.21	0.00	358.21	Mar31/12	
Apr30/12	DU	SJ8601/01	Monthly Dues	472.00	0.00	472.00	Apr30/12	
Apr30/12	DU	SJ8601/01	Club Amenities	50.00	0.00	50.00	Apr30/12	
Apr30/12	DU	SJ8601/01	Golf Course Re	50.00	0.00	50.00	Apr30/12	
Apr30/12	LP	SJ8604/04	Finance Charge	372.16	0.00	372.16	Apr30/12	
May31/12	DU	SJ8621/21	Monthly Dues	472.00	0.00	472.00	May31/12	
May31/12	DU	SJ8621/21	Club Amenities	50.00	0.00	50.00	May31/12	
May31/12	DU	SJ8621/21	Golf Course Re	50.00	0.00	50.00	May31/12	
May31/12	LP	SJ8626/26	Finance Charge	386.32	0.00	386.32	May31/12	
Jun30/12	DU	SJ8651/51	Monthly Dues	472.00	0.00	472.00	Jun30/12	

August 26, 2012 12:44pm

User: CRAIG Term: A4

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

CALLAWASSIE ISLAND)
MEMBERS CLUB Inc.,)

Plaintiff,)

vs.)

MICHAEL J. FREY and)
GRACE I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-07- 03209

ANSWER AND COUNTERCLAIMS

2012 NOV 21 PM 4:32
CLERK OF COURT
SOUTH CAROLINA
COUNTY OF BEAUFORT

COME NOW the Defendants, Michael J. Frey and Grace I. Frey, by and through their undersigned counsel, to Answer the Complaint of the Plaintiff (hereinafter "CIMC" or the "Club") and alleging counterclaims against the Plaintiff and states as follows:

1. The Defendants admit paragraphs 1 and 2 of the Complaint.
2. The Defendants admit to signing the document referenced in paragraph 3 attached as A-1 and the Defendants admit to signing the document referenced in paragraph 3 attached as Exhibit A-2, but otherwise deny the paragraph in all other ways and in as much as the documents attached as Exhibits A-1 and A-2 are inconsistent, in as much as those documents refer to other documents not included in the allegation, and in as much as those documents speak for themselves.
3. Paragraphs 4 and 5 of the Complaint are denied.
4. Paragraph 6 of the Complaint is admitted.
5. As to Paragraph 7 of the Complaint the Defendants crave reference to the documents which are referenced as part of that transaction and believe such documents speak for themselves and as to those documents which are not specified in the Complaint the Defendants are without

knowledge and information as to what specific documents the Plaintiff is referring and therefore denies all other aspects of the paragraph.

6. As to Paragraph 8 of the Complaint it is admitted that the property was purchased in 1995 but was told that a golf membership was the only guarantee that the property could be resold and was not told that the membership was voluntary, therefore all other allegations and parts of paragraph 8 are denied, including the reference to what is defined as the "Declaration" (referring to 2001 documents) in paragraph 7 of the Complaint but apparently refers to different documents related to the purchase which occurred in 1995.

7. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint are denied.

8. All other allegations contained in the Complaint which are not herein admitted are denied.

FACTUAL ALLEGATIONS

9. The Defendant, Michael Frey, applied for an equity membership in the Club in September, 1995 (hereinafter "Golf Membership") which membership application submitted by Defendant Michael Frey was not contingent upon, or linked to, his ownership of property on Callawassie Island.

10. That the Defendant, Grace I Frey, did not make an application for membership but signed only as the "Spouse" of the Applicant and it is denied that she is a member of the Club, furthermore all references in this Answer to "Defendants" are answered in that manner in the event that the court finds Grace Frey is a member of CIMC, which is specifically denied.

11. That the Plaintiff is obligated to keep a "Resale List" pursuant to CIC and CIMC governing documents which was/is intended to be for the sequential and orderly resale of those memberships not sold under specific terms and in conjunction with a property sale.

12. The Plaintiff has represented to the Defendants that all membership sales must be made through the Club whether going through the Club controlled and maintained Resale List or in conjunction with a Callawassie Island property sale.

13. That in May 2010 the Defendant(s) attempted to confirm resignation and/or expulsion of membership to the General Manager of the Club as well as to the Membership Director but received no response from the Club.

14. That despite the governing documents and specific representations, the Plaintiff is currently claiming dues and fees and various charges are owed by the Defendants pursuant to their resigned membership in CIMC.

15. That the Defendants ceased paying dues and fees in October 2009.

16. That upon information and belief, in September 2010 the Plaintiff informed its members, including the Defendants herein, that it had agreed to allow an entity (believed to be Callawassie Island Company "CIC") owning approximately one hundred eighty nine memberships, to resign all those memberships without ongoing obligation and not in conformity with the policies being pursued against the Defendants and that they had made that agreement in a manner of secrecy and concealment as to the Defendants and other members of the Club.

17. That on about the same time in September, 2010, then CIMC Communications Committee Chairman, Phil Kilian, revealed that the Plaintiff owned 52 Equity Golf and 1 Equity Social memberships in its own club.

18. That the governing documents of the Club have no provision for the Plaintiff to own memberships as described herein.

19. That upon information and belief the unexplained release of the largest known membership holder has cost the members of CIMC substantial past and future yearly revenue,

and according to CIMC letters, payments of over \$1 million dollars were received based on CIC dues for a period from 2007 to 2009.

20. That the governing documents and Board of CIMC have stated and agreed that delinquent members would be suspended then expelled from membership at the end of a period of 4 months of being so delinquent.

21. That according to the governing documents the Defendant(s) have been expelled from membership since January 2010.

22. That upon information and belief the Club has alleged to "suspend" the Defendants' membership for a period greater than four months.

23. That since at least 2003 the Plaintiff has allowed numerous other club members similarly situated to the Defendants herein, to resign and/or terminate their memberships without penalty charge or claim of ongoing dues, fees and obligations (as are being claimed against the Defendants).

24. That the "Membership Plan" of April 18, 1994, as referenced in the "Membership Purchase Agreement" signed by the Defendant(s), upon information and belief, provides for and allows the resignation of membership.

25. That subsequent governing documents of the Club affirmed that members such as the Defendants herein have the right to resign their membership and thus terminate any accumulation of ongoing obligations or charges to the Club after that date.

26. Subsequent documents including, but not limited to, The Callawassie Island Members Club Plan For the Offering of Memberships of 8/8/01 indicates that resigned members are no longer equity members (See § 3.5).

27. The Callawassie Island Members Club, Inc General Club Rules of 8/8/01 specify that member not paying dues will be "suspended" for a four month period and accounts "not settled within the four (4) month period following suspension shall be expelled from the Club. (§3.3.1)
28. "Suspension" and "Expulsion" are defined more fully in § 14.1.3 and 14.1.5 respectively, the pertinent difference being that dues and fees accumulate during a period of suspension but not as a result of "Termination" (§ 14.1.4) nor "Expulsion" (§14.1.5).
29. That the governing documents in fact require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.
30. That the Plaintiff, through its Treasurer, as recently as February 2007, and others have affirmed and stated the policy of compulsory expulsion in conformity with paragraphs above describing the same.
31. That numerous individuals and Club members have been allowed to effectively relinquish membership back to the Club without being pursued for ongoing obligations such as are being assessed by the Club against the Defendants.
32. That the governing documents specifically exclude the Defendant(s) who is "grandfathered" due to the date of purchase of his membership from the claims currently made by the Plaintiff.
33. That the Club has failed to maintain, and/or refuses to provide, complete and proper information regarding the resale list and the memberships placed thereon and has failed to maintain those records in a proper manner.

FOR A DEFENSE AND FIRST CAUSE OF ACTION
(Breach of Contract)

34. That the allegations contained herein above are realleged herein as if set forth verbatim.

35. That the Plaintiff has breached their agreement with the Defendants and have in fact now charged the Defendants in an amount greatly exceeding the amounts actually, or rightly, due and have misapplied payments previously made by the Defendants.

36. That the Defendants requests an accounting of all monies paid and seek all damages from such breach including as damages all amounts found to be overpayments, or not rightly owed, made to the Plaintiff by the Defendants as well as the costs and attorneys fees associated with this litigation. Additionally the Defendants seek a finding that their membership obligations, including charges of fees dues and/or assessments terminated at the time of their resignation or first attempt at resignation due to the false statements made to them concerning their right to resign, in the alternative the Defendants seek a finding that their obligations and liabilities ceased upon being delinquent for four months.

FOR A DEFENSE AND SECOND CAUSE OF ACTION
(Violation of South Carolina Code §§33-31-, 620,621 et seq.)

37. That the allegations contained herein above are realleged herein as if set forth verbatim.

38. That the Plaintiff herein refuse to accept and/or acknowledge the right of the Defendant(s) to resign or terminate their membership with the Club in violation of South Carolina Code of Laws, including but not limited to § 33-31-620 and SC Code § 33-31-621, and further that the Plaintiff continues to make claim for ongoing billing to the Defendants claiming that the Defendants remain members despite their resignation.

39. That the Plaintiff has not maintained a fair and reasonable process for the termination of the memberships of its members, more specifically as to the Defendants herein, including but not limited to in, the Plan of Membership, By-Laws or other operational, governing or organizational documents.

40. Upon information and belief, the actions of the Plaintiff with regard to the Defendants, including expelling or terminating, or the refusal to do the same, have not been conducted in good faith and that the Plaintiff continues to pursue practices and policies in violation of §33-31-620, 621 and in violation of their fiduciary duties to the Defendants including these and all others described herein.

41. That the Plaintiff has failed to give notice to the Defendants as required for the suspension, expulsion or termination of a member.

42. And that the Defendants seek a finding that his/their membership was resigned as of May 2010 (if they are not found to have been expelled prior to that date) and that all duties obligations, fees and charges claimed by the Plaintiff against them after that date are void and/or invalid.

FOR A DEFENSE AND THIRD CAUSE OF ACTION
(Failure to allow Members to approve fundamental changes)

43. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

44. That upon information and belief, the Plaintiff did not afford the proper notice and/or did not meet the voting requirements to change fundamental obligations and rights of the members. Those fundamental obligations and rights include, but are not limited to, making changes to the charges now and previously assessed against the Defendants, failing to allow members to resign,

terminate or be expelled from membership and the selective enforcement of membership requirements and charges.

45. That the governing documents in fact require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.

46. That as a result of these failures the changes made should be declared null and void by this Court and make a finding that his membership was terminated as of January 2010 (4 months after delinquency) or in the alternative was resigned as of May 2010 and that all duties obligations, fees and charges claimed by the Plaintiff against them after that date are void and/or invalid and not later than such date.

FOR A DEFENSE AND FOURTH CAUSE OF ACTION
(Misrepresentation)

47. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

48. That the Plaintiff, by and through its employees, agents, Board of Directors or other officers, and predecessors in interest did make material misrepresentations to the Defendants herein including the following, one or more of which is believed to be false:

- a) That members of the club were being treated uniformly and that dues, fees and charges are (and have been) being charged and pursued in a consistent and fair manner;
- b) That members are not allowed to resign or terminate their memberships in any meaningful manner;

- c) That fees and charges would be uniformly and fairly applied to all members for all transactions and dealings with regard to their Club membership(s);
- d) That Golf and/or Social Club memberships were/are an asset that would be beneficial to the member and with regard to sale of land to prospective buyers;
- e) That membership fees, sale charges and other costs of purchasing or transferring membership(s) would be uniformly applied;
- f) That the Club was being run in an open and honest manner;
- g) That the Club maintained records and accounting of the Resale List in a proper and accurate fashion;
- h) and other material misrepresentations to be determined during discovery in this matter.

49. That the Defendants herein did not know the falsity of the misrepresentations and did rely upon the above misrepresentations to their substantial detriment.

50. That upon information and belief, there exists no meaningful market for the membership interests, if found to be owned by the Defendant(s) herein, and said membership is effectively inalienable.

51. That the Defendants have paid numerous dues, fees and charges over the years based upon these misrepresentations, and that the Plaintiff should be required to return said payments to the Defendants herein.

52. That the misrepresentations of the Plaintiff were grossly negligent and/or recklessly made.

53. That the Defendants request the compensatory as well as punitive damages against the Plaintiff, attorneys fees and court costs and further damages and relief as the court deems just and proper.

FOR DEFENSE AND FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

54. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

55. Pursuant to the By-Laws and other governing documents, the relationship of Board and Member was established between the Defendants (Members) and Plaintiff which results in a special relationship of trust and confidence existing between the same.

56. The Plaintiff, as a result of this relationship, owed the Defendants fiduciary duties, including the duties of care, loyalty, and good faith, with regard to the interests of the Defendants and could not therefore act in their own best interest without regard for their duties to the Defendants.

57. That the Defendants (as an Equity Club in which the Defendants were a member) being in a fiduciary relationship with the Defendants, did by and through the Club's employees, agents, the Board of Directors or other officers, breach its fiduciary duty to the Defendants herein in the following manner:

I. AS TO THE Plaintiff, CIMC as Follows

- a. As described herein in this Complaint in all other paragraphs;
- b. In failing to terminate, or allow the Defendants to terminate or resign, their memberships pursuant to state law and/or in a reasonable manner;

- c. In failing to treat similarly situated members uniformly with regard to termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants herein;
- d. In taking actions for the benefit of specific members which were detrimental to the Club and/or members (including the Defendants) herein;
- e. In failing to pursue the best interest of the entire membership of the Club, but instead benefiting selected members to the detriment of others such as the Defendants herein;
- f. In failing to provide additional value for additional memberships for the Defendants herein;
- g. In failing to properly maintain accounts and having improper and insufficient accounting practices to the detriment of the members, including the Defendant;
- h. In breaching its duty of loyalty and/or care to the CIMC members and specifically to the Defendants herein;
- i. By causing the value of the Defendants' memberships to be greatly or significantly diminished by its actions;
- j. In inconsistently attempting to enforce mandatory perpetual obligations against select members and in releasing or failing to adhere to the same policy with other members and in other ways as described herein in this pleading;
- k. In failing to make efforts to market or otherwise sell membership(s) on the "Resale List" of the Club or doing so in an unfair and non-uniform manner prejudicing some members to the benefit of others;
- l. In improperly attempting to amend or revise the Club governing documents;

m. And in other ways to be discovered or proved at trial in this matter.

58. That as a direct and proximate result of the breaches of fiduciary duty described above, the Club has been injured and the Defendants herein have been injured in numerous ways including, but not limited to, the value and potential resale of Defendants' real property in Callawassie and their Club membership(s) have been significantly damaged and continue to lose value while the Club continues to claim to accumulate costs, fees and obligations against the Defendants (all such costs fees and obligations are denied).

59. That the Defendants requests that the court award them compensatory damages and order that the board members be removed, sanctioned or otherwise be ordered to allow the Defendants to resign from the Club and return monies previously paid by the Defendants or make other reasonable measures and amendments to the governing documents to allow memberships to terminate within a reasonable period, that CIMC be required to repurchase the memberships of the Defendants, that punitive damages, and an award of attorneys' fees and costs of this litigation be granted to the Defendants.

FOR A DEFENSE AND SIXTH CAUSE OF ACTION
(Violation of South Carolina Code §§33-31-, 610 et seq.)

60. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

61. That the Club has failed to operate in compliance with SC § 33-31-610 and as described herein in above in the preceding paragraphs of this complaint by not treating members of the same class the same with regard to their rights and obligations of membership, and specifically with regard to their rights of transfer.

62. That the Defendants herein have been injured and damaged as a result of the actions as set forth herein and request the court ruling for the damages set forth and a finding that the Defendants obligations to the Club terminated at the time of their resignation in November 2011.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Limitations/ Laches)

63. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

64. That as an additional defense the Plaintiffs claims is right barred due the applicable statute of limitations and under the doctrine of laches.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Frauds)

65. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim..

66. That as an additional defense the Plaintiffs seeks to enforce an agreement which is not in writing and not signed by the party against which they seek to enforce in violation of the statute of frauds.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Waiver)

67. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

68. That as an additional defense the Plaintiffs claim is barred under the doctrine of waiver as described herein above, and in releasing from liability the Callawassie Island Club, Inc..

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Payment)

67. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

68. That as an additional defense the Plaintiffs claim is barred under the doctrine of payment.

WHEREFORE, the Defendants, pray for the following:

1. The Defendants be granted the damages requested herein including actual, compensatory and punitive damages, reasonable attorneys' fees, costs and expenses.
2. That the membership of the Defendants be deemed belonging only to the Defendant Michael Frey and be deemed to have been terminated and that the Defendant be required to repurchase said membership from the Defendant(s) by the at full face, or market, value, whichever is higher and that all claims against the Defendant Grace Frey be dismissed.
3. That the resignation of the Defendant(s) be deemed to be effective and that all obligations for payment of any fees, dues, assessments or other liabilities or charges was terminated at the time of attempted resignation in May 2010.
4. That in the alternative that the Defendants membership be deemed to have been terminated not more than 4 months after becoming delinquent.
5. The Defendants be granted a trial by jury.

[Signature to Follow]

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BY: 

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**ATTORNEY FOR THE DEFENDANTS
MICHAEL FREY AND GRACE FREY**

**Beaufort, South Carolina
November 21, 2012**

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-07- 03209

CALLAWASSIE ISLAND)
MEMBERS CLUB Inc.,)

Plaintiff,)

**DEFENDANTS' AMENDED
ANSWER AND COUNTERCLAIMS**

vs.)

MICHAEL J. FREY and)
GRACE I. FREY,)

Defendants.)

2012 DEC 20 PM 3:54
CLERK OF COURT
SOUTH CAROLINA

COME NOW the Defendants, Michael J. Frey and Grace I. Frey, by and through their undersigned counsel, to Answer the Complaint of the Plaintiff (hereinafter "CIMC" or the "Club") and alleging counterclaims against the Plaintiff and states as follows:

1. The Defendants admit paragraphs 1 and 2 of the Complaint.
2. The Defendants admit to signing the document referenced in paragraph 3 attached as A-1 and the Defendants admit to signing the document referenced in paragraph 3 attached as Exhibit A-2, but otherwise deny the paragraph in all other ways and in as much as the documents attached as Exhibits A-1 and A-2 are inconsistent, in as much as those documents refer to other documents not included in the allegation, and in as much as those documents speak for themselves.
3. Paragraphs 4 and 5 of the Complaint are denied.
4. Paragraph 6 of the Complaint is admitted.
5. As to Paragraph 7 of the Complaint the Defendants crave reference to the documents which are referenced as part of that transaction but which are not specified in the Complaint the

Defendants are without knowledge and information as to what specific documents the Plaintiff is referring and therefore denies all other aspects of the paragraph.

6. As to Paragraph 8 of the Complaint it is admitted that the property was purchased in 1995 but was told that a golf membership was the only guarantee that the property could be resold and was not told that the membership was voluntary, therefore all other allegations and parts of paragraph 8 are denied, including the reference to what is defined as the "Declaration" (referring to 2001 documents) in paragraph 7 of the Complaint but apparently refers to different documents related to the purchase which occurred in 1995.

7. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint are denied.

8. All other allegations contained in the Complaint which are not herein admitted are denied.

FACTUAL ALLEGATIONS

9. The Defendant, Michael Frey, applied for an equity membership in the Club in September, 1995 (hereinafter "Golf Membership") which membership application submitted by Defendant Michael Frey was not contingent upon, or linked to, his ownership of property on Callawassie Island.

10. That the Defendant, Grace I. Frey, did not make an application for membership but signed only as the "Spouse" of the Applicant and it is denied that she is a member of the Club, furthermore all references in this Answer to "Defendants" are answered in that manner in the event that the court finds Grace Frey is a member of CIMC, which is specifically denied.

11. That the Plaintiff is obligated to keep a "Resale List" pursuant to CIC and CIMC governing documents which was/is intended to be for the sequential and orderly resale of those memberships not sold under specific terms and in conjunction with a property sale.

12. The Plaintiff has represented to the Defendants that all membership sales must be made through the Club whether going through the Club controlled and maintained Resale List or in conjunction with a Callawassie Island property sale.
13. That in May 2010 the Defendant(s) attempted to confirm resignation and/or expulsion of membership to the General Manager of the Club as well as to the Membership Director but received no response from the Club.
14. That despite the governing documents and specific representations, the Plaintiff is currently claiming dues and fees and various charges are owed by the Defendants pursuant to their resigned membership in CIMC.
15. That the Defendants ceased paying dues and fees in October 2009.
16. That upon information and belief, in September 2010 the Plaintiff informed its members, including the Defendants herein, that it had agreed to allow an entity (believed to be Callawassie Island Company "CIC") owning approximately one hundred eighty nine memberships, to resign all those memberships without ongoing obligation and not in conformity with the policies being pursued against the Defendants and that they had made that agreement in a manner of secrecy and concealment as to the Defendants and other members of the Club.
17. That on about the same time in September, 2010, then CIMC Communications Committee Chairman, Phil Kilian, revealed that the Plaintiff owned 52 Equity Golf and 1 Equity Social memberships in its own club.
18. That the governing documents of the Club have no provision for the Plaintiff to own memberships as described herein.
19. That upon information and belief the release of the largest known membership holder, without approval of the Defendants, has cost the members of CIMC substantial past and future

yearly revenue, and according to CIMC letters, payments of over \$1 million dollars were received based on CIC dues for a period from 2007 to 2009, having a material and adverse affect on the membership of the Defendants.

20. That the governing documents and Board of CIMC have stated and agreed that delinquent members would be suspended then expelled from membership at the end of a period of 4 months of being so delinquent.

21. That according to the governing documents the Defendant(s) have been expelled from membership since January 2010.

22. That upon information and belief the Club has alleged to "suspend" the Defendants' membership for a period greater than four months.

23. That since at least 2003 the Plaintiff has allowed numerous other club members similarly situated to the Defendants herein, to resign and/or terminate their memberships without penalty charge or claim of ongoing dues, fees and obligations (as are being claimed against the Defendants).

24. That the "Membership Plan" of April 18, 1994, as referenced in the "Membership Purchase Agreement" signed by the Defendant(s), upon information and belief, provides for and allows the resignation of membership.

25. That subsequent governing documents of the Club including the membership plan of April 1994 and 2001, if applicable to the Defendants, affirmed that members such as the Defendants herein have the right to resign their membership and thus terminate any accumulation of ongoing obligations or charges to the Club after that date.

26. Subsequent documents including, but not limited to, The Callawassie Island Members Club Plan For the Offering of Memberships of 8/8/01 indicates that resigned members are no longer equity members (See § 3.5).
27. The Callawassie Island Members Club, Inc General Club Rules of 8/8/01 specify that member not paying dues will be "suspended" for a four month period and accounts "not settled within the four (4) month period following suspension shall be expelled from the Club. (§13.3.1)
28. "Suspension" and "Expulsion" are defined more fully in § 14.1.3 and 14.1.5 respectively, the pertinent difference being that dues and fees accumulate during a period of suspension but not as a result of "Termination" (§ 14.1.4) nor "Expulsion" (§14.1.5).
29. That the governing documents in fact require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.
30. That the Plaintiff, through its Treasurer, as recently as February 2007, and others have affirmed and stated the policy of compulsory expulsion in conformity with paragraphs above describing the same.
31. That numerous individuals and Club members have been allowed to effectively relinquish membership back to the Club without being pursued for ongoing obligations such as are being assessed by the Club against the Defendants.
32. That the governing documents specifically exclude the Defendant(s) who is "grandfathered" due to the date of purchase of his membership from the claims currently made by the Plaintiff.

33. That the Club has failed to maintain, and/or refuses to provide, complete and proper information regarding the resale list and the memberships placed thereon and has failed to maintain those records in a proper manner.

FOR A DEFENSE AND FIRST CAUSE OF ACTION
(Breach of Contract)

34. That the allegations contained herein above are realleged herein as if set forth verbatim.

35. That the Plaintiff has breached their agreement with the Defendants and have in fact now charged the Defendants in an amount greatly exceeding the amounts actually, or rightly, due and have misapplied payments previously made by the Defendants.

36. That the Defendants requests an accounting of all monies paid and seek all damages from such breach including as damages all amounts found to be overpayments, or not rightly owed, made to the Plaintiff by the Defendants as well as the costs and attorneys fees associated with this litigation. Additionally the Defendants seek a finding that their membership obligations, including charges of fees dues and/or assessments terminated at the time of their resignation or first attempt at resignation due to the false statements made to them concerning their right to resign, in the alternative the Defendants seek a finding that their obligations and liabilities ceased upon being delinquent for four months.

FOR A DEFENSE AND SECOND CAUSE OF ACTION
(Violation of South Carolina Code §§33-31-, 620,621 et seq.)

37. That the allegations contained herein above are realleged herein as if set forth verbatim.

38. That the Plaintiff herein refuse to accept and/or acknowledge the right of the Defendant(s) to resign or terminate their membership with the Club in violation of South

Carolina Code of Laws, including but not limited to § 33-31-620 and SC Code § 33-31-621, and further that the Plaintiff continues to make claim for ongoing billing to the Defendants claiming that the Defendants remain members despite their resignation.

39. That the Plaintiff has not maintained a fair and reasonable process for the termination of the memberships of its members, more specifically as to the Defendants herein, including but not limited to in, the Plan of Membership, By-Laws or other operational, governing or organizational documents.

40. Upon information and belief, the actions of the Plaintiff with regard to the Defendants, including expelling or terminating, or the refusal to do the same, have not been conducted in good faith and that the Plaintiff continues to pursue practices and policies in violation of §33-31-620, 621 and in violation of their fiduciary duties to the Defendants including these and all others described herein.

41. That the Plaintiff has failed to give notice to the Defendants as required for the suspension, expulsion or termination of a member.

42. And that the Defendants seek a finding that his/their membership was resigned as of May 2010 (if they are not found to have been expelled prior to that date) and that all duties obligations, fees and charges claimed by the Plaintiff against them after that date are void and/or invalid.

FOR A DEFENSE AND THIRD CAUSE OF ACTION
(Failure to allow Members to approve fundamental changes)
(Violation of S.C. Code § 33-31-611)

43. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

44. That upon information and belief, the Plaintiff did not afford the proper notice and/or did not meet the voting requirements to change fundamental obligations and rights of the members. Those fundamental obligations and rights include, but are not limited to, making changes to the charges now and previously assessed against the Defendants, failing to allow members to resign, terminate or be expelled from membership and the selective enforcement of membership requirements and charges.

45. That the governing documents in fact require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.

46. That the Club is failing to recognize the Defendant(s)' right to transfer membership and is attempting to enforce restrictions on the Defendants' right to transfer membership by enforcement of a restriction (if determined to exist as alleged by the Plaintiff, which is denied) that was not approved by the Defendant(s) in is therefore in violation of S.C. Code § 33-31-611.

47. That as a result of these failures the changes made should be declared null and void by this Court and make a finding that his membership was terminated as of January 2010 (4 months after delinquency) or in the alternative was resigned as of May 2010 and that all duties obligations, fees and charges claimed by the Plaintiff against them after that date are void and/or invalid and not later that such date.

FOR A DEFENSE AND FOURTH CAUSE OF ACTION
(Misrepresentation)

48. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

49. That the Plaintiff, by and through its employees, agents, Board of Directors or other officers, and predecessors in interest did make material misrepresentations to the Defendants herein including the following, one or more of which is believed to be false:

- a) That members of the club were being treated uniformly and that dues, fees and charges are (and have been) being charged and pursued in a consistent and fair manner;
- b) That members are not allowed to resign or terminate their memberships in any meaningful manner;
- c) That fees and charges would be uniformly and fairly applied to all members for all transactions and dealings with regard to their Club membership(s);
- d) That Golf and/or Social Club memberships were/are an asset that would be beneficial to the member and with regard to sale of land to prospective buyers;
- e) That membership fees, sale charges and other costs of purchasing or transferring membership(s) would be uniformly applied;
- f) That the Club was being run in a competent and/or professional, open and honest manner;
- g) That the Club maintained records and accounting of the Resale List in a proper and accurate fashion;
- h) That actions or changes to governance of, or on behalf of, the Club which materially and/or adversely affected a member would be voted on by the member(s) so affected;
- i) and other material misrepresentations to be determined during discovery in this matter.

50. The Plaintiff also negligently, recklessly and with conscious indifference to the rights of the Defendants, failed to disclose, and/or misrepresented, to the Defendants and other members of the Club, that changes made to the governing documents of the Club were intended to be minor changes when in fact the Plaintiff has made changes to the governing documents, including those changes described herein above, with the undisclosed intent to remove or greatly limit members right to resign, as well as the claimed removal of the required expulsion of members greater than 4 months past due, such changes substantially and detrimentally effecting the rights and obligations of the Defendants and the relation between the parties.

51. That the Plaintiff had a pecuniary and economic interest in making the misrepresentations and/or taking the actions and/or omissions described above.

52. That the Defendants herein did not know the falsity of the misrepresentations and did rely upon the above misrepresentations to their substantial detriment.

53. That upon information and belief, there exists no meaningful market for the membership interests, if found to be owned by the Defendant(s) herein, and said membership is effectively inalienable.

54. That the Defendants have paid numerous dues, fees and charges over the years based upon these misrepresentations, and that the Plaintiff should be required to return said payments to the Defendants herein.

55. That the misrepresentations of the Plaintiff were grossly negligent and/or recklessly made.

56. That the Defendants request the compensatory as well as punitive damages against the Plaintiff, attorneys fees and court costs and further damages and relief as the court deems just and proper.

FOR DEFENSE AND FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

57. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

58. Pursuant to the By-Laws and other governing documents, the relationship of Board and Member was established between the Defendants (Members) and Plaintiff which results in a special relationship of trust and confidence existing between the same.

59. The Plaintiff, as a result of this relationship, owed the Defendants fiduciary duties, including the duties of care, loyalty, and good faith, with regard to the interests of the Defendants and could not therefore act in their own best interest without regard for their duties to the Defendants.

60. That the Plaintiff (as an Equity Club in which the Defendants held a membership) being in a fiduciary relationship with the Defendants, did by and through the Club's employees, agents, the Board of Directors or other officers, breach its fiduciary duty to the Defendants herein in the following manner:

I. AS TO THE Plaintiff, CIMC as Follows

- a. As described herein in this Complaint in all other paragraphs;
- b. In failing to terminate, or allow the Defendants to terminate or resign, their memberships pursuant to state law and/or in a reasonable and fair manner;
- c. In failing to treat similarly situated members uniformly with regard to termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants herein;

- d. In taking actions for the benefit of specific members which were detrimental to the Club and/or members (including the Defendants) herein;
- e. In failing to pursue the best interest of the entire membership of the Club, but instead benefiting selected members to the detriment of others such as the Defendants herein including seeking to derive an economic benefit to the detriment of the members by the improper manipulation of governing documents and in contravention of the law and the established purpose of the Club;;
- f. In failing to properly account for monies received by receiving such funds as "capital contributions" when they should have been credited to members fund;
- g. In failing to properly maintain accounts and having improper and insufficient accounting practices to the detriment of the members, including the Defendant;
- h. In breaching its duty of loyalty and/or care to the CIMC members and specifically to the Defendants herein;
- i. By causing the value of the Defendants' memberships to be greatly or significantly diminished by its actions;
- j. In inconsistently attempting to enforce mandatory perpetual obligations against select members and in releasing or failing to adhere to the same policy with other members and in other ways as described herein in this pleading;
- k. In failing to make efforts to market or otherwise sell membership(s) on the "Resale List" of the Club or doing so in an unfair and non-uniform manner prejudicing some members to the benefit of others;
- l. In improperly attempting to amend or revise the Club governing documents;
- m. And in other ways to be discovered or proved at trial in this matter.

61. That as a direct and proximate result of the breaches of fiduciary duty described above, the Club has been injured and the Defendants herein have been injured in numerous ways including, but not limited to, the value and potential resale of Defendants' real property in Callawassie and their Club membership(s) have been significantly damaged and continue to lose value while the Club continues to claim to accumulate costs, fees and obligations against the Defendants (all such costs fees and obligations are denied).

62. That the Defendants requests that the court award them compensatory damages and order that the board members be removed, sanctioned or otherwise be ordered to allow the Defendants to resign from the Club and return monies previously paid by the Defendants or make other reasonable measures and amendments to the governing documents to allow memberships to terminate within a reasonable period, that CIMC be required to repurchase the memberships of the Defendants, that punitive damages, and an award of attorneys' fees and costs of this litigation be granted to the Defendants.

FOR A DEFENSE AND SIXTH CAUSE OF ACTION
(Violation of South Carolina Code §§33-31-, 610, 611 et seq.)

63. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

64. That the Club has failed to operate in compliance with SC § 33-31-610 and as described herein in above in the preceding paragraphs of this complaint by not treating members of the same class the same with regard to their rights and obligations of membership, and specifically with regard to their rights of transfer.

65. That the Club is failing to recognize the Defendant(s)' right to transfer membership and is attempting to enforce restrictions on the Defendants' right to transfer membership by

enforcement of a restriction (if determined to exist as alleged by the Plaintiff, which is denied) that was not approved by the Defendant(s) in violation of S.C. Code § 33-31-611.

66. That the Defendants herein have been injured and damaged as a result of the actions as set forth herein and request the court ruling for the damages set forth and a finding that the Defendants obligations to the Club terminated at the time of their resignation in May 2010 and that any attempted restrictions on the right of the Defendant(s) to resign or otherwise transfer their membership, which were not approved by the Defendants, are deemed void or unenforceable as to these Defendants.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Limitations/ Laches)

67. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

68. That as an additional defense the Plaintiffs claims is right barred due the applicable statute of limitations and under the doctrine of laches.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Frauds)

69. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

70. That as an additional defense the Plaintiffs seeks to enforce an agreement which is not in writing and not signed by the party against which they seek to enforce in violation of the statute of frauds.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Waiver)

71. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

72. That as an additional defense the Plaintiffs claim is barred under the doctrine of waiver as described herein above, and in releasing from liability the Callawassie Island Club, Inc..

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Payment)

73. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

74. That as an additional defense the Plaintiffs claim is barred under the doctrine of payment.

WHEREFORE, the Defendants, pray for the following:

1. The Defendants be granted the damages requested herein including actual, compensatory and punitive damages, reasonable attorneys' fees, costs and expenses.
2. That the membership of the Defendants be deemed belonging only to the Defendant Michael Frey and be deemed to have been terminated and that the Plaintiff be required to repurchase said membership from the Defendant(s) by the at full face, or market value, whichever is higher and that all claims against the Defendant Grace Frey be dismissed.
3. That the resignation of the Defendant(s) be deemed to be effective and that all obligations for payment of any fees, dues, assessments or other liabilities or charges was terminated at the time of attempted resignation in May 2010.

4. That in the alternative that the Defendants membership be deemed to have been terminated not more than 4 months after becoming delinquent and that dues and fees stopped accumulating at that time.
5. The Defendants be granted a trial by jury.

Law Office of Brian McDaniel, LLC

BY:



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**ATTORNEY FOR THE DEFENDANTS
MICHAEL FREY AND GRACE FREY**

**Beaufort, South Carolina
December 20, 2012**

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO: 2012-CP-07-03209

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allegations set forth in the CIMC Complaint, and require no response by CIMC; to the extent that the allegations of said paragraphs may be deemed to require a response by CIMC, such allegations are hereby specifically denied.

3. That CIMC admits, upon information and belief, only so much of Paragraph 9 of the Frey Amended Counter-Claim as alleges that Frey applied for an equity membership in the club in September, 1995; CIMC would show that the best evidence of the documents cited within the aforesaid Paragraph 9 of the Frey Amended Counter-Claim consists of the documents themselves, and denies so much of Paragraph 9 as may inconsistent and/or incompatible with such documents. CIMC further denies so much of Paragraph 9 as may allege, or may be construed to allege, that the referenced documents relieve the Freys of their obligations to satisfy those claims asserted by the Callawassie Island Members Club in the instant litigation.
4. That CIMC, in responding to Paragraph 10 of the Frey Counter-Claim, would show that the best evidence of the documents cited therein consists of the documents themselves, and denies so much of paragraph 10 as may be inconsistent and/or incompatible with such documents. CIMC denies the remaining allegations of Paragraph 10.
5. That CIMC, in responding to Paragraph 11 of the Frey Counter-Claim, would show that the best evidence of the CIC and/or CIMC respective governing documents consists of the documents themselves, and denies

so much of Paragraph 11 as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of said paragraph as may allege, or may be construed to allege, that the referenced documents relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation.

6. That CIMC admits the allegations set forth in Paragraph 12 of the Counter-Claim.
7. That CIMC is without knowledge or information sufficient to form an opinion as to the truth of the allegations set forth in Paragraph 13 of the Amended Counter-Claim, and therefore denies the same and demands strict proof thereof. CIMC further denies so much of said paragraph as alleges, or may be construed to allege, that any purported or attempted resignation and/or expulsion may relieve the Freys of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club in the instant litigation.
8. That CIMC admits only so much of Paragraph 14 as alleges, or may be construed to allege, that CIMC continues to claim that dues, fees, assessments, etc. are owed by the Defendants upon their equity memberships in the Callawassie Island Members Club; CIMC denies so much thereof as alleges, or may be construed to allege, that any purported resignation has effected a termination of any ongoing obligation, by the Freys, to continue payment of dues, fees, assessments, etc. until their equity membership has been reissued.

9. That CIMC admits, upon information and belief, the allegations set forth in Paragraph 15 of Frey Counter-Claim.
10. That CIMC denies the allegations set forth in Paragraph 16 of the Frey Counter-Claim.
11. That CIMC admits only so much of Paragraph 17 of the Frey Amended Counter-Claim as alleges, or may be construed to allege, that CIMC owns certain golf memberships and/or other equity memberships in the Callawassie Island Members Club.
12. That CIMC, in responding to Paragraph 18 of the Frey Amended Counter-Claim would show that the best evidence of the documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents; CIMC denies the remaining allegations of Paragraph 18.
13. That CIMC denies the allegations set forth in Paragraph 19 of the Frey Counter-Claim.
14. That CIMC denies so much of Paragraph 20 of the Amended Counter-Claim as alleges, or may be construed to allege, any statement or agreement, by the Board of CIMC, that any suspension or expulsion of delinquent members would effect a termination of any ongoing obligation for the payment of dues, fees, and assessments, etc., against such member; CIMC would further show that the best evidence of the documents cited in Paragraph 20 consists of the documents themselves, and denies so much of Paragraph 20 as may be inconsistent and/or

incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any alleged statements by CIMC, relieve the Freys of their obligations to satisfy those claims asserted by the Callawassie Island Members Club in the instant litigation. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to satisfy dues, fees, assessments, etc., based upon an alleged delinquency, suspension, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

15. That CIMC, in responding to Paragraph 21 of the Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club Inc. in the instant litigation. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged

suspension, resignation, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

16. That CIMC denies the allegations set forth in Paragraphs 22 and 23 of the Frey Counter-Claim.
17. That CIMC, in responding to Paragraphs 24, 25, 26, 27, 28 and 29 of the Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraphs as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged suspension, resignation, termination, or expulsion. CIMC denies the remaining allegations of the aforesaid paragraphs.
18. That CIMC denies the allegations set forth in Paragraphs 30 and 31 of the Frey Counter-Claim.
19. That CIMC, in responding to Paragraph 32 of the Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said

paragraph as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged suspension, resignation, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

20. That CIMC denies the allegations set forth in Paragraph 33 of the Counter-Claim.
21. That CIMC, in responding to Paragraph 34 of the Counter-Claim, would reallege and reiterate each and every allegation set forth in preceding paragraphs hereof.
22. That CIMC denies the allegations set forth in Paragraphs 35 and 36 of the Frey Counter-Claim.
23. That CIMC, in responding to Paragraph 37 of the Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
24. That CIMC denies the allegations set forth in Paragraphs 38, 39, 40, 41 and 42 of the Frey Counter-Claim.

25. That CIMC, in responding to Paragraph 43 of the Frey Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
26. That CIMC denies the allegations set forth in Paragraph 44 of the Frey Counter-Claim.
27. That CIMC, in responding to Paragraph 45 of the Frey Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents.
28. That CIMC denies the allegations set forth in Paragraph 46 and 47 of the Frey Counter-Claim.
29. That CIMC, in responding to Paragraph 48 of the Frey Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
30. That CIMC denies the allegations set forth in Paragraphs 49, 50, 51, 52, 53, 54, 55, and 56 of the Frey Counter-Claim.
31. That CIMC, in responding to Paragraph 57 of the Frey Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
32. That CIMC denies the allegations set forth in Paragraphs 59, 60, 61, and 62 of the Frey Counter-Claim.

33. That CIMC, in responding to Paragraph 63 of the Frey Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
34. That CIMC denies the allegations set forth in Paragraphs 64, 65, and 66 of the Frey Counter-Claim.
35. That CIMC would show that the allegations of Paragraphs 67 through 72 of the Frey Amended Counter-Claim relate to the assertion of defenses, by the Freys, to the Complaint of CIMC, and require no responses by CIMC; to the extent that the allegations of said paragraphs may be deemed to require a response by CIMC, such allegations are hereby specifically denied.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

36. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
37. That CIMC would show that the Amended Counter-Claim must be dismissed pursuant to Rule 12(b)(5) SCRCP, as the Defendants/Counterclaim Plaintiffs have failed properly to serve CIMC.

FOR A THIRD DEFENSE

38. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
39. That CIMC would show that the allegations of the Counter-Claims fail to state facts sufficient to state a cause of action and/or causes of action against the answering Amended Counter-Claim Defendants.

FOR A FOURTH DEFENSE

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
41. That CIMC would show that, if any representations were made to the Defendants/Counterclaim Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations have merged into the contract between the parties.

FOR A FIFTH DEFENSE

42. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
43. That CIMC would show that all claims asserted by the Defendants/Counterclaim Plaintiffs are barred by the applicable statute or statutes of limitations.

FOR A SIXTH DEFENSE

44. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
45. That the answering Plaintiff/Amended Counter-Claim Defendant would show that any and all representations alleged made by the Defendants/Counterclaim Plaintiffs, which representations are hereby specifically denied, constitute parole evidence outside the terms of any contract entered into between the parties, and therefore cannot serve to supplement the written contract(s).

FOR A SEVENTH DEFENSE

46. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
47. That CIMC would show that the Defendants/Counterclaim Plaintiffs are barred by the doctrine of estoppel from asserting claims against these parties.

FOR AN EIGHTH DEFENSE

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
49. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the doctrine of waiver.

FOR A NINTH DEFENSE

50. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
51. That CIMC would show that there is no fiduciary relationship between themselves and the Defendants/Counterclaim Plaintiffs.

FOR A TENTH DEFENSE

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
53. That CIMC would show that all agreements entered into by the parties were arms length transactions and the Defendants/Counterclaim Plaintiffs were fully informed of all obligations undertaken by the Defendants/Counterclaim Plaintiffs as a result of said agreements.

FOR A ELEVENTH DEFENSE

54. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
55. An award of punitive damages under South Carolina law in this case would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution.

FOR A TWELFTH DEFENSE

56. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
57. That CIMC plead the doctrine of unclean hands as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs.

FOR A THIRTEENTH DEFENSE

58. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
59. That CIMC plead equitable estoppel as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs.

FOR A FORTEENTH DEFENSE

60. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

61. That CIMC would show that the Defendants/Counterclaim Plaintiffs had no right or entitlement to rely upon any representations allegedly made by CIMC, which representations are hereby specifically denied.

FOR A FIFTEENTH DEFENSE

62. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
63. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the doctrine of laches.

FOR A SIXTEENTH DEFENSE

64. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
65. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the economic loss rule.

FOR A SEVENTEENTH DEFENSE

66. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
67. That CIMC would show that one or more of them were not or are not a party to any agreement, written or verbal, relating to the Defendants/Counterclaim Plaintiffs' membership as described in the Answer, Counter-Claim, and therefore are not proper parties to this action.

FOR A EIGHTEENTH DEFENSE

68. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

69. That CIMC would show that the Defendants/Counterclaim Plaintiffs, by and through their actions and/or inactions with regard to the matters alleged in the Amended Counter-Claim have assumed the risk and/or accepted all portions of any damages alleged by the Defendants/Counterclaim Plaintiffs, and such assumption of risk and/or acceptance is a bar to claims against CIMC.

FOR A NINETEENTH DEFENSE

70. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
71. That CIMC does not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these parties or their counsel during the course of discovery or otherwise.

FOR A TWENTIETH DEFENSE

72. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
73. That CIMC would show that the Defendants/Counterclaim Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Counter-Claim, which failure is a bar to all claims against these parties.

FOR A TWENTY-FIRST DEFENSE

74. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

75. That the actions taken by CIMC are authorized by statute.

FOR A TWENTY-SECOND DEFENSE

76. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

77. That CIMC plead the Business Judgment Rule as a bar to all claims asserted against them.

FOR A TWENTY-THIRD DEFENSE

78. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

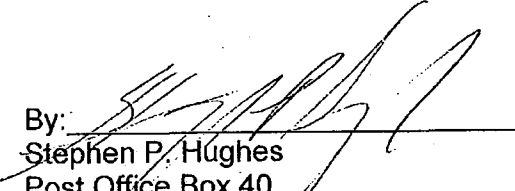
79. That CIMI would show that neither the provisions of South Carolina Code Section 33-31-610, nor the provisions of Code Section 33-31-620, 621 et seq., afford a private cause of action, and the Plaintiffs' causes of action, premised upon the provisions of the respective code sections, should therefore be dismissed.

WHEREFORE, the Plaintiff/Counterclaim Defendant, Callawassie Island Members Club, Inc., prays that this Honorable Court inquire into the matters and facts set forth herein, and issue its Order in the following particulars:

- a. For judgment in favor of the Plaintiff/Counterclaim Defendant, The Callawassie Island Members Club, Inc.;
- b. Dismissing the Counter-Claims of the Counter-Claim Plaintiffs, with prejudice;
- c. Awarding attorneys fees and costs in favor of Plaintiff/Counter-Claim Defendant;

- d. For such other and further relief as this Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Plaintiff/Counter-Claim

Defendant

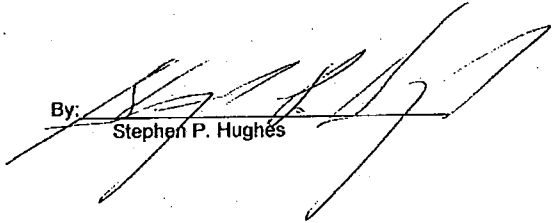
Bar No: 002805

Beaufort, South Carolina

January 11, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Reply to Counter-Claim upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 11th day of January, 2013.

By: 

Stephen P. Hughes

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
C.A. NO. 2012-CP-07- 03209

CALLAWASSIE ISLAND)
MEMBERS CLUB Inc.,)

Plaintiff,)

**DEFENDANTS' SECOND AMENDED
ANSWER AND COUNTERCLAIMS**

vs.)

MICHAEL J. FREY and)
GRACE I. FREY,)

(JURY TRIAL DEMANDED)

Defendants.)

2014 MAY -7 PM 3:51
CLERK OF COURT
BEAUFORT COUNTY, S.C.
JAN ROSEVEAU

COME NOW the Defendants, Michael J. Frey and Grace I. Frey, by and through their undersigned counsel, to amend the Answer to the Complaint of the Plaintiff (hereinafter "CIMC" or the "Club") and alleging counterclaims against the Plaintiff and states as follows:

1. The Defendants admit paragraphs 1 and 2 of the Complaint.
2. The Defendants admit to signing the document referenced in paragraph 3 attached as A-1 and the Defendants admit to signing the document referenced in paragraph 3 attached as Exhibit A-2, but otherwise deny the paragraph in all other ways and in as much as the documents attached as Exhibits A-1 and A-2 are inconsistent, in as much as those documents refer to other documents not included in the allegation, and in as much as those documents speak for themselves.
3. Paragraphs 4 and 5 of the Complaint are denied.
4. Paragraph 6 of the Complaint is admitted.
5. As to Paragraph 7 of the Complaint the Defendants crave reference to the documents which are referenced as part of that transaction but which are not specified in the Complaint the

Defendants are without knowledge and information as to what specific documents the Plaintiff is referring and therefore denies all other aspects of the paragraph.

6. As to Paragraph 8 of the Complaint it is admitted that the property was purchased in 1995 but was told that a golf membership was the only guarantee that the property could be resold and was not told that the membership was voluntary, therefore all other allegations and parts of paragraph 8 are denied, including the reference to what is defined as the "Declaration" (referring to 2001 documents) in paragraph 7 of the Complaint but apparently refers to different documents related to the purchase which occurred in 1995.

7. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint are denied.

8. All other allegations contained in the Complaint which are not herein admitted are denied.

FACTUAL ALLEGATIONS

9. The Defendant, Michael Frey, applied for an equity membership in the Club in September, 1995 (hereinafter "Golf Membership") which membership application submitted by Defendant Michael Frey was not contingent upon, or linked to, his ownership of property on Callawassie Island.

10. That the Defendant, Grace I. Frey, did not make an application for membership but signed only as the "Spouse" of the Applicant and it is denied that she is a member of the Club, furthermore all references in this Answer to "Defendants" are answered in that manner in the event that the court finds Grace Frey is a member of CIMC, which is specifically denied.

11. That the Plaintiff is obligated to keep a "Resale List" pursuant to CIC and CIMC governing documents which was/is intended to be for the sequential and orderly resale of those memberships not sold under specific terms and in conjunction with a property sale.

12. The Plaintiff has represented to the Defendants that all membership sales must be made through the Club whether going through the Club controlled and maintained Resale List or in conjunction with a Callawassie Island property sale.
13. That in May 2010 the Defendant(s) attempted to confirm resignation and/or expulsion of membership to the General Manager of the Club as well as to the Membership Director but received no response from the Club.
14. That despite the governing documents and specific representations, the Plaintiff is currently claiming dues and fees and various charges are owed by the Defendants pursuant to their resigned membership in CIMC.
15. That the Defendants ceased paying dues and fees in October 2009.
16. That upon information and belief, in September 2010 the Plaintiff informed its members, including the Defendants herein, that it had agreed to allow an entity (believed to be Callawassie Island Company "CIC") owning approximately one hundred eighty nine memberships, to resign all those memberships without ongoing obligation and not in conformity with the policies being pursued against the Defendants and that they had made that agreement in a manner of secrecy and concealment as to the Defendants and other members of the Club.
17. That on about the same time in September, 2010, then CIMC Communications Committee Chairman, Phil Kilian, revealed that the Plaintiff owned 52 Equity Golf and 1 Equity Social memberships in its own club.
18. That the governing documents of the Club have no provision for the Plaintiff to own memberships as described herein.
19. That upon information and belief the release of the largest known membership holder, without approval of the Defendants, has cost the members of CIMC substantial past and future

yearly revenue, and according to CIMC letters, payments of over \$1 million dollars were received based on CIC dues for a period from 2007 to 2009, having a material and adverse affect on the membership of the Defendants.

20. That the governing documents and Board of CIMC have stated and agreed that delinquent members would be suspended then expelled from membership at the end of a period of 4 months of being so delinquent.

21. That according to the governing documents the Defendant(s) have been expelled from membership since January 2010.

22. That upon information and belief the Club has alleged to "suspend" the Defendants' membership for a period greater than four months.

23. That since at least 2003 the Plaintiff has allowed numerous other club members similarly situated to the Defendants herein, to resign and/or terminate their memberships without penalty charge or claim of ongoing dues, fees and obligations (as are being claimed against the Defendants).

24. That the "Membership Plan" of April 18, 1994, as referenced in the "Membership Purchase Agreement" signed by the Defendant(s), upon information and belief, provides for and allows the resignation of membership.

25. That subsequent governing documents of the Club including the membership plan of April 1994 and 2001, if applicable to the Defendants, affirmed that members such as the Defendants herein have the right to resign their membership and thus terminate any accumulation of ongoing obligations or charges to the Club after that date.

26. Subsequent documents including, but not limited to, The Callawassie Island Members Club Plan For the Offering of Memberships of 8/8/01 indicates that resigned members are no longer equity members (See § 3.5).

27. The Callawassie Island Members Club, Inc General Club Rules of 8/8/01 specify that member not paying dues will be “suspended” for a four month period and accounts “not settled within the four (4) month period following suspension shall be expelled from the Club. (§13.3.1)

28. “Suspension” and “Expulsion” are defined more fully in § 14.1.3 and 14.1.5 respectively, the pertinent difference being that dues and fees accumulate during a period of suspension but not as a result of “Termination” (§ 14.1.4) nor “Expulsion” (§14.1.5).

29. That the governing documents in fact require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.

30. That the Plaintiff, through its Treasurer, as recently as February 2007, and others have affirmed and stated the policy of compulsory expulsion in conformity with paragraphs above describing the same.

31. That numerous individuals and Club members have been allowed to effectively relinquish membership back to the Club without being pursued for ongoing obligations such as are being assessed by the Club against the Defendants.

32. That the governing documents specifically exclude the Defendant(s) who is “grandfathered” due to the date of purchase of his membership from the claims currently made by the Plaintiff.

33. That the Club has failed to maintain, and/or refuses to provide, complete and proper information regarding the resale list and the memberships placed thereon and has failed to maintain those records in a proper manner.

FOR A DEFENSE AND FIRST CAUSE OF ACTION
(Breach of Contract)

34. That the allegations contained herein above are realleged herein as if set forth verbatim.

35. That the Plaintiff has breached their agreement with the Defendants and have in fact now charged the Defendants in an amount greatly exceeding the amounts actually, or rightly, due and have misapplied payments previously made by the Defendants.

36. That the Defendants requests an accounting of all monies paid and seek all damages from such breach including as damages all amounts found to be overpayments, or not rightly owed, made to the Plaintiff by the Defendants as well as the costs and attorneys fees associated with this litigation. Additionally the Defendants seek a finding that their membership obligations, including charges of fees dues and/or assessments terminated at the time of their resignation or first attempt at resignation due to the false statements made to them concerning their right to resign, in the alternative the Defendants seek a finding that their obligations and liabilities ceased upon being delinquent for four months.

FOR A SECOND DEFENSE
(Violation of South Carolina Code §§33-31-, 620, 621 et seq.)

37. That the allegations contained herein above are realleged herein as if set forth verbatim.

38. That, to the extent that it is determined that either, or both, of the Defendants own membership in the Plaintiff Club, the Defendants have resigned that membership and/or terminated their membership with the Club pursuant to South Carolina Code of Laws, including

but not limited to § 33-31-620 and SC Code § 33-31-621, ending any obligation for dues fees or charges, such as is being claimed by the Plaintiff in this action.

39. That the Plaintiff has not maintained a fair and reasonable process for the termination of the memberships of its members, more specifically as to the Defendants herein, including but not limited to in, the Plan of Membership, By-Laws or other operational, governing or organizational documents.

40. Upon information and belief, the refusal of the Plaintiff to terminate or expel the Defendants is being done in violation of §§33-31-620, 621 and in knowing disregard to the legal rights of the Defendants.

41. That the Plaintiff has failed to give notice to the Defendants as required for the suspension, expulsion or termination of a member.

42. That the Defendants assert South Carolina Code of Laws §§33-31-, 620,621 et seq. as an additional defense to the damages and claims asserted by the Plaintiff.

FOR A THIRD DEFENSE

(Violation of S.C. Code § 33-31-611) and
(Failure to allow Members to approve fundamental changes)

43. Defendants repeat and reallege the foregoing paragraphs as though fully restated and re-alleged herein verbatim.

44. That, to the extent that it is determined that either, or both, of the Defendants own membership in the Plaintiff Club, the Defendants are not liable to the Plaintiff in this matter pursuant to South Carolina Code § 33-31-611.

45. That the Plaintiff's current action improperly seeks to restrict the Defendants' right to transfer membership in violation of S.C. Code § 33-31-611 and should therefore be dismissed.

46. That the governing documents of the Plaintiff Club require that the Club may not be operated in contravention of the terms and conditions of the Membership Plan and may not be changed in a manner that materially and adversely affects the right of equity members without the approval of a majority of those adversely affected.

47. That upon information and belief, the Plaintiff did not afford the proper notice and/or did not meet the voting requirements to change fundamental obligations and rights of the members. Those fundamental obligations and rights include, but are not limited to, making changes to the charges now and previously assessed against the Defendants, failing to allow members to resign, terminate or be expelled from membership and the selective enforcement of membership requirements and charges.

48. That as a result the Defendant's membership was terminated as of January 2010 (4 months after delinquency) or in the alternative was resigned as of May 2010 and that the claims by the Plaintiff against them in this action should be dismissed or reduced accordingly.

FOR A FOURTH DEFENSE AND SECOND CAUSE OF ACTION
(Misrepresentation)

49. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

50. That the Plaintiff, by and through its employees, agents, Board of Directors or other officers, and predecessors in interest did make material misrepresentations to the Defendants herein including the following, one or more of which is believed to be false:

- a) That members of the club were being treated uniformly and that dues, fees and charges are (and have been) being charged and pursued in a consistent and fair manner;

- b) That members are not allowed to resign or terminate their memberships in any meaningful manner;
- c) That fees and charges would be uniformly and fairly applied to all members for all transactions and dealings with regard to their Club membership(s);
- d) That Golf and/or Social Club memberships were/are an asset that would be beneficial to the member and with regard to sale of land to prospective buyers;
- e) That membership fees, sale charges and other costs of purchasing or transferring membership(s) would be uniformly applied;
- f) That the Club was being run in a competent and/or professional, open and honest manner;
- g) That the Club maintained records and accounting of the Resale List in a proper and accurate fashion;
- h) That actions or changes to governance of, or on behalf of, the Club which materially and/or adversely affected a member would be voted on by the member(s) so affected;
- i) and other material misrepresentations to be determined during discovery in this matter.

51. The Plaintiff also negligently, recklessly and with conscious indifference to the rights of the Defendants, failed to disclose, and/or misrepresented, to the Defendants and other members of the Club, that changes made to the governing documents of the Club were intended to be minor changes when in fact the Plaintiff has made changes to the governing documents, including those changes described herein above, with the undisclosed intent to remove or greatly limit members right to resign, as well as the claimed removal of the required expulsion of

members greater than 4 months past due, such changes substantially and detrimentally effecting the rights and obligations of the Defendants and the relation between the parties.

52. That the Plaintiff had a pecuniary and economic interest in making the misrepresentations and/or taking the actions and/or omissions described above.

53. That the Defendants herein did not know the falsity of the misrepresentations and did rely upon the above misrepresentations to their substantial detriment.

54. That upon information and belief, there exists no meaningful market for the membership interests, if found to be owned by the Defendant(s) herein, and said membership is effectively inalienable.

55. That the Defendants have paid numerous dues, fees and charges over the years based upon these misrepresentations, and that the Plaintiff should be required to return said payments to the Defendants herein.

56. That the misrepresentations of the Plaintiff were grossly negligent and/or recklessly made.

57. That the Defendants request the compensatory as well as punitive damages against the Plaintiff, attorneys fees and court costs and further damages and relief as the court deems just and proper.

FOR A FIFTH DEFENSE

(Violation of South Carolina Code §§33-31-, 610, 611 et seq.)

58. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

59. That the Club has failed to operate in compliance with SC § 33-31-610 and as described herein in above in the preceding paragraphs of this complaint by not treating members of the

same class the same with regard to their rights and obligations of membership, and specifically with regard to their rights of transfer.

60. That the Plaintiff's claim against the Defendants herein is in contravention of state law and in violation of S.C. Code § 33-31-611 and should therefore be dismissed.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Limitations/ Laches)

61. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

62. That as an additional defense the Plaintiffs claims is right barred due the applicable statute of limitations and under the doctrine of laches.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Statute of Frauds)

63. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

64. That as an additional defense the Plaintiffs seeks to enforce an agreement which is not in writing and not signed by the party against which they seek to enforce in violation of the statute of frauds.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE
(Waiver)

65. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

66. That as an additional defense the Plaintiffs claim is barred under the doctrine of waiver as described herein above, and in releasing from liability the Callawassie Island Club, Inc.:

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE

(Payment)

67. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

68. That as an additional defense the Plaintiffs claim is barred under the doctrine of payment.

WHEREFORE, the Defendants, pray for the following:

1. That the claims and actions of the Plaintiff be dismissed and/or denied.
2. The Defendants be granted the damages requested herein including actual, compensatory and punitive damages, reasonable attorneys' fees, costs and expenses.
3. That the membership of the Defendants be determined to have been owned by the Defendant Michael Frey only and be deemed to have been terminated.
4. That the claims of the Plaintiff as to the Defendant Grace Frey be dismissed.
5. That the resignation of the Defendant(s) be deemed to be effective and that all obligations for payment of any fees, dues, assessments or other liabilities or charges was terminated at the time of resignation in May 2010.
6. That in the alternative that the Defendants membership be determined to have been terminated not more than 4 months after becoming delinquent.
7. The Defendants be granted a trial by jury.

Law Office of Brian McDaniel, LLC

BY:



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**ATTORNEY FOR THE DEFENDANTS
MICHAEL FREY AND GRACE FREY**

**Beaufort, South Carolina
May 7, 2014**

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2012-CP-07-03209

CALLAWASSIE ISLAND MEMBERS
CLUB, INC.,

Plaintiff,

vs.

MICHAEL J. FREY and GRACE I.
FREY,

Defendants.

CALLAWASSIE ISLAND
MEMBERS CLUB INC.'S REPLY
TO SECOND AMENDED
COUNTER-CLAIM

FILED
MAY 16 PM 1:55
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff/Counter-Claim Defendant, The Callawassie Island Members Club Inc., reserving all rights under any and/or all pending and/or hereinafter filed motions, and replying to the Second Amended Counter-Claim of Defendants/Counter-Claim Plaintiffs, Michael J. Frey and Grace I. Frey, would respectfully allege unto this Honorable Court:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Second Amended Counter-Claim (hereinafter sometimes "Frey" Counter-Claims), not hereinafter specifically admitted, is denied, and strict proof demanded thereof.
2. That the Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as "CIMC"), would show that the allegations of Paragraphs 1 through 8 of the Second Amended Answer and Counter-Claim relate to the assertion of defenses, by the Defendant/Counter-Claim Plaintiffs,

(hereinafter sometimes referred to as "Frey" and/or "Freys"), to the allegations set forth in the CIMC Complaint, and require no response by CIMC; to the extent that the allegations of said paragraphs may be deemed to require a response by CIMC, such allegations are hereby specifically denied.

3. That CIMC admits, upon information and belief, only so much of Paragraph 9 of the Frey Second Amended Counter-Claim as alleges that Frey applied for an equity membership in the club in September, 1995; CIMC would show that the best evidence of the documents cited within the aforesaid Paragraph 9 of the Frey Second Amended Counter-Claim consists of the documents themselves, and denies so much of Paragraph 9 as may inconsistent and/or incompatible with such documents. CIMC further denies so much of Paragraph 9 as may allege, or may be construed to allege, that the referenced documents relieve the Freys of their obligations to satisfy those claims asserted by the Callawassie Island Members Club in the instant litigation.
4. That CIMC, in responding to Paragraph 10 of the Frey Second Amended Counter-Claim, would show that the best evidence of the documents cited therein consists of the documents themselves, and denies so much of paragraph 10 as may be inconsistent and/or incompatible with such documents. CIMC denies the remaining allegations of Paragraph 10.
5. That CIMC, in responding to Paragraph 11 of the Frey Second Amended Counter-Claim, would show that the best evidence of the CIC and/or

CIMC respective governing documents consists of the documents themselves, and denies so much of Paragraph 11 as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of said paragraph as may allege, or may be construed to allege, that the referenced documents relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation.

6. That CIMC admits the allegations set forth in Paragraph 12 of the Second Amended Counter-Claim.
7. That CIMC is without knowledge or information sufficient to form an opinion as to the truth of the allegations set forth in Paragraph 13 of the Second Amended Counter-Claim, and therefore denies the same and demands strict proof thereof. CIMC further denies so much of said paragraph as alleges, or may be construed to allege, that any purported or attempted resignation and/or expulsion may relieve the Freys of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club in the instant litigation.
8. That CIMC admits only so much of Paragraph 14 as alleges, or may be construed to allege, that CIMC continues to claim that dues, fees, assessments, etc. are owed by the Defendants upon their equity memberships in the Callawassie Island Members Club; CIMC denies so much thereof as alleges, or may be construed to allege, that any purported resignation has effected a termination of any ongoing obligation,

by the Freys, to continue payment of dues, fees, assessments, etc. until their equity membership has been reissued.

9. That CIMC admits, upon information and belief, the allegations set forth in Paragraph 15 of Frey Second Amended Counter-Claim.
10. That CIMC denies the allegations set forth in Paragraph 16 of the Frey Second Amended Counter-Claim.
11. That CIMC admits only so much of Paragraph 17 of the Frey Second Amended Counter-Claim as alleges, or may be construed to allege, that CIMC owns certain golf memberships and/or other equity memberships in the Callawassie Island Members Club.
12. That CIMC, in responding to Paragraph 18 of the Frey Amended Counter-Claim would show that the best evidence of the documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents; CIMC denies the remaining allegations of Paragraph 18.
13. That CIMC denies the allegations set forth in Paragraph 19 of the Frey Second Amended Counter-Claim.
14. That CIMC denies so much of Paragraph 20 of the Second Amended Counter-Claim as alleges, or may be construed to allege, any statement or agreement, by the Board of CIMC, that any suspension or expulsion of delinquent members would effect a termination of any ongoing obligation for the payment of dues, fees, and assessments, etc., against such member; CIMC would further show that the best evidence of the

documents cited in Paragraph 20 consists of the documents themselves, and denies so much of Paragraph 20 as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any alleged statements by CIMC, relieve the Freys of their obligations to satisfy those claims asserted by the Callawassie Island Members Club in the instant litigation. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to satisfy dues, fees, assessments, etc., based upon an alleged delinquency, suspension, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

15. That CIMC, in responding to Paragraph 21 of the Second Amended Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club Inc. in the instant litigation. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing

obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged suspension, resignation, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

16. That CIMC denies the allegations set forth in Paragraphs 22 and 23 of the Frey Second Amended Counter-Claim.
17. That CIMC, in responding to Paragraphs 24, 25, 26, 27, 28 and 29 of the Second Amended Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraphs as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation. CIMC further denies so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged suspension, resignation, termination, or expulsion. CIMC denies the remaining allegations of the aforesaid paragraphs.
18. That CIMC denies the allegations set forth in Paragraphs 30 and 31 of the Frey Second Amended Counter-Claim.
19. That CIMC, in responding to Paragraph 32 of the Second Amended Counter-Claim, would show that the best evidence of the respective

documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve the Freys of their obligations to satisfy those claims as asserted by CIMC in the instant litigation. CIMC further denies so much of the aforesaid paragraph as may allege, or may be construed to allege, any right or entitlement of the Freys to avoid their continuing obligations to pay and satisfy dues, fees, assessments, etc., based upon any alleged suspension, resignation, termination, or expulsion; CIMC denies the remaining allegations of the aforesaid paragraph.

20. That CIMC denies the allegations set forth in Paragraph 33 of the Second Amended Counter-Claim.
21. That CIMC, in responding to Paragraph 34 of the Second Amended Counter-Claim, would reallege and reiterate each and every allegation set forth in preceding paragraphs hereof.
22. That CIMC denies the allegations set forth in Paragraphs 35 and 36 of the Frey Second Amended Counter-Claim.
23. That CIMC, in responding to Paragraph 37 of the Second Amended Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.

24. That CIMC denies the allegations set forth in Paragraphs 38, 39, 40, 41 and 42 of the Frey Second Amended Counter-Claim.
25. That CIMC, in responding to Paragraph 43 of the Frey Second Amended Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
26. That CIMC denies the allegations set forth in Paragraphs 44 and 45 of the Frey Second Amended Counter-Claim.
27. That CIMC, in responding to Paragraph 46 of the Frey Second Amended Counter-Claim, would show that the best evidence of the respective documents cited therein consists of the documents themselves, and denies so much of said paragraph as may be inconsistent and/or incompatible with such documents.
28. That CIMC denies the allegations set forth in Paragraph 47 and 48 of the Frey Second Amended Counter-Claim.
29. That CIMC, in responding to Paragraph 49 of the Frey Second Amended Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.
30. That CIMC denies the allegations set forth in Paragraphs 50, 51, 52, 53, 54, 55, 56, and 57 of the Frey Second Amended Counter-Claim.
31. That CIMC, in responding to Paragraph 58 of the Frey Second Amended Counter-Claim, would re-allege and reiterate each and every allegation set forth in preceding paragraphs hereof.

32. That CIMC denies the allegations set forth in Paragraphs 59 and 60 of the Frey Second Amended Counter-Claim.

33. That CIMC would show that the allegations of Paragraphs 61 through 68 of the Frey Second Amended Counter-Claim relate to the assertion of defenses, by the Freys, to the Complaint of CIMC, and require no responses by CIMC; to the extent that the allegations of said paragraphs may be deemed to require a response by CIMC, such allegations are hereby specifically denied.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

34. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

35. That CIMC would show that the Second Amended Counter-Claim must be dismissed pursuant to Rule 12(b)(5) SCRCP, as the Defendants/Counterclaim Plaintiffs have failed properly to serve CIMC.

FOR A THIRD DEFENSE

36. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

37. That CIMC would show that the allegations of the Second Amended Counter-Claims fail to state facts sufficient to state a cause of action and/or causes of action against the answering Second Amended Counter-Claim Defendants.

FOR A FOURTH DEFENSE

38. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
39. That CIMC would show that, if any representations were made to the Defendants/Counterclaim Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations have merged into the contract between the parties.

FOR A FIFTH DEFENSE

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
41. That CIMC would show that all claims asserted by the Defendants/Counterclaim Plaintiffs are barred by the applicable statute or statutes of limitations.

FOR A SIXTH DEFENSE

42. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
43. That the answering Plaintiff/Amended Counter-Claim Defendant would show that any and all representations alleged made by the Defendants/Counterclaim Plaintiffs, which representations are hereby specifically denied, constitute parole evidence outside the terms of any contract entered into between the parties, and therefore cannot serve to supplement the written contract(s).

FOR A SEVENTH DEFENSE

44. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
45. That CIMC would show that the Defendants/Counterclaim Plaintiffs are barred by the doctrine of estoppel from asserting claims against these parties.

FOR AN EIGHTH DEFENSE

46. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
47. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the doctrine of waiver.

FOR A NINTH DEFENSE

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
49. That CIMC would show that there is no fiduciary relationship between themselves and the Defendants/Counterclaim Plaintiffs.

FOR A TENTH DEFENSE

50. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
51. That CIMC would show that all agreements entered into by the parties were arms length transactions and the Defendants/Counterclaim Plaintiffs were fully informed of all obligations undertaken by the Defendants/Counterclaim Plaintiffs as a result of said agreements.

FOR A ELEVENTH DEFENSE

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
53. An award of punitive damages under South Carolina law in this case would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution.

FOR A TWELFTH DEFENSE

54. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
55. That CIMC plead the doctrine of unclean hands as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs.

FOR A THIRTEENTH DEFENSE

56. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
57. That CIMC plead equitable estoppel as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs.

FOR A FORTEENTH DEFENSE

58. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

59. That CIMC would show that the Defendants/Counterclaim Plaintiffs had no right or entitlement to rely upon any representations allegedly made by CIMC, which representations are hereby specifically denied.

FOR A FIFTEENTH DEFENSE

60. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
61. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the doctrine of laches.

FOR A SIXTEENTH DEFENSE

62. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
63. That CIMC would show that the claims of the Defendants/Counterclaim Plaintiffs are barred by the economic loss rule.

FOR A SEVENTEENTH DEFENSE

64. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
65. That CIMC would show that one or more of them were not or are not a party to any agreement, written or verbal, relating to the Defendants/Counterclaim Plaintiffs' membership as described in the Answer, Second Amended Counter-Claim, and therefore are not proper parties to this action.

FOR A EIGHTEENTH DEFENSE

66. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
67. That CIMC would show that the Defendants/Counterclaim Plaintiffs, by and through their actions and/or inactions with regard to the matters alleged in the Second Amended Counter-Claim have assumed the risk and/or accepted all portions of any damages alleged by the Defendants/Counterclaim Plaintiffs, and such assumption of risk and/or acceptance is a bar to claims against CIMC.

FOR A NINETEENTH DEFENSE

68. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
69. That CIMC does not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these parties or their counsel during the course of discovery or otherwise.

FOR A TWENTIETH DEFENSE

70. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
71. That CIMC would show that the Defendants/Counterclaim Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Second Amended Counter-Claim, which failure is a bar to all claims against these parties.

FOR A TWENTY-FIRST DEFENSE

72. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
73. That the actions taken by CIMC are authorized by statute.

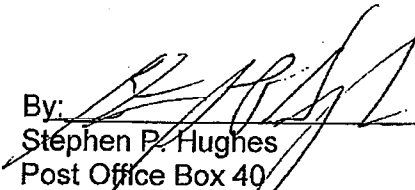
FOR A TWENTY-SECOND DEFENSE

74. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
75. That CIMC plead the Business Judgment Rule as a bar to all claims asserted against them.

WHEREFORE, the Plaintiff/Counterclaim Defendant, Callawassie Island Members Club, Inc., prays that this Honorable Court inquire into the matters and facts set forth herein, and issue its Order in the following particulars:

- a. For judgment in favor of the Plaintiff/Counterclaim Defendant, The Callawassie Island Members Club, Inc.;
- b. Dismissing the Second Amended Counter-Claims of the Counter-Claim Plaintiffs, with prejudice;
- c. Awarding attorneys fees and costs in favor of Plaintiff/Counter-Claim Defendant;
- d. For such other and further relief as this Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

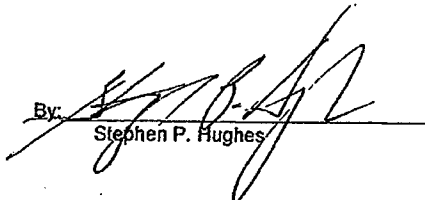
By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Plaintiff/Counter-Claim
Defendant
Bar No: 002805

Beaufort, South Carolina

May 15, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Reply to Second Amended Counter-Claim upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 16 day of May, 2014.

By: 
Stephen P. Hughes

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2012-CP-07-03209

CALLAWASSIE ISLAND
MEMBERS CLUB'S MOTION TO
DISMISS OR FOR JUDGMENT
ON THE PLEADINGS

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, The Callawassie Island Members Club, Inc., by and through its undersigned counsel, will move on the tenth day after service hereof, or as soon thereafter as may be heard, before the Presiding Circuit Court Judge in the Beaufort County Court of Common Pleas, for an Order of this Court dismissing counterclaims asserted by the Defendants, to include those counterclaims asserting violations of South Carolina Codes §§33-31-610, -611, -620, & -621 (or any other section within the South Carolina Nonprofit Corporations Act), the claim entitled "Failure to allow Members to approve fundamental changes," and the claim for breach of fiduciary duty, designated within the relevant pleadings as the second, third, fifth, and sixth causes of action.

The within motion is made pursuant to Rules 12(b)(6) and 12(c), SCRPC, and upon the grounds that the allegations related to the second, third, and sixth causes of action fail to state claims for which relief may be granted. The South Carolina Nonprofit Corporations Act does not create a private right of action, and "Failure to allow members to approve fundamental changes" is not a recognized cause of action in South Carolina. Additionally, a breach of fiduciary duty claim is not properly before this Court, and should be dismissed accordingly.

Under South Carolina law, a breach of fiduciary claim is nearly always a derivative claim, rather than a direct claim, because it seeks to remedy harm that all shareholders/members suffered and felt equally. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown teaches that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina law allows for derivative actions against nonprofit corporations, in accordance with the South Carolina Rules of Civil Procedure. S.C. Code Ann. §33-31-630. As alluded to by this code section, Rule 23(b)(1), SCRPC, provides for the appropriate manner in asserting a derivative claim:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts,

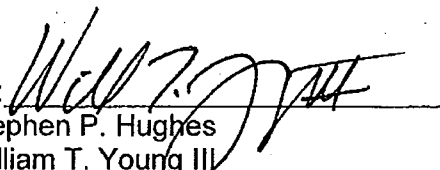
if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The Defendants' Answer and Counterclaim fails to satisfy the requirements of Rule 23 in several particulars. First, it is not a verified pleading. Second, Defendants fail to meet the specific pleading requirements contained within the Rule: they do not "allege with particularity" any efforts made on their behalf to obtain the corporate action sought, or their failure to obtain the corporate action sought, or the reason why they did not make the efforts to have the corporate action occur. Moreover, given that the Defendants' counterclaim is in response to a debt collection action brought by CIMC, it is unreasonable to believe that they adequately represent the interests of all members. Certainly, the interests of other CIMC members are best served by these Defendants making payments as required under their contractual obligations. Consequently, the Defendants should be barred from amending their claim for breach of fiduciary duty.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the pleadings exchanged in the instant matter, and any other documentation and/or information related to the within motion.

The undersigned certifies, pursuant to Rule 11, SCRCP, that there is no duty of consultation with opposing counsel prior to the filing of the within motion.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

And:

Ehrick K. Haight, Jr.
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

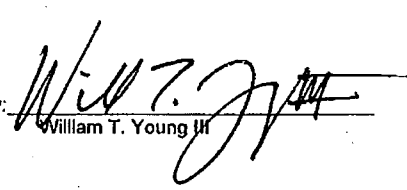
Attorneys for The Callawassie Island
Members Club, Inc

Beaufort, South Carolina

July 24, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Dismiss or for Judgment on the Pleadings upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 25th day of July, 2013.

By: 
William T. Young III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Michael J. Frey and Grace I Frey

Defendants,

IN THE COURT OF COMMON PLEAS

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2012-CP-07-03209

JOHN J. WOODS
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**MEMO IN OPPOSITION TO
PLAINTIFF'S MOTION TO DISMISS
SPECIFIED COUNTERCLAIMS**

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

Dismissal of the counterclaims and/or defenses of the Defendants in this case is not warranted. The Plaintiff contends that the Defendants'¹ claim for breach of fiduciary duty should be dismissed because the Defendants' claim is actually a derivative claim seeking remedy for all shareholders equally. The Plaintiff argues that the fiduciary obligation of "directors" is ordinarily enforceable through a shareholder derivative action and that a breach of fiduciary claim must be enforced derivatively. (Brown v. Stewart 348 S.C. 33 (Ct. App. 2001)). To the contrary, the Brown case does not teach that a fiduciary claim must be enforced derivatively, but instead supports that the Defendant's claim for breach of fiduciary duty is appropriate in this case. The Brown case states that "If misconduct by the management of a corporation has caused a particular loss to an individual stockholder, the liability for the mismanagement is an asset of the individual stockholder. *Of course, a suit based on the misconduct can be brought by the individual stockholder.*" (citing Ward v. Griffin, 295 S.C. 219, 221 (Ct. App. 1988)) (Emphasis

¹ The Defendant Grace I. Frey denies that she ever purchased a membership in the Plaintiff Club.

Added). The court in Brown further states, "[A]n individual action is also allowed if alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation. 19 AmJur.2d Corporations § 2268, at 167 (1986)." In the case of Brown, the Court decided only that a mere loss in value of stock, **which in that case effected all stockholders equally**, was insufficient to support a separate claim for breach of fiduciary duty.

In this case the damages and harm to the Defendants which they are seeking in the breach of fiduciary duty claim are separate and distinct from the losses suffered by the corporation as a whole.² The Defendants are claiming that the Plaintiff failed to follow the Club governing documents and did not expel him (or them) as they were required to do. The claim that the Plaintiff failed to expel this Defendant, while select other members may also have a similar claim, is not a claim shared by all members, nor is the amount of resulting damages the same for those affected. In fact it is the disparate treatment that as outlined in the Answer and Counterclaims which supports many of the Counterclaims made by the Defendants.

In this case, the Defendants are distinct from the general membership because they became Club members prior to the Plaintiff purchasing the assets of the Club in 2001. Specifically, Plaintiff's Complaint at paragraph 3 states that these Defendants became members in 1995. Therefore, the Defendants supplement this memorandum with the attached exhibits which include a portion of the Callawassie Island Property Owners Association Covenants of 1997 (EXHIBIT A) and the Amended and Restated General Declaration for Callawassie Island And Provisions for the Callawassie Island Property Owners Association, Inc of December 1, 2001 (EXHIBIT B). I have provided only the

² It is noted that in this case the Defendants are equity owners and not shareholders.

relevant pages which deal with Callawassie Island Club or Callawassie Island Members Club, Inc.. These are significant because they are relied upon by the Plaintiff in its claim but also because they distinguish these Defendants and their rights from the general membership of the Plaintiff Club as a whole. As you can see at Section 2 of the 12/1/2001 Declarations p. 74 provided (EXHIBIT B), the requirement to remain an equity member in the Plaintiff Club does not apply to a group of members that bought property on Callawassie prior to December 1, 2001. The requirement did not exist in the previous Covenants (EXHIBIT A). Further in their Answer at paragraph 26- 28 the Defendants note that the governing documents in fact discuss the procedures for resignation that should apply to these particular defendants. Since these Defendants purchased prior to 2001 they have no obligation to maintain a membership and should be allowed to resign as they have attempted to do, and they therefore have a separate and distinct claim to bring against the Plaintiff, which is not a claim that would be derivative and to the benefit of all members.

The Plaintiff argues that instead of a defense or counterclaim that the matters raised by the Defendants would have to be raised as a Derivative Action, based upon S.C. Code §33-31-304(b), but that argument is not supported by the code or case law. Review of the Official Comments to S.C. Code §33-31-304 specifically addresses that the Ultra Vires limitation section is narrow and **"It does not address actions that ... (ii) violate federal or state laws; (iii) breach duties owed by the directors... (vi) breach duties owed by the corporation."** The Defendants' Answer raises as defenses that the Plaintiff has violated the state Nonprofit Corporations statutes (state law –ii above) and as a counterclaim that the Plaintiff has breach its fiduciary duty to its members (point vi

above). Therefore, the Plaintiff's reliance upon S.C. Code §33-31-304 for its request for dismissal is misplaced.

The Plaintiff also contends that the other counterclaims asserting enforcement of the statutory provisions of S.C. Code §§ 33-31-620, 621, 611 and 610 are not private rights of action. The Defendants in this case are seeking to enforce statutory requirements which are designed to protect members of nonprofits, such as this Defendant (or if both are determined to be members "Defendants"). The Defendant(s) seek a determination by the court that its membership has been resigned or was by operation of the governing documents terminated by expulsion thereby ending the Defendant's obligations, if any, to the Plaintiff. The court has been granted wide power to enforce minority owner (shareholder) rights pursuant to § 33-14-300 and the remedies provided at § 33-14-310 (d) which are provided in lieu of dissolution of the company. The Defendant has alleged for just these sorts of remedies and they are appropriate for this case.

Finally, if the court does not believe that the Defendant has set forth a sufficient counterclaim in counterclaims 2, 3, 5 and 6, the Defendants requests that those allegations remain as Affirmative defenses in this matter.

In conclusion the Defendant requests that the Plaintiff's motion be denied.

LAW OFFICE OF BRIAN McDANIEL, LLC

A handwritten signature in black ink, appearing to read "Brian McDaniel", written over a horizontal line.

BRIAN McDANIEL

2015 Boundary Street, Suite 216

P. O. Box 2085

Beaufort, South Carolina 29901

Phone: 843-379-5117

Fax: 843-379-5118

Attorney for the Defendants

Michael Frey Grace Frey

November 5, 2013
Beaufort, South Carolina

EXHIBIT A to Defendants
Memo in Opposition

EXISTING: 05/10/07

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ARTICLE VII
CLUB PROPERTY

Section 1. General. Neither membership in the Association nor ownership or occupancy of any Residential Lot or Family Dwelling Unit shall confer any ownership interest in or right to use the Club Property. Rights to use the Club Property will be granted only to such persons, and upon such terms and conditions, as may be determined from time to time by the owner(s) of the Club Property. The owner(s) of the Club Property shall have the right, from time to time and without notice to the Association or any Member, to amend or waive the terms and conditions of use of the Club Property, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Ownership and Operation. All persons, including all Property Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Company, the Association or any other person with regard to the continuing ownership or operation of the Club Property as now or hereafter depicted upon any plats, plans, maps or renderings of the Property, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment hereto executed or joined into by Declarant.

Section 3. Cooperation. Notwithstanding the foregoing, the Company and the Association acknowledge that a cooperative relationship among the Company, the Association and the owner(s) of the Club Property is necessary and desirable, and thus, the Company and the Association, on their behalf and on behalf of their successors and assigns, hereby pledge such cooperation.

ARTICLE VIII
DISCLAIMER

The adoption of this Amended and Restated Declaration, while by its nature intended to recite matters and circumstance in their present state as a result of changed circumstances or intervening events as discussed in the recitals on the Initial page hereof, is not intended to and shall not be construed as modifying, in and of itself, any separate or independent documents having their own existence or independent legal significance such as, for example, Property Reports filed with Office of Interstate Land Sales and Registration, Department of Housing and Urban Development or Callawassie Island Club, Inc.

EXHIBIT A to Defendants
Memo in Opposition

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Callawassie Island
Property Owners Association
Covenants

December 1997

EXHIBIT A to Defendants
Memo in Opposition

AMENDED AND RESTATED GENERAL DECLARATION FOR
CALLAWASSIE ISLAND AND PROVISIONS FOR
THE CALLAWASSIE ISLAND PROPERTY
OWNERS ASSOCIATIONS, INC.

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EXHIBIT B to Defendants
Memo in Opposition

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Amended And Restated General Declaration For
Callawassie Island And Provisions For The
Callawassie Island Property Owners Association, Inc.

Of

December 1, 2001

BEAUFORT COUNTY SC - ROD
BK 01505 PG 0850
FILE NUM 2001074988
RECORDING FEES 133.00
RECORDED BY B BING RCPT# 26394
RECORDED 12/03/2001 02:09:19 M

After Recording Return To:
James P. Schelder, Jr.
Jones, Schelder & Patterson, P.A.
P.O. Box 1938
Bluffton, South Carolina 29910
(843) 705-6111

EXHIBIT B to Defendants

Memo in Opposition OR BK 01505 PAGE 0931

in or right to use the Club Property. Rights to use the Club Property will be granted only to such persons, and upon such terms and conditions, as may be determined from time to time by the owner(s) of the Club Property. The owner(s) of the Club Property shall have the right, from time to time and without notice to the Association or any Member, to amend or waive the terms and conditions of use of the Club Property, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Callawassie Island Members Club Membership. Every Person or entity who purchases property on Callawassie Island after December 1, 2001 shall thereupon be required to purchase an Equity Membership ("Membership") in the Callawassie Island Members Club, Inc. ("Club") and remain an Equity Member in good standing in such Club for each property purchased or transferred after the approval date of this amendment for so long as such person or entity owns the subject property. Such Member shall thereafter be vested with all of the rights, privileges and obligations of Membership in the Club as set forth in the Plan for the Offering of Membership and Bylaws of the Club and Amendments thereto. The applicable Membership Contribution Fee shall be paid as of the date of such conveyance. The payment of such Membership Contribution Fee shall be a condition precedent to the delivery of a deed or any other form of conveyance.

In the event one or more property owners who are already equity members of the Club purchase all or a portion of an abutting lot to form a single lot, such property owners will not be required to purchase and hold an additional Equity Membership in the Club.

Pursuant to Part Three, Article I, Section 1 hereof, or in the event that a Lot or Dwelling is owned by one or more individuals, a partnership or a corporation, only one Owner with respect to any such Lot or Dwelling shall be an Equity Member of the Club, any such determination to be made in accordance with the Bylaws of the Club as from time to time constituted.

The provisions of this Section shall run with the title of and be appurtenant to all Lots and Dwellings transferred or otherwise conveyed after December 1, 2001 and shall be binding upon and inure to the benefit of all Owners of such Lots and Dwellings and their respective heirs, executors, legal representatives, successors and assigns. Each Owner, by acceptance of a deed or other conveyance pursuant to purchase of a Lot or Dwelling after the approval date of this amendment consents and agrees to the obligations of an Equity Member of the Club.

All other sections of this Declaration not herein specifically amended shall be automatically amended to conform with the spirit and intent of this Amendment to this Declaration.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE)
I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT

TO: BRIAN D. MCDANIEL, ESQUIRE, ATTORNEY FOR THE DEFENDANT/COUNTERCLAIM
PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff/Counterclaim Defendant, The Callawassie Island Members Club, Inc. ("CIMC"), will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court granting summary judgment upon all causes of action raised by CIMC against the Defendants, Michael and Grace Frey (collectively "Freys").

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and upon the following grounds:

- a. That the instant litigation was commenced by CIMC, seeking to recover unpaid dues, fees, and assessments owed to it by Freys;
- b. That in 1995, the Callawassie Island Club ("CIC"), CIMC's predecessor in interest, and Freys entered into an unambiguous contract for the acquisition of a membership in CIC, which later became a membership in CIMC (the "Membership"), in which Freys agreed to abide by and be bound by certain

covenants, rules, and other obligations, "as same may be amended from time to time";

- c. That among the agreements voluntarily entered into by Freys was that they would continue to pay dues, fees, and assessments as established from time to time, on their Membership until the Membership was reissued;
- d. That Freys, despite entering into valid and enforceable contracts, have failed in the continuing and ongoing obligation to pay dues, fees, assessments, and other charges to CIMC;
- e. That Freys currently owe significant monies to CIMC, with the specific amount to be set forth via affidavit;
- f. That there is no genuine issue of material fact for a jury to consider, as the contracts between CIMC and Freys, as well as the governing documents of Callawassie Island (including the 1994 Plan for Offering Membership; the 2001 Plan for Offering of Membership, General Club Rules, bylaws, and Callawassie Island Property Owners' Association Covenants), and all amendments thereto, are unambiguous in the collective requirement that a member must remain in good standing with CIMC until his membership is reissued; and
- g. That the agreement between CIMC and Freys, requiring Freys' ongoing obligation to pay dues, fees, assessments, etc. until the membership is reissued, are permitted, authorized, and contemplated within the South Carolina Nonprofit Corporation Act, including S.C. Code Ann. §§33-31-620 and -621, which provide that a member is not relieved from any obligations incurred or commitments made while still a member.

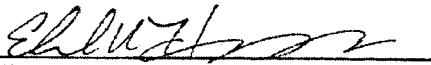
YOU WILL PLEASE TAKE FURTHER NOTICE THAT the Plaintiff/Counterclaim Defendant, CIMC, will seek an Order of this Court granting summary judgment in its favor on all counterclaims asserted by Freys. This motion is made pursuant to Rule 56, SCRCP, and upon the following factual grounds:

- a. That Freys' claims are barred by the statute of limitations;
- b. That Freys have suffered no damages from the claims asserted;
- c. That Freys have failed to establish a breach of fiduciary duty by CIMC;
- d. That Freys have failed to establish a claim for negligent misrepresentation;
- e. That the actions complained of by Freys were taken upon advice of counsel, financial consultants, and other information upon which the CIMC Board may rely;
- f. That the business judgment rule precludes judicial review of the alleged actions taken by CIMC;
- g. That CIMC was otherwise justified in taking the actions complained of by Freys, through authority granted by its governing documents and the South Carolina Code of Laws;
- h. That Freys have failed to follow conditions precedent to seeking recovery upon a theory of breach of fiduciary duty, and is otherwise not entitled to assert a claim for breach of fiduciary duty;
- i. That Freys are not entitled to equitable relief;
- j. That Freys have failed to establish that they are entitled to an accounting; and
- k. That therefore, Freys have failed to set forth a genuine issue of material fact for a jury to consider.

The undersigned certifies, pursuant to Rule 11, SCRCP, that there is no duty of consultation with opposing counsel prior to the filing of the within motion.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits, deposition testimony, and discovery documents exchanged herein.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 
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P.O. Drawer 6067
Hilton Head Island, SC 29938
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AND:

HOWELL, GIBSON & HUGHES, P.A.
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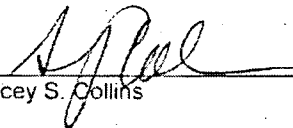
Attorneys for The Callawassie Island
Members Club, Inc.

Hilton Head Island, South Carolina

March 6, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 6th day of March, 2014

By: 
Stacey S. Collins

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

v.

MICHAEL J. FREY and
GRACE I. FREY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

v.

GREGORY L. MARTIN and
REBECCA L. MARTIN,

Defendants.

CIVIL ACTION NO. 2012-CP-07-03218

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

v.

MARK QUINN and
SHERRY B. QUINN,

Defendants.

CIVIL ACTION NO. 2012-CP-07-03216

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, submits this memorandum of law in support of its motion for summary judgment.¹ For the reasons discussed herein, summary judgment in favor of CIMC is warranted.

BACKGROUND

This is an action commenced on behalf of CIMC, seeking recovery of unpaid dues, fees, and assessments² owed to it by the Defendants in the above-captioned cases (collectively referred to as "Members"), in connection with their memberships in CIMC.

FACTS

Callawassie Island is a private, members-only island, located between Beaufort and Hilton Head. Its members enjoy many amenities on the island, including: swimming, tennis and golf facilities; as well as a clubhouse and dining room. The Club was originally formed in the 1980's, and was known at that time as the Country Club of Callawassie. In 1994, the Club's assets were purchased and operated by The Callawassie Island Company, L.P. ("CIC"). During CIC's control, the Club was known as the Callawassie Island Club. In 1999, CIC and its membership overwhelmingly approved a transfer agreement allowing the members to purchase the club's assets. Although CIMC was formed in 1999 for the purpose of taking title to the assets, the transfer did not occur until June 29, 2001. CIMC is a 501(c)(7), mutual benefit nonprofit corporation, organized under and existing pursuant to the laws of the State of South Carolina.³

Each of the Members purchased a membership in the Callawassie Island Club prior to the

¹ As the above-captioned cases involve substantially similar facts and causes of action and the attorneys for both the Plaintiff and the various Defendants are the same in each case, CIMC is filing this single Memorandum in support of its Motions for Summary Judgment to avoid unnecessary repetition and confusion.

² For the sake of brevity, subsequent references to "dues" in this memorandum shall include all costs sought by CIMC.

³ The foregoing facts pertaining to the creation of CIMC and its acquisition of the assets are set forth more particularly in that certain Affidavit of G. Harman Switzer 3rd, attached hereto as Exhibit "A" and incorporated herein by reference.

transfer of the assets;⁴ remained members following said transfer; paid a \$4,000.00 assessment required of the members subsequent to the transfer; and were issued a membership certificate in CIMC. Each of the Members likewise continued to enjoy the use of CIMC's amenities and the privileges and benefits of membership for many years following the transfer.

The Members paid dues, fees and assessments to CIMC following the transfer of assets until their purported resignation and/or allegedly required expulsion. The Members allege that their responsibility for the payment of ongoing dues ceased upon resignation, or alternatively, that had they been expelled for non-payment, they would be relieved from further obligation. CIMC contends that neither resignation, nor expulsion, would automatically result in a termination of Members' obligation to pay dues; relying upon its governing documents which clearly state such obligation continues until the memberships are re-issued to a new owner.

CIMC commenced these actions seeking recovery of ongoing dues owed by the Members. In each of the cases, CIMC filed a Motion to Dismiss or for Judgment on the Pleadings, which motions were heard on November 8, 2013, by the Honorable Carmen T. Mullen, who dismissed the Members' second, third, fifth and sixth causes of actions.⁵ The Members' only remaining counterclaims against CIMC are for breach of contract and misrepresentation.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

⁴

Defendants Frey purchased on or about September 29, 1995, Defendants Martin purchased on or about February 15, 2001, and Defendants Quinn purchased on or about July 4, 1997.

⁵

A proposed Order was submitted on January 16, 2014.

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ARGUMENT

Summary judgment on the claims asserted by CIMC is appropriate because the CIMC governing documents⁶ are unambiguous and obligate the Members to continue to pay dues associated with the memberships until the memberships are re-issued. Accordingly, the documents must be interpreted by this Court and given their plain and ordinary meaning. Since it is uncontroverted that the memberships in question have yet to be re-issued, the Members' are justly charged with the payment of on-going dues.

Regardless of when the Members first acquired their respective memberships, they are bound by the current controlling documents,⁷ which have been duly adopted and amended from time to time. These documents, and indeed all of the Governing Documents dating back to the Members' initial acquisition, universally require a member to pay dues until his or her membership is reissued. The following excerpts leave no room for contrary interpretation:

Relevant Plan Excerpts:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club ***until his or her equity membership is reissued*** (emphasis added) by the Club. (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendants acquired Membership*).

⁶

The term governing documents shall mean The Plan for Offering Memberships dated April 1, 1994, Rev. July, 1994, and the By-Laws and General Club Rules issued by CIC; together with later versions, as amended and adopted by CIMC during the period of time in which Defendants owned their respective memberships (the "Governing Documents").

⁷

As of the date of this Memorandum, the current controlling documents are comprised of the Plan for Offering Memberships effective July 1, 2013, the By-Laws for the Callawassie Island Membership Club effective January 1, 2014, and the General Club Rules effective of even date therewith, copies of which are attached hereto as Exhibit "B" and incorporated herein by reference.

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club. (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Relevant Excerpt from By-Laws:

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (emphasis added) by the Club. (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendants acquired Membership*).⁸

Relevant Excerpts from the General Club Rules:

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums)(*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendants acquired Membership*).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Although the Members contend that their purported resignations and/or allegedly required expulsion should terminate any further obligation to CIMC, they fail to reference any provision within the documents that stands for such a proposition. Rather, they have made an unsupported leap in logic that resignation or expulsion by right excuses them from further liability. This conclusion is

8

The foregoing language has remained substantially the same in later enacted versions of the By-laws, until the most current Amended and Restated By-Laws of Callawassie Island Members Club, Inc. dated January 1, 2014, which leaves recitation of this policy to the current Plan.

in direct contradiction of the Governing Documents as illustrated by the foregoing excerpts, which show a clear and consistent policy and intent to hold members accountable for such charges until their membership is re-issued.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Whether the contract is ambiguous is a question of law for the court. Id. "A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009) (quoting S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001)). In the face of such clear and unequivocal language, the Court must conclude that dues continue to be the responsibility of a member until such time as his or her membership is re-issued.

The Members point to S.C. Code Ann. §33-31-620, of the South Carolina Nonprofit Corporations Act (the "Act"), for the proposition that assigning liability for continuing obligations post resignation is statutorily prohibited. The Defendants' argument conveniently ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes the legislative intent patently clear. Members are to be held accountable for previously agreed upon continuing obligations, even beyond resignation. Since the Members agreed to be bound by the Governing Documents, which unambiguously and consistently obligate them to pay dues ***until such time as their membership reissues***, the Act can not be misconstrued as to exonerate them from their commitment.

As the plain language of the Governing Documents is clear and unambiguous and the Members have failed to present any evidence that the amounts referenced within the affidavits of Jeff Spencer and Ehrick K. Haight, Jr. are inaccurate in any of their particulars, summary judgment in favor of CIMC is appropriate. Just as CIMC is entitled to summary judgment on its claims against the Members, it is also entitled to summary judgment on the remaining defensive counterclaims asserted against it by the Members. Despite ample opportunity to conduct discovery, the Members have failed to produce any credible evidence in support of their breach of contract or negligent misrepresentation claims.

AS TO DEFENDANTS' COUNTERCLAIM

FOR BREACH OF CONTRACT

With respect to the breach of contract claim, it is uncontested that the Members contractually agreed to be bound by the 1994 Plan for Offering Memberships (as amended); owned a membership interest in CIMC; enjoyed the benefits thereof for many years; and, until the time of their purported resignations, paid dues, fees and assessments to CIMC. It is also uncontroverted that their respective memberships have not been re-issued and therefore, the Members continue to be bound by the terms and conditions contained in the Governing Documents. Although the Members claim to have been charged for amounts "greatly exceeding" the amounts rightly due, their contention is based on the presumption that either resignation or expulsion relieved them of any further ongoing liability. As that contention is unsupported by the Governing Documents, no breach has occurred and summary judgment is appropriate.

AS TO DEFENDANTS' COUNTERCLAIM

FOR NEGLIGENT MISREPRESENTATION

In their Amended Answer and Counterclaims, the Members assert for their fourth cause of action, a claim for negligent misrepresentation. In order to recover upon a claim for negligent

misrepresentation, the Members must show: 1) a false representation made by CIMC to the Members; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Members; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A false representation must be false at the time it was made. GSM Dealer Services, Inc. v. Chrysler Corp., 32 F.3d 139 (4th Cir. 1994). Moreover, the representation cannot be based on unfulfilled promises or statements of future events. Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

As stated hereinabove, the Members all obtained memberships prior to CIMC acquiring the club assets in 2001. It is therefore a legal impossibility for CIMC to have made any misrepresentation that would have induced the Members to acquire a membership. By the time CIMC acquired possession and control of the assets and commenced the management thereof, the Members had already obligated themselves for the payment of dues fees and assessments until their memberships reissued, making any "justifiable reliance" argument moot and negating an essential element of their claim.

Further, the litany of misrepresentations CIMC is alleged to have made appear to be predicated on the Members' breach of fiduciary duty claim which was dismissed by the Hon. Carmen T. Mullen at an earlier hearing. (See Footnote 4, *Supra*). Even assuming the truth of the Members' assertions, namely that: members were treated disparately, not allowed to resign, charged inconsistently, purchased memberships of no value, had fees inconsistently applied, or were denied voting rights (all of which CIMC expressly denies); the Members have failed to produce any evidence to substantiate that such alleged misrepresentations were made by CIMC following

its acquisition of the assets, or that if made, that they were false, in breach of any duty owed by CIMC, or resulted in justifiable reliance leading to a pecuniary loss by the Members.

Further, to the extent any such actions and/or representations were taken or made by CIMC, they fall under the business judgment rule. The Act grants comprehensive and wide-ranging authority to Boards for the settlement of compromised claims. As such, any decision by CIMC to write-off bad debts in association with memberships no longer affiliated with real property on the island was expressly permitted by S.C. Code Ann. §33-31-101, *et seq.*

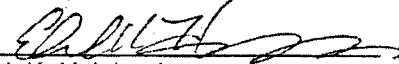
The Act generally empowers nonprofit corporations to take all reasonable actions consistent with its governing documents in managing the operations of the organization. S.C. Code Ann. 33-31-302. Additionally, the Act establishes the standard of care owed by directors, and allows the directors to rely upon the advice of counsel or other persons with specific knowledge regarding issues before the entire Board. S.C. Code Ann. §33-31-830.

Courts should not inquire into *intra vires* actions of a nonprofit corporation which require the business judgment of the directors, when such actions are taken within the organization's authority and done in good faith, and absent fraud, self-dealing, or unconscionable conduct. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). A person challenging whether a board acted in good faith bears the burden of proof, irrespective of that party's alignment as a plaintiff or defendant. Id. Here, the Members have not alleged fraud, self-dealing, or unconscionable conduct and offer no evidence that would authorize the Court's review of the CIMC actions. Without such evidence, the Members fail to substantiate that: 1) any false representations were made by CIMC to the Members; 2) CIMC wrongfully gained any pecuniary interest in making such alleged statements; 3) CIMC violated any duty of care; 4) the Members justifiably relied on the representation; or 5) the Members suffered of a pecuniary loss as a direct and proximate result of reliance on the representation. Based on the foregoing, summary judgment must be granted.

CONCLUSION

For the reasons discussed herein, CIMC is entitled to summary judgment. The unambiguous language of the governing documents requires members to pay dues until the membership is transferred, and the Members have offered no legitimate basis for nonpayment. Moreover, the Members' counterclaims are fatally defective. Nonprofit corporations in South Carolina are given wide ranging authority, and it is incumbent upon the challenging party to show fraud, lack of good faith, or incompetence in the club's actions before courts will inquire into the inner workings of an organization. The Members have not met the high burden required of them. Finally, the Members have no evidence to support their counterclaims. Therefore, CIMC is entitled to summary judgment.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

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Members Club and Third Party Defendants

Beaufort, South Carolina
March 6, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE
I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

AFFIDAVIT OF JEFF SPENCER

PERSONALLY appeared before the undersigned Notary Public Jeff Spencer, General Manager of The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as "The Callawassie Island Members Club" or "CIMC"), Plaintiff in the above-captioned matter, who having first been duly sworn, deposes and on oath says:

1. That as General Manager of The Callawassie Island Members Club, I am familiar with and have personal knowledge of the files and records associated with the membership which is the subject of this action and I have reviewed the account information and records of CIMC kept in the ordinary course of business reflecting the debits and credits relating to this matter and have reviewed the various governing documents.

2. That as of January 31, 2014, the Defendants are indebted to the Plaintiff for the total amount of Fifty Three Thousand Four Hundred Sixty-Three and 93/100 (\$53,463.92) Dollars for unpaid dues, fees, assessments and other charges as shown on the statement attached to this affidavit as Exhibit "A". That the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, continue to accrue. Said amount does not include attorney's fees and other costs of collection which are also due and which are addressed in a separate affidavit.

CIVIL ACTION NO. 2012-CP-07-03209
AFFIDAVIT OF JEFF SPENCER

3. In applying for and contracting to purchase a membership from The Callawassie Island Club, Inc., Plaintiff's predecessor in interest, and, further, in subsequently purchasing said membership, the Defendants agreed to a continuing contractual obligation to pay such dues, fees and charges established from time to time and to keep the memberships in good standing. Defendants also agreed that their membership would be governed by the Plan for the Offering of Memberships in The Callawassie Island Club, dated April 1, 1994, as same may be amended from time to time ("Plan"). Additionally, Defendants agreed that their membership would be governed by the General Club Rules and that any payments would be billed in accordance with the customary billing and collection procedure of the The Callawassie Island Club, Inc.

4. The Defendants also agreed to release and hold The Callawassie Island Club, Inc. harmless from any claims, demands or actions they might have because of the Membership Purchase Agreement, the Application for Membership, or any subsequent acts or omissions suspending or terminating the membership.

5. The Defendants were provided notice to satisfy their delinquent account, but have failed or refused to satisfy their continuing obligations to CIMC.

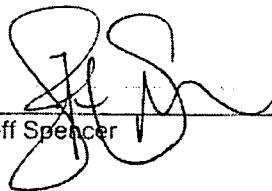
6. CIMC has demanded payment of the amounts due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in breach and default of the agreements and covenants under the applicable documents, including but not limited to the The Callawassie Island Club Application for Membership and The Callawassie Island Club Membership Purchase Agreement; as well as the Plan, the By-Laws and the General Club Rules, as they may be amended from time to time.

CIVIL ACTION NO. 2012-CP-07-03209
AFFIDAVIT OF JEFF SPENCER

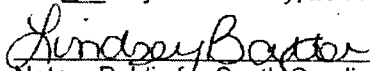
7. The fact that CIMC has been forced, owing to non-payment, to suspend the Defendants' membership rights and privileges pursuant to the applicable documents is unrelated to the Defendants' continuing obligation to maintain the memberships in good standing and pay the associated dues, fees, assessments and other charges.

8. The suspension of membership privileges does not relieve the Defendants' of their obligation to continue paying dues, fees and assessments until such time as their membership is reissued to a new member in accordance with the Plan, as amended.

FURTHER DEPONENT SAYETH NOT.


Jeff Spencer

SWORN to AND SUBSCRIBED before me
this 30 day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission expires: September 5, 2016

01 - Callawassie Island Club
Member History Nov 01/07 - Feb 27/14

02774 - Mr. Michael Frey
202 Cedar Street
Cedar Grove NJ 07009

Main Phone : 201-857-0921

Alt. Phone :

Status : S

Date	Chit/Inv	Description	Charges	Tax/Grat	Amount	
		Balance Fwd			1,611.96	1,611.96
Nov30/07	SJ7257/57	Monthly Dues	338.00	-	338.00	1,949.96
Nov30/07	SJ7257/57	Club Amenities	50.00	-	50.00	1,999.96
Nov30/07	SJ7273/73	Finance Charge	24.17	-	24.17	2,024.13
Dec26/07	7231/71	Ref. 7231 - Pa			(1,611.96)	412.17
Dec31/07	SJ7288/88	Monthly Dues	364.00	-	364.00	776.17
Dec31/07	SJ7288/88	Club Amenities	50.00	-	50.00	826.17
Dec31/07	SJ7310/10	Annual Food &	300.00	-	300.00	1,126.17
Dec31/07	SJ7309/09	Finance Charge	6.18	-	6.18	1,132.35
Jan31/08	SJ7319/19	Monthly Dues	364.00	-	364.00	1,496.35
Jan31/08	SJ7319/19	Club Amenities	50.00	-	50.00	1,546.35
Jan31/08	SJ7328/28	Finance Charge	16.98	-	16.98	1,563.33
Feb29/08	SJ7339/39	Monthly Dues	364.00	-	364.00	1,927.33
Feb29/08	SJ7339/39	Club Amenities	50.00	-	50.00	1,977.33
Feb29/08	SJ7341/41	Golf Course Re	50.00	-	50.00	2,027.33
Feb29/08	SJ7352/52	Finance Charge	23.44	-	23.44	2,050.77
Mar31/08	SJ7363/63	Monthly Dues	364.00	-	364.00	2,414.77
Mar31/08	SJ7363/63	Club Amenities	50.00	-	50.00	2,464.77
Mar31/08	SJ7363/63	Golf Course Re	50.00	-	50.00	2,514.77
Mar31/08	SJ7380/80	Finance Charge	30.75	-	30.75	2,545.52
Apr30/08	SJ7395/95	Monthly Dues	364.00	-	364.00	2,909.52
Apr30/08	SJ7395/95	Club Amenities	50.00	-	50.00	2,959.52
Apr30/08	SJ7395/95	Golf Course Re	50.00	-	50.00	3,009.52
Apr30/08	SJ7414/14	Finance Charge	38.17	-	38.17	3,047.69
May31/08	SJ7430/30	Monthly Dues	364.00	-	364.00	3,411.69
May31/08	SJ7430/30	Club Amenities	50.00	-	50.00	3,461.69
May31/08	SJ7430/30	Golf Course Re	50.00	-	50.00	3,511.69
May31/08	SJ7438/38	Finance Charge	45.70	-	45.70	3,557.39
Jun24/08	7555/35	Ref. 7555 - Pa			(500.00)	3,057.39
Jun30/08	SJ7446/46	Monthly Dues	364.00	-	364.00	3,421.39
Jun30/08	SJ7446/46	Club Amenities	50.00	-	50.00	3,471.39
Jun30/08	SJ7446/46	Golf Course Re	50.00	-	50.00	3,521.39
Jun30/08	SJ7454/54	Finance Charge	45.85	-	45.85	3,567.24
Jul31/08	SJ7465/65	Monthly Dues	364.00	-	364.00	3,931.24
Jul31/08	SJ7465/65	Club Amenities	50.00	-	50.00	3,981.24
Jul31/08	SJ7465/65	Golf Course Re	50.00	-	50.00	4,031.24
Jul31/08	SJ7482/82	Finance Charge	53.50	-	53.50	4,084.74
Aug25/08	7590/63	Ref. 7590 - Pa			(1,000.00)	3,084.74
Aug31/08	SJ7495/95	Monthly Dues	364.00	-	364.00	3,448.74
Aug31/08	SJ7495/95	Club Amenities	50.00	-	50.00	3,498.74
Aug31/08	SJ7495/95	Golf Course Re	50.00	-	50.00	3,548.74
Aug31/08	SJ7504/04	Finance Charge	46.27	-	46.27	3,595.01
Sep30/08	SJ7510/10	Monthly Dues	364.00	-	364.00	3,959.01
Sep30/08	SJ7510/10	Club Amenities	50.00	-	50.00	4,009.01
Sep30/08	SJ7510/10	Golf Course Re	50.00	-	50.00	4,059.01
Sep30/08	SJ7521/21	Finance Charge	53.92	-	53.92	4,112.93
Oct31/08	SJ7534/34	Monthly Dues	364.00	-	364.00	4,476.93
Oct31/08	SJ7534/34	Club Amenities	50.00	-	50.00	4,526.93
Oct31/08	SJ7534/34	Golf Course Re	50.00	-	50.00	4,576.93
Oct31/08	SJ7548/48	Finance Charge	61.69	-	61.69	4,638.62

EXHIBIT A

Nov30/08	SJ7561/61	Monthly Dues	364.00	-	364.00	5,002.62
Nov30/08	SJ7561/61	Club Amenities	50.00	-	50.00	5,052.62
Nov30/08	SJ7561/61	Golf Course Re	50.00	-	50.00	5,102.62
Nov30/08	SJ7574/74	Finance Charge	69.58	-	69.58	5,172.20
Dec31/08	SJ7587/87	Monthly Dues	382.00	-	382.00	5,554.20
Dec31/08	SJ7587/87	Club Amenities	50.00	-	50.00	5,604.20
Dec31/08	SJ7587/87	Golf Course Re	50.00	-	50.00	5,654.20
Dec31/08	SJ7587/87	Golf Deficit A	7.00	-	7.00	5,661.20
Dec31/08	SJ7588/88	Annual Food &	300.00	-	300.00	5,961.20
Dec31/08	SJ7594/94	Finance Charge	77.58	-	77.58	6,038.78
Jan31/09	SJ7611/11	Monthly Dues	382.00	-	382.00	6,420.78
Jan31/09	SJ7611/11	Club Amenities	50.00	-	50.00	6,470.78
Jan31/09	SJ7611/11	Golf Course Re	50.00	-	50.00	6,520.78
Jan31/09	SJ7611/11	Golf Deficit A	7.00	-	7.00	6,527.78
Jan31/09	SJ7631/31	Finance Charge	90.58	-	90.58	6,618.36
Feb28/09	SJ7640/40	Monthly Dues	382.00	-	382.00	7,000.36
Feb28/09	SJ7640/40	Club Amenities	50.00	-	50.00	7,050.36
Feb28/09	SJ7640/40	Golf Course Re	50.00	-	50.00	7,100.36
Feb28/09	SJ7640/40	Golf Deficit A	7.00	-	7.00	7,107.36
Feb28/09	SJ7651/51	Finance Charge	99.28	-	99.28	7,206.64
Mar31/09	SJ7665/65	Monthly Dues	382.00	-	382.00	7,588.64
Mar31/09	SJ7665/65	Club Amenities	50.00	-	50.00	7,638.64
Mar31/09	SJ7665/65	Golf Course Re	50.00	-	50.00	7,688.64
Mar31/09	SJ7665/65	Golf Deficit A	7.00	-	7.00	7,695.64
Mar31/09	SJ7671/71	Finance Charge	108.11	-	108.11	7,803.75
Apr30/09	SJ7681/81	Monthly Dues	382.00	-	382.00	8,185.75
Apr30/09	SJ7681/81	Club Amenities	50.00	-	50.00	8,235.75
Apr30/09	SJ7681/81	Golf Course Re	50.00	-	50.00	8,285.75
Apr30/09	SJ7681/81	Golf Deficit A	7.00	-	7.00	8,292.75
Apr30/09	SJ7693/93	Finance Charge	117.07	-	117.07	8,409.82
May31/09	SJ7704/04	Monthly Dues	382.00	-	382.00	8,791.82
May31/09	SJ7704/04	Club Amenities	50.00	-	50.00	8,841.82
May31/09	SJ7704/04	Golf Course Re	50.00	-	50.00	8,891.82
May31/09	SJ7704/04	Golf Deficit A	7.00	-	7.00	8,898.82
May31/09	SJ7721/21	Finance Charge	126.17	-	126.17	9,024.99
Jun30/09	SJ7730/30	Monthly Dues	382.00	-	382.00	9,406.99
Jun30/09	SJ7730/30	Club Amenities	50.00	-	50.00	9,456.99
Jun30/09	SJ7730/30	Golf Course Re	50.00	-	50.00	9,506.99
Jun30/09	SJ7730/30	Golf Deficit A	7.00	-	7.00	9,513.99
Jun30/09	SJ7740/40	Finance Charge	135.40	-	135.40	9,649.39
Jul24/09	7874/91	Ref. 7874 - Pa			(6,038.78)	3,610.61
Jul31/09	SJ7752/52	Monthly Dues	382.00	-	382.00	3,992.61
Jul31/09	SJ7752/52	Club Amenities	50.00	-	50.00	4,042.61
Jul31/09	SJ7752/52	Golf Course Re	50.00	-	50.00	4,092.61
Jul31/09	SJ7752/52	Golf Deficit A	7.00	-	7.00	4,099.61
Jul31/09	SJ7763/63	Finance Charge	54.19	-	54.19	4,153.80
Aug31/09	SJ7775/75	Monthly Dues	382.00	-	382.00	4,535.80
Aug31/09	SJ7775/75	Club Amenities	50.00	-	50.00	4,585.80
Aug31/09	SJ7775/75	Golf Course Re	50.00	-	50.00	4,635.80
Aug31/09	SJ7775/75	Golf Deficit A	7.00	-	7.00	4,642.80
Aug31/09	SJ7783/83	Finance Charge	62.34	-	62.34	4,705.14
Sep30/09	SJ7793/93	Monthly Dues	382.00	-	382.00	5,087.14
Sep30/09	SJ7793/93	Club Amenities	50.00	-	50.00	5,137.14
Sep30/09	SJ7793/93	Golf Course Re	50.00	-	50.00	5,187.14
Sep30/09	SJ7793/93	Golf Deficit A	7.00	-	7.00	5,194.14
Sep30/09	SJ7798/98	Finance Charge	70.62	-	70.62	5,264.76
Oct31/09	SJ7802/02	Monthly Dues	382.00	-	382.00	5,646.76

Oct31/09	SJ7802/02	Club Amenities	50.00	-	50.00	5,696.76
Oct31/09	SJ7802/02	Golf Course Re	50.00	-	50.00	5,746.76
Oct31/09	SJ7802/02	Golf Deficit A	7.00	-	7.00	5,753.76
Oct31/09	SJ7817/17	Finance Charge	79.02	-	79.02	5,832.78
Nov30/09	SJ7829/29	Monthly Dues	382.00	-	382.00	6,214.78
Nov30/09	SJ7829/29	Club Amenities	50.00	-	50.00	6,264.78
Nov30/09	SJ7829/29	Golf Course Re	50.00	-	50.00	6,314.78
Nov30/09	SJ7829/29	Golf Deficit A	7.00	-	7.00	6,321.78
Nov30/09	SJ7844/44	Finance Charge	87.55	-	87.55	6,409.33
Dec31/09	SJ7860/60	Monthly Dues	402.00	-	402.00	6,811.33
Dec31/09	SJ7860/60	Club Amenities	50.00	-	50.00	6,861.33
Dec31/09	SJ7860/60	Golf Course Re	50.00	-	50.00	6,911.33
Dec31/09	SJ7878/78	Annual Food &	500.00	-	500.00	7,411.33
Dec31/09	SJ7883/83	Finance Charge	96.20	-	96.20	7,507.53
Jan31/10	SJ7896/96	Monthly Dues	402.00	-	402.00	7,909.53
Jan31/10	SJ7896/96	Club Amenities	50.00	-	50.00	7,959.53
Jan31/10	SJ7896/96	Golf Course Re	50.00	-	50.00	8,009.53
Jan31/10	SJ7896/96	GNR Deficit As	191.67	-	191.67	8,201.20
Jan31/10	SJ7904/04	Finance Charge	112.67	-	112.67	8,313.87
Feb28/10	SJ7917/17	Monthly Dues	402.00	-	402.00	8,715.87
Feb28/10	SJ7917/17	Club Amenities	50.00	-	50.00	8,765.87
Feb28/10	SJ7917/17	Golf Course Re	50.00	-	50.00	8,815.87
Feb28/10	SJ7917/17	GNR Deficit As	191.67	-	191.67	9,007.54
Feb28/10	SJ7924/24	Finance Charge	124.77	-	124.77	9,132.31
Mar31/10	SJ7931/31	Monthly Dues	402.00	-	402.00	9,534.31
Mar31/10	SJ7931/31	Club Amenities	50.00	-	50.00	9,584.31
Mar31/10	SJ7931/31	Golf Course Re	50.00	-	50.00	9,634.31
Mar31/10	SJ7931/31	GNR Deficit As	191.66	-	191.66	9,825.97
Mar31/10	SJ7940/40	Finance Charge	137.05	-	137.05	9,963.02
Apr30/10	SJ7950/50	Monthly Dues	402.00	-	402.00	10,365.02
Apr30/10	SJ7950/50	Club Amenities	50.00	-	50.00	10,415.02
Apr30/10	SJ7950/50	Golf Course Re	50.00	-	50.00	10,465.02
Apr30/10	SJ7967/67	Finance Charge	149.51	-	149.51	10,614.53
May31/10	SJ7972/72	Monthly Dues	402.00	-	402.00	11,016.53
May31/10	SJ7972/72	Club Amenities	50.00	-	50.00	11,066.53
May31/10	SJ7972/72	Golf Course Re	50.00	-	50.00	11,116.53
May31/10	SJ7989/89	Finance Charge	159.28	-	159.28	11,275.81
Jun30/10	SJ7996/96	Monthly Dues	402.00	-	402.00	11,677.81
Jun30/10	SJ7996/96	Club Amenities	50.00	-	50.00	11,727.81
Jun30/10	SJ7996/96	Golf Course Re	50.00	-	50.00	11,777.81
Jun30/10	SJ8009/09	Finance Charge	169.20	-	169.20	11,947.01
Jul27/10	8493/28	Ref. 8493 - Pa			(500.00)	11,447.01
Jul31/10	SJ8021/21	Monthly Dues	402.00	-	402.00	11,849.01
Jul31/10	SJ8021/21	Club Amenities	50.00	-	50.00	11,899.01
Jul31/10	SJ8021/21	Golf Course Re	50.00	-	50.00	11,949.01
Jul31/10	SJ8034/34	Finance Charge	171.76	-	171.76	12,120.77
Aug31/10	SJ8042/42	Monthly Dues	402.00	-	402.00	12,522.77
Aug31/10	SJ8042/42	Club Amenities	50.00	-	50.00	12,572.77
Aug31/10	SJ8042/42	Golf Course Re	50.00	-	50.00	12,622.77
Aug31/10	SJ8056/56	Finance Charge	181.87	-	181.87	12,804.64
Sep30/10	SJ8080/80	Monthly Dues	402.00	-	402.00	13,206.64
Sep30/10	SJ8080/80	Club Amenities	50.00	-	50.00	13,256.64
Sep30/10	SJ8080/80	Golf Course Re	50.00	-	50.00	13,306.64
Sep30/10	SJ8084/84	Finance Charge	192.13	-	192.13	13,498.77
Oct31/10	SJ8105/05	Monthly Dues	402.00	-	402.00	13,900.77
Oct31/10	SJ8105/05	Club Amenities	50.00	-	50.00	13,950.77
Oct31/10	SJ8105/05	Golf Course Re	50.00	-	50.00	14,000.77

Oct31/10	SJ8110/10	Finance Charge	202.54	-	202.54	14,203.31	
Nov30/10	SJ8139/39	Monthly Dues	402.00	-	402.00	14,605.31	
Nov30/10	SJ8139/39	Club Amenities	50.00	-	50.00	14,655.31	
Nov30/10	SJ8139/39	Golf Course Re	50.00	-	50.00	14,705.31	
Nov30/10	SJ8144/44	Finance Charge	213.11	-	213.11	14,918.42	
Dec31/10	SJ8177/77	Monthly Dues	450.00	-	450.00	15,368.42	
Dec31/10	SJ8177/77	Club Amenities	50.00	-	50.00	15,418.42	
Dec31/10	SJ8177/77	Golf Course Re	50.00	-	50.00	15,468.42	
Dec31/10	SJ8180/80	Annual Food &	500.00	-	500.00	15,968.42	
Dec31/10	SJ8179/79	Finance Charge	223.84	-	223.84	16,192.26	
Jan31/11	SJ8209/09	Monthly Dues	450.00	-	450.00	16,642.26	
Jan31/11	SJ8209/09	Club Amenities	50.00	-	50.00	16,692.26	
Jan31/11	SJ8209/09	Golf Course Re	50.00	-	50.00	16,742.26	
Jan31/11	SJ8209/09	GNR Deficit As	191.67	-	191.67	16,933.93	
Jan31/11	SJ8209/10	Monthly Dues	(450.00)	-	(450.00)	16,483.93	
Jan31/11	SJ8209/10	Club Amenities	(50.00)	-	(50.00)	16,433.93	
Jan31/11	SJ8209/10	Golf Course Re	(50.00)	-	(50.00)	16,383.93	
Jan31/11	SJ8209/10	GNR Deficit As	(191.67)	-	(191.67)	16,192.26	
Jan31/11	SJ8211/11	Monthly Dues	450.00	-	450.00	16,642.26	
Jan31/11	SJ8211/11	Club Amenities	50.00	-	50.00	16,692.26	
Jan31/11	SJ8211/11	Golf Course Re	50.00	-	50.00	16,742.26	242.88
Jan31/11	SJ8212/12	Finance Charge	242.88	-	242.88	16,985.14	
Feb28/11	SJ8234/34	Monthly Dues	450.00	-	450.00	17,435.14	
Feb28/11	SJ8234/34	Club Amenities	50.00	-	50.00	17,485.14	
Feb28/11	SJ8234/34	Golf Course Re	50.00	-	50.00	17,535.14	254.78
Feb28/11	SJ8233/33	Finance Charge	254.78	-	254.78	17,789.92	
Mar31/11	SJ8267/67	Monthly Dues	450.00	-	450.00	18,239.92	
Mar31/11	SJ8267/67	Club Amenities	50.00	-	50.00	18,289.92	
Mar31/11	SJ8267/67	Golf Course Re	50.00	-	50.00	18,339.92	266.85
Mar31/11	SJ8270/70	Finance Charge	266.85	-	266.85	18,606.77	
Apr19/11	8838/22	Ref. 8838 - Pa			(1,000.00)	17,606.77	
Apr30/11	SJ8295/95	Monthly Dues	450.00	-	450.00	18,056.77	
Apr30/11	SJ8295/95	Club Amenities	50.00	-	50.00	18,106.77	
Apr30/11	SJ8295/95	Golf Course Re	50.00	-	50.00	18,156.77	
Apr30/11	SJ8295/96	Monthly Dues	(450.00)	-	(450.00)	17,706.77	
Apr30/11	SJ8295/96	Club Amenities	(50.00)	-	(50.00)	17,656.77	
Apr30/11	SJ8295/96	Golf Course Re	(50.00)	-	(50.00)	17,606.77	
Apr30/11	SJ8297/97	Monthly Dues	450.00	-	450.00	18,056.77	
Apr30/11	SJ8297/97	Club Amenities	50.00	-	50.00	18,106.77	
Apr30/11	SJ8297/97	Golf Course Re	50.00	-	50.00	18,156.77	264.10
Apr30/11	SJ8299/99	Finance Charge	264.10	-	264.10	18,420.87	
May31/11	SJ8314/14	Monthly Dues	450.00	-	450.00	18,870.87	
May31/11	SJ8314/14	Club Amenities	50.00	-	50.00	18,920.87	
May31/11	SJ8314/14	Golf Course Re	50.00	-	50.00	18,970.87	276.31
May31/11	SJ8330/30	Finance Charge	276.31	-	276.31	19,247.18	
Jun30/11	SJ8351/51	Monthly Dues	450.00	-	450.00	19,697.18	
Jun30/11	SJ8351/51	Club Amenities	50.00	-	50.00	19,747.18	
Jun30/11	SJ8351/51	Golf Course Re	50.00	-	50.00	19,797.18	288.71
Jun30/11	SJ8353/53	Finance Charge	288.71	-	288.71	20,085.89	
Jul19/11	2774/64	Ref. 2774 - Pa			(2,000.00)	18,085.89	
Jul31/11	SJ8380/80	Monthly Dues	450.00	-	450.00	18,535.89	
Jul31/11	SJ8380/80	Club Amenities	50.00	-	50.00	18,585.89	
Jul31/11	SJ8380/80	Golf Course Re	50.00	-	50.00	18,635.89	271.29
Jul31/11	SJ8387/87	Finance Charge	271.29	-	271.29	18,907.18	
Aug31/11	SJ8409/09	Monthly Dues	450.00	-	450.00	19,357.18	
Aug31/11	SJ8409/09	Club Amenities	50.00	-	50.00	19,407.18	
Aug31/11	SJ8409/09	Golf Course Re	50.00	-	50.00	19,457.18	283.61

Aug31/11	SJ8411/11	Finance Charge	283.61	-	283.61	19,740.79	
Sep09/11	8990/84	Ref. 8990 - Pa			(1,000.00)	18,740.79	
Sep30/11	SJ8429/29	Monthly Dues	450.00	-	450.00	19,190.79	
Sep30/11	SJ8429/29	Club Amenities	50.00	-	50.00	19,240.79	
Sep30/11	SJ8429/29	Golf Course Re	50.00	-	50.00	19,290.79	281.11
Sep30/11	SJ8430/30	Finance Charge	281.11	-	281.11	19,571.90	
Oct31/11	SJ8454/54	Monthly Dues	450.00	-	450.00	20,021.90	
Oct31/11	SJ8454/54	Club Amenities	50.00	-	50.00	20,071.90	
Oct31/11	SJ8454/54	Golf Course Re	50.00	-	50.00	20,121.90	293.58
Oct31/11	SJ8458/58	Finance Charge	293.58	-	293.58	20,415.48	
Nov18/11	9066/22	Ref. 9066 - Pa			(1,000.00)	19,415.48	
Nov30/11	SJ8480/80	Monthly Dues	450.00	-	450.00	19,865.48	
Nov30/11	SJ8480/80	Club Amenities	50.00	-	50.00	19,915.48	
Nov30/11	SJ8480/80	Golf Course Re	50.00	-	50.00	19,965.48	291.23
Nov30/11	SJ8482/82	Finance Charge	291.23	-	291.23	20,256.71	
Dec31/11	SJ8508/08	Monthly Dues	472.00	-	472.00	20,728.71	
Dec31/11	SJ8508/08	Club Amenities	50.00	-	50.00	20,778.71	
Dec31/11	SJ8508/08	Golf Course Re	50.00	-	50.00	20,828.71	303.85
Dec31/11	SJ8510/10	Finance Charge	303.85	-	303.85	21,132.56	
Jan01/12	SJ8511/11	Annual Food &	500.00	-	500.00	21,632.56	
Jan31/12	SJ8532/32	Monthly Dues	472.00	-	472.00	22,104.56	
Jan31/12	SJ8532/32	Club Amenities	50.00	-	50.00	22,154.56	
Jan31/12	SJ8532/32	Golf Course Re	50.00	-	50.00	22,204.56	316.99
Jan31/12	SJ8529/29	Finance Charge	316.99	-	316.99	22,521.55	
Feb29/12	SJ8555/55	Monthly Dues	472.00	-	472.00	22,993.55	
Feb29/12	SJ8555/55	Club Amenities	50.00	-	50.00	23,043.55	
Feb29/12	SJ8555/55	Golf Course Re	50.00	-	50.00	23,093.55	337.82
Feb29/12	SJ8557/57	Finance Charge	337.82	-	337.82	23,431.37	
Mar31/12	SJ8577/77	Monthly Dues	472.00	-	472.00	23,903.37	
Mar31/12	SJ8577/77	Club Amenities	50.00	-	50.00	23,953.37	
Mar31/12	SJ8577/77	Golf Course Re	50.00	-	50.00	24,003.37	351.47
Mar31/12	SJ8579/79	Finance Charge	351.47	-	351.47	24,354.84	
Apr30/12	SJ8601/01	Monthly Dues	472.00	-	472.00	24,826.84	
Apr30/12	SJ8601/01	Club Amenities	50.00	-	50.00	24,876.84	
Apr30/12	SJ8601/01	Golf Course Re	50.00	-	50.00	24,926.84	365.32
Apr30/12	SJ8604/04	Finance Charge	365.32	-	365.32	25,292.17	
May31/12	SJ8621/21	Monthly Dues	472.00	-	472.00	25,764.17	
May31/12	SJ8621/21	Club Amenities	50.00	-	50.00	25,814.17	
May31/12	SJ8621/21	Golf Course Re	50.00	-	50.00	25,864.17	379.38
May31/12	SJ8626/26	Finance Charge	379.38	-	379.38	26,243.55	
Jun30/12	SJ8651/51	Monthly Dues	472.00	-	472.00	26,715.55	
Jun30/12	SJ8651/51	Club Amenities	50.00	-	50.00	26,765.55	
Jun30/12	SJ8651/51	Golf Course Re	50.00	-	50.00	26,815.55	393.65
Jun30/12	SJ8654/54	Finance Charge	393.65	-	393.65	27,209.20	
Jul31/12	SJ8671/71	Monthly Dues	472.00	-	472.00	27,681.20	
Jul31/12	SJ8671/71	Club Amenities	50.00	-	50.00	27,731.20	
Jul31/12	SJ8671/71	Golf Course Re	50.00	-	50.00	27,781.20	408.14
Jul31/12	SJ8678/78	Finance Charge	408.14	-	408.14	28,189.34	
Aug31/12	SJ8696/96	Monthly Dues	472.00	-	472.00	28,661.34	
Aug31/12	SJ8696/96	Club Amenities	50.00	-	50.00	28,711.34	
Aug31/12	SJ8696/96	Golf Course Re	50.00	-	50.00	28,761.34	422.84
Aug31/12	SJ8704/04	Finance Charge	422.84	-	422.84	29,184.18	
Sep30/12	SJ8728/28	Monthly Dues	472.00	-	472.00	29,656.18	
Sep30/12	SJ8728/28	Club Amenities	50.00	-	50.00	29,706.18	
Sep30/12	SJ8728/28	Golf Course Re	50.00	-	50.00	29,756.18	437.76
Sep30/12	SJ8730/30	Finance Charge	437.76	-	437.76	30,193.94	
Oct31/12	SJ8752/52	Monthly Dues	472.00	-	472.00	30,665.94	

Oct31/12	SJ8752/52	Club Amenities	50.00	-	50.00	30,715.94	
Oct31/12	SJ8752/52	Golf Course Re	50.00	-	50.00	30,765.94	452.91
Oct31/12	SJ8754/54	Finance Charge	452.91	-	452.91	31,218.85	
Nov30/12	SJ8770/70	Monthly Dues	472.00	-	472.00	31,690.85	
Nov30/12	SJ8770/70	Club Amenities	50.00	-	50.00	31,740.85	
Nov30/12	SJ8770/70	Golf Course Re	50.00	-	50.00	31,790.85	
Nov30/12	SJ8770/70	Golf Capital A	900.00	-	900.00	32,690.85	468.28
Nov30/12	SJ8791/91	Finance Charge	468.28	-	468.28	33,159.13	
Dec31/12	SJ8808/08	Monthly Dues	472.00	-	472.00	33,631.13	
Dec31/12	SJ8808/08	Club Amenities	50.00	-	50.00	33,681.13	
Dec31/12	SJ8808/08	Golf Course Re	50.00	-	50.00	33,731.13	
Dec31/12	SJ8830/30	Annual Food &	500.00	-	500.00	34,231.13	497.39
Dec31/12	SJ8827/27	Finance Charge	497.39	-	497.39	34,728.52	
Jan31/13	SJ8866/66	Monthly Dues	472.00	-	472.00	35,200.52	
Jan31/13	SJ8866/66	Club Amenities	50.00	-	50.00	35,250.52	
Jan31/13	SJ8866/66	Golf Course Re	50.00	-	50.00	35,300.52	520.93
Jan31/13	SJ8869/69	Finance Charge	520.93	-	520.93	35,821.45	
Feb28/13	SJ8877/77	Monthly Dues	472.00	-	472.00	36,293.45	
Feb28/13	SJ8877/77	Club Amenities	50.00	-	50.00	36,343.45	
Feb28/13	SJ8877/77	Golf Course Re	50.00	-	50.00	36,393.45	537.32
Feb28/13	SJ8890/90	Finance Charge	537.32	-	537.32	36,930.77	
Mar31/13	SJ8906/06	Monthly Dues	472.00	-	472.00	37,402.77	
Mar31/13	SJ8906/06	Club Amenities	50.00	-	50.00	37,452.77	
Mar31/13	SJ8906/06	Golf Course Re	50.00	-	50.00	37,502.77	553.96
Mar31/13	SJ8929/29	Finance Charge	553.96	-	553.96	38,056.73	
Mar31/13	SJ8929/31	Finance Charge	(553.96)	-	(553.96)	37,502.77	
Mar31/13	SJ8936/36	Finance Charge	553.96	-	553.96	38,056.73	
Mar31/13	AutoAdjust	Auto Account A	-	-	-	38,056.73	
Apr30/13	SJ8985/85	Monthly Dues	472.00	-	472.00	38,528.73	
Apr30/13	SJ8985/85	Club Amenities	50.00	-	50.00	38,578.73	
Apr30/13	SJ8985/85	Golf Course Re	50.00	-	50.00	38,628.73	570.85
Apr30/13	SJ8989/89	Finance Charge	570.85	-	570.85	39,199.58	
May31/13	SJ9015/15	Monthly Dues	472.00	-	472.00	39,671.58	
May31/13	SJ9015/15	Club Amenities	50.00	-	50.00	39,721.58	
May31/13	SJ9015/15	Golf Course Re	50.00	-	50.00	39,771.58	
May31/13	SJ9015/15	Golf Capital A	900.00	-	900.00	40,671.58	587.99
May31/13	SJ9017/17	Finance Charge	587.99	-	587.99	41,259.58	
Jun30/13	SJ9041/41	Monthly Dues	472.00	-	472.00	41,731.58	
Jun30/13	SJ9041/41	Club Amenities	50.00	-	50.00	41,781.58	
Jun30/13	SJ9041/41	Golf Course Re	50.00	-	50.00	41,831.58	618.89
Jun30/13	SJ9043/43	Finance Charge	618.89	-	618.89	42,450.47	
Jul31/13	SJ9078/78	Monthly Dues	472.00	-	472.00	42,922.47	
Jul31/13	SJ9078/78	Club Amenities	50.00	-	50.00	42,972.47	
Jul31/13	SJ9078/78	Golf Course Re	50.00	-	50.00	43,022.47	636.76
Jul31/13	SJ9080/80	Finance Charge	636.76	-	636.76	43,659.23	
Aug31/13	SJ9103/03	Monthly Dues	472.00	-	472.00	44,131.23	
Aug31/13	SJ9103/03	Club Amenities	50.00	-	50.00	44,181.23	
Aug31/13	SJ9103/03	Golf Course Re	50.00	-	50.00	44,231.23	654.89
Aug31/13	SJ9106/06	Finance Charge	654.89	-	654.89	44,886.12	
Sep30/13	SJ9130/30	Monthly Dues	472.00	-	472.00	45,358.12	
Sep30/13	SJ9130/30	Club Amenities	50.00	-	50.00	45,408.12	
Sep30/13	SJ9130/30	Golf Course Re	50.00	-	50.00	45,458.12	673.29
Sep30/13	SJ9136/36	Finance Charge	673.29	-	673.29	46,131.41	
Oct31/13	SJ9207/07	Monthly Dues	472.00	-	472.00	46,603.41	
Oct31/13	SJ9207/07	Club Amenities	50.00	-	50.00	46,653.41	
Oct31/13	SJ9207/07	Golf Course Re	50.00	-	50.00	46,703.41	691.97
Oct31/13	SJ9212/12	Finance Charge	691.97	-	691.97	47,395.38	

Nov30/13	SJ9252/52	Monthly Dues	472.00	-	472.00	47,867.38	
Nov30/13	SJ9252/52	Club Amenities	50.00	-	50.00	47,917.38	
Nov30/13	SJ9252/52	Golf Course Re	50.00	-	50.00	47,967.38	
Nov30/13	SJ9252/52	Golf Capital A	900.00	-	900.00	48,867.38	710.93
Nov30/13	SJ9255/55	Finance Charge	710.93	-	710.93	49,578.31	
Dec31/13	SJ9278/78	Island Dues	640.00	-	640.00	50,218.31	
Dec31/13	SJ9292/92	Annual Food &	500.00	-	500.00	50,718.31	743.67
Dec31/13	SJ9294/94	Finance Charge	743.67	-	743.67	51,461.99	
Jan31/14	SJ9329/29	Island Dues	640.00	-	640.00	52,101.99	771.93
Jan31/14	SJ9333/33	Finance Charge	771.93	-	771.93	52,873.92	
Feb01/14	014173/36	January Unlimi	295.00	-	295.00	53,168.92	
Feb01/14	014236/37	February Unlim	295.00	-	295.00	53,463.92	

Total: 53,463.92

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and)
GRACE I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

AFFIDAVIT OF EHRICK K. HAIGHT, JR.

PERSONALLY appeared before the undersigned Notary Public Ehrick K. Haight, Jr., who having first been duly sworn, deposes and says that he is an attorney with the law firm of Minor, Haight & Arundell, P.C., attorneys for the Plaintiff in the above-captioned matter.

That he has reviewed the books and records of the law firm, has personal knowledge of the same and finds that through and including February 28, 2014, Minor, Haight & Arundell, P.C., had expended time on behalf of the Plaintiff as set forth on the attached Statement of Time.

That such time was devoted to discussion, research, legal research, written correspondence, telephone calls, reviewing documents, preparation of pleadings and other documents, locating and perfecting service upon the Defendants, discovery, attendance at conferences, and hearing preparation. The time for each of the attorneys and paralegals involved in the file and their customary billing rates are set forth on the attached sheet. The Deponent believes it will be reasonably necessary to devote an additional Ten (10) to Twenty (20) hours until the conclusion of this action, assuming the Plaintiff's Motion of Summary Judgment is granted.

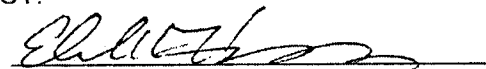
The Deponent calls the attention of the Court to the terms and conditions of those certain contracts with the Plaintiff or the Plaintiff's predecessor-in-interest, which were previously filed with this court as Exhibits to the Complaint, whereby the Defendants agreed to be bound by the terms

and conditions of Plan for Offering of Memberships in the Callawassie Island Club, dated April 1994 and the exhibits thereto ("Membership Plan"), as amended. In agreeing to be bound to the Membership Plan, the Defendants became obligated for the payment of dues, fees, assessments and other charges. The Membership Plan was subsequently amended and made part of a Plan for Offering of Memberships (the "Plan"), which was adopted by the Defendants by virtue of their continuing membership with the Club. Under the Plan, Defendants continued to be obligated for the payment of dues, fees, assessments and other charges and the costs of collection, including reasonable attorney's fees. In addition, based upon the books and records of the law firm in this file, it appears that the law firm has expended on behalf of the Plaintiff the following sums, representing costs of collection:

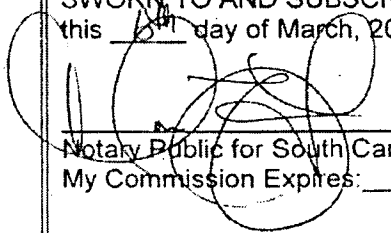
(1)	Filing fees:	\$175.00
(2)	Fees for service:	\$145.00
Total Costs (as of Filing hereof):		<u>\$320.00</u>

Based upon the foregoing, the Deponent is informed and believes that the court should award the sum of **Eight Thousand Eight Hundred Twenty and 73/100 (\$8,820.73) Dollars** as reasonable attorneys' fees and costs. Deponent is further informed and verily believes that such items should be recovered as a part of the judgment against the Defendants.

FURTHER DEPONENT SAYETH NOT.


Ehrick K. Haight, Jr.

SWORN TO AND SUBSCRIBED before me
this 5th day of March, 2014.


Notary Public for South Carolina
My Commission Expires: 7.3.22

STATEMENT OF TIME & COSTS

MINOR, HAIGHT & ARUNDELL, P.C.

<u>Attorney</u>	<u>Hours Billed</u>	<u>Rate</u>	<u>Total</u>
Ehrick K. Haight, Jr.	8.63	\$225.00	\$ 1,941.98
Stacey Collins	7.50	\$200.00	\$ 1,499.00
Philip J. Rios	1.03	\$150.00	\$ 153.75

Paralegals

Elaine H. Montgomery	.7	\$ 80.00	\$ 56.00
Maria F. Lara	7.00	\$ 50.00	\$ 350.00

Fees incurred as of 02/25/2014:	\$ 4,000.73

Estimated Additional Fees:	\$ 4,500.00

Subtotal of Attorneys' Fees	\$ 8,500.73

Plus Costs:	\$ 320.00

TOTAL FEES AND COSTS:	\$ 8,820.73

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

AFFIDAVIT OF G. HARMAN SWITZER, 3RD

PERSONALLY appeared before the undersigned Notary Public G. Harman Switzer, 3rd, a Member of the Board of Directors for The Callawassie Island Members Club, Inc. ("CIMC"), who having first been duly sworn, deposes and says as follows:

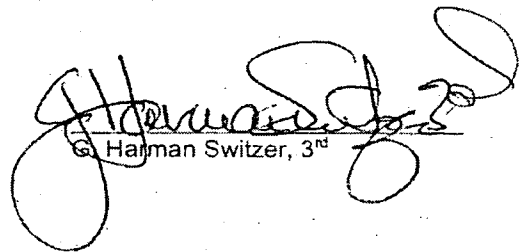
- (1) That I served on the Board of Directors for CIMC from its inception until March of 2002 ("Initial Term"), and was familiar with the business operations of CIMC during said Initial Term.
- (2) That I currently serve on the Board of Directors of CIMC and have done so since March of 2009.
- (3) That in addition, I served on the Board of Directors for The Callawassie Island Property Owners Association, Inc. ("CIPOA") from late 1996 until October of 1998.
- (4) That in the foregoing capacities, I am familiar with, and have personal knowledge of the records and business operations of CIMC and its Board.
- (5) That CIMC is a 501(c)(7) non-profit corporation, organized and existing in the State of South Carolina, and formed by a vote of the members of the Callawassie Island Club (the "Club") for the purpose of acquiring all, or substantially all of the assets of The Callawassie Island Club, Inc. ("CIC"), as well as certain real property relating to CIC and owned by Callawassie Island Company, L.P. ("Developer"); and for continuing the operation and management thereof following the transfer.
- (6) That CIMC did accomplish the purpose set forth in Paragraph 5 above by acquiring all, or substantially all of the Club assets from CIC and the Developer on or about June 29, 2001 (the "Closing Date") by Limited Warranty Deed filed with the Register of Deeds for Beaufort County, South Carolina on July 2, 2001 in Deed Book 01440, page 0817.

EXHIBIT "A" TO MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FILED BY THE
CALLAWASSIE ISLAND MEMBERS CLUB, INC. IN CASE NO.'S 2012-CP-07-03209, 2012-CP-07-03218 AND
2012-CP-07-03216

- (7) Prior to said transfer, the Club was managed and operated by CIC (whose Board of Directors was under the control of the Developer), which entity continued to issue memberships in the Club, up to the Closing Date.
- (8) That to the best of my knowledge and belief, upon due inquiry and investigation, neither CIMC, its officers or directors, made any representations to members acquiring a membership in CIC, regarding the value of such memberships, or the ability to resign from such memberships, nor would they have had the authority to do so prior to the Closing Date.
- (9) The "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, and all subsequent versions and/or amendments thereto, obligated members to continue to pay dues, fees, assessments and other charges until their memberships are reissued.
- (10) That the "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, additionally stipulated that members with more than one membership would have to pay dues on all of his or her equity memberships after the Closing Date.
- (11) Following the Closing Date, the Club became known as The Callawassie Island Members Club, Inc. doing business as The Callawassie Island Club.
- (12) For a period of approximately two (2) years following the Closing Date, the CIMC Board, on advice of counsel and in exercise of the power and authority granted it in the By-laws and by statutory authority, did negotiate settlements with various members who (a) owned memberships unaffiliated with real property on Callawassie Island, (b) who were in default and (c) had placed their memberships on the CIMC resale list; whereby said members were allowed to concede such memberships in settlement of their obligations and forfeit any return of their equity.

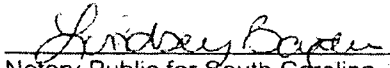
- (13) The CIMC Board's decision to make these proffers of settlement was triggered, in part, by two factors, namely, (a) the accrual of dues against equity would no longer be an option for members on the resale list after the Closing Date, and (b) the "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, required payment of dues on multiple memberships following the Closing Date; both of which impacted upon those individual members who held more than one membership and/or whose membership was not affiliated with real property on Callawassie Island.
- (14) At some time in 2010, the CIMC Board made a similar offer to all members holding memberships unaffiliated with real property, who had placed their memberships on the resale list, for the primary purpose of eliminating memberships unaffiliated with real property and to minimize or eliminate the prospect of future bad debt associated with such memberships.
- (15) The foregoing offers of settlement were made in good faith, in the absence of any fraud, self-dealing or other unconscionable conduct, to all members in so situated as a compromise of debt justly owed which the CIMC Board determined was in the best interest of CIMC.

FURTHER DEPONENT SAYETH NOT.



G. Harman Switzer, 3rd

SWORN TO AND SUBSCRIBED BEFORE me
this 3rd day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission expires: September 5, 2016



THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

GENERAL CLUB RULES

Effective January 1, 2014.

This document is copyrighted proprietary property of The Callawassie Island Members Club, Inc. Distribution is authorized only to Club Members, candidates for Membership, and others directly affiliated with or retained by the Club.

EXHIBIT B

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BLUFFTON 480797v8 047974-00035

The Callawassie Island Members Club
General Club Rules

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

GENERAL CLUB RULES

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THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

GENERAL CLUB RULES

Pursuant to Section 7.2(d) of the By-Laws of Callawassie Island Members Club, Inc. (the "Club"), the Board of Directors of the Club has adopted the following General Club Rules (the "Rules") to govern the use of the Club and Club Facilities by Members, the Immediate Family of Members, and Guests of Members:

1. **DEFINITIONS.** Any capitalized term not defined below shall have the meaning given in the Club Plan or By-Laws. The following capitalized words and terms, when used in these Rules, unless the context clearly shall indicate otherwise, shall have the meaning given below:

1.1 **Amenity Package.** A description of privileges for certain Club Facilities available to Equity Island Members with fees for such package determined by the Board of Directors for each Membership Year.

1.2 **Board of Directors.** The body responsible for governance of the Club, selected as provided in the By-Laws and generally serving the same role as a board of directors under South Carolina corporate law.

1.3 **By-Laws.** The current By-Laws of the Club, as they may be amended.

1.4 **Charges.** Dues, fees, assessments, charges, state taxes, fines, interest, service charges and other charges that the Club may establish from time to time to be paid by Members.

1.5 **Club.** The Callawassie Island Members Club, Inc., a South Carolina non-stock and non-profit corporation.

1.6 **Club Docks.** The Day Use Dock and the Long Term Dock.

1.7 **Club Facilities.** The real and personal property and recreational and social facilities on Callawassie Island owned by the Club for use by Members.

1.8 **Club Plan.** The Callawassie Island Members Club Plan for the Offering of Memberships, as may be amended.

1.9 **Day Use Dock.** The dock adjacent to the River Club owned, maintained and operated by the Club for the exclusive use of Club Members and their Guests.

1.10 **Entity.** A company, partnership, corporation, limited liability company, trustee, or other form of legal entity owning a Membership.

1.11 **Equity Island Member or Island Member.** A Person who holds an Equity Island Membership.

1.12 **Equity Island Membership.** The category of Membership in the Club held by an Equity Island Member.

1.13 **Equity Member.** A Person who holds an Equity Membership.

1.14 **Equity Membership.** An Equity Island Membership or an Equity Social Membership, collectively, the "Equity Memberships".

1.15 **Equity Social Member.** A Person who holds an Equity Social Membership.

1.16 **Equity Social Membership.** The category of Membership in the Club held by an Equity Social Member.

1.17 **Guest.** An individual who is not a Member invited by a Member to use Club Facilities.

1.18 **Immediate Family.** A Member's (a) spouse or one other adult who is a resident of an individual Member's residential unit, and a Member's (b) children, step-children and their spouses, (c) grandchildren, step-grandchildren and their spouses, and (d) parents and the parents of an individual Member's spouse.

1.19 **Long Term Dock.** The dock adjacent to the Day Use Dock owned by the Club that has 8 private boat slips that may be leased by the Club to individual Members.

1.20 **Member.** A Person who holds a Membership in the Club.

1.21 **Membership.** An Equity island Membership or Equity Social Membership or any other type of membership described in the Club Plan held by a Member in the Club.

1.22 **Membership Year.** The (12)-month period commencing on January 1st and ending on December 31st.

1.23 **Person.** A natural person or an Entity.

1.24 **Rules.** These General Club Rules currently in effect and adopted by the Board of Directors of the Club, as may be amended.

2. GENERAL RULES.

2.1 **Club Hours.** The Club and Club Facilities shall be open on the days and during the hours as may be established by the Board of Directors from time to time.

2.2 **Member Complaints and Suggestions.** All Member complaints or suggestions should be directed to and will be addressed by the Club General Manager, the chairman of the appropriate committee, or the president of the Board of Directors.

2.3 **Member Conduct.** Members should refrain from confronting Members, Immediate Family, or Guests regarding the misuse or suspected misuse of the Club Facilities. The Club General Manager or Security should be promptly notified in such instances.

2.4 Employees.

2.4.1 It is inappropriate for any Members, Immediate Family or Guests to abuse or discipline any of the Club's employees, verbally or otherwise. Any employee not rendering courteous and prompt service should be reported to the Club General Manager.

2.4.2 No Member shall request an employee to leave the Club Facilities for any purpose whatsoever nor redirect an employee from their scheduled work activities. Notify the Club General Manager, the golf or tennis professionals, or the golf course superintendent if a need occurs.

2.4.3 Members must not request special or personal services from employees of the Club who are on duty.

2.4.4 Club employees are not permitted to provide off-hour services away from the Club Facilities to Members without the pre-approval of the Club General Manager, Clubhouse Manager, or Course Superintendent, as applicable. Members wishing such services should speak to the Club General Manager.

2.4.5 Club employees are not permitted to deliver food or liquor to locations away from the immediate area of the Clubhouse without prior permission of the Club General Manager.

2.5 Advertisements and Petitions.

2.5.1 No commercial advertisements shall be posted or circulated in the Club, provided, however, that Members may submit advertisements to the Club General Manager to be approved for posting in designated areas.

2.5.2 Other than as permitted by the By-Laws of the Club, no petition shall be originated, solicited, circulated, or posted within the Club Facilities.

2.6 Use of Electronic Equipment.

2.6.1 Use of mobile phones and pagers is prohibited inside Club Facilities. Members, Immediate Family, and Guests are encouraged to show courtesy in using mobile phones within exterior Club Facilities in a manner that is not distracting or offensive to others.

2.6.2 Use of radios, tape players, and CD players except with the use of headsets is prohibited in common areas, including dining rooms, bar, pool areas, on the golf course and tennis courts unless otherwise approved by the Board of Directors or the Club General Manager.

2.7 **Pets.** Dogs or other pets, with the exception of service dogs, are not permitted in Club buildings or at the pools. Members may walk their pets at Club Facilities only in such areas and at such times as may be approved by the Board of Directors or the Club General Manager. Pets at Club Facilities shall be leashed at all

times except on the golf course when the golf pro shop is closed and shall then be leashed or under voice control. Members are required to dispose properly of any excrement produced by their pets.

2.8 **Lagoons and Fishing.** All fishing in the lagoons is strictly on a catch and release basis and is not to be conducted in any areas abutting the golf course during hours in which the golf pro shop is open. The lagoons contain natural wildlife, and Members shall avoid alligators and are prohibited from harassing wildlife or feeding alligators.

2.9 **Maintenance Yard Parking.** Residents' vehicles cannot be kept in the Maintenance Yard at any time and will be removed at the owner's expense.

2.10 **Donations to the Club.** Members may make donations of up to \$1,000.00 without prior approval. All donations over \$1,000 require prior approval by the Board of Directors and the Club General Manager. The Board of Directors reserves the right to refuse a donation. All donations will be anonymous.

2.11 **Realtors and Discovery Tour Ambassadors.** Realtors and Discovery Tour Ambassadors will not be compensated for the cost of their meals when hosting Discovery Tour participants.

3. AMENITY PACKAGE.

3.1 Prior to the beginning of each Membership Year, Members will have the option to select an Amenity Package for the following Membership Year. The Amenity Package chosen will determine a Member's privileges for certain Club Facilities with fees for each Amenity Package determined by the Board of Directors for each Membership Year. Members may not change an Amenity Package during a Membership Year.

3.2 For the initial Membership Year that Amenity Packages are available, if a Member fails to make a selection, the Member's selection shall default to an Unlimited Amenity Package. If no selection of Amenity Package is made in subsequent Membership Years, the Member shall continue with the same Amenity Package as the prior Membership Year.

4. RESERVATIONS AND PRIVATE PARTIES.

4.1 **Reservations.** Reservations for most Club activities are taken on a first-come, first-serve basis by pre-registering with the appropriate Club personnel. For dining, tables are assigned on a first-come, first choice basis.

4.2 **Reservation Cancellation.** Cancellation of reservations for special events must be made at least 24 hours prior to the event or according to the published event deadline. Members will be charged for the full cost of the event if not in compliance with this rule.

4.3 **Dining Room Reservations.** Reservations for dinner are requested. Members are asked to assist in maintaining required service levels by making reservations for dining prior to noon on the day involved. For a party of ten (10) or more, a minimum additional twenty-four hour notice is required.

4.4 Private Parties and Events.

4.4.1 The Club wishes to encourage the use of the Clubhouse by Members for private parties on any day or evening, provided it does not interfere with the normal operation of the Club or with the service regularly available to the Members. Such parties require a signed contract approved by the Club General Manager or the Clubhouse Manager. The sponsoring Member assumes full responsibility for the conduct of his or her Guests and may be required to execute a written document so signifying.

4.4.2 Private parties at Club Facilities must be catered exclusively by the Club unless at the River Club.

4.4.3 Member sponsored and hosted events involving significant commitment of Club Facilities and non-Member use must be pre-approved by the Board of Directors.

4.4.4 Performance by entertainers will be permitted at Club Facilities only with the permission of the Board of Directors or the Club General Manager.

4.4.5 Alcoholic beverages will not be served or sold, or permitted to be consumed, within Club Facilities during hours prohibited by law. No alcoholic beverages will be sold or served to any person not permitted to purchase the same under the laws of the State of South Carolina or be sold for off-premises consumption.

4.4.6 The Board of Directors or the Club General Manager must approve in advance all sponsored functions to be held at Club Facilities and will limit the number of such approved functions in accordance with Club policies.

5. DINING ROOM.

5.1 Dining Minimums.

5.1.1 Each Member may be charged an annual food and beverage minimum as determined from time to time by the Board of Directors. All food and beverage charges exclusive of taxes and gratuities will be credited against any food and beverage minimum until such time as the minimum is completely used.

5.1.2 Any amount of the food and beverage minimum that is unused in a Membership Year will not be carried over to the subsequent Membership Year and will be charged in the final billing for the current Membership Year.

5.2 Service Charges and Gratuities.

5.2.1 A service charge in an amount determined by the Board of Directors from time to time may be added to food and beverage sales.

5.2.2 In November, it is customary to send a letter from the President of the Board of Directors providing an opportunity for Members to contribute to a Holiday Fund for employees. Payment will be voluntary and, if elected, shall be included on each Member's November bill.

5.2.3 Gratuities are not expected by Club service personnel.

6. **ATTIRE.** It is expected that Members, Immediate Family, and Guests (children included) will dress in a fashion befitting the surroundings and atmosphere provided in the setting of the Club. It is also expected that Members will advise their Immediate Family and Guests of the dress requirements. Special dress requirements may be established from time to time by the Board of Directors or the Clubhouse Manager and made known to the Members.

6.1 Clubhouse.

6.1.1 All men must remove their caps/hats upon entering the Clubhouse and River Club. Exceptions will be made for medical or religious reasons.

6.1.2 At no time will pool attire be permitted in the Clubhouse, except with a cover-up while picking up outgoing orders only.

6.1.3 Acceptable attire includes:

For males:

- Bermuda length shorts, golf slacks, business casual slacks and dress slacks (dungarees/work jeans/denim of any kind, gym/workout attire, cut-offs, cargo pants, and jogging/wind pants are not permitted).
- Shirts with sleeve and collar, turtlenecks and mock turtlenecks (tank tops are not permitted).
- Shoes, soft spiked or spikeless golf shoes, sneakers, dress sandals, and deck shoes (flip-flops, pool shoes, and work boots are not permitted).
- "Jacket Only" or "Jacket and Tie" are always acceptable and may be required upon special request.

For females:

- Bermuda length shorts, golf slacks and dress slacks (dungarees/work jeans/denim of any kind, gym/workout attire, cut-offs, jogging/wind pants and short-shorts are not permitted).
- Appropriate length dresses and skirts. Dresses, skirts, pants and tops made in a "dress" denim style will NOT be permitted.
- A variety of tops are acceptable, but at no time will bare midriff, tank, tube, or halter tops be permitted.

- Shoes, soft spiked or spikeless golf shoes, dress sandals, sneakers, and deck shoes (flip-flops and pool shoes are not permitted).

6.1.4 Additionally, attire that complies with tennis attire rules as set forth in Section 6.3 below is acceptable in the Clubhouse during daylight hours.

6.2 Golf.

6.2.1 Proper golf attire as stated is required at all times on the golf course and practice facilities.

6.2.2 Soft spiked or spikeless golf shoes, golf sandals, or sneakers are required (flip-flops, pool shoes, work boots, hiking boots, and street shoes are not permitted).

6.2.3 Acceptable attire includes:

For Males:

- Bermuda length shorts or golf slacks (dungarees/work jeans/denim of any kind, gym attire, cut-offs, and jogging pants are not permitted).
- Shirts with sleeve and collar, turtlenecks and mock turtlenecks (tank tops are not permitted). Shirts with banded waist may be worn as designed; all other shirts must be tucked in.

For Females:

- Bermuda length shorts, culottes, skirts or golf slacks (dungarees/work jeans/denim of any kind, gym attire, cut-offs, and jogging pants are not permitted).
- A variety of tops are acceptable, but at no time will bare midriff, tank, tube, or halter tops be permitted.

6.3 Tennis.

6.3.1 Proper tennis attire is required for use of the tennis facility both during play and practice. Sleeves are required on men's shirts.

6.3.2 Smooth soled tennis shoes are required. Jogging shoes, basketball shoes, and street shoes are not permitted.

6.4 Pools.

6.4.1 Appropriate swim attire is required of all swimmers. Cut-offs, dungarees, and shorts are not permitted.

6.4.2 Cloth and disposable diapers are not permitted. "Swim diapers" or "Swimmies" are recommended when the situation warrants.

6.5 Fitness Center.

6.5.1 Proper fitness attire is required for use of the Fitness Center.

6.5.2 Tennis shoes are preferred. Golf shoes and open-toe shoes are not permitted.

7. GUESTS.

7.1 General.

7.1.1 Members may invite Guests to use the Club Facilities subject to availability.

7.1.2 Callawassie Island property owners who are not Members may not use the Club Facilities as a Guest of a Member except for attendance at private functions or other approved group activities.

7.1.3 A Member may have a maximum of eight (8) Guests present at Club Facilities at any one time, unless otherwise previously approved by the General Manager. In order that all Members may enjoy our facilities, the number of Guests may be restricted by the Club General Manager. Large groups are not permitted to use several Memberships in order to obviate this rule. Requests for exceptions to the above Guest limits must be submitted to the Club General Manager at least 14 days in advance of the proposed Guest arrival. Exceptions may

or may not be granted depending on demands on the Club Facilities by Members and previously scheduled events.

7.1.4 Guests must observe Club Rules.

7.1.5 Members are responsible for the conduct of their Guests and must ensure that Guests comply with the Rules and all governing documents of the Club.

7.2 Registration and Charges.

7.2.1 Guests may use the Club Facilities either in the company of or unaccompanied by the sponsoring Member pursuant to conditions established by the Club from time to time including the payment of a guest fee if applicable.

7.2.2 If a Guest intends to use the Club Facilities at any time without the accompaniment of the sponsoring Member, the Club may require that the sponsoring Member obtain a guest pass at the Club office prior to such unaccompanied usage. Information to be provided by the sponsoring Member will include:

- Guest's name
- Club usage dates
- Callawassie residence and telephone number, if applicable
- Whether or not the Guest is authorized to sign for charges against the sponsoring Member's Club account.

7.2.3 Guest registration may be accomplished by the sponsoring Member and Guest personally appearing at the Club office or by letter, phone, or fax. A registered Guest may pick up his or her guest pass at the Club office during normal business hours.

7.2.4 Unaccompanied Guests may not use Club Facilities without a guest pass that must be made available upon request at any time.

7.2.5 Member accompanied Guests will not require a guest pass to use the Club Facilities but must be registered with the appropriate professional prior to use of the golf or tennis facilities.

7.2.6 Guests may sign for charges against the hosting Member's account if specifically authorized to do so in writing by the hosting Member or they may charge to recognized personal charge cards. The hosting Member is responsible for any unpaid Charges incurred by his or her Guest(s).

7.2.7 The sponsoring Member is at all times responsible for the conduct of his or her Guests while at the Club. If the manner, deportment, and appearance of any Guest is deemed by the Club to be unsatisfactory, the sponsoring Member shall, at the request of the Club General Manager, cause such Guest to surrender his or her guest pass and leave the Club Facilities. The Club may at any time suspend or terminate the Guest sponsorship privileges of any Member(s) of the Club.

7.3 Immediate Family of Equity Members.

7.3.1 An Equity Member's Immediate Family may use the Club Facilities on the same basis as Equity Members at any time without the accompaniment of the Equity Member.

7.3.2 Equity Members must provide the names and addresses of the Immediate Family of such Equity Member by completing and submitting to the Club an Immediate Family form.

7.3.3 An Equity Member's Immediate Family may sign for charges against the Equity Member's account if specifically authorized to do so in writing by the Equity Member or they may charge to recognized personal charge cards. The Equity Member is responsible for any unpaid Charges incurred by his or her Immediate Family.

7.3.4 Immediate Family must observe Club Rules.

7.3.5 Equity Members are responsible for the conduct of the Equity Member's Immediate Family while at the Club and must ensure that Guests comply with the Rules and all governing documents of the Club. If the manner, deportment, and appearance of any Immediate Family of such Equity Member is deemed by the Club to be unsatisfactory, the Equity Member shall at the request of the Club General Manager, cause such Immediate Family leave the Club Facilities. The Club may at any time suspend or terminate the Immediate Family

privileges of any Equity Member(s) of the Club due to violation of the Club Rules.

8. CHILDREN.

8.1 Children under fifteen (15) years of age must be accompanied by an adult to enter the Clubhouse and to use the pool facilities, the golf course, and the Fitness Center.

8.2 Children under the applicable minimum legal drinking age are not allowed at the Clubhouse bar unless accompanied by an adult.

9. DESIGNATED USER PRIVILEGES.

9.1 **Tenant or Resident.** An Equity Member not residing in his/her Callawassie residential unit may designate a bona fide resident or tenant and his/her spouse of such residential unit as the designated user of his/her Equity Membership. If an Equity Member does not rent his/her residential unit through the Club's rental program, the Equity Member must complete and submit to the Club in advance a registration form with information regarding the designated user of an Equity Member's Membership. The Club General Manager will determine if the person(s) named in the proposed agreement meet the requirements to be a designated resident. After these requirements are met and written confirmation from the Club to the sponsoring Member, the designated user may begin to use the Club Facilities.

9.2 Non-Member.

9.2.1 Upon written request by an Equity Member to the Club, the Board, in its sole discretion, may approve a non-Member and his/her spouse as the designated user of his/her Equity Membership. The sponsoring Member must submit a written request to the Board for designated user privileges. The Board will determine if the person(s) named meets the requirements to be a designated user. After these requirements are met and written confirmation from the Club to the sponsoring Member, the designated user may use the Club Facilities.

9.3 During the period that a resident or non-Member is designated as the designated user of the Equity Member's Membership, the Equity Member shall not be entitled to use the Membership or the Club Facilities, but shall remain obligated for all Charges associated with his/her Equity Membership. The Equity Member shall be responsible for all Charges incurred by the designated user and for the deportment of the designated user.

9.4 The designated user of the Equity Member's Membership shall pay the applicable fees for use of the Club Facilities.

9.5 Designated user privileges may be denied, withdrawn, or revoked at any time for reasons considered sufficient by the Board of Directors in its sole and absolute discretion.

9.6 The Equity Member will be responsible for the deportment of and for all unpaid Charges of the designated user.

9.7 Immediate Family use privileges shall not extend to designated users.

10. POOLS.

10.1 **General.** The Club General Manager has full authority to enforce these pool rules, and any infractions may be reported to the Board of Directors for disciplinary action. By being mindful of these pool rules, all Members, Immediate Family, and Guests will be able to enjoy fully the pool facilities.

10.1.1 USE OF THE CLUB'S POOL FACILITIES AT ANY TIME IS AT RISK OF THE SWIMMER.

10.1.2 Only Members, Immediate Family and the Guests may use the pool facilities.

10.1.3 Showers are required prior to entering the pools.

10.1.4 Pool furniture must be kept on patio decks. All persons using pool furniture are required to cover the furniture with a towel when using suntan lotions to avoid stain and damage to the vinyl strapping.

10.1.5 No running, jumping, or boisterous playing is allowed.

10.1.6 All persons using the pool areas and washrooms are responsible for keeping the areas clean by properly disposing of towels, cans, paper plates, cigarettes, etc.

10.1.7 Fishing, spear fishing and snorkeling equipment, other than a mask and/or fins are not to be used in the pool areas except as part of an organized course of instruction.

10.2 Safety. (*All Rules marked with an asterisk are required by the State of South Carolina DHEC.)

10.2.1 *There should be no solo swimming.

10.2.2 *There should be no running, boisterous or rough play.

10.2.3 *No person under the influence of alcohol or drugs should use the pool.

10.2.4 *There should be no spitting or blowing nose in pool.

10.2.5 *Persons with diarrheal illness or nausea should not enter the pool.

10.2.6 *Persons with skin, eye, ear or respiratory infections should not enter the pool.

10.2.7 *Persons with open lesions or wounds should not enter the pool.

10.2.8 *No animals or pets allowed in the pool enclosure.

10.2.9 *No glass is allowed in the pool or on the pool deck.

10.2.10 *No children should be in the pool without supervision.

10.2.11 *You should take a shower before entering the pool.

10.2.12 *Pools are open from 8:00 a.m. to sunset.

10.2.13 *The maximum number of swimmers allowed in each pool is 100.

10.2.14 A first aid kit is located on the wall entering the restroom area at each pool.

10.2.15 *An emergency phone (or other notification device) is located on the wall entering the restroom area at each pool.

10.2.16 *Life saving equipment is located at each pool.

10.2.17 *No diving is allowed.

10.2.18 *There is no lifeguard on duty. Swim at your own risk.

10.3 Clubhouse Pool.

10.3.1 Bringing food and beverages to the Clubhouse pool area is prohibited during Club service hours of 11:00 am to 3:00 pm, Tuesday through Sunday. The Club will serve food and beverages poolside during these hours.

10.3.2 No food is permitted in or around the perimeter of the pool. Members are encouraged to use the tables under the arbor.

10.4 River Club Pool.

10.4.1 No food is permitted in or around the perimeter of the pool. Members are encouraged to use the picnic tables on the back deck of the River Club.

11. GOLF.

11.1 Rules.

11.1.1 Rules, guidelines, and fines concerning the use of the golf course and related facilities established by the Board of Directors are available in the golf pro shop or on the Callawassie Island website.

11.1.2 Such rules, guidelines, and fines may be modified and additional rules, guidelines, and fines concerning the use of the golf course and related facilities may be established from time to time by the Board of Directors with the advice of the Golf Committee, the Green Committee, the Golf Professional, or the Club General Manager, and will be made available to Members. Rules and guidelines may include, without limitation, the following:

- Starting times and weather associated policies
- Checking-in procedures
- Golf course monitoring
- Rain check policy
- Driving range rules
- Private golf cart rules
- Golf course etiquette
- Attire

11.1.3 Special rules and notices concerning golf facility usage will be posted on the bulletin boards in the golf pro shop from time to time as necessary and appropriate.

11.1.4 The golf facilities may be used by charitable or other organizations upon approval of the Board of Directors.

11.1.5 Golfers should not attempt to retrieve golf balls from lagoons. Alligators and other wildlife are present. All efforts to retrieve golf balls are at the sole risk of the individual.

11.2 Golf Rounds.

11.2.1 Equity Social Members may play golf only once a month during the IN SEASON (March 1 through May 15, and October 1 through November 30). Equity Social Members may play golf twice a month during the OFF SEASON (May 16 through September 30, and December 1 through February 28). Equity Social Members shall pay applicable fees for such rounds of golf played.

11.2.2 Equity Island Members who previously were Equity Golf Members and who paid non-resident dues as of June 30, 2013 shall be entitled to 25 complimentary rounds of golf annually from July 1, 2013 through June 30, 2018.

11.3 Golf Carts and Cart Paths.

11.3.1 Use of the golf course or the cart paths by non-players is strictly forbidden at all times when the golf pro shop is open, except as permitted in Section 11.3.2 below.

11.3.2 Golf carts may not be driven on the cart paths by Members driving to and from the Clubhouse area. Members are requested to use the roadways for this purpose. However, this restriction shall not apply to Members using the cart path along Dogwood Hole #4 in lieu of Spring Island Drive.

11.4 Member Owned Golf Carts.

11.4.1 All Member owned golf carts must be registered and display a golf cart sticker. There are three (3) options for golf cart stickers: (1) Social; (2) Unlimited; and (3) Pay as You Go based upon the Amenity Package selected by a Member each Membership Year.

11.4.2 The right to use a Member owned golf cart on Club Facilities is a non-transferable and non-assignable personal right.

11.4.3 All golf carts while on Club Facilities shall be driven by licensed drivers only. All operators of golf carts shall operate the golf carts safely and prudently and in accordance with all applicable state and local laws and regulations.

11.4.4 All Member owned golf carts shall be similar in appearance and shall be as close to the color white or beige as possible. All Member owned golf carts shall be four-wheeled and electrically powered, equipped with a rear view mirror and head and tail lights for use on private roads.

11.4.5 The owner of a Member owned golf cart is individually responsible for all liability concerning such Member owned golf cart. The owner of a Member owned golf cart will be held responsible for any and all damages resulting from the use or misuse of the golf cart, whether by the owner or another person authorized by the owner to use the golf cart.

11.4.6 The owner of a Member owned golf cart used on Club Facilities shall maintain a liability insurance policy with adequate coverage for property damage and personal injury. Operation of a Member owned golf cart without such coverage can result in suspension of the right to use a Member owned golf cart on Club Facilities.

11.4.7 The spouse of a Member selecting an Unlimited Amenity Package currently using their Member owned golf cart may use a Club owned golf cart for playing golf at no charge.

11.4.8 A maximum of two (2) riders and two (2) golf bags per cart is allowed on Member owned golf carts when on Club Facilities.

11.4.9 The current golf cart sticker shall be removed if the Member owned golf cart is sold or is no longer qualified to be used on the golf course.

12. TENNIS.

12.1 Rules concerning the use of the tennis facilities will be established from time to time by the Board of Directors with the advice of the Tennis Committee, the Club Tennis Professional, or the Club General Manager, and will be posted on the bulletin board at the tennis court or in the tennis pro shop, and will include the following.

- Sign up privileges and restrictions
- Tennis attire
- Court etiquette
- Court maintenance

12.2 Special rules and notices concerning tennis facility usage will be posted on the bulletin board at the tennis courts or the tennis pro shop from time to time as necessary and appropriate.

13. CLUB DOCKS.

13.1 **Day Use Dock.** The Day Use Dock is owned, maintained and operated by the Club for the exclusive use of Club Members, Immediate Family and Guests. All other use of the Day Use Dock, unless specifically authorized by the Club General Manager or the Board of Directors, is strictly prohibited and should be reported to the Club General Manager or Security.

13.2 **Long Term Dock.** The Long Term Dock adjacent to the Day Use Dock is owned by the Club and is comprised of 8 private boat slips which may be leased by the Club to individual Members. Only the individual Members leasing the boat slips are permitted to access and use the such leased boat slips. Members may use the Long Term Dock except for the leased boat slips.

13.3 THERE GENERALLY WILL BE NO ATTENDANT PRESENT AT OR NEAR THE CLUB DOCKS AND ALL MEMBERS AND GUESTS USE THE CLUB DOCKS COMPLETELY AT THEIR OWN RISK FOR ANY PROPERTY DAMAGE, LOSS OR PERSONAL INJURY. FOR SAFETY REASONS UNACCOMPANIED CHILDREN ARE NOT PERMITTED ON THE CLUB DOCKS.

13.4 Club Members, Immediate Family, and Guests are permitted to tie boats to the Day Use Dock for a period not to exceed 72 consecutive hours when proper notification is given to the Club General Manager's office.

13.5 In recognition of the severe river currents often present, rafting of a boat alongside another boat is prohibited for safety reasons, except in emergency situations.

13.6 In compliance with the State of South Carolina DHEC dock permit, persons are not permitted to remain on docked boats overnight and discharge of waste, garbage, or other materials into the surrounding waters is prohibited.

13.7 All Club Members owning boats and who anticipate using the Club Docks are required to list their boat registration number with the Club General Manager's office. Any Member's Immediate Family or Guests docking boats for overnight stay are required to register their boat with Security for safety reasons.

13.8 Members using the Club Docks for crabbing are required to clearly mark any traps left unattended at the docks with their names. Any baited trap placed in the water should be attended to at least once every 24 hours.

13.9 The Club Docks are important Club Facilities operated for the pleasure of all Club Members, both boat owners and others. Mutual consideration of and respect by all concerned for the rights and privileges of other Members, including adjacent property owners, is requested and expected.

13.10 Callawassie Island property owners who are not Club Members, Immediate Family or Guests shall not use the Club Docks at any time.

14. MEMBERSHIP CARDS.

14.1 A membership card indicating a Club account number and type may be issued to the Member and a Member's Immediate Family entitled to membership privileges. Membership cards are not transferable. Presentation of a membership card by the Member and Immediate Family may be required prior to the use of any Club Facilities.

14.2 A membership card may only be used by the person to whom it was issued.

14.3 In the event of a lost or stolen membership card, the Club General Manager must be notified in writing immediately. The Member is responsible for all charges made to the Member's account using the lost or stolen card until the Club General Manager has been notified in writing of the loss or theft of the card. A nominal card replacement charge will be added to the Member's account for each reissued card.

15. DUES, FEES, ASSESSMENTS AND CHARGES.

15.1 **Billing.** Annual Membership dues are payable monthly in advance. All Charges incurred by the Member to his or her Club account will be billed monthly and shall be deemed delinquent if not paid within thirty (30) days of the statement date.

15.2 Payment.

15.2.1 If payment is not received by the due date, the outstanding balance will be subject to an interest charge of one and one half percent (1.5%) per month that will be added to the balance until payment is received. The Membership Director will review the payment requirements as part of the new Member orientation process. The Membership Director will contact any Member whose bill is more than 30 days past due.

15.2.2 Arrangement or payment for services shall be made at the time the services are rendered.

15.2.3 Payment may be made by authorized use of a Member's Club account number or by recognized credit card by the Member, Member's Immediate Family, or Guests of the Member.

15.2.4 Charges to a Club account will appear on the next monthly statement.

15.3 Delinquencies.

15.3.1 Any Member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. Suspended Members may not use any Club Facilities, participate in any Club activities, or vote on any Club matters. Upon payment of all indebtedness and Charges plus interest calculated at the rate of one and one half percent (1.5%) monthly, suspended Members shall be reinstated by the Board of Directors. Any Member whose account is not settled within the four (4) month period following suspension may be expelled from the Club.

15.3.2 Any Member who receives three 30-day notices within a 12-month period may be suspended without privileges for 30 days.

15.3.3 Suspended Members may have their names posted on the Callawassie Island website in the "Members Only" section.

15.3.4 In accordance with the By-Laws, the Club shall have a lien against each Membership for any unpaid Charges of a Member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such Charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such Equity Membership shall be junior to Club's lien.

15.3.5 If the Club commences any legal action to collect any amount owed, or to enforce any liability of a Member to the Club, the Member shall also be liable for all costs and expenses of the legal action, including without limitation, reasonable attorneys' fees required in connection with appellate proceedings.

15.3.6 The failure of a member to pay Charges in a proper and timely manner is a basis for discipline. Any delinquency on any membership account held by a Member shall be deemed to be a delinquency on all membership accounts of the Member and shall affect the standing of the Member in the Club.

15.4 **Hardship Considerations.** The Board of Directors may, upon specific request of a Member in good standing, consider a deferral of or reduction in payment of dues or Charges in cases of permanent Member medical hardship causing significant loss of ability to use the Club's sports facilities. Any such considerations will be made at the sole discretion of the Board of Directors.

16. DISCIPLINE.

16.1 **Improper Conduct or Violations.** Any Member who is in violation of the By-Laws, the Club Plan, or the Rules or whose conduct, or whose Immediate Family's, Guests', or designated user's conduct, shall be deemed by the Board of Directors to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its Members or staff, may be reprimanded, fined, suspended or expelled from the Club by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes a violation, improper conduct, or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its Members. The following list includes, without limitation, examples of conduct that are not acceptable:

16.1.1 exhibiting inappropriate behavior, deportment and appearance;

16.1.2 failing to pay Charges in a proper and timely manner;

16.1.3 failing to abide by the Rules for the golf, tennis, pool, fitness, and dining facilities or for any other recreational facilities of the Club;

16.1.4 verbally or physically abusing or harassing Members, Immediate Family, Guests, or Club personnel;

16.1.5 submitting false information on a membership application or with respect to a Member's Guests or lessees;

16.1.6 using or reproducing the information in the membership directory in any manner or means for commercial or charitable purpose or providing information contained in the membership directory to persons who are not Members of the Club;

16.1.7 violations of the Club's Social Media Policy set forth in the Rules.

16.2 **Board Action.** Violations of the By-Laws, the Club Plan, or the Rules or improper conduct shall be immediately investigated by the Club General Manager then reviewed by the Board in executive session. The Board may, but is not required to, allow the Member to attend a meeting with the Board prior to the Board taking any disciplinary action. If the Board decides to proceed with disciplinary action, the Member(s) involved will be notified of the Board's decision regarding disciplinary action taken against the Member. Following notice of disciplinary action to the Member, the disciplined Member(s) shall have thirty (30) days from the date of notice of the disciplinary action to appeal the decision of the Board of Directors. Upon request for an appeal by a disciplined

Member, the Board of Directors shall set a time and date for the appeal hearing within 10 days from the date of the appeal request. While such appeal is being considered by the Board, the Member shall enjoy the privileges of the Club. Notwithstanding the above, the Board reserves the right to suspend, request the resignation of, or expel a Member immediately without privileges should the circumstances warrant such action.

16.3 Suspension. The Board of Directors may suspend a Member and the Member's Immediate Family or Guests from some or all Club privileges for a period of up to one (1) year. Charges shall accrue during such suspension and shall be paid in full before reinstatement to full privileges.

16.4 Requested Resignation. The Board of Directors may request, by a two-thirds (2/3) vote of the directors present at a Board meeting, the resignation of any Member of the Club for cause deemed sufficient to the Board. The disciplined Member may resign from the Club upon request of the Board by delivering to the Membership Director written notice of resignation. Notwithstanding such resignation, the Member shall remain liable for all Charges until the Membership is re-issued. If the Member does not resign at the request of the Board, the Member may be expelled by the Board.

16.5 Expulsion. Any Member of the Club who has been expelled shall not again be eligible for Membership in the Club nor admitted to Club Facilities. An expelled Member shall be so notified of such expulsion and shall have the obligation to surrender his or her membership certificate to the Club for reissuance by the Club to a new Member. Notwithstanding such expulsion, the Member shall remain liable for all Charges until the Membership is re-issued.

16.6 Fines. The Board by resolution may adopt a schedule of fines to be charged for violations of the Rules, Club Plan, or By-Laws or impose fines on a case by case basis.

16.7 Voting Rights and Membership Privileges. Any suspended, resigned, or expelled Member automatically shall lose all membership privileges including the right to a vote on Club matters during any period of suspension. The suspension, requested resignation, or expulsion of one Member shall impact the Member's Membership and shall apply to any other Members affiliated with such suspended, resigned, or expelled Member's Membership.

16.8 Obligation for Charges. Notwithstanding any resignation, suspension, or expulsion of Membership, the Member shall remain liable for all Charges, and such Member shall not be entitled to a refund of any Charges paid by the Member to the Club.

17. LOSS OR DESTRUCTION OF PROPERTY OR PERSONAL INJURY.

17.1 The Club shall not be responsible for any loss or damage to any property left or stored within Club Facilities.

17.2 No person shall remove from the Club Facilities any property belonging to the Club without authorization. Every Member of the Club shall be liable for any property damage to Club property and/or personal injury at Club Facilities, or at any activity or function operated, organized, arranged, or sponsored by the Club, caused by the Member, or the Member's Immediate Family, Guests, or lessees. The cost of any such damage may be charged to the Member's Club account.

17.3 Any Member, Immediate Family, Guest or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club, either on or off the Club Facilities, does so at his or her own risk, assumes such risk, releases the Club from liability, and shall hold harmless and indemnify the Club and its directors, officers, employees, representatives, and agents for any and all loss, cost, claim, injury, damage or liability sustained or incurred by him or her, resulting there from and/or from any act or omission of any director, officer, employee, representative or agent of the same. Any Member, Immediate Family, Guest or other person shall have, owe and perform the same obligation to the Club, and its directors, officers, employees representatives and agents, hereunder in respect to any such loss, cost, claim, injury, damage or liability sustained or incurred by any Member, Immediate Family, Guest or other person.

18. **PRIVACY OF CLUB INFORMATION.** The Club does not generally provide information concerning Club activities or Membership to the media or to other third parties. When appropriate, the Club General Manager or his designee will do so. Members are cautioned to avoid answering media questions and specifically from providing Club documents or Member information to individuals outside the Club. The roster or list of Members in the Club shall be furnished only to Members and appropriate Club staff and may not be used or given to anyone else by a Member of the Club for any reason.

19. **MAILING ADDRESSES.** Each Member shall submit in writing his/her current email and postal mailing address to the office of the Club General Manager and for updating address changes as needed. All club notices and invoices will be sent to that address. Members will be held to have received all Club mailings ten (10) days after they have been mailed to the address on file.

20. **MODIFICATION OF THESE RULES.** The Board of Directors reserves the right to amend or modify these Rules when necessary and will notify the Membership of such changes. Any such amendments or modifications to the Rules shall be subject to and controlled by the applicable provisions of the By-Laws and the Club Plan.



CALLAWASSIE ISLAND MEMBERS CLUB, INC.

Amended And Restated By-Laws

January 1, 2014

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**THE CALLAWASSIE ISLAND CLUB MEMBERS CLUB, INC.
AMENDED AND RESTATED BY-LAWS**

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**AMENDED AND RESTATED BY-LAWS
OF
CALLAWASSIE ISLAND MEMBERS CLUB**

January 1, 2014

Pursuant to the approval of Members of Callawassie Island Members Club, Inc. ("Club") to amend the Plan for the Offering of Membership which became effective on July 1, 2013 ("Club Plan"), the Board of Directors does hereby adopt these Amended and Restated By-Laws on behalf of the Club to make all modifications necessary for consistency between the Club Plan and the By-Laws.

**Article 1
PURPOSE OF CLUB**

The nature and purpose of the Callawassie Island Members Club, Inc., ("Club") is to own and operate a private country club for the recreation, pleasure and benefit of its equity members.

**Article 2
CLUB EMBLEM**

The emblem of the Club shall be of a style and design to be approved by the Board of Directors.

**Article 3
MEMBERS MEETING**

3.1 Annual Meeting. An annual meeting of the equity members of the Club shall be held for the purposes of receiving reports of officers and others, electing directors, and for such other business as may be properly brought before the meetings.

3.2 Date and Place of Annual Meeting. The annual meeting of the equity members shall be held at such appropriate time and place in South Carolina as the Board of Directors may designate.

3.3 Special Meetings. Special meetings of the equity members may be called by the President of the Board of Directors, a majority of the members of the Board of Directors or, upon the written request of ten percent (10%) or more of the members entitled to vote. Such request shall be submitted to the President who shall then call a special meeting within thirty (30) days of the date of such request. Notices of any special meeting must contain a statement of the purpose for which such special meeting is called and no other business may be transacted at that meeting.

3.4 Notices. The Secretary shall give not less than fifteen (15) days nor more than fifty (50) days prior notice, by mail, prepaid, to all equity members of the Club, stating the time, place, and purpose of any meeting.

3.5 Quorum. The presence, either in person or by written proxy, of equity members having a majority of the votes then entitled to be voted shall constitute a quorum at any meeting of the equity members. A quorum must be present to constitute a legal vote of the equity members.

3.6 Proxies. Members may vote by proxy. The Board of Directors will determine the form and procedures for the use of the proxies authorized in writing.

3.7 Voting Percentage. Except for the election of members to the Board of Directors, which shall be by plurality vote, a majority of those equity members present (in person or by proxy) is necessary for passage of any issue before the equity members.

3.8 Memberships. Each equity membership shall entitle the equity member to vote on various club

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matters, including the election of the Board of Directors. Each Island membership shall entitle the Island Member to five (5) votes, while each Social Membership shall entitle the Social Member to two (2) votes.

3.9 Ballot. In lieu of the annual or a special meeting, the Club shall have the option to conduct any vote by written ballot.

3.10 Ballot for Election of Directors. The written ballot shall be delivered by mail, facsimile, electronically (or any combination thereof) to all equity members by February 1st of each year. All written ballots must be returned to the Club by March 1st of that same year. The written ballot shall contain the names of those individuals selected by the nominating committee and those eligible by petition. The vote shall be conducted by written ballots and all written ballots must be received by the Board of Directors no later than 5:00 p.m. on March first. The Member delivering the ballot is responsible for the method of delivery. For an election to be valid, more than fifty percent (50%) of the Members must timely submit the written ballots. A majority of the ballots returned is required for the passage of any issue except for the election of directors. The individuals with the highest number of votes shall be elected as directors. The Board of Directors will announce the vote tabulation during the Annual Meeting and the candidates with the greatest number of votes shall fill the open directorships. The new directors shall hold office for their three (3) year term commencing with the close of the Annual Meeting.

Article 4 BOARD OF DIRECTORS

4.1 Number and Qualifications. The business and affairs of the Club shall be governed by a Board of Directors. The Board of Directors shall consist of nine (9) equity members of the Club in good standing.

4.2 Nominating.

(a) The Board of Directors shall appoint a Nominating Committee consisting of five (5) members entitled to vote, two (2) of whom shall be members of the Board of Directors by September 1st of each year. Members of the Nominating Committee shall serve for a term of one (1) year or until their successors are appointed and qualified. Unless specifically requested by a majority of the Board of Directors, the Nominating Committee shall not nominate candidates to fill any vacancies occurring by reason of death, resignation or otherwise, for any unexpired term.

(b) The Nominating Committee shall recommend to the Board of Directors at the December Board meeting of each year, the names of equity members of the Club to be submitted to the equity members of the Club either (i) at their annual meeting for election to the Board of Directors; or (ii) to be placed on the written ballot.

(c) Ten percent (10%) or more of the total equity members entitled to vote who are not on the Nominating Committee or the Board of Directors may also nominate candidates for the Board of Directors by petition, signed by ten percent (10%) of the equity members entitled to vote, and filed with the Secretary by January 15th of each year.

4.3 Elections.

(a) There shall be no cumulative voting.

(b) Voting shall occur at the annual meeting or pursuant to written ballot.

(c) The Board of Directors shall be nine (9) directors, all of whom shall be elected by the equity members and must be equity members of the Club in good standing.

(d) Each year, the equity members shall elect directors for a term of three (3) years to replace those directors whose terms have expired. This number shall be adjusted to conform to the total number to be elected to the Board of Directors for the ensuing year.

(e) The number of candidates necessary to fill the vacancies on the Board of Directors receiving the highest number of votes for each designated term shall be declared elected.

(f) A Board Member may serve for no more than two (2) consecutive terms.

(g) The Board of Directors, at its option, may appoint a member to fill a Board vacancy until the next election of Directors. The appointed member may be elected to complete the unexpired term. If the appointed member does not wish to complete the unexpired term, another member may be elected to complete the term.

Article 5 MEETING OF THE BOARD OF DIRECTORS

5.1 Organizational Meeting. Each year the Board of Directors shall hold an organizational meeting to elect officers and to consider any other matters that may be properly brought before the meeting. The organizational meeting of the Board of Directors shall be held during the month of March of each year.

5.2 Duties at Organizational Meeting. The Board of Directors shall fix the membership contribution and terms for payment of any membership certificate. Such membership contribution and terms shall be in effect for the following calendar year or until changed sooner by the Board of Directors.

5.3 Quorum. A majority (in person or telephonically) of the Board of Directors at any meeting shall constitute a quorum for the transaction of business.

5.4 Action Without Meetings. Any action which may be taken by the Board of Directors may be taken without a meeting if a written consent setting forth the action taken is signed by all of the directors entitled to vote and is filed in the minutes of the proceedings of the Board of Directors.

5.5 Notice of Meetings. Notice of any meeting of the Board of Directors, regular or special, may be conveyed by written, electronic (e-mail), telephonic or personal notice, at least three (3) days prior to the meeting, except in the event of an emergency in which event such notice may be waived to the extent permitted by law.

5.6 Voting Percentage. A majority of the Board of Directors attending the meeting must vote to approve any matter before the Board, unless otherwise provided herein or required under the law.

5.7 Meetings. The Board of Directors shall meet quarterly or have a minimum of six (6) regular meetings each year, at such times as the Board of Directors shall determine.

Article 6 POWERS OF THE BOARD OF DIRECTORS

6.1 Management of the Club. The Board of Directors shall have the power and authority to govern all aspects of the Club and may delegate this power and authority to committees and/or officers.

6.2 Duties and Powers. The Board of Directors may:

- (a) Appoint committees and assign duties;
- (b) Fill vacancies on the Board of Directors due to death, resignation, inability to perform duties, or otherwise, for the unexpired term.
- (c) Appoint managers and other employees and delegate such authority considered necessary for the proper operation and management of the Club;
- (d) Adopt, alter, amend or repeal the General Club Rules governing use of the Club and all its facilities by members and their families and guests;

(e) Determine the amount of dues, fees, and other charges;

(f) Replace any director who shall fail to attend fifty percent (50%) of the regular Board meetings in any one (1) fiscal year or who fails to be a member of the Club in good standing, or who is actively attempting to sell his real property;

(g) Expend funds to the extent of the amount in the club treasury or owing to the Club Treasury or owing to the Club, to make contracts, including, without limitation, those pertaining to general or specific lines of credit, or create indebtedness and to borrow money or incur indebtedness for purposes of the Club, and to cause promissory notes, bonds, mortgages or other evidence of indebtedness to be executed and issued in the ordinary course of the Club's business;

(h) Enter into any single capital expenditures project on behalf of the Club involving total expenditures of up to \$200,000 without prior approval of a majority vote of all the equity members of the Club entitled to vote except as permitted in paragraph (i) hereto.

Assessments for any capital expenditures over \$200,000 to the golf course shall be voted on by and prorated equally among the Island Members. Social Members shall not be subject to any assessment for capital expenditures to the golf course. All other assessments for capital expenditures over \$200,000 to the Club Facilities shall be voted on by and prorated equally among all of the equity members. Such assessments shall require a majority vote of the equity members entitled to vote and who are present in person or by written proxy hereto;

(i) By a majority vote of the Executive Committee, and without a specific Member vote, declare an emergency situation warranting an expenditure of amounts in excess of the limitation imposed in this Section 6.2. The committee may then expend such sums, without limitation, as it determines necessary to counteract the emergency. Such situations are to include, but not be limited to, those which could be considered as "Force Majeure" under generally accepted interpretation of such;

(j) Exchange rights to use the Club facilities with members of other Country Clubs;

(k) Maintain replacement cost insurance on the Club facilities equal to full replacement cost thereof if available at a commercially reasonable cost as determined by the Board;

(l) Determine whether any member's conduct or whose families or guests conduct shall be deemed to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members. If so determined, the members may be reprimanded, fined, suspended or expelled from the Club by the action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony, or good reputation of the Club or its members. Any member suspended or terminated by action of the Board of Directors shall automatically lose all membership privileges including the right to a vote on Club matters during the period of suspension or termination;

(m) Suspend a member's credit and membership privileges in the event of a delinquency in payment of dues, assessments or other charges levied by the Board of Directors in accordance with notice of said delinquency

6.3 Issuance of Membership Certificates. The Board of Directors shall have sole authority to issue, cancel, and transfer membership certificates and shall have such certificates prepared in the form and content consistent with the provisions of these By-Laws of the Club.

6.4 Compensation. No director shall receive a salary or any other compensation whatsoever, but shall be entitled to reimbursement for all expenses reasonably incurred in performing any duties pursuant to these By-Laws.

6.5 Interpretation of By-Laws. The Board of Directors shall have the corporate powers to generally do everything permitted for nonprofit corporations by law, by statute, the Articles of Incorporation, or these By-Laws,

and to determine the interpretation or construction of these By-Laws or any parts thereof, which may be in conflict or of doubtful meaning, and their decisions shall be final and conclusive.

Article 7 OFFICERS

7.1 Election of Officers. The Board of Directors shall elect a President, a Vice President, a Treasurer, a Secretary and such other officers as the Board determines appropriate from time to time. Such officers shall be elected to serve for the term of one (1) year or until their successors shall be elected and shall carry out the duties described below.

7.2 President. The President shall preside at all meetings and enforce observance of the provisions of these By-Laws and all of the General Club Rules. The President may call special meetings of the Board of Directors, shall be an ex-officio member of all committees, and shall be empowered to execute all papers and documents requiring execution in the name of the Club. All papers and documents must also be executed by a second member of the Executive Committee.

7.3 Vice President. In the absence of the President, the Vice President shall perform and carry out all duties and responsibilities of the President.

7.4 Secretary. The Secretary shall keep records and minutes of all meetings of the Board of Directors and the membership. The Secretary shall also be responsible for giving all required notices of such meetings. The Secretary shall have custody of the Seal of the Club and all membership records shall be kept under the Secretary's supervision.

7.5 Treasurer. The Treasurer shall cause to be collected, held and disbursed, under the direction of the Board of Directors, all monies of the Club and it shall be the Treasurer's duty to collect monies due the Club from the issuance of membership certificates, dues and charges from the members of the Club, and all amounts due from others. The Treasurer shall keep or cause to be kept regular books of accounts and all financial records of the Club, and shall have prepared for and submitted to the Board of Directors financial statements, when and in the form requested by the Board of Directors. The Treasurer shall deposit or cause to be deposited or invested all monies of the Club in an account or accounts in the Club's name in the bank or banks designated by the Board of Directors, and shall give a surety bond (if economically feasible) for faithful performance in the amount directed by the Board of Directors, which surety bond premium shall be paid by the Club.

7.6 Other Officers. The Board of Directors may appoint additional officers and assign their duties.

7.7 Additional Duties of Officers. Any officer may be given additional assignments and duties by the Board of Directors.

7.8 Removal from Office. An officer may be removed from office by the members of the Board of Directors.

Article 8 INSURANCE AND INDEMNIFICATION

8.1 Insurance. The Club shall obtain on behalf and for the benefit of the officers and directors of the Club such insurance as the Board of Directors deems appropriate and is permitted by law.

8.2 Indemnification. The Club shall, to the fullest extent permitted by the laws of South Carolina, as the same may be amended and supplemented, indemnify any and all of the directors and officers of the Club from and against any and all of the expenses, liabilities or other matters referred to in or covered by said laws, and the indemnification provided for herein shall not be deemed exclusive of any rights to which those indemnified may be entitled under any by-law, agreement, vote of the members, disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a

person who has ceased to be a director or officer, and shall inure to the benefit of the heirs, executors and administrators of such person.

Article 9 COMMITTEES

9.1 Standing Committees. Each year the President, subject to the approval of the Board of Directors, shall designate the chairs and members of each of the following standing committees: Executive, Finance, Membership, House, Golf, Green, Tennis, and such other committees as may be deemed advisable by the Board of Directors from time to time.

(a) The Executive Committee shall consist of the President, as Chairman, Vice President, Secretary, Treasurer, and in addition, one (1) member of the Board of Directors. [The Executive Committee shall have the powers of the Board of Directors during the interval between Board meetings.] A majority of the members of the committee shall constitute a quorum. Actions and resolutions shall require unanimous approval of the members present. Such actions shall be reported to the Board at its next regular meeting.

(b) The Finance and Audit Committee shall review and recommend for adoption by the Board of Directors, the annual operating and capital budgets, prepared by Club Management, the monthly and annual financial reports as compared to said budgets, the employment of outside auditors, the financial reporting to equity members, and include itself in any other financial matters as determined by the Board of Directors from time to time including, but not restricted to, meeting with the outside auditors to investigate their independence, responding to their "letter of recommendations" and assist with the presentations to lenders or members, if requested by the Board.

(c) Each of the following committees, subject to the approval of the Board of Directors, shall submit recommendations to the Board of Directors for approval. The officers of the Club and Club Manager shall have control of the execution of such programs and recommendations as approved by the Board. The following committees shall act only as consultants and advisors to the Board of Directors and officers:

(i) Membership Committee. The Membership Committee shall investigate all Applications for membership and shall report thereon to the Board of Directors with its recommendation as to the approval or disapproval of each application.

(ii) House Committee. The House Committee shall advise the Board of Directors on matters concerning the operations of the Clubhouses, pools, the equipment, furnishings and property in the Clubhouse, specifically including, without limitation, utilities, building maintenance and repairs. The House Committee shall also advise the Board on all food and beverage operations and entertainment.

(iii) Golf Committee. The Golf Committee shall advise the Board of Directors on the scope of the Golf Professional's operation, the operation of the Golf Pro Shop and golf carts, the promulgation of playing rules for members and their guests, the programming of golfing events for members and their guests, and the maintenance of members' handicaps.

(iv) Green Committee. The Green Committee shall advise the Board of Directors on the scope of the Green Superintendent's operations, and the maintenance of the golf course, roads, facilities and equipment used in connection therewith. No live trees shall be removed nor shall any alteration be made in the golf courses except with the approval of the Board of Directors.

(v) Tennis Committee. The Tennis Committee shall advise the Board of Directors on the scope of the Tennis Professional's operation, the operation of the Tennis Pro Shop, the promulgation of playing rules for members and their guests, and the programming of tennis events for members and their guests. The Committee shall advise the Board of Directors on the condition of, and make recommendations concerning, tennis courts, equipment and other related facilities.

9.2 Ad Hoc Committees. The President, subject to the approval of the Board of Directors, may

appoint from time to time such ad hoc committees with such powers, responsibilities, and composition as the President shall determine appropriate.

9.3 Powers of Committees. Except for the Executive Committee, these committees shall act only as advisory committees and the individual members thereof shall have no power or authority. The chairman of each committee may appoint from the members of his or her committee such subcommittees as the chairman deems desirable. Such subcommittees shall report directly to the committee as a whole, which shall approve, amend or disapprove the report of the subcommittee.

9.4 Terms of Committee Chairmen and Committee Members. A committee chairman may not serve as a committee chairman on the same committee for more than three (3) successive years. A committee member may not serve as a member of the same committee for more than three (3) successive years unless approved by the Board of Directors. Only one individual per membership may serve on the same committee during a single term. The term of a committee chairman or a committee member may be terminated at any time by the President with the approval of the Board of Directors.

Article 10 PLAN OF MEMBERSHIP

The Board shall adopt, and administer as appropriate, a Plan of Membership for the Club, the Plan shall include, but not be limited to:

- 10.1 Description of Club facilities;
- 10.2 Membership application procedures and offering statement;
- 10.3 Equity membership category description and numbers statement;
- 10.4 Membership privileges statement;
- 10.5 Membership transfer provisions;
- 10.6 Dues, fees, charges and assessments rules and procedures; and
- 10.7 Plan amendment procedures.

Article 11 DELINQUENCIES

The Club shall have a lien against each membership for any unpaid assessments, fees, annual dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such annual dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing of the Club and all such liens may be foreclosed by the Club, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. The Club may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges without thereby waiving the lien securing the same.

Any other liens placed against such equity membership shall be junior to Club's lien.

Article 12 CORPORATE SEAL

The Corporate Seal of the Club shall be circular in form and shall bear the words "The Callawassie Island Members Club, Inc., non-profit 1999 South Carolina". A copy of said seal is affixed hereto. The Corporate Seal shall be in the possession of the Secretary and be affixed by the Secretary to all documents relating to the official acts of the Club, as authorized by the Board of Directors.

**Article 13
MISCELLANEOUS**

13.1 Fiscal Year. The fiscal year of the Club shall commence on the 1st day of January and conclude on the 31st day of December.

13.2 Conflict Between By-Laws and the Articles of Incorporation. In the event of a conflict between the terms of these By-Laws and the Articles of Incorporation, the latter shall prevail.

**Article 14
AMENDMENTS**

These By-Laws may be amended by a majority vote of the Board of Directors and a majority of the eligible votes cast (a) at a duly called meeting or (b) by written ballot as long as a majority of the written ballots are returned.



**THE CALLAWASSIE ISLAND MEMBERS CLUB
PLAN FOR THE OFFERING OF MEMBERSHIPS**
Effective as of July 1, 2013

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1. GENERAL DESCRIPTION OF THE PLAN.

1.1 Purpose of the Plan. The Callawassie Island Members Club, Inc., a South Carolina non-stock and non-profit corporation, owns and operates the recreational and social facilities on Callawassie Island, South Carolina for the use, recreation and enjoyment of the Club's Members. The Board of Directors of the Club has adopted this Plan as mandated by Article X of the By-Laws. The By-Laws, the Articles of Incorporation of the Club, the General Club Rules, and the Settlement Agreement, offer persons the opportunity to acquire an Equity Island Membership in the Club.

1.2 Definitions. The following capitalized words and terms, when used in this Plan, unless the context clearly shall indicate otherwise, shall have the meaning given below:

(a) *Amenity Package.* A description of privileges for certain Club Facilities available to Equity Island Members with fees for such package determined by the Board of Directors for each Membership Year.

(b) *Board of Directors.* The body responsible for governance of the Club, selected as provided in the By-Laws and generally serving the same role as a board of directors under South Carolina corporate law.

(c) *By-Laws.* The current By-Laws of the Club, as they may be amended.

(d) *Charges.* Dues, fees, assessments, charges, state taxes, fines, interest, service charges and other charges that the Club may establish from time to time to be paid by Members.

(e) *Club.* The Callawassie Island Members Club, Inc., a South Carolina non-stock and non-profit corporation.

(f) *Club Facilities.* The recreational and social facilities on Callawassie Island owned by the Club for use by Members.

(g) *Declaration.* The Amended And Restated General Declaration For Callawassie Island And Provisions For The Callawassie Island Property Owners Association, Inc. of December 15, 2011.

(h) *Entity.* A company, partnership, corporation, limited liability company, trustee, or other form of legal entity owning a Membership.

(i) *Equity Island Member or Island Member.* A Person who holds an Equity Island Membership.

(j) *Equity Island Membership.* The category of Membership in the Club held by an Equity Island Member.

(k) *Equity Member.* A Person who holds an Equity Membership.

(l) *Equity Membership.* An Equity Island Membership or an Equity Social Memberships, collectively, the "Equity Memberships".

(m) *Equity Social Member.* A Person who holds an Equity Social Membership.

(n) *Equity Social Membership.* The category of Membership in the Club held by an Equity Social Member.

(o) *General Club Rules.* The General Club Rules currently in effect and adopted by the Board of Directors of the Club.

(p) *Immediate Family.* The Member (whether held in an individual name or jointly) and the Member's (a) spouse or one other adult who is a resident of an individual Member's residential unit, and the Member's (b) children, step-children and their spouses, (c) grandchildren, step-grandchildren and their spouses, and (d) parents and the parents of an individual Member's spouse.

(q) *Member.* A Person who holds a Membership in the Club.

(r) *Membership.* A membership held by a Member in the Club.

(s) *Membership Contribution.* The amount paid to the Club by a Member to acquire a Membership in the Club.

(t) *Membership Year.* The (12)-month period commencing on January 1st and ending on December 31st.

(u) *Non-Equity Associate Member.* A Person who holds a Non-Equity Associate Membership.

(v) *Non-Equity Associate Membership.* The category of Membership in the Club held by a Non-Equity Associate Member.

(w) *Non-Equity Corporate Member.* A Person who holds a Non-Equity Corporate Membership.

(x) *Non-Equity Corporation Membership.* The category of Membership in the Club held by a Non-Equity Corporate Member.

(y) *Partnership.* Callawassie Island Company, L.P.

(z) *Person.* A natural person or an Entity.

(aa) *Plan*. The Callawassie Island Members Club Plan for the Offering of Memberships, as may be amended.

(bb) *Resigned Member*. An Equity Member who has resigned his/her Membership in the Club by written notice to the Club pursuant to Section 6.

(cc) *Settlement Agreement*. The Omnibus Settlement and Security Agreement dated August 23, 2010, as amended on February 2, 2012, between the Club and the Partnership, a copy of which is attached as Exhibit A.

1.3 Description of Club Facilities. The Club Facilities currently owned by the Club include the following:

- a 27-hole championship golf course designed by Tom Fazio, locker rooms, a fitness center and a golf pro shop;
- a driving range and practice green;
- tennis courts and a tennis pro shop;
- a clubhouse facility, which includes a dining room, a bar, a snack shop, club rooms, and administrative offices;
- a swimming pool and deck area, located adjacent to the clubhouse;
- a river club, which is located on the Colleton River and includes a swimming pool, bathhouse, club room, kitchen, barbecue area and boat docks;
- auxiliary buildings used for maintenance, equipment storage, and administration and parking facilities.

The Club may modify the Club Facilities and provide such other Club Facilities as the Club deems appropriate from time to time.

1.4 General Description of Membership Categories.

(a) The Club currently is offering one category of Equity Membership known as an Equity Island Membership, and two categories of non-equity Membership known as Non-Equity Associate Membership and Non-Equity Corporate Membership as further described herein. Equity Island Members formerly were known as Equity Golf Members. Upon the date of this Plan, all Equity Golf Members automatically shall become Equity Island Members.

(b) The Club previously had issued Equity Social Memberships. Although these Memberships are not currently being offered by the Club, the rights and privileges of Equity Social Members are described in Section 3 below.

1.5 Purchasers of Residential Units or Lots Must Own an Equity Membership. As described in Section 2.3(c) below, the purchaser of a residential unit or lot on Callawassie Island must own and maintain an Equity Island Membership and pay the required Membership Contribution and all Charges associated with his/her Membership in compliance with the Declaration and as further described herein.

2. MEMBERSHIPS IN THE CLUB.

2.1 Description Of Available Memberships and Voting Privileges

(a) Equity Island Memberships, Non-Equity Associate Memberships, and Non-Equity Corporate Memberships in the Club are available for purchase.

(b) Each Equity Island Membership represents an ownership interest in the Club and entitles an Equity Island Member to vote on various Club matters, including the election of the Board of Directors. Each Equity Island Membership entitles an Equity Island Member to five (5) votes.

(c) Non-Equity Associate Memberships do not entitle the Member to any ownership interest or voting privileges, but do allow the use of certain facilities provided at the Club upon payment of all Charges.

(d) Non-Equity Corporate Memberships do not entitle the Member to any ownership interest or voting privileges, but do allow the use of certain facilities provided at the Club upon payment of all Charges.

2.2 Number of Memberships Available. The total number of Memberships permitted to be issued by the Club shall be not less than the number of owners of residential units and lots on Callawassie Island.

2.3 Eligibility.

(a) *Eligibility For Memberships.*

(i) The Club currently offers Equity Island Memberships to persons who own or purchase residential units or lots on Callawassie Island and to such other persons as the Club determines appropriate from time to time, who are approved for Membership.

(ii) The Club currently is offering Non-Equity Associate Memberships and Non-Equity Corporate Memberships to persons who do not own a residential unit or lot on Callawassie Island.

(b) *Existing Property Owners May Acquire an Equity Membership.* Persons who owned residential units or lots on Callawassie Island prior to December, 2001 who are not Equity Members are permitted to acquire an Equity Island Membership, upon application and approval, and payment of the applicable Membership Contribution and Charges.

(c) *Purchasers of Residential Units or Lots After December 1, 2001 Must Own Equity Membership.*

(i) In accordance with Section 5.7.2 of the Declaration a purchaser, owner, co-owner or Entity that acquires title to a residential unit or lot on

Callawassie Island after December 1, 2001 is required to own and maintain an Equity Island Membership in the Club and pay the applicable Membership Contribution and Charges associated with such Membership. Such owner shall be required to maintain an Equity Membership in good standing for each residential unit or lot acquired on Callawassie Island after said date for as long as such person or entity owns the subject property. Any such owner of a residential unit or lot on Callawassie Island shall not be exempt from the obligation to own an Equity Membership by non-use of the facilities.

(ii) As a condition precedent to the conveyance of an ownership interest in a residential unit or lot on Callawassie Island and no later than acquiring an ownership interest in a residential unit or lot on Callawassie Island, the person or entity obtaining title to the residential unit or lot on Callawassie Island must submit an Application for Membership, Membership Purchase Agreement and the applicable Membership Contribution to the Club. The applicable Membership Contribution must be paid no later than the date of such conveyance. The payment of such Membership Contribution shall be a condition precedent to the delivery of a deed or any other form of conveyance of a residential unit or lot on Callawassie Island.

(d) *Multiple Owners.* In the event a residential unit or lot on Callawassie Island is owned by multiple owners, then the owners of such residential unit or lot must designate one of such owners to obtain the Equity Island Membership. As provided herein, an Equity Island Membership only permits the Member and the Member's Immediate Family Members to use the Club Facilities upon payment of the applicable Membership Contribution and Charges. All other owners of the residential unit or lot on Callawassie Island are not permitted to use the Club Facilities (even as a guest) unless another available Equity Island Membership is obtained by such owner(s). If the additional owner(s) of the residential unit or lot on Callawassie Island obtains an available Equity Island Membership, he/she must follow the same application procedures as any other Member and pay the applicable Membership Contribution and Charges established by the Club.

(e) *Multiple Lots.* If a person or entity owns more than one residential unit or lot on Callawassie Island, then an Equity Membership must be obtained and maintained for each of such residential unit or lot on Callawassie Island. However, if an owner, who is already an Equity Member of the Club, also owns an abutting lot and forms a single lot through consolidation by approval of Callawassie Island Property Owners Association and filing of a consolidation survey and consolidation agreement in the Office of the Register of Deeds for Beaufort County, South Carolina, then such owner will not be required to purchase and maintain an additional Equity Membership for the abutting lot.

(f) *Membership by Person Who Does Not Own Property.* The Club may offer Equity Memberships to persons who do not own residential units or lots on Callawassie Island as the Club may determine appropriate from time to time.

(g) *Equity Membership Held by an Entity.* An Equity Membership may be

held in the name of an Entity. The Entity must designate one individual (and his/her Immediate Family Members) who will have the right to use the privileges of the Equity Membership. An Equity Membership that is owned by an Entity allows the designee to use the Club Facilities and pay the same Charges as a Member in the same category of Equity Membership. The Entity may change the designated user no more than one time each Membership Year upon payment of a non-refundable re-designation fee established by the Club from time to time. Prior to the change of any designee, the prior designee must return the issued membership cards and membership certificate to the Club, any required re-designation fee must be paid to the Club, and the new designee must submit an application and be approved by the Club. All designated users will be subject to the approval of the Club. The Club may establish other rules from time to time governing the designation of an individual to use the privileges of the Equity Membership, including a limit on the number of times the entity may change the designated user. Both the Entity and the designated user shall be jointly and severally liable for the payment of all Charges incurred by the designated user and his/her Immediate Family Members and guests.

2.4 Membership Privileges.

(a) *Membership Privileges.* The privileges of Membership are subject to this Plan, as it may be amended from time to time. The General Club Rules, including the services provided to Members and the hours of operation of the Club Facilities or any portion thereof, may be altered, amended or repealed at the discretion of the Board of Directors of the Club. Each Person who acquires a Membership at the Club will be permitted to use the Club Facilities in accordance with the Member's category of Membership, the applicable dues category, the General Club Rules, and the applicable Amenity Package(s), as long as the Member remains a Member in good standing. Any suspension or expulsion of a Member shall result in the loss of all Membership privileges including the right to vote. Upon approval, payment of the applicable Membership Contribution and the Charges and compliance with the General Club Rules established by the Club, Members obtain the use privileges described herein.

(b) *Equity Island Membership Privileges.* Equity Island Members are entitled to use Club Facilities in accordance with the General Club Rules upon payment of the applicable Membership Contribution and Charges. Prior to the beginning of each Membership Year, Equity Island Members will have the option to select an Amenity Package(s) for the following Membership Year. The Club shall establish fees for each Amenity Package.

(c) *Equity Island Member Immediate Family Privileges.* An Equity Island Member's Immediate Family may use the Club Facilities in accordance with the General Club Rules and the applicable Amenity Package(s).

(d) *Non-Equity Associate and Non-Equity Corporate Membership Privileges.*

(i) In order to promote the sale of residential units and lots on Callawassie Island and to introduce the Club to prospective Members, the Club may offer Non-Equity Associate Memberships and Non-Equity Corporate Memberships on an annual basis, or for such other time period as approved by the

Board of Directors of the Club. Non-Equity Associate Memberships and Non-Equity Corporate Memberships are only available to persons who do not own a residential unit or lot on Callawassie Island. The rights and privileges of Non-Equity Associate Members and Non-Equity Corporate Members will be determined by the Club from time to time. Non-Equity Associate Members and Non-Equity Corporate Members shall not have any ownership interest in the Club or the Club Facilities, shall not have any voting privileges, and shall not be subject to any operating assessments or capital assessments.

(ii) Non-Equity Associate Members and Non-Equity Corporate Members must pay a one-time non-refundable Membership Contribution and an annual non-refundable renewal fee established by the Club from time to time. Non-Equity Associate Memberships and Non-Equity Corporate Memberships are subject to renewal each Membership Year in the sole discretion of the Club, and therefore, the Club will determine whether Non-Equity Associate Memberships and Non-Equity Corporate Memberships (and how many) will be available prior to the beginning of each Membership Year.

(iii) If the Club determines that Non-Equity Associate Memberships and Non-Equity Corporate Memberships will not be renewed, then the Club shall recall and terminate (without refund of any amounts) each such Membership at the end of the Membership Year, as necessary, on a first-issued, last-recalled basis.

(iv) Non-Equity Associate Members and Non-Equity Corporate Members are permitted to use Club Facilities in accordance with the General Club Rules upon payment of the applicable non-refundable Membership Contribution and Charges. Prior to the beginning of each Membership Year, Equity Island Members will have the option to select an Amenity Package(s) for the following Membership Year. The Club shall establish fees for each Amenity Package.

(e) *Club May Change Playing Privileges.* In order to provide the utmost playing pleasure for all Members, the Club reserves the right to establish different rules governing access, sign-up privileges and starting times with respect to the golf, tennis and other recreational facilities provided at the Club.

(f) *Guest Privileges.* An Equity Member may have guests use the Club Facilities in accordance with the Member's category of Membership and the General Club Rules and payment of applicable guest fees. The Club may limit the number of times any particular individual guest may use the Club Facilities or any particular facility provided at the Club during a specific period of time and limit the number of guests a Member may sponsor at any particular time. The sponsoring Member will be responsible for all fees and other Charges incurred by his/her guests and for the deportment of his/her guests.

(g) *Equity Members May Designate a User of Membership Privileges.*

(i) Subject to the General Club Rules, an Equity Member who is not residing in his/her residential unit located on Callawassie Island may designate a

bona fide resident and his/her spouse of such residential unit as the beneficial user of his/her Equity Membership. The designation of a bona fide resident as the beneficial user of an Equity Member's Membership must be made in advance and in writing to the Club.

(ii) Subject to the General Club Rules, upon written request by an Equity Member to the Club, the Board, in its sole discretion, may approve a non-member and his/her spouse as the beneficial user of his/her Equity Membership.

(iii) During the period that a resident or non-member is designated as the beneficial user of the Membership, the Equity Member shall not be entitled to use the Membership but shall remain obligated for all Charges associated with his/her Equity Membership. The Equity Member shall be responsible for all Charges incurred by the beneficial user and for the deportment of the beneficial user.

(iv) Immediate Family use privileges shall not extend to designated users.

(h) *Island and Social Membership Exchanges.* No Membership exchanges or renewals of Membership exchanges shall be permitted after the date of this Plan. Temporary exchanges shall not be renewed after the date of this Plan.

3. EQUITY SOCIAL MEMBERSHIPS.

3.1 Equity Social Membership Privileges. Equity Social Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable Membership Contribution and Charges. Equity Social Members will be entitled to play golf one time per month during the golfing season and two times per month during the non-golf season as defined in the General Club Rules. Equity Social Members will not be required to pay court fees for use of the tennis facilities, but will be required to pay greens fees and golf cart fees for use of the golf course. Equity Social Members using the golf facilities shall abide by the Golf Rules and Guidelines.

3.2 Social Member Family Privileges. An Equity Social Member's Immediate Family may use the Club Facilities in accordance with the General Club Rules.

3.3 Equity Social Member Able To Upgrade To An Equity Island Membership.

(a) An Equity Social Member may upgrade to an available Equity Island Membership by resigning his/her Equity Social Membership and acquiring an Equity Island Membership by paying the difference between the then-current Membership Contribution for an Equity Island Membership and \$12,000.00. The resigned Equity Social Membership shall be retired and shall not be reissued. Notwithstanding anything herein to the contrary, for ninety (90) days after the effective date of this Plan, Equity Social Members may upgrade to an Equity Island Membership without payment of any additional Membership Contribution.

(b) The downgrade of an Equity Island Membership to an Equity Social Membership is not permitted.

3.4 Voting. Each Equity Social Membership represents an ownership interest in the Club and entitles the Equity Social Member to vote on various Club matters, including the election of the Board of Directors. Each Equity Social Membership entitles an Equity Social Member to two (2) votes.

3.5 Assessments. Equity Social Members shall not be assessed for any debt service for capital expenditures to the golf course.

3.6 Dues. In establishing the dues to be paid by Equity Social Members, Equity Social Members shall not be responsible for golf operating expenses.

3.7 Retirement of Equity Social Memberships. Upon the resignation of an Equity Social Membership, such Equity Social Membership shall be retired in the records of the Club and shall not be reissued.

4. **MEMBERSHIP ADMISSION.**

4.1 Application For Membership.

(a) Each Person applying for Membership in the Club must submit to the Club Membership Office a completed and signed Application for Membership, a Membership Purchase Agreement and any required Membership Contribution by check made payable to "The Callawassie Island Members Club, Inc." The required Membership Contribution to be paid for a Membership shall be the Membership Contribution charged on the date the applicant submits the Application for Membership to the Club.

(b) The Membership Contribution required for a Membership may be changed from time to time by the Board of Directors, and therefore, the Membership Contribution required for a Membership in the future may be higher or lower than the Membership Contribution currently in effect.

4.2 Membership Applications Not Associated with Property Transfers or Sales

(a) The Board of Directors of the Club shall have the exclusive right to determine the qualifications of a Membership candidate.

(b) Subject to the above, upon receipt of the Application for Membership, the Membership Purchase Agreement and the required Membership Contribution, the Club will determine within thirty (30) days after receipt of the Application for Membership, Membership Purchase Agreement and the required Membership Contribution whether the candidate has satisfied the conditions of Membership. If the candidate has satisfied the conditions of Membership, the candidate will be notified in writing that his/her application has been acted upon favorably. If the candidate has not satisfied the requirements of Membership, the candidate will be notified that the application has not

been acted upon favorably and any Membership Contribution previously paid by such applicant shall be returned, without interest.

(c) The membership application review process will be confidential. The identity of any applicant and any information gathered in the evaluation process will not be disclosed until posting for acceptance. Records of all membership deliberations will be considered, and retained as, confidential. If an application is not approved, neither the sponsor nor applicant will be given a specific reason for denial. The Club will follow, without exception, the same procedures for every membership candidate. No exceptions will be made to the conditions of membership.

(d) A majority vote of the Board of Directors of the Club against any applicant shall constitute disapproval.

4.3 Membership Applications Associated With Property Transfers or Sales All membership applications that are associated directly with the transfer or sale of a residential unit or lot on Callawassie Island shall be evaluated by the Club based solely on the ability of the applicant to fulfill the financial requirements of Membership at the Club.

4.4 Equity Membership Certificates. Each Equity Member who has paid the required Membership Contribution shall receive a membership certificate. Issuance and redemption of membership certificates shall be coordinated by the Club. Certificates shall be in a form approved by the Board of Directors. Each certificate shall state that the certificate is issued subject to the By-Laws of the Club as they now are or may be amended, and shall be signed by the President or Vice President and the Secretary and under the seal of the Club. Membership certificates are not redeemable or transferable, except as specifically provided in this Plan and then only through the Club. Whenever any person shall cease to be an Equity Member, pursuant to this Plan or the By-Laws, such cessation shall operate to authorize the Club to effectuate the redemption, cancellation, purchase or reissuance of the membership certificate of such Equity Member in accordance with, and in the manner prescribed by, this Plan and the By-Laws.

5. MEMBERSHIP CONTRIBUTION

5.1 Proceeds of Membership Contributions. All proceeds of Membership Contributions from the sale of Equity Memberships shall be paid to the Club and allocated appropriately by the Club in accordance with the Settlement Agreement.

5.2 Sale of Memberships. The Club is the only Entity permitted to sell Memberships in the Club.

5.3 Amount of Required Membership Contribution. The Board of Directors of the Club shall establish the required Membership Contribution for each category of Membership subject to the terms of Section 8 of the Settlement Statement. All Membership resales shall be sold at a price of not less than the then current offering price for Memberships of the same category or at such price as may be approved by the Club. All Memberships sold shall include an obligation to pay all Charges.

6. SALE AND TRANSFER OF EQUITY MEMBERSHIPS

6.1 Memberships Are Not Transferable Directly to Another Member. Members may not sell, transfer or otherwise assign their Equity Membership directly to any third party. Any attempt to sell, transfer or otherwise assign a Membership, either voluntarily, involuntarily or by operation of law, which is not in accordance with this Plan and the By-Laws shall be null and void and be of no force and effect, and shall not confer any Membership rights or other privileges upon any such purchaser, transferee or assignee to use the Club Facilities.

6.2 Membership Transfers. An Equity Membership only may be resigned and transferred to the Club. An Equity Member who owns a residential unit or lot on Callawassie Island may arrange for the Club to reissue his/her resigned Equity Island Membership to the successor owner of his/her residential unit or lot on Callawassie Island provided such successor owner is approved for Membership. The Club reserves the right, in its sole discretion, to repurchase any Equity Membership upon terms approved by the Board of Directors in its sole and absolute discretion.

6.3 Equity Members Who Purchased Residential Units or Lots After December 1, 2001. In accordance with Section 5.7.2 of the Declaration and Section 2.3(c) of the Plan, a purchaser, owner, co-owner or Entity that acquires title to a residential unit or lot on Callawassie Island after December 1, 2001 is required to own and maintain an Equity Membership in good standing for each residential unit or lot acquired on Callawassie Island after said date for as long as such person or entity owns the subject property. Therefore, such owner of a residential unit or lot on Callawassie Island must maintain an Equity Membership in good standing and pay all Charges to the Club for such Equity Membership until such Member ceases to be an owner of a residential unit or lot on Callawassie Island.

6.4 Resale of Equity Membership to Successor Owner of Residential Unit or Lot

(a) The Equity Member shall submit his/her resignation in writing stating that he/she is transferring his/her residential unit or lot on Callawassie Island and that the resignation shall become effective following the closing of transfer of title and the approval for Membership of the successor owner of his/her residential unit or lot by the Club. Upon such Equity Member's written resignation, the Equity Member shall become a Resigned Member.

(b) The successor owner of the residential unit or lot must submit to the Club a signed and completed Application for Membership, a Membership Purchase Agreement and the required Membership Contribution.

(c) Prior to the reissuance of an Equity Membership, the Resigned Member must pay all Charges associated with his/her Membership.

(d) Notwithstanding any provision to the contrary in the Club Plan, if a Resigned Member fails to pay all Charges associated with his/her Membership in connection with the sale of the Resigned Member's property, the Club shall have the option to issue a Membership to the new owner of the Resigned Member's property from the Memberships available in accordance with the terms of Section 6.5(f) of the Plan.

(e) The Membership Contribution to be paid to the Club by the successor owner for his/her Membership shall be the amount of the Membership Contribution in effect on the date the Membership is acquired. After the successor owner becomes an Equity Member following the successor owner's payment of the Membership Contribution to the Club, the Club shall promptly remit the amount due, if any, to the Resigned Member as provided pursuant to Section 6.6(a).

(f) Upon the Club's receipt of a Member's resignation, payment of Charges by the Resigned Member, the successor owner's Application for Membership, Membership Purchase Agreement and Membership Contribution, and the approval by the Club of the successor owner for Membership in the Club, the Club shall terminate the Resigned Member's Membership in the Club records and issue a membership certificate for the successor owner.

6.5 Reissuance of Resigned Equity Memberships/Waiting List The Equity Membership of any Resigned Member that is not reissued to the successor owner of the Resigned Member's residential unit or lot on Callawassie Island in accordance with Section 6.4 and the Equity Membership of any Resigned Member who does not own a residential unit or lot on Callawassie Island shall be placed on the waiting list to be reissued by the Club on a first-listed, first-reissued basis in accordance with the following procedure:

(a) The Equity Member shall submit his/her resignation in writing and the resignation shall become effective upon the Club's receipt of such communication. Upon such Equity Member's written resignation, the Equity Member shall become a Resigned Member.

(b) Prior to the initial issuance of all of the Equity Memberships, every fourth Equity Membership issued will be an Equity Membership from the waiting list. The other three Equity Memberships will be issued from the Club's unissued Equity Memberships.

(c) After the initial issuance of all of the Equity Memberships, every Equity Membership issued will be an Equity Membership from the waiting list.

(d) When an Equity Social Member sells his/her residential unit or lot on Callawassie Island, the purchaser of such residential unit or lot on Callawassie Island shall purchase an Equity Island Membership in accordance with Sections 6.5(a) and 6.5.(b) above.

(e) Prior to the reissuance of an Equity Membership, the Resigned Member must pay all outstanding Charges associated with his/her Membership.

(f) Notwithstanding any provision to the contrary in the Club Plan, if a Resigned Member fails to pay all outstanding Charges associated with his/her Membership in connection with the sale of the Resigned Member's property, the Club shall have the option to issue a Membership to the new owner of the Resigned Member's property from the Memberships available in accordance with the terms of this Section 6.5 and the Club Plan.

6.6 Repayment of Membership Contribution.

(a) *Prior to February 2, 2012:* For Memberships purchased on or before February 2, 2012, Equity Members in good standing will be entitled to receive upon the reissuance of their resigned Memberships (either pursuant to Section 6.4 or Section 6.5) a repayment in an amount equal to:

(i) thirty-three and three tenths percent (33.3%) of the Membership Contribution paid by the successor owner of the Resigned Member's Equity Membership; or

(ii) notwithstanding the above, for Equity Island Members, fifty percent (50%) of the Membership Contribution paid in excess of \$20,000 by the successor owner of the Resigned Member's Equity Membership, in the event that the Membership Contribution for an Equity Island Membership increases to \$20,000.00 or more.

In all instances, the Club is entitled to deduct from the amount to be paid to a Resigned Member any amount (including Charges and Membership Contributions) that such Resigned Member owes to the Club.

(b) *After February 2, 2012:* For Equity Memberships purchased after February 2, 2012, an Equity Member will not be entitled to any repayment of the Membership Contribution paid by an Equity Member.

6.7 Portion of Membership Contribution Retained by Club.

(a) All proceeds from the reissuance (resale) of an Equity Membership in excess of any amount refunded to the Resigned Member in accordance with Section 6.6(a) retained by the Club shall be deposited in an applicable capital reserve fund.

(b) All proceeds from the reissuance (resale) of an Equity Membership in accordance with Section 6.6(b) retained by the Club shall be deposited in an applicable capital reserve fund.

(c) The Board of Directors of the Club will direct the investment of capital reserve funds. Capital reserve funds shall be used to fund capital additions, alterations, repairs or improvements to the Club Facilities, or reduction of capital debt as the Board of Directors of the Club determines appropriate.

6.8 Resale of Membership of Resigned Member Selling Residential Unit or Lot to Another Member. A Resigned Member who sells his/her residential unit or lot on Callawassie Island to another Equity Member who desires to retain his/her Equity Membership and such purchaser has sold his/her residential unit or lot on Callawassie Island to a non-member/third party, then the Resigned Member may arrange for the Club to reissue his/her Equity Membership to such non-member/third party. However, the three (3) transactions (both residential units or lots and the reissuance of the Equity Membership) must have simultaneous closing dates. The reissuance of an Equity Membership to the non-member/third party shall be considered a resale

of an Equity Membership in accordance with Sections 6.4 and 6.6, and shall be subject to all of the requirements as set forth therein.

6.9 Transfer Upon Death Of A Member.

(a) Upon the death of an Equity Member in good standing who is survived by a spouse, the deceased Member's Membership will automatically pass to the surviving spouse without payment of any new Membership Contribution in accordance with the provisions of this section. If the deceased Equity Member is not survived by a spouse, then the legatee or heir of the Equity Membership may acquire the deceased Member's Equity Membership without payment of any new Membership Contribution. If the legatee or heir desires to acquire the Equity Membership, the legatee or heir must apply for the Membership within one hundred twenty (120) days after his/her right to the Equity Membership has been determined and pay to the Club all Charges from the date of the Member's death to the date of the application. If the legatee or heir does not apply for the Equity Membership within one hundred twenty (120) days after acquiring the right to the Equity Membership, then the Equity Membership will be deemed to have been resigned and will be reissued by the Club in the same manner as any other resigned Equity Membership. Upon the reissuance of such Equity Membership, the estate of the deceased Member will be paid the amount of the Membership Contribution which would otherwise have been payable to the deceased Member in accordance with Section 6.6 less Charges associated with the Equity Membership that are owed to the Club. In any event, the estate of the deceased Member shall be responsible for payment of all Charges associated with the deceased Member's Equity Membership from the date of the Member's death until such time as the deceased Member's residential unit or lot on Callawassie Island is transferred to another owner and such owner acquires an Equity Membership.

(b) Upon the death of non-equity Members, the Membership is not transferable.

(c) The Club reserves the right, in its sole discretion, to establish such other rules as may be necessary in connection with the transfer of a Membership upon the death of a Member and may require the execution of such forms as may be deemed necessary by the Club from time to time.

6.10 Separation Or Divorce Of Members.

(a) In the event of the divorce or legal separation of an Equity Member in good standing, the Equity Membership shall belong to the party designated by agreement of the Member and the Member's spouse or as designated by final court order, provided, however, that in order for the Equity Membership to be transferred to the spouse, the spouse must satisfy all Membership eligibility requirements. Both of the divorced or legally separated persons must give written notice to the Club designating the person who is entitled to the rights and privileges of the Equity Membership within five (5) days after the divorce or legal separation is final. Until written notice has been provided to the Club, both spouses will be responsible for the payment of all Charges owed to the Club associated with the Membership. A spouse who does not retain or acquire the Equity Membership shall no longer be permitted to use the Club Facilities upon the entry of a separation or final divorce order. The Club will not be involved in any dispute, and reserves the right to suspend any and all Membership privileges in the event of a dispute between a Member and his/her spouse with respect to the ownership of an Equity Membership and use of the Club Facilities.

(b) In the event of the divorce or legal separation of non-equity Members in good standing, the Membership is not transferable.

(c) The Club reserves the right, in its sole discretion, to establish such other rules as may be necessary in connection with the transfer of a Membership upon the divorce or legal separation of a Member and may require the execution of such forms as may be deemed necessary by the Club from time to time.

6.11 Payment Of Dues And Charges By Resigned Members.

(a) An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club.

(b) A Resigned Member will be entitled to use the Club Facilities so long as the Resigned Member is obligated and continues to pay all Charges associated with the Resigned Member's Equity Membership.

(c) Prior to the reissuance of a Resigned Member's Equity Membership, any unpaid Charges either: (a) will be deducted from any amount to be paid to the Resigned Member who was an Equity Member on or before February 2, 2012; or (b) must be paid by the Resigned Member. If the amount to be paid by the Club to a resigned Equity Member is not sufficient to pay any unpaid Charges owed by the resigned Equity Member, then such resigned Equity Member must pay all such Charges prior to the reissuance of his/her resigned Equity Membership.

6.12 Proration Upon Reissuance Of Resigned Equity Membership. If an Equity Membership of a Resigned Member is reissued by the Club during a Membership Year, the Resigned Member will be entitled to receive a refund of all dues and other Charges paid in advance for the remainder of the Membership Year.

6.13 No Refund for Non-Equity Members. Non-Equity Associate Memberships and Non-Equity Corporate Memberships are not transferable and shall terminate upon resignation of Membership privileges. Non-Equity Associate Members and Non-Equity Corporate Members are not entitled to a refund of any amounts whatsoever (i.e., Membership Contribution and Charges) previously paid for Membership upon the resignation or other termination of Membership.

7. DUES, FEES, CHARGES AND LIENS

7.1 Setting of Dues, Fees and Charges. Members are and will continue to be the primary source of operating and capital funds for the Club. The Board of Directors of the Club will, from time to time, determine the dues, fees, and Charges for each category of Membership. All dues will be payable in advance, on a monthly basis during the Membership Year, unless otherwise determined by the Club. The timely payment of Charges is required to maintain Membership privileges at the Club.

7.2 Budget. The Board of Directors of the Club annually will establish a budget for the operation of the Club.

7.3 Liens. The Club shall have a lien against each Membership for any unpaid Charges owed by a Member, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such Charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the Member, the number of the Membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the Member making payment shall be entitled to be reinstated as a Member in good standing and shall be entitled to a satisfaction of lien to be prepared and recorded at the Member's expense. All such liens may be foreclosed by the Club, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. The Club may also, at its option, sue to recover a money judgment for unpaid Charges without thereby waving the lien securing the same. The Board of Directors reserves the right to report Members who are in arrears on their Club bills to an appropriate national credit reporting agency. Any other liens placed against a Membership shall be junior to the Club's lien.

8. OPERATING AND CAPITAL ASSESSMENTS AND DEBTS

8.1 Operating Assessments. From time to time the Board of Directors of the Club may find it necessary to assess the Members, in addition to dues, fees and other Charges, to cover any operating deficits which may occur. Any assessments to cover operating deficits will be prorated among all of the Equity Members in relation to the amount of dues charged to their respective Membership categories.

8.2 Capital Assessments. In accordance with Section VI.2 of the By-Laws, there shall be no one-time assessments for any single capital expenditures project involving total expenditures in excess of \$200,000, except in the case of a declared emergency, unless such assessment is approved by a majority vote of all the Equity Members entitled to vote on such

proposed assessment. Assessments for any capital expenditures to the golf course shall be voted on by, and prorated equally among, the Equity Island Members. All other assessments for capital expenditures to the Club Facilities shall be voted on by, and prorated equally among, all of the Equity Members.

8.3 Debt. The Club will be responsible for making payments on any debt incurred on behalf of the Club. The Club shall allocate the cost of all payments on any debt service for capital expenditures among the Members in such a manner that:

(a) Any debt service payments for capital expenditures to the golf course shall be prorated equally among all Equity Island Members;

(b) All other debt service payments for capital expenditures to the Club Facilities shall be prorated equally among all of the Equity Members.

9. THE BOARD OF DIRECTORS

9.1 Board of Directors Responsible for Management of Club. The Board of Directors will be responsible for the government and administration of the affairs and property of the Club. In general, the Board of Directors has the authority to accept Members, set dues, fees and other Charges, establish rules and regulations and, control the overall management and affairs of the Club. The Club may not be operated in contravention of the terms and conditions of this Plan or the By-Laws. Refer to Article IV of the By-Laws.

10. OTHER USE PRIVILEGES

10.1 Non-Member Use of the Club Facilities. Use of the Club Facilities by non-members may be permitted from time to time as may be authorized by the Board of Directors of the Club.

11. MODIFICATION OF MEMBERSHIP PLAN

11.1 Board of Directors May Amend Plan. The Board of Directors may, in its sole discretion, amend or modify this Plan from time to time, so long as such amendments or modifications do not materially and adversely affect the rights of the Equity Members. Any amendment or modification which materially and adversely affects the rights of the Equity Members must be approved by a majority of the votes held by the Equity Members so affected. Certain terms of this Plan as listed below may not be amended without concurrence of the Partnership.

11.2 Certain Provisions of Plan May Not Be Amended. This Plan may be amended in accordance Section 11.1 provided, however, that neither the Club nor its Members may at any time, without the prior consent of the Partnership, which consent may not be unreasonably withheld, alter, amend or change this Plan in any manner which may conflict with the terms of the Settlement Agreement.

12. MISCELLANEOUS PROVISIONS

12.1 Carefully Review All Documents. This Plan describes the Membership opportunities offered by the Club and is qualified by the definitive information set forth in the By-Laws, Articles of Incorporation, General Club Rules, and Settlement Agreement. Every person who desires to purchase a Membership at the Club should carefully read this Plan and all of the referenced documents and should consider seeking professional advice to evaluate these documents.

12.2 Rely Only on Information in Plan. No person has been authorized to give any information or make any representation not expressly contained in this Plan and, if given or made, such information or representation must not be relied upon as having been authorized by the Club.

12.3 Memberships Offered Only for Recreational Purposes. Memberships are being offered exclusively for the purpose of permitting persons acquiring Memberships to obtain recreational use of the Club Facilities. Memberships should not be viewed or acquired as an investment, and no person purchasing a Membership should expect to derive any economic profits from Membership at the Club.

12.4 No Registration. This Plan and the Club's Memberships have not been registered with any federal or state agency.

12.5 Binding Effect. This Plan and the provisions contained herein, as amended to the date hereof and as may be amended hereafter, are binding on and shall inure to the benefit of all Club Members (whether in good standing or not), their heirs, successors and assigns, to the same extent and with the same effect as if they were in effect at the time of a Member's purchase of a residential unit or lot on Callawassie Island.

13. TRANSITION MATTERS. The following provisions apply from the date of this Plan through December 31, 2013:

13.1 Non-Resident Dues. Beginning January 1, 2014, the Club will not offer a non-resident dues category. Members paying non-resident dues in 2013 will continue to pay the same dues and fees through December 31, 2013. In October 2013, such Members will select an Amenity Package for the Club's 2014 Membership Year.

13.2 Surviving Spouse Dues.

(a) Prior to the date of this Plan, the Club allowed a limited number of persons whose spouse was a resident Equity Member on or before February 2, 2012 and in good standing at the time of his/her death to elect Surviving Spouse Privileges as described herein. No Member may elect Surviving Spouse Privileges after the date of this Plan and Surviving Spouse Privileges and reduced dues schedule shall cease on December 31, 2013. Members who had elected Surviving Spouse Privileges will revert to the privileges associated with their category of Membership.

(b) A surviving spouse who elected Surviving Spouse Privileges, shall be permitted to use all of the Club Facilities except the golf course and golf practice facilities on a space available basis upon payment of applicable Charges. Such surviving spouse

will be entitled to reserve tennis court times in accordance with rules then in effect and will not be required to pay any court fees for use of the tennis facilities. At the beginning of each Membership Year each such surviving spouse is entitled to receive a maximum of twelve (12) vouchers entitling Immediate Family of such Member to play golf without payment of any greens fee or golf cart fee. Vouchers must be used during the year of issuance and cannot be carried over to another year.

(c) The surviving spouse shall pay dues equal to eighty percent (80%) of the dues charged to Equity Island Members. All other fees and assessments shall be the same as that paid by Equity Island Members. Should the surviving spouse become delinquent (as described in the General Club Rules) the Surviving Spouse Privileges will be suspended and the obligation to pay the full amount of dues will be reinstated.

(d) The cumulative amount of dues that are not paid by a surviving spouse who has elected Surviving Spouse Privileges (i.e., the 20% difference) shall accrue and shall be deducted from the amount that would otherwise be paid to the surviving spouse upon resignation and reissuance of his/her Equity Membership by the Club in accordance with Section 6.6(a). All such dues amounts that are deducted from the amount to be paid to the surviving spouse shall be retained by the Club. In the event that the amount to be paid to the surviving spouse electing Surviving Spouse Privileges upon resignation and reissuance of his/her Equity Membership is not sufficient to pay any unpaid Charges plus interest accrued owed by the resigned Equity Member, then such resigned Equity Member must pay all such Charges prior to the reissuance of his/her resigned Equity Membership. The Club shall have the right to require a Equity Member electing the Surviving Spouse Privilege to grant a mortgage to the Club to secure payment of amounts owed by such Equity Member.

13.3 Senior Dues Category.

(a) Prior to the date of this Plan, the Club allowed a limited number of eligible Equity Members in good standing to elect Senior Dues Status. No Member may elect Senior Dues Status after the date of this Plan and Senior Dues Status and the reduced dues schedule shall cease on December 31, 2013. Members who had elected Senior Dues Status will revert to the privileges associated with their category of Membership.

(b) In order to be eligible to elect Senior Dues Status, the Member must have been an Equity Member on or before February 2, 2012 and remained in good standing for at least fifteen (15) years and be at least seventy-five (75) years of age. If the Member is married then his/her spouse must also be at least seventy-five (75) years of age. If an Equity Member elects Senior Dues Status, then he/she shall be permitted to use all of the Club Facilities on a space available basis upon payment of applicable Charges. Such Members will be entitled to reserve tee times and tennis court times in accordance with the rules then in effect and will not be required to pay any greens fees or court fees for use of the golf and tennis facilities. Such Members will be required to pay golf cart fees for use of the golf course.

(c) If the Equity Member who elected Senior Dues Status is not married, then at the beginning of each Membership Year such Member is entitled to receive a

maximum of twelve (12) vouchers entitling Immediate Family of such Member to play golf without payment of any greens fee or golf cart fee. Vouchers must be used during the year of issuance and cannot be carried over to another year.

(d) The Equity Member electing Senior Dues Status shall pay dues equal to eighty percent (80%) of the dues charged to Equity Island Members. All other fees and assessments shall be the same as that paid by Equity Island Members. Should the Member become delinquent (as described in the General Club Rules) the Senior Dues Status will be suspended and the obligation to pay the full amount of dues will be reinstated.

(e) The cumulative amount of dues that are not paid by a Member who has elected Senior Dues Status (i.e., the 20% difference) shall accrue and shall be deducted from the amount that would otherwise be paid to the Member upon resignation and reissuance of his/her Equity Membership by the Club in accordance with Section 6.6(a). All such dues amounts that are deducted from the amount to be paid to the Member shall be retained by the Club. In the event that the amount to be paid to the Equity Member electing Senior Dues Status upon resignation and reissuance of his/her Equity Membership is not sufficient to pay any unpaid Charges owed by the resigned Equity Member, then such resigned Equity Member must pay all such Charges prior to the reissuance of his/her resigned Equity Membership. The Club shall have the right to require an Equity Member electing the Senior Dues Status to grant a mortgage to the Club to secure payment of amounts owed by such Equity Member.

EXHIBIT A
COPY OF SETTLEMENT AGREEMENT AS AMENDED

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and)
GRACE I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

GREGORY L. MARTIN and)
REBECCA L. MARTIN,)

Defendants.)

CIVIL ACTION NO. 2012-CP-07-03218

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MARK QUINN and)
SHERRY B. QUINN,)

Defendants.)

CIVIL ACTION NO. 2012-CP-07-03216

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, submits this memorandum of law in support of its motion for summary judgment.¹ For the reasons discussed herein, summary judgment in favor of CIMC is warranted.

BACKGROUND

This is an action commenced on behalf of CIMC, seeking recovery of unpaid dues, fees, and assessments² owed to it by the Defendants in the above-captioned cases (collectively referred to as "Members"), in connection with their memberships in CIMC.

FACTS

Callawassie Island is a private, members-only island, located between Beaufort and Hilton Head. Its members enjoy many amenities on the island, including: swimming, tennis and golf facilities; as well as a clubhouse and dining room. The Club was originally formed in the 1980's, and was known at that time as the Country Club of Callawassie. In 1994, the Club's assets were purchased and operated by The Callawassie Island Company, L.P. ("CIC"). During CIC's control, the Club was known as the Callawassie Island Club. In 1999, CIC and its membership overwhelmingly approved a transfer agreement allowing the members to purchase the club's assets. Although CIMC was formed in 1999 for the purpose of taking title to the assets, the transfer did not occur until June 29, 2001. CIMC is a 501(c)(7), mutual benefit nonprofit corporation, organized under and existing pursuant to the laws of the State of South Carolina.³

Each of the Members purchased a membership in the Callawassie Island Club prior to the

¹ As the above-captioned cases involve substantially similar facts and causes of action and the attorneys for both the Plaintiff and the various Defendants are the same in each case, CIMC is filing this single Memorandum in support of its Motions for Summary Judgment to avoid unnecessary repetition and confusion.

² For the sake of brevity, subsequent references to "dues" in this memorandum shall include all costs sought by CIMC.

³ The foregoing facts pertaining to the creation of CIMC and its acquisition of the assets are set forth more particularly in that certain Affidavit of G. Harman Switzer 3rd, attached hereto as Exhibit "A" and incorporated herein by reference.

transfer of the assets;⁴ remained members following said transfer; paid a \$4,000.00 assessment required of the members subsequent to the transfer; and were issued a membership certificate in CIMC. Each of the Members likewise continued to enjoy the use of CIMC's amenities and the privileges and benefits of membership for many years following the transfer.

The Members paid dues, fees and assessments to CIMC following the transfer of assets until their purported resignation and/or allegedly required expulsion. The Members allege that their responsibility for the payment of ongoing dues ceased upon resignation, or alternatively, that had they been expelled for non-payment, they would be relieved from further obligation. CIMC contends that neither resignation, nor expulsion, would automatically result in a termination of Members' obligation to pay dues; relying upon its governing documents which clearly state such obligation continues until the memberships are re-issued to a new owner.

CIMC commenced these actions seeking recovery of ongoing dues owed by the Members. In each of the cases, CIMC filed a Motion to Dismiss or for Judgment on the Pleadings, which motions were heard on November 8, 2013, by the Honorable Carmen T. Mullen, who dismissed the Members' second, third, fifth and sixth causes of actions.⁵ The Members' only remaining counterclaims against CIMC are for breach of contract and misrepresentation.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

⁴ Defendants Frey purchased on or about September 29, 1995, Defendants Martin purchased on or about February 15, 2001, and Defendants Quinn purchased on or about July 4, 1997.

⁵ A proposed Order was submitted on January 16, 2014.

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ARGUMENT

Summary judgment on the claims asserted by CIMC is appropriate because the CIMC governing documents⁶ are unambiguous and obligate the Members to continue to pay dues associated with the memberships until the memberships are re-issued. Accordingly, the documents must be interpreted by this Court and given their plain and ordinary meaning. Since it is uncontroverted that the memberships in question have yet to be re-issued, the Members' are justly charged with the payment of on-going dues.

Regardless of when the Members first acquired their respective memberships, they are bound by the current controlling documents,⁷ which have been duly adopted and amended from time to time. These documents, and indeed all of the Governing Documents dating back to the Members' initial acquisition, universally require a member to pay dues until his or her membership is reissued. The following excerpts leave no room for contrary interpretation:

Relevant Plan Excerpts:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club ***until his or her equity membership is reissued (emphasis added)*** by the Club. (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendants acquired Membership*).

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The term governing documents shall mean The Plan for Offering Memberships dated April 1, 1994, Rev. July, 1994, and the By-Laws and General Club Rules issued by CIC; together with later versions, as amended and adopted by CIMC during the period of time in which Defendants owned their respective memberships (the "Governing Documents").

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As of the date of this Memorandum, the current controlling documents are comprised of the Plan for Offering Memberships effective July 1, 2013, the By-Laws for the Callawassie Island Membership Club effective January 1, 2014, and the General Club Rules effective of even date therewith, copies of which are attached hereto as Exhibit "B" and incorporated herein by reference.

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club. (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Relevant Excerpt from By-Laws:

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (emphasis added) by the Club. (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendants acquired Membership*).⁸

Relevant Excerpts from the General Club Rules:

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums)(*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendants acquired Membership*).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Although the Members contend that their purported resignations and/or allegedly required expulsion should terminate any further obligation to CIMC, they fail to reference any provision within the documents that stands for such a proposition. Rather, they have made an unsupported leap in logic that resignation or expulsion by right excuses them from further liability. This conclusion is

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The foregoing language has remained substantially the same in later enacted versions of the By-laws, until the most current Amended and Restated By-Laws of Callawassie Island Members Club, Inc. dated January 1, 2014, which leaves recitation of this policy to the current Plan.

in direct contradiction of the Governing Documents as illustrated by the foregoing excerpts, which show a clear and consistent policy and intent to hold members accountable for such charges until their membership is re-issued.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Whether the contract is ambiguous is a question of law for the court. Id. "A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009) (quoting S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001)). In the face of such clear and unequivocal language, the Court must conclude that dues continue to be the responsibility of a member until such time as his or her membership is re-issued.

The Members point to S.C. Code Ann. §33-31-620, of the South Carolina Nonprofit Corporations Act (the "Act"), for the proposition that assigning liability for continuing obligations post resignation is statutorily prohibited. The Defendants' argument conveniently ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes the legislative intent patently clear. Members are to be held accountable for previously agreed upon continuing obligations, even beyond resignation. Since the Members agreed to be bound by the Governing Documents, which unambiguously and consistently obligate them to pay dues *until such time as their membership reissues*; the Act can not be misconstrued as to exonerate them from their commitment.

As the plain language of the Governing Documents is clear and unambiguous and the Members have failed to present any evidence that the amounts referenced within the affidavits of Jeff Spencer and Ehrick K. Haight, Jr. are inaccurate in any of their particulars, summary judgment in favor of CIMC is appropriate. Just as CIMC is entitled to summary judgment on its claims against the Members, it is also entitled to summary judgment on the remaining defensive counterclaims asserted against it by the Members. Despite ample opportunity to conduct discovery, the Members have failed to produce any credible evidence in support of their breach of contract or negligent misrepresentation claims.

AS TO DEFENDANTS' COUNTERCLAIM

FOR BREACH OF CONTRACT

With respect to the breach of contract claim, it is uncontested that the Members contractually agreed to be bound by the 1994 Plan for Offering Memberships (as amended); owned a membership interest in CIMC; enjoyed the benefits thereof for many years; and, until the time of their purported resignations, paid dues, fees and assessments to CIMC. It is also uncontroverted that their respective memberships have not been re-issued and therefore, the Members continue to be bound by the terms and conditions contained in the Governing Documents. Although the Members claim to have been charged for amounts "greatly exceeding" the amounts rightly due, their contention is based on the presumption that either resignation or expulsion relieved them of any further ongoing liability. As that contention is unsupported by the Governing Documents, no breach has occurred and summary judgment is appropriate.

AS TO DEFENDANTS' COUNTERCLAIM

FOR NEGLIGENT MISREPRESENTATION

In their Amended Answer and Counterclaims, the Members assert for their fourth cause of action, a claim for negligent misrepresentation. In order to recover upon a claim for negligent

misrepresentation, the Members must show: 1) a false representation made by CIMC to the Members; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Members; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A false representation must be false at the time it was made. GSM Dealer Services, Inc. v. Chrysler Corp., 32 F.3d 139 (4th Cir. 1994). Moreover, the representation cannot be based on unfulfilled promises or statements of future events. Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

As stated hereinabove, the Members all obtained memberships prior to CIMC acquiring the club assets in 2001. It is therefore a legal impossibility for CIMC to have made any misrepresentation that would have induced the Members to acquire a membership. By the time CIMC acquired possession and control of the assets and commenced the management thereof, the Members had already obligated themselves for the payment of dues fees and assessments until their memberships reissued, making any "justifiable reliance" argument moot and negating an essential element of their claim.

Further, the litany of misrepresentations CIMC is alleged to have made appear to be predicated on the Members' breach of fiduciary duty claim which was dismissed by the Hon. Carmen T. Mullen at an earlier hearing. (*See Footnote 4, Supra*). Even assuming the truth of the Members assertions, namely that: members were treated disparately, not allowed to resign, charged inconsistently, purchased memberships of no value, had fees inconsistently applied, or were denied voting rights (all of which CIMC expressly denies); the Members have failed to produce any evidence to substantiate that such alleged misrepresentations were made by CIMC following

its acquisition of the assets, or that if made, that they were false, in breach of any duty owed by CIMC, or resulted in justifiable reliance leading to a pecuniary loss by the Members.

Further, to the extent any such actions and/or representations were taken or made by CIMC, they fall under the business judgment rule. The Act grants comprehensive and wide-ranging authority to Boards for the settlement of compromised claims. As such, any decision by CIMC to write-off bad debts in association with memberships no longer affiliated with real property on the island was expressly permitted by S.C. Code Ann. §33-31-101, *et seq.*

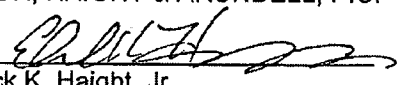
The Act generally empowers nonprofit corporations to take all reasonable actions consistent with its governing documents in managing the operations of the organization. S.C. Code Ann. 33-31-302. Additionally, the Act establishes the standard of care owed by directors, and allows the directors to rely upon the advice of counsel or other persons with specific knowledge regarding issues before the entire Board. S.C. Code Ann. §33-31-830.

Courts should not inquire into *intra vires* actions of a nonprofit corporation which require the business judgment of the directors, when such actions are taken within the organization's authority and done in good faith, and absent fraud, self-dealing, or unconscionable conduct. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). A person challenging whether a board acted in good faith bears the burden of proof, irrespective of that party's alignment as a plaintiff or defendant. Id. Here, the Members have not alleged fraud, self-dealing, or unconscionable conduct and offer no evidence that would authorize the Court's review of the CIMC actions. Without such evidence, the Members fail to substantiate that: 1) any false representations were made by CIMC to the Members; 2) CIMC wrongfully gained any pecuniary interest in making such alleged statements; 3) CIMC violated any duty of care; 4) the Members justifiably relied on the representation; or 5) the Members suffered of a pecuniary loss as a direct and proximate result of reliance on the representation. Based on the foregoing, summary judgment must be granted.

CONCLUSION

For the reasons discussed herein, CIMC is entitled to summary judgment. The unambiguous language of the governing documents requires members to pay dues until the membership is transferred, and the Members have offered no legitimate basis for nonpayment. Moreover, the Members' counterclaims are fatally defective. Nonprofit corporations in South Carolina are given wide ranging authority, and it is incumbent upon the challenging party to show fraud, lack of good faith, or incompetence in the club's actions before courts will inquire into the inner workings of an organization. The Members have not met the high burden required of them. Finally, the Members have no evidence to support their counterclaims. Therefore, CIMC is entitled to summary judgment.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

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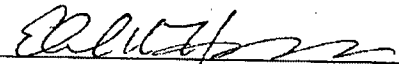
(843) 522-2400

Attorneys for Counterclaim Defendant Callawassie Island
Members Club and Third Party Defendants

Beaufort, South Carolina
March 6, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 6th day of March, 2014.

By: 
Ehrick K. Haight, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF G. HARMAN SWITZER, 3RD

PERSONALLY appeared before the undersigned Notary Public G. Harman Switzer, 3rd, a Member of the Board of Directors for The Callawassie Island Members Club, Inc. ("CIMC"), who having first been duly sworn, deposes and says as follows:

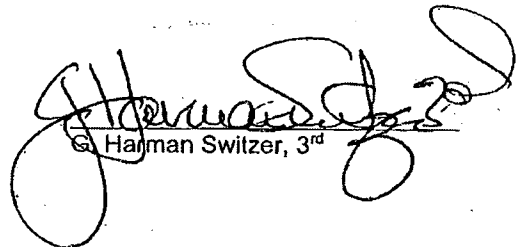
- (1) That I served on the Board of Directors for CIMC from its inception until March of 2002 ("Initial Term"), and was familiar with the business operations of CIMC during said Initial Term.
- (2) That I currently serve on the Board of Directors of CIMC and have done so since March of 2009.
- (3) That in addition, I served on the Board of Directors for The Callawassie Island Property Owners Association, Inc. ("CIPOA") from late 1996 until October of 1998.
- (4) That in the foregoing capacities, I am familiar with, and have personal knowledge of the records and business operations of CIMC and its Board.
- (5) That CIMC is a 501(c)(7) non-profit corporation, organized and existing in the State of South Carolina, and formed by a vote of the members of the Callawassie Island Club (the "Club") for the purpose of acquiring all, or substantially all of the assets of The Callawassie Island Club, Inc. ("CIC"), as well as certain real property relating to CIC and owned by Callawassie Island Company, L.P. ("Developer"); and for continuing the operation and management thereof following the transfer.
- (6) That CIMC did accomplish the purpose set forth in Paragraph 5 above by acquiring all, or substantially all of the Club assets from CIC and the Developer on or about June 29, 2001 (the "Closing Date") by Limited Warranty Deed filed with the Register of Deeds for Beaufort County, South Carolina on July 2, 2001 in Deed Book 01440, page 0817.

EXHIBIT "A" TO MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FILED BY THE
CALLAWASSIE ISLAND MEMBERS CLUB, INC. IN CASE NO.'S 2012-CP-07-03209, 2012-CP-07-03218 AND
2012-CP-07-03216

- (7) Prior to said transfer, the Club was managed and operated by CIC (whose Board of Directors was under the control of the Developer), which entity continued to issue memberships in the Club, up to the Closing Date.
- (8) That to the best of my knowledge and belief, upon due inquiry and investigation, neither CIMC, its officers or directors, made any representations to members acquiring a membership in CIC, regarding the value of such memberships, or the ability to resign from such memberships, nor would they have had the authority to do so prior to the Closing Date.
- (9) The "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, and all subsequent versions and/or amendments thereto, obligated members to continue to pay dues, fees, assessments and other charges until their memberships are reissued.
- (10) That the "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, additionally stipulated that members with more than one membership would have to pay dues on all of his or her equity memberships after the Closing Date.
- (11) Following the Closing Date, the Club became known as The Callawassie Island Members Club, Inc. doing business as The Callawassie Island Club.
- (12) For a period of approximately two (2) years following the Closing Date, the CIMC Board, on advice of counsel and in exercise of the power and authority granted it in the By-laws and by statutory authority, did negotiate settlements with various members who (a) owned memberships unaffiliated with real property on Callawassie Island, (b) who were in default and (c) had placed their memberships on the CIMC resale list; whereby said members were allowed to concede such memberships in settlement of their obligations and forfeit any return of their equity.

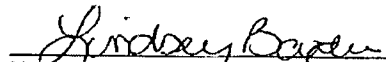
- (13) The CIMC Board's decision to make these proffers of settlement was triggered, in part, by two factors, namely, (a) the accrual of dues against equity would no longer be an option for members on the resale list after the Closing Date, and (b) the "Plan for the Offering of Memberships in the Callawassie Island Club," dated April 1, 1994, Rev. July, 1994, required payment of dues on multiple memberships following the Closing Date; both of which impacted upon those individual members who held more than one membership and/or whose membership was not affiliated with real property on Callawassie Island.
- (14) At some time in 2010, the CIMC Board made a similar offer to all members holding memberships unaffiliated with real property, who had placed their memberships on the resale list, for the primary purpose of eliminating memberships unaffiliated with real property and to minimize or eliminate the prospect of future bad debt associated with such memberships.
- (15) The foregoing offers of settlement were made in good faith, in the absence of any fraud, self-dealing or other unconscionable conduct, to all members in so situated as a compromise of debt justly owed which the CIMC Board determined was in the best interest of CIMC.

FURTHER DEPONENT SAYETH NOT.



G. Harman Switzer, 3rd

SWORN TO AND SUBSCRIBED BEFORE me
this 3rd day of March, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission expires: September 5, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc.

Plaintiff,

vs.

Michael J. Frey and Grace I. Frey

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2012-CP-07-3209

**MEMO IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

2014 MAY 19 PM 12:55

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

The Plaintiff's motion for summary judgment should be denied because it is factually inaccurate and because there exist in this case numerous issues of material fact which should be determined by a jury.

STANDARD OF REVIEW

Our Supreme Court has recently made clear that virtually any evidence at all that demonstrates a dispute exists in the case is sufficient to require the denial of a summary judgment motion. Further, the burden of proving that no fact exists is upon the moving party (the Plaintiff) in this case so that the non-moving party is not denied an opportunity for the matter to be heard in full by a jury, "Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451,

455-456, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005).

I. AS TO THE PLAINTIFF’S CLAIM THAT THERE EXISTS NO ISSUE OF MATERIAL FACT WITH REGARD TO EVEN A SINGLE ELEMENT OF THEIR CLAIM

The Plaintiff’s request for the court to determine as a matter of law that there does not exist a mere scintilla of evidence that there is an issue of material fact for the jury is unsupportable in this case.

The Plaintiff’s argument and Complaint in this action rely upon a number of false and unsupported allegations. First, in their motion for Summary Judgment the Plaintiff asserts that the agreement signed by Defendant Michael Frey in 1995 (apparently referring to the Application for Membership and Purchase Agreement attached to the Complaint as Exhibits A-1 and A-2) included a provision that the Defendants were agreeing to be bound by such covenants, rules, and other obligations “as same may be amended from time to time.” (See Plaintiff’s Motion to Dismiss at b.) This is false, as a careful review of those Exhibits to the Complaint will show, and the referenced language is not accurately reflected. Furthermore, the Defendants in fact never entered into any agreement with the Plaintiff, but instead Defendant Michael Frey signed an Application

for Membership with the Callawassie Island Club in September 1995 (See Exhibit A-1 to the Complaint) and Defendant Grace Frey signed only as "Applicant's Spouse". In fact the 1994 Plan of Offering specifically states that "The Club may not be operated in contravention of the terms and conditions of the Membership Plan." (p. 14 "Operation of the Club"). The 1994 Plan for the Offering of Membership ("The Plan for Offering") goes on to state that after the "Closing" date the Membership Plan may be amended in accordance with the By-Laws (p. 17 Plan for Offering 1994). A review of the By-Laws indicates that the Board of Directors is given "Duties and Powers" do not include the right to change the basic rights of membership by making inalienable memberships nor are they authorized to refuse to allow meaningful resignation, or refuse to enforce expulsion terms, nor to refuse to deduct amounts owed from membership equity only. Instead the By-Laws set forth a defined list which includes such things as altering the Club Rules with regard to the "use of the Club and all its facilities", managing employees, determining the "amount of dues, fees and other charges", and "elect officers". (see page B-4 1994 By-Laws). The allowed actions are specific and narrow.

In its motion the Plaintiff also asserts (at 'c.' of the Plaintiff's motion) that the Defendant agreed to continue to pay dues and fees until the membership is reissued, though the Plaintiff does not quote a provision nor cite any authority for this claim. In fact the document signed by the Defendant does not have such a provision (See Exhibit A to the Complaint), and as will be discussed in detail below, the Defendant and the Court in this case have good reason to believe otherwise. Regardless, the Plaintiff has not met its burden because it has provided no evidence of agreement to the obligations claimed. case requiring their motion, if not the case, be dismissed.

Next the Plaintiff in their motion asserts that the Callawassie Island Property Owner's Association (CIPOA) Covenants (referred to as the General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association Inc.) require that the Defendant remain a member in good standing (See Plaintiff's motion at f. and at paragraphs 7, 8 and 9 of the Complaint). This again, is simply false. What are referred to in the Plaintiff's Complaint as "the "Declaration" in fact explicitly excepts and exempts persons such as the Defendant(s) who purchased property prior to December 2001. (See Exhibit B). The language of the covenants states that the requirement to maintain a membership in good standing applies to people "who purchase property on Callawassie Island after December 1, 2001..."¹ (Emphasis Added) This is further supported by the deposition testimony of past CIMC Board President Karen Norwood that referred to such persons purchasing prior to December 2001 (such as the Defendant herein) as being "*grandfathered*" (page 11 line 1 Norwood deposition). Clearly, the obligation on which the Plaintiff relies is not applicable to the Defendant, and the Plaintiff's reliance upon these provisions ("Declarations") to assert a claim for summary judgment evidences that there is at a minimum a genuine issue of material fact in the

The 1994 Plan of Offering also requires the Club to reissue memberships from the waiting list as "every forth equity membership issued in that category will be a resigned membership from the waiting list for that category." (P. 7 1994 Plan for the Offering of Membership – "Transfer of Equity Membership"). This requirement, however, has not been followed as the waiting list or "Resale List" contains dozens of members in order

¹ Section 5.7.2 of the Amended and Restated General Declaration

ahead of the Defendants that did not "resign" but were conceded or expelled members (see Exhibit D).

Assuming that the Defendant is in fact a member of the Plaintiff, the majority of the evidence (although only a mere scintilla is required) further supports that the Defendant is not entitled to the damages that it seeks in this case for several reasons. First, the Rules under which the Plaintiff contends the Defendant is obligated, the 2001 General Club Rules, which the Plaintiff cites at point (f) in its motion, state that "Any member whose account is not settled within the four months' period following suspension shall be expelled..." Rule 13.3.1. (Emphasis Added) See Exhibit C - 2001 General Club Rules Excerpts. Use of the word "shall" established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). Accordingly, even if a member of the Plaintiff the Defendant² had the right to be expelled from CIMC once his membership had been suspended for four months due to delinquency. The policies of CIMC has evidenced that they in fact do expel members and acknowledge that they have no further obligations. The 1994 By-Laws also anticipated members being expelled and note that such members "shall not again be eligible for membership" (p B-15 1994 By-Laws). Once a member is expelled, he or she is no longer a CIMC member and thus has no financial obligations to CIMC per Rule 14.1.5 (p. 9 General Club Rules 2001). CIMC 30(b)(6) designee Harmon Switzer and past Board President Karen Norwood has testified in fact that suspension is automatic after a delinquency of 3 months. (See Deposition Excerpts -- Switzer and

² Again it is not admitted that they are members of the Plaintiff but for the purposes of this Summary Judgment Motion only that is taken as true

Norwood see also the 1994 Club Rules at C-2(item 6)). Evidence further suggest that eh Club previously adhered to the automatic suspension and mandatory expulsion Rules as can be seen on the May 22, 2012, Resale List, (Exhibit D) at least fifteen members have been expelled from CIMC. Thus, CIMC has expelled some members but has not expelled all members who meet the criteria for expulsion. Expelled members were sent expulsion letters such as the letters contained in Exhibit E.

The Plaintiff has contended that Club Rule 14.2.3 requires that expelled members continue to be liable for ongoing dues and fees but this is contradicted by the plain language of that provision. First the provision does not include expelled members but lists on Terminated and suspended members, and second the provision indicates that such are "liable for any unpaid club account" at least implying a reference to that amount unpaid at the time of termination (See 2001 Club Rules p. 9).

The 1994 Club Rules also evidence that "Any member may terminate membership in the Club" with the only liability being those matters left unpaid at the time of the termination. There is no mention of any ongoing liability whatsoever. Again, this is evidence that the documents in question which have in the past been understood to support termination or even expulsion when a member is delinquent, further support the Defendants claims and defenses in this case.

The Defendant has offered an affidavit in this case in which he asserts that he was not obligated to pay dues fees and assessments from the Club after 4 months of delinquency. (See Exhibit A to this Memo). The Defendant has stated in his affidavit that the terms of the agreement of the parties in any event would never result in a loss or claim against him for more than the equity he obtained in the Club. The Defendant was

denied the opportunity to concede his membership offered to other similarly situated members. The Defendant also states that he has never voted to change these essential and important rights (See Affidavit of the Defendant- Exhibit A to this Memo).

Furthermore, others being sued by CIMC have supported the proposition that they were in fact told by agents of the Club that they could resign at any time and/or that they could incur no more than 4 months liability in any event. For instance, Mr. Dick Mercier has testified that he was told by agent Lee Allen, in 1989 that he could resign at anytime prior to the drafting of any of the modern day governing documents (See deposition of R. Mercier p. 46- 47). He further testified that the Club³ at the time he joined was a loosely formed organization with few assets.

Ellen Padgett worked in the Callawassie Sales Office, was an acting Membership Secretary, and maintained the Resale List, and testified in her deposition that CIMC would inform her when a member had been expelled and was thus no longer a member. (See Padgett Deposition P. 8, 88-90, 108). It is well established by testimony of numerous witnesses (including the Plaintiff's own 30(b)(6) witness) and in the many documents prepared by and signed by CIMC in which Ellen Padgett was referred to as the membership secretary, membership administrator, membership coordinator that she acted for many years as an agent of CIMC, specifically with regard to membership issues. Ms. Padgett in fact dealt with several specific matters alleged as part of the defense in this action, including, but not limited to, her attendance and involvement in the Defendant's purchase of membership in the Club. Both Ronnie Dennis and Jeannette Dennis testified that they spoke to her specifically with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months

³ "Club" refers to the Country Club of Callawassie

of delinquency, (J. Dennis depo p. 18 ln 23 – 25; and R. Dennis depo p. 24ln 22 thru p 25 ln 9; p 27) Ms. Padgett also testified to the facts surrounding the Club's action for years secretly allowing some members to concede and/or resign memberships, as to the extremely slow progression of the Club Resale List (which Ms. Padgett was tasked with maintaining), as to the Club's change in policies from how the Club was run by the Developer, as to her understanding of the Club Rules and what constituted the governing documents of the Club (which she was tasked with providing to new members), as to how resignations were handled and virtually all other aspects of membership.

As further evidence that Ellen Padgett was serving as agent regarding membership for the Plaintiff even after 2001, in a letter to Mr. and Mrs. Homer Knearl dated November 13, 2002⁴, Bill Hawkins, then CIMC President, referred to Ms. Padgett as "Ellen Padgett, Membership Administrator, CIMC". Numerous other documents support that Ellen Padgett was held out to the members (and the Defendants) as the agent of the Club. For instance, the 2004 Intent to Resign Form signed by Mr. and Mrs. Michael Aulton states that the form should be returned to "Callawassie Island Members Club, Inc. ATTN Ellen Padgett" and the note written on the bottom seems to indicate it was sent from Ms. Padgett as well. In a September 20, 2006, email to Sandy Aulton, Ms. Padgett refers to "her involvement with the Club as membership director" In a May 13, 2002 letter to Ralph Zezza. Bruce McGinn, the general manager of Callawassie Island Club (CIC), CIMC's predecessor, referred to Ellen Padgett as the "C.I.C. Membership Coordinator."

In her deposition, Ellen Padgett testified that she acted as membership secretary and handled all CIMC memberships and that she was called the membership secretary.

⁴ After the 2001 date the Plaintiff claims it purchased the predecessor Club assets

Padgett Dep.p.8, lines 20-24. Ms. Padgett fulfilled the following membership secretary functions:

- Made membership certificates, got them signed, and kept them (Padgett Dep.p.22, lines 8-20);

- Maintained the member mailing list (Padgett Dep.p.22, lines 8-20);

Provided CIMC with the resale list to be published in the minutes (Padgett Dep.p.24, line 18-p.25, line 4);

- Maintained a hard copy of the resale list (Padgett Dep.p.26, line 23-p.27, line 11);

- Attended some Club marketing team meetings (Padgett Dep.p.30, lines 5-12);

- Fielded calls from members (Padgett Dep.p.38, lines 8-18);

- Mailed out proposed membership plans to all the members (Padgett Dep.p.40, lines 11-20);

- Maintained membership applications (Padgett Dep.p.32, line 22-p.33, line 1);

- Made copies of documents to be sent to members regarding votes, stuffed envelopes and mailed them out (Padgett Dep.p.41, line 21-p.42, line 8);

- Received the calls and letters requesting to be on the resale list (Padgett Dep.p.45, lines 7-17);

- Maintained files with letters from members (Padgett Dep.p.63, line 23-p.64, line 4);

- Maintained copies of membership plans, applications, and other documents to be given to property purchasers (Padgett Dep.p.70, line 7-p.72, line 21);

- Would switch membership privileges from golf to social (Padgett Dep.p.76, line 19-p.77, line 5);

- Notified accounting of membership changes (Padgett Dep.p.79, lines 8-20);

- Provided information, as requested, for committee meetings (Padgett Dep.p.95, line 24-p.96, line 5);
- Started and maintained the resale list (Padgett Dep.p.108, lines 5-6) and
- Was “very familiar” with the Plan for Offering of Memberships, General Club Rules, and By-Laws (Padgett Dep.p.135, lines 3-17).

Further, members of CIMC have testified that they believe Ellen Padgett was an agent of CIMC. For example, Sandy Aulton testified that Ellen Padgett was the “Club Manager and not a salesperson.” S. Aulton Dep.p.35, lines 3-4. She also described Ellen Padgett as the “membership person.” S. Aulton Dep.p.52, lines 14-16. In addition, Michael Aulton stated that Ellen Padgett was the manager of membership for the Club. M. Aulton Dep.p.49, line 15-p.50, line 2; p.84, line 17-p.85, line 4. Further, fellow Defendant Ronnie Dennis testified that Ellen Padgett was the Membership Director of the Callawassie Island Club. (Dennis Dep.p.20, lines 11-15).

Finally, the Rule 30(b)(6) designee Harmon Switzer stated that while he did not know if she was employed by CIMC per se, Ellen Padgett fulfilled the roles of office manager and membership administration. 30(b)(6) Dep.p.75, lines 11-17. The 30(b)(6) designee testified that after the 2001 asset transfer from the developer to CIMC, Ellen Padgett “had various roles at the sales center or welcome center, probably that of record keeper, management of member correspondence. How that worked as to whether it was an administrative services contract or not, I’m really not aware of, but she was always around the office and handling either billing or membership issues, questions, brochures.” 30(b)(6) Dep.p.76, lines 10-17. The 30(b)(6) designee could not say when she was no

longer doing any of these services, noting that "[i]t was always a fluid arrangement."

30(b)(6) Dep.p.77, lines 9-16.

Pursuant to the doctrine of apparent authority, a principal is bound by the acts of a person or agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. E.g., Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). Further, agency may be implied or inferred and may be shown directly or circumstantially. E.g., Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982). Indeed, "such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997) (quoting 3 AM.JUR.2d Agency § 79, at 584 (1986)).

In the instant case, Ms. Padgett fulfilled all of the functions of a membership secretary or administrator for CIMC. Accordingly, any person who dealt with her — prospective member or current member — would believe that Ms. Padgett had authority to act as membership secretary or administrator for CIMC. Further, CIMC did much more than passively permit Ms. Padgett to appear to a third person as its agent. CIMC actually stated that she was the membership administrator for CIMC.

The point of Ms. Padgett is expanded on to this degree not only because several witnesses, have testified that she represented to them that they could have no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact *require expulsion after 4 months*. In fact at pages 146 and 147 of her

deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (p. 146 ln 8 – p 147 ln 19 Padgett Depo) If this is not an admission by the Plaintiff requiring judgment on this issue it is at least enough to create a genuine issue of a material fact such that the Plaintiff's motion should be denied.

Ms. Padgett also testified with regard to the members on the Resale List stated as Expelled or Conceded that it was when the members took over (2001) that they put all "these expelling and conceded happened on this- were put here on this list after the members took over." (p. 133 ln12-13 Padgett Depo). When questioned about the basis for expulsion Ms. Padgett indicated that it was because "they owed so much money..." (P.134 ln 10 Depo Padgett).

Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3., Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (See Padgett depo p. 135 ln 23 thru p. 147). These documents all support, or at least can reasonably be interpreted to support, the position of the Defendant in this matter thereby requiring a denial of the current motion of the Plaintiff.

In addition, James Carling, who served on the CIMC Board from approximately 2000 to 2007 as President and Treasurer (pp. 7, 8 & 57 Carling depo) at different times, and then again on the board in 2010 serving on the finance committee, testified to several fact which support the claims of the Defendants and which compel denying the Plaintiff's motion. First, he testified that, although he was serving on the finance board during the

time a settlement was reached with the Developer (CIC) that he did not know the details of that settlement and that the terms of that settlement were not discussed with the Finance Committee. (p.16 ln 23 -p17 ln 14 depo Carling).

In his deposition, Mr. Carling acknowledges that there have been past offers made to members for them to concede their membership while he was on the Board, but that he did not know the specifics of the terms or situations of those offers (p.17 ln 15 - 18 ln 25). Mr. Carling stated that although he did not know, he wouldn't think that persons that conceded memberships would continue to pay dues and fees. (p.21 ln 17-18 depo.). In his deposition Mr. Carling identified a letter (Exhibit F) signed by him on behalf of the Club to Bernard Carpenter in which he references 13.3.1 of the Club Rules (See Exhibit C) and confirmed that members who do not bring their accounts current within four months "Following suspension they're expelled from the club, yes." (p.24 ln 15 - ln 24 and p.27- ln 15 - p28 ln 11. depo Carling). Mr. Carling again confirms this 4 month suspension followed by expulsion when asked in reference to the quoted letter: "Would you agree that the—the rule at that time was that a member would -- would be expelled from the club if they were suspended for more than four months and did not settle their accounts? Answer: Yes." (P. 30 ln 6 -18 depo Carling) and would not again be eligible to be a member (p 30 ln 12- 18 Carling Depo). (See also Exhibit F)

Mr. Carling also testified that during his time on the board that a member could not resign. (Depo p. 30 ln 23 to p 31ln 4). He elaborated on this statement stating that he would have told someone trying to resign that they "Can't do it." (p.44 ln 15 Depo Carling).

Another past CIMC Board President, Karen Norwood, (p. 3 In 20-21 Depo Norwood) also testified that members simply *are not allowed to resign* (p.11 In 12-13) (emphasis added). This policy of refusal to allow resignation is in violation of state law. As previously mentioned in this Memo, CIMC Board President Norwood also testified that persons acquiring membership prior to the 2001 passage of the CIPOA Covenants were “grandfathered” (P. 28 In. 13). Ms. Norwood testimony also supports the claims of the Defendant that the Plaintiff was reaching secret and concealed deals to allow members to concede their membership to the Club (p55. In 22 –p 56 In 1). Most significant in Ms. Norwood’s deposition is that she confirms that when the Club changed the 13.3.1 language from “shall be expelled” to “may be expelled” it was done without discussion among the Board and without presentation to the members of the Club. (P. 82 In 12 thru p84 In 19). And that the change was made because they did not like the previous language which suggested that a member would “**absolutely have to be expelled**” (emphasis added) (see p.84 In 16 Norwood deposition) and the Club wanted to change that. This explanation presents far more than a scintilla of evidence that the Defendant’s interpretation of this provision⁵ is warranted in this case. It also supports that these changes were not properly made, and certainly not done by a vote of the Defendant or even the members.

Current Board Member, Secretary and Committee Member, (P 6 In. 3- 8 depo Kilian) Phil Killian testified in his deposition that members are suspended after 60 or 90 days (P 72 In 8 -12) but claimed he was unaware of any member that has ever been expelled (p. 76 In 10-12). Mr. Killian also was unable to explain when or how the 13.3.1 Rule language changed from “shall” to “may”. (P. 80 In 10 –In 21 depo Kilian). Mr.

⁵ Again, it is not admitted that these provisions apply to defendant Mercier as contended by the Plaintiff

Kilian also admitted that under the definition of "resignation" being put forth by CIMC in the current action that resignation in fact provides no benefit to the member (P. 94 ln.16 depo Kilian).

In addition the Defendant hereby provides the court with letters of concession or expulsion relative to Ralph Zezza, Homer Knearl (November 13, 2002), Phillip Thomas (April 14, 2010), Margaret Brice, McBee Butcher, Marshall Field, Jaqueline Leffers, John Reid (Expulsion- December 23, 2004), Jacquelyn Wallace –Expulsion -October 17, 2003).

As to the 1994 Plan for the Offering of Membership and Exhibits thereto

A. The 1994 Plan For the Offering of Membership

The Defendants have also included the 1994 Plan for the Offering of Membership which supports their defense and counterclaim at p.8 that when a resigned membership is reissued the equity member receives back either the equity contribution paid or 80% of the equity amount paid by the new purchaser (whichever is greater) and that if any amount is owed it is deducted from the amount to be paid to the resigned member. Again, the document does not say that the member is obligated beyond that amount and clearly at least creates an issue of fact as to whether or not they are so obligated. In fact, nowhere in any of the evidence submitted in the case is there any evidence to contradict this interpretation of the agreement. The "Transfer Upon Death" provision at page 9 of that document further supports this interpretation saying only that the "deceased member will be entitled **to receive the amount** of the membership contribution which would otherwise have been payable to the deceased member" (emphasis added) and not stating that there could be any further or ongoing obligation beyond this amount. Finally, at

"Payment of Dues by Resigned Equity Member" on page 9 the document specifically states that an obligation of an equity member who has resigned will "**accrue against and be deducted from the amount to be paid** to the resigned member upon the reissuance of his or her resigned membership" (Emphasis added). Again, the contractual provision at least presents a mere scintilla of evidence in the case supporting the defenses and sufficient to defeat the Plaintiff's summary Judgment request. Also, on page 10 of that documents the "Dues, Fees and Charges Prorated Upon Reissuance of Resigned Membership" section speaks only of payments and refunds to the members not any amounts which can accumulate in excess being actionable by the Club.

B. As to the 1994 By-Laws (Exhibit B to the 1994 Plan For Offering)

The Defendants also submitted herewith a copy of the 1994 Bylaws for the hearing in this matter. At page B-11 the 1994 Bylaws presents a particularly striking statement under provision 8(b) that "Whenever any person shall **cease to be an equity member**, whether by death, resignation, recall, expulsion or other provision of these By-Law..." (emphasis added) is a clear indication that the person ceases being a **member** at resignation or expulsion. Although the Club may claim that the obligations accrue against the **membership** until it is reissued, this paragraph supports the argument of the Defendants that the agreement states that there exists no personal liability, but that the liability thereafter accrues against the membership and is deducted from what the resigned or expelled member is owed. This is a valid interpretation which, when all inferences are viewed in the light most favorable to the non-moving party requires the motion of the Plaintiff for summary judgment be denied. This interpretation is supported

further at page B-11 part 9 (a) which states that the dues and fees accrue against the "membership" and at B-12 9(b) which set forth the amounts to be paid to the resigned member, but nowhere mentions any amounts which would be owed by, or paid by the member, beyond losing the value of the membership equity. Again, see B-13 at 10 (iv) and 11 (a) which both discuss only the amounts to be paid to the member upon reissuance. ("amount due to the resigned member").

In fact the 1994 By-laws contradict the Plaintiff's claims in this case and make clear that person **can** "cease to be an equity member". The By-Laws indicate that a membership can cease "by death, resignation, recall, expulsion or other provision of these By-Laws" (By-Law at B-11). To cease means that person, such as the Defendant's herein are no longer members and therefore no longer obligated as members. The By-Laws go on to state that the Treasurer of the Club is authorized to effectuate the redemption, cancellation, purchase or res-issuance of the membership certificate... thereafter in accordance with the By-Laws. (By-Laws p B-11).

Finally, at page B-15 the Bylaws recount that the Club has a "Lien" (3) against the membership and discusses that once expelled a person is no longer a member and therefore can have none of the obligations of membership Article XIV (5).

C. As to the 1994 General Club Rules (Exhibit C to 1994 Plan of Offering)

The Defendants also submits the 1994 General Club Rules at the hearing and would refer to the following provisions which are believed to create multiple issues of fact sufficient to defeat summary judgment in this matter. Page C-3 at Suspension and Termination of Membership at section 1, the Club Rules set forth that the member may

terminate membership but will remain liable for unpaid club account charges. In this case the Defendants had no unpaid account when their membership was terminated. There may be some room to debate what encompasses "unpaid accounts" but it is certainly reasonable, given that the Defendants did not draft the documents, and taking all inferences in the light most favorable to the Defendants, that there exists a scintilla of evidence sufficient to deny summary judgment on this issue.

II. AS TO THE REQUEST FOR SUMMARY JUDGMENT AS TO THE COUNTERCLAIMS OF THE DEFENDANTS

The Plaintiff's request for summary judgment as to the two counterclaims of the Defendant in this case should be denied for many of the same reasons as set forth above in this memorandum and as set forth below.

The Plaintiff's motion does not adequately inform the Defendant as to the grounds upon which they assert the generalized defenses raised in their motion. For instance, the Plaintiff provides no dates or explanations as to how the statute of limitations bars the claims of the Defendant and response therefore is speculative and unreasonably difficult. Given the lack of argument or explanation the Defendants contend that their claims arise as of the dates of the continued billing, since 2010 and the secret deal made with the developer, upon their discovery of the numerous secret concession and expulsion agreements made with various past members all of which have been within the applicable statute of limitations. Further, given the Plaintiff's suit in this matter against the Defendant, equity would demand that they be able to bring these claims in response.

Further, as set forth in his affidavit, the Plaintiff represented to the Defendants that they would be able to resign at anytime and that expulsion would automatically occur

after 4 months of delinquency and that in any case the Defendant would be obligated to no more than the amount of the equity had in the non-profit corporation by the Defendant. These representation and the failure to act in accordance with the true terms of the agreement, if such statements are determined to be untrue, would most certainly represent a breach of the agreement terms of the parties and would been negligently made and therefore would be the basis for the Defendants' claim against the Plaintiff and any damages and obligations found to be owed by the Defendants would be their damages. In addition, the actions of the Plaintiff in allowing members to resign, conceded and be expelled for the last 13 years, including the developer's secret agreement to turn over 187 memberships has injured the Defendants in several ways. Specifically, the expelled, conceded and resigned memberships have been put upon the Resale List to which the Plaintiff contends is the only method by which the Defendant might rid himself of the subject membership. By placing so many, non-dues-paying members on that Resale List ahead of the Defendant they have made it so that the Defendants membership has virtually no chance to ever exit the Resale List. This fact was testified to by Harmon Switzer, the 30(b)(6) designee of the Plaintiff. At his deposition he admitted that because there are only 90 remaining home sites (lots) on Callawassie, and since nearly all existing property owners had a membership, that no more than 21 memberships were ever going to be sold off the Resale List. The actions of the Club in breaching their duty to the Defendant has resulted in an ongoing and perpetual injury for which they seek damages.

As to damages, taking the Defendants allegations as true, the Defendant overpaid on dues and fees and is seeking return of the overpayment. In addition, the Defendant is

owed for the amount of equity he still hold in the membership or for which he was never paid when he should have been rightly expelled.

In conclusion the Defendant requests that the Plaintiff's motion be denied.

III. FOR ADDITIONAL ARGUMENT OF DEFENDANT Grace Frey:

The Defendant, Grace Frey, would further argue that there exists a question of fact as to whether she is a member of the Plaintiff club at all.

The Plaintiff, Callawassie Island Members Club, Inc., (CIMC) is a South Carolina Non-Profit Corporation established in 1999. See Exhibit A -- South Carolina Secretary of State Corporation Details.

In Septmeber 1995, Defendant Michael Frey completed an Application for Membership in the Callawassie Island Club, to which the Plaintiff is claiming they are a predecessor.⁶ Defendant Michael Frey signed as the Applicant, and Defendant Grace Frey signed as the **"Applicant's Spouse"**. See Exhibit A-1 & A-2, 1995 Application -- and Purchase Agreement from the Complaint in this action.

All the evidence in the case supports that the Defendant, Grace Frey, is not a member of the Plaintiff and, as the spouse of a member, she is not liable for dues, fees, and charges associated with her husband's membership in a country club.

"Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract. . . ." Clardy v. Bodolosky, 383 S.C. 418, 429, 679 S.E.2d 527, 533 (Ct. App. 2009). See also Windsor Green Owners Ass'n v. Allied Signal, Inc., 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004).

⁶ Neither of the Defendants have signed a contract or completed any application of membership in the Plaintiff.

Further, the mere fact that two people are married does not mean that one spouse has a legal responsibility to pay all of the debts and obligations of the other spouse. Indeed, the necessities doctrine establishes when one spouse has a responsibility to pay the debts or obligations of the other spouse.

Under the necessities doctrine, "husbands and wives have an obligation to support their spouses, and both spouses are liable for the cost of necessities supplied to one of the spouses, even if only one spouse is contractually liable for the necessities." Trident Regional Medical Center v. Evans, 317 S.C. 346, 348, 454 S.E.2d 343, 344 (Ct. App. 1995). See also Richland Memorial Hosp. v. Burton, 282 S.C. 159, 318 S.E.2d 12 (1984); Anderson Memorial Hosp. v. Hagen, 313 S.C. 497, 443 S.E.2d 399 (Ct. App. 1994). Necessaries include food, clothing, habitation, and medical expenses. E.g., Burton, 282 S.C. at 159, 318 S.E.2d at 12; Medlin v. King, 294 S.C. 406, 365 S.E.2d 36 (Ct. App. 1988).

Finally, S.C. Code Ann. § 33-31-601(b) established that no person may be admitted as a member of a South Carolina Non Profit Corporation without his consent. S.C. Code Ann § 33-31-601(b).

The evidence in this case establishes that Defendant Grace Frey never applied for membership in the Club. Only Defendant Michael Frey applied for membership in the Club. Defendant Grace Frey signed only as the "Applicant's Spouse."

Second, a review of the Plans for the Offering of Memberships establishes that the Plaintiff viewed only one spouse of a married couple as the member of the Plaintiff club. This is established by the language confirming that an Equity Member's spouse is allowed to use the facilities in the same manner as the Equity Member and the language

relating to the transfer of membership to the surviving spouse of a deceased Equity Member. The reference to the applicant's "Spouse" is further supported since the Purchase Agreement relies upon the April 1, 1994 Plan for the Offering of Membership and the By-Law of 1994 specifically defines "Family Privileges" (at page 6 of the Plan of Offering and at Page B-10 of the By-Laws) stating "An equity member's immediate family may use the Club Facilities in accordance with the member's category of membership. An equity member's immediate family **includes the equity member's spouse** and..." (Emphasis Added).

Further, subsequent documents of the Plaintiff, upon which they have relied in this case, such as the 2001 Plan for the Offering of Memberships, provides that an equity member's immediate family, which includes the equity member's spouse, may use the facilities in accordance with the member's category. The 2001 Plan for the Offering of Memberships also confirms that "[u]pon the death of an equity member, the deceased member's membership will automatically pass to the surviving spouse without payment of any new membership contribution." See Exhibit C - 2001 Offering Plan p. (4), (5).

Further, in the 2007 Plan for the Offering of Membership, Section 2.3.8 defines immediate family as "the individual member and not more than one other adult who is a full time resident of the member's residential unit" and states that immediate family members may use the facilities in the same manner as the member. Section 5.9 states that a deceased member's membership "will automatically pass to the surviving spouse without payment of any new membership contribution. . . ." See Exhibit D - 2007 Offering Plan p. 7, 13. The 2012 Plan for the Offering of Memberships again confirms in Section 2.3.8 that an Equity Member's immediate family, which includes not more

than one other adult who is a full time resident of the member's house, may use the facilities in the same manner and the Equity Member. The 2012 Plan for the Offering of Memberships also states that upon the death of an Equity Member in good standing, "the deceased member's membership will automatically pass to the surviving spouse without payment of any new membership contribution. . . ." See Exhibit G – 2012 Plan of Offering p. 7, 13.

Third, the Plaintiff, in its Member History Report, only lists Defendant Michael Frey as a member. See Exhibit B to the Complaint- Member History Report (Exhibit B to Complaint).

Fourth, the Plaintiff lists only Michael Frey as a suspended member on its Suspended Member List. See Exhibit H - Suspended Member List as of 11/15/11.

Accordingly, the evidence clearly establishes that even if the Defendant Michael Frey is a member of the Plaintiff, the Defendant Grace Frey never applied for membership, and the Plaintiff cannot make her a member since doing so would violate S.C. Code Ann. § 33-31-610(b)'s prohibition against making persons member without their consent.

Since she is not a member herself Defendant Grace Frey, faces, at most, contractual liability only for her husband's necessities. As noted above, necessities are food, clothing, housing, and medical expenses. E.g., Burton, 282 S.C. at 159, 318 S.E.2d at 12; Medlin, 294 S.C. at 406, 365 S.E.2d at 36. Membership in a country club simply does not meet the definition of a necessary. Since membership in a country club is not a necessary, Defendant Grace Frey is not liable for the dues, fees, and charges associated with her husband's membership with the Plaintiff.

IV. AS TO DAMAGES REQUESTED BY THE PLAINTIFF

A. Statute of Limitations

Damages requested are not available because they go back more than three years from the date of the filing the action and are subject to the statute of limitations. Exhibit A to the Affidavit of Jeff Spencer claims to set forth the accumulation of charges asserted against the Defendants but references charges claimed as far back as July 2009, more than 3 years prior to the current litigation and subject to the defense raised of the statute of limitations.

B. Even if the Court is to believe that there does not exist even a mere scintilla of evidence with regard to the claims and defenses in this case, the Plan for Offering of Membership of 1994 would require that the Court award no more damages than the "amount to be paid to the resigned member upon the reissuance of his or her resigned membership" (p. 9 Plan of 1994). Although the Defendant contends his liability would be limited to 4 months of dues and fees due to a mandatory expulsion, even under the resignation theory of the Plaintiff, the members' liability was always intended to be limited to the amount of equity in the Club. This is evidenced throughout with numerous citations to the same in this Memorandum.

C. Attorney's Fees undocumented

The defendants have denied that they owe the claims alleged by the Plaintiff and the Plaintiff has failed to support its claim for damages. Specifically, the Plaintiff is claiming more \$8,820.73 in attorney's fees. The Plaintiff fails to provide an itemized statement for the amount of past attorney's and Plaintiff's counsel contends that \$4,500.00 of the requested fee is for future work not yet performed in the case, more than

the amount claimed for all work to date plus expenses. The Plaintiff makes no attempt to explain or described the \$4,500.00 estimated future fee figure claimed. Our court has refused to support attorney fee awards in which the record does not contain an itemization of the fees and expenditures claimed. Parker v. Shecut, 531 S.E.2d 546, 340 S.C. 460 (S.C.App. 2000). Likewise the federal courts have criticized time records which contain only notations such as "gather information" "prepare documents" "correspondence" and similarly vague statements Bores v. Domino's Pizza LLC, 2008 U.S. Dist. LEXIS 87252, at 22 (D. Minn. Oct. 27, 2008) which parallel the generalized explanation provided in by Plaintiff's counsel in this case (See Affidavit of Ehrick K. Haight, Jr. dated March 6, 2014). Furthermore the Defendant has sent the Plaintiff discovery requests seeking this additional information regarding the claimed attorney's fees (See Defendant's Supplement Request for Production) to which the Plaintiff has not responded to date.

D. Resignation and/or Expulsion and S.C. Code §§ 33-31-610,, 611 et Seq.

As set forth above and in the Amended Answer and Counterclaims the resignation and/or expulsion of the Defendants from the Club, if either is in fact a member, would end all obligations as discussed above.

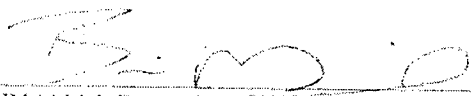
V. DISCOVERY STILL ONGOING:

If all of the above reasons and issues are not sufficient, the Defendant also contends that Summary Judgment should not be granted because discovery in this case is ongoing and the Plaintiff has failed to respond to outstanding discovery. The Defendant currently has a pending motion to compel, filed April 15, 2014 in which he contends the

Plaintiff has failed and refused to provide full and complete responses to discovery requests, both Interrogatories and Requests for Production. The Plaintiff has recently provided some nominal responses, but these responses fail to answer most of the Interrogatories and fail to provide the documents requested.

Further, the Defendant intends to take the deposition of Jeff Spencer and possibly other witnesses in this case but has not yet been able to do so and believes that because of these pending discovery issues that granting of summary judgment would be improper.

LAW OFFICE OF BRIAN McDANIEL, LLC



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Fax: 843-379-5118
Attorney for the Defendants
Michael and Grace Frey

May 18, 2014
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

THE CALLAWASSIE ISLAND,
MEMBERS CLUB, INC.

Plaintiff,

vs.

MICHAEL FREY and GRACE FREY
Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)

) C.A. No.: 2012-CP-07-03209
)

) ATTACHMENT TO MEMO
) IN OPPOSITION TO PLAINTIFF'S
) MOTION FOR SUMMARY JUDGMENT
)

1. Exhibits

- A. Affidavit of Defendant
- B. Amended Gen. Declaration (Dec. 2001)
- C. CIMC General Club Rules (8/8/01)
- D. Golf membership resale list (2012)
- E. Letters & Membership concession forms
- F. Letter to Carpenter (2007)
- G. Plan – Offering of Memberships Table of Contents (2012)
- H. CIMC Suspended

2. 1994 Plan for Offering of Memberships
Exhibits A – C

3. Depositions

- A. J. Dennis
- B. R. Dennis
- C. Cooler
- D. Padgett
- E. Kilian
- F. Switzer
- G. Norwood

4. Plaintiff's Responses to written Discovery

5. Defendants' Supplemental Request for Production

Exhibit R

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND,
MEMBERS CLUB, INC.)

Plaintiff,)

vs.)

Michael J. Frey and Grace I. Frey)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-07-03209

Affidavit of Michael Frey

Personally appeared before me, Michael J. Frey, being duly sworn, deposes and under oath states:

1. I am over Eighteen (18) years of age, am a resident of the state of New Jersey.
2. In 1995 I submitted an application for membership in a club known as the Callawassie Island Club.
3. The Membership Purchase Agreement I signed in September 1995 does NOT indicate that I was agreeing to amendments or changes to the Plan For the Offering of Memberships dated April 1, 1994 referenced in that document.
4. That the Plan for Offering of Membership and Club Rules did NOT obligate members to continue to pay dues, fees and assessments and other charges after 4 months of delinquency (at which point they were required to be expelled) and in no case was the liability ever greater than the value of the equity in the membership.
5. That I have not agreed to release the Plaintiff nor Callawassie Island Club, Inc. from claims and defenses asserted in defense and against them for failing to abide by the terms of membership and for the violations of state statute and for any of the claims or defenses we have asserted in this case.

6. The Plan of Offering of Membership in the Callawassie Island Club dated April 1, 1994 restricted a members liability for dues and fees to the Club(such as the Plaintiff is seeking in this case) to the amount of equity that membership had in the Club.
7. That at page 17 of the 1994 Plan for the Offering of Membership it indicates that the "Partnership" could only modify that document up to the "Closing Date" and only if such change does not "materially and adversely affect the rights of the equity members", otherwise, the members so affected would have to approve the change.
8. That, I have never voted to change the requirement that a member must be expelled after 4 months of suspension and have never been made aware of any vote to do so, nor have I voted to restrict my right to transfer my property or membership.
9. That the offers to concede memberships, which are admitted to by Harman Switzer in his affidavit of March 3, 2014, were never offered to me nor disclosed to me.
10. That I purchased property on Callawassie BEFORE December 2001 and therefore section 5.7.2 of the Callawassie Island Amended and Restated General Declaration of 2001 specifically recognizes that I am not bound by any provision requiring ownership of a membership in a Club as set forth in those .

Further Affiant Sayeth not

Beaufort, South Carolina

Sworn to and subscribed before me
this 15 day of May, 2014

Kathleen R. Stutz
Notary Public for New Jersey
My commission expires:

KATHLEEN R STUTZ
NOTARY PUBLIC OF NEW JERSEY
ESSEX COUNTY
My Commission Expires July 2, 2017

Michael J. Frey
Michael Frey

Date: May 15 2014

EXHIBIT B

Exhibit B

JEP/JPG

133/20
133/20
H649

Exhibits B-H; Plan for Offering;
& transcripts of logs were
included in Martin documents
previously sent & are not
included in this envelope.

Amended And Restated General Declaration For

Callawassie Island And Provisions For The

Callawassie Island Property Owners Association, Inc.

Of

December 1, 2001

BEAUFORT, COUNTY SC - ROD
BK 01505 PG 0850
FILE NUM 2001074988
RECORDING FEES 133.00
RECORDED BY B BING RCPT# 26394
RECORDED 12/03/2001 02:09:19 M

After Recording Return To:
James P. Scheider, Jr.
Jones, Scheider & Patterson, P.A.
P.O. Box 1938
Muffon, South Carolina 29910
(843) 708-6111

4 + 5 of
attachment to memo

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2012-CP-07-03209

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

MICHAEL J. FREY and GRACE I.
FREY,

Defendants.

THE CALLAWASSIE ISLAND
CLUB MEMBERS, INC.'S
ANSWERS TO DEFENDANTS'
INTERROGATORIES

TO: BRIAN D. McDANIEL, ESQUIRE, ATTORNEY FOR MICHAEL J. FREY
AND GRACE I. FREY:

The Plaintiff, The Callawassie Island Members Club, Inc., above named,
answering the Interrogatories propounded by the Defendants would show unto
this Honorable Court:

1. Designate an officer, director, manager agent, or other person who is
designated and consents to testify on behalf of the Plaintiff as to the matters
asserted in the Plaintiffs Complaint.

ANSWER: G. Harman Switzer, 3rd has previously been designated as a
representative of the Plaintiff, and has provided deposition testimony in that
capacity. The Plaintiff reserves the right to designate additional representatives
as it deems appropriate.

2. Give the names and addresses of persons known by the Plaintiff or
Plaintiff's counsel to be witnesses concerning the facts of the case and indicate
whether or not written or recorded statements have been taken from each such
witness.

5/1/13

ANSWER: G. Harman Switzer, 3rd
c/o Callawassie Island Members Club, Inc.
174 Callawassie Island Drive
Okatie, SC 29909Mr

Mr. Switzer has previously provided testimony, both individually and in the capacity as designated representative of CIMC, and upon information and belief, that testimony is in the possession of counsel for the defendants.

Jeff Spencer
Craig Simonson
Any current or former CIMC board member
c/o Callawassie Island Members Club, Inc.
174 Callawassie Island Drive
Okatie, SC 29909

These persons are expected to offer testimony concerning their knowledge of the facts and circumstances giving rise to the allegations in the Summons and Complaint, the amounts owed by the Defendants, contractual obligations entered into by the Defendants, and any other issues raise in the instant litigation.

Michael J. Frey
Grace I. Frey

These persons are expected to offer testimony concerning their knowledge of the facts and circumstances giving rise to the instant litigation.

This Plaintiff reserves the right to identify additional witnesses at a later date. The Plaintiff further incorporates herein by reference any persons identified as a potential witness by the Defendant.

3. Set forth a list of photographs, plats, sketches or other prepared documents in the possession of the party that relate to the claim or defense in the case.

ANSWER: a. Defendants' Application of Membership;
b. Purported resignation of Defendants;
c. Warranty Deed, from Callawassie Island Company, LP (Grantors), to Michael J. Frey and Grace I. Frey (Grantees), for Lot 16, Callawassie Island, and DMP No: R600 015 00B 0344;
d. Contract for the Defendants' purchase of lot on Callawassie Island;
h. CIMC Articles of Incorporation, filed November 16, 1999;

- j. The Callawassie Island Club Plan for Offering of Memberships of 1994 (April and July versions);
- k. The Callawassie Island Members Club Plan for Offering of Memberships of August 8, 2001;
- l. The Callawassie Island Members Club Plan for Offering of Memberships of September 1, 2007;
- m. The Callawassie Island Members Club Plan for Offering of Memberships of February 1, 2008;
- n. The Callawassie Island Members Club Plan for Offering of Memberships of February 2, 2012;
- o. The Callawassie Island Members Club Plan for Offering of Memberships of July 1, 2013;
- p. The Callawassie Island Members Club General Club Rules dated June 29, 2001;
- q. The Callawassie Island Members Club General Club Rules dated August 8, 2001;
- r. The Callawassie Island Members Club General Club Rules dated December 3, 2007;
- s. The Callawassie Island Members Club General Club Rules dated February 1, 2008;
- t. The Callawassie Island Members Club General Club Rules dated February 23, 2009;
- u. The Callawassie Island Club General Club Rules of 1994;
- v. The Amended and Restated General Declaration for Callawassie Island of December 1, 2001;
- w. The First Amendment to Amended and Restated General Declaration for Callawassie Island of July 8, 2008;
- x. 2012 & 2013 Amendments to the General Declaration for Callawassie Island
- y. The Callawassie Island Members Club By-Laws of June 2001;
- x. The Callawassie Island Members Club By-Laws of January 1, 2014;
- y. The Callawassie Island Club By-Laws of 1994;
- z. The CIPOA By-Laws of 1997;
- aa. The Club Purchase Agreement dated October 26, 1999;
The Letter of Understanding dated June 27, 2001;
- bb. The Addendum to Letter of Understanding, dated December 30, 2001;
- cc. Letter of Understanding, dated April 4, 2007;
- dd. Omnibus Settlement and Security Agreement;
- ee. Any other amendments to CIMC Plan for Offering of Memberships, the CIMC General Club Rules, CIMC By-Laws, and CIPOA Declaration;
- ff. Any other documents contained within the Defendants' membership file;

gg. Any other documents produced in connection with litigation between any other member of CIMC and CIMC.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness in the trial in the case.

ANSWER: The Plaintiff has not identified an expert witness at this time, but reserves the right to do so in the future.

5. List all litigation in which the Plaintiff has been a party in the past 6 years and designate the following:

- a. The parties to the action
- b. The nature of the litigation
- c. The outcome of the litigation
- d. The county in which the litigation was filed
- e. The attorneys of all parties to the litigation.

ANSWER: The Plaintiff objects to Interrogatory No. 5 upon the grounds that the Interrogatory is overly broad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is a matter of public record and equally available to all parties.

6. Give the date of all versions, amendments, revisions, and changes to the "Plan for Offering of Memberships" (referenced in paragraph 5 of your complaint) which you contend have been in force or effect at anytime during the membership of the Defendants.

ANSWER: Please see the Plaintiff's answer to Interrogatory No. 3.

7. At paragraph 8 in the Complaint the Plaintiff asserts that "The Defendants' purchase of the membership and their purchase and ownership of Lot 101, Phase B, require them to remain members in good standing under the terms and conditions of the governing document, including the Plan and Declaration".

A. Does the plaintiff contend that the "Declarations" create a contractual obligation for these Defendants to maintain their membership in good standing pursuant to Section 5.7.2 of those "Declarations"?

B. Specify any section of the "Declaration", other than Section 5.7.2 that the Plaintiff contends creates a contractual obligation upon these Defendants to maintain their membership in good standing, as alleged at paragraph 8 in the Complaint.

ANSWER: The Plaintiff objects to Interrogatory No. 7 upon the grounds that the interrogatory seeks a legal conclusion. The Plaintiff further responds by craving reference to its Summons and Complaint. Finally the Plaintiff craves reference to Section 5.7.2 of the Declaration, in reference to the specific inquiry regarding the terms of that provision, and specifically responding to Interrogatory

7B, notes that Section 5.7.2 provides "all sections of this Declaration not herein specifically amended shall be automatically amended to conform with the spirit and intent of this amendment to this Declaration."

8. List all Club members currently delinquent with regard to dues, fees, assessment and other charges specifying the amount and length of any such delinquency.

ANSWER: The Plaintiff objects to Interrogatory No. 8 upon the grounds that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Plaintiff further objects upon the grounds that the interrogatory is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague.

9. For each person known by counsel to be a witness concerning the facts in the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by the witness.

ANSWER: The Plaintiff craves reference to its answer to Interrogatory No. 2.

10. Provide a list of all documents which are in the possession or control of the Plaintiff which relate to the Defendants and/or the membership of either or both of the Defendants, including but not limited to, all applications, resignations, correspondence, contracts, agreements, ballots, files, emails, and notices.

ANSWER: The Plaintiff objects to Interrogatory No. 10 upon the grounds that the information sought is overly broad, insufficient specific, oppressive, ambiguous, and vague. The Plaintiff further objects upon the grounds that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, the Plaintiff craves reference to the Freys' membership file and all records, ballots or other votes taken during the course of the Freys' membership in CIMC or CIC.

11. Did the Plaintiff ever provide these Defendants with notice that some other members were given the option to enter into concession agreements to relinquish their membership(s)?

ANSWER: CIMC is empowered, pursuant to its governing documents and laws of the State of South Carolina, to enter into negotiated resolutions of debts by delinquent members. CIMC is unaware of any obligation to notify other club members of the resolution and/or nature of these settlements. Under the circumstances, it is unaware of any instance where the Freys would have been notified of these negotiated settlements.

12. If you answered in the affirmative to Interrogatory 11 then provide the method, date and person(s) giving such notice.

ANSWER: Please see the answer to the foregoing interrogatory.

13. Is the Plaintiff aware of any membership-wide notice or notification being given, at anytime during the course of membership of these Defendants, regarding offers being made to certain members (or types of members) to concede their memberships?

ANSWER: Please see the Plaintiff's answer to Interrogatory No. 11.

14. If the Plaintiff answered affirmatively to Interrogatory 13 then provide the date, method and person providing such notice or notification.

ANSWER: Please see the Plaintiff's answer to Interrogatory No. 11.

15. On what basis or criteria were some members given offers to concede their memberships during the time the Defendants were alleged to be members?

ANSWER: CIMC craves reference to deposition testimony of Harman Switzer. Further responding to Interrogatory No. 15, CIMC would show that any agreements regarding concession were made within CIMC's power and authority granted to it by its governing documents and the laws of the State of South Carolina. Upon information and belief, any such arrangements made would have related to memberships unassociated with real property, and not subject to the mandatory membership requirement imposed in 2001.

16. On what basis or criteria were members expelled during the time the Defendants were alleged to be members?

ANSWER: Please see the Plaintiff's answer to Interrogatory No. 11.

17. How many members either conceded their membership or were expelled from membership of the Plaintiff Club between the years, 2001 and the present.

ANSWER: The Plaintiff objects to Interrogatory No. 17 upon the grounds that the Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

18. For each person numbered in Interrogatory 17 set forth the following:

- a. The full name of the member
- b. The date of the concession or expulsion
- c. The reason for the concession or expulsion

ANSWER: The Plaintiff objects to Interrogatory No. 18 upon the grounds that the Interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

19. For members that joined a predecessor Club, of which the Plaintiff now claims it purchased and is the successor in interest, does the Plaintiff believe it is obligated to uphold the promises and agreements made by its predecessor Club to its members?

ANSWER: The Plaintiff objects to Interrogatory No. 19 upon the grounds that the Interrogatory incorrectly states its position and makes incorrect assumptions, and therefore is ambiguous, vague, oppressive, and insufficiently specific. Notwithstanding the foregoing objections, the Plaintiff would crave reference to CIC governing documents and CIMC governing documents referenced in this Plaintiff's answer to Interrogatory No. 3.

20. Identify the specific documents identified as "governing documents" in the Complaint (including at paragraph 8 of the Complaint).

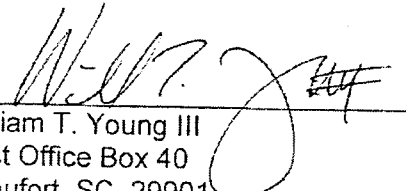
ANSWER: a. CIPOA Declaration (and all amendments thereto);
b. CIMC Plan for Offering of Memberships (and all amendments thereto);
c. CIMC General Club Rules (and all amendments thereto);
d. CIMC By-Laws (and all amendments thereto).

21. For each document listed in response to Interrogatory 20 give the date of all versions, revisions, amendments and changes to each.

ANSWER: Please see this Plaintiff's answers to Interrogatories No. 3 and 20.

(Signature Page to Follow)

HOWELL, GIBSON & HUGHES, P.A.

By: 

William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Bar No: 75153
Attorney for

And:

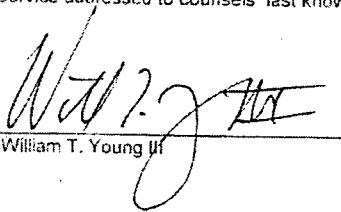
Ehrick K. Haight, Jr.
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for The Callawassie Island
Members Club, Inc

Beaufort, South Carolina

April 24, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answers to Interrogatories upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 24th day of April, 2014.

By: 

William T. Young III

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2012-CP-07-03209

Defendants.

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
RESPONSES TO THE
DEFENDANTS' REQUESTS FOR
PRODUCTION

The Plaintiff, The Callawassie Island Members Club, Inc., above named, responding to the Request for Production propounded by the Defendants, would show unto this Honorable Court:

RESPONSE: CIMC objects to the Defendant's Request for Production No 1 upon the grounds that request, as phrased, is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CIMC further objects upon the grounds that the request seeks information and/or documentation that is protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks information and/or documentation without a prior demonstration of those showings mandated by the relevant Rules of Civil Procedure. Subject to and without waiving the foregoing objections, CIMC

craves reference to its Answers to Defendant's Interrogatories and would state, upon information and belief, that counsel for the Defendant is in possession of these documents. In the event, however, that counsel for the Defendant believes that documents identified within the Answers to Interrogatories have not been produced, counsel for CIMC will produce the same upon a specific request and/or make said documents available for review at a mutually convenient time and place.

2. Provide a copy of the CV and any report or communication with any expert retained by the Plaintiff in this matter.

RESPONSE: CIMC objects to the Defendant's Request for Production No. 2 upon the grounds that the request, as phrased, is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CIMC further objects upon the grounds that the request seeks information and/or documentation that is protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks information and/or documentation without a prior demonstration of those showings mandated by the relevant Rules of Civil Procedure. CIMC has not designated an expert at this time, but reserves the right to do so in the future. Upon any such designation, the requested information will be produced.

3. Provide a copy of all letters, faxes, emails, text messages, or other communications from the Plaintiff, or Plaintiff's representative(s), to the Defendant(s)

RESPONSE: CIMC objects to the Defendant's Request for Production No. 3 upon the grounds that the request, as phrased, is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CIMC further objects upon the grounds that the request seeks information and/or documentation that is protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks information and/or documentation without a prior demonstration of those showings mandated by the relevant Rules of Civil Procedure. Subject to and without waiving the foregoing objects, CIMC craves reference to its Answers to Interrogatories and would state, upon information and belief, that counsel for the Defendant is in possession of these documents. In the event, however, that counsel for the Defendant believes that documents identified within the Answers to Interrogatories have not been produced, counsel

for CIMC will produce the same upon a specific request and/or make said documents available for review at a mutually convenient time and place.

4. Provide a copy of all items, documents and materials received by the Plaintiff pursuant to a subpoena in the case.

RESPONSE: CIMC objects to the Defendant's Request for Production No. 4 upon the grounds that the request, as phrased, is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. CIMC further objects upon the grounds that the request seeks information and/or documentation that is protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks information and/or documentation without a prior demonstration of those showings mandated by the relevant Rules of Civil Procedure. Subject to and without waiving the foregoing objects, CIMC craves reference to its Answers to Interrogatories and would state, upon information and belief, that counsel for the Defendant is in possession of these documents. In the event, however, that counsel for the Defendant believes that documents identified within the Answers to Interrogatories have not been produced, counsel for CIMC will produce the same upon a specific request and/or make said documents available for review at a mutually convenient time and place.

5. Provide a copy of all written or recorded statements from any and all witnesses in this matter.

RESPONSE: CIMC is informed and believes that counsel for the defendant is in the possession of any such statements.

6. A copy of any and all video, photographs, documents or other materials which CIMC plans to introduce in the trial in this matter.

RESPONSE: CIMC objects upon the grounds that Request No. 6 of Defendant's Requests for Production seeks to limit the introduction of evidence at trial. CIMC further objects upon the grounds that the request is overly broad, unduly burdensome, insufficiently specific, oppressive, ambiguous, and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks to limit the introduction of evidence at trial. Subject to and without waiving the foregoing objections, CIMC would show that it has not yet determined what items would be introduced at trial.

7. All communication by and between board members, including all letters, emails, notes, text message or otherwise, related to the charges, fees and assessments against the Defendants herein, or related in any way to the current litigation or the decision to bring the current litigation.

RESPONSE: CIMC objects to Request No. 7 of the Defendant's Requests for Production upon the grounds that the request seeks information and/or documentation that is protected against discovery as a result of its status as attorney work product, trial preparation material, and/or the attorney-client privilege. CIMC further objects upon the grounds that the request seeks information and/or documentation prepared in anticipation of litigation. CIMC further objects upon the grounds that the request is overly broad, unduly burdensome, insufficient specific, oppressive and vague. CIMC further objects upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

8. All documentation as to the current fair market value of the memberships of the Defendant herein.

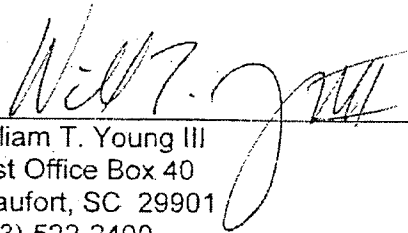
RESPONSE: CIMC objects to Request No. 8 of the Defendant's Requests for Production upon the grounds that the request seeks information and/or documentation that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. Copy of all documents and materials you intend to introduce in trial in this matter.

RESPONSE: Please see CIMC's responses to Request No. 6.

(Signature Page to Follow)

HOWELL, GIBSON & HUGHES, P.A.

By: 

William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for The Callawassie Island
Members Club, Inc.

And:

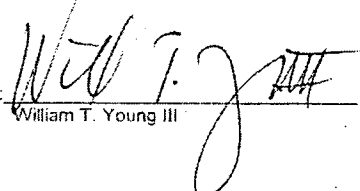
Ehrick K. Haight, Jr.
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for The Callawassie Island
Members Club, Inc

Beaufort, South Carolina

April 24, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Reply to Defendant's Request for Production upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 24 day of April, 2014.

By: 

William T. Young III

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND,)
MEMBERS CLUB, INC.)

Plaintiff,)

vs.)

MICHAEL J. FREY and)
GRACE I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-07-3209

DEFENDANTS MICHAEL J. FREY
AND GRACE I. FREY'S
SUPPLEMENTAL REQUEST FOR
PRODUCTION TO THE PLAINTIFF

TO: EHRICK K. HAIGHT, JR., ATTORNEY FOR PLAINTIFF THE CALLAWASSIE
ISLAND MEMBERS CLUB, INC.:

The Defendants, Michael J. Frey and Grace I. Frey, by and through their undersigned counsel, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, hereby requests that within thirty (30) days from the date of service hercof, the Plaintiff, The Callawassie Island Members Club, Inc. (hereinafter "the Club"), provide a copy or make available for inspection the following:

1. Please provide itemization and supporting documentation for all attorney fees and expenses which you are seeking to be awarded to the Plaintiff as part of the judgment against the Defendants in this action. *The material provided should include sufficient detail to permit the Defendant to ascertain if the time expended was reasonably necessary, redundant or excessive.* Such disclosures would include, but are not limited to, the following:
 - A. Itemized billing records indicating the time spent on all billed time you are asserting in this case which provides the amount
 - B. All invoices provided to the Plaintiff by its legal counsel in this matter.
 - C. Any documentation supporting the "Estimated Additional Fees of \$4,500.00".

Law Office of Brian McDaniel, LLC

BY:



BRIAN D. MCDANIEL

2015 Boundary St., Suite 216

Post Office Box 2085

Beaufort, South Carolina 29901

PHONE (843) 379-5117

FAX (843) 379-5118

ATTORNEY FOR THE DEFENDANTS

MICHAEL J. FREY AND

GRACE I. FREY

Beaufort, South Carolina
May 7, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND,
MEMBERS CLUB, INC.)

Plaintiff,)

vs.)

MICHAEL J. FREY and
GRACE I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-07-03209

CERTIFICATE OF SERVICE

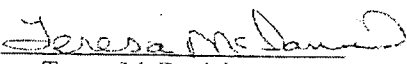
I, Teresa McDaniel, Legal Assistant of the Law Office of Brian McDaniel, LLC,
Attorney for the Defendants do hereby certify that on this 7th day of May, 2014, I
served a copy of the Defendants Michael J. Frey and Grace I. Frey's Supplemental
Request for Production to the Plaintiff upon the Plaintiff by mailing via First Class
US Mail postage prepaid to its attorneys at the following addresses:

Howell Gibson & Hughes, P.A.
William T. Young, III, Esquire
Stephen P. Hughes, Esquire
P.O. Box 40
Beaufort, SC 29901-0040

Minor, Haight & Arundell, P.C.
Ehrick K. Haight, Jr., Esquire
P. O. Drawer 6067
Hilton Head Island, SC 29938

Law Office of Brian McDaniel, LLC

BY:


Teresa McDaniel

Beaufort, South Carolina
May 7, 2014

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION 2012-CP-07-03209

The Callawassie Island Members Club,
Inc.,

Plaintiff/Counterclaim
Defendant,

v.

Michael J. Frey and Grace I. Frey,

Defendants/Counterclaim
Plaintiffs.

**SUPPLEMENTAL BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT DEMANDING
ATTORNEYS' FEES**

Defendants and counterclaim plaintiffs Michael J. Frey and Grace I. Frey by and through counsel, submit this supplemental brief in opposition to plaintiff and counterclaim defendant The Callawassie Island Members Club, Inc.'s ("CIMC") motion for summary judgment, as instructed by the Court during the hearing on November 3, 2014.

FACTS

CIMC alleges that there is no genuine issue of material fact that it is entitled to attorney's fees and costs under the relevant agreements, including the following:¹

- The Callawassie Island Members Club Plan for the Offering of Memberships, amended as of Sept. 1, 2007 (Exhibit 1);
- CIMC By-Laws dated March 2009 (Exhibit 2);

¹ These are the versions of the documents in effect when the Freys resigned from CIMC, and when this lawsuit was filed. The 2014 documents cited by CIMC were enacted later and are not applicable.

- CIMC General Club Rules dated Feb. 23, 2009 (Exhibit 3).

The Plan contains the following provision concerning attorney's fees:

The Club [CIMC] shall have a **lien against each membership** for any unpaid dues, fees and other Charges made by that member, which **lien shall also accrue reasonable attorneys' fees** incurred by the Club incident to the collection of such dues, fees and other Charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing and shall be entitled to a satisfaction of lien to be prepared and recorded at the member's expense. **All such liens may be foreclosed by the Club**, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. **The Club may also, at its option, sue to recover a money judgment for unpaid dues, fees and other Charges² without thereby waving the lien securing the same.** The Board of Directors reserves the right to report members who are in arrears on their Club bills to an appropriate national credit reporting agency. Any other liens placed against a membership shall be junior to the Club's lien.

See The Callawassie Island Members Club Plan for the Offering of Memberships, amended as of Sept. 1, 2007, § 6.8 at Exhibit 1 (emphasis added). By its terms, the Plan provides two alternative remedies to CIMC in the event that a member fails to pay membership dues: (1) foreclose its lien against the membership; or (2) sue to recover a money judgment. Attorney's fees incurred in collection efforts

² This Plan defines "charges" as "dues, fees, food and beverage minimums, assessments, charges, state taxes, service charges and other charges that the Club may establish from time to time" See Plan § 6.1, p. 15, at Exhibit 1. It does not include attorneys' fees.

accrue only to the membership lien, and recovery of attorney's fees is only available in the event CIMC elects to foreclose its lien on the membership. The Plan is silent as to the recovery of attorney's fees in the event that CIMC elects to sue for a money judgment, which it has elected to do in this case.

The By-Laws contain language concerning attorney's fees that is virtually identical to the language in the Plan:

The Club shall have a **lien against each membership** for any unpaid assessments, fees, annual dues or other charges made by that member of the Club, which **lien shall also accrue reasonable attorneys' fees** incurred by the Club incident to the collection of such annual dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing of the Club and **all such liens may be foreclosed by the Club**, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. **The Club may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges without thereby waiving the lien securing the same.** Any other liens placed against such equity membership shall be junior to Club's lien.

See CIMC By-Laws dated March 2009, Art. XI, p. 8, at Exhibit 2 (emphasis added). Like the Plan, the By-Laws provide that attorney's fees are recoverable only in the event that CIMC elects to foreclose its lien on the membership. Like the Plan, the By-Laws are silent as to the recovery of attorney's fees in the event that CIMC elects to sue for a money judgment.

Finally, the Rules contain the following provisions concerning attorney's fees:

In accordance with the By-Laws, the Club shall have a lien against each membership for any unpaid dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such equity membership shall be junior to Club's lien.

If the Club commences any legal action to collect any amount owed, or to enforce any liability of a member to the Club, the member shall also be liable for all costs and expenses of the legal action and **reasonable attorneys' fees required in connection with appellate proceedings.**

See CIMC General Club Rules dated Feb. 23, 2009, §§ 13.3.4 and 13.3.5, p. 14 at Exhibit 3 (emphasis added). Under the Rules, the Club can only recover attorney's fees incurred in connection with any "appellate proceedings" when it elects to sue for a money judgment.

LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. S.C. R. Civ. P. 56(c). "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." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). In cases such as this, **"the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."** *Id.* (emphasis added).

ARGUMENT

In this action for a money judgment, CIMC has no right to recover its attorneys' fees from Mr. and Mrs. Frey. "In South Carolina, the authority to award attorneys' fees can come only from a statute or be provided for in the language of a contract." *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005). "There is no common law right to recover attorney's fees." *Id.*

CIMC has not, to date, claimed a statutory source of authority for recovering its attorneys' fees. Further, CIMC has not presented evidence that the Declaration entitles it to attorneys' fees.

CIMC appears to rely solely on the terms of the Plan, the By-Laws, and the Rules as a contractual source of authority for its claim for attorney's fees. "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of S. Carolina*, 317 S.C. 452, 457, 454 S.E.2d 901, 905 (Ct. App. 1995). "[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement." *CoastalStates Bank v. Hanover Homes of S. Carolina, LLC*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014).

The plain terms of the applicable Plan and the By-Laws only entitle CIMC to attorney's fees in the event that it elects to foreclose its lien for unpaid assessments against a membership. Here, CIMC elected to sue Mr. and Mrs. Frey for a money judgment instead, in which case the Plan and the By-Laws do not

not provide for the recovery of attorney's fees. The Rules only entitle CIMC to recover attorney's fees "in connection with appellate proceedings," which is not the case here.

CIMC's primary citations to the by-laws and other documents are generalized statements about the board's authority to interpret the by-laws; those general statements do not allow the board to disregard clear limitations in the documents that limit attorney's fees to situations when CIMC attempts to recover on a lien. CIMC's argument to the contrary effectively demands that it be allowed to ignore specific provisions in the documents, and to improperly revise the rules mid-litigation. At the least, a genuine issue of material fact exists as to whether later-enacted versions of CIMC's Rules (i) were properly enacted, (ii) override other documents such as the by-laws, etc., and (iii) are appropriate authority for CIMC to attempt to foist attorney's fees on the Freys and others.

CONCLUSION

For the foregoing reasons, CIMC's motion for summary judgment as to attorneys' fees should be denied.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: Neil D. Thomson

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 13th, 2014, this document was served by electronic mail and/or first class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

Neil D. Thang

EXHIBITS TO
SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT DEMANDING ATTORNEYS' FEES

Exhibit 1: The Callawassie Island Members Club Plan for the Offering of
Memberships, amended as of Sept. 1, 2007

Exhibit 2: CIMC By-Laws dated March 2009

Exhibit 3: CIMC General Club Rules dated Feb. 23, 2009

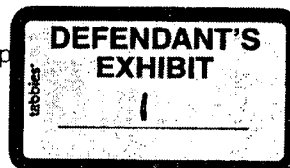
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THE CALLAWASSIE ISLAND MEMBERS CLUB PLAN FOR THE OFFERING OF MEMBERSHIPS

Amended as of September 1, 2007

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THE CALLAWASSIE ISLAND MEMBERS CLUB

PLAN FOR THE OFFERING OF MEMBERSHIPS

Amended as of September 1, 2007

1.0 GENERAL DESCRIPTION OF THE PLAN FOR THE OFFERING OF MEMBERSHIPS

1.1 PURPOSE OF THE PLAN FOR THE OFFERING OF MEMBERSHIPS

The Callawassie Island Members Club, Inc., a South Carolina non-stock and non-profit corporation (the "Club") owns and operates the golf, tennis, swimming and social facilities on Callawassie Island, South Carolina for the use, recreation and enjoyment of its members. The Board of Directors of the Club has adopted this Plan for the Offering of Memberships (the "Plan") as mandated by Article X of the By-Laws, and along with the Articles of Incorporation of The Callawassie Island Members Club, Inc., the current By-Laws of The Callawassie Island Members Club, Inc. (the "By-Laws"), the current General Club Rules of The Callawassie Island Members Club, Inc., and the Club Purchase Agreement between Callawassie Island Company L.P. (the "Partnership"), The Callawassie Island Club, Inc., and The Callawassie Island Members Club, Inc. dated October 26, 1999, as amended (the "Club Purchase Agreement"), offer persons the opportunity to acquire an Equity Membership (as defined below) at the Club.

1.2 DESCRIPTION OF THE CLUB FACILITIES

The facilities currently owned by the Club (the "Club Facilities") that are available for use include the following:

- a 27-hole championship golf course designed by Tom Fazio;
- a driving range and practice green;
- 6 tennis courts;
- a clubhouse facility, which includes locker rooms, a golf shop, tennis shop, a fitness center, a dining room, a bar, a snack shop, club rooms, and administrative offices;
- a swimming pool and deck area, located adjacent to the clubhouse;
- a river club, which is located on the Colleton River and includes a swimming pool, bathhouse, club room, kitchen, barbecue area and boat dock;
- auxiliary buildings used for maintenance, equipment storage, and administration; and
- parking facilities.

The Club may modify these facilities and provide such other facilities as it deems appropriate from time to time.

1.3 GENERAL DESCRIPTION OF MEMBERSHIP CATEGORIES

The Club is currently offering two categories of Equity Membership known as Equity Golf Memberships and Equity Social Memberships, and one category of non-equity membership known as Non-Equity Associate Memberships as further described in Section 2.3.4.

The Club has previously issued Spring Island Non-Equity Social Memberships and Spring Island Founder Memberships. Although these memberships are not currently being offered by the Club, the rights and privileges of these members are described herein.

The Equity Golf Memberships and Equity Social Memberships are sometimes hereinafter collectively referred to as an "Equity Membership" or as "Equity Memberships." A person who obtains an Equity Golf Membership is sometimes hereinafter referred to as an "Equity Golf Member" and collectively as "Equity Golf Members", a person who obtains an Equity Social Membership is sometimes hereinafter referred to as an "Equity Social Member" and collectively as "Equity Social Members", a person who obtains an Equity Membership is sometimes hereinafter referred to as an "Equity Member" and collectively as "Equity Members", a person who obtains a Non-Equity Associate Membership is sometimes hereinafter referred to as a "Non-Equity Associate Member" and collectively as "Non-Equity Associate Members", a person who has obtained a Spring Island Founder Membership is sometimes hereinafter referred to as a "Spring Island Founder Member" and collectively as "Spring Island Founder Members", and a person who has obtained a Spring Island Non-Equity Social Membership is sometimes hereinafter referred to as a "Spring Island Non-Equity Social Member" and collectively as "Spring Island Non-Equity Social Members."

1.4 OWNERS OF RESIDENTIAL UNITS OR LOTS ON CALLAWASSIE ISLAND MUST OBTAIN AN EQUITY MEMBERSHIP

The owner of a residential unit or lot on Callawassie Island must obtain an Equity Membership and pay the required membership contribution and all applicable dues, fees and other Charges (as defined herein) associated with his/her membership until the closing of the sale or other transfer of his/her residential unit or lot to another owner as further described herein.

2.0 MEMBERSHIPS IN THE CLUB

2.1 IN GENERAL

2.1.1 DESCRIPTION OF MEMBERSHIPS

Two categories of Equity Membership are currently available at the Club: Equity Golf Membership and Equity Social Membership. Each Equity Membership represents an ownership interest in the Club and entitles the Equity Member to vote on various club matters, including the election of the Board of Directors. Each Equity Golf Membership and Spring Island Founder Membership entitles the member to five votes and each Equity Social Membership entitles the member to two votes.

The Non-Equity Associate Memberships do not entitle the member to any ownership interest or voting privileges, but do allow the use of certain facilities provided at the Club upon payment of applicable dues, fees and other Charges.

2.1.2 NUMBER OF MEMBERSHIPS AVAILABLE AT THE CLUB

The total number of memberships permitted to be issued in each category is limited as follows.

<u>CATEGORY</u>	<u>MEMBERSHIP LIMITS</u>
Equity Golf Membership and Non-Equity Associate Golf Membership	595
Equity Social Membership	255

Since resigned Spring Island Founder Memberships are placed on the same waiting list for reissuance by the Club on the same basis as Equity Golf Memberships and are reissued by the Club as an Equity Golf Membership, the Club reserves the right to increase the total number of Equity Golf Memberships to accommodate all existing Spring Island Founder Memberships. As of the date of this amended Plan for the Offering of Memberships there are two existing Spring Island Founder Memberships at the Club.

2.2 ELIGIBILITY

2.2.1 ELIGIBILITY FOR MEMBERSHIPS

The Club currently offers Equity Memberships to persons who own residential units or lots on Callawassie Island and to such other persons as the Club determines appropriate from time to time, who are approved for membership.

The Club is currently offering Non-Equity Associate Memberships to persons who do not own a residential unit or lot on Callawassie Island.

2.2.2 EXISTING PROPERTY OWNERS ON CALLAWASSIE ISLAND WHO ARE NOT EQUITY MEMBERS MAY ACQUIRE AN EQUITY MEMBERSHIP ONLY IF AVAILABLE AND UPON PAYMENT OF APPLICABLE FEES

Persons who owned residential units or lots on Callawassie Island prior to December, 2001 who are not Equity Members are permitted to acquire an Equity Membership only if the desired category of Equity Membership is available, upon application and approval, and payment of the applicable membership contribution, dues, fees and other Charges.

2.2.3 PURCHASERS OF RESIDENTIAL UNITS OR LOTS ON CALLAWASSIE ISLAND AFTER DECEMBER 1, 2001, MUST OBTAIN AN EQUITY MEMBERSHIP

In accordance with the Amended And Restated General Declaration For Callawassie Island And Provisions For The Callawassie Island Property Owners Association, Inc. Of December 1, 2001 (the "Declaration") an owner, co-owner or entity that acquires title to a residential unit or lot on Callawassie Island after December 1, 2001, is required to obtain an available Equity Membership at the Club and pay the applicable membership contribution, dues, fees and other Charges associated with such membership. Such owner shall be required to maintain an Equity Membership at the Club in good standing for each residential unit or lot acquired on Callawassie Island after said date for as long as such person or entity owns the subject property. Any such owner of a residential unit or lot on Callawassie Island shall not be exempt from the obligation to obtain an Equity Membership by non-use of the facilities.

2.3 MEMBERSHIP PRIVILEGES

2.3.1 MEMBERSHIP PRIVILEGES AT THE CLUB

The privileges of membership are subject to this Plan, as it may be amended from time to time. The General Club Rules, including the services provided to members and the hours of operation of the Club Facilities or any portion thereof, may be altered, amended or repealed at the discretion of the Board of Directors of the Club. Each person who acquires a membership at the Club will be permitted to use the Club Facilities in accordance with the member's category of membership, the applicable dues category and the General Club Rules as long as the member remains a member in good standing. Any suspension or expulsion of a member shall result in the loss of all membership privileges including the right to vote. Upon approval, payment of the applicable membership contribution and the applicable dues, fees and other Charges and compliance with the General Club Rules established by the Club, members obtain the following use privileges.

2.3.2 EQUITY GOLF MEMBERSHIP PRIVILEGES

Equity Golf Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable membership contribution, dues, fees and other Charges (including food and beverage minimums). Equity Golf Members will be entitled to reserve tee times and tennis court times in accordance with the rules then in effect and will not be required to pay any greens fees or court fees for use of the golf and tennis facilities. Equity Golf Members will be required to pay golf cart fees or trail pass fees for use of the golf course. Equity Golf Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

2.3.3 EQUITY SOCIAL MEMBERSHIP PRIVILEGES

Equity Social Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable membership contribution, dues, fees and other Charges (including food and beverage minimums). Equity Social Members will be entitled to play golf one time per month during the golfing season and two times per month during the non-golf season as defined in the General Club Rules. Equity Social Members will not be required to pay court fees for use of the tennis facilities, but will be required to pay greens fees at the same rate as guests of an Equity Golf Member and golf cart fees or trail pass fees for use of the golf course. Equity Social Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

2.3.4 NON-EQUITY ASSOCIATE MEMBERSHIP PRIVILEGES

In order to promote the sale of residential units and lots on Callawassie Island and to introduce the Club to prospective members, the Club may offer Non-Equity Associate Memberships on an annual basis, or for such other time period as approved by the Board of Directors of the Club. Non-Equity Associate Memberships are only available to persons who do not own a residential unit or lot on Callawassie Island. The rights and privileges of Non-Equity Associate Members will be determined by the Club from time to time. Non-Equity Associate Members shall not have any ownership interest in the Club or the Club Facilities, shall not have any voting privileges, and shall not be subject to any operating assessments or capital assessments. Non-Equity Associate Members must pay a one-time non-refundable membership contribution and an annual non-refundable renewal fee established by the Club from time to time. Non-Equity Associate Memberships are subject to renewal each membership year in the sole discretion of the Club, and therefore, the Club will determine whether Non-Equity Associate Memberships (and how many) will be available prior to the beginning of each membership year.

If the Club determines that Non-Equity Associate Memberships will not be renewed, then the Club shall recall and terminate (without refund of any amounts) each such membership at the end of the membership year, as necessary, on a first-issued, last-recalled basis.

The Club currently offers a Non-Equity Associate Golf Membership and a Non-Equity Associate Social Membership on the following terms and conditions.

Non-Equity Associate Golf Memberships. Non-Equity Associate Golf Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable non-refundable membership contribution, dues, fees and other Charges (including food and beverage minimums). Non-Equity Associate Golf Members will be entitled to reserve tee times and tennis court times in accordance with the rules then in effect and will not be required to pay any greens fees or court fees for use of the golf and tennis facilities. Non-Equity Associate Golf Members will be required to pay golf cart fees or trail pass fees for use of the golf course. Non-Equity Associate Golf Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

At the beginning of each membership year, the total number of permitted Non-Equity Associate Golf Memberships will be limited to the difference between five hundred ninety-five (595) and the number of issued Equity Golf Memberships.

Non-Equity Associate Social Memberships. Non-Equity Associate Social Members are currently available only to residents on Callawassie Island who do not own a residential unit or lot on Callawassie Island. Non-Equity Associate Social Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable non-refundable membership contribution dues, fees and other Charges (including food and beverage minimums). Non-Equity Associate Social Members will be entitled to play golf one time per month during the golfing season and two times per month during the non-golf season as defined in the General Club Rules. Non-Equity Associate Social Members will not be required to pay court fees for use of the tennis facilities, but will be required to pay greens fees at the same rate as guests of an Equity Golf Member and golf cart fees or trail pass fees for use of the golf course. Non-Equity Associate Social Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

2.3.5 SPRING ISLAND NON-EQUITY SOCIAL MEMBERSHIP PRIVILEGES

Spring Island Non-Equity Social Memberships are no longer offered. Existing Spring Island Non-Equity Social Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable dues, fees and other Charges (including food and beverage minimums). Spring Island Non-Equity Social Members will be entitled to play golf one time per month during the golfing season and two times per month during the non-golf season as defined in the General Club Rules. Spring Island Non-Equity Social Members will not be required to pay court fees for use of the tennis facilities, but will be required to pay greens fees at the same rate as guests of an Equity Golf Member and golf cart fees or trail pass fees for use of the golf course. Spring Island Non-Equity Social Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

Spring Island Non-Equity Social Members shall pay the same dues, fees and other Charges (including food and beverage minimums) as an Equity Social Member. However, Spring Island Non-Equity Social Members shall not have any ownership interest in the Club or the Club Facilities, shall not have any voting privileges, and shall not be subject to any capital assessments. The Spring Island Non-Equity Social Membership shall terminate (without refund of any amounts) upon the occurrence of the earlier of: (i) death of the member, (ii) resignation of the membership, or (iii) the sale or other transfer of the member's residential unit or lot on Spring Island.

2.3.6 SPRING ISLAND FOUNDER MEMBERSHIP PRIVILEGES

Spring Island Founder Memberships are no longer offered. Existing Spring Island Founder Members are permitted to use all of the Club Facilities on a space available basis upon payment of the applicable dues, fees and other Charges (including food and beverage minimums).

Spring Island Founder Members will be entitled to reserve tee times and tennis court times in accordance with the rules then in effect and will not be required to pay any greens fees or court fees for use of the golf and tennis facilities. Spring Island Founder Members will be required to pay golf cart fees or trail pass fees for use of the golf course. Spring Island Founder Members using the golf facilities shall abide by the published Golf Rules and Guidelines.

Spring Island Founder Members shall pay the same dues, fees and other Charges (including food and beverage minimums) and assessments as an Equity Golf Member.

2.3.7 THE CLUB MAY CHANGE PLAYING PRIVILEGES

In order to provide the utmost playing pleasure for all members, the Club reserves the right to establish different rules governing access, sign-up privileges and starting times with respect to the golf, tennis and other recreational facilities provided at the Club.

2.3.8 FAMILY PRIVILEGES

An Equity Member's immediate family may use the Club Facilities in accordance with the member's category of membership as provided in the General Club Rules. For purposes of this section, "immediate family" is defined as the individual member and not more than one other adult who is a full-time resident of the member's residential unit and the member's unmarried children under twenty-five years of age who are either full-time residents of the member's residential unit or attending school on a full-time basis.

2.3.9 GUEST PRIVILEGES

An Equity Member may have guests use the Club Facilities in accordance with the member's category of membership and the General Club Rules and payment of applicable guest fees. The Club may limit the number of times any particular individual guest may use the Club Facilities or any particular facility provided at the Club during a specific period of time and limit the number of guests a member may sponsor at any particular time. The sponsoring member will be responsible for all fees and other Charges incurred by his/her guests and for the deportment of his/her guests.

2.3.10 EQUITY MEMBERS MAY DESIGNATE A RESIDENT IN THEIR RESIDENTIAL UNIT ON CALLAWASSIE ISLAND AS A USER OF THEIR MEMBERSHIP PRIVILEGES

Subject to the General Club Rules, an Equity Member who is not residing in his/her residential unit located on Callawassie Island may designate a bona fide resident of such residential unit as the beneficial user of his/her Equity Membership. The designation of a bona fide resident as the beneficial user of an Equity Member's membership must be made in advance and in writing to the Club. During the period that a resident is designated as the beneficial user of the membership, the Equity Member shall not be entitled to use the membership but shall remain obligated for all dues, fees and other Charges (including assessments) associated with his/her Equity Membership. The Equity Member shall be responsible for all fees and other Charges incurred by the beneficial user and for the deportment of the beneficial user.

2.3.11 EQUITY SOCIAL MEMBERS MAY HAVE THE OPPORTUNITY TO UPGRADE TO AN EQUITY GOLF MEMBERSHIP

An Equity Social Member who desires to upgrade to an available Equity Golf Membership shall resign his/her Equity Social Membership and acquire the Equity Golf Membership by paying the then-current membership contribution for an Equity Golf Membership in full. The Equity Social Membership shall be placed on the waiting list to be reissued by the Club. The Club shall reissue the resigned Equity Social Membership on the same basis as any other resigned Equity Social Membership placed on the waiting list and upon reissuance by the Club, shall refund to the upgrading member the amount to be repaid pursuant to Section 5.6. During such time as the resigned Equity Social Membership is on the waiting list to be reissued, the resigned member will not be required to pay dues, fees and other Charges associated with the resigned Equity Social Membership as long as the Equity Golf Membership remains in good standing and all applicable dues, fees and other Charges associated with such Equity Golf Membership are paid. If the Equity Golf Membership becomes delinquent prior to the reissuance of the member's resigned Equity Social Membership, then such member shall be responsible for all dues, fees and other Charges associated with both the Equity Golf Membership and the resigned Equity Social Membership. Prior to the initial sale of all five hundred ninety-five Equity Golf Memberships permitted to be issued at the Club, the Partnership will be entitled to the proceeds from the upgrade of an Equity Social Membership to an Equity Golf Membership.

The downgrade of an Equity Golf Membership to an Equity Social Membership is not permitted.

2.3.12 GOLF AND SOCIAL MEMBERSHIP EXCHANGES

Subject to the General Club Rules and payment of such fees as may be fixed by the Club from time to time and with the prior approval of the Club in each instance, Equity Golf Members and Equity Social Members who are paying resident dues (as described below) may exchange their respective memberships permanently or membership privileges temporarily in accordance with this section. A permanent exchange shall be deemed a membership sale subject to transfer fees as outlined in Sections 5.6 and 5.7. An Equity Social Member may not exchange his/her membership unless he/she has been a member in good standing for at least five (5) consecutive years prior to the time of the exchange. An Equity Social Member shall be permitted to exchange his/her Social Membership on a temporary basis for no more than two (2) years unless the Equity Social Member has previously been an Equity Golf Member who has paid resident golf dues for at least five (5) years.

Exchanging members shall submit such application forms as may be required by the Club and shall pay the dues for the membership being acquired for the membership year in which the exchange occurs. All temporary exchanges shall be for not less than, and shall coincide with, a membership year. Applications for the renewal of exchanges of memberships, together with applicable fees, shall be submitted prior to the beginning of each subsequent membership year. Temporary exchanges will not affect the exchanging members' underlying memberships. Each exchanging member shall vote according to the membership they own and is responsible for all dues, fees and other Charges applicable to the membership they own.

3.0 MEMBERSHIP ADMISSION

3.1 APPLICATION FOR MEMBERSHIP

Each person who desires to acquire a membership in the Club must submit to the Club Membership Office a completed and signed Application for Membership, a Membership Agreement and any required membership contribution by check made payable to "The Callawassie Island Members Club, Inc." The required membership contribution to be paid for a membership shall be the membership contribution charged on the date the applicant submits the Application for Membership to the Club.

The membership contribution required for a membership shall change from time to time, and therefore, the membership contribution required for a membership in the future may be higher or lower than the membership contribution currently in effect.

3.2 REVIEW OF APPLICATION FOR MEMBERSHIP (Exclusive of Property Sale Related Membership Transfers Described In Section 3.3)

Prior to the initial sale of all five hundred ninety-five (595) Equity Golf Memberships in the Club, the Partnership shall have the exclusive right to determine the qualifications of a membership candidate. Following the initial sale of all five hundred ninety-five (595) Equity Golf Memberships in the Club, the Board of Directors of the Club will exercise sole authority to determine the qualifications of a membership candidate.

Subject to the above, upon receipt of the Application for Membership, the Membership Agreement and the required membership contribution, the Partnership or the Club (as the case may be) will determine within thirty (30) days after receipt of the Application for Membership, Membership Agreement and the required membership contribution whether the candidate has satisfied the conditions of membership. If the candidate has satisfied the conditions of membership, the candidate will be notified in writing that his/her application has been acted upon favorably. If the candidate has not satisfied the requirements of membership, the candidate will be notified that the application has not been acted upon favorably and any membership contribution previously paid by such applicant shall be returned, without interest.

(a) The membership process will be confidential. The identity of any applicant and any information gathered in the evaluation process will not be disclosed until posting for acceptance. Records of all membership deliberations will be considered, and retained as, confidential. If an application is not approved, neither the sponsor nor applicant will be given a specific reason for denial. The Club will follow, without exception, the same procedures for every membership candidate. No exceptions will be made to the conditions of membership.

(b) A majority vote of the members of the Board of Directors of the Club against any applicant shall constitute disapproval.

3.3 MEMBERSHIP APPLICATIONS ASSOCIATED WITH PROPERTY TRANSFERS OR SALES

All membership applications that are directly associated with the transfer or sale of a residential unit or lot on Callawassie Island shall be evaluated by either the Partnership or the Club (as the case may be) based solely on the ability of the applicant to fulfill the financial requirements of membership at the Club.

3.4 EQUITY MEMBERSHIP CERTIFICATES

(a) Each Equity Golf Member and Equity Social Member who has paid the required membership contribution shall receive a membership certificate. Such certificate shall be in a form approved by the Board of Directors and shall state that the certificate is issued subject to the By-Laws of the Club as they now are or may be amended, and shall be subscribed by the President or Vice President and the Secretary and under the Seal of the Club.

(b) Membership certificates are not redeemable or transferable, except as specifically provided in this Plan and then only through the Treasurer of the Club. Whenever any person shall cease to be an Equity Member, whether by death, resignation, recall, expulsion or other provisions of this Plan or the By-Laws, such cessation shall operate to authorize the Treasurer of the Club to effectuate the redemption, cancellation, purchase or reissuance of the membership certificate of such Equity Member in accordance with, and in the manner prescribed by, this Plan and the By-Laws.

4.0 INITIAL SALE MEMBERSHIP CONTRIBUTION

4.1 MEMBERSHIP CONTRIBUTIONS PAID TO THE PARTNERSHIP

The Partnership will receive all proceeds from the initial sale of all Equity Memberships. All membership contributions received or to be received by the Club from the initial sale of all of the Equity Memberships permitted to be issued at the Club shall be paid directly to the Partnership as a non-refundable purchase payment. All such payments shall be utilized by the Partnership in any manner that the Partnership, in its sole and absolute discretion, determines appropriate.

4.2 UNISSUED EQUITY MEMBERSHIPS

The Partnership shall sell all of the unissued Equity Memberships and the Club shall cooperate with the Partnership in good faith to assist with the sale of these unissued Equity Memberships.

In consideration for the ongoing obligation of the Partnership to pay dues as herein provided, the Partnership will be entitled to vote on any Equity Membership it is holding for initial sale.

4.3 AMOUNT OF REQUIRED MEMBERSHIP CONTRIBUTION

Prior to the initial sale of all five hundred ninety-five (595) Equity Golf Memberships permitted to be issued at the Club, the Partnership shall establish, from time to time, the required membership contribution for Equity Memberships (including any resigned memberships). All golf and social membership resales shall be sold at a price of not less than the then current offering price for initial sale memberships of the same category or at such price as may be approved by the Club. All memberships sold by the Partnership or the Club shall include an obligation to pay full membership dues, fees and assessments. After the initial sale of all five hundred ninety-five (595) Equity Golf Memberships permitted to be issued at the Club, the Board of Directors of the Club shall establish the required membership contribution.

5.0 TRANSFER OF MEMBERSHIPS

5.1 MEMBERSHIPS ARE NOT TRANSFERABLE DIRECTLY TO ANOTHER MEMBER

Members may not sell, transfer or otherwise assign their membership directly to any third party. Any attempt to sell, transfer or otherwise assign a membership, either voluntarily, involuntarily or by operation of law, which is not in accordance with this Plan and the By-Laws shall be null and void and be of no force and effect, and shall not confer any membership rights or other privileges upon any such purchaser, transferee or assignee to use the Club Facilities.

5.2 MEMBERSHIP TRANSFERS

A membership may only be transferred to the Club. An Equity Member who owns a residential unit or lot on Callawassie Island may arrange for the Club to reissue his/her resigned Equity Golf Membership or Equity Social Membership to the successor owner of his/her residential unit or lot on Callawassie Island provided such successor owner is approved for membership.

5.3 EQUITY MEMBERS WHO PURCHASED RESIDENTIAL UNITS OR LOTS ON CALLAWASSIE ISLAND AFTER DECEMBER 1, 2001 MAY NOT RESIGN MEMBERSHIP PRIVILEGES

In accordance with the Declaration, an owner, co-owner or entity that acquires title to a residential unit or lot on Callawassie Island after December 1, 2001 is not permitted to resign the Equity Membership and is required to maintain an Equity Membership in good standing for each such residential unit or lot acquired on Callawassie Island after said date for as long as such person or entity owns the subject property. Therefore, such owner of a residential unit or lot on Callawassie Island must maintain an Equity Membership in good standing and pay the required dues, fees and other Charges to the Club for such Equity Membership until such member ceases to be an owner of a residential unit or lot on Callawassie Island.

5.4 RESALE OF MEMBERSHIP TO SUCCESSOR OWNER OF RESIDENTIAL UNIT OR LOT ON CALLAWASSIE ISLAND

(a) The member shall submit his/her resignation in writing stating that he/she is transferring his/her residential unit or lot on Callawassie Island and that the resignation shall become effective following the closing of title and the acceptance of the successor owner of his/her residential unit or lot by the Club.

(b) The successor owner of the residential unit or lot must submit to the Club a signed and completed Application for Membership, a Membership Agreement and the required membership contribution.

(c) The resigning member shall deliver to the Secretary of the Club the membership certificate for the resigned membership together with an assignment thereof, properly endorsed by the resigning member.

(d) The membership contribution to be paid to the Club by the successor owner for his/her membership shall be the amount of the membership contribution in effect on the date the resigned membership is acquired. After the successor owner becomes an Equity Member and upon receipt of his/her membership contribution, the Club shall promptly remit the amount due to the resigned member as provided pursuant to Section 5.6. As soon as practicable thereafter, the Secretary of the Club shall cancel the membership certificate of the resigned member and issue a new membership certificate to the successor owner.

5.5 REISSUANCE OF RESIGNED EQUITY MEMBERSHIPS

The resigned Equity Membership of any member that is not reissued to the successor owner of his/her residential unit or lot on Callawassie Island in accordance with Section 5.4 and the resigned Equity Membership of any member who does not own a residential unit or lot on Callawassie Island, shall, subject to the Club's and the Partnership's right of first refusal, be placed on the waiting list to be reissued by the Club on a first-listed, first-reissued basis in accordance with the following procedure.

(a) Prior to the issuance of all of the Equity Memberships permitted to be issued in the member's category of membership, every fourth Equity Membership issued in that category will be an Equity Membership from the waiting list for that category. The other three Equity Memberships will be issued from the Partnership's unissued Equity Memberships.

(b) After the issuance of all of the Equity Memberships permitted to be issued in the member's category of membership, every Equity Membership issued in that category will be an Equity Membership from the waiting list for that category.

Spring Island Founder Members may resign their memberships on the same basis as Equity Golf Members. Spring Island Founder Memberships that have been resigned shall be placed on the same waiting list for reissuance by the Club on the same basis as Equity Golf Memberships. A resigned Spring Island Founder Membership will be reissued by the Club as an Equity Golf Membership. Upon reissuance of a resigned Spring Island Founder Membership as an Equity Golf Membership by the Club, then the resigned Spring Island Founder Member shall be paid an amount determined pursuant to Section 5.6.

5.6 REPAYMENT OF MEMBERSHIP CONTRIBUTION

For memberships purchased before March 15, 2006, Equity Members and Spring Island Founder Members in good standing will be entitled to receive upon the reissuance of their resigned memberships (either pursuant to Section 5.4 or Section 5.5) an amount equal to the greater of: (a) the membership contribution which the resigned member previously paid for his/her membership, or (b) eighty percent (80%) of the membership contribution paid by the successor owner of the resigned member's Equity Membership.

For Equity Memberships purchased after March 14, 2006, Equity Members in good standing will be entitled to receive upon the reissuance of their resigned Equity Memberships (either pursuant to Section 5.4 or Section 5.5) an amount equal to eighty percent (80%) of the membership contribution paid by the successor owner of the resigned member's Equity Membership.

The Club is entitled to deduct from the amount to be paid to a resigned member any amount (including dues, fees, assessments, other Charges and membership contributions) that such resigned member owes to the Club.

5.7 PORTION OF MEMBERSHIP CONTRIBUTION RETAINED BY CLUB

All proceeds from the reissuance (resale) of an Equity Membership in excess of the amount refunded to the resigning member in accordance with Section 5.6 shall be retained by the Club, and deposited in a Club Fund. The Board of Directors of the Club will direct the investment of the Club Fund. The Club Fund may be used to fund any operating deficits, capital replacement reserve and any capital additions, repairs or improvements to the Club Facilities, or in such other manner as the Board of Directors of the Club determines appropriate.

5.8 RESALE OF MEMBERSHIP OF RESIGNING MEMBER SELLING HIS/HER RESIDENTIAL UNIT OR LOT ON CALLAWASSIE ISLAND TO ANOTHER MEMBER

A resigning Equity Member who sells his/her residential unit or lot on Callawassie Island to another Equity Member who desires to retain his/her Equity Membership and such purchaser has sold his/her residential unit or lot on Callawassie Island to a non-member/third party, then the resigning member may arrange for the Club to reissue his/her Equity Membership to such non-member/third party. However, the three (3) transactions (both residential units or lots and the reissuance of the Equity Membership) must have simultaneous closing dates. The reissuance of an Equity Membership to the non-member/third party shall be considered a resale of an Equity Membership in accordance with Sections 5.4 and 5.6, and shall be subject to all of the requirements as set forth therein.

5.9 TRANSFER UPON DEATH OF A MEMBER

Upon the death of an Equity Member or Spring Island Founder Member in good standing who is survived by a spouse, the deceased member's membership will automatically pass to the surviving spouse without payment of any new membership contribution in accordance with the provisions of this section. If the deceased Equity Member is not survived by a spouse, then the legatee or heir of the Equity Membership may acquire the deceased member's Equity Membership without payment of any new membership contribution. If the legatee or heir desires to acquire the Equity Membership, the legatee or heir must apply for the membership within one hundred twenty (120) days after his/her right to the Equity Membership has been determined and pay to the Club all dues, fees and other Charges from the date of the member's death to the date of the application. If the legatee or heir does not apply for the Equity Membership within one hundred twenty (120) days after acquiring the right to the Equity Membership, then the Equity Membership will be deemed to have been resigned and will be reissued by the Club in the same manner as any other resigned Equity Membership. Upon the reissuance of such Equity Membership, the estate of the deceased member will be paid the amount of the membership contribution which would otherwise have been payable to the deceased member in accordance with Section 5.6 less all dues, fees and other Charges associated with the Equity Membership that are owed to the Club. In any event, the spouse, legatee/heir and/or estate of the deceased member shall be responsible for payment of all dues, fees and other Charges associated with the deceased member's Equity Membership from the date of the member's death until such time as the deceased member's residential unit or lot on Callawassie Island is transferred to another owner and such owner acquires an Equity Membership.

Upon the death of all other non-equity members, the membership is not transferable.

The Club reserves the right, in its sole discretion, to establish such other rules as may be necessary in connection with the transfer of a membership upon the death of a member and may require the execution of such forms as may be deemed necessary by the Club from time to time.

5.10 SEPARATION OR DIVORCE OF MEMBERS

In the event of the divorce or legal separation of an Equity Member or Spring Island Founder Member in good standing, the Equity Membership shall belong to the party designated by agreement of the member and the member's spouse or as designated by final court order, provided, however, that in order for the Equity Membership to be transferred to the spouse, the spouse must satisfy all membership eligibility requirements. Both of the divorced or legally separated persons must give written notice to the Club designating the person who is entitled to the rights and privileges of the Equity Membership within five (5) days after the divorce or legal

separation is final. Until written notice has been provided to the Club, both spouses will be responsible for the payment of all dues, fees and other Charges associated with the membership. A spouse who does not retain or acquire the Equity Membership shall no longer be permitted to use the Club Facilities upon the entry of a separation or final divorce order. The Club will not be involved in any dispute, and reserves the right to suspend any and all membership privileges in the event of a dispute between a member and his/her spouse with respect to the ownership of an Equity Membership and use of the Club Facilities.

In the event of the divorce or legal separation of all other non-equity members in good standing, the membership is not transferable.

The Club reserves the right, in its sole discretion, to establish such other rules as may be necessary in connection with the transfer of a membership upon the divorce or legal separation of a member and may require the execution of such forms as may be deemed necessary by the Club from time to time.

5.11 PAYMENT OF DUES AND OTHER CHARGES BY RESIGNING MEMBERS

An Equity Member who is on the waiting list to sell his/her membership will be obligated to continue to pay to the Club all dues, fees and other Charges associated with his/her membership until his/her Equity Membership is reissued by the Club. Any unpaid dues, fees and other Charges plus interest accrued under the then prevailing terms of the General Club Rules will be deducted from the amount to be paid to the resigned member upon the reissuance of his/her resigned Equity Membership. A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all dues, fees and other Charges associated with the resigned Equity Membership.

5.12 DUES, FEES AND CHARGES PRORATED UPON REISSUANCE OF RESIGNED EQUITY MEMBERSHIP

If a resigned Equity Membership is reissued by the Club during a membership year, the resigned Equity Member will be entitled to receive a refund of all dues and other Charges paid in advance for the remainder of the membership year.

5.13 NON-EQUITY ASSOCIATE MEMBERS AND SPRING ISLAND NON-EQUITY SOCIAL MEMBERS ARE NOT ENTITLED TO A REFUND OF ANY AMOUNT UPON RESIGNATION OF MEMBERSHIP PRIVILEGES

Non-Equity Associate Memberships and Spring Island Non-Equity Social Memberships are not transferable and shall terminate upon resignation of membership privileges. Non-Equity Associate Members and Spring Island Non-Equity Social Members are not entitled to a refund of any amounts whatsoever (i.e., membership contribution, dues, fees and other Charges) previously paid for membership upon the resignation or other termination of membership.

6.0 DUES, FEES, CHARGES AND LIENS

6.1 SETTING OF DUES, FEES AND CHARGES

Members are and will continue to be the primary source of operating and capital funds for the Club. The Board of Directors of the Club will, from time to time, determine the dues, fees and other Charges (including any food and beverage minimums) for each category of membership. All dues will be payable in advance, on or before the first day of each month during the membership year, unless otherwise determined by the Club.

The timely payment of dues, fees, food and beverage minimums, assessments, charges, state taxes, service charges and other charges that the Club may establish from time to time (collectively, the "Charges") is required to obtain and maintain membership privileges at the Club.

6.2 RESIDENT DUES AND NONRESIDENT DUES

Resident and nonresident dues categories are currently available for Equity Golf Memberships. Each Equity Golf Member who owns a completed residential unit on Callawassie Island or who resides for three (3) or more months during any membership year in Beaufort or Jasper Counties, South Carolina, or Chatham County, Georgia, will be considered to be a "resident" and will be required to pay resident dues. All other Equity Golf Members shall pay nonresident dues. It is the responsibility of Equity Golf Members to inform the Club immediately upon a change in resident status.

The Club does not currently offer a nonresident dues category for Equity Social Memberships and therefore, all Equity Social Members shall pay resident dues. However, those existing Equity Social Members that qualified for nonresident dues status prior to July 1, 2005, shall be grandfathered and be permitted to continue to pay nonresident dues established by the Club.

6.3 SURVIVING SPOUSE MAY ELECT TO PAY LESS DUES

The Club allows a limited number of persons whose spouse was a resident Equity Golf Member in good standing at the time of his/her death to elect Surviving Spouse Privileges as described herein. A surviving spouse who elects Surviving Spouse Privileges, shall be permitted to use all of the Club Facilities except the golf course and golf practice facilities on a space available basis upon payment of the applicable dues, fees and other Charges. Such surviving spouse will be entitled to reserve tennis court times in accordance with rules then in effect and will not be required to pay any court fees for use of the tennis facilities. At the beginning of each membership year each such surviving spouse is entitled to receive a maximum of twelve (12) vouchers entitling immediate family members to play golf without payment of any greens fee or golf cart fee. Vouchers must be used during the year of issuance and cannot be carried over to another year. Immediate family members when using the golf facilities shall abide by the published Golf Rules and Guidelines.

The surviving spouse shall pay dues equal to eighty percent (80%) of the dues charged to Equity Golf Members who are paying resident dues and shall be subject to the same food and beverage minimum that is charged to Equity Golf Members who are paying nonresident dues. All other fees and assessments shall be the same as that paid by Equity Golf Members who are paying resident dues. Should the surviving spouse become delinquent (as described in the General Club Rules) the Surviving Spouse Privileges will be suspended and the obligation to pay resident dues will be reinstated.

The cumulative amount of dues that are not paid by a surviving spouse who has elected Surviving Spouse Privileges (i.e., the 20% difference) shall accrue and shall be deducted from the amount that would otherwise be paid to the surviving spouse upon resignation and reissuance of his/her Equity Golf Membership by the Club in accordance with Section 5.6. All such dues amounts that are deducted from the amount to be paid to the surviving spouse shall be retained by the Club.

6.4 SENIOR DUES CATEGORY

The Club allows a limited number of eligible Equity Golf Members in good standing to elect Senior Dues Status. In order to be eligible to elect Senior Dues Status, the member must have been an Equity Golf Member who has paid resident dues and remained in good standing for at least fifteen (15) years and be at least seventy-five (75) years of age. If the member is married then his/her spouse must also be at least seventy-five (75) years of age. If an Equity Golf Member elects Senior Dues Status, then he/she shall be permitted to use all of the Club Facilities on a space available basis upon payment of the applicable dues, fees and other Charges. Such members will be entitled to reserve tee times and tennis court times in accordance with the rules then in effect and will not be required to pay any greens fees or court fees for use of the golf and tennis facilities. Such members will be required to pay golf cart fees or trail pass fees for use of the golf course.

If the Equity Golf Member who elects Senior Dues Status is not married, then at the beginning of each membership year such member is entitled to receive a maximum of twelve (12) vouchers entitling immediate family members to play golf without payment of any greens fee or golf cart fee. Vouchers must be used during the year of issuance and cannot be carried over to another year. Immediate family members when using the golf facilities shall abide by the published Golf Rules and Guidelines.

The Equity Golf Member electing Senior Dues Status shall pay dues equal to eighty percent (80%) of the dues charged to Equity Golf Members who are paying resident dues and shall be subject to the same food and beverage minimum that is charged to Equity Golf Members who are paying nonresident dues. All other fees and assessments shall be the same as that paid by Equity Golf Members who are paying resident dues. Should the member become delinquent (as described in the General Club Rules) the Senior Dues Status will be suspended and the obligation to pay resident dues will be reinstated.

The cumulative amount of dues that are not paid by a member who has elected Senior Dues Status (i.e., the 20% difference) shall accrue and shall be deducted from the amount that would otherwise be paid to the member upon resignation and reissuance of his/her Equity Golf Membership by the Club in accordance with Section 5.6. All such dues amounts that are deducted from the amount to be paid to the member shall be retained by the Club.

6.5 NUMBER OF PERSONS THAT CAN SELECT SURVIVING SPOUSE PRIVILEGES AND SENIOR DUES STATUS AT ANY ONE TIME

The maximum number of Equity Golf Members that may elect Surviving Spouse Privileges and Senior Dues Status pursuant to Sections 6.3 and 6.4 at any one time shall be defined in the General Club Rules. Once the maximum number has been reached, then the Club shall maintain a waiting list of eligible Equity Golf Members. Members shall be placed on the waiting list based on his/her length of continuous membership at the Club (i.e., the member who has been a member for the longest continuous period of time shall have priority on that particular waiting list and shall be placed ahead of other members). Each waiting list shall be updated on a monthly basis, and therefore, a member's position on a particular waiting list may change from month to month.

6.6 BUDGET

In accordance with the Club Purchase Agreement, until such time as the Club operates at least at break-even cash flow for the preceding twelve (12)-month period, the Partnership and the Club will annually establish a mutually agreed upon budget for the operation of the Club. For this purpose, the term "break-even cash flow" shall be defined as a positive excess of revenues over all mutually agreed upon operating expenses including capital repair and replacement, capital improvements, and capital lease expenditures. Such operation to be determined by an independent CPA firm.

6.7 MEMBERSHIP YEAR

The Club's membership year will constitute the twelve (12)-month period commencing on January 1st and ending on December 31st.

6.8 LIENS

The Club shall have a lien against each membership for any unpaid dues, fees and other Charges made by that member, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues, fees and other Charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing and shall be entitled to a satisfaction of lien to be prepared and recorded at the member's expense. All such liens may be foreclosed by the Club, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. The Club may also, at its option, sue to recover a money judgment for unpaid dues, fees and other Charges without thereby waving the lien securing the same. The Board of Directors reserves the right to report members who are in arrears on their Club bills to an appropriate national credit reporting agency.

Any other liens placed against a membership shall be junior to the Club's lien.

7.0 OPERATING AND CAPITAL ASSESSMENTS AND DEBTS

7.1 OPERATING ASSESSMENTS

From time to time the Board of Directors of the Club may find it necessary to assess the members, in addition to dues, fees and other Charges, to cover any operating deficits which may occur. Any assessments to cover operating deficits will be prorated among all of the Equity Members and Spring Island Founder Members in relation to the amount of dues charged to their respective membership categories. Equity Golf Members who have elected either Surviving Spouse Privileges or Senior Dues Status will be required to pay the same amount as that paid by Equity Golf Members who are paying resident dues.

7.2 CAPITAL ASSESSMENTS

In accordance with Section VI.2 of the By-Laws, there shall be no one-time assessments for capital expenditures in excess of \$200,000, except in the case of a declared emergency, unless such assessment is approved by a majority vote of the Equity Members and Spring Island Founder Members entitled to vote on such proposed assessment. Assessments for any capital expenditures to the golf course shall be voted on by, and prorated equally among, the Equity Golf Members and Spring Island Founder Members. Equity Social Members shall not be subject to any assessment for capital expenditures to the golf course. All other assessments for capital expenditures to the Club Facilities shall be voted on by, and prorated equally among, all of the Equity Members and Spring Island Founder Members.

7.3 DUES AND ASSESSMENTS REGARDING PARTNERSHIP'S UNSOLD MEMBERSHIPS

Pursuant to the Club Purchase Agreement, the Partnership has agreed that the unsold Equity Golf Membership certificates issued to the Partnership on June 29, 2001, shall be subject to nonresident Equity Golf Membership dues and assessments. Payments of monthly dues/fees or assessments by the Partnership on the unsold Equity Golf Memberships are to be stopped when a positive cash flow is achieved on a monthly basis. Such payments by the Partnership will resume if positive cash flow is not achieved and maintained on a monthly basis to ensure positive cash flow which maintains working capital as forty-five (45) days average payables, maintenance of budgeted capital repair and replacement reserves and payment of all capital leases. As the Partnership sells a membership, the dues, fees and other Charges for such membership shall be prorated as of the date of purchase of the membership on the basis of the number of months left in the membership year.

7.4 DEBT

The Club will be responsible for making payments on any debt incurred on behalf of the Club. The Club shall allocate the cost of all payments on any debt service for capital expenditures among the members in such a manner that:

- (a) Any debt service payments for capital expenditures to the golf course shall be prorated equally among all Equity Golf Members and Spring Island Founder Members;
- (b) Equity Social Members shall not be assessed for any debt service for capital expenditures to the golf course;
- (c) All other debt service payments for capital expenditures to the Club Facilities shall be prorated equally among all of the Equity Members and Spring Island Founder Members.

8.0 THE BOARD OF DIRECTORS

8.1 BOARD OF DIRECTORS RESPONSIBLE FOR MANAGEMENT OF THE CLUB

The Board of Directors will be responsible for the government and administration of the affairs and property of the Club. In general, the Board of Directors has the authority to accept members, set dues, fees and other Charges (including any food and beverage minimums), establish rules and regulations and, control the overall management and affairs of the Club. The Club may not be operated in contravention of the terms and conditions of this Plan or the By-Laws. Refer to Article IV of the By-Laws.

8.2 CONTROL OF THE BOARD OF DIRECTORS

The Board of Directors consists of nine (9) Directors, all of whom are elected by the Equity Members and must be Equity Members at the Club. Directors shall serve a term of three (3) years.

9.0 OTHER USE PRIVILEGES

9.1 NONMEMBER USE OF THE CLUB FACILITIES

Use of the Club Facilities by nonmembers may be permitted from time to time as may be authorized by the Board of Directors of the Club.

10.0 PARTNERSHIP ACCESS, FACILITY DESIGN AND EASEMENT RIGHTS

In order to promote the sale and re-sales of residential units and lots on Callawassie Island, to promote the sale of Equity Golf Memberships at the Club and to protect its remaining assets and interests on Callawassie Island and the Club, the Partnership has retained certain rights to and concerning the Club Facilities. These rights terminate when certain conditions have been satisfied. The details of these rights are contained in the Club Purchase Agreement and Attachment A hereto.

11.0 MODIFICATION OF MEMBERSHIP PLAN

11.1 BOARD OF DIRECTORS MAY AMEND THE PLAN

The Board of Directors may, in its sole discretion, amend or modify this Plan from time to time, so long as such amendments or modifications do not materially and adversely affect the rights of the Equity Members. Any amendment or modification which materially and adversely affects the rights of the Equity Members must be approved by a majority of the votes held by the Equity Members so affected. Certain terms of this Plan as listed below may not be amended without concurrence of the Partnership.

11.2 CERTAIN PROVISIONS OF THIS PLAN MAY NOT BE AMENDED

This Plan may be amended in accordance Section 11.1 provided, however, that until (a) the Partnership has sold five hundred ninety-five (595) Equity Golf Memberships, or (b) seven hundred (700) of its residential lots and units at Callawassie, or (c) December 31, 2010, whichever shall last occur, neither the Club nor its members may at any time, without the prior consent of the Partnership, which consent may not be unreasonably withheld, alter, amend or change this Plan with regard to any of the following items:

- (a) the total number of memberships permitted to be issued in the Club or in any particular category of membership as described in the Plan as of June 29, 2001;
- (b) the restrictions or limitations on assessments as described in the Plan as of June 29, 2001;
- (c) the restrictions or limitations on any unissued memberships held by or on behalf of the Partnership for dues, fees, assessments and other Charges as described in the Plan as of June 29, 2001;

- (d) the right of the Partnership to use the Club Facilities pursuant to the Marketing, Access and Use Agreement as described in the Plan as of June 29, 2001;
- (e) the rules and regulations relating to use of the Club Facilities by guests of members as described in the Plan as of June 29, 2001;
- (f) the rights of a lessee of an Equity Member's residential unit on Callawassie Island as described in the Plan as of June 29, 2001; and
- (g) the eligibility to acquire an Equity Membership as described in the Plan as of June 29, 2001.

12.0 MISCELLANEOUS PROVISIONS

12.1 MEMBERSHIP DIRECTOR AVAILABLE TO ANSWER INQUIRIES

If you have any questions concerning the Plan or the membership opportunities available at the Club, please contact the Membership Director or visit the Club Membership Office Monday through Friday from 9:00 A.M. to 5:00 P.M. No appointment is necessary.

12.2 CAREFULLY REVIEW ALL DOCUMENTS

This Plan describes the membership opportunities offered by the Club and is qualified by the definitive information set forth in the By-Laws, Articles of Incorporation, General Club Rules and Club Purchase Agreement. Every person who desires to purchase a membership at the Club should carefully read this Plan and all of the referenced documents and should consider seeking professional advice to evaluate these documents.

12.3 RELY ONLY ON INFORMATION IN THIS PLAN

No person has been authorized to give any information or make any representation not expressly contained in this Plan and, if given or made, such information or representation must not be relied upon as having been authorized by the Club.

12.4 MEMBERSHIPS OFFERED ONLY FOR RECREATIONAL PURPOSES

Memberships are being offered exclusively for the purpose of permitting persons acquiring memberships to obtain recreational use of the Club Facilities. Memberships should not be viewed or acquired as an investment, and no person purchasing a membership should expect to derive any economic profits from membership at the Club.

No federal or state authority has passed upon or endorsed the merits of this Plan.

ATTACHMENT A (3/20/01) IS INCLUDED AS AN INTEGRAL PART OF THIS MEMBERSHIP PLAN.

ATTACHMENT A (3/20/01)
PARTNERSHIP RIGHTS

APPLICABLE SECTIONS FROM CLUB PURCHASE AGREEMENT DATED 10/26/99

USE OF CLUB FACILITIES BY PROSPECTIVE PURCHASERS OR MEMBERS

The Club shall permit the Partnership, its successors, affiliates and assignees to use the dining and lounge facilities for the purpose of entertaining prospective retail purchasers of homes or lots on Callawassie Island, including re-sales, and prospective Club Members. Club shall permit such prospective purchasers or members to use the golf and tennis facilities in accordance with current practices accorded the Partnership and its successors, assignees and affiliates (including without limitation tee access) and otherwise in accordance with the same rules and regulations prescribed for guest of golf members. These rights include the ability of the Partnership to hold promotional events and tournaments at the Club Facilities with the approval of the Board of Directors with such approval not to be unreasonably withheld or delayed. This right to use the Club facilities becomes null and void when all developer lots are sold.

The Partnership will establish an account for charges incurred by the Partnership's affiliates, assignees, employees and agents in connection with the entertainment of such prospective purchasers, including green fees and cart fees. The amount of said charges shall be the same as those charged, from time to time, for guest(s) of member(s) of the Club.

The Club shall bill the Partnership and its affiliates, successors and assignees, as the case may be, monthly for such charges.

MARKETING ACCESS AND USE RIGHTS

In order to promote the sale and re-sales of residential units and lots on Callawassie Island, and to promote the sale of golf memberships in the Club, the Partnership and its successors, assigns and affiliates shall be permitted to use the Club Facilities until such time as Partnership has sold 595 initial golf equity memberships (the "Access Term").

Such Access Term may be extended upon mutual agreement of Members Club and Partnership. The Partnership shall have the right to designate individuals to use the Club Facilities on a space available basis during the Access Term, subject to the approval of the Club and without regard as to whether such individuals are employees of the partnership, prospective members of the Club or prospective purchasers of property on Callawassie Island or one of the other designated communities. Access and use of the Club Facilities shall be subject to such terms and conditions as are reasonably established by the Members Club from time to time.

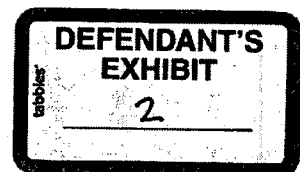
During the access term, Partnership shall have the right, upon the prior approval of Club, and payment of appropriate user fees, to schedule and hold marketing and promotional events using the Club Facilities, including without limitation, golf and tennis tournaments and other exhibitions and the right to promote the development of and to otherwise market residential units and lots on Callawassie Island and memberships in the Club in advertisements, promotional materials and other promotional media by making reference to the Club (including but not limited to pictures or drawings thereof) and the availability of equity memberships herein.

The Club shall establish a separate account for each of those individuals designated by the Partnership to use the Club Facilities during the Access Term. The individuals designated by the Partnership shall charge their fees, charges and food and beverages purchases to their Club account with payment of such charges to be guaranteed by the Partnership. Individuals designated by the Partnership shall pay the same fees and charges that are charged to the guests of a golf member. The Club shall bill the Partnership directly for each such club account. Individuals designated by the Partnership to use the Club Facilities shall not have any voting rights, nor shall they be obligated to pay any membership contribution, annual dues, food and beverage minimums or assessments, and shall not count against the total number of memberships permitted to be issued in the Club.

CALLAWASSIE ISLAND MEMBERS CLUB

By-Laws

March, 2009



**THE CALLAWASSIE ISLAND CLUB
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AMENDED AND RESTATED BY-LAWS OF CALLAWASSIE ISLAND MEMBERS CLUB

March, 2009

ARTICLE I PURPOSE OF CLUB

The nature and purpose of the Callawassie Island Members Club, Inc.. ("Club") is to own and operate a private country club for the recreation, pleasure and benefit of its equity members.

ARTICLE II CLUB EMBLEM

The emblem of the Club shall be of a style and design to be approved by the Board of Directors.

ARTICLE III MEMBERS MEETING

3.1 Annual Meeting. An annual meeting of the equity members of the Club shall be held for the purposes of receiving reports of officers and others, electing directors, and for such other business as may be properly brought before the meetings.

3.2 Date and Place of Annual Meeting. The annual meeting of the Equity members shall be held at such appropriate time and place in South Carolina as the Board of Directors may designate.

3.3 Special Meetings. Special meetings of the equity members may be called by the President of the Board of Directors, a majority of the members of the Board of Directors or, upon the written request of ten percent (10%) or more of the members entitled to vote. Such request shall be submitted to the President who shall then call a special meeting within thirty (30) days of the date of such request. Notices of any special meeting must contain a statement of the purpose for which such special meeting is called and no other business may be transacted at that meeting.

3.4 Notices. The Secretary shall give not less than fifteen (15) days nor more than fifty (50) days prior notice, by mail, prepaid, to all equity members of the Club, stating the time, place, and purpose of any meeting.

3.5 Quorum. The presence, either in person or by written proxy, of equity members having a majority of the votes then entitled to be voted shall constitute a quorum at any meeting of the equity members. A quorum must be present to constitute a legal vote of the Equity members.

3.6 Proxies. Members may vote by proxy. The Board of Directors will determine the form and procedures for the use of the proxies authorized in writing.

3.7 Voting Percentage. Except for the election of members to the Board of Directors, which shall be by plurality vote, a majority of those equity members present (in person or by proxy) is necessary for passage of any issue before the equity members.

3.8 Memberships. Each equity membership shall entitle the equity member to vote on various club matters, including the election of the Board of Directors. Each Golf membership shall entitle the golf member to five (5) votes, while each social membership shall entitle the social member to two (2) votes. Spring Island founder members shall have the same voting privileges as a golf member.

3.9 Ballot. In lieu of the annual or a special meeting, the Club shall have the option to conduct any vote by written ballot.

3.10 Ballot for Election of Directors. The written ballot shall be delivered by mail, facsimile, electronically (or any combination thereof) to all equity members by February 1st of each year. All written ballots must be returned to the Club by March 1st of that same year. The written ballot shall contain the names of those individuals selected by the nominating committee and those eligible by petition. The vote shall be conducted by written ballots and all written ballots must be received by the Board of Directors no later than 5:00 p.m. on March first. The Member delivering the ballot is responsible for the method of delivery. For an election to be valid, more than fifty percent (50%) of the Members must timely submit the written ballots. A majority of the ballots returned is required for the passage of any issue except for the election of directors. The individuals with the highest number of votes shall be elected as directors. The Board of Directors will announce the vote tabulation during the Annual Meeting and the candidates with the greatest number of votes shall fill the open directorships. The new directors shall hold office for their three (3) year term commencing with the close of the Annual Meeting

ARTICLE IV BOARD OF DIRECTORS

4.1 Number and Qualifications. The business and affairs of the Club shall be governed by a Board of Directors. The Board of Directors shall consist of nine (9) equity members of the Club in good standing

4.2 Nominating.

(a) The Board of Directors shall appoint a Nominating Committee consisting of five (5) members entitled to vote, two (2) of whom shall be members of the Board of Directors by September 1st of each year. Members of the Nominating Committee shall serve for a term of one (1) year or until their successors are appointed and qualified. Unless specifically requested by a majority of the Board of Directors, the Nominating Committee shall not nominate candidates to fill any vacancies occurring by reason of death, resignation or otherwise, for any unexpired term.

(b) The Nominating Committee shall recommend to the Board of Directors at the December Board meeting of each year, the names of equity members of the Club to be submitted to the equity members of the Club either (i) at their annual meeting for election to the Board of Directors; or (ii) to be placed on the written ballot.

(c) Ten percent (10%) or more of the total equity members entitled to vote who are not on the Nominating Committee or the Board of Directors may also nominate candidates for the Board of Directors by petition, signed by ten percent (10%) of the equity members entitled to vote, and filed with the Secretary by January 15th of each year.

4.3 Elections.

(a) There shall be no cumulative voting.

(b) Voting shall occur at the annual meeting or pursuant to written ballot.

(c) The Board of Directors shall be nine (9) directors, all of whom shall be elected by the equity members and must be equity members of the Club in good standing.

(d) Each year, the equity members shall elect directors for a term of three (3) years to replace those directors whose terms have expired. This number shall be adjusted to conform to the total number to be elected to the Board of Directors for the ensuing year.

(e) The number of candidates necessary to fill the vacancies on the Board of Directors receiving the highest number of votes for each designated term shall be declared elected.

(f) A Board Member may serve for no more than two (2) consecutive terms.

(g) The Board of Directors, at its option, may appoint a member to fill a Board vacancy until the next election of Directors. The appointed member may be elected to complete the unexpired term. If the appointed member does not wish to complete the unexpired term, another member may be elected to complete the term.

ARTICLE V MEETING OF THE BOARD OF DIRECTORS

5.1 **Organizational Meeting.** Each year the Board of Directors shall hold an organizational meeting to elect officers and to consider any other matters that may be properly brought before the meeting. The organizational meeting of the Board of Directors shall be held during the month of March of each year.

5.2 **Duties at Organizational Meeting.** The Board of Directors shall fix the membership contribution and terms for payment of any membership certificate. Such membership contribution and terms shall be in effect for the following calendar year or until changed sooner by the Board of Directors.

5.3 **Quorum.** A majority (in person or telephonically) of the Board of Directors at any meeting shall constitute a quorum for the transaction of business.

5.4 **Action Without Meetings.** Any action which may be taken by the Board of Directors may be taken without a meeting if a written consent setting forth the action taken is signed by all of the directors entitled to vote and is filed in the minutes of the proceedings of the Board of Directors.

5.5 **Notice of Meetings.** Notice of any meeting of the Board of Directors, regular or special, may be conveyed by written, electronic (e-mail), telephonic or personal notice, at least three (3) days prior to the meeting, except in the event of an emergency in which event such notice may be waived to the extent permitted by law.

5.6 **Voting Percentage.** A majority of the Board of Directors attending the meeting must vote to approve any matter before the Board, unless otherwise provided herein or required under the law.

5.7 **Meetings.** The Board of Directors shall meet quarterly or have a minimum of six (6) regular meetings each year, at such times as the Board of Directors shall determine.

ARTICLE VI POWERS OF THE BOARD OF DIRECTORS

6.1 **Management of the Club.** The Board of Directors shall have the power and authority to govern all aspects of the Club and may delegate this power and authority to committees and/or officers.

6.2 **Duties and Powers.** The Board of Directors may:

- (a) Appoint committees and assign duties;
- (b) Fill vacancies on the Board of Directors due to death, resignation, inability to perform duties, or otherwise, for the unexpired term.
- (c) Appoint managers and other employees and delegate such authority considered necessary for the proper operation and management of the Club;
- (d) Adopt, alter, amend or repeal the General Club Rules governing use of the Club and all its facilities by members and their families and guests;
- (e) Determine the amount of dues, fees, and other charges;

(f) Replace any director who shall fail to attend fifty percent (50%) of the regular Board meetings in any one (1) fiscal year or who fails to be a member of the Club in good standing, or who is actively attempting to sell his real property;

(g) Expend funds to the extent of the amount in the club treasury or owing to the Club Treasury or owing to the Club, to make contracts, including, without limitation, those pertaining to general or specific lines of credit, or create indebtedness and to borrow money or incur indebtedness for purposes of the Club, and to cause promissory notes, bonds, mortgages or other evidence of indebtedness to be executed and issued in the ordinary course of the Club's business;

(h) Enter into any single capital expenditures project on behalf of the Club involving total expenditures of up to \$200,000 without prior approval of a majority vote of all the equity members of the Club entitled to vote except as permitted in paragraph (i) hereto.

Assessments for any capital expenditures over \$200,000 to the golf course shall be voted on by and prorated equally among the Golf Members. Social Members shall not be subject to any assessment for capital expenditures to the golf course. All other assessments for capital expenditures over \$200,000 to the Club Facilities shall be voted on by and prorated equally among all of the equity members. Such assessments shall require a majority vote of the equity members entitled to vote and who are present in person or by written proxy hereto:

(i) By a majority vote of the Executive Committee, and without a specific Member vote, declare an emergency situation warranting an expenditure of amounts in excess of the limitation imposed in this Section 6.2. The committee may then expend such sums, without limitation, as it determines necessary to counteract the emergency. Such situations are to include, but not be limited to, those which could be considered as "Force Majeure" under generally accepted interpretation of such;

(j) Exchange rights to use the Club facilities with members of other Country Clubs;

(k) Comply with all the terms and conditions of the Club Purchase Agreement dated October 26, 1999 and any amendments thereto.

(l) Maintain replacement cost insurance on the Club facilities equal to full replacement cost thereof if available at a commercially reasonable cost as determined by the Board;

(m) Determine whether any member's conduct or whose families or guests conduct shall be deemed to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members. If so determined, the members may be reprimanded, fined, suspended or expelled from the Club by the action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony, or good reputation of the Club or its members. Any member suspended or terminated by action of the Board of Directors shall automatically lose all membership privileges including the right to a vote on Club matters during the period of suspension or termination;

(n) Suspend a member's credit and membership privileges in the event of a delinquency in payment of dues, assessments or other charges levied by the Board of Directors in accordance with notice of said delinquency

6.3 Issuance of Membership Certificates. The Board of Directors shall have sole authority to issue, cancel, and transfer membership certificates and shall have such certificates prepared in the form and content consistent with the provisions of these By-Laws of the Club.

6.4 Compensation. No director shall receive a salary or any other compensation whatsoever, but shall be entitled to reimbursement for all expenses reasonably incurred in performing any duties pursuant to these By-Laws.

6.5 **Interpretation of By-Laws.** The Board of Directors shall have the corporate powers to generally do everything permitted for nonprofit corporations by law, by statute, the Articles of Incorporation, or these By-Laws, and to determine the interpretation or construction of these By-Laws or any parts thereof, which may be in conflict or of doubtful meaning, and their decisions shall be final and conclusive.

ARTICLE VII OFFICERS

7.1 **Election of Officers.** The Board of Directors shall elect a President, a Vice President, a Treasurer, a Secretary and such other officers as the Board determines appropriate from time to time. Such officers shall be elected to serve for the term of one (1) year or until their successors shall be elected and shall carry out the duties described below.

7.2 **President.** The President shall preside at all meetings and enforce observance of the provisions of these By-Laws and all of the General Club Rules. The President may call special meetings of the Board of Directors, shall be an ex-officio member of all committees, and shall be empowered to execute all papers and documents requiring execution in the name of the Club. All papers and documents must also be executed by a second member of the Executive Committee.

7.3 **Vice President.** In the absence of the President, the Vice President shall perform and carry out all duties and responsibilities of the President.

7.4 **Secretary.** The Secretary shall keep records and minutes of all meetings of the Board of Directors and the membership. The Secretary shall also be responsible for giving all required notices of such meetings. The Secretary shall have custody of the Seal of the Club and all membership records shall be kept under the Secretary's supervision.

7.5 **Treasurer.** The Treasurer shall cause to be collected, held and disbursed, under the direction of the Board of Directors, all monies of the Club and it shall be the Treasurer's duty to collect monies due the Club from the issuance of membership certificates, dues and charges from the members of the Club, and all amounts due from others. The Treasurer shall keep or cause to be kept regular books of accounts and all financial records of the Club, and shall have prepared for and submitted to the Board of Directors financial statements, when and in the form requested by the Board of Directors. The Treasurer shall deposit or cause to be deposited or invested all monies of the Club in an account or accounts in the Club's name in the bank or banks designated by the Board of Directors, and shall give a surety bond (if economically feasible) for faithful performance in the amount directed by the Board of Directors, which surety bond premium shall be paid by the Club.

7.6 **Other Officers.** The Board of Directors may appoint additional officers and assign their duties.

7.7 **Additional Duties of Officers.** Any officer may be given additional assignments and duties by the Board of Directors.

7.8 **Removal from Office.** An officer may be removed from office by the members of the Board of Directors.

ARTICLE VIII INSURANCE AND INDEMNIFICATION

8.1 **Insurance.** The Club shall obtain on behalf and for the benefit of the officers and directors of the Club such insurance as the Board of Directors deems appropriate and is permitted by law.

8.2 **Indemnification.** The Club shall, to the fullest extent permitted by the laws of South Carolina, as the same may be amended and supplemented, indemnify any and all of the directors and officers of the Club from and against any and all of the expenses, liabilities or other matters referred to in or covered by said laws, and the indemnification provided for herein shall not be deemed exclusive of any rights to which those indemnified may be entitled under any by-law, agreement, vote of the members, disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person

who has ceased to be a director or officer, and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE IX COMMITTEES

9.1 Standing Committees. Each year the President, subject to the approval of the Board of Directors, shall designate the chairs and members of each of the following standing committees: Executive, Finance, Membership, House, Golf, Green, Tennis, and such other committees as may be deemed advisable by the Board of Directors from time to time.

(a) The Executive Committee shall consist of the President, as Chairman, Vice President, Secretary, Treasurer, and in addition, one (1) member of the Board of Directors. [The Executive Committee shall have the powers of the Board of Directors during the interval between Board meetings.] A majority of the members of the committee shall constitute a quorum. Actions and resolutions shall require unanimous approval of the members present. Such actions shall be reported to the Board at its next regular meeting.

(b) The Finance and Audit Committee shall review and recommend for adoption by the Board of Directors, the annual operating and capital budgets, prepared by Club Management, the monthly and annual financial reports as compared to said budgets, the employment of outside auditors, the financial reporting to Equity Members, and include itself in any other financial matters as determined by the Board of Directors from time to time including, but not restricted to, meeting with the outside auditors to investigate their independence, responding to their "letter of recommendations" and assist with the presentations to lenders or members, if requested by the Board.

(c) Each of the following committees, subject to the approval of the Board of Directors, shall submit recommendations to the Board of Directors for approval. The officers of the Club and Club Manager shall have control of the execution of such programs and recommendations as approved by the Board. The following committees shall act only as consultants and advisors to the Board of Directors and officers:

(i) Membership Committee. The Membership Committee shall investigate all Applications for membership and shall report thereon to the Board of Directors with its recommendation as to the approval or disapproval of each application.

(ii) House Committee. The House Committee shall advise the Board of Directors on matters concerning the operations of the Clubhouses, pools, the equipment, furnishings and property in the Clubhouse, specifically including, without limitation, utilities, building maintenance and repairs. The House Committee shall also advise the Board on all food and beverage operations and entertainment.

(iii) Golf Committee. The Golf Committee shall advise the Board of Directors on the scope of the Golf Professional's operation, the operation of the Golf Pro Shop and golf carts, the promulgation of playing rules for members and their guests, the programming of golfing events for members and their guests, and the maintenance of members' handicaps.

(iv) Green Committee. The Green Committee shall advise the Board of Directors on the scope of the Green Superintendent's operations, and the maintenance of the golf course, roads, facilities and equipment used in connection therewith. No live trees shall be removed nor shall any alteration be made in the golf courses except with the approval of the Board of Directors.

(v) Tennis Committee. The Tennis Committee shall advise the Board of Directors on the scope of the Tennis Professional's operation, the operation of the Tennis Pro Shop, the promulgation of playing rules for members and their guests, and the programming of tennis events for members and their guests. The Committee shall advise the Board of Directors on the condition of, and make recommendations concerning, tennis courts, equipment and other related facilities.

(d) Ad Hoc Committee. The President, subject to the approval of the Board of Directors, may appoint from time to time such ad hoc committees with such powers and composition as the President shall determine appropriate.

(e) Powers of Committees. Except for the Executive Committee, these committees shall act only as advisory committees and the individual members thereof shall have no power or authority. The chairman of each committee may appoint from the members of his or her committee such subcommittees as the chairman deems desirable. Such subcommittees shall report directly to the committee as a whole, which shall approve, amend or disapprove the report of the subcommittee.

(f) Terms of Committee Chairmen and Committee Members. A committee chairman may not serve as a committee chairman on the same committee for more than three (3) successive years. A committee member may not serve as a member of the same committee for more than three (3) successive years unless approved by the Board of Directors. Only one individual per membership may serve on the same committee during a single term. The term of a committee chairman or a committee member may be terminated at any time by the President with the approval of the Board of Directors.

ARTICLE X PLAN OF MEMBERSHIP

10.1 Plan of Membership. The Board shall adopt, and administer as appropriate, a Plan of Membership for the Club, the Plan shall include, but not be limited to:

- (a) Description of Club facilities;
- (b) Membership application procedures and offering statement;
- (c) Equity membership category description and numbers statement;
- (d) Membership privileges statement;
- (e) Membership transfer provisions;
- (f) Dues, fees, charges and assessments rules and procedures; and
- (g) Plan amendment procedures.

ARTICLE XI DELINQUENCIES

The Club shall have a lien against each membership for any unpaid assessments, fees, annual dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such annual dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing of the Club and all such liens may be foreclosed by the Club, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. The Club may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges without thereby waiving the lien securing the same.

Any other liens placed against such equity membership shall be junior to Club's lien.

ARTICLE XII
CORPORATE SEAL

The Corporate Seal of the Club shall be circular in form and shall bear the words "The Callawassie Island Members Club, Inc., non-profit 1999 South Carolina". A copy of said seal is affixed hereto. The Corporate Seal shall be in the possession of the Secretary and be affixed by the Secretary to all documents relating to the official acts of the Club, as authorized by the Board of Directors.

ARTICLE XIII
MISCELLANEOUS

13.1 *Fiscal Year*. The fiscal year of the Club shall commence on the 1st day of January and conclude on the 31st day of December.

13.2 *Conflict between By-Laws and the Articles of Incorporation*. In the event of a conflict between the terms of these By-Laws and the Articles of Incorporation, the latter shall prevail.

ARTICLE XIV
AMENDMENTS

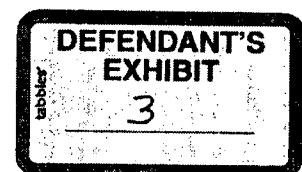
These By-Laws may be amended by a majority vote of the Board of Directors and a majority of the eligible votes cast (i) at a duly called meeting or (ii) by written ballot as long as a majority of the written ballots are returned.

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC. GENERAL CLUB RULES

General Club Rules current as of February 23, 2009.

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GENERAL CLUB RULES

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1. GENERAL RULES

1.1. CLUB HOURS

The Callawassie Island Members Club, Inc. ("the Club") and its facilities shall be open on the days and during the hours as may be established by the Board of Directors from time to time.

1.2. RULES VIOLATIONS

Violation of any of the rules contained herein or conduct in a manner prejudicial to the best interests of the Club will subject one to disciplinary action in accordance with the By-Laws.

1.3. MODIFICATION OF THESE RULES

The Board of Directors reserves the right to amend or modify these rules when necessary and will notify the Membership of such changes. Any such amendments or modifications shall be subject to and controlled by the applicable provisions of the By-Laws and the Plan for the Offering of Memberships.

1.4. MEMBER COMPLAINTS AND SUGGESTIONS

All member complaints or suggestions should be directed to and will be addressed by the Club General Manager, the chairman of the appropriate committee, or the president of the Board of Directors.

1.5. MEMBER CONDUCT

Members should refrain from confronting members, guests, or visitors regarding the misuse or suspected misuse of the Club property and amenities. The Club General Manager or Security should be promptly notified in such instances.

1.6. GUEST CONDUCT

Members are responsible for the conduct of their guests and must see that they comply with all Club rules. In order that all members may enjoy our facilities, the number of guests may be restricted by the Club General Manager.

1.7. PARTIES AND EVENTS

1.7.1. Private parties on the Club premises will be catered solely by the Club unless at the River Club.

1.7.2. Member sponsored and hosted events involving significant commitment of Club facilities and nonmember use will be preapproved by the Board of Directors.

1.7.3. Performance by entertainers will be permitted on the property of the Club only with the permission of the Board of Directors or the Club General Manager.

1.7.4. Alcoholic beverages will not be served or sold, or permitted to be consumed, on the premises during hours prohibited by law. No alcoholic beverages will be sold or served to any person not permitted to purchase the same under the laws of the State of South Carolina or be sold for off-premises consumption.

1.7.5. The Board of Directors or the Club General Manager will approve all nonmember sponsored functions to be held on Club premises prior to their authorization and will limit the number of such approved functions in accordance with current Club policies.

1.8. EMPLOYEES

1.8.1. It is inappropriate for any members or guests to abuse or discipline any of the Club's employees, verbally or otherwise. Any employee not rendering courteous and prompt service should be reported to the Club General Manager.

1.8.2. No member shall request an employee to leave the Club's premises for any purpose whatsoever nor redirect an employee from their scheduled work activities. Notify the Club General Manager, the golf or tennis professionals, or the golf course superintendent if a need occurs.

1.8.3. Members must not request special or personal services from employees of the Club who are on duty.

1.8.4. Club employees are not permitted to provide off-hour services away from the Club premises to members without the pre-approval of the Club General Manager. Members wishing such services should speak to the Club General Manager.

1.8.5. Club employees are not permitted to deliver food or liquor to locations away from the immediate area of the Clubhouse without prior permission of the Club General Manager.

1.9. ADVERTISEMENTS AND PETITIONS

1.9.1. No commercial advertisements shall be posted or circulated in the Club.

1.9.2. Other than as permitted by the By-Laws of the Club, no petition shall be originated, solicited, circulated, or posted within the Clubhouse or on Club property.

1.10. USE OF ELECTRONIC EQUIPMENT

1.10.1. Use of cell phones and pagers is prohibited within Club buildings, on or near the golf practice facility, or while participating in sports or pool area activities except for emergency use.

1.10.2. Use of radios, tape players, and CD players except with the use of headsets is prohibited in common areas, including dining rooms, bar, pool areas, on the golf course and tennis courts unless otherwise approved by the Board of Directors or the Club General Manager.

1.11. PETS

Dogs or other pets, with the exception of seeing-eye dogs, are not permitted in Club buildings or at the pools. Members may walk their pets on Club premises only in such areas and at such times as may be approved by the Board of Directors or the Club General Manager. Pets on Club premises shall be leashed at all times except on the golf course when the Pro Shop is closed and shall then be leashed or under voice control. Members are required to dispose properly of any excrement produced by their pets.

1.12. GOLF CARTS AND CART PATHS

1.12.1. Use of the golf course or the cart paths by non-players is strictly forbidden at all times when the Pro Shop is open.

1.12.2. Golf carts are not to be driven on the cart paths by members driving to and from the Clubhouse area. Members are requested to use the roadways for this purpose.

1.12.3. Golf carts are to be white or near white in color and will be subject to the approval of the Golf Professional.

1.13. GOLF CART LIABILITY

Liability concerning privately owned golf carts is solely the individual responsibility of the owning member.

1.14. LAGOON FISHING

All fishing in the lagoons is strictly on a catch and release basis and is not to be conducted in any areas abutting the golf course during hours in which the Pro Shop is open.

1.15. MAINTENANCE YARD PARKING

Residents' commercial vehicles cannot be parked in the Maintenance Yard at any time and will be removed at the owner's expense.

1.16. DONATIONS TO THE CLUB

Tennis and golf association members may implement projects with direct membership contributions for amounts up to \$1,000 with prior approval by the appropriate committee and the Club General Manager. ARC approval is required, if appropriate. All donations over \$1,000 require prior approval by the Board of Directors, the Club General Manager and the ARC, if appropriate. All other gifts, projects, or donations require prior approval by the Board of Directors and the Club General Manager. The Board of Directors reserves the right to refuse a donation. All donations will be anonymous.

1.17. REALTORS AND DISCOVERY TOUR AMBASSADORS

Realtors and Discovery Tour Ambassadors will not be compensated for the cost of their meals when hosting Discovery Tour participants.

2. CLUB SERVICES AND ACTIVITIES

2.1. RESERVATIONS

Reservations for most Club activities are taken on a first-come, first-serve basis by pre-registering with the appropriate Club personnel.

2.2. RESERVATION CANCELLATION

Cancellation of reservations for special events must be made at least 24 hours prior to the event or according to the published event deadline. Members will be charged for the full cost of the event if not in compliance with this rule.

2.3. PRIVATE PARTIES

The Club wishes to encourage the use of the Clubhouse by members for private parties on any day or evening, provided it does not interfere with the normal operation of the Club or with the service regularly available to the members. Such parties require a signed contract approved by the Club General Manager or the Clubhouse Manager. The sponsoring member assumes full responsibility for the conduct of his or her guests and may be required to execute a written document so signifying.

3. DINING ROOM

3.1. DINING MINIMUMS

3.1.1. Each member will be charged an annual food and beverage minimum as determined from time to time by the Board of Directors. All food and beverage charges exclusive of taxes and gratuities will be credited against the food and beverage minimum until such time as the minimum is completely used.

3.1.2. Any amount of the food and beverage minimum that is unused in a membership year will not be carried over to the subsequent membership year and will be charged in the final billing for the current membership year.

3.2. RESERVATIONS

3.2.1. Dinner reservations are requested. Members are asked to assist in maintaining required service levels by making reservations for dining prior to noon on the day involved. For a party of ten or more, a minimum additional twenty-four (24) hour notice is required by the Clubhouse staff.

3.2.2. For all functions at the Club, tables will be assigned on a first-call, first-choice basis.

3.3. GRATUITIES

3.3.1. A service charge in an amount determined by the Board of Directors from time to time will be added to all food and beverage sales and will be distributed to service personnel.

3.3.2. In November, it is customary to send a letter from the President of the Board of Directors providing an opportunity for the membership to contribute to a Holiday Fund for employees. Payment will be voluntary and, if elected, shall be included on each member's November bill.

4. ATTIRE

4.1. CLUBHOUSE

4.1.1. It is expected that members and their guests (children included) will dress in a fashion befitting the surroundings and atmosphere provided in the setting of the Club. It is also expected that members will advise their guests of the dress requirements. Special dress requirements may be established from time to time by the Board of Directors or the Clubhouse Manager and made known to the members.

4.1.2. All men are asked to remove their caps/hats upon entering the Clubhouse. Exceptions will be made for medical or religious reasons.

4.1.3. Established dress requirements apply to members and guests (children included).

4.1.4. At no time will pool attire be permitted in the Clubhouse, except with a cover-up for picking up outgoing orders only.

4.1.5. Acceptable attire includes:

Males

- Bermuda length shorts, golf slacks, business casual slacks and dress slacks (dungarees/work jeans, gym/workout attire, cut-offs, and jogging/wind pants are not permitted).
- Shirts with sleeve and collar, turtlenecks and mock turtlenecks (tank tops are not permitted).
- Shoes, golf shoes, sneakers, dress sandals, and deck shoes (flip-flops, pool shoes, and work boots are not permitted).
- "Jacket Only" or "Jacket and Tie" are always acceptable and may be required upon special request.

Females

- Bermuda length shorts, golf slacks and dress slacks (dungarees/work jeans, gym/workout attire, cut-offs, jogging/wind pants and short-shorts are not permitted).
- Appropriate length dresses and skirts. Dresses, skirts, pants and tops made in a "dress" denim style will be permitted, but they are not to be confused with dungarees/work jeans type of attire.
- A variety of tops are acceptable, but at no time will bare midriff, tank, tube, or halter tops be permitted.
- Shoes, golf shoes, dress sandals, sneakers, and deck shoes (flip-flops and pool shoes are not permitted).

4.2. GOLF

4.2.1. Established dress requirements apply to members and guests (children included).

4.2.2. Proper golf attire as stated is required at all times on the golf course and practice facilities.

4.2.3. Soft spiked golf shoes, golf sandals, or sneakers are required (flip-flops, pool shoes, work boots, hiking boots, and street shoes are not permitted).

4.2.4. Acceptable attire includes:

Males

- Bermuda length shorts or golf slacks (dungarees/work jeans, gym attire, cut-offs, and jogging pants are not permitted).
- Shirts with sleeve and collar, turtlenecks and mock turtlenecks (tank tops are not permitted). Shirts with banded waist may be worn as designed; all other shirts must be tucked in.

Females

- Bermuda length shorts, culottes, skirts or golf slacks (dungarees/work jeans, gym attire, cut-offs, and jogging pants are not permitted).
- A variety of tops are acceptable, but at no time will bare midriff, tank, tube, or halter tops be permitted.

4.3. TENNIS

4.3.1. Established dress requirements apply to members and guests (children included).

4.3.2. Proper tennis attire is required for use of the tennis facility both during play and practice. Sleeves are required on men's shirts.

4.3.3. Smooth soled tennis shoes are required. Jogging shoes, basketball shoes, and street shoes are not permitted.

4.4. POOLS

4.4.1. Bona fide swim attire is required of all swimmers. Cut-offs, dungarees, and shorts are not permitted.

4.4.2. Cloth and disposable diapers are not permitted. "Swimmees" are recommended for children when the situation warrants.

4.5. FITNESS CENTER

4.5.1. Established dress requirements apply to members and guests (children included).

4.5.2. Proper fitness attire is required for use of the Fitness Center.

4.5.3. Tennis shoes are preferred. Golf shoes and open-toe shoes are not permitted.

5. GUESTS

5.1. GENERAL

5.1.1. Callawassie Island property owners who are not members cannot use the Club facilities as a guest of a member except for attendance at private functions or other approved group activities.

5.1.2. All guests shall either be "day guests" or "house guests". A house guest is defined as a guest temporarily residing in a member's unit at Callawassie. All other guests shall be considered to be day guests.

5.1.3. A day guest may be invited to use the golf course, tennis or pool facilities up to a maximum of twelve (12) times per calendar year as a guest of a member or a combination of members.

5.1.4. A house guest may be a guest of a member or a combination of members a maximum of twelve (12) times per calendar year for a maximum of thirty (30) days' use of Club facilities.

5.1.5. An individual may be a combination of house guest and a day guest within a calendar year subject to the limitations of twelve (12) times and thirty days' use of Club facilities.

5.1.6. A member may have a maximum of eight (8) guests at any one time. Large groups are not permitted to use several memberships in order to obviate this rule. Requests for exceptions to the above guest limits must be submitted to the Club General Manager at least 14 days in advance of the proposed guest arrival. Exceptions may or may not be granted depending on demands on the Club facilities by members and previously scheduled events.

5.1.7. Guests must observe Club rules with regard to food, beverage, and amenity reservations.

5.2. REGISTRATION AND CHARGES

5.2.1. Guests may use the Club facilities either in the company of or unaccompanied by the sponsoring member pursuant to conditions established by the Club from time to time including the payment of a guest fee if applicable.

5.2.2. If a guest is to use the Club facilities at any time without the accompaniment of the sponsoring member, the guest must be registered for a guest pass at the Club office by the sponsoring member prior to such unaccompanied usage. Information to be provided by the sponsoring member will include:

- Guest's name
- Club usage dates
- Callawassie residence and telephone number, if applicable
- Whether or not the guest is authorized to sign for charges against the sponsoring member's Club account

5.2.3. Guest registration may be accomplished by the sponsoring member and guest personally appearing at the Club office or by letter, phone, or fax. A registered guest may pick up his or her guest pass at the Club office during normal business hours.

5.2.4. Unaccompanied guests may not use Club facilities without a guest pass that must be made available upon request at any time.

5.2.5. Member accompanied guests will not require a guest pass to use the Club facilities but must be registered with the appropriate professional prior to use of the Golf or Tennis facilities.

5.2.6. Guests may sign for charges against the hosting member's account if specifically authorized to do so in writing by the hosting member or they may charge to recognized personal charge cards. The hosting member is responsible for any unpaid charges incurred by his or her guest(s).

5.2.7. The sponsoring member is at all times responsible for the conduct of his or her guests while at the Club. If the manner, deportment, and appearance of any guest is deemed by the Club to be unsatisfactory, the sponsoring member shall at the request of the Club General Manager, cause such guest to surrender his or her guest card and leave the Club premises. The Club may at any time suspend or terminate the guest sponsorship privileges of any member(s) of the Club.

6. CHILDREN

6.1. Children under fifteen (15) years of age are not allowed in the Clubhouse pool nor are they allowed in the Clubhouse unless accompanied by an adult.

6.2. Children under fifteen (15) years of age may use the River Club pool when accompanied by an adult.

6.3. Children under the applicable minimum legal drinking age are not allowed at the bar unless accompanied by an adult.

6.4. The Golf Course may be used by juniors under thirteen (13) years of age with the permission of the Golf Professional.

6.5. Children under the age of thirteen (13) are not allowed in the Fitness Center unless accompanied by an adult.

USE OF GOLF CARTS ON THE GOLF COURSE BY CHILDREN UNDER THE AGE OF FIFTEEN (15) WITHOUT THE PRESENCE OF AN ADULT IN THE CART IS STRICTLY PROHIBITED. ONLY LICENSED DRIVERS MAY DRIVE GOLF CARTS ON THE ROADS OF CALLAWASSIE.

7. LESSEE AND RENTER PRIVILEGES

7.1. A member not residing in his/her Callawassie residential unit may designate a bona fide resident of such unit as the beneficial user of his/her membership. The designation of a bona fide resident as the beneficial user of a member's membership must be made in advance and in writing to the Club General Manager.

7.2. The sponsoring member must initiate the application for resident privileges and furnish the Club General Manager with a copy of the Lease or Rental Agreement. The Club General Manager will determine if the person(s) named in the proposed agreement meet the requirements to be a bona fide resident. After these requirements are met, the resident may begin to use the Club facilities.

7.3. During the period when a lessee is designated as the user of the member's membership, the member shall not have the rights or privileges of membership. However, the lessee's dining charges shall be allowed to count against the dining minimum on the membership since the owner of the membership is not allowed to use the facilities while the membership is being leased.

7.4 The resident user of the member's membership shall pay the designated fees for use of the Club facilities.

7.5. Temporary resident privileges may be denied, withdrawn, or revoked at any time for reasons considered sufficient by the Board of Directors in its sole and absolute discretion.

7.6. The member will be responsible for the deportment of and for all unpaid charges of the temporary resident.

8. POOLS

USE OF THE CLUB POOL FACILITIES AT ANY TIME IS AT RISK OF THE SWIMMER.

8.1. GENERAL

8.1.1. Only members and their guests may use the pools.

8.1.2. Showers are required prior to entering the pools.

8.1.3. Pool furniture must be kept on patio decks. All persons using pool furniture are required to cover the furniture with a towel when using suntan lotions. It has been found that these preparations stain and damage the vinyl strapping.

8.1.4. No running, jumping, or boisterous playing is allowed.

8.1.5. All persons using the pool areas and washrooms are responsible for keeping the areas clean by properly disposing of towels, cans, paper plates, cigarettes, etc.

8.1.6. All swimmers must wear bona fide swimming attire. Cut-offs, dungarees, and Bermudas are not considered appropriate attire.

8.1.7. Fishing, spear fishing and snorkeling equipment, other than a mask and/or fins are not to be used in the pool areas except as part of an organized course of instruction.

8.2. SAFETY

8.2.1. *No person under the influence of drugs or alcohol should use the pools.

8.2.2. *No spitting or blowing nose in pools.

8.2.3. *No person with communicable diseases allowed in pools.

8.2.4. *No person with skin, eye, ear or nasal infections allowed in pools.

8.2.5. *No animals or pets allowed in the pools or pool areas or on the marina docks.

8.2.6. *No glass or hard plastic allowed in the pools or pool areas.

8.2.7. *Pools are open from 8:00 a.m. to sundown.

8.2.8. *A FIRST AID KIT is located on the wall entering the restroom area at each pool.

8.2.9. *An EMERGENCY PHONE is located on the wall entering the restroom area at each pool.

8.2.10. *NO SOLO SWIMMING. NO LIFEGUARD ON DUTY. SWIM AT YOUR OWN RISK.

8.3. RULES ENFORCEMENT.

The Club General Manager has full authority to enforce these rules and regulations, and any infractions will be reported to the Board of Directors. By being mindful of these rules, all members and guests will be able to enjoy fully the pool facilities.

8.4. CLUBHOUSE POOL

8.4.1. The clubhouse pool is an ADULT pool. Persons must be fifteen (15) years or older to use this pool.

8.4.2. Bringing food and beverages to the Clubhouse pool area is prohibited during Club service hours of 11:00 am to 3:00 pm, Tuesday through Sunday. The Club will serve food and beverages poolside during these hours.

8.4.3. No food is permitted in or around the perimeter of the pool. Members are encouraged to use the tables under the arbor.

8.4.4. *The maximum number of swimmers allowed in the pool is 100.

8.5. RIVER CLUB POOL

8.5.1. Children under fifteen (15) years of age must be accompanied by a parent or guardian.

8.5.2. No food is permitted in or around the perimeter of the pool. Members are encouraged to use the picnic tables on the back deck of the River Club.

8.5.3. Those wearing diapers are prohibited in the pool.

8.5.4. *The maximum number of swimmers allowed in the pool is 100.

* All rules marked with an asterisk are required by the State of SC DHEC.

9. GOLF

9.1. Rules concerning the use of the golf course and related facilities will be established from time to time by the Board of Directors with the advice of the Golf Committee, the Green Committee, the Golf Professional, or the Club General Manager, and will be made available to members as a printed booklet entitled, *Golf Rules and Guidelines*, and will include the following.

- Starting times and weather associated policies
- Rain check policy
- Driving range rules
- Private golf cart rules
- Golf course etiquette
- Attire

9.2. All members should familiarize themselves with and comply with the Club Golf Rules to ensure and enhance the enjoyment of the golf facilities by all members.

9.3. Social members may play golf only once a month during the IN SEASON (March 1 through May 15, and October 1 through November 30). Social Members may play golf twice a month during the OFF SEASON (May 16 through September 30, and December 1 through February 28).

9.4. Special rules and notices concerning golf facility usage will be posted on the bulletin boards in the Pro Shop from time to time as necessary and appropriate.

9.5. The golf facilities may be used by charitable organizations up to four times per year. Each event must be approved by the Board of Directors with consideration given to revenue production, exposure of Callawassie Island for marketing purposes and goodwill generated in the community. Although events must produce revenue, the events may or may not be profitable. Additional events may be approved on a case-by-case basis by the Board of Directors.

9.6. Private Golf Carts

9.6.1. All privately owned golf carts must be registered and display either a trail fee sticker or a non-trail fee sticker. If a cart does not have a trail fee sticker, the owner of the cart may use it on the golf course only after payment in the Golf Pro Shop of all appropriate fees, including a cart fee.

9.6.2. The right to use a privately owned golf cart on The Callawassie Island Members Club (the "Club") property is a non-transferable and non-assignable personal right.

9.6.3. Privately owned golf carts while on Club property, shall be driven by licensed driver only. All operators of privately owned golf carts shall operate the golf carts safely and prudently and in accordance with all applicable state and local laws and regulations.

9.6.4. Uniformity of private golf carts:

- a. All private golf carts shall be similar in appearance and shall be as close to the color white as possible.
- b. All private golf carts shall be four-wheeled and electrically powered, two passenger with head and tail lights for use on private roads.
- c. All private golf carts shall be equipped with a canopy, sweater basket, sand bottle or bucket holder, rear view mirror, power rib tires, and rake with holder.
- d. All private golf carts shall have a trail fee sticker or other authorized sticker/pass used by the Club.
- e. Golf carts also may have the following optional features: (i) tinted snap on windshield, (ii) all-weather enclosure, (iii) side sweater baskets, (iv) dash tray, (v) dash board, (vi) seat cover, and (vii) interior mounted heater, fans, horn and clocks.

9.6.5. The owners of privately owned golf carts used on Club property shall maintain a liability insurance policy with adequate coverage for property damage and personal injury. Operation of a privately owned golf cart without such coverage can result in suspension of the right to use a private cart on Club property.

9.6.6. The owner of a private golf cart will be held responsible for any and all damages resulting from the use or misuse of the golf cart, whether by the owner or another person authorized by the owner to use the golf cart.

9.6.7. As long as annual trail fees are in effect for privately owned golf carts, such fees will be reviewed each year by the Club. Trail fees are a yearly fee and are non-refundable. Trail fees may be paid in total each if paid in January of that year or may be billed monthly. The trail fee shall not be prorated, except for the first year a member applies for a private cart privilege. A trail fee, paid in full, in January of any given year is transferable with the cart if a member sells his/her property and membership during the year for which the annual trail fee has been paid. Any deviation, from the above, must be appealed to the Club General Manager.

9.6.8. The annual trail fee includes only member, spouse and all family members of the member so long as such family members are (a) residing in the member's household or away at school or in the military and (b) under twenty-five (25) years of age, with a valid driver's license who named

on the trail fee application. Members who own private carts, their spouse and family members may ride with other private cart owners at no charge.

9.6.9. The spouse of a member currently using their privately owned golf cart may use a Club owned golf cart for playing golf at no charge.

9.6.10. A maximum of two (2) riders and two (2) golf bags per cart is allowed on private golf carts when on Club property.

9.6.11. The current trail fee sticker shall be removed if the private golf cart is sold or is no longer qualified to be under the trail fee program.

10. TENNIS

10.1. Rules concerning the use of the tennis facilities will be established from time to time by the Board of Directors with the advice of the Tennis Committee, the Tennis Professional, or the Club General Manager, and will be posted on the bulletin board at the tennis court or in the Tennis Pro Shop, and will include the following.

- Sign up privileges and restrictions
- Tennis attire
- Court etiquette
- Court maintenance

10.2. All club members are encouraged to familiarize themselves with and comply with the Club Tennis Rules to ensure and enhance the enjoyment of the tennis facilities by all members.

10.3. Special rules and notices concerning tennis facility usage will be posted on the bulletin board at the tennis courts or the Tennis Pro Shop from time to time as necessary and appropriate.

11. RIVER DOCK USAGE

11.1. The Club dock adjacent to the River Club is maintained and operated by the Club for the exclusive use of Club members and their guests. All other use of the facility, unless specifically authorized by the Club General Manager or the Board of Directors, is strictly prohibited and should be reported to the Club General Manager or Security.

11.2. THERE WILL GENERALLY BE NO ATTENDANT PRESENT AT OR NEAR THE DOCK FACILITY AND ALL MEMBERS AND GUESTS USE THE DOCK STRICTLY AND COMPLETELY AT THEIR OWN RISK FOR ANY PROPERTY DAMAGE, LOSS OR PERSONAL INJURY. FOR SAFETY REASONS UNACCOMPANIED CHILDREN ARE NOT PERMITTED ON THE DOCK FACILITY.

11.3. Club members or their guests are permitted to tie boats to the dock facility for a period not to exceed 72 consecutive hours when proper notification is given to the Club General Manager's office.

11.4. In recognition of the severe river currents often present, rafting of a boat alongside another is not thought to generally be prudent and therefore, for safety reasons, extreme caution in doing so is recommended.

11.5. In compliance with dock permit restrictions, no persons are permitted to remain on docked boats overnight and any discharge of waste, garbage, or other materials into the surrounding waters by any person at any time is strictly prohibited.

11.6. All Club members owning boats and who anticipate using the dock facility from time to time are required to list their boat registration number with the Club General Manager's office in order that any observed problems with a docked boat can be promptly reported to the owner. Any member's guests docking boats for overnight stay are similarly requested to register boats with Security for safety reasons.

11.7. Members using the facility for crabbing are required to clearly mark any traps left unattended at the dock with their names. Any baited trap placed in the water should be attended to at least once every 24 hours.

11.8. The dock is in an important Club facility operated for the pleasure of all Club members, both boat owners and others. Mutual consideration of and respect by all concerned for the rights and privileges of other members, including adjacent property owners, is requested and expected.

11.9. Callawassie Island Property Owners who are not Club members or their guests cannot use the dock facilities at any time including use as a guest of a member.

12. MEMBERSHIP CARDS

12.1. A membership card indicating a Club account number and type will be issued to the member as well as other eligible family members entitled to membership privileges. Membership cards are not transferable. Presentation of a membership card by the member may be required prior to the member's use of any club facilities.

12.2. A membership card may only be used by the person to whom it was issued.

12.3. In the event of a lost or stolen membership card, the Club General Manager must be notified in writing immediately. The member is responsible for all charges made to the member's account using the lost or stolen card until the Club General Manager has been notified in writing of the loss or theft of the card. A nominal card replacement charge will be added to the member's account for each reissued card.

13. DUES, FEES, ASSESSMENTS AND CHARGES

13.1. BILLING

13.1.1 Annual membership dues are payable monthly in advance.

13.1.2. All charges incurred by the member to his or her Club account will be billed monthly and shall be deemed delinquent if not paid within thirty (30) days of the statement date.

13.1.3. When a Club member is building a home on the Island, the dues category will be permanently changed from nonresident to resident status when a Certificate of Occupancy is issued or nine (9) months from the date of issue of a Building Permit, whichever first occurs. Billing will also be permanently changed from nonresident to resident status when a member resides anywhere in Beaufort or Jasper Counties, South Carolina or Chatham County, Georgia for 90 days or more.

13.2. PAYMENT

13.2.1 If payment is not received by the end of the month following the statement date, the outstanding balance will be subject to an interest charge of one and one half percent (1.5%) per month that will be added to the balance until payment is received. The Membership Director will review the payment requirements as part of the new member orientation process. If the first bill is not paid on a timely basis, the Membership Director will contact the member to ascertain the reason for nonpayment. Also, the Membership Director will contact any member whose bill is more than 30 days past due.

13.2.2. Arrangement or payment for services will generally be expected to be made at the time the services are rendered.

13.2.3. Form of payment may be by use of Club account number by the member, member's immediate family or authorized guests of the member or recognized credit card

13.2.4. Charges to a Club account will appear on the next monthly statement, and payment will be expected in accordance with the terms spelled out above.

13.3. DELINQUENCIES

13.3.1 Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. Suspended members may not use any Club facilities, participate in any Club activities, or vote on any Club matters. Upon payment of all indebtedness and charges (including all dues, fees, assessments, food and beverage minimums) accrued since the initial time of delinquency, plus interest calculated at the rate of one and one half percent (1.5%) monthly, suspended members may be reinstated by the Board of Directors after an additional period of thirty (30) days. Any member whose account is not settled within the four (4) month period following suspension may be expelled from the Club.

13.3.2. Any member who receives three 30-day notices within a 12-month period will be suspended without privileges for 30 days.

13.3.3. Suspended members may have their names posted on the Callawassie Island website in the "Members Only" section.

13.3.4. In accordance with the By-Laws, the Club shall have a lien against each membership for any unpaid dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such equity membership shall be junior to Club's lien.

13.3.5. If the Club commences any legal action to collect any amount owed, or to enforce any liability of a member to the Club, the member shall also be liable for all costs and expenses of the legal action and reasonable attorneys' fees required in connection with appellate proceedings.

13.4. HARDSHIP CONSIDERATIONS

The Board of Directors will, upon specific request of a member in good standing, consider a change in membership status from resident to non-resident status in cases of permanent member medical hardship causing significant loss of ability to use the club sports facilities. Any such considerations will be made at the sole discretion of the Board of Directors.

13.5. SPECIAL DUES CATEGORIES

The maximum number of Equity Golf Members that may elect Surviving Spouse Privileges or Senior Dues Status is thirty (30) for both categories combined.

14. DISCIPLINE

14.1. GENERAL

14.1.1. Improper Conduct. Any member whose conduct, or whose family's or guests' conduct, shall be deemed by the Board of Directors to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members, may be reprimanded, fined, suspended or expelled from the Club by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its members.

14.1.2. Board Action. Improper conduct shall be immediately investigated by the Club General Manager then reviewed by the Board in Executive Session. If the Board decides to proceed with discipline, the member(s) involved will be immediately notified of the Board's intention to suspend and given an opportunity to be heard by the Board of Directors to show cause why he or she should not be disciplined in

accordance with this Article. If the Board decides to proceed with the suspension and such member(s) desire to appeal, the Board of Directors shall set a time and date for the appeal hearing within 10 days from the date of the appeal request. While such appeal is being considered by the Board, the member shall enjoy the privileges of the Club.

Notwithstanding the above, the Board reserves the right to suspend immediately without privileges should the circumstances warrant such action.

14.1.3. Suspension. The Board of Directors may suspend a member and his or her family or guests from some or all Club privileges for a period of up to one (1) year. Dues and other obligations shall accrue during such suspension and shall be paid in full before reinstatement to full privileges.

14.1.4. Termination. The Board of Directors may, by a two-thirds (2/3) vote of the directors, request the resignation of any member of the Club for cause deemed sufficient to the Board. If the member does not resign at the request of the Board, the member may be expelled by the Board.

14.1.5. Expulsion. Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.

14.1.6. Voting Rights. Any member suspended or terminated by action of the Board of Directors shall automatically lose all membership privileges including the right to a vote on Club matters during the period of suspension or termination.

14.2. REPRIMAND, SUSPENSION, EXPULSION AND TERMINATION OF MEMBERSHIP

14.2.1. Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.2. A member may be reprimanded, expelled, or suspended by the Board of Directors if, in the sole judgment of the Board of Directors, the member, his or her family, or guests, or lessees is deemed improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members. The following includes, but is not limited to, examples of conduct that are not acceptable:

- Exhibit unsatisfactory behavior, deportment and appearance
- Fail to pay the required membership contribution, dues, fees, charges (including any food and beverage minimums) or assessments in a proper and timely manner
- Fail to abide by the rules and regulations for the golf, tennis, pool, fitness, and dining facilities or for any other recreational facilities of the Club
- Verbally or physically abuse the personnel or employees of the Club
- Submit false information on his or her application or with respect to his or her guests or lessees
- Use or reproduce the information in the membership directory in any manner or means for commercial or charitable purpose or provide information contained in the membership directory to persons who are not members of the Club.

The foregoing also shall apply to the family or guests of a lessee.

14.2.3. Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by the member to the Club.

14.2.4. Any member who has had his or her membership terminated for any reason shall not again be admitted to the Club's Facilities under any circumstances while such suspension or termination is in force and shall not be permitted to vote on any matter brought before the members.

14.2.5. A suspended or terminated member may have full membership privileges restored only by specific Board of Directors action to restore such status until such time as the membership is reissued under the terms of the Plan for the Offering of Memberships.

15. LOSS OR DESTRUCTION OF PROPERTY OR INSTANCES OF PERSONAL INJURY

15.1. The Club shall not be responsible for any loss or damage to any property left or stored on the Club's premises, whether in lockers or elsewhere.

15.2. No person shall remove from the Club's premises any property belonging to the Club without proper authorization. Every member of the Club shall be liable for any property damage and/or personal injury at the Club, or at any activity or function operated, organized, arranged, or sponsored by the Club, caused by the member, or his or her family, guests, or lessees. The cost of any such damage may be charged to the members Club account.

15.3. Any member, guest or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club, either on or off the Club's premises, shall do so at his or her own risk, and shall hold the Club and its directors, officers, employees, representatives, and agents harmless for any and all loss, cost, claim, injury, damage or liability sustained or incurred by him or her, resulting there from and/or from any act or omission of any director, officer, employee, representative or agent of the same. Any member shall have, owe and perform the same obligation to the Club, and its directors, officers, employees representatives and agents, hereunder in respect to any such loss, cost, claim, injury, damage or liability sustained or incurred by any guest or such member.

16. MAILING ADDRESSES

16.1 Each member is responsible for submitting in writing his/her current email and postal mailing address to the office of the Club General Manager and for updating subsequent address changes as needed. All club notices and invoices will be sent to that address. Members will be held to have received all club mailings ten (10) days after they have been mailed to the address on file.

17. PRIVACY OF CLUB INFORMATION

17.1. The Club does not generally provide information concerning Club activities or membership to the media or to other third parties. When appropriate, the Club General Manager or his designate will do so. Members are cautioned to avoid answering media questions and specifically from providing club documents or member information to individuals outside the membership.

17.2. The roster or list of members in the Club shall be furnished only to members and appropriate Club staff and shall not be used by or given to anyone else by a member of the Club for any reason whatsoever.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

The Callawassie Island Members Club,
Inc.,

Plaintiff/Counterclaim
Defendant,

v.

Michael J. Frey and Grace I. Frey,

Defendants/Counterclaim
Plaintiffs.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION 2012-CP-07-03209

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS TO ATTORNEYS' FEES**

Plaintiff and counterclaim defendant The Callawassie Island Members Club, Inc.'s ("CIMC") has filed a motion for summary judgment seeking, among other things, an award of attorneys' fees against defendants and counterclaim plaintiffs Michael J. Frey and Grace I. Frey. For the reasons stated below, the Court denies CIMC's motion for summary judgment as to attorneys' fees.

FACTS

CIMC alleges that there is no genuine issue of material fact that it is entitled to attorneys' fees and costs under the relevant agreements, including the following:¹

- The Callawassie Island Members Club Plan for the Offering of Memberships, amended as of Sept. 1, 2007;
- CIMC By-Laws dated March 2009;
- CIMC General Club Rules dated Feb. 23, 2009.

¹ These are the versions of the documents in effect when the Freys resigned from CIMC, and when this lawsuit was filed.

The Plan contains the following provision concerning attorneys' fees:

The Club [CIMC] shall have a **lien against each membership** for any unpaid dues, fees and other Charges made by that member, which **lien shall also accrue reasonable attorneys' fees** incurred by the Club incident to the collection of such dues, fees and other Charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing and shall be entitled to a satisfaction of lien to be prepared and recorded at the member's expense. **All such liens may be foreclosed by the Club**, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. **The Club may also, at its option, sue to recover a money judgment for unpaid dues, fees and other Charges² without thereby waving the lien securing the same.** The Board of Directors reserves the right to report members who are in arrears on their Club bills to an appropriate national credit reporting agency. Any other liens placed against a membership shall be junior to the Club's lien.

See The Callawassie Island Members Club Plan for the Offering of Memberships, amended as of Sept. 1, 2007, § 6.8 (emphasis added). By its terms, the Plan provides two alternative remedies to CIMC in the event that a member fails to pay membership dues: (1) foreclose its lien against the membership; or (2) sue to recover a money judgment. Attorneys' fees incurred in collection efforts accrue only to the membership lien, and recovery of attorneys' fees is only available in the event CIMC elects to foreclose its lien on the membership. The Plan is silent as to the recovery of attorneys' fees in the event that CIMC elects to sue for a money judgment, which it has elected to do in this case.

² This Plan defines "charges" as "dues, fees, food and beverage minimums, assessments, charges, state taxes, service charges and other charges that the Club may establish from time to time" See Plan § 6.1, p. 15. It does not include attorneys' fees.

The By-Laws contain language concerning attorneys' fees that is virtually identical to the language in the Plan:

The Club shall have a **lien against each membership** for any unpaid assessments, fees, annual dues or other charges made by that member of the Club, which **lien shall also accrue reasonable attorneys' fees** incurred by the Club incident to the collection of such annual dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing of the Club and **all such liens may be foreclosed by the Club**, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. **The Club may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges without thereby waiving the lien securing the same.** Any other liens placed against such equity membership shall be junior to Club's lien.

See CIMC By-Laws dated March 2009, Art. XI, p. 8 (emphasis added). Like the Plan, the By-Laws provide that attorneys' fees are recoverable only in the event that CIMC elects to foreclose its lien on the membership. Like the Plan, the By-Laws are silent as to the recovery of attorneys' fees in the event that CIMC elects to sue for a money judgment.

Finally, the Rules contain the following provisions concerning attorney's fees:

In accordance with the By-Laws, the Club shall have a lien against each membership for any unpaid dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such equity membership shall be junior to Club's lien.

If the Club commences any legal action to collect any amount owed, or to enforce any liability of a member to the Club, the member shall also be liable for all costs and expenses of the legal action and **reasonable attorneys' fees required in connection with appellate proceedings.**

See CIMC General Club Rules dated Feb. 23, 2009, §§ 13.3.4 and 13.3.5, p. 14 (emphasis added). Under the Rules, the Club can only recover attorneys' fees incurred in connection with any "appellate proceedings" when it elects to sue for a money judgment.

LEGAL STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. S.C. R. Civ. P. 56(c). "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." *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). In cases such as this, **"the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."** *Id.* (emphasis added).

ANALYSIS

"In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract." *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005). "There is no common law right to recover attorney's fees." *Id.*

CIMC has not claimed a statutory source of authority for recovering its attorneys' fees. Further, CIMC has not indicated that the Declaration entitles it to attorneys' fees.

CIMC appears to rely solely on the terms of the Plan, the By-Laws, and the Rules as a contractual source of authority for its claim for attorneys' fees. "When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense." *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of S. Carolina*, 317 S.C. 452, 457, 454 S.E.2d 901, 905 (Ct. App. 1995). "[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement." *Coastal States Bank v. Hanover Homes of S. Carolina, LLC*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014).

The plain terms of the applicable Plan and the By-Laws only entitle CIMC to attorney's fees in the event that it elects to foreclose its lien for unpaid assessments against a membership. Here, CIMC elected to sue Mr. and Mrs. Frey for a money judgment instead, in which case the Plan and the By-Laws do not provide for the recovery of attorney's fees. The Rules only entitle CIMC to recover attorney's fees "in connection with appellate proceedings," which is not the case here.

CIMC's primary citations to the by-laws and other documents are generalized statements about the board's authority to interpret the by-laws; those general statements do not allow the board to disregard clear limitations in the documents that limit attorney's fees to situations when CIMC attempts to recover on a lien. CIMC's argument to the contrary effectively demands that it be allowed to ignore specific

provisions in the documents, and to improperly revise the rules mid-litigation. At the least, a genuine issue of material fact exists as to whether later-enacted versions of CIMC's Rules (i) were properly enacted, (ii) override other documents such as the by-laws, etc., and (iii) are appropriate authority for CIMC to attempt to claim attorney's fees from the Freys and others.

CONCLUSION

For the foregoing reasons, the Court denies CIMC's motion for summary judgment as to attorneys' fees.

J. Ernest Kinard, Jr.

Circuit Court Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	C. A. NO.: 2012-CP-07-3209
The Callawassie Island Members Club, Inc.	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION TO RECONSIDER
vs.	)	ORDER GRANTING SUMMARY
	)	JUDGMENT AGAINST MICHAEL
Michael J. Frey and Grace L. Frey	)	J. FREY
	)	
Defendants,	)	
	)	

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

YOU WILL PLEASE TAKE NOTICE that the Petitioners, Michael J. Frey, by and through his undersigned attorney, pursuant to SC Rule Civil Procedure 59 and all other relevant authority, moves the court to reconsider its opinion and Order dated June 24, 2014 by Judge J. Ernest Kinard, Jr. in this case from the hearing before the Court of May 19, 2014 (Attached hereto as Exhibit A).

Improper standard used in determining to grant Summary judgment:

This Motion is made on the grounds that the Court fails to apply the proper standard in deciding to grant the Plaintiff's Motion for Summary Judgment in this case. Our Supreme Court has recently made clear that virtually any evidence at all that demonstrates a dispute exists in the case is sufficient to require the denial of a summary judgment motion. Further, the burden of proving that no fact exists is upon the moving party (the Plaintiff in this case) so that the non-moving party is not denied an opportunity for the matter to be heard in full by a jury. The Court has held that summary Judgment is

appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-456, 665 S.E.2d 667, 670 (Cl. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Cl.App. 2005). The Court's order in this case fails to analyze the Plaintiff's motion in this case pursuant to this standard and the application of the standard articulated by the Supreme Court in this case would necessitate that the Plaintiff's motion for summary judgment in this case be denied.

Reconsideration of Order's misplaced reliance upon specific documents:

The Order in this case references six (6) places where it contends that the governing documents applicable to this case support the award made by the Court (Order p. 3). Although the Order states that the Defendant's contractual obligation arose from the 1994 Plan it provides no reference to that document which would support the finding of summary judgment. Furthermore, none of the sections of the governing documents

referenced in the Order support the granting of summary judgment as the following will demonstrate:

1) On page 3 of the order, the first citation to the Plan for the Offering of Membership, April 1, 1994 references only "resigned" members but does not speak to expelled members, such as the Defendant in this case. Furthermore, the Court's reference to the 1994 Plan also leaves out the critically important next line which reads "These dues will accrue against and be deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership." (1994 Plan for the Offering of Membership p. 9). The Defendant's affidavit further supports the understanding that a member could never owe more than the value of his membership and that accrual against the membership was the limits of the potential liability of the Defendant. Taking all inferences in the light most favorable to the Defendant, as the Court must in this case, there is clearly an issue of fact as to whether the Defendant was expelled and as to the amount of damages owed, if any.

2) On page 3 the Order next references the Plan for the Offering of Membership dated July 1, 2013. Reliance on the 2013 document is inappropriate in as much as this Rule went into effect (if at all) a year after the current litigation was initiated and is being applied to a debt which was alleged to be incurred as early as 2009 (see the Affidavit of Jeff Spencer and the Complaint in this case). Finally, the Defendant's expulsion was completed by January 2010, approximately **three years prior** to this Rule change, at which time all obligations would cease. On page 4 of the Order the Court subsequently makes the finding that the documents after 1994 are irrelevant anyway (p.4

Order –end of first paragraph) so reliance upon them to support summary judgment is improper.

3) The Order on page 3 next references Club By-Laws (undated) which state only that for resigned members the amount owed accrues against their membership. This is significant because it specifies that any accruing dues, fees and charges are accruing against the “resigned **membership**” – it does NOT say accruing against the resigning member. Again, this supports the Defendant’s contention that while the membership may be subject to accrual of a specific amount of owed dues, fees and charges that such liability does not exceed the value of the membership. Likewise, this provision does not speak to expelled members or possible charges owed by an “expelled” member such as the Defendant.

4) The Order on page 3 next relies upon the General Club Rules (undated) which references **terminated** members in the cited portion. Again, a terminated member is not the same as an “expelled” member and the 2001 Club documents highlight that distinction. (See Defendant’s Memo in Opposition to Plaintiff’s Motion for Summary Judgment with 2001 Club document excerpt Exhibits). Further, according to the cited portion, the mechanism for “termination” involves a voluntary act of the member to provide written notice of that termination, which is not the same automatic procedure which the governing documents set forth for expulsion. However, this references in the Order to the General club Rules at C-3 also does not justify summary judgment in this matter because it speaks only to owing on an “unpaid club account, membership dues and charges” at the time of termination, but makes no reference to ongoing obligation claimed by the Plaintiff in this case.

5 & 6) The Order's final two references on page 3 rely upon the January 1, 2014 General Club Rules (p.3 Order) at sections 16.4 and 16.5. These 2014 Rules, which address expelled members, are not only inapplicable (and the reliance thereon inappropriate) because they went into effect (if at all) a year and a half after the current litigation was initiated, but also because even if they are currently in effect, they can not retroactively undo the Defendant's expulsion which was completed by January 2010, approximately **four years prior** to this Rule change. As stated above, the Court in its order subsequently finds that these documents (and all passed after 1994) are irrelevant on p. 4 of its Order. In fact, the Court's reliance upon 2014 documents is inappropriate where such documents are too recent in history to be applicable to the Defendants in this case since the Plaintiff is seeking summary judgment as to damages claimed from 2009. These two very recent provisions highlight the fact that the Plaintiff was unable to provide the Court with governing documents applicable to the Defendant that would refute the Defendant's contention that expulsion was mandatory and that expulsion results in an end to all obligations owed to the Plaintiff. Whether there is any support for the Plaintiff's argument that expelled members, such as the Defendant, remain liable for ongoing charges after expulsion, there is certainly at least a scintilla of evidence opposing that notion sufficient to withstand summary judgment and for which the Defendant respectfully requests the Court reconsider its Order and deny summary judgment.

Outstanding and Ongoing Discovery:

In this case, summary is also inappropriate because there is outstanding discovery which is needed to have a full and fair hearing of any summary judgment matter in this

case. As set forth at the hearing, the Defendant, Michael J. Frey has been forced to obtain a motion to compel discovery against the Plaintiff in this matter to obtain discovery in this case. The Defendant served discovery on the Plaintiff on January 6, 2014 (two months prior to the Plaintiff's filing for summary judgment) and that responses were not provided within the time set by the SC Rules of Civil Procedure, therefore on April 5, 2014 the Defendant filed a motion to compel discovery in an attempt to gather the information reasonably needed to defend against the motion of the Plaintiff. A hearing on the Defendants' motion to compel the Plaintiff to provide discovery was heard June 2, 2014 and an Order compelling the discovery was filed and served June 17, 2014. The Court did not believe that the information sought was part of a "fishing expedition" but instead ordered the Plaintiff to respond. The Plaintiff has not provided the material sought by that Order compelling discovery. It is therefore improper for the Court to grant summary judgment to the plaintiff in a situation where the Plaintiff has refused to fully and fairly respond to discovery requests and where the Defendants have been diligent in pursuing said discovery. (see Defendant's Interrogatories and Requests for Production attached as Exhibits to Defendant's Memo in Opposition to Plaintiff's Motion for Summary Judgment, and see the June 17, 2014 Order Granting Defendant's Motion to Compel). Further, the material sought is directly relevant to the case at hand. As can be seen from the current Order the "membership file" of the Defendant has not yet been provided to the Defendant by the Plaintiff, and the granting of summary judgment prior to the opportunity of the Defendant to obtain and present all evidence relevant to his membership file is improper. (See also Defendant's Memo in Opposition to Plaintiff's Motion for Summary Judgment at pages 25 and 26).

Further, the Defendant intends to take the deposition of Jeff Spencer, Plaintiff General Manager, and possibly other witnesses in this case but has not yet been able to do so and believes that because of these pending discovery issues that the granting of summary judgment was improper and should be reconsidered by this Court.

Improper Award of Attorney Fees and Damages:

The Order also improperly awards additional unearned fees to the attorney of the Plaintiff of \$4,500.00 (see p. 3 of Ehrick K. Haight Jr. affidavit of March 6th 2014). The Defendant believes that the award of any attorney's fees to the Plaintiff is improper in this case but these "Estimated Additional Fees" are wholly unsupported and based upon nothing of substance in the record before the court. Furthermore, with the Plaintiff claiming actual "earned" fees of \$4,000.73, for nearly two years of litigation, the \$4,500 of "future" fees would appear to be grossly overestimated and not reasonably tethered to any work to be done in securing of the judgment in question. Our court has refused to support attorney fee awards in which the record does not contain an itemization of the fees and expenditures claimed. Parker v. Shecut, 531 S.E.2d 546, 340 S.C. 460 (S.C.App. 2000). It is simply improper for the court to engage in purely speculative award of future fees where no evidence was heard nor presented on the subject, and where there is no reasonable connection between the amount chosen and any future work of the Plaintiff attorney in this matter. (See also Defendant's Memo in Opposition to Summary Judgment pages 24 and 25).

As to damages, the Defendant has an equity account of \$31,000.00 from which any amount considered for judgment must be reduced according to the governing

documents and in equity. (See Defendants exhibits and deposition excerpts to the Memo in Opposition to Motion for Summary Judgment)

Other Findings not supported by the Record in the case:

The Order in this case also makes assertions which are not supported in the record in the case. For instance, on page 4 the Order finds that the "Defendant continued to use the club amenities" which is untrue and found no where in the record before the Court. The Order relies heavily upon the statement that the "obligation to pay dues, fees and assessments until his membership was re-issued was evident in the 1994 Plan" (p. 4 Order) but is only able to support such finding with references to 2 provisions that specifically refer to resigned memberships and not expelled memberships. The Court's Order in fact relies heavily upon the January 2014 governing documents but says that any contention that these later documents were not properly passed is "irrelevant" (order p.4 end of first paragraph). This is an error in as much as the Court can not rightly rely upon documents in support of finding summary judgment (the Defendant believes that such reliance is error for other reasons set forth herein as well) and then tell the Defendant that the mechanism of passage of those documents can not be challenged because they are irrelevant.

Evidence that Expulsion was mandatory ending all obligations and of representations of this fact made by the Plaintiff's agent:

The Order of this Court should be reconsidered because the Defendant put forth compelling evidence that representations were made by Ellen Padgett, an agent of the

Plaintiff, not CIC as is found in the Order, support the construction of the membership plan in conformity with the position of the Defendant (that expulsion was mandatory and resulted in a complete end to all membership rights and obligations). (See the Defendant's Memo in Opposition to Summary Judgment at pages 6 through 12) While the Defendant believes his interpretation is the supported and correct one, if the Court determines otherwise, certainly the Defendant would have the basis for the counterclaim for misrepresentation he has asserted in the pleadings in this case such that the case should not be decided by summary judgment. Further, the Defendant presented a thorough and compelling argument and evidence that Ellen Padgett in fact spoke for the Plaintiff and was in the best position to interpret the governing documents of the Plaintiff. Ellen Padgett's testimony, Plaintiff's former Membership Director, supports the Defendant's position that he is liable for no more than 4 months of owed dues and fees. Ellen Padgett worked in the Callawassie Sales Office, was an acting Membership Secretary, and maintained the Resale List, and testified in her deposition that CIMC would inform her when a member had been expelled and was thus no longer a member. (See Padgett Deposition P. 8, 88-90, 108). In fact, several witnesses, have testified that she represented to them that they could have no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact *require expulsion after 4 months*. In fact at pages 146 and 147 of her deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (p. 146 ln 8 - p 147 ln 19 Padgett Depo) These admissions are enough to create a genuine issue of a

material fact such that the Court should reconsider its Order and deny the Plaintiff's motion for Summary Judgment.

Plaintiff Club documents require expulsion ending all future obligations:

The Defendant points the Court again to the 2001 Club Rules which require expulsion after 4 months of an account being delinquent (See 13.3.1 indicating "Any member whose account is not settled within the four (4) months period following suspension shall be expelled from the Club." (Emphasis Added) The Club Rules then go on to define "Expulsion" 14.1.5 and distinguish it from both "Suspension" 14.1.3 and "Termination" 14.1.4. The Club Rules at 14.2.3 then discuss that members that have been suspended or terminated "shall remain liable for any unpaid account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club". Please note that this is not applicable to members that have been expelled. Use of the word "shall" established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). Accordingly, even if a member of the Plaintiff the Defendant had the right to be expelled from CIMC once his membership had been suspended for four months due to delinquency. In fact, there is no provision anywhere in all the CIMC governing documents from 1994 through 2013 suggesting expelled members are liable after expulsion. The Plaintiff has very recently attempted to adopt new Club Rules just this year to change this provision, but those are not relevant to this case.

In addition, the Court's finding that the documents at issue are unambiguous should not be the basis for the granting of summary judgment. The case of Ward v. West Oil Company, Inc., 379 S.C. 225 at 238 (S.C. App. 2008) indicates that even an action to **construe** an **unambiguous** contract is an action at law. While Defendants disagree that the contract is unambiguous, even if so, the effect would only be to limit what information the jury can review as they "construe" the contract documents to determine the intent of the parties, it does not require the granting of summary judgment nor that the Defendants are no longer be entitled to a jury, nor does it mean that the jury would construe the contract in the Plaintiff's favor. These matters along with other questions of fact, such as, whether the Defendant was expelled from the Club?; can the Club allow some members to concede memberships while refusing to allow other members of the same class to concede their memberships back to the Club?; did the Appellant resign from the Club?; and does the Appellant owe money to the Club?; all demand that the Appellant be allowed a jury trial in this matter.

In addition, the Defendant presented evidence that concessions were allowed in numerous circumstances which clearly violate the rights of the Defendant who has not been "allowed" to concede his membership where others of the same class of membership have been. The Plaintiff has no right to violate state law, even in negotiations of settlement and in fact SC Code §33-31-302 at part 18 expressly states just that: The Order improperly grants summary judgment without ruling on these arguments and thereby allows the Plaintiff to violate SC law to the detriment of the Defendant. The Defendant requests the Order be altered or amended to deny summary judgment.

State Law must be interpreted to provide some benefit to the member and not create an obligation to pay an unspecified and unending obligation:

However, even if the court believes that there is no issue of fact as to whether the Defendants have been expelled or terminated, section 14.2.3 still creates an issue of fact in as much as the Defendants have argued that the liability is for "unpaid account or membership dues..." meaning those amounts due at the time of termination, not the ongoing and never ending accumulation sought by the Plaintiffs. The Defendants interpretation conforms with the South Carolina Non-Profit corporations statute which declares that a member must be able to resign from a non-profit (§33-31-620). This statute is rendered meaningless if the Defendants receive no benefit from resignation as is the effect in the Court's interpretation of the documents in this case. Please bear in mind that the Plaintiff chose to operate as a nonprofit corporation and while receiving those benefits and should also be required to comply with the requirements of that decision. The statute can not be interpreted to negate itself by essentially saying that a resigned member can be obligated to all the obligations of membership for so long as the Club desires. However, that is how the Plaintiff suggests it should be interpreted. In this case, the Plaintiff has complete discretion to re-issue the Defendant membership and even if the Defendant membership could reach the top of the Resale List, which is now virtually impossible, the Plaintiff can still refuse to allow any transfer based completely on its own discretion to refuse the proposed purchaser. This situation, is patently unfair to the Defendant and interprets South Carolina Code §33-31-620 in a manner which fails to provide the benefit to the member which it was intended to provide.

The 1994 Plan of Offering also requires the Club to reissue memberships from the waiting list as "every fourth equity membership issued in that category will be a resigned

membership from the waiting list for that category.” (P. 7 1994 Plan for the Offering of Membership – “Transfer of Equity Membership”). This requirement, however, has not been followed as the waiting list or “Resale List” contains dozens of members in order ahead of the Defendants that did not “resign” but were conceded or expelled members (see Exhibit D to Defendant’s Memo in Opposition to the Plaintiff’s Motion for Summary Judgment). The policies of CIMC has evidenced that they in fact do expel members and acknowledge that they have no further obligations. CIMC 30(b)(6) designee Harmon Switzer and past Board President Karen Norwood has testified in fact that suspension is automatic after a delinquency of 3 months. (See Deposition Excerpts -- Switzer and Norwood see also the 1994 Club Rules at C-2(item 6)). Expelled members were sent expulsion letters such as the letters contained in Exhibit E to the Defendant’s Memo in Opposition to the Plaintiff’s Motion for Summary judgment.

Further, under the scintilla of evidence standard, the Court should reconsider the evidence submitted by the Defendant. Specifically, the Defendant has offered an affidavit in this case in which he asserts that he was not obligated to pay dues fees and assessments from the Club after 4 months of delinquency. (See Exhibit A to the Defendant’s Memo in Opposition). The Defendant has stated in his affidavit that the terms of the agreement of the parties in any event would never result in a loss or claim against him for more than the equity he obtained in the Club. The Defendant was denied the opportunity to concede his membership offered to other similarly situated members. The Defendant also states that he has never voted to change these essential and important rights (See Affidavit of the Defendant- Exhibit A to the Defendant’s Memo in Opposition).

Furthermore, others being sued by CIMC have supported the proposition that they were in fact told by agents of the Club that they could resign at any time and/or that they could incur no more than 4 months liability in any event. For instance, Mr. Dick Mercier has testified that he was told by agent Lee Allen, in 1989 that he could resign at anytime prior to the drafting of any of the modern day governing documents (See deposition of R. Mercier p. 46- 47). See also the testimony of Ronnie and Jeannette Dennis provided with the Defendant's Memo in Opposition to the Plaintiff's Motion for Summary Judgment in which he gave similar testimony.

Ellen Padgett worked in the Callawassie Sales Office, was an acting Membership Secretary, and maintained the Resale List, and testified in her deposition that CIMC would inform her when a member had been expelled and was thus no longer a member. (See Padgett Deposition P. 8, 88-90, 108). In fact, several witnesses, have testified that she represented to them that they could have no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact *require expulsion after 4 months*. In fact at pages 146 and 147 of her deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (p. 146 ln 8 – p 147 ln 19 Padgett Depo) If this is not an admission by the Plaintiff requiring judgment on this issue it is at least enough to create a genuine issue of a material fact such that the Plaintiff's motion should be denied.

Ms. Padgett also testified with regard to the members on the Resale List stated as Expelled or Conceded that it was when the members took over (2001) that they put all

"these expelling and conceded happened on this- were put here on this list after the members took over." (p. 133 ln12-13 Padgett Depo).

In addition, James Carling, who served on the CIMC Board from approximately 2000 to 2007 as President and Treasurer (pp. 7, 8 & 57 Carling depo attached to Defendant's Memo in Opposition) at different times, and then again on the board in 2010 serving on the finance committee, testified to several fact which support the claims of the Defendants and which compel denying the Plaintiff's motion. In his deposition, Mr. Carling identified a letter (Exhibit F to Defendant's Memo in Opposition) signed by him on behalf of the Club to Bernard Carpenter in which he references 13.3.1 of the Club Rules (See Exhibit C to Defendant's Memo in Opposition) and confirmed that members who do not bring their accounts current within four months "Following suspension they're expelled from the club, yes." (p.24 ln 15 - ln 24 and p.27-ln 15 - p.28 ln 11. depo Carling). Mr. Carling again confirms this 4 month suspension followed by expulsion when asked in reference to the quoted letter: "Would you agree that the --the rule at that time was that a member would -- would be expelled from the club if they were suspended for more than four months and did not settle their accounts? Answer: Yes." (P. 30 ln 6 - 18 depo Carling) and would not again be eligible to be a member (p 30 ln 12- 18 Carling Depo). (See also Exhibit F to Defendant's Memo in Opposition). Mr. Carling also testified that during his time on the board that a member could not resign. (Depo p. 30 ln 23 to p 31 ln 4). He elaborated on this statement stating that he would have told someone trying to resign that they "Can't do it." (p.44 ln 15 Depo Carling).

Another past CIMC Board President, Karen Norwood, (p. 3 ln 20-21 Depo Norwood) testified that persons acquiring membership prior to the 2001 passage of the

CIPOA Covenants were "grandfathered" (P. 28 ln. 13). Most significant in Ms. Norwood's deposition is that she confirms that when the Club changed the 13.3.1 language from "shall be expelled" to "may be expelled" it was done without discussion among the Board and without presentation to the members of the Club. (P. 82 ln 12 thru p84 ln 19). And that the change was made because they did not like the previous language which suggested that a member would "**absolutely have to be expelled**" (emphasis added) (see p.84 ln 16 Norwood deposition) and the Club wanted to change that. This explanation presents far more than a scintilla of evidence that the Defendant's interpretation of this provision is warranted in this case.

In addition the Defendant provided the court with letters of concession or expulsion relative to Ralph Zezza, Homer Knearl (November 13, 2002), Phillip Thomas (April 14, 2010), Margaret Brice, McBee Butcher, Marshall Field, Jacqueline Leffers, John Reid (Expulsion- December 23, 2004), Jacquelyn Wallace -Expulsion -October 17, 2003) all of which are conspicuously absent of any language or mention of any ongoing obligation to the Club, but instead appear to end all future dealings.

In its Order the Court fails to rule on the Defendant's statute of limitations argument and the limitations on damages argument and rulings thereon are requested. In this case, the damages requested by the Plaintiff are not available because they go back more than three years from the date of the filing the action and are subject to the statute of limitations. Exhibit A to the Affidavit of Jeff Spencer claims to set forth the accumulation of charges asserted against the Defendants but references charges claimed as far back as July 2009, more than 3 years prior to the current litigation and subject to the defense raised of the statute of limitations.

Even if the Court is to believe that there does not exist even a mere scintilla of evidence with regard to the claims and defenses in this case, the Plan for Offering of Membership of 1994 would require that the Court award no more damages than the equity contribution as "amount to be paid to the resigned member upon the reissuance of his or her resigned membership" (p. 9 Plan of 1994). Although the Defendant contends his liability would be limited to 4 months of dues and fees due to a mandatory expulsion, even under the resignation theory of the Plaintiff, the members' liability was always intended to be limited to the amount of equity in the Club. This is evidenced throughout with numerous citations to the same in the Defendant's Memorandum in Opposition.

The Defendant references and incorporates in this Motion his Memo in Opposition to the Plaintiff's Motion for Summary Judgment and all exhibits and materials submitted therewith to the Court and materials filed or otherwise submitted to the Court by either party.

CONCLUSION

For the reasons set forth herein and as may be presented in a hearing of this matter, the Order of the Court should be reconsidered and the Motion of the Plaintiff for Summary Judgment should be denied.

LAW OFFICE OF BRIAN McDANIEL, LLC



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Michael Frey

July 3, 2014
Beaufort, South Carolina

STATE OF SOUTH CAROLINA	)	2014 JUN 21 AM 9:00	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)		FOR THE FOURTEENTH JUDICIAL CIRCUIT
THE CALLAWASSIE ISLAND	)		CIVIL ACTION NO. 2012-CP-07-03209
MEMBERS CLUB, INC.,	)	BEAUFORT COUNTY, S.C.	CLERK OF COURT
Plaintiff,	)		
v.	)		<u>ORDER GRANTING SUMMARY</u>
MICHAEL J. FREY and GRACE	)		<u>JUDGMENT IN FAVOR OF PLAINTIFF</u>
I. FREY,	)		<u>AGAINST MICHAEL J. FREY</u>
Defendants.	)		

THIS MATTER came before the Court upon the motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), for summary judgment against the Defendants, Michael J. Frey and Grace I. Frey. Present before the Court on Monday, May 19, 2014, were Ehrick K. Haight, Jr., Esquire and William T. Young III, Esquire, Attorneys for the Plaintiff, and Brian D. McDaniel, Esquire, Attorney for the Defendants.

Defendant Grace I. Frey claims she signed the relevant membership documents in her capacity as spouse only and not as an applicant and/or purchaser in her own right; as additional discovery may be warranted with respect to this issue, this Court denies Plaintiff's motion for summary judgment with respect to Mrs. Frey at this time pending the completion of additional discovery, with leave to refile.

This is a breach of contract for indebtedness owed by the Defendants arising from their membership in CIMC. The Plaintiff's motion, made pursuant to Rule 56, SCRPC, is based upon the pleadings, including the verified Complaint, Plaintiff's Memorandum in Support of Motion for Summary Judgment, the relevant governing documents (as cited

therein), the Affidavits of Jeff Spencer, the Affidavits of Ehrick K. Haight, Jr. and the law applicable to the case. Defendants submitted a Memorandum in Opposition to Plaintiff's motion and tendered an Affidavit in support of their position. As this Court declines to grant Summary Judgment as against Defendant Grace I. Frey at this time, the following shall apply only to Defendant Michael J. Frey (hereinafter, "Defendant").

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E. 2d 801 (2009), Rule 56 (c), SCRCP.

Defendant argues that his membership was or should have been suspended, or terminated and that he should have been expelled because of non-payment under the terms of the General Club Rules dated August 8, 2001, and other documents. Whether this is true or not is irrelevant. It is clear under all of the relevant documents, from the time Defendant initially acquired his membership until the present, that the obligation to remain a member in good standing and pay dues, fees, assessments and other charges continues until the membership is re-issued to a new member. Moreover, this continuing obligation is consistent with S.C. Code Ann. §33-31-621 (e) (2006), which specifically recognizes a corporation's right to impose obligations on its members beyond termination of the membership as follows: "A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension."

By applying for a membership and purchasing same, Defendant became contractually bound by the 1994 Plan for the Offering of Memberships and the Exhibits thereto, which included the By-laws and the General Club Rules (collectively, the "1994 Plan"). Reading these documents as a whole and giving them their plain and ordinary meanings, the Defendant's

obligation to pay dues, fees and assessments until such time as his membership re-issues is clear and unambiguous. The following excerpts leave no room for contrary interpretation:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club **until his or her equity membership is reissued** (emphasis added) by the Club. (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendant acquired Membership*).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club. (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (emphasis added) by the Club. (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendant acquired Membership*).

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums). (*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendant acquired Membership*).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Although Defendant initially entered into these contractual obligations with the Callawassie Island Club, Inc. ("CIC"), Plaintiff has the right to enforce those obligations. Plaintiff's acquisition of the club assets was contemplated by the 1994 Plan; was voted upon and approved by the membership (of which Defendant was a part); and the transaction was closed in 2001. Thereafter, Defendant continued to use the club amenities; paid dues, fees and assessments to CIMC; and was issued a membership certificate evidencing his membership in CIMC. As the obligation to pay dues, fees and assessments until his membership was re-issued was evident in the 1994 Plan, which was in effect at the time he acquired his membership, Defendant's contention that the Plaintiff may have later failed to properly notice and/or meet the voting requirements for subsequent amendments is irrelevant.

Defendant asserts that various representations and warranties were made by CIC that contradict the plain reading of the governing documents. CIC is not a party to this action. Moreover, even if such representations or warranties were made by CIC, they would not avail Defendant as a defense to this action. The 1994 Plan exhorts prospective members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the 1994 Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The 1994 Plan makes clear that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership.

Plaintiff was not in existence at the time Defendant purchased his membership in 1995. Defendant, therefore, cannot establish the essential elements for a negligent

misrepresentation claim, namely, 1) a false representation made by CIMC to the Member; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Member; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation; as against this Plaintiff. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Defendant points to S.C. Code Ann. §33-31-620(a), of the South Carolina Nonprofit Corporations Act (the "Act"), for the proposition that imposing liability for continuing obligations following resignation is statutorily prohibited. The Defendant's argument ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes clear that members are to be held accountable for previously agreed-upon continuing obligations, even beyond resignation. Defendant agreed to be bound by the 1994 Plan, including the By-laws and General Club Rules attached thereto, all of which unambiguously and consistently obligate him to pay dues until his membership reissues. Furthermore, this Court can find no violation of the statutory provisions relied upon by Defendant.

Defendant, in further opposition to the summary judgment motion at issue, asserts that granting the motion is inappropriate because discovery has not yet been completed. However, a party opposing summary judgment on this basis "must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (Quoting Baughman v. American Tel. and Tel. Co., 306 S.C.

101, 112, 410 S.E.2d 537, 544 (1991)). Moreover, a failure of proof on an essential element of a claim renders all other facts immaterial. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Defendant has failed to demonstrate the likelihood that further discovery will uncover additional relevant evidence. Consequently, Defendant's argument must be rejected.

In the case at bar, CIMC's claim is premised upon a breach of contract. Because this Court has determined that the agreement between the parties is unambiguous, extrinsic evidence is inadmissible to determine the intent of the parties. See Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993). ("The construction of an unambiguous deed is a question of law, not fact. The terms of such a deed may not be varied or contradicted by evidence drawn from sources other than the deed itself.... Extrinsic evidence is admissible to resolve ambiguities but not to create them where none exist."). Accordingly, because Defendant would not be able to introduce any evidence beyond the contents of the documents at issue, any further discovery is unnecessary, superfluous, and would not defeat CIMC's motion for summary judgment. Likewise, Defendant's position on ongoing discovery also fails with regards to his counterclaims. Defendant's claim for negligent misrepresentation fails as a matter of law because CIMC did not exist at the time Defendant undertook his obligation. The instant matter presents a classic example of a failure of proof on an essential element, as it is impossible for CIMC to have made any representation to Defendant prior to its existence. Therefore, further discovery is unnecessary, as Defendant cannot satisfy an essential element of this claim.

The only remaining counterclaim relates to an accounting requested by Defendant. Defendant has presented no evidence to contradict the billing records submitted by CIMC.

Furthermore, because this Court has determined that the agreement unambiguously requires Defendant to remain liable for payment until his membership is transferred, this Court must also find that Defendant cannot demonstrate any right to an accounting, and grants summary judgment in favor of CIMC.

Based upon the foregoing, this Court finds the Plaintiff has established as a matter of law that pursuant to the terms and conditions of the 1994 Plan, the By-laws and General Club Rules (and all subsequent amendments thereto), that there is an unpaid balance due and owing for dues, fees, assessments and other charges, including interest at the contract rate of one and one-half (1.5%) percent per month, for which the Defendant is responsible. The Defendant has failed and refused to make payment in full for dues, assessments, interest and other charges and Defendant is indebted to the Plaintiff in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars, as contemplated by the 1994 Plan (and all subsequent amendments).

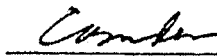
Based upon the pleadings, the relevant documents, and the affidavits submitted, it appears that there is no genuine issue as to the charges made on the account and the liability of the Defendant for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendant, as a matter of law, for the sum of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and

against the Defendant, Michael J. Frey, in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars², for a grand total of Sixty Seven Thousand Eight Hundred Seventy Six and 46/100 (\$67,876.46) Dollars.

AND IT IS SO ORDERED.


J. ERNEST KINARD, JR.
Presiding Judge

, South Carolina

June 24, 2014

This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

² The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
Plaintiff,)
v.)
)
MICHAEL J. FREY and)
GRACE I. FREY,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO RECONSIDER

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
Plaintiff,)
v.)
)
GREGORY L. MARTIN and)
REBECCA L. MARTIN,)
)
Defendants.)

CIVIL ACTION NO. 2012-CP-07-03218

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO RECONSIDER

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
Plaintiff,)
v.)
)
MARK QUINN and)
SHERRY B. QUINN,)
)
Defendants.)

CIVIL ACTION NO. 2012-CP-07-03216

THE CALLAWASSIE ISLAND MEMBERS
CLUB, INC.'S MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO RECONSIDER

The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned
counsel, submits this memorandum of law in opposition to Defendants' Motion to Reconsider.¹ The

¹
As the above-captioned cases involve substantially similar facts and causes of action and the attorneys for both the Plaintiff and the various Defendants are the same in each case, CIMC is filing this single Memorandum to avoid unnecessary repetition and confusion. The named defendants are referred to herein collectively as "Defendants" unless otherwise noted.

Court's decision to grant summary judgment as to Messrs. Frey, Martin and Quinn was proper. To the extent the Court should choose to modify its prior ruling, summary judgment should also be granted as to their respective spouses.

ARGUMENT

A. Proper Standard of Review.

There is no triable issue of fact for a jury to consider when the language of the applicable contract is clear and unambiguous. "When a contract or agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *ESA Services, LLC v. S.C. Dept. of Revenue*, 392 S.C. 11, 20, 707 S.E.2d 431, 436 (2011). "It is a question of law for the court whether the language of a contract is ambiguous." *Id.*; see also: *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App. 1997).

At all times during the Defendants' membership, the applicable governing documents mandated that members remain obligated for dues, fees and assessments until such time as their membership was reissued. The following excerpts leave no room for contrary interpretation:

Relevant Plan Excerpts:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club **until his or her equity membership is reissued by the Club** (*emphasis added*). (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendants acquired Membership*).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership **until his/her Equity Membership is reissued by the Club** (*emphasis added*). (*Plan for the Offering of Membership, Amended as of February 1, 2008, 5.11 "Payment of Dues and Charges By Resigned Members", in force at the time of the Defendants' attempted resignation*).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership **until his/her Equity Membership is reissued by the Club** (*emphasis added*). (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Relevant Excerpt from By-Laws:

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued by the Club** (*emphasis added*). (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendants acquired Membership*).

The Club shall have a lien against each membership for any unpaid assessments, fees, annual dues or other charges . . . [and] may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges . . . " (*By-Laws, Callawassie Island Members Club, March, 2009, in force at the time Defendants attempted resignation - showing Club is not limited to recovery as against equity only*).

Relevant Excerpts from the General Club Rules:

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (*emphasis added*) (including food and beverage minimums). (*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendants acquired Membership*).

Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums) **until the membership is sold** (*emphasis added*). (*The Callawassie Island Members Club, Inc. General Club Rules as of February 23, 2009, Sec. 14.2.1, in force at the time Defendants attempted resignation*).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (*emphasis added*). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (*emphasis added*). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).²

²

Copies of the complete governing documents were provided in a notebook presented to the Court prior to the hearing.

A careful reading of the documents as a whole, giving the language its plain meaning, makes clear that there is an unambiguous obligation to pay ongoing dues until the membership reissues. The Court correctly applied the cardinal rule of contract interpretation by ascertaining and giving legal effect to the parties' intentions as determined by the contract language. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

Despite the Defendants' concerted efforts to manufacture ambiguities by reading various other sections of the governing documents in isolation, a contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. *Id.* This Court applied the appropriate legal standard in determining the contract to be unambiguous, and in the absence of other evidence of breach of the contract on the part of CIMC, the award of summary judgment was justified.

B. Correct Reliance on the Governing Documents as Dispositive.

This Court based its award of summary judgment on the governing documents in place as of the time the Defendants acquired membership, as amended.³ While the documents themselves, as well as the Membership Purchase Agreements and/or Membership Applications signed by the Defendants⁴, contemplated amendment, the obligation to pay dues until the membership is reissued has not changed. The documents reflect, and this Court rightfully concluded, that such obligation applies irrespective of the manner in which a membership is terminated, whether by resignation, suspension, expulsion or otherwise. The Defendants did not, and indeed cannot, point to any provision of the governing documents, or any other evidence, for the proposition that expulsion **absolves** a member from any further liability. Whether or not a member is expelled, the

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See Order, pg. 2, "...Defendants became contractually bound by the 1994 Plan for the Offering of Memberships and the Exhibits thereto, which included the By-laws and the General Club Rules."

Defendants Frey and Quinn signed Applications and Membership Purchase Agreements, copies of which were attached as Exhibits to the Verified Complaints against each of them. A copy of the Membership Application signed by Defendants Martin was also an Exhibit to the Verified Complaint in their case.

obligation to pay dues, fees and assessments (by the clear language of the governing documents) continues until the membership reissues.

The Defendants' reliance on the deposition testimony of Ellen Padgett, in support of their expulsion argument is clearly misplaced. Defendants' cannot resort to parole evidence in interpreting an unambiguous written contract. Further, the alleged representations by Ms. Padgett occurred prior to CIMC's acquisition of the Club and cannot be attributed to CIMC, thereby vitiating any claim of negligent misrepresentation on its part.

While CIMC is sympathetic to the fact that in order to effect a re-issuance of their memberships in this troubled real estate market, members may be forced to sell at a loss; this in no way alters their obligation. Indeed, had the drafters wished to include a hardship provision, they could have done so. The fact that such language is missing from the governing documents illustrates the importance CIMC ascribes to maintaining the revenue stream for the benefit of all members. If, as these Defendants assert, their obligations end after four months of non-payment, there would be no reason for a re-sale list or for the language cited herein above.

C. Discovery.

Defendants' contention that summary judgment was premature due to ongoing discovery is unfounded. "The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (2008), citing: *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct.App. 2001), (additional citations omitted). "A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Id.* As the Defendants cannot establish the necessary elements of their counterclaims, further discovery is unnecessary. Regardless, CIMC has since provided Supplemental Answers to

Interrogatories and Supplemental Responses to Defendant's Request to Produce and the Defendants have failed to cite any newly discovered materials that would defeat summary judgment in their respective cases.⁵

D. Attorneys' Fees Properly Awarded.

Ehrick K. Haight, Jr., filed Supplemental Affidavits in each of the three cases addressed herein on May 19, 2014, and submitted them to opposing counsel and this Court at the hearing of even date therewith. The purpose of the supplemental affidavit was to bring current the attorneys' fees set forth in Mr. Haight's earlier affidavit filed with CIMC's motion for summary judgment. Although Rule 6(d), SCRCP directs that such supplemental affidavit be provided two (2) days prior to the hearing, the trial court has the discretion under Rule 6(b)(1) to permit a party to file at the hearing. The Note to 1986 Amendment to Rule 6, makes clear the court is authorized to permit an act to be done after the expiration of time upon a showing of good cause. Good cause can be inferred by the need to provide a current and accurate statement of the attorneys' fees in the case and the trial court's acceptance and later ratification of the affidavit. Further, under Rule 61, SCRCP, the allowance, if error, proved harmless, as the estimated fees set forth by Mr. Haight have proven insufficient and should the matter be re-opened to debate, the charges to the Defendants will likely increase.

E. Claims Raised for First Time in Motion for Reconsideration.

Defendants attempt to raise, for the first time in their Motion for Reconsideration, the issue of whether or not certain negotiated settlements, between CIMC and members no longer owning property on Callawassie Island, violated S.C. Code Ann. §33-31-302. "[A] party cannot use a motion to reconsider, alter, or amend a judgment to present an issue that could have been raised prior to the judgment but was not so raised." *Anonymous v. State Board of Medical Examiners*,

⁵

CIMC served Supplemental Answers to Interrogatories and Supplemental Responses to Defendants Request for Production, as ordered, on July 10, 2014.

323 S.C. 260, 473 S.E.2d 870, 879 (Ct. App. 1996). See also: *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436, 437 (Ct. App. 1995). Even if the issue were properly before this Court, there is no evidence of a statutory violation in this case.

The action complained of by the Defendants (that CIMC allowed certain members who no longer owned real property on Callawassie Island to concede their memberships and terminate their obligations), was part of a negotiated settlement of debts owed to CIMC. In recognition of the escalating debts associated with memberships on its re-sale list that were unaffiliated with a lot or home, CIMC offered to settle those accounts for a lump sum payment in exchange for the concession of the membership. Such action was clearly within the Board's discretion to compromise debts owed to the corporation and was therefore an *intra vires* action. In the absence of fraud or self-dealing, such settlements are protected from scrutiny under the Business Judgment Rule. The Defendants have presented no evidence of wrong doing with respect to these settlements and therefore, summary judgment remains appropriate in this case.

The Non-Profit Corporation Act, S.C. Code Ann. §33-31-101, *et seq.*, empowers a non-profit corporation to take all reasonable actions consistent with its governing documents. There is no evidence CIMC acted in contravention of its governing documents in this case. The allegations of voting irregularities and violations of the documents are red herrings. The governing documents themselves allowed CIMC to make such changes without a vote. Further, as CIMC argued, any challenge based on the propriety or adoption of the amendments were barred by the statute of limitations.

"In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. at

180, 760 S.E.2d at 129-130, *citing: Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993); see also *Dockside*, 294 S.C. at 87, 362 S.E.2d at 874. ("[T]he business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing[,] or unconscionable conduct."); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000) ("Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith." (internal quotation marks omitted)). "[T]he burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside*, 294 S.C. at 87, 362 S.E.2d at 874. The burden was squarely on the Defendants to show some evidence that CIMC acted without good faith and they failed to do so.

As for Defendants' statutory claims under S.C. Code Ann. §33-31-620, this Court correctly ascertained and effectuated the intent of the legislature. This Court gave the words found in the statute their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E. 2d 877, 881 (2011). "In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Anderson v. South Carolina Election Com'n*, 397 S.C. 551, 556-557, 725 S.E.2d 704, 706-707 (2012), *citations omitted*.

The Defendants' contention that the ruling creates an "unending obligation" simply is not true. The Defendants need only sell their property along with their membership to terminate their

contractual obligations. As all persons acquiring property on Callawassie Island are now obligated under the Declaration⁶ to purchase a membership in CIMC, the membership would necessarily transfer to the new owner.

The Official Comments to §33-31-620 recognize that a "member in joining the organization may promise to use its facilities or services for a specific period of time." In this case, the specific period of time is "until their membership is reissued." Such requirements are quite common, particularly in Beaufort County, where nearly all developments utilize non-profit corporations to collect dues for the maintenance of common areas and recreational amenities within their community. A fact this Court is intimately familiar with having heard arguments in a similar case in the matter of *Davenport v. Dataw Island Owner's Association, Inc.*, which upheld similar covenants, restrictions and mandatory membership provisions.

It would be illogical to assert that S.C. Code Ann. §33-31-620, absolves homeowners from liability for dues incurred prior to sale under the rational that members of a not-for-profit corporation have a "right to resign at any time". However, that is the tortured conclusion to be drawn from the Defendants' reading of the statute.

The fact that the Defendants may find it economically inconvenient to sell their property does not excuse their financial responsibilities. Nowhere in any of the governing documents are the Defendants guaranteed a profitable return on their investment. In fact, the 1994 Plan specifically advised that the memberships were for recreational purposes and not to be relied upon

6

Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Associations, Inc. of December 1, 2001 (the "Declaration"), recorded in the Office of the Register of Deeds for Beaufort County, in Book 1505, at Page 850, amended by Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Associations, Inc. of December 15, 2011, recorded on April 25, 2012, in the Office of the Register of Deeds for Beaufort County, in Book 3137 at Page 3004; and also by that certain First Amendment to the Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Associations, Inc. of December 15, 2011, dated September 23, 2013, which was recorded on October 10, 2013, in the Office of the Register of Deeds for Beaufort County, in Book 3276 at Page 1604 is incorporated herein by reference.

as an investment. No matter how disadvantageous the requirement may prove, the fact remains that allowing members to unilaterally resign without selling or transferring their membership to a new, dues paying, member, would have devastating consequences to all of the other members on Callawassie Island who rely upon a steady source of funding to maintain their amenities. It is clear from the statutory language and comments that such an application is consistent with the stated purposes and intent of the Act.

F. Spouses are Members.

The Court declined to issue summary judgment against the spouses of Messrs. Frey, Martin and Quinn pending further discovery to ascertain whether their respective signatures on the contracts evidenced an intent to be bound thereby. For the following reasons, the Court should reconsider its initial findings and issue summary judgment against both husband and wife.

First, the Court should take judicial notice of the Declaration, which requires anyone purchasing property on Callawassie Island to acquire a membership in CIMC. Although these Defendants acquired before this affirmative duty was imposed, the Declaration evidences the intent of the Callawassie Island Property Owners Association, and CIMC as its intended third party beneficiary, to make all owners of record members of CIMC. This later enacted restrictive covenant ratifies and serves as evidence of, CIMC's earlier policy regarding husbands and wives as members. The intent having always been that if a property is owned by both husband and wife, as is the case with all of these Defendants, then both are required to purchase the membership.

Defendants Michael J. Frey and Grace I. Frey, as well as Defendants Mark Quinn and Sherry B. Quinn, each signed purchase agreements entitled "The Callawassie Island Club Membership Purchase Agreement", copies of which can be found attached to their respective Verified Complaints ("Purchase Agreements"). The Purchase Agreements state, "[t]he undersigned hereby agrees to acquire an equity membership" and the Defendants, both husbands

and wives, did in fact acquire memberships as attested to in the Affidavit of Jeff Spencer, General Manager of CIMC. In light of the respective Purchase Agreements and the testimony presented, the Court should reconsider whether further discovery is necessary. These Defendants admitted the authenticity of the documents in their respective answers and the documents are the best evidence of the agreement between the parties.

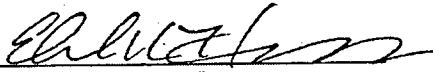
Although CIMC is unable to produce a Purchase Agreement signed by Defendant Rebecca L. Martin, CIMC calls the Court's attention to the matter of *Joseph A. Downie et al. v. The Callawassie Island Members Club, Inc.* et al., 2013CP0701280, in which Defendant Rebecca Martin (among others) brought suit against CIMC in her capacity as a member. Having availed herself of the Court in another action in which she maintained membership in CIMC, Ms. Martin cannot now be heard to disavow her membership. In furtherance of CIMC's claims as to all of the spouses, CIMC also directs the Court to a recent ruling in a substantially similar case, *The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis*, 2011-CP-07-3322, in which summary judgment was awarded against both husband and wife, jointly and severally.

CONCLUSION

Despite extensive efforts to manufacture ambiguities, a plain reading of the governing documents shows that the Defendants are obligated for dues, fees and assessments until their membership reissues. CIMC conclusively established (1) the existence of a contract, (2) the obligation to pay, (3) the breach of that obligation and (4) the amounts due for such breach. The Defendants cannot say the same for their counterclaims and failed to introduce any evidence in support of their affirmative defenses. In light of the clear contractual obligations, undertaken by all of the named Defendants, the Defendants' Motion for Reconsideration should be denied and

the Court should award Summary Judgment in favor of CIMC and against both husband and wife, jointly and severally, in each of the referenced cases.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 
Ehrick K. Haight, Jr., Esq.
Stacey S. Collins, Esq.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

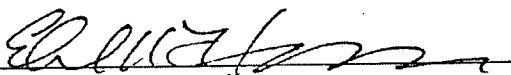
And

Stephen P. Hughes, Esq.
J. Andrew Yoho, Esq.
HOWELL, GIBSON & HUGHES, P.A.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Callawassie Island Members Club, Inc.

Beaufort, South Carolina
October 27th, 2014.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 27th day of October, 2014.

By: 
Ehrick K. Haight, Jr.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-07-3209

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

MICHAEL J. FREY and GRACE I FREY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stacey S. Collins, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Callawassie Island Members Club, Inc.	Michael J. Frey and Grace I. Frey	\$ 67,876.46
If applicable, describe the property, including tax map information and address, referenced in the order		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest
SCRCPP Form 4C (10/2011)

Page 1 of 2

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing

pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ehrick K. Haight, Jr., Esq.
Stacey S. Collins, Esq.
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

Stephen P. Hughes, Esq.
J. Andrew Yoho, Esq.
Howell Gibson & Hughes, PA.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

ATTORNEY(S) FOR THE DEFENDANT(S)

Ian S. Ford, Esq.
Ford Wallace Thompson, LLC
715 King Street
Charleston, SC 29403
(843) 608-1234

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
Plaintiff,)
)
v.)
)
MICHAEL J. FREY and GRACE I.)
FREY,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03209

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER
AND AWARDING SUMMARY
JUDGMENT IN FAVOR OF PLAINTIFF
AND AGAINST BOTH DEFENDANTS

THIS MATTER came before the Court upon the motion of the Defendants, Michael J. Frey and Grace I. Frey ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Michael J. Frey, entered June 24, 2014 (the "Order").

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied.

It further appears that Defendant Grace I. Frey entered into a contract to purchase a membership in The Callawassie Island Members Club, Inc. ("CIMC"), and did in fact acquire said membership. These documents clearly obligate her to the same extent as Defendant Michael J. Frey.

Based on the pleadings, the relevant documents, the affidavits and memoranda submitted, it appears that there is no issue as to the charges made on the accounts and the liability of the Defendants for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendants, jointly and severally, as a matter of law, for the sum of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the motion for reconsideration is denied and that summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and against the Defendants Michael J. Frey and Grace I. Frey, jointly and severally, in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars², for a grand total of Sixty Seven Thousand Eight Hundred Seventy-Six and 46/100 (\$67,876.46) Dollars.

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
Presiding Judge

_____, South Carolina
October ____, 2014.

¹This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

²The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-07-3218

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

GREGORY L. MARTIN and REBECCA L. MARTIN

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stacey S. Collins, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Callawassie Island Members Club, Inc.	Gregory L. Martin and Rebecca L. Martin	\$ 41,930.24
If applicable, describe the property, including tax map information and address, referenced in the order		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest
SCRCPP Form 4C (10/2011)

Page 1 of 2

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing

pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ehrick K. Haight, Jr., Esq.
Stacey S. Collins, Esq.
Minor, Haight & Arundell, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

Stephen P. Hughes, Esq.
J. Andrew Yoho, Esq.
Howell Gibson & Hughes, PA.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

ATTORNEY(S) FOR THE DEFENDANT(S)

Ian S. Ford, Esq.
Ford Wallace Thompson, LLC
715 King Street
Charleston, SC 29403
(843) 608-1234

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

v.

GREGORY L. MARTIN and
REBECCA L. MARTIN,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03218

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER
AND AWARDING SUMMARY
JUDGMENT IN FAVOR OF PLAINTIFF
AND AGAINST BOTH DEFENDANTS

THIS MATTER came before the Court upon the motion of the Defendants, Gregory L. Martin and Rebecca L. Martin ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Gregory L. Martin, entered June 24, 2014 (the "Order").

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied.

It further appears that Defendant Rebecca L. Martin is estopped from denying membership in The Callawassie Island Members Club, Inc. ("CIMC") by virtue of her suit against CIMC in which she asserted such membership, and therefore she is bound to the same extent as Defendant Gregory L. Martin.

Based on the pleadings, the relevant documents, the affidavits and memoranda submitted, it appears that there is no issue as to the charges made on the accounts and the liability of the Defendants for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendants, jointly and severally, as a matter of law, for the sum of Thirty-Three Thousand Three Hundred and 11/100 (\$33,300.11) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Eight Thousand Six Hundred Thirty and 13/100 (\$8,630.13) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the motion for reconsideration is denied and that summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and against the Defendants, Gregory L. Martin and Rebecca L. Martin, jointly and severally, in the amount of Thirty-Three Thousand Three Hundred and 11/100 (\$33,300.11) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Eight Thousand Six Hundred Thirty and 13/100 (\$8,630.13) Dollars², for a grand total of Forty-One Thousand Nine Hundred Thirty and 24/100 (\$41,930.24) Dollars.

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
Presiding Judge

_____, South Carolina
October _____, 2014.

¹This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

²The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-07-3216

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.

MARK K. QUINN and SHERRY B. QUINN

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stacey S. Collins, Esq.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
The Callawassie Island Members Club, Inc.	MARK K. QUINN and SHERRY B. QUINN	\$ 76,845.07
If applicable, describe the property, including tax map information and address, referenced in the order		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest
SCRPC Form 4C (10/2011)

Page 1 of 2

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2014 to attorneys of record or to parties (when appearing

pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

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Stephen P. Hughes, Esq.
J. Andrew Yoho, Esq.
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(843) 522-2400

ATTORNEY(S) FOR THE DEFENDANT(S)

Ian S. Ford, Esq.
Ford Wallace Thompson, LLC
715 King Street
Charleston, SC 29403
(843) 608-1234

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
Plaintiff,)
)
v.)
)
MARK QUINN and SHERRY B.)
QUINN,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03216

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER
AND AWARDING SUMMARY
JUDGMENT IN FAVOR OF PLAINTIFF
AND AGAINST BOTH DEFENDANTS

THIS MATTER came before the Court upon the motion of the Defendants, Mark Quinn and Sherry B. Quinn ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Mark Quinn, entered June 24, 2014 (the "Order").

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied.

It further appears that Defendant Sherry B. Quinn entered into a contract to purchase a membership in The Callawassie Island Members Club, Inc. ("CIMC"), and did in fact acquire said membership. These documents clearly obligate her to the same extent as Defendant Mark Quinn.

Based on the pleadings, the relevant documents, the affidavits and memoranda submitted, it appears that there is no issue as to the charges made on the accounts and the liability of the Defendants for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendants, jointly and severally, as a matter of law, for the sum of Sixty-Six Thousand Six Hundred Fifty-Eight and 09/100 (\$66,658.09) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Ten Thousand One Hundred Eight-Six and 98/100 (\$10,186.98) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the motion for reconsideration is denied and summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and against the Defendants, Mark Quinn and Sherry B. Quinn, jointly and severally, in the amount of Sixty-Six Thousand Six Hundred Fifty-Eight and 09/100 (\$66,658.09) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Ten Thousand One Hundred Eight-Six and 98/100 (\$10,186.98) Dollars², for a grand total of Seventy-Six Thousand Eight Hundred Forty-Five and 07/100 (\$76,845.07) Dollars.

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
Presiding Judge

_____, South Carolina
October ____, 2014.

¹This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

²The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
Plaintiff,)
v.)
MICHAEL J. FREY and GRACE)
I. FREY,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03209

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER

THIS MATTER came before the Court upon the motion of the Defendants, Michael J. Frey and Grace I. Frey ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Michael J. Frey, entered June 24, 2014.

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied,

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
CIRCUIT JUDGE

_____, South Carolina
This _____ day of October, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
Plaintiff,)
v.)
GREGORY L. MARTIN and)
REBECCA L. MARTIN,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03218

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER

THIS MATTER came before the Court upon the motion of the Defendants, Gregory L. Martin and Rebecca L. Martin ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Gregory L. Martin, entered June 24, 2014.

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied,

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
CIRCUIT JUDGE

_____, South Carolina
This _____ day of October, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
Plaintiff,)
v.)
MARK QUINN and SHERRY B.)
QUINN,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-07-03216

ORDER DENYING DEFENDANTS'
MOTION TO RECONSIDER

THIS MATTER came before the Court upon the motion of the Defendants, Mark Quinn and Sherry B. Quinn ("Defendants"), for reconsideration of this Court's Order granting summary judgment as to Defendant, Mark Quinn, entered June 24, 2014.

Following careful consideration of Defendants' eighteen (18) page motion, the exhibits attached thereto, Plaintiff's memorandum in opposition to same, and the record, it appears that oral argument is not necessary and Defendants' motion should be denied,

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
CIRCUIT JUDGE

_____, South Carolina
This _____ day of October, 2014.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
FOURTEENTH JUDICIAL CIRCUIT

J. Ernest Kinard, Jr., Judge

Case No. 2012-CP-07-03209

The Callawassie Island Members Club, Inc.,

Respondent

v.

Michael J. Frey,

Appellant.

NOTICE OF APPEAL

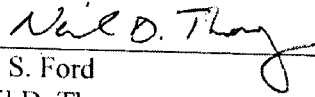
Appellant Michael J. Frey appeals the decisions of the Honorable J. Ernest Kinard, Jr. dated June 24, 2014 (Order Granting Summary Judgment Against Defendant Michael J. Frey), and dated December 16, 2014 (Order Denying Motion to Reconsider and Affirming Summary Judgment Against Defendant Michael J. Frey), copies of which are attached hereto. Appellant received a copy of the Order Denying Motion to Reconsider and Affirming Summary Judgment Against Michael J. Frey on December 19, 2014.

RECEIVED
JAN 02 2015
SC COURT of Appeals

December 29, 2014

Respectfully submitted,

FORD WALLACE THOMSON LLC



Ian S. Ford

Neil D. Thomson

715 King St.

Charleston, SC 29403

843-277-2011

Ian.Ford@FordWallace.com

Attorney for Appellant

Other Counsel of Record:

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rick@mhalawfirm.com

Attorney for Respondent The Callawassie Island Members Club, Inc.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JAN 02 2015
SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
FOURTEENTH JUDICIAL CIRCUIT

J. Ernest Kinard, Jr., Judge

Case No. 2012-CP-07-03209

The Callawassie Island Members Club, Inc.,

Respondent

v.

Michael J. Frey,

Appellant.

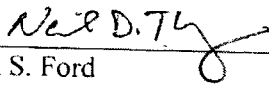
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Callawassie Island Members Club, Inc., and all parties of record, by depositing a copy of it in the United States Mail, postage prepaid, on December 30th, 2014, addressed to the attorneys of record, Ehrick K. Haight, Jr., Minor, Haight & Arundell, P.C., P. O. Drawer 6067, Hilton Head Island, SC 29938. I also have served the Beaufort County Clerk of Court in the same manner at Beaufort County Courthouse, 102 Ribaut Road, Beaufort, SC 29902.

December 30th, 2014

Respectfully submitted,

FORD WALLACE THOMSON LLC



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Attorney for Respondent The Callawassie Island Members Club, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE)
I. FREY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209

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CU Court of Appeals

ORDER DENYING DEFENDANTS' MOTION
FOR RECONSIDERATION AND AFFIRMING
SUMMARY JUDGMENT AGAINST
DEFENDANT MICHAEL J. FREY

THIS MATTER came before the Court upon the motion of Defendants, Michael J. Frey and Grace I. Frey, for reconsideration of the order granting summary judgment as against Defendant Michael J. Frey filed July 7, 2014. Present before the Court on Monday, November 2, 2014, were Stephen P. Hughes, Esquire and Stacey S. Collins, Esquire; attorneys for the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC" or alternatively the "Club") and Ian S. Ford, Esquire and Neil D. Thomson, Esquire, attorneys for the Defendants.

Based on the motion, the memoranda filed by the respective parties, the arguments of counsel and a reading of the relevant governing documents, the Court makes the following findings of fact:

The governing documents, from the time the membership was initially acquired, clearly and unambiguously imposed a duty on members to remain in good standing until their membership reissued. As there is no question of fact regarding the interpretation,

legality or applicability of this obligation, the prior Order Granting Partial Summary Judgment in Favor of Plaintiff Against Michael J. Frey is hereby affirmed and all prior findings of fact set forth therein are incorporated herein by reference.

As for CIMC's authority to collect its attorneys' fees, which was raised for the first time at the hearing for reconsideration, Section 15.3.5 of the General Club Rules¹ states that "[i]f the Club commences any legal action to collect any amount owed, or to enforce the liability of a Member to the Club, the Member shall also be liable for all costs and expenses of the legal action, including without limitation, reasonable attorneys' fees required in connection with appellate proceedings." Similarly, Section 15.3.4 authorizes the collection of attorneys' fees "incurred by the Club incident to the collection of such Charges, or enforcement of such lien, whether or not legal proceedings are initiated (*emphasis added*)."² The Court notes that the Club's governing documents (from 1994 forward) consistently allowed the Board of Directors, to establish and determine the amount of "dues, fees and charges" under its By-laws.³ The Board also maintained the exclusive authority "to determine the interpretation or construction of these By-laws or any parts thereof, which may be in conflict or of doubtful meaning, and their decisions shall be final and conclusive."⁴ From the Complaint and Affidavits filed in this case, it is clear that the Club has consistently interpreted the term "Charges" to include attorneys' fees incurred in actions to collect for unpaid dues. Based on the foregoing, the award of attorneys' fees is likewise affirmed.

¹Dated January 1, 2014 and currently in force.

²Section 15.3.4, General Club Rules, January 1, 2014; see also Article 11, By-laws, January 1, 2014 and Article XIII), By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships.

³Article VI(2)(f), By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships and Article 6.2(e), By-laws dated January 1, 2014.

⁴Article 6.5, By-laws dated January 1, 2014; and also, Article VI, Section 5, By-laws attached as Exhibit "B" to the 1994 Plan for the Offering of Memberships.

CIMC has leave to renew its motion for summary judgment as to Defendant Grace I. Frey and if such motion be filed and adequate notice given, said motion may be heard before me at my next term of court in Beaufort County.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the prior Order Granting Summary Judgment Against Michael J. Frey in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars, for a grand total of Sixty Seven Thousand Eight Hundred Seventy Six and 46/100 (\$67,876.46) Dollars⁵ is hereby re-affirmed and all findings of fact contained therein are likewise re-affirmed.

AND IT IS SO ORDERED.


J. ERNEST KINARD, JR.
Presiding Judge

Camden, South Carolina
~~November~~ 11, 2014.
~~December~~

⁵This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

MICHAEL J. FREY and GRACE)
I. FREY,)

Defendants.)

2014 JUN 27 PM 3:29
IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-07-03209
OF BEAUFORT COUNTY, S.C.
CLERK OF COURT

ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF PLAINTIFF
AGAINST MICHAEL J. FREY

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JAN 02 2015

SC Court of Appeals

THIS MATTER came before the Court upon the motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), for summary judgment against the Defendants, Michael J. Frey and Grace I. Frey. Present before the Court on Monday, May 19, 2014, were Ehrick K. Haight, Jr., Esquire and William T. Young III, Esquire, Attorneys for the Plaintiff, and Brian D. McDaniel, Esquire, Attorney for the Defendants.

Defendant Grace I. Frey claims she signed the relevant membership documents in her capacity as spouse only and not as an applicant and/or purchaser in her own right; as additional discovery may be warranted with respect to this issue, this Court denies Plaintiff's motion for summary judgment with respect to Mrs. Frey at this time pending the completion of additional discovery, with leave to refile.

This is a breach of contract for indebtedness owed by the Defendants arising from their membership in CIMC. The Plaintiff's motion, made pursuant to Rule 56, SCRCF, is based upon the pleadings, including the verified Complaint, Plaintiff's Memorandum in Support of Motion for Summary Judgment, the relevant governing documents (as cited

therein), the Affidavits of Jeff Spencer, the Affidavits of Ehrick K. Haight, Jr. and the law applicable to the case. Defendants submitted a Memorandum in Opposition to Plaintiff's motion and tendered an Affidavit in support of their position. As this Court declines to grant Summary Judgment as against Defendant Grace I. Frey at this time, the following shall apply only to Defendant Michael J. Frey (hereinafter, "Defendant").

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E. 2d 801 (2009), Rule 56 (c), SCRPC.

Defendant argues that his membership was or should have been suspended, or terminated and that he should have been expelled because of non-payment under the terms of the General Club Rules dated August 8, 2001, and other documents. Whether this is true or not is irrelevant. It is clear under all of the relevant documents, from the time Defendant initially acquired his membership until the present, that the obligation to remain a member in good standing and pay dues, fees, assessments and other charges continues until the membership is re-issued to a new member. Moreover, this continuing obligation is consistent with S.C. Code Ann. §33-31-621 (e) (2006), which specifically recognizes a corporation's right to impose obligations on its members beyond termination of the membership as follows: "A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension."

By applying for a membership and purchasing same, Defendant became contractually bound by the 1994 Plan for the Offering of Memberships and the Exhibits thereto, which included the By-laws and the General Club Rules (collectively, the "1994 Plan"). Reading these documents as a whole and giving them their plain and ordinary meanings, the Defendant's

obligation to pay dues, fees and assessments until such time as his membership re-issues is clear and unambiguous. The following excerpts leave no room for contrary interpretation:

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club **until his or her equity membership is reissued** (emphasis added) by the Club. (Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time Defendant acquired Membership).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership until his/her Equity Membership is reissued by the Club. (Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force).

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (emphasis added) by the Club. (By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time Defendant acquired Membership).

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums). (Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time Defendant acquired Membership).

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (emphasis added). (Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force).

Although Defendant initially entered into these contractual obligations with the Callawassie Island Club, Inc. ("CIC"), Plaintiff has the right to enforce those obligations. Plaintiff's acquisition of the club assets was contemplated by the 1994 Plan; was voted upon and approved by the membership (of which Defendant was a part); and the transaction was closed in 2001. Thereafter, Defendant continued to use the club amenities; paid dues, fees and assessments to CIMC; and was issued a membership certificate evidencing his membership in CIMC. As the obligation to pay dues, fees and assessments until his membership was re-issued was evident in the 1994 Plan, which was in effect at the time he acquired his membership, Defendant's contention that the Plaintiff may have later failed to properly notice and/or meet the voting requirements for subsequent amendments is irrelevant.

Defendant asserts that various representations and warranties were made by CIC that contradict the plain reading of the governing documents. CIC is not a party to this action. Moreover, even if such representations or warranties were made by CIC, they would not avail Defendant as a defense to this action. The 1994 Plan exhorts prospective members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the 1994 Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The 1994 Plan makes clear that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership.

Plaintiff was not in existence at the time Defendant purchased his membership in 1995. Defendant, therefore, cannot establish the essential elements for a negligent

misrepresentation claim, namely, 1) a false representation made by CIMC to the Member; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Member; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation; as against this Plaintiff. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Defendant points to S.C. Code Ann. §33-31-620(a), of the South Carolina Nonprofit Corporations Act (the "Act"), for the proposition that imposing liability for continuing obligations following resignation is statutorily prohibited. The Defendant's argument ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes clear that members are to be held accountable for previously agreed-upon continuing obligations, even beyond resignation. Defendant agreed to be bound by the 1994 Plan, including the By-laws and General Club Rules attached thereto, all of which unambiguously and consistently obligate him to pay dues until his membership reissues. Furthermore, this Court can find no violation of the statutory provisions relied upon by Defendant.

Defendant, in further opposition to the summary judgment motion at issue, asserts that granting the motion is inappropriate because discovery has not yet been completed. However, a party opposing summary judgment on this basis "must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (Quoting Baughman v. American Tel. and Tel. Co., 306 S.C.

101, 112, 410 S.E.2d 537, 544 (1991)). Moreover, a failure of proof on an essential element of a claim renders all other facts immaterial. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Defendant has failed to demonstrate the likelihood that further discovery will uncover additional relevant evidence. Consequently, Defendant's argument must be rejected.

In the case at bar, CIMC's claim is premised upon a breach of contract. Because this Court has determined that the agreement between the parties is unambiguous, extrinsic evidence is inadmissible to determine the intent of the parties. See Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993). ("The construction of an unambiguous deed is a question of law, not fact. The terms of such a deed may not be varied or contradicted by evidence drawn from sources other than the deed itself.... Extrinsic evidence is admissible to resolve ambiguities but not to create them where none exist."). Accordingly, because Defendant would not be able to introduce any evidence beyond the contents of the documents at issue, any further discovery is unnecessary, superfluous, and would not defeat CIMC's motion for summary judgment. Likewise, Defendant's position on ongoing discovery also fails with regards to his counterclaims. Defendant's claim for negligent misrepresentation fails as a matter of law because CIMC did not exist at the time Defendant undertook his obligation. The instant matter presents a classic example of a failure of proof on an essential element, as it is impossible for CIMC to have made any representation to Defendant prior to its existence. Therefore, further discovery is unnecessary, as Defendant cannot satisfy an essential element of this claim.

The only remaining counterclaim relates to an accounting requested by Defendant. Defendant has presented no evidence to contradict the billing records submitted by CIMC.

Furthermore, because this Court has determined that the agreement unambiguously requires Defendant to remain liable for payment until his membership is transferred, this Court must also find that Defendant cannot demonstrate any right to an accounting, and grants summary judgment in favor of CIMC.

Based upon the foregoing, this Court finds the Plaintiff has established as a matter of law that pursuant to the terms and conditions of the 1994 Plan, the By-laws and General Club Rules (and all subsequent amendments thereto), that there is an unpaid balance due and owing for dues, fees, assessments and other charges, including interest at the contract rate of one and one-half (1.5%) percent per month, for which the Defendant is responsible. The Defendant has failed and refused to make payment in full for dues, assessments, interest and other charges and Defendant is indebted to the Plaintiff in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars, as contemplated by the 1994 Plan (and all subsequent amendments).

Based upon the pleadings, the relevant documents, and the affidavits submitted, it appears that there is no genuine issue as to the charges made on the account and the liability of the Defendant for those charges. Therefore, the Plaintiff is entitled to a judgment against the Defendant, as a matter of law, for the sum of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that summary judgment be entered for the Plaintiff, The Callawassie Island Members Club, Inc., and

against the Defendant, Michael J. Frey, in the amount of Fifty Eight Thousand Seven Hundred Forty-Four and 23/100 (\$58,744.23) Dollars as of May 9, 2014¹; plus reasonable attorneys' fees and costs of Nine Thousand One Hundred Thirty-Two and 23/100 (\$9,132.23) Dollars², for a grand total of Sixty Seven Thousand Eight Hundred Seventy Six and 46/100 (\$67,876.46) Dollars.

AND IT IS SO ORDERED.


J. ERNEST KINARD, JR.
Presiding Judge

, South Carolina

June 24, 2014

¹ This judgment does not include any dues, fees, assessments or other charges levied by the Plaintiff after April 30, 2014, which must be the subject of a subsequent action.

² The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys' fees. These factors are: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents and pleadings, locate and review documentation, serve and respond to discovery, attend various hearings and perform other tasks in pursuing this matter over a period of months. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2004 respectively and have experience in this type of lawsuit. The hourly rates charged are reasonable for the locality and type of lawsuit.