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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Circuit Court Case No. 2017-CP-07-01057
Appellate Case No. 2022-000867

Bittmint LLC and Harbour Town Surf Shop LLC.....Appellants,

v.

Lynda H. Johnson, Charles S. Giannone, and Sea Pines Resort, LLC,
.....Respondents.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND ORDER GRANTING DEFENDANTS' MOTION FOR DIRECTED VERDICT**

To: Hon. Bentley D. Price and Counsel of Record:

YOU WILL PLEASE TAKE NOTICE that, at the time, place and manner set by the Clerk of Court for Beaufort County, the undersigned attorneys for Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC will move and ask the Hon. Bentley D. Price, pursuant to Rule 59(e), SCRCP, to reconsider the Court's order entered on March 2, 2022 granting Defendants' Motion for Directed Verdict after the conclusion of Plaintiffs' case in chief, and to issue an order altering or amending the Court's order as set forth herein.

I.

Standard for Motion to Reconsider, Alter, and Amend

"[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S. Carolina Dep't of Transp*., 361 S.C. 9, 21-22, 602 S.E.2d 772 (2004). "A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id*. (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar*, *Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003) (an

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example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure*, 702 (4th ed. 2020) (stating 59(e) "provides an opportunity for the trial court to correct errors in the finding and perhaps change the result"). "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." *Elam*, 361 S.C. at 21-22.

II.

Standard for Motion for Directed Verdict

Rule 50(a) SCRCP provides:

> Motion for Directed Verdict: When Made: Effect. When upon a trial the case presents only questions of law the judge may direct a verdict. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

The standard for evaluating the sufficiency of the evidence under Rule 50 is the same regardless of whether it is made at the end of the plaintiff's case, at the end of all of the evidence, or renewed after a verdict. The motion may be granted only when there is no material factual dispute for the jury to decide. Rule 50(a) SCRCP. In ruling on a motion for directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when either the evidence yields more than one inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439 (1994); *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 514 S.E.2d 126 (1999). The court does not consider evidence contrary to or in conflict with the evidence favorable to the non-moving party. *Small v. Pioneer Mach., Inc.*, 316 S.C. 479, 450 S.E.2d 609 (1994); *Gillispie v. Ford*, 225 S.C. 104, 81 S.E.2d 44 (1954) (court considers evidence as presented not as impeached with prior trial testimony). When considering directed verdict motions, the trial court has no authority to

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decide credibility issues or to resolve conflicts in the testimony or evidence. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997); Flanagan, *South Carolina Civil Procedure*, Vol. 4 (2020) (Nor is the court concerned with the credibility of the witnesses or the weight of the evidence because these are jury issues.) "If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury." *Quesinberry v. Rouppasong*, 331 S.C. 589, 594, 503 S.E.2d 717 (1998).

III.

Evidence At Trial

By late-2016, Defendant Lynda Johnson owned commercial real property known as Shop 6 of the Mariner's Way Horizontal Property Regime located in the Harbourtown basin in the Sea Pines community on Hilton Head Island, South Carolina. Her brother, Defendant Charles Giannone, owned the neighboring commercial property, known as Shop 8. (Shop 6 and Shop 8 are collectively referred to as the "Surf Shop Property"). Defendants Johnson and Giannone leased the Surf Shop Property to Plaintiff Harbourtown Surf Shop, LLC ("HTSS") (Pl. Ex. 3) from which HTSS operated the Harbourtown Surf Shop, a retail store selling clothing and assorted resort-oriented souvenirs.

Through the latter part of 2016 and into January 2017, Johnson discussed and negotiated (on behalf of herself and her brother) the potential sale of the Surf Shop Property with both Plaintiff Bittmint, LLC ("Bittmint") and Defendant Sea Pines Resort, LLC ("SPR").

On January 31, 2017, Johnson entered into a Letter of Intent with Bittmint to sell the Surf Shop Property to Bittmint. (Pl. Ex. 10.) The LOI provides

> This Letter of Intent ("LOI") and memorandum of understanding is made by and between Bittmint, LLC, on the first part ("Purchaser") and Lynda Johnson, on the second part, ("Seller").
>
> Seller owns title to Lot 6 Mariners Way Harbourtown, Hilton Head Island, South Carolina (147A Lighthouse Road) by virtue of a Deed of Distribution recorded in November 2016. Seller's brother Charles Giannone owns Lot 8 Mariners Way (147B Lighthouse Road) by virtue of a Deed of Distribution also recorded in November 2016.

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> The principals of the Purchaser, being Amir Bitton and Alon Mintz, also own and operate Harbourtown Surf Shop, which is the tenant in the spaces within Lot 6 and Lot 8.
>
> The parties have agreed that Bittmint, LLC will purchase the two units, being Lot 6 and Lot 8, for the sum of $580,000.00, provided that the units can be conveyed by Seller free and clear of all title encumbrances except Harbourtown Surf Shop's Lease and possession.
>
> The closing (transaction) is be contemplated within 120 days from the date that the Seller confirms to Purchaser that Charles Giannone has conveyed his interest in Lot 8 to Seller, either by recorded Deed or written confirmation that there is a Deed in escrow with an escrow agent with instruction to release to Seller upon stated terms which are agreeable to Purchaser.
>
> The parties expressly and specifically agree that until a full form Contract of Sale, incorporating these terms and with other terms and conditions which are standard for sale of retail commercial space on Hilton Head Island is executed, the transaction is non-binding. Notwithstanding this covenant, seller promises in good faith to not place either Lot 6 or Lot 8 for sale to any third party without first offering Purchaser the opportunity to purchase the properties under the price term stated herein.

The same day, Johnson spoke with Robert Bender, a management executive at SPR, and informed him that she and her brother were selling the Surf Shop Property to Alan Mintz and Amir Bitton, the co-owners of Bittmint and HTTS. The following day, February 1, 2017, Bender wrote an e-mail to Steve Birdwell, President of SPR, stating: "Lynda Johnson called me yesterday to tell me that the tenant of the Surf Shop was ***dropping off an offer*** for the space and she was going to give to her attorney to move forward on the sale." (Pl. Ex. 8(e).) Bender attached to his e-mail a memo analyzing SPR's possible purchase of the Surf Shop Property. (Pl. Ex. 8(e).) That analysis identified the Surf Shop Property, the asking price, existing lease terms, square footage of the property, annual amounts for real estate taxes, regime fees and insurance and tenant's requirement to pay those expenses, and tenant's responsibility to pay additional assessments and utilities on the Surf Shop Property.

Mintz testified that Johnson requested that his attorney prepare a LOI because Johnson wanted something in writing to give to SPR. Mintz further testified that within a week after the signing of the LOI, Johnson informed him that the LOI had been delivered to SPR. Johnson denied

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making this statement; however, her prior deposition testimony (read at trial) contradicted her current testimonial denial.

On March 17, 2017, Plaintiff Bittmint, LLC entered into a written contract to purchase the Surf Shop Property from Johnson and Giannone (collectively the "Sellers") for $580,000 (the "Contract"). (Pl. Ex. 11.) Section 6 of the Contract required the Sellers to obtain "all appropriate waivers and approvals from Sea Pines." Johnson believed that SPR had a right of first refusal on the Surf Shop Property and that one of the "appropriate" waivers that she and her brother were required to obtain was SPR's waiver of a right of first refusal. However, neither Johnson nor her attorney, Meredith Bannon, obtained a waiver from SPR or even attempted to procure such.

Around mid-March 2017, Johnson asked Mintz to have Bittmint's attorney, Michael Mogil, procure the appropriate waiver from SPR. Mintz, wanting to move the deal toward closing, complied and asked Mogil to accommodate Johnson's request. On April 13, 2017, Mogil submitted a Request for Waiver and/or Assessments to SPR. (Def. Ex. 9.) The Request for Waiver is a standard form, created by SPR, that asks for the following information: (1) property description, (2) name of purchaser, (3) name of seller, (4) sale amount, (5) closing date and (6) property tax identification number. Except for the property tax identification number and closing date, SPR had received verbal notice of this information on January 31, 2017 and written notice by the first week of February 2017. The Request for Waiver also states:

> The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above. It is hereby understood by all parties that the company has thirty (30) business days from receipt of this offer in which to determine its re-purchase option.

The Request for Waiver is not signed by any party to the transaction, nor does it even contain a signature line.

On April 17, 2017, Mogil e-mailed a copy of the Contract to Bender and Bender acknowledged his receipt of the Contract by return e-mail. (Pl. Ex 13(d).)

On May 2, 2017, before the Contract closed and the Surf Shop Property was transferred to Bittmint, SPR, though its attorney, Simon Fraser, informed the Sellers and Mogil that SPR was

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exercising its claimed right of first refusal to purchase the Surf Shop Property from the Sellers at the same $580,000 price.

Bittmint, through Mogil, protested SPR's intervention and its use of the purported right of first refusal. These protestations were made to both SPR and the Sellers' attorney. (Pl. Ex. 22(b) and Ex. 24.) On Mar 4, 2017, Mogil requested that SPR's attorney, Simon Fraser, provide him with information on the source of the right of first refusal relied on by SPR. (Pl. Ex. 22(a).) On May 8, 2017, Fraser informed Mogil by email that "the right of first refusal appears in several places: Deed Book 173, Page 46; Deed Book 922, Page 152 and Deed Book 128, Page 185." Mogil then pointed out that those documents governed residential properties and were not applicable to commercial properties, at which point Fraser responded by e-mail on May 9, 2017 citing three other recorded documents that he believed applied to commercial lands. (Pl. Ex. 22(b).) Once again Mogil noted the inapplicability of the documents referenced by Fraser and Fraser responded for the third time (by e-mail on May 23, 2017) stating that the "applicable repurchase option is contained in the Commercial Use Covenants, dated January 25, 1973 and recorded in Deed Book 206, Page 1143 (copy attached, see section 19." (Pl. Ex. 23.) After reviewing the document provided by Fraser, Mogil filed a Lis Pendens on May 10, 2017.

The Sellers sold the Surf Shop Property to SPR on May 11, 2017.

The Right of First Refusal that SPR eventually relied on to acquire the Surf Shop Property is set forth a Declaration of Rights, Restrictions, Affirmative Obligations and Covenants affecting commercial property of Lighthouse Beach Company, Limited Partnership. The Declaration is self-described as the "Commercial Use Covenants dated January 25, 1973" and it was recorded on February 15, 1973 ("73 Commercial Covenants"). (Pl. Ex.1.) Section 19 of the 73 Commercial Covenants provides:

> In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than

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> that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation, or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

On April 17, 1977, the right of first refusal was severed from the 73 Commercial Covenants and assigned by the Lighthouse Beach Company to the Sea Pines Plantation Company by an Assignment of Option to Repurchase dated April 14, 1977 (the "1977 Assignment"). (Pl. Ex. 2.) The 1977 Assignment provides that "[i]t was intended by the parties that all rights to waive and benefit accruing from said option to repurchase in Lighthouse Beach Company should inure to Sea Pines Plantation Company."

The 1977 Assignment's specific language of conveyance is:

> The Prospect Company, as liquidating partner of Lighthouse Beach Company, hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company, a South Carolina corporation doing business on Hilton Head Island in Beaufort County, South Carolina, all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation on Hilton Head Island in Beaufort County, South Carolina, which was owned, possessed and seized unto Lighthouse Beach Company and the Said Prospect Company, as liquidating partner of Lighthouse Beach Company.

(Pl. Ex. 2.)

Notably absent from this conveyance language is any granting language to Sea Pines Plantation Company's successors, assigns or transferees.[1]

[1] Plaintiffs requested that the Court take Judicial Notice of two facts relating to the 1977 Assignment that are directly relevant to determining whether SPR owns the right of first refusal: (1) that Sea Pines Plantation Company changed its name to Hilton Head Liquidation Corp. in 1987 and (2) that Hilton Head Liquidation Corp. was dissolved in 1991. (Plaintiffs' Request for Judicial Notice, #4 and #5 and Exs. C and D thereto.) The Court declined to judicially notice any facts submitted by Plaintiffs in their Request for Judicial Notice and when Plaintiffs sought to introduce into evidence a certified Articles of Amendment for Sea Pines Plantation Company filed November 2, 1987 with the South Carolina Department of State showing the

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IV.

Request for Relief

The Court found that Defendants Johnson and Giannone did not breach the Contract and, in so doing, the Court impliedly determined that SPR owned the right of first refusal and that SPR properly exercised its rights under the right of first refusal.[2]

However, Plaintiffs presented substantial credible evidence attacking both the enforceability of the right of first refusal and the proper and timely exercise of the right by SPR. Plaintiffs additionally advanced alternative legal grounds establishing the invalidity of the right of first refusal. Plaintiffs' evidence and legal argument flows as follows:

1. The right of first refusal is void as a matter of law because it violates the common law Rule Against Perpetuities.

2. The right of first refusal could not be utilized by SPR because it was a personal right that could not be assigned to SPR.

3. There is no evidence in the record showing that SPR acquired the right of first refusal.

4. In the event SPR is deemed to have a valid right of first refusal, SPR nevertheless failed to exercise the right in a timely and proper manner because:

   a. The right of first refusal does not clearly define what notice must be given to the holder;

   b. Reasonable notice of Bittmint's bona fide offer was provided to SPR;

   c. SPR failed to undertake a reasonable investigation of the offer terms;

---

name change the Court deferred a ruling on its admissibility pending a Rule 403 determination that never transpired.

[2] These Court determinations are the basis for the Court's holding that Bittmint had not met its burden of proof on its claims for breach of contract against Johnson and Giannone and tortious interference with contractual relations against SPR and HTSS had not met its burden of proof on its claim for tortious interference with prospective economic relations against SPR.

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d. The request for waiver at most raises a question of fact as to its relevance; and

e. SPR's failure to match the terms of the offer terminated the right of first refusal.

Plaintiffs ask the Court to reconsider these legal arguments (Items 1 and 2) and facts (Items 3 and 4) and its exclusion of certain evidence (described herein) and to alter/amend its ruling and order on Defendants' Motion for Directed Verdict by now denying the same.

A. <u>The Right of First Refusal is Voided by the Common Law Rule Against Perpetuities</u>

The common law rule against perpetuities is that "[n]o interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest." *Abrams v. Templeton*, 320 S.C. 325, 327, 465 S.E.2d 117 (Ct.App.1995). The seminal case in South Carolina applying the rule against perpetuities to a right of first refusal is *Webb v. Reames,* 326 S.C. 444, 485 S.E.2d 384 (Ct.App.1997), which holds that a right of first refusal that fails to establish a termination date within a life in being plus twenty-one years is a perpetual option that violates the rule against perpetuities.

Webb involved a declaratory judgment action to determine the validity of the following right of first refusal in a deed conveying real property:

> The condition, running with the land . . . conveyed, is that the Grantee, in case he or his heirs should sell the . . . property, the Grantor, his heirs and assigns shall be given the first refusal to buy the same. A further condition is that, in case the land is to be resold, the Grantor, his heirs or assigns may purchase the same at and for the same consideration [paid by the Grantee].

Webb, 326 S.C. at 446.

The Court of Appeals held that the right of first refusal violated the common law rule against perpetuities:

> We agree with Webb's contention challenging the validity of the right of first refusal. This pre-emptive right is a contingent, nonvested interest in that the grantee or the grantee's heirs might never choose to sell the property. It is an interest not conditioned on an event certain to occur. See R. Cunningham, W. Stoebuck, D.

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> Whitman, *The Law of Proper*ty § 3.18, at 132 (2d ed. 1993) ("A pre-emptive right merely requires the owner, when and if he decides to sell, to offer the property first to the holder of the pre-emptive right so that he may . . . buy at a price set out in the pre-emption agreement."). The right represented an attempt by the grantor Blease to reserve to himself, his heirs, and assigns a perpetual option to purchase the property described at the price of $64. Because the right or interest was one that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter, the interest violates the rule against perpetuities and is therefore void. *Atchison v. Englewood*, 463 P.2d 297 (Colo. 1969); *Henderson v. Bell*, 173 P. 1124 (Kan. 1918); *Ferrero Constr. Co. v. Dennis Rourke Corp*., 536 A.2d 1137 (Md. 1988); *Pace v. Culpepper*, 347 So.2d 1313 (Miss. 1977); 61 Am.Jur.2d, Perpetuities and Restraints on Alienation § 65, at 75 (1981); see Cunningham et al., supra, at 132-33 n. 23 (listing cases holding a pre-emptive right subject to the rule against perpetuities); *Love v. Love*, 208 S.C. 363, 374, 38 S.E.2d 231, 236 (1946) ("It is not enough that a contingent event may happen, or even that it will probably happen, within the limits of the Rule against Perpetuities; if it can possibly happen beyond those limits, an interest conditioned on it is too remote."); see also S.C. Code Ann. § 27-6-60 (B) (1991) (savings clause provision of the Uniform Statutory Rule Against Perpetuities)."

Webb, 326 S.C. at 446-47 (emphasis added.)

In this instance, the right of first refusal was declared by the Lighthouse Beach Company in the 1973 Commercial Covenants, ***forty-four years*** before SPR attempted to exercise the right to acquire the Surf Shop Property. The 1973 Commercial Covenants have no term establishing a termination date within a life in being plus twenty-one years. Thus, similar to the right holder in *Webb*, SPR sought to reserve in itself a perpetual option to purchase the Surf Shop Property and because SPR's "right or interest was one that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter, the interest violates the rule against perpetuities and is therefore void." *Webb*, 326 S.C. at 446.

Webb is the controlling precedent, as articulated by the Court in *Peoples Federal Savings and Loan Ass'n v. Res. Planning*, 358 S.C. 460, 477, 596 S.E.2d 51 (2004). The *Peoples Federal* case involved a right of first refusal that was almost identical to the one at issue.[3] While the Court

[3] The right of first refusal in *Peoples Federa*l provided: "Prior to acceptance of any offer for the purchase of any property (including improvements, if any) the owner thereof shall first offer said property for sale to the Corporation for the same price at which the higher bona fide offer has been made for such property, and the said Corporation shall have thirty (30) days within which to exercise its option to purchase said property

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declined to rule on the enforceability of the right of first refusal in *Peoples Federa*l due to the lack of a justiciable controversy in the absence of a pending offer for the purchase of the property at issue, the Court nevertheless specifically signaled the applicability of *Webb* and other similar authorities to the enforcement of preemptive rights. ("But see *Webb v. Reames*, supra (where preemptive right might not vest within a life in being at the time of creation of right or until later than 21 years thereafter, interest violates RAP and is, therefore, void); see also *Estate of Johnson v. Carr*, 691 S.W.2d 161 (Ark. 1985) (where preemptive right is of unlimited duration, the provision is considered void as violative of RAP); *Atchison v. City of Englewood*, 463 P.2d 297 (Colo. 1969) (same); *Peele v. Wilson County Bd. of Ed.,* 289 S.E.2d 890 (N.C.App. 1982) (same)). *Peoples Federal*, 358 S.C. at 477.

Moreover*, Webb* follows the majority view applying the common law rule against perpetuities to void a perpetual right of first refusal. See, e.g., *New Bar P'ship v. Martin*, 729 S.E.2d 675 (N.C. Ct. App. 2012) (the common law rule against perpetuities voids commercial property interests established without reference to any measuring life because such interest is not certain to terminate or vest within 21 years); *Lake of the Woods Assoc. v. McHugh*, 238 Va. 1 (Va. 1989).

Fourteen years after the creation of the right of first refusal at issue in the case, South Carolina enacted he Statutory Rule Against Perpetuities ("SRAP") set forth in S.C. Code §27-6-10, et seq. SRAP does not apply to nondonative transfers (i.e., commercial transactions) and the statute is inapplicable to the right of first refusal in this case See S. C. Code §27-6-50 (1) (SRAP does not apply to "a nonvested property interest … arising out of a nondonative transfer" except for certain exceptions that are inapplicable to this commercial transaction.) See also *New Bar P'ship v. Martin*, supra, 729 S.E.2d at 683 (the Uniform Statutory Rule Against Perpetuities did not replace the common law rule against perpetuities as to a right of first refusal arising from nondonative transfers); *Buck v. Banks*, 668 N.E.2d 1259, 1260-61 (Ind. Ct. App. 1996) (the

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at such price; should the Corporation fail or refuse, within thirty (30) days after receipt of written notice of the price and terms of the offer, to exercise its option to purchase said property, then the owner thereof shall have the right to sell said property subject, however, to all covenants, restrictions and limitations contained therein. *Id*. at 477, n.5

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Uniform Statutory Rule Against Perpetuities does not apply to a pre-emptive right to purchase real property which is a nonvested property interest arising out of a nondonative transfer).

SPR's right of first refusal is void ab initio under prevailing precedent set forth in *Webb* and the common law rule against perpetuities. The SRAP did not replace this established common law. Thus, SPR could not rely on the right of first refusal to acquire the Surf Shop Property and displace the Contract between Bittmint and the Sellers. Accordingly, Plaintiffs request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

B. The 1977 Assignment of the Right of First Refusal By Lighthouse Beach Company Created a Personal Non-Assignable Right

"[R]ights of first refusal are presumed to be personal and are not ordinarily construed as transferable or assignable unless the particular clause granting the right refers to successors or assigns or the instrument otherwise clearly shows that the right was intended to be transferable or assignable." *Malone v. Flattery*, 797 N.W.2d 624 (Iowa Ct. App. 2011); *Mulberry v. Burns, 435 P.3d 509, 511-513 (Idaho 2019); Ryan v. Lawyers Title Ins. Corp*., 959 N.E.2d 870, 876 (Ind. Ct. App. 2011); *Waterstradt v. Snyder*, 194 N.W.2d 389, 390 (Mich. Ct. App. 1971) (holding a right of first refusal to repurchase property was not binding on a personal representative, because "[i]f the grantors had meant to bind her personal representative, her successors in title, or assigns (assuming they could), they should have said so"); 6A C.J.S. Assignments §36 (rights of first refusal are presumed to be personal, and are thus not assignable unless either the clause granting the right refers to successors or assigns or the instrument clearly shows that the right was intended to be assignable).

The assignment of the right by the Lighthouse Beach Company (through its liquidating partner, the Prospect Company) to the Sea Pines Plantation Company in the 1977 Assignment, unconditionally converted the right of first refusal to a personal right of the assignor, Sea Pines Plantation Company and rendered the right non-assignable in the future.

The clear and unambiguous intent of the parties to the 1977 Assignment was to assign the right of first refusal exclusively unto Sea Pines Plantation Company and not also to its successors, assigns or transferees. This intent is evidenced by (a) the stated intention ("[i]t was intended by the parties that all rights … should inure to Sea Pines Plantation Company") and (b) the grant

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("hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company … all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation …"). The language of "successors and assigns" is intentionally excluded and there simply was no contemplation that the right of first refusal should carry on to anyone other than the Sea Pines Plantation Company. The exclusivity to Sea Pines Plantation Company is further evidenced by the fact that right of first refusal is the only right emanating from the 73 Commercial Covenants that was included in the 1977 Assignment.

Inasmuch as the right of first refusal was personal in nature to Sea Pines Plantation Company, it could not have been assigned to anyone else, including SPR. Thus, the right of first refusal expired along with the extinguishment of its owner, the Sea Pines Plantation Company, and it was never assigned to SPR. As a result, SPR could not rely on the right of first refusal to acquire the Surf Shop Property and displace the Contract between Bittmint and the Sellers. Accordingly, Plaintiffs request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

C. **There Is No Evidence that SPR Owned the Right of First Refusal**.

There is no evidence showing that SPR owned the right of first refusal. The only evidence in the record is the creation of the right of first refusal by its declarant, the Lighthouse Beach Company, in the 73 Commercial Covenants, and the subsequent transfer of the right of first refusal to the Sea Pines Plantation Company in 1977. Sea Pines Plantation Company was in Chapter 11 bankruptcy proceedings by the mid-1980s. (Pl. Ex. 33.) There simply is no evidence of the chain-of-title transferring the right of first refusal from Sea Pines Plantation Company out to anyone, no less to SPR.

In addition, the Plaintiffs' proffered evidence showing Sea Pines Plantation Company changed its name to Hilton Head Liquidation Corp. in 1987 and Hilton Head Liquidation Corp. was dissolved in 1991. The Court declined to take judicial notice of a certified Articles of Amendment for Sea Pines Plantation Company evidencing the name change filed November 2, 1987 with the South Carolina Department of State (Request for Judicial Notice Fact #4 and Ex. C) and a certified Declaration of Dissolution of Forfeiture of Hilton Head Liquidation Corp., issued by the South Carolina Department of State on December 5, 1991 stating the company's "charter is hereby declared forfeited and dissolved on this date." (Request for Judicial Notice Fact #5 and

Ex. D). Plaintiffs request that the Court reconsider its ruling and admit these facts into evidence as they are relevant evidence of the lack of SPR's ownership of the right of first refusal.

Thus, SPR could not rely on the right of first refusal to acquire the Surf Shop Property and displace the Contract between Bittmint and the Sellers because there has been no evidence offered that SPR possessed any such right. Accordingly, Plaintiffs request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

D. SPR Did Not Exercise the Right of First Refusal in a Timely Manner

1. The Right of First Refusal Does Not Clearly Define What Notice Must Be Given to the Holder

The right of first refusal is riddled with inconsistencies.

The first clause provides "said property shall be ***offered*** for sale to the Company at the ***same price*** at which the highest bona fide offer has been made for the property." This first clause does not specify how the offer is to be made and it certainly does not require the offer to be communicated to the holder in a writing. Further, this clause solely requires the offer to include the "same price" as a bona fide offer and does not require the "terms" of the offer in addition to the "price".

The second clause states that "and the said Company shall have thirty (30) days within which to exercise its option to purchase said property ***at this price***." Again, there is no mention of the required "terms" of the offer.

The third clause provides "and should Company fail or refuse within thirty days after receipt of ***written notice*** of the ***price and terms*** to exercise its option to purchase said property at the ***offered price***." The clause contains the first reference to the words "written notice" and "terms" and the clause is prefaced with a "should the Company fail or refuse" qualifier.

The fourth clause states "then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, ***at a price*** not lower than that at which it was offered to the Company. This clause refers back to "price" again and makes no mention to the "terms" of the offer.

These inconsistencies and ambiguities create factual questions, specifically:

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- What notice is required to trigger the 30-day exercise period?
- What terms, if any, other than price are required to be in a bona fide offer?
- Was adequate notice of the offer given to SPR?
- Was the offer a "bona fide" offer?
- When was the right of first refusal triggered?
- Did SPR undertake a proper investigation of the offer terms?
- When did the right of first refusal expire?
- What is the factual relevance of the Request for Waiver?
- Did SPR "match" the offer terms?
- Did SPR properly exercise the right of first refusal?

These are questions that should have been submitted to the jury to determine.

2. Reasonable Notice of Bittmint's Bona Fide Offer Was Provided to SPR

The requirements for the notice that an owner must give to trigger the right of first refusal are generally specified in the agreement containing the right of first refusal. When the agreement is silent as to notice or the notice terms are inconsistent or lacking clear definition (as in this case), the courts[4] agree that any method that gives the right-holder notice of a potential sale and reasonably discloses the terms of the sale is sufficient to trigger the right of first refusal. *Paccar Inc. v. Elliot Wilson Capitol Trucks LLC*, 923 F. Supp. 2d 745, 750 (D. Md. 2013); *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 785 (Minn.2004); *John D. Stump & Assoc. v. Cunningham Memorial Park*, 187 W.Va. 438, 419 S.E.2d 699 (1992) ("The primary purpose of the notice by the property owner is to provide the holder of the right of first refusal with sufficient information to determine whether he is interested in exercising the right."); *Roeland v. Trucano*, 214 P.3d 343, 348 (Alaska 2009) ("[T]he owner must provide adequate notice of the terms of the offer to the holder of the right. Adequate notice is notice sufficient to enable the holder ... to decide whether to attempt to match the terms.")

Notice of the offer does not have to be a perfect mirror of the sale terms. "The consensus of judicial opinion is that there is a liberality in reviewing the sufficiency of the notice. Courts

[4] There is no South Carolina decision articulating the test to determine when an offer contains sufficient information to trigger the holder's obligation to respond - in this case within 30 days of the offer.

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have rejected the requirement that the proposed deal contain all material terms with specificity." *Paccar Inc*., 923 F. Supp. 2d at 759, n.15. Notice may be reasonable even if some of the terms are ambiguous or uncertain in the eyes of the right holder. *Id.* at 750. "If there is some ambiguity in the terms set out in the notice, the proper recourse for the rightholder is to request additional information. " *John D. Stump*, 187 W. Va. at 445.

Plaintiffs presented evidence establishing the following facts:

- Johnson requested that Bittmint prepare a written offer sheet because she wanted something in writing to give to SPR.
- On January 31, 2017, Johnson signed a written Letter of Intent ("LOI") with Bittmint to sell the Surf Shop Property to Bittmint.
- The LOI provides, in part, that Bittmint will purchase the two units (Lot 6 and Lot 8) for the sum of $580,000.00, provided that the units can be conveyed by Seller free and clear of all title encumbrances except Harbourtown Surf Shop's Lease and possession.
- On January 31, 2017, Johnson spoke with Bender, a management executive at SPR, and informed him that she and her brother were selling the Surf Shop Property to Alan Mintz and Amir Bitton, the co-owners of Bittmint and HTTS.
- The following day, February 1, 2017, Bender wrote an e-mail to Steve Birdwell, President of SPR, stating: "Lynda Johnson called me yesterday to tell me that the tenant of the Surf Shop was dropping off an offer for the space and she was going to give to her attorney to move forward on the sale."
- Bender attached to his e-mail a memo analyzing SPR's possible purchase of the Surf Shop Property. That analysis identified the Surf Shop Property, the asking price, existing lease terms, square footage of the property, annual amounts for real estate taxes, regime fees and insurance and tenant's requirement to pay those expenses, and tenant's responsibility to pay additional assessments and utilities on the Surf Shop Property. This same memo, except for a few insignificant changes, was used by SPR management in late April 2017 in making its ultimate decision to buy the Surf Shop Property.

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- Mintz testified that within a week after the signing of the LOI, Johnson informed him that the LOI had been delivered to SPR.
- Johnson admitted at deposition (although she recanted her prior testimony at trial) that she delivered the LOI to SPR in the first week of February 2017.

It is a question of fact as to whether this series of events establish that reasonable notice of a bona fide[5] offer was provided to SPR and when such notice was received by SPR to trigger the 30-day exercise period.

3. <u>SPR Failed to Undertake a Reasonable Investigation of the Offer Terms</u>

Once the seller-owner reasonably discloses the terms of the third party's offer, the holder of the right of first refusal has a "duty to undertake a 'reasonable' investigation of any terms unclear to him." *Paccar Inc.* 923 F. Supp 2d at 750-51; *Koch Industries, Inc. v. Sun Co*., 918 F.2d 1203; *Van Dam v. Spickler,* 968 A.2d 1040, 1043 (Me.2009) (Supreme Court of Maine found that for a simple sale of a plot of land, an oral statement of the price is sufficient notice to require the holder of the right to make further inquiries); *Roeland,* 214 P.3d at 349 (Alaska Supreme Court

[5] Bona fide is not defined in the 1973 Commercial Covenants or in the specific language of the right of first refusal. There is no South Carolina authority defining "bona fide" offer in the context of a right of first refusal. Other jurisdictions have defined it as: "Bona fide in this context is generally considered to mean an offer made in honesty and good faith. An offer contrived in concert with the seller solely to extract a better offer from the owner of the right does not meet this standard." *Paccar Inc*., 923 F. Supp. 2d 745, 750 n.4. (citing *Uno Rests., Inc. v. Boston Kenmore Realty Corp*., 441 Mass. 376, 805 N.E.2d 957, 963 (Mass. 2004); *Shepherd v. Davis*, 265 Va. 108, 574 S.E.2d 514, 521 (2003) (holding that the term "bona fide" for purposes of a third-party offer for property burdened by a first-refusal right "is defined as '[m]ade in good faith; without fraud or deceit'"); *Story v. Wood*, 166 A.D.2d 124, 126, 569 N.Y.S.2d 487 (3d Dep't 1991). (defining a "good-faith offer" in the context of a first-refusal right is "a genuine outside offer rather than one contrived in concert with the seller solely for the purpose of extracting a more favorable price from the holder).

The bona fide nature of an offer is a question of fact for the jury. The legal standard requires an offer to be made in good faith and without fraud and deceit. There is no evidence of bad faith, fraud or deceit. There is no evidence of collusion between the Sellers and Bittmint. The only evidence presented by SPR was its President's self-serving conclusory testimony that the LOI was not bona fide because it did not include a recitation of all terms later found in the Contract. This testimony is entirely irrelevant to the determination of bona fide or not.

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held that a three page Memorandum of Understanding which—was only a "framework for entering binding arrangements in the future," and which included no definite price—was sufficient to trigger the duty to investigate despite plaintiffs' objections that it lacked numerous details); *Dyrdal,* 689 N.W.2d at 785 (Supreme Court of Minnesota found that a right holder "may have to clarify or investigate uncertainties and ambiguities of essential terms, but ... that such an inquiry must be done within a reasonable time"); *John D. Stump,* 187 W.Va at 445 (Supreme Court of Appeals of West Virginia held that "[i]f there is some ambiguity in the terms set out in the notice, the proper recourse for the rightholder is to request additional information.") See also *Comeaux v. Suderman*, 93 S.W.3d 215, 222 (Tex. App. 2002)(although notice to the right holder was "not a model of clarity" it reasonably disclosed the owner's intention to sell the property to a third party for the total price of $350,000 and "[w]hen an owner makes a reasonable disclosure of the terms of a proposed sale to another, the holder of the right of first refusal has a duty to undertake a reasonable investigation of any terms unclear to him. A right holder who fails to do so cannot subsequently complain that he lacked sufficient information to make an informed choice about whether to purchase the property that is subject to the right of first refusal.")

The evidence presented at trial shows that SPR received a substantial amount of detailed information about the transaction by the first week of February 2017. In addition, SPR's management prepared an analytical memo that was e-mailed to SPR's President on February 1, 2007 that extensively detailed the terms of the transaction (seller, buyer, price, square footage, existing lease terms with the tenant (HTSS), insurance, property tax and regime fees, tenant's responsibility to pay those expenses, as well as assessments and utilities) and provided a financial model by which SPR could analyze whether it would make an investment in the Surf Shop Property. This same memo, except for a few insignificant changes, was used by SPR management in late April 2017 in making its ultimate decision on whether to buy the Surf Shop Property. Yet, between early-February 2017 and late April 2017, the evidence (or the absence of such) demonstrates that SPR did absolutely nothing to either investigate the terms of the offer or to seek clarification of any questions it may have had about its terms. SPR just sat back and waited for a final contract of the transaction to be delivered into its hands.

The evidence presented shows that SPR had substantial amounts of information about this transaction by the first week of February 2017, it did nothing to further investigate any questions

about the offer terms and, as a result the right of first refusal exercise period expired in early-March 2017. At a minimum, the factual determinations pertinent to this issue should have been submitted to and made by the jury. Thus, SPR could not rely on the right of first refusal to acquire the Surf Shop Property and displace the Contract between Bittmint and the Sellers. Accordingly, Plaintiffs request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

4. The Request for Waiver at Most Raises a Question of Fact as to Its Relevance

SPR places a great deal significance on the Request for Waiver as the triggering event for the right of first refusal. The Request for Waiver seeks disclosure of six information items, four of which were known by SPR by no later than the first week of February 2017 – property, sales price, seller and buyer. The other two items are the closing date and the Beaufort County tax identification number for the property which is easily obtainable through a public records search.

The evidence shows the Request for Waiver is a standard form created by SPR. However, nowhere in the right of first refusal does it mention or require a Request for Waiver be submitted by a selling owner or other party to the sales transaction. The significance of the Request for Waiver, and whether it is the triggering "offer" for the right of first refusal or tantamount to some type of admission by Bittmint as to the existence of a valid right of first refusal are, once again, questions of fact for the jury.

Moreover, the language in the Request for Waiver stating "it is hereby understood by all parties that the company has thirty (30) business days from receipt of this offer in which to determine its re-purchase option" is, on one end of the spectrum, entirely irrelevant if the right of first refusal already expired before April 13, 2017 and, at the other end of the spectrum, at most raises a question of fact for the jury whether the document re-sets the right of first refusal trigger. There is no evidence that Bittmint's owners were aware of this provision. Moreover, this language significant expands upon SPR's rights from those in found in the right of first refusal embodied in the 1973 Commercial Covenants by increasing the exercise period from "thirty days" to "thirty ***business*** days" and by reducing the holder's affirmative duty to "exercise its option to purchase said property" within thirty days to an obligation to merely "***determine*** its re-purchase option" within the thirty-day window.

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5. SPR's Failure to Match the Terms of the Offer Terminated the Right of First Refusal

Because a first refusal right ripens into an option when the triggering notice is given, cases uniformly hold that the holder's acceptance, like an optionee's acceptance, must match the triggering offer exactly except for nominal changes need to reflect the parties' identities. *John D. Stump*, 187 W. Va. at 444 (a right of first refusal becomes an option once the holder of such right is notified by the property owner of the terms of a third-party offer to purchase the property; in order to properly exercise the resulting option, the rightholder's acceptance must be unequivocal and must not vary from the proffered terms); *West Texas Transmission, L.P. v. Enron Corp*., 907 F.2d 1554, 1564 (5th Cir. 1990), cert. denied 499 U.S. 906, 111 S.Ct. 1105, 113 L.Ed.2d 215 (1991).

Thus, where the right of first refusal requires the holder to match all the "terms" of the third party's bona fide offer, the holder generally is required to do just that—exactly match all the triggering offer's terms and conditions, and not only its price terms. The "exact-match" requirement is founded on the basic rule of offer and acceptance that an offeree may not vary the offer's terms—that is, an acceptance must be the "mirror image" of the offer. *John D. Stump*, 187 W. Va. at 444

Defendants contended (and SPR's executive testified) at trial that the applicable "offer" terms for the right of first refusal were the terms of the Contract. If such were the case, the evidence shows that SPR failed to exactly match the Contract terms. The Contract required the purchaser to immediately pay a $2,000 earnest money deposit, which Bittmint did. (Pl. Ex. 12.) However, there is no evidence that SPR paid an earnest money deposit, either upon its invoking the right of first refusal on May 2, 2017 or any time prior to closing. In fact, the only evidence presented at trial shows that SPR prepared financial models indicating it would finance the entire $580,000 purchase price. SPR's failure to exactly match the offer "terms" is fatal to its right of first refusal. See *Smith v. Hevro Realty Corp*., 199 Conn. 330, 340-343, 507 A.2d 980 (Conn. 1986) (holding that the holder's failure to pay earnest money when it purported to exercise the right of first refusal right as required by the triggering offer was not a proper acceptance and this failure foreclosed its right to purchase the property).

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The right of first refusal terminates if the holder timely exercises it but later fails to execute a contract on the same terms as the triggering offer. *Seessel Holdings, Inc. v. Flemings Cos.*, 949 F. Supp. 572, 578 (W.D. Tenn. 1996) ("[M]erely electing to exercise a first-refusal right is not sufficient if a right holder subsequently refuses to timely enter into a contract matching the terms of the third party agreement."); *Comeaux,* 93 S.W.3d at 220 (a failure to exercise an right of first refusal according to its terms, including untimely or defective acceptance, is simply ineffectual, and legally amounts to nothing more than a rejection.)

By failing to match what SPR contended was the triggering "offer" (i.e., the Contract), SPR failed to property exercise the right of first refusal and it was foreclosed from purchasing the Surf Shop Property. Accordingly, Plaintiffs request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

E. The Court's Refusal to Take Judicial Notice of Certain Facts Is Improper

The Court was asked to take Judicial Notice of sixteen facts contained in twelve officially recorded documents pursuant to SCRE Rule 201.[6] The facts contained in these documents were not subject to reasonable dispute in that they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The majority are Federal Bankruptcy Court Orders that were self-authenticating public records under SCRE Rule 901(b)(8)(7) (self-authenticating public records) and SCRE Rule 901(b)(8)(B)(self-authenticating ancient documents). They are excepted from the hearsay rule under SCRE Rule 803(8) (public record), SCRE Rule 803(14) (records affecting an interest in property); SCRE Rule 803(15) (statements in documents affecting an interest in property) and SCRE Rule 803(16) (statements in ancient documents).

The documents are relevant to proving that SPR did not have any right of first refusal because (1) the right became a personal right that was extinguished upon the dissolution of Sea Pines Plantation Company (a/k/a Hilton Head Liquidation Corp.) and (2) the right did not survive

[6] The Request for Judicial Notice("RJN") is attached hereto as Exhibit 1. Three of the documents in Plaintiff's RJN were admitted into evidence: RJN Exhibit A (trial exhibit Plaintiffs 1); RJN Exhibit B (trial exhibit Plaintiffs 2) and RJN Exhibit E (trial exhibit Plaintiffs 33).

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bankruptcy proceedings involving Sea Pines Plantation Company (a/k/a Hilton Head Liquidation Corp.) some thirty years prior to the transaction at issue in this case.

The specific facts contained within each document and their relevancy are explained as follows:

1. Exhibit C is a certified true copy of Articles of Amendment for Sea Pines Plantation Co. (at Ex. A thereto, pg. 2.) recorded November 2, 1987 with the South Carolina Secretary of State. This document is relevant to the issue of the status of the Sea Pines Plantation Company, which is central to the issue of the validity if any, of the right of first refusal that Defendants are asserting they possess.

2. Exhibit D is a certified true copy of the Declaration of Dissolution by Forfeiture: Hilton Head Liquidation Corporation, dated December 5, 1991, issued by the South Carolina Department of State. This document is relevant to the issue of the status of the Sea Pines Plantation Company, which is central to the issue of the validity if any, of the right of first refusal that Defendants are asserting they possess.

3. Exhibit F is a certified true copy of the US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on October 22, 1987, and recorded in Beaufort County ROD on November 11, 1987, at DB 490 at PG 443: Order; DB 490 at PG 502: Deed and DB 490 at PG 682: the Asset Purchase Agreement. This document is relevant because Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 and any rights that Sea Pines Resort may or may not have come directly from the assets purchased out of the aforementioned Bankruptcy cases.

4. Exhibit G is a certified true copy of the US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on October 22, 1987, and recorded in Beaufort County ROD on November 11, 1987, at DB 490 at PG 712. This document is relevant because Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 and any rights that Sea Pines Resort may or may not have come directly from the assets purchased out of the aforementioned Bankruptcy cases and this document contains the Assignment of Rights that were specifically assumed and assigned and approved by the US Bankruptcy Court. Neither the January 25, 1973, Commercial Use Covenants of Lighthouse Beach Company Recorded in Beaufort County ROD

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on February 15, 1973, at DB 206 at PG 1143, nor the 1977 Assignment of the right of first refusal from Lighthouse Beach Company to Sea Pines Plantation Company Recorded in Beaufort County ROD on April 14, 1977, at DB 246 at PG 2087 were among the rights specifically assumed and assigned.

5. Exhibit H is a certified true copy of the US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on October 22, 1987, and recorded in Beaufort County ROD on November 11, 1987, at DB 490 at PG 848. This document is relevant because Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 and any rights that Sea Pines Resort may or may not have come directly from the assets purchased out of the aforementioned Bankruptcy cases and this document contains the specific lists of Contracts and Leases that were Specifically assumed and assigned. The 1977 Right of First Right of Refusal Assignment is not on the list.

6. Exhibit I is a certified true copy of the US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on October 22, 1987, and recorded in Beaufort County ROD on November 11, 1987, at DB 490 at PG 887. This document is relevant because Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 and any rights that Sea Pines Resort may or may not have come directly out of the assets purchased from the aforementioned Bankruptcy cases and this document contains the specific lists of Tournament Contracts and Agreements that were specifically assumed and assigned. The 1977 Right of First Right of Refusal Assignment is not on the list.

7. Exhibit J is a true copy of the Affidavit of John Curry, Trustee for Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company, Hilton Head Holding Company, and all debtors of the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 actions. It was recorded in Beaufort County ROD on November 17, 1987, at DB 490 at PG. 571 as part of the Bankruptcy case. This document is relevant because it demonstrates that:

> In accordance with Article X of the Plan, any executory contract which was not specifically accepted under the Plan is rejected. Pursuant to 11 U.S.C. § 365, any person, corporation or other entity suffering any damages from the rejection of any

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executory contract must file a proof of claim therefor. The filing of a proof of claim is the sole remedy for the rejection of an executory contract.

This is relevant to the central issue of this lawsuit regarding whether the right of first refusal made it into the Bankruptcy case, and if it did, was it specifically assumed and assigned.

8. Exhibit K is a certified true copy of a Quitclaim Deed arising out of the Bankruptcy estate recorded in Beaufort County ROD on February 6, 1989, at DB 5220 at PG. 1300 in which the US Bankruptcy Court ordered the transfer of the remaining(residual) assets free and clear of all liens, claims, and encumbrances owned by the Trustee. This transfer was confirmed by Order of Judge Wm. Thurmond Bishop, in a hearing held on March 22, 1988, which Order became final on April 6, 1988. This document is relevant because it demonstrates that any remaining (residual) assets of the debtor Sea Pines Plantation Company arising out of the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 that were not transferred in the previously approved Asset and Purchase agreement were transferred free and clear to Property Research Holdings, Inc.

9. Exhibit L is a true copy of the Letter from John F. Curry, initial Trustee for the Sea Pines Bankruptcy debtors to Mr. Francis Webster of Sea Pines Associates dated March 15, 1988. This document was produced by Defendants in discovery and is relevant because Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805, and 86-03871 and any rights that Sea Pines Resort may or may not have come directly from the assets purchased from the aforementioned Bankruptcy cases. This document states that all parties are mutually released from further claims relating to the Asset Purchase agreement. The Deal is closed.

The facts contained in these documents are self-authenticating, non-hearsay and directly relevant to the fundamental issue whether SPR had a valid and enforceable right of first refusal. Accordingly, Plaintiffs request that that Court reconsider its decision not to take judicial notice of these facts.

Conclusion

Plaintiffs have presented two legal arguments (common law rule against perpetuities and extinguishment of the right of first refusal as a non-assignable personal right) that eviscerate the

claimed right of first refusal relied on by Defendants. Plaintiffs have also presented substantial evidence that creates a myriad of factual disputes which could only be decided by a jury and the Court failed to view this evidence, and the inferences which reasonably can be drawn therefrom, in the light most favorable to Plaintiffs. Therefore, Plaintiffs respectfully request that the Court reconsider its decision and order and deny Defendants' Motion for Directed Verdict.

COFFEY KUBEC, LLP

By: /s/ Edward M. Kubec
Edward M. Kubec, Esq. (S.C. Bar #76576)
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Hilton Head Island, SC 29928
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Attorneys for Plaintiffs

Hilton Head Island, SC
March 11, 2022

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EXHIBIT 1

TO

MOTION FOR RECONSIDERATION

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC

Plaintiffs,

vs.

LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT

CASE NO. 2017-CP-07-01057

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

PLEASE TAKE NOTICE THAT Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, by and through the undersigned counsel, hereby request that the Court take Judicial Notice of the following facts pursuant to SC Rules of Evidence Rule 201 for trial in the above-referenced action:

Fact No.	Fact	Exhibit	Authority
1.	The January 25, 1973 Commercial Use Covenants of Lighthouse Beach Company ¶19 In the event, the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price; and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said	The January 25, 1973, Commercial Use Covenants of Lighthouse Beach Company ("Commercial Use Covenants") Recorded in Beaufort County ROD on 2/15/1973 at DB 206 at PG 1143	SC Rules of Evidence Rule 201 (Judicial Notice); SC Rules of Evidence Rule 803(8) (Public Records); Rule 803(14) (Records of Documents Affecting an Interest in Property); Rule 803(15) (Statements in Documents Affecting an Interest in Property) Rule 803(16) (Statements in Ancient Documents) Rule 901 (b)(8)(7) (Self-Authenticating – Public Records) Rule 901 (b)(8)(B) (Self-Authenticating – Ancient Documents)

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	property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company.	[**EXHIBIT A** attached hereto]	
2.	The Prospect Company, as liquidating partner of the Lighthouse Beach Company, transfers and sets over, assigns, and conveys unto to the Sea Pines Plantation Company all right, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation on Hilton Head Island in Beaufort County, South Carolina, which was owned, possessed and seized unto Lighthouse Beach Company.	1977 Assignment of the Right of First Refusal from Lighthouse Beach Company to Sea Pines Plantation Company ("1977 Assignment") Recorded in Beaufort County ROD on 4/14/1977 at DB 246 at PG 2087 [**EXHIBIT B** attached hereto]	Refer to authorities cited in Fact No. 1.
3.	The 1977 Assignment does not include granting language to Sea Pines Plantation Company's "successors and assigns".	**EXHIBIT B**	Refer to authorities cited in Fact No. 1.
4.	The name of Sea Pines Plantation Company is changed to Hilton Head Liquidation Corporation in October 1987.	Articles of Amendment for Sea Pines Plantation Co. (at Ex. A thereto, pg. 2.) Filed November 2, 1987, with the South Carolina Secretary of State (Certified copy) [**EXHIBIT C** attached hereto]	Refer to authorities cited in Fact No. 1.
5.	Hilton Head Liquidation Corporation was dissolved on December 5, 1991.	Declaration of Dissolution by Forfeiture: Hilton Head Liquidation Corporation dated December 5, 1991. Recorded with South Carolina Secretary of State (Certified Copy) [**EXHIBIT D** attached hereto]	Refer to authorities cited in Fact No. 1.

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6.	Sea Pines Plantation Company was a debtor in the consolidated Chapter 11 US Bankruptcy of Case Nos. 86-03801, 86-03803, 86-03804, 85-03805 and 86-03871 (the "Bankruptcy Case").	US Bankruptcy Court Order Confirming the Second Amended Joint Plan of Reorganization filed on October 15, 1987. Contained in a Warranty Deed Recorded in Beaufort County ROD on 10/15/1987 in DB 490 at PG 415 [**EXHIBIT E** attached hereto]	SC Rules of Evidence Rule 201 (Judicial Notice); SC Rules of Evidence Rule 803(8) (Public Records); Rule 803(14) (Records of Documents Affecting an Interest in Property); Rule 803(15) (Statements in Documents Affecting an Interest in Property) Rule 803(16) (Statements in Ancient Documents) Rule 901 (b)(8)(7) (Self-Authenticating – Public Records) Rule 901 (b)(8)(B) (Self-Authenticating – Ancient Documents); 11 U.S.C. § 107(a) ("[A] paper filed in a case under [the Bankruptcy Code] and the dockets of a bankruptcy court are public records."). *Reusser v. Wachovia Bank*, 525 F.3d 855, 857 n. 1 (9th Cir. 2008) ("We take judicial notice of the bankruptcy court order, because it is a matter of public record.")
7.	US Bankruptcy Court in the Bankruptcy Case ordered: Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors except such further reorganization and liquidation as is contemplated by the Plan. **There is no successor to the Debtors under the Plan.**	US Bankruptcy Court Order Confirming the Second Amended Joint Plan of Reorganization filed on October 15, 1987. Recorded in Beaufort County ROD on 10/15/1987 in DB 490 at PG 420 [**EXHIBIT E** at page 11;	Refer to authorities cited in Fact No. 6

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	¶13 at p. 5 (ROD pg. 424)	and page 5 of exhibit "A" attached hereto]	
8.	US Bankruptcy Court in the Bankruptcy Case ordered: ORDERED, ADJUDGED AND DECREED that the assumption by the Trustee of each contract or unexpired lease on the List of Assumed Executory Contracts and Unexpired Leases (hereinafter the "List") filed with this Court on October 9, 1987, and the rejection of all other executory contracts and unexpired leases is hereby approved: Page 12 (ROD at p.431)	US Bankruptcy Court Order Confirming the Second Amended Joint Plan of Reorganization filed on October 15, 1987. Recorded in Beaufort County ROD on 10/15/1987 in DB 490 at PG 420 **EXHIBIT E**	Refer to authorities cited in Fact No. 6.
9.	US Bankruptcy Court ordered: IT IS HEREBY ORDERED, ADJUDGED AND DECREED: That the Trustee be, and he hereby is, authorized to sell or transfer the **Sea Pines Assets free and clear of all liens, encumbrances, and other claims** (including, but not limited to those as set forth on Exhibit "A" hereto), except for those certain Permitted Exceptions contemplated by the Sales Procedures, which Sales Procedures are attached as an exhibit to the Second Amended Joint Plan of Reorganization filed in these cases. ¶1 at p. 2 (ROD p.435)	US Bankruptcy Court Order Authorizing the Sale of the Debtors Sea Pines Assets dated October 26, 1987. Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG. 434 [**EXHIBIT E** attached hereto]	Refer to authorities cited in Fact No. 6.
10.	US Bankruptcy Court approved: The Asset Purchase Agreement between John Curry, Trustee in Bankruptcy, and Sea Pines Associates specified which assets	US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on October 22, 1987.	Refer to authorities cited in Fact No. 6.

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	out of the Bankruptcy estate, were included in the sale.)	Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG 443: Order DB 490 at PG 502: Deed & DB 490 at PG 682: Agreement [**EXHIBIT F** attached hereto]	
11.	US Bankruptcy Court approved: The Assignment of Rights that were assumed and assigned. 3. All of its "rights of repurchase", in regard to all properties within Sea Pines Plantation as more particularly described in any Restrictions and/or Declarations of recorded in Beaufort County, South Carolina including those certain Declarations, Covenants and/or Restrictions recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Deed Book 172 at Page 316, Deed Book 260 at Page 1143, Deed Book 209 at Page 1745, and in Deed Book 173 at Page 6; and like Declaration of Covenants of the Sea Pines Plantation Company as Declarant for Class "A" Single Family Residential Areas and Multi-Family Residential Areas within Sea Pines Plantation. Noticeably absent are 206/1143 and 246/2087	US Bankruptcy Court Order approving the Asset and Purchase Agreement that was executed on November 17, 1987 Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG. 712 [**EXHIBIT G** attached hereto]	Refer to authorities cited in Fact No. 6.
12.	US Bankruptcy Court Ordered: the specific lists of Contracts and leases that were assumed and assigned by and to Sea Pines Associates.	US Bankruptcy Court Order exhibit of Assignment of Contracts and leases.	Refer to authorities cited in Fact No. 6.

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	The 1977 Right of First Right of Refusal Assignment is not on the list.	Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG. 848 [**EXHIBIT H** attached hereto]	
13.	US Bankruptcy Court Ordered: The List of Tournament Contracts and Agreements that were assumed and assigned. The 1977 Right of First Refusal Assignment is not listed.	Bankruptcy Court Order containing Collateral Assignment of Contracts: Exhibit "A", Assignment of Tournament Contracts and Agreements. Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG. 887 [**EXHIBIT I** attached hereto]	Refer to authorities cited in Fact No. 6.
14.	4. In accordance with Article X of the Plan, any executory contract which was not specifically accepted under the Plan is rejected. Pursuant to 11 U.S.C. § 365, any person, corporation or other entity suffering any damages from the rejection of any executory contract must file a proof of claim therefor. The filing of a proof of claim is the sole remedy for the rejection of an executory contract.	Affidavit of John Curry Trustee for Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company, Hilton Head Holding Company, and all debtors of the action. Recorded in Beaufort County ROD on 11/17/1987 at DB 490 at PG. 571 [**EXHIBIT J** attached hereto]	Refer to authorities cited in Fact No. 6.
15.	The US Bankruptcy Court ordered: The transfer of the **remaining** assets **free and clear of all liens, claims and encumbrances** owned by the Trustee was confirmed by Order	Quit Claim Deed out of the Bankruptcy estate from "debtors" to Property Research Holdings, Inc. for residual bankruptcy estate	Refer to authorities cited in Fact No. 6.

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	of Judge Wm. Thurmond Bishop, in a hearing held on March 22, 1988, which Order became final on April 6, 1988, said hearing being duly noticed to all parties in interest.	Recorded in Beaufort County ROD on 02/06/1989 at DB 5220 at PG. 1300 [**EXHIBIT K** attached hereto]	
16.	All parties are mutually released from further claims relating to the Asset Purchase agreement. Deal is closed.	Letter from John F. Curry, initial Trustee for the Sea Pines Bankruptcy debtors to Mr. Francis Webster of Sea Pines Associates dated March 15, 1988. Sea Pines Supplemental 0053 [**EXHIBIT L** attached hereto]	SC Rules of Evidence Rule 201 (Judicial Notice); SC Rules of Evidence Rule 803(8) Records of Documents Affecting an Interest in Property); Rule 803(15) (Statements in Documents Affecting an Interest in Property) Rule 803(16) (Statements in Ancient Documents) Rule 901 (b)(8)(7) (Self-Authenticating – Public Records) Rule 901 (b)(8)(B) (Self-Authenticating – Ancient Documents);

Respectfully submitted,

COFFEY KUBEC, LLP

By: /s/ Edward M. Kubec_____
Edward M. Kubec, Esq. (S.C. Bar #76576)
CoffeyKubec, LLP
18 Executive Park Road, Suite 3
Hilton Head Island, SC 29928
(843) 422-4488
ekubec@coffeykubec.com
Attorneys for Plaintiffs

February 23, 2023
Hilton Head Island, SC

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EXHIBIT C

INAL ON FILE IN THIS OFFICE
Oct 01 2021
REFERENCE ID: 881138
Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF AMENDMENT

To The Articles of Incorporation of

SEA PINES PLANTATION COMPANY

(File This Form in Duplicate)

John T. Campbell
SECRETARY OF STATE
FILED
NOV 02 1987
AM 7|8|9|10|11|12|1|2|3|4|5|6 PM

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For Use By The Secretary of State
File No. 30654
Fee Paid.....
C.B.....
Date.....

Pursuant to Authority of Section 33-15-10 the South Carolina Code of 1976 as amended, the undersigned Corporation adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the Corporation is...Sea Pines Plantation Company.....

2. The Registered Office of the Corporation is Hwy. 278, Wexford Plantation Entrance (Street and No.)
in the City of Hilton Head Island, County of Beaufort and
the State of South Carolina and the name of the Registered Agent at such address is John F. Curry, Trustee
.....

(Complete item 3 of 4 whichever is relevant)

3. a. The following Amendment of the Articles of Incorporation was adopted by the shareholders of the Corporation on October 29, 1987

(Text of Amendment)

See Exhibit "A" attached hereto.

b. At the date of adoption of the Amendment, the total number of all outstanding shares of the Corporation was...141,500..... The total of such shares entitled to vote, and the vote of such shares was:

Total Number of Shares Entitled to vote	Number of Shares Voted For	Against
141,500	141,500	-0-

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ARTICLES OF AMENDMENT (Continued)

c. At the date of adoption of the Amendment, the number of outstanding shares of each class entitled to vote as a class on the Amendment, and the vote of such shares, was: (if inapplicable, insert "none")

Class	Number of Shares Entitled to Vote	Number of Shares Voted For	Against
Common	4,000	4,000	-0-
Preferred	137,500	137,500	-0-

4. a. Prior to the organizational meeting the Corporation and with the consent of the subscribers, the following Amendment was adopted by the Incorporator(s) on.....

(Text of Amendment)

b. The number of withdrawals of subscribers, if such be the case is.....

c. The number of Incorporators are.....and the number voting for the Amendment was .....and the number voting against the Amendment was.....

5. The manner, if not set forth in the Amendment, in which any exchange, reclassification, or cancellation or issued shares provided for in the Amendment shall be effected, is as follows: (if not applicable, insert "no change")

No change.

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The manner in which the Amendment effects a change in the amount of stated capital, and amount of stated capital, expressed in dollars, as changed by the Amendment, is as follows: (if not applicable, insert "no change")

No change.

Date 10/30/87 Sea Pines Plantation Company
(Name of Corporation)

John F Curry
(Name and title)
John F. Curry, Trustee in Bankruptcy for Sea Pines Plantation Company and Hilton Head Holdings Corporation
(Name and title)

(Name and title)

(Name and title)

(Name and title)

Note: Any person signing this form, shall either opposite or beneath his signature, clearly and legibly state his name and the capacity in which he signs. Must be signed in accordance with Section 33-1-40 of the 1976 Code, as amended.

STATE OF South Carolina
COUNTY OF Beaufort
} ss:

The undersigned John F. Curry, Trustee, ~~and~~ ..... does ~~xxx~~ hereby certify that ~~he~~ he is ~~xxxxx~~ the duly ~~elected and acting~~ appointed Trustee in Bankruptcy for Sea Pines Plantation Company and Hilton Head Holdings Corporation respectively, ~~of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ and ~~are~~ is authorized to execute this document; that each of the undersigned for himself does hereby further certify that he signed and was so authorized, has read the foregoing document, understands the meaning and purport of the statements therein contained and the same are true to the best of his information and belief.

Dated at Hilton Head Island SC this 30th day of October, 19 87

John F Curry
John F. Curry, Trustee in Bankruptcy for Sea Pines Plantation Company and Hilton Head Holdings Corporation

SCHEDULE OF FEES
(Payable at time of filing application with Secretary of State)

Filing Fee	$ 5.00
Taxes	40.00
Total Fee	$45.00

Note: If The Amendment effects an increase in capital stock, in lieu of the above, the filing fees will be as follows:

Fee for filing application	$ 5.00
In addition to the above, $.40 for each $1,000.00 of the total increase in the aggregate value of authorized shares,	
but in no case less than	40.00
nor more than	1,000.00

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EXHIBIT "A"

WHEREAS, on October 22, 1987, United States District Judge Sol Blatt, Jr. (District of South Carolina), signed an Order in that certain Adversary Proceeding entitled John F. Curry, Trustee, Plaintiff, vs. Beaufort County Treasurer, et al., Defendants (Case No. 87-0232), arising out of the Chapter 11 bankruptcy proceedings of Gardner-Matthews Plantation Company (Case No. 86-03801), Hilton Head Hotel Company (Case No. 86-03803), Vacation Resorts Holding, Inc. (Case No. 86-03804), Vacation Resorts, Inc. (Case No. 86-03805) and Hilton Head Holdings Corporation (Case No. 86-03871), Debtors, authorizing the sale of certain of Debtors' Sea Pines Assets free and clear of liens, encumbrances and other interests, a copy of said Order being attached hereto and marked Exhibit "A"; and

WHEREAS, on October 26, 1987, United States District Court Judge Sol Blatt, Jr. (District of South Carolina), signed a supplemental Order in the above described Adversary Proceedings which more clearly defined and itemized certain liens, encumbrances and other interests that the Sea Pines Assets would be sold free and clear of, a copy of said supplemental Order being attached hereto as Exhibit "B"; and

WHEREAS, on October 22, 1987, John F. Curry, Trustee in Bankruptcy for Hilton Head Holdings Corporation and Sea Pines Plantation Company (as Seller), and Sea Pines Associates, Inc. (as Buyer), did enter into an Asset Purchase Agreement for certain real, personal and intangible property; a Stock Purchase Agreement for all of the issued and outstanding capital stock of the Sea Pines Real Estate Companies, Inc., and HHC Realty Company, a Delaware corporation; a

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Stock Purchase Agreement for all of the issued and outstanding shares of Sea Pines Investments, Inc.; and a Stock Purchase Agreement for all of the issued and outstanding shares of the Fifth Golf Course Club, Inc., a Delaware corporation, and fifty percent of the issued and outstanding shares of Sea Pines Forest Reserve Conservation Association, Inc., a Delaware corporation (hereinafter collectively referred to as the "Sales Agreements"); and

WHEREAS, pursuant to the terms of the aforesaid Sales Agreements, Seller desires to amend the Articles of Incorporation of Sea Pines Plantation Company to change its corporate name to Hilton Head Liquidation Corp. in order to allow Buyer, Sea Pines Associates, Inc., or its designee, to form a new South Carolina corporation under the name of Sea Pines Plantation Company, Inc., to take title to certain of the assets being conveyed pursuant to the Sales Agreements.

NOW, THEREFORE, BE IT RESOLVED, that John F. Curry, Trustee in Bankruptcy for Sea Pines Plantation Company, Sea Pines Company and Hilton Head Holdings Corporation, as and for the shareholders of each Corporation, hereby authorizes the execution of the Sales Agreements set forth above, all documents contemplated thereby and all documents reasonably necessary to consummate the sales and purchases described therein, and the filing of such resolutions and documents with the applicable governmental agencies of the State of South Carolina as may be required to:

1. Consent to the issuance of a corporate name certificate to Sea Pines Associates, Inc., or its designee, for the corporate names: Sea Pines Plantation Company, Inc., Sea Pines Company and such other corporate names which may have been reserved by or on behalf of Sea Pines Plantation Company, Sea Pines Company, or Hilton Head Holdings Corporation for use in connection with the operation and/or ownership of any of the properties as defined and described in the Sales Agreements; and

2. Change the corporate name of Sea Pines Plantation Company to Hilton Head Liquidation Corp.

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AND FURTHER BE IT RESOLVED, that the Articles of Amendment of Sea Pines Plantation Company, including this resolution, be recorded in the records of the Office of the Clerk of Court, Beaufort County, South Carolina, to constitute record notice of the change of corporate name of Sea Pines Plantation Company, so as to allow Buyer to incorporate a new South Carolina corporation under the name of Sea Pines Plantation Company, Inc. to buy and take title to certain of the assets described in the aforementioned Sales Agreements.

PINE:RESOLUTION:10-29-87:mjb
(8th Draft)

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EXHIBIT "A"
UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at ____ O'clock 2 ____ min
OCT 22 1987
GEORGE B. CAUTHEN, CLERK
United States Bankruptcy Court
Columbia, South Carolina

IN RE:	
GARDNER MATTHEWS PLANTATION COMPANY,	CASE NO. 86-03801
HILTON HEAD HOTEL COMPANY,	CASE NO. 86-03803
VACATION RESORTS HOLDING, INC.,	CASE NO. 86-03804
VACATION RESORTS, INC.,	CASE NO. 86-03805
HILTON HEAD HOLDINGS CORPORATION	CASE NO. 86-03871
Debtors.	CHAPTER 11
	JUDGE SOL BLATT

ORDER

IT APPEARING that bids submitted in accordance with the Sales Procedures as incorporated into the Second Amended Joint Plan of Reorganization confirmed by this Court on October 14, 1987, were received from Fogelman Properties, Inc. on the property commonly known as Harbour House A, and received from Sea Pines Associates on the property contained in the Sea Pines Sales Package, that the bids received conform fully to the Sales Procedures, that the aforementioned bids were the only bids submitted, that any further bidding is precluded in accordance with the Sales Procedure and that there will be no auction on October 22, 1987, it is accordingly

#1

ORDERED, ADJUDGED AND DECREED that the bids of Fogelman Properties, Inc. and Sea Pines Associates are herewith accepted and Fogelman Properties, Inc. and Sea Pines Associates shall comply fully and forthwith with all of the provisions of the Sales Procedures.

DATED: Hilton Head Island, S.C. October 22, 1987.

Sol Blatt, Jr.
United States District Judge

SBJ
1 subject to a supplemental Order
to / and subject to the Sea Pines purchase

1-M-1593

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SECRETARY OF STATE OF SOUTH CAROLINA

EXHIBIT "B"

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	
GARDNER-MATTHEWS PLANTATION COMPANY,	86-03801
HILTON HEAD HOTEL COMPANY,	86-03803
VACATION RESORTS HOLDING, INC.,	86-03804
VACATION RESORTS, INC.,	86-03805
HILTON HEAD HOLDINGS CORPORATION,	86-03871
DEBTORS.	(Chapter 11)
JOHN F. CURRY, Trustee, Plaintiff, vs. BEAUFORT COUNTY TREASURER, ET AL., Defendants.	Adversary Proceeding Case No.: 87-0232

ORDER AUTHORIZING SALE OF THE DEBTORS' SEA PINES ASSETS

The Amended Complaint to Sell the Debtors' Sea Pines Assets Free and Clear of Liens, Encumbrances, and Other Interests (the "Complaint") came on for hearing before this Court on October 14, 1987. Upon this Court's determination from the testimony and evidence in the record before it that all persons claiming a lien, encumbrance, or other interest in the Debtors' Sea Pines Assets were served with the Complaint by mail or by publication in accordance with Rules 4(d) and 4(i) of the Federal Rules of Civil Procedure and Bankruptcy Rule 7004 and that proper notice of hearing on the Complaint was given to all creditors and parties in interest in accordance with Bankruptcy

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Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Rules 6004 and 2002(a)(2), (c), and (i); and upon the only objections to the Complaint having been withdrawn and no other parties having objected to the sale of the Sea Pines Assets free and clear of all liens, claims, and encumbrances; and upon this Court's determination that the sale or transfer of the Sea Pines Assets free and clear of liens, encumbrances, or other interests is permitted pursuant to sections 363(b) and (f) of the Bankruptcy Code, 11 U.S.C. §§ 363(b) and (f), in that (1) applicable nonbankruptcy law permits the sale or transfer of the property free and clear, (2) parties claiming an interest in the property have consented to such sale or transfer, (3) the price at which the property is to be sold or transferred is greater than the aggregate value of all liens on the property, (4) the claimed interests in the property are in bona fide dispute, or (5) the parties claiming an interest in the property could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their interest; and upon this Court's further determination that the sale of the Sea Pines Assets free and clear of liens, encumbrances, or other interests is in the best interest of the Debtors' estates;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Trustee be, and he hereby is, authorized to sell or transfer the Sea Pines Assets free and clear of all liens, encumbrances, and other claims (including, but not limited to those as set forth on Exhibit "A" hereto), except for those certain Permitted Exceptions contemplated by the Sales Procedures, which Sales Procedures are attached as an exhibit to the Second Amended Joint Plan of Reorganization filed in these cases, in accordance with those Sales

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Procedures and the FSLIC Settlement Agreement, as previously approved by this Court.

2. That all persons or entities who have failed to assert any lien, encumbrance, or other interest in the Sea Pines Assets, other than Permitted Exceptions, are forever barred from doing so.

3. That the Trustee be, and he hereby is, authorized to recover from the proceeds of sale the cost of conducting the sale or transfer of the Sea Pines Assets prior to the attachment, allocation, or disbursement of the proceeds of any other person or entity.

4. That all valid liens, encumbrances, and other interests, other than the Permitted Exceptions, be transferred to the proceeds of the sale of the Sea Pines Assets.

5. There is no just reason for delay, and this Order constitutes a final order and findings of fact and conclusions of law under Bankruptcy Rule 7054.

IT IS SO ORDERED.

#3

Sol Blatt, Jr.
United States District Judge

Dated this 26th day of October, 1987
Charleston, South Carolina

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EXHIBIT A

1. Mortgage from Sea Pines Plantation Company to South Carolina National Bank in the amount of $3,000,000.00, dated February 6, 1987 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 390 at Page 474.

2. Mortgage from Sea Pines Plantation Company to Southern Floridabanc, S.A. in the amount of $13,100,000.00, dated February 13, 1984 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 339 at Page 845, and the Memorandum of Agreement between Southern Floridabanc, S.A. and Financial Federal Savings and Loan Association of Dade County recorded in said R.M.C. Office in Mortgage Book 339 at Page 880.

3. UCC-1 Financing Statement filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina as follows: #70513 - Sea Pines Plantation Company to Intercapital Savings Bank, assigned to Southern Floridabanc.

4. UCC-1 Financing Statement filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina as follows: #71084 - Sea Pines Plantation Company to Southern Floridabanc, S.A.

5. UCC-1 Financing Statement filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina as follows: #72012 - Sea Pines Plantation Company to Southern Bank & Trust Company.

6. Lis Pendens against Sea Pines Plantation Company, et al filed by Southern Floridabanc on September 10, 1986, and recorded in Cabinet #4, File #2685.

7. Lis Pendens against Sea Pines Plantation Company et al filed by Southern Floridabanc on September 10, 1986, and recorded in Cabinet #4, File #2707.

#4
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8. Lis Pendens against Sea Pines Plantation Company filed by Sea Pines Public Service District in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Cabinet #5, File #2842, on September 10, 1986.

9. Mortgage to The Citizens and Southern National Bank of South Carolina from Sea Pines Plantation Company in the original amount of $850,000.00, dated April 6, 1983 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 284 at Page 234; said Mortgage extended in Mortgage Book 339 at Page 1114.

10. Mortgage from Cordillo Parkway Associates Limited Partnership to The Citizens and Southern National Bank of South Carolina by Sea Pines Plantation Company as General Partner in the original amount of $350,000.00 dated April 6, 1983 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 284 at Page 228; said Mortgage extended in Mortgage Book 314 at Page 749, then modified and extended in Mortgage Book 354 at Page 184.

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EXHIBIT A

11. Mortgage from Harbour Town Green Unit 1122 Associates, a South Carolina Limited Partnership to Service Corporation of South Carolina in the amount of $384,000.00, dated February 4, 1983, and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 280 at Page 1093; said Mortgage assigned to First Federal Savings & Loan Association of Camden, S.C. in Mortgage Book 357 at Page 49 on January 13, 1986.

12. Lis Pendens against Sea Pines Plantation Company filed by First Federal Savings and Loan Association of Camden, South Carolina in said R.M.C. Office in Cabinet #4, File 2570 on July 17, 1986.

13. Mortgage from Amelia Beach Campgrounds Company to South Carolina National Bank in the amount of $3,000,000.00, dated February 6, 1987 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Mortgage Book 390 at Page 499.

14. Judgment against Amelia Beach Campgrounds Company, Corp., filed by the South Carolina Tax Commission on September 12, 1986, at Judgment Roll #60623.

15. Mortgage from Sea Pines Plantation Company to First National Bank of South Carolina in the amount of $1,800,000.00, dated February 24, 1984 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina, in Mortgage Book 307 at Page 309; said Mortgage amended on September 23, 1985, in Mortgage Book 347 at Page 299 and Modified on June 27, 1986 in Mortgage Book 369 at Page 698.

16. UCC-1 Financing Statements filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, as follows: #72415 - Sea Pines Plantation Company to Sea Pines Center.

17. Mechanics' Lien against Sea Pines Plantation Company filed by Archipelagos, Incorporated, in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Cabinet #3, Folder #1983, on May 30, 1986, and Lis Pendens filed in said Clerk's Office in Cabinet #4, File #2666, September 2, 1986.

#J

18. UCC-1 Financing Statements filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, as follows: #66104 - Sea Pines Plantation Company to Bankers Trust of South Carolina.

19. UCC-1 Financing Statements filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, as follows: #69387 - Sea Pines Plantation Company to Donald H. O'Quinn, Sr. and Arthur I. Jeffords.

20. Mortgage from William E. Whitshire, III to Ralph W. Ballantine in the amount of $100,000.00, dated August 20, 1973, and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Mortgage Book 161 at Page 1376.

21. Mortgage from Sea Pines Plantation Company to The Bank of Beaufort in the amount of $250,000.00, dated December 6, 1982 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Mortgage Book 275 at Page 1754; said Mortgage modified by

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EXHIBIT A

Modification Agreement dated June 23, 1986, recorded in Mortgage Book 369 at Page 696.

22. Mortgage from Sea Pines Plantation Company to The Citizens and Southern National Bank of South Carolina in the amount of $400,000.00, dated June 15, 1984 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Mortgage Book 315 at Page 1164; said Mortgage assigned to Charles E. Fraser by assignment dated January 31, 1986, recorded in Mortgage Book 358 at Page 1729; then re-assigned to The Citizens and Southern National Bank by Collateral Assignment dated January 31, 1986, recorded in Mortgage Book 358 at Page 1733.

23. Mortgage from Charles E. Fraser Associates, Inc. to Southern Floridabanc, S.A. in the amount of $3,300,000.00, dated April 16, 1985 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Mortgage Book 335 at Page 933.

24. Mortgage from Charles E. Fraser Associates, Inc. to Sea Pines Plantation Company in the amount of $1,850,000.00, dated April 16, 1985 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Mortgage Book 335 at Page 962, which mortgage may be subject to a claim by Rolyat Holdings Corp.

25. Judgment against Charles E. Fraser Associates, Inc. and Charles E. Fraser filed by Rolyat Holdings, Corp. and Sea Pines Plantation in Judgment Roll #64174.

26. Judgment against Charles E. Fraser Associates, Inc. filed by the South Carolina Tax Commission in said Register of Mesne Conveyance Office in Judgment Roll #64669.

27. Lis Pendens against Charles E. Fraser Associates, Inc., Charles E. Fraser and Sea Pines Plantation Company filed by Southern Floridabanc, S.A. in said Register of Mesne Conveyance Office in Cabinet #4, File #2697.

28. UCC-1 Financing Statement filed in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina as follows: #70802 - Charles E. Fraser Associates, Inc. to Southern Floridabanc, S.A.

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EXHIBIT A

29. Order Approving Settlement of Claim of Minor in the amount of $3,800.00 in case styled Jack S. Davis, Petitioner in re: Kimberly M. Davis vs. Sea Pines Plantation Company (Beaufort Court of Common Pleas) dated July 24, 1977, filed in Judgment Roll #28031, Beaufort County Records.

30. Order for Settlement in the amount of $11,000.00 in case styled William L. O'Quinn, Jr., a minor by his guardian William L. O'Quinn vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas) dated February 10, 1978, filed February 15, 1978 in Judgment Roll #29620, Beaufort County Records.

31. Final Judgment Approving Settlement in case styled Association of Sea Pines Plantation Property Owners, Inc. and Edward Jr. Kusel vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas - Case No. 82-CP-07-43) dated February 22, 1984, filed February 23, 1984 in Judgment Roll #47428, Beaufort County Records.

32. Order of Default Judgment in case styled Peterson Outdoor Advertising Corporation of South Carolina vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas - Case No. 86-CP-07-152) dated March 12, 1986, filed March 14, 1986 in Judgment Roll #58193, Beaufort County Records.

33. Confession of Judgment in the amount of $15,018.51 in case styled Colonial Oil Industries vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas - Case No. 86-CP-07-561) dated September 15, 1986, filed September 16, 1986 in Judgment Roll #60918, Beaufort County Records.

34. Order in the amount of $242,761.52 plus interest in case styled Rabun & Partners, Inc. vs. Sea Pines Company, Sea Pines Plantation Company, Universetrust, Inc. and Earl D Hewlette, Jr. (Beaufort County Court of Common Pleas, Case No. 86-CP-07-1232) dated October 9, 1986, filed October 10, 1986, in Judgment Roll #61231, Beaufort County Records. (Reference is also made to Lis Pendens filed in Cabinet 4, Folder 2598 and Mechanics' Lien filed in Cabinet 3, Folder 1835, and Rule 40(c)(3) orders filed in Judgment Roll #62996 and Judgment Roll #61231, Beaufort County Records.)

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35. Order of Judgment in the amount of $45,909.21 in the case styled Sue Wade & Associates, Inc. vs. Sea Pines Plantation Company, Universetrust, Inc. and Earl D. Hewlette, Jr. (Beaufort County Court of Common Pleas - Case No. 86-CP-07-1111) dated October 9, 1986, filed October 10, 1986 in Judgment Roll #61232, Beaufort County Records. (Reference is also made to Mechanics' Lien filed in Cabinet 3, Folder 1847, Lis Pendens filed in Cabinet 4, Folder 2556, and Rule 40(c)(3) Order filed in Judgment Roll #62985, Beaufort County Records.)

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EXHIBIT A

36. Settlement of case styled Furtado Corp., et al. vs. Sea Pines Company (South Carolina Circuit Court 14th Judicial Circuit - Case No. 86-CP-07-755) dated October 13, 1986, filed November 11, 1986, in Judgment Roll #61254, Beaufort County Records.

37. Accommodations Tax Lien filed by South Carolina Tax Commission against Sea Pines Plantation, dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61815, Beaufort County Records.

38. Admission Tax Lien in the amount of $9,253.60 by South Carolina Tax Commission against Sea Pines Plantation Co., dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61816, Beaufort County Records.

39. Admission Tax Lien in the amount of $9,306.75 by South Carolina Tax Commission against Sea Pines Plantation Co., dated November 5, 1986, filed November 6, 1986, in Judgment Roll #61817, Beaufort County Records.

40. Admission Tax Lien in the amount of $13,300.17 by South Carolina Tax Commission against Sea Pines Plantation Co., dated November 5, 1986, filed November 6, 1986, in Judgment Roll #61818, Beaufort County Records.

41. Admission Tax Lien in the amount of $15,257.14 by South Carolina Tax Commission against Sea Pines Plantation Co., dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61819, Beaufort County Records.

42. Admission Tax Lien in the amount of $10,502.00 by South Carolina Tax Commission against Sea Pines Plantation Co., dated November 5, 1986, filed November 6, 1986, in Judgment Roll #61820, Beaufort County Records.

43. Accommodations Tax Lien in the amount of $592,997.49 by South Carolina Tax Commission against Sea Pines Plantation Company dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61821, Beaufort County Records.

44. Sales Tax Lien in the amount of $287,957.53 by South Carolina Tax Commission against Sea Pines Plantation Company dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61822, Beaufort County Records.

45. Sales Tax Lien in the amount of $29,328.50 by South Carolina Tax Commission against Sea Pines Plantation Company dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61823, Beaufort County Records.

46. Accommodations Tax Lien in the amount of $33,869.04 by South Carolina Tax Commission against Sea Pines Plantation Company, dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61824, Beaufort County Records.

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EXHIBIT A

47. Sales Tax Lien in the amount of $2,980.33 by South Carolina Tax Commission against Sea Pines Plantation, Inc. dated November 5, 1986, filed November 6, 1986 in Judgment Roll #61825, Beaufort County Records.

48. Default Judgment in the amount of $22,832.77 plus costs by the case styled National Advertising Company vs. Sea Pines Plantation Company (South Carolina Circuit Court, 14th Judicial Circuit - Case No. 86-CP-07-1449) dated October 27, 1986, filed November 6, 1986 in Judgment Roll #61837, Beaufort County Records.

49. Order in case styled Merrill H. Archard & Bette L. Archard vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas - Case No. 86-CP-07-1250) in Judgment Roll #62390. (Court advised case settled, but no terms of settlement were filed.)

50. Order in case styled Southern Mill Creek Products vs. Sea Pines Plantation Company (Beaufort County Court of Common Pleas, Case No. 86-CP-07-267) dated July 18, 1986 in Judgment Roll #60061, Beaufort County Records. (Court advised case settled, but terms of settlement have not been filed.)

51. Order in case styled Earl D. Hewlette, Jr. vs. Sea Pines Plantation Company, dated January 12, 1987 in Judgment Roll #63093, Beaufort County Records. (Judgement Roll not in file - case sent to Bankruptcy Court.)

52. Order in case styled Archipelagos Inc. vs. Sea Pines Plantation Company, et al. (S.C. Circuit Court, 14th Judicial Circuit - Case No. 86-CP-07-1442) filed May 14, 1987 in Judgment Roll #65056, Beaufort County Records. (Court advised party in Bankruptcy pursuant to Rule 40(c)(3), SCRCP. Reference is also made to Mechanics' Lien filed in Cabinet 3, Folder 1983 and Lis Pendens filed in Cabinet 4, Folder 2666, Beaufort County Records.)

53. All Beaufort County taxes for the years 1985 and 1986, including penalties and interest.

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EXHIBIT D

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Oct 01 2021
REFERENCE ID: 881138

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

DEPARTMENT OF STATE

COLUMBIA, SOUTH CAROLINA

DECLARATION OF DISSOLUTION BY FORFEITURE

Date of Dissolution DECEMBER 05, 1991

HILTON HEAD LIQUIDATION CORP
SEA PINES CIRCLE
HILTON HEAD SC 29948

21125759-3

Whereas, Section 33-14-200, of the 1976 Code of Laws of S.C., as amended, provides for the dissolution of a corporation by forfeiture if the corporation has failed to:

(1) File its annual report within the time required by Chapters 1 to 25 of this Title, or

(2) Pay its franchise tax on or before the date on which such franchise tax is due and payable, or

(3) Appoint and maintain a registered agent in this State, or

(4) Notify the office of The Secretary of State of a change in its registered-agent or registered office, or

(5) The corporation's period of duration stated in its Articles of Incorporation expires.

AND WHEREAS, IT APPEARS FROM THE RECORDS IN THIS OFFICE, AFTER DUE NOTICE, THAT THE ABOVE NAMED CORPORATION HAS FAILED TO MEET REQUIREMENTS OF NOS. 1 AND/OR 2 ABOVE SET FORTH.

NOW THEREFORE, UNDER THE AUTHORITY OF SAID ACT, THE CHARTER IS HEREBY DECLARED FORFEITED AND DISSOLVED THIS DATE.

Inquires concerning this administrative dissolution should be directed to the SC Tax Commission, P.O. Box 125, Columbia, SC 29214, Attn: Corporate Section.

Jim Miles
Secretary of State

SOS-2 (Rev.11/90) 3119

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EXHIBIT F

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date): 11-17-1987
in OR Book 490 Page 1 to 3
This document contains 49 pages.
Pamelia Barnes
Register of Deeds - Beaufort County, SC
Oct 8, 2021

J S & P/J P S

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U 663

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS (hereinafter "Assignment"), made this 17th day of November, 1987, by and between JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation, debtor in Case Number: 86-03871, United States Bankruptcy Court, District of South Carolina, and HILTON HEAD LIQUIDATION CORP. f/k/a SEA PINES PLANTATION COMPANY, debtor in Case Number: 86-03885, United States Bankruptcy Court, District of South Carolina, (hereinafter "Assignor") and SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation (hereinafter "Assignee").

W I T N E S S E T H:

WHEREAS, on August 21, 1981, Sea Pines Plantation Company (hereinafter referred to as "Sea Pines"), did enter into an Easement and Subordination Agreement (hereinafter referred to as the "Agreement," a copy of which is attached hereto and marked Exhibit "A") with American Resorts Properties, Inc. (hereinafter referred to as "American Resorts") and Trust Company of Georgia Bank of Savannah, N.A. (hereinafter referred to as "Trust Company"), wherein Sea Pines did grant unto American Resorts certain easements associated with its Monarch Project, said easements being more fully described in an exhibit attached to the Agreement; and

WHEREAS, American Resorts subsequently sold its Monarch Project in gross to Marriott Ownership Resort, Inc. (hereinafter referred to as

INITIALS

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"Marriott"); and

WHEREAS, Sea Pines, American Resorts and Marriott did, concurrently with the sale of the Monarch Project to Marriott, enter into a Tri-Party Agreement, dated April 13, 1984 (hereinafter referred to as "Tri-Party Agreement," a copy of which is attached hereto and marked Exhibit "B") wherein the parties agreed to amend the easements previously granted to American Resorts in the Agreement so as to eliminate certain portions thereof; and

WHEREAS, subsequent to the execution of the Tri-Party Agreement, and prior to the recording of an instrument implementing the changes to the easements as set forth in the Tri-Party Agreement, Sea Pines and its parent company, Hilton Head Holdings Corporation, filed for Bankruptcy pursuant to Chapter 11 of the United States Bankruptcy Code; and

WHEREAS, on October 22, 1987, Assignor, pursuant to a final Order of the United States Bankruptcy Court for the District of South Carolina, did enter into an Asset Purchase Agreement (hereinafter referred to as the "Asset Purchase Agreement," a copy of which is attached hereto and marked Exhibit "C") with Assignee, wherein Assignee agreed to purchase certain of the assets, properties, rights and businesses of Hilton Head Holdings Corporation; and

WHEREAS, pursuant to the terms of the Asset Purchase Agreement, it is now the desire and intention of Assignor to assign all of Sea Pines' rights, entitlements, and responsibilities in the Agreement and Tri-Party Agreement to and for the benefit of Assignee, its successors and assigns.

NOW, THEREFORE, for Ten and No/100 Dollars ($10.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, Assignor

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does, by and through these presents, assign all of Sea Pines' rights, entitlements, and responsibilities in the Agreement and Tri-Party Agreement to Assignee, its successors and/or assigns, and Assignee does hereby agree and consent to said assignment and to be hereafter bound by each of the terms and conditions contained in the Agreement and Tri-Party Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

ASSIGNOR:

By: _____
JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation

ASSIGNEE: SEA PINES PLANTATION COMPANY, INC., a South Carolina business corporation

By: _____

Attest: _____ Sec

J.S & P/J P S

[PINE:ASSIGN.1-.2:11/15/87:bsl]
(7th draft)

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me, the undersigned witness, who, on oath, says that s/he saw the within named JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation, sign, seal, and as his act and deed, deliver the within written Instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.

Caroline B. Bryan

SWORN to before me this 17th
day of November, 1987.

Notary Public for South Carolina
My Commission Expires: 3/19/97

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me, the undersigned witness, who, on oath, says that s/he saw the within named SEA PINES PLANTATION COMPANY, INC., a South Carolina business corporation, by its appropriate officers, sign, seal, and as its act and deed, deliver the within written Instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.

Angela M Kubit

SWORN to before me this 17th
day of November, 1987.

Notary Public for South Carolina
My Commission Expires:
JAMES P. SCHEIDER, JR.
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires November 25, 1991

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ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

Exhibit "A"

331/1717

DB331p1717

STATE OF SOUTH CAROLINA)
) EASEMENT AND SUBORDINATION AGREEMENT
COUNTY OF BEAUFORT)

1717

667

THIS AGREEMENT, made this ___ day of _____, 1981, by and between SEA PINES PLANTATION COMPANY, (hereinafter referred to as "GRANTOR"), AMERICAN RESORT PROPERTIES, INC. (hereinafter referred to as "GRANTEE") and TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. (hereinafter referred to as "MORTGAGEE").

WHEREAS, GRANTOR is the owner of that certain 3.20 acre tract located in Sea Pines Plantation, Hilton Head Island, Beaufort County, and being more and particularly shown and designated on a plat entitled "A Plat of 13.60 Acres, A Section of Sea Pines Plantation," dated December 16, 1977 and prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, recorded in Book 26 at Page 130 in the Office of the Clerk of Court for Beaufort County, said parcel hereinafter referred to as the Property; and

WHEREAS, GRANTOR, by mortgage instrument dated February 12, 1980, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 227 at Page 694, has previously granted to the MORTGAGEE a first security lien over the Property; and

WHEREAS, in accordance with the terms of that CONTRACT OF SALE AND PURCHASE between GRANTEE and GRANTOR dated April 14, 1981, GRANTOR has agreed to grant to the GRANTEE certain easements over the Property as more and particularly described in the within instrument; and

WHEREAS, MORTGAGEE in accordance with the terms of the within instrument has agreed to subordinate the lien of the aforesaid mortgage to the within described easements.

NOW, THEREFORE, know all men by these presents, that Sea Pines Plantation Company, in the state aforesaid, for and in consideration of the sum of THREE ($3.00) DOLLARS, to it in hand paid at and before the sealing of these presents by AMERICAN RESORT PROPERTIES, INC., the receipt whereof is hereby acknowledged,

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ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

has granted, bargained, sold and released, and BY THESE PRESENTS, DOES GRANT, BARGAIN, SELL AND RELEASE UNTO THE SAID AMERICAN RESORT PROPERTIES, INC., ITS SUCCESSORS AND ASSIGNS FOREVER, THOSE CERTAIN EASEMENTS AS MORE AND PARTICULARLY DESCRIBED AT EXHIBIT A HERETO. 1718

With all and singular, the rights, members, hereditaments, and appurtenants to the said Premises, belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said AMERICAN RESORT PROPERTIES, INC., its successors and assigns forever.

SAID Easements are conveyed subject to all covenants, restrictions, and easements of record includan those recorded in Book 257 at Page 2037, Book 226 at Page 1596, Book 224 at Page 1036, Boo, 258 at Page 253 and Book 78 at Page 306 in the Office of the Clerk of Court for Beaufort County, South Carolina. The within described real estate is the same property, or a portion thereof, conveyed to the Grantor herein by Deed recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 257 at Page 2037.

TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. does, by execution hereof, subordinated the lien of its mortgage recorded in Mortgage Book 227 at Page 694 at the Office of the Clerk of Court for Beaufort County, South Carolina to the within described easements over the Property, subject to the limitations contained at Exhibit A hereto.

The within easement was prepared in the Law Offices of Charles A. Scarminach, Post Office Box 5962, Hilton Head Island, South Carolina, 29938.

IN WITNESS WHEREOF, SEA PINES PLANTATION COMPANY, AMERICAN RESORT PROPERTIES, INC. and TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. have caused these Presents to be executed in their name by their duly authorized officers, and their corporate seals to be hereto affixed this 21st day of August in the year of our

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POOR CONTRAST OR CONDITION

Lord One Thousand Nine Hundred and Eighty-one in the Two Hundred Sixth Year of the Sovereignty and Independence of the United States of America.

1719

WITNESSES

SEA PINES PLANTATION COMPANY

BY:

ATTEST:

AMERICAN RESORT PROPERTIES, INC.

BY:

ATTEST:

TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A.

BY: Assistant Vice President

ATTEST: Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me who, on oath, says that he saw the within named Sea Pines Plantation Company by , its President, and , its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that he with witnessed the execution thereof.

(witness)

SWORN to before me this 21 day of , 1981.

Notary Public for South Carolina
My Commission Expires:

-1-

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STATE OF [illegible])
COUNTY OF [illegible]) PROBATE 1720

PERSONALLY appeared before me [illegible] who, on oath, says that he saw the within named American Resort Properties, Inc. by [illegible], its President, and [illegible], its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that he with [illegible] witnessed the execution thereof.

SWORN to before me this [illegible] day of [illegible], 1981.

(witness)

Notary Public for:
My Commission Expires:

STATE OF [illegible])
COUNTY OF [illegible]) PROBATE

PERSONALLY appeared before me [illegible] who, on oath, says that he saw the within named Trust Company of Georgia Bank of Savannah, N.A., by [illegible], its Secretary, sign, seal, President, and [illegible], its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that he with [illegible] witnessed the execution thereof.

SWORN to before me this [illegible] day of [illegible], 1981.

(witness)

Notary Public for: [illegible]
My Commission Expires: [illegible]

-4-

ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

EXHIBIT A

1721

I. An easement and license to construct and maintain, at GRANTEE'S sole expense, a temporary sales office and model villa together with reasonable access thereto over existing or to be constructed roadways and pathways from the right-of-way of Sea Pines Drive and the adjacent parcel lying east of the Property and owned by the within GRANTEE. Actual location of the within described easement and the facility to be constructed thereon shall be subject to the approval of the GRANTOR and the MORTGAGEE, such approval not to be unreasonably withheld. Upon location of the easement, GRANTEE shall prepare a plat identifying such location and upon approval of the GRANTOR and MORTGAGEE, said plat shall be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina. Unless sooner terminated by mutual agreement of the GRANTOR and GRANTEE, the easement described in this paragraph shall terminate upon the expiration of five (5) years from the date of this instrument or upon the sale by GRANTEE of all dwelling units or Interval Ownership Segments constructed on the parcel owned by the GRANTEE and lying immediately west of the Property, whichever date shall first occur.

II. A perpetual, non-exclusive easement, twenty (20') feet in width traversing along the entire length of the western most boundary line of the Property said easement being granted to enable GRANTEE to construct buildings and other structures within the established applicable building set back area on GRANTEE'S adjacent parcel. This easement is not intended to permit GRANTEE to encroach in any manner on the Property nor shall GRANTEE be permitted to construct or maintain structures or facilities of any kind within the described easement property. GRANTOR reserves the right to use the property within the easement described in this paragraph for any purpose not inconsistent with the use granted to the GRANTEE.

III. A perpetual, non-exclusive easement for ingress and egress over the Property to provide vehicular and pedestrian access to the adjacent parcel owned by GRANTEE from the right-of-way of Sea Pines Drive. Actual location of the within described easement shall be over roadways and pathways to be constructed and maintained at the sole expense of GRANTEE. Location of said easement shall be subject to the approval of the GRANTOR and the MORTGAGEE, such approval not to be unreasonably withheld. Upon location of the easement, GRANTEE shall prepare a plat identifying such location and upon approval of the GRANTOR and MORTGAGEE, said plat shall be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina.

Lender

FILED AT 2:10 P.M. BEAUFORT COUNTY S. C. SEP 4 1981 RECORDED IN BOOK 331 PAGE 1717
Mary W. Lander
CLERK OF COURT OF COMMON PLEAS

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Exhibit "B"

TRI-PARTY AGREEMENT

672

This Tri-Party Agreement made this 13th day of April, 1984 by and among American Resorts Properties, Inc., a Florida corporation ("American Resorts"), Sea Pines Plantation Company, a South Carolina corporation ("Sea Pines"), and Marriott Ownership Resorts, Inc., a Delaware corporation ("Marriott").

W I T N E S S E T H :

WHEREAS, American Resorts is the owner of a multi-phase timeshare project known as Monarch located in Sea Pines Plantation, Hilton Head Island, South Carolina (the "Monarch Project"); and

WHEREAS, American Resorts purchased a portion of the land comprising the Monarch Project from Sea Pines pursuant to a contract of Sale and Purchase dated April 13, 1981 (the "Purchase Contract"), subject to a purchase money mortgage in favor of Sea Pines (the "Sea Pines Mortgage"); and

WHEREAS, pursuant to Sections 4(a), (b) and (c) of the Purchase Contract, Sea Pines granted and conveyed to American Resorts certain easements relating to an adjoining parcel of land owned by Sea Pines and known as the Beach Club Property, all as more particularly set forth in an Easement and Subordination Agreement dated August 21, 1981 between Sea Pines, American Resorts and Trust Company of Georgia Bank of Savannah, N.A. ("Trust Company") as Mortgagee recorded in Book 331 at pages 1717 to 1721 of the Public Records of Beaufort County, South Carolina, a copy of which Agreement is appended hereto as Exhibit "A"; and

WHEREAS, pursuant to Section 15 of the Purchase Contract Sea Pines entered into a ground lease agreement dated March 1, 1983 with American Resorts pursuant to which Sea Pines leased to American Resorts five existing tennis courts located at the Harbour Town Racquet Club with an option to purchase the tennis courts exercisable at a future date (the "Tennis Court Agreement"); and

WHEREAS, under date of April 13, 1981 Sea Pines and American Resorts entered into a Marketing Agreement with respect to the marketing of interval ownership weeks in the Monarch Project; and

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POOR CONTRAST OR CONDITION

WHEREAS, American Resorts intends to sell the Monarch Project in gross to Marriott and Marriott thereafter intends to continue the development and marketing of the Monarch Project; and

WHEREAS, the sale of the Monarch Project to Marriott will terminate the existing Marketing Agreement pursuant to Section 7.2 thereof; and

WHEREAS, the parties desire to (i) arrange for the execution of a new Marketing Agreement between Sea Pines and Marriott; (ii) document the profit participation payments to be made to Sea Pines pursuant to the existing Marketing Agreement; (iii) modify in certain respects the provisions of the existing Beach Club easements; (iv) document Sea Pines' consent to the assignment of the Tennis Court Agreement by American Resorts to Marriott; (v) document the understanding that the Sea Pines Mortgage will be satisfied at the closing of the sale of the Monarch Project; and (vi) document their understandings with regard to certain other matters.

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, the parties covenant and agree as follows:

1. New Marketing Agreement. Promptly after consummation of the sale of the Monarch Project by American Resorts to Marriott, Sea Pines and Marriott will use their best efforts to negotiate a new Marketing Agreement with respect to the Monarch Project.

2. Payment of Sea Pines' Profit Participation. Within forty-eight (48) hours following the closing, American Resorts will pay $400,000 to Sea Pines. Within sixty (60) days following the close of the sale of the Monarch Project to Marriott, American Resorts will deliver to Sea Pines (i) a financial statement for American Resorts prepared as of the close of business on the day of such closing which has been certified by Arthur Young & Co., and (ii) a cashier's or certified check for an amount equal to ten percent (10%) of American Resort's pre-tax profits as set forth in Section 11 of the existing Marketing Agreement between Sea Pines and American Resorts less credit for all prior payments.

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3. Sales Office and Model Villa Easement. Sea Pines acknowledges American Resorts' right to assign its existing easement and license on the Beach Club property for the Monarch Project's sales office and model villa as described in the Easement and Subordination Agreement at Exhibit A. Marriott, does hereby grant Sea Pines an option to purchase the sales office and model villa for a cash price of $100,000 at such time as the easement terminates. In the absence of Sea Pines purchase, Marriott, its successors and assigns, shall have a reasonable time to remove same.

4. Tennis Court Agreement. Sea Pines Herewith consents to the assignment of the Tennis Court Agreement by American Resorts to Marriott.

5. Sports Package. Sea Pines and Marriott agree to use their best efforts to negotiate a "sports package" to be made available to the owners and guests occupying timeshare units owned or managed by Marriott within Sea Pines Plantation.

6. Elimination of Existing Roadway Easements. Marriott and Sea Pines will cooperate with each other and use their best efforts to secure all necessary governmental and regulatory approvals to authorize the construction of a new driveway entrance to the Monarch Project directly from Sea Pines Drive at a mutually satisfactory location or such other entrance location as may be approved by Marriott and Sea Pines, all costs thereof to be the sole responsibility of Marriott. Promptly after such approvals have been secured and the new entrance has been constructed, Marriott and Sea Pines will amend the existing Beach Club easement to eliminate the roadway easement described in Section III of the Easement and Subordination Agreement, attached at Exhibit A, save and excepting, however, that portion of the said easement used as a traffic turnaround at the Monarch lobby.

7. References to Sea Pines. All references to Sea Pines appearing herein shall include Sea Pines Real Estate Company, and Sea Pines Company as necessary or appropriate. All references to Marriott shall include Marriott Ownership Resorts, Inc., its successors and assigns.

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IN WITNESS WHEREOF, the undersigned parties have placed their hands and seals this 13 day of April, 1984.

AMERICAN RESORTS PROPERTIES, INC.

By: _____ President

ATTEST: _____ Secretary

SEA PINES PLANTATION COMPANY

By: _____ Vice President

ATTEST: _____ Secretary

MARRIOTT OWNERSHIP RESORTS, INC.

By: _____ Vice President

ATTEST: _____ Secretary

0769v

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INDEX TO EXHIBITS

Document	Exhibit Reference
Beach Club Easement and Subordination Agreement dated August 21, 1981	A

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POOR CONTRAST OR CONDITION

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...CAROLINA)
) EASEMENT AND SUBORDINATION AGREEMENT
COUNTY OF BEAUFORT)

1717
677

THIS AGREEMENT, made this ... day of ..., 1981, by and between SEA PINES PLANTATION COMPANY, (hereinafter referred to as "GRANTOR"), AMERICAN RESORT PROPERTIES, INC. (hereinafter referred to as "GRANTEE") and TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. (hereinafter referred to as "MORTGAGEE").

WHEREAS, GRANTOR is the owner of that certain 3.20 acre tract located in Sea Pines Plantation, Hilton Head Island, Beaufort County, and being more and particularly shown and designated on a plat entitled "A Plat of 13.60 Acres, A Section of Sea Pines Plantation," dated December 16, 1977 and prepared by Thomas & Hutton Engineering Company, Savannah, Georgia, recorded in Book 26 at Page 130 in the Office of the Clerk of Court for Beaufort County, said parcel hereinafter referred to as the Property; and

WHEREAS, GRANTOR, by mortgage instrument dated February 12, 1980, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 227 at Page 694, has previously granted to the MORTGAGEE a first security lien over the Property; and

WHEREAS, in accordance with the terms of that CONTRACT OF SALE AND PURCHASE between GRANTEE and GRANTOR dated April 14, 1981, GRANTOR has agreed to grant to the GRANTEE certain easements over the Property as more and particularly described in the within instrument; and

WHEREAS, MORTGAGEE in accordance with the terms of the within instrument has agreed to subordinate the lien of the aforesaid mortgage to the within described easements.

NOW, THEREFORE, know all men by these presents, that Sea Pines Plantation Company, in the state aforesaid, for and in consideration of the sum of THREE ($3.00) DOLLARS, to it in hand paid at and before the sealing of these presents by AMERICAN RESORT PROPERTIES, INC., the receipt whereof is hereby acknowledged,

ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

has granted, bargained, sold and released, and BY THESE PRESENTS, DOES GRANT, BARGAIN, SELL AND RELEASE UNTO THE SAID AMERICAN RESORT PROPERTIES, INC., ITS SUCCESSORS AND ASSIGNS FOREVER, THOSE CERTAIN EASEMENTS AS MORE AND PARTICULARLY DESCRIBED AT EXHIBIT A HERETO.

With all and singular, the rights, members, hereditaments, and appurtenants to the said Premises, belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said AMERICAN RESORT PROPERTIES, INC., its successors and assigns forever.

SAID Easements are conveyed subject to all covenants, restrictions, and easements of record includin those recorded in Book 257 at Page 2037, Book 226 at Page 1596, Book 224 at Page 1036, Boo, 258 at Page 253 and Book 78 at Page 306 in the Office of the Clerk of Court for Beaufort County, South Carolina. The within described real estate is the same property, or a portion thereof, conveyed to the Grantor herein by Deed recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 257 at Page 2037.

TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. does, by execution hereof, subordinated the lien of its mortgage recorded in Mortgage Book 227 at Page 694 at the Office of the Clerk of Court for Beaufort County, South Carolina to the within described easements over the Property, subject to the limitations contained at Exhibit A hereto.

The within easement was prepared in the Law Offices of Charles A. Scarminach, Post Office Box 5962, Hilton Head Island, South Carolina, 29938.

IN WITNESS WHEREOF, SEA PINES PLANTATION COMPANY, AMERICAN RESORT PROPERTIES, INC. and TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A. have caused these Presents to be executed in their name by their duly authorized officers, and their corporate seals to be hereto affixed this 21st day of August in the year of our

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POOR CONTRAST OR CONDITION

679

1719

Lord One Thousand Nine Hundred and Eighty-One in the Two Hundred Sixth Year of the Sovereignty and Independence of the United States of America.

WITNESSES

SEA PINES PLANTATION COMPANY

BY:

ATTEST:

AMERICAN RESORT PROPERTIES, INC.

BY:

ATTEST:

TRUST COMPANY OF GEORGIA BANK OF SAVANNAH, N.A.

BY:

ATTEST:

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me _____ who, on oath, says that he saw the within named Sea Pines Plantation Company by _____, its President, and _____, its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that he with _____ witnessed the execution thereof.

SWORN to before me this 21 day of _____, 1981.

_____ (witness)

_____
Notary Public for South Carolina
My Commission Expires: _____

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680

STATE OF South Carolina)
COUNTY OF Beaufort) PROBATE 1720

PERSONALLY appeared before me [illegible]
who, on oath, says that he saw the within named American Resort Properties, Inc. by Edwin H Hilhallen, its President, and [illegible], its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that she with [illegible] witnessed the execution thereof.

SWORN to before me this 21st day of December, 1981.

(witness)

Notary Public for:
My Commission Expires:

STATE OF [illegible])
COUNTY OF [illegible]) PROBATE

PERSONALLY appeared before me [illegible]
who, on oath, says that she saw the within named Trust Company of Georgia Bank of Savannah, N.A., by [illegible], its President, and [illegible], its Secretary, sign, seal, and as its act and deed, deliver the within written instrument, and that she with [illegible] witnessed the execution thereof.

SWORN to before me this 21 day of December, 1981.

(witness)

Notary Public for:
My Commission Expires:

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EXHIBIT A

I. An easement and license to construct and maintain, at GRANTEE'S sole expense, a temporary sales office and model villa together with reasonable access thereto over existing or to be constructed roadways and pathways from the right-of-way of Sea Pines Drive and the adjacent parcel lying east of the Property and owned by the within GRANTEE. Actual location of the within described easement and the facility to be constructed thereon shall be subject to the approval of the GRANTOR and the MORTGAGEE, such approval not to be unreasonably withheld. Upon location of the easement, GRANTEE shall prepare a plat identifying such location and upon approval of the GRANTOR and MORTGAGEE, said plat shall be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina. Unless sooner terminated by mutual agreement of the GRANTOR and GRANTEE, the easement described in this paragraph shall terminate upon the expiration of five (5) years from the date of this instrument or upon the sale by GRANTEE of all dwelling units or Interval Ownership Segments constructed on the parcel owned by the GRANTEE and lying immediately west of the Property, whichever date shall first occur.

II. A perpetual, non-exclusive easement, twenty (20') feet in width traversing along the entire length of the western most boundary line of the Property said easement being granted to enable GRANTEE to construct buildings and other structures within the established applicable building set back area on GRANTEE'S adjacent parcel. This easement is not intended to permit GRANTEE to encroach in any manner on the Property nor shall GRANTEE be permitted to construct or maintain structures or facilities of any kind within the described easement property. GRANTOR reserves the right to use the property within the easement described in this paragraph for any purpose not inconsistent with the use granted to the GRANTEE.

III. A perpetual, non-exclusive easement for ingress and egress over the Property to provide vehicular and pedestrian access to the adjacent parcel owned by GRANTEE from the right-of-way of Sea Pines Drive. Actual location of the within described easement shall be over roadways and pathways to be constructed and maintained at the sole expense of GRANTEE. Location of said easement shall be subject to the approval of the GRANTOR and the MORTGAGEE, such approval not to be unreasonably withheld. Upon location of the easement, GRANTEE shall prepare a plat identifying such location and upon approval of the GRANTOR and MORTGAGEE, said plat shall be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina.

FILED AT 2:12 P.M. BEAUFORT COUNTY S. C. SEP 4 1981 RECORDED IN BOOK 331 PAGE 1717

Marion S. Lander
CLERK OF COURT OF COMMON PLEAS

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Exhibit "C"

SEA PINES

682

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into as of the 22nd day of October, 1987, by and between JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation, (hereinafter referred to as "Seller"), and SEA PINES ASSOCIATES, INC., a South Carolina Corp., (hereinafter referred to as the "Buyer").

W I T N E S S E T H:

WHEREAS, Seller is the duly appointed and authorized trustee in bankruptcy for Hilton Head Holdings Corporation, a Delaware corporation, debtor in Case No. 86-03871 (hereinafter sometimes referred to as "Debtor"), a case presently pending in the United States Bankruptcy Court for the District of South Carolina (hereinafter referred to as the "Court");

WHEREAS, Seller is administering the estate of the Debtor under the supervision of the Court, and has authority to sell and otherwise dispose of the assets, properties, rights and businesses of Debtor under the procedures set forth in the Court approved "Procedures for and Terms of Sale of the Encumbered Property and Free Assets" (the "Sales Procedures"), any of which sales are subject to the Court's approval;

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WHEREAS, Seller desires to sell, and Buyer desires to purchase, certain assets, properties, rights and businesses of Debtor, as more particularly hereinafter described, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement by Buyer, together with the initial earnest money deposit referred to in Section 3.2(a) below, shall constitute an irrevocable offer to purchase the certain assets, properties, rights and businesses of Debtor until accepted or rejected by Seller, but in no event no later than November 15, 1987;

WHEREAS, several offers for the purchase of such assets, properties, rights and businesses may be similarly submitted and Seller will make application to the Court for approval of the offer Seller deems to be in the best interest of the Debtor and, subject to the auction process set out in the Sales Procedures and the Court's approval, Seller shall execute the offer approved by the Court;

WHEREAS, if Seller executes this Agreement pursuant to such procedure, this Agreement shall become an agreement for the purchase and sale of such assets, properties, rights and businesses upon the terms and subject to the conditions set out herein, and, if not so executed by Seller, this Agreement shall be deemed rejected and Seller shall return all earnest money deposited pursuant to Section 3.2 below, and this Agreement shall be null and void and have no further force and effect.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, Seller and Buyer hereby agree as follows:

ARTICLE I

ASSETS TO BE PURCHASED

Section 1.1. Description of Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Time of Closing (as hereinafter defined), Seller shall convey, sell, transfer, assign and deliver to Buyer, and Buyer shall purchase from Seller, all right, title and interest of Seller in and to the following assets, properties, rights (contractual or otherwise) and businesses (hereinafter collectively referred to as the "Property"):

(a) Real Property. The real property located on Hilton Head Island in Beaufort County, South Carolina, which is more particularly described on Exhibit 1.1(a)*, together with all buildings, fixtures and improvements located thereon and all appurtenant rights, easements and privileges appertaining or relating thereto (the "Real Property");

(b) Real Property Leases. The leases of real property and improvements listed on Exhibit 1.1(b), together with all buildings, fixtures, and improvements located thereon and therein and all appurtenant rights, easements and privileges appertaining or relating thereto (the "Real Property Leases");

(c) Personal Property. All machinery, equipment, tooling, parts, furniture, and other tangible personal property located on the

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* Each reference in this Agreement to an Exhibit shall mean an Exhibit attached to this Agreement and incorporated into this Agreement by such reference.

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Real Property or the Real Property Leases or used in connection with any business conducted at or on the Real Property or the Real Propert Leases (the "Personal Property"), including, without limitation, the Personal Property described on Exhibit 1.1(c), but excluding, however Inventory and Vehicles (each as hereinafter defined);

(d) Inventory. All inventory, including all operating supplies, spare parts and other inventory located on the Real Property or the Real Property Leases or used in connection with any business conducted at or on the Real Property or the Real Property Leases (the "Inventory"), including, without limitation, the Inventory listed by location and category on Exhibit 1.1(d), but excluding, however, Personal Property;

(e) Vehicles. The automobiles, and other passenger vehicles (the "Vehicles") described on Exhibit 1.1(e) (heavy trucks, tractors and off-road vehicles are for purposes hereof deemed Personal Property);

(f) Authorizations. All franchises, licenses, permits, consents, authorizations, approvals, and certificates of any regulatory, administrative or other government agency or body (to the extent the same are transferable) relating to the Real Property or Real Property Leases or used in connection with any business conducted at or on the Real Property or the Real Property Leases, including, without limitation, the items listed on Exhibit 1.1(f) (the "Authorizations"), but excluding, however, those Authorizations described on Exhibit 1.1(f)(1);

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(g) Proprietary Rights. All proprietary rights, computer software, trademarks, names, service marks, trade names, copy rights, marks, symbols, logos, franchises and permits and all applications therefor, registrations thereof and licenses, sublicenses and agreements in respect thereof, relating to the Real Property or the Real Property Leases or used in connection with any business operated at or on the Real Property or the Real Property Leases, which Seller owns or has the right to use or to which Seller is a party and all filings, registrations and issuances of any of the foregoing with or by any federal, state, local or foreign regulatory, administrative or governmental office or offices, including, without limitation, all rights in and to the items described on Exhibit 1.1(g) (the "Proprietary Rights"), but excluding, however, those shared Proprietary Rights described on Exhibit 1.1(g)(1);

(h) Personal Property Leases. All leases of Personal Property, Vehicles or other tangible personal property used in connection with the Real Property or the Real Property Leases or used in connection with any business conducted at or on the Real Property or the Real Property Leases (the "Personal Property Leases"), including, without limitation, the Personal Property Leases listed on Exhibit 1.1(h);

(i) Contracts. The contracts, agreements, contract rights, leases, license agreements, franchise rights and agreements, options, purchase and sales orders, and executory commitments, whether oral or written, relating to the Real Property or the Real Property Leases or any business conducted at or on the Real Property or the Real Property Leases (the "Contracts"), including, without limitation, the Contracts

listed on Exhibit 1.1(i), but excluding, however, those Contracts listed as "Excluded Contracts" on Exhibit 1.1(i)(a); and

(j) Books and Records. All books of account, customer lists, files, papers and records relating to the Real Property or the Real Property Leases or used in connection with any business conducted at or on the Real Property or Real Property Leases (the "Books and Records"), (all of which shall be subject to Buyer's rights to inspect and copy) excluding, however, all corporate minute books, stock records, corporate seals, treasury shares, tax returns and supporting schedules of Seller and those Excluded Books and Records described on Exhibit 1.1(j);

(k) Capital Stock. All of the Seller's capital stock in those corporations identified in the Stock Purchase Agreement attached as Exhibit 1.1(k)1 through 1.1(k) 3. The purchase of such capital stock shall be under the specific terms and conditions set out in said Stock Purchase Agreement attached, and the Purchase Price for said stock, except for increases pursuant to Sections 2.2 and 2.3 and closing adjustments provided for therein, is included in the Purchase Price set out in Article III hereof;

provided, however, that there shall be excluded from the assets, properties, rights (contractual and otherwise) and businesses of Seller to be conveyed, sold, transferred, assigned, and delivered to Buyer under this Agreement, cash on hand and on deposit, Cash Equivalents (hereinafter defined), and those items listed on Exhibit 1.1(x) (the "Excluded Assets"). For purposes of this Agreement, the term "Cash Equivalents" shall mean those items listed on Exhibit 1.2.

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ARTICLE II

ASSUMPTION OF OBLIGATIONS

Section 2.1. Assumption of Certain Obligations. Subject to the provisions of this Agreement, from and after the Time of Closing, Buyer shall assume the liabilities and obligations of Seller described on Exhibit 2.1 and to the extent that Buyer accepts or receives the benefit of an agreement, arrangement or state of facts, Buyer shall be deemed to have assumed the related liabilities and obligations (collectively, the "Assumed Liabilities"), specifically excluding, however, those listed on Exhibit 2.1(a), if any.

ARTICLE III

PURCHASE PRICE

Section 3.1. Consideration. Upon the terms and subject to the conditions contained in this Agreement, in consideration for all of the Property (excluding the Inventory, which shall be paid for separately by Buyer as provided in Section 3.5) and in full payment therefor, at the Time of Closing (a) Buyer shall assume the Assumed Liabilities as provided in Section 2.1 of this Agreement, and (b) Buyer shall pay to Seller the sum of TWENTY FOUR MILLION, THREE HUNDRED THOUSAND Dollars ($ --24,300,000.00--) as the Gross Sales Price, less any brokerage fees and expenses set forth in Exhibit 4.2(d) for a Net Purchase Price of TWENTY FOUR MILLION, THREE HUNDRED THOUSAND Dollars ($ --24,300,000.00--).

Section 3.2. Payment. The Net Purchase Price shall be payable by Buyer as follows:

(a) Initial Earnest Money. One percent (1%) of the Net Purchase Price, in the form of a cashier's check or in the form of immediately available funds by federal wire transfer into an account designated by Seller shall be paid to Seller upon the delivery of this Agreement

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duly executed by Buyer, as an initial earnest money deposit;

(b) Earnest Money. An amount which when added to the initial earnest money deposit will produce a total earnest money deposit of ten percent (10%) of the Net Purchase Price, in the form of a cashier's check drawn on a bank with at least $25 Million in capital or in the form of immediately available funds by federal wire transfer into an account designated by Seller shall be paid to Seller concurrently with the later of (i) the entry of an Order by the Court approving the sale to Buyer, or (ii) the execution of this Agreement by Seller, as a final earnest money deposit; and

(c) Balance. The balance of the Net Purchase Price in the form of immediately available funds shall be paid to Seller by federal wire transfer into an account designated by Seller at or prior to the Time of Closing.

Section 3.3. Purchase Price Allocation. Seller and Buyer hereby agree that the Gross Purchase Price for the Property shall be allocated for purposes of this Agreement and for federal, state and local tax purposes as set forth in Exhibit 3.3. Buyer and Seller covenant and agree to file all federal, state and local tax returns in accordance with such allocation.

Section 3.4. Prorations. At the Time of Closing the following items shall be prorated and apportioned as follows:

(a) Taxes. Current year real estate taxes and ad valorem taxes (general and special) applicable to the Real Property or the Real Property Leases which Seller is obligated to pay shall be prorated on the basis of the last available tax bills.

(b) Insurance. From and after the Time of Closing, Buyer shall be responsible for obtaining insurance on the Property. Seller shall

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be entitled to a refund of all prepaid insurance premiums from insurers of the Property.

(c) Utilities. All prepaid or delinquent electric, gas, water, sewer, telephone and all other utility services applicable to the Property shall be prorated. If permitted by the supplier, Buyer may pay to Seller the amount of all deposits on account with the suppliers of such utilities, otherwise, Buyer shall make any necessary deposits and Seller shall be entitled to receive any rebate of existing deposits.

(d) Rents. All rental income and other revenue relating to the Real Property and Real Property Leases shall be prorated at the Time of Closing. All prepaid rentals, down payments and deposits paid by third parties to Seller relating to the Property shall be prorated and credited to Buyer and all prepaid rentals, down payments and deposits paid by Seller to third parties relating to the Property shall be prorated and credited to Seller. Alternatively any prepaid rentals or other items held in escrow may be turned over to Buyer by delivery of the escrow account balance to Buyer.

(e) Prepaid Items. All prepaid items paid by third parties to Seller shall be prorated and credited to Buyer and all prepaid items, excluding rents as described in Section 3.4(d) paid by Seller to third parties shall be prorated and credited to Seller.

(f) Salaries and Benefits. Subject to treatment of accrued vacation as provided in Section 5.4, salaries, wages, employee benefits and other compensation of all other employees of Seller relating to the Property for the pay period including the Closing shall be prorated.

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(g) Revenue and Expenses. All fees, dues and all other revenue and expenses relating to the Property shall be prorated on an accrual basis so that Seller shall benefit from all revenues and bear the burden of all costs and expenses arising from or fairly attributable to the period of time up through the Time of Closing and Buyer shall benefit from all revenues and bear the burden of all costs and expenses arising from or fairly attributable to the period of time after the date of Closing.

(h) Those matters specifically identified in Exhibit 3.4(h) whether or not within the categories set out in Section 3.4(a) through (g) or shall be prorated as specifically provided in Exhibit 3.4.

Section 3.5. Inventory. All Inventory shall be counted by Seller's staff, which count shall be observed, tested and valued by Arthur Young & Company, using the first-in, first-out method of evaluation. Buyer may have such representatives as it desires to observe the count and evaluation, provided that such activities are coordinated with Arthur Young & Company. Buyer shall pay to Seller the amount of such evaluation, in addition to the purchase price stated herein. The value as determined by Arthur Young & Company shall be binding on the parties and the cost of such work shall be borne by Seller. If Buyer desires any tests or procedures not contemplated herein by Arthur Young & Company and requests such, Buyer shall bear the expense of such additional service.

Section 3.6. Post Closing Adjustment. Arthur Young & Company shall determine any proration or apportionment provided for herein which cannot be made with accuracy as of the Time of Closing, except Seller and Buyer will estimate such prorations and apportionments as

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accurately as possible as of the Time of Closing and will correct the same within ten (10) days after the Time of Closing or as soon thereafter as Arthur Young & Company can make a determination of the accurate prorations and apportionments. Payment of any adjustment required to correct any estimated proration and apportionment shall be made as soon as accurate information becomes available. Such determination by Arthur Young & Company shall be binding upon the parties.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1. Seller's Representations and Warranties. Seller hereby represents and warrants to the Buyer as follows:

(a) Authority. Seller is the duly appointed Trustee in bankruptcy for Debtor and has full power and authority to enter into this Agreement and, subject to the approval and final order of the Court, to sell the Property to Buyer pursuant to the terms and conditions of this Agreement.

(b) Brokers, Finders. Seller has not employed any broker or finder or incurred any liability for brokerage commissions, finder's fees or similar fees or expenses in connection with this Agreement or the transactions contemplated herein in a manner that would cause either party to become liable for any brokerage commission, finder's fees or similar fees or expenses.

Section 4.2. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

(a) Organization. If Buyer is not an individual, (i) Buyer is a

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corporation or trust duly organized, validly existing and in good standing, or (ii) is a partnership duly formed, and in good standing under the laws of the State of South Carolina. Buyer is or at Closing will be duly authorized to do business in the State of South Carolina. Buyer has full corporate, trust or partnership power and authority, as the case may be, to own its properties and to carry on its business as currently conducted.

(b) Authorization. Buyer has full corporate, trust or partnership power and authority, as the case may be, to enter into this Agreement and to purchase the Property. Buyer has taken all corporate, trust or partnership action, as the case may be, necessary or appropriate to authorize the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the execution and delivery of each of the documents required to be delivered hereunder, and this Agreement constitutes valid and binding obligations of Buyer, enforceable in accordance with its terms.

(c) No Conflict. Neither the execution of this Agreement nor the consummation by Buyer of the transactions contemplated hereby and thereby nor compliance with any provisions hereof or thereof will violate any order, writ, injunction, decree, judgment, ruling, law, or rule of any court or governmental authority, United States or foreign, applicable to Buyer.

(d) Brokers, Finders. Buyer has not employed any broker or finder or incurred any liability for brokerage commissions or fees, finder's fees or similar fees or expenses in connection with this Agreement or the transactions contemplated herein in a manner that would cause either party to become liable for any brokerage,

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commission, finder's fee or similar fees or expenses, except as set forth on Exhibit 4.2(d), and Buyer agrees to indemnify and hold Seller harmless with respect to any such fees and expenses.

(e) Sufficient Funds. Buyer has sufficient funds available to pay the Purchase Price and other amounts required to be paid by Buyer according to the terms of this Agreement at the Time of Closing.

(f) No Litigation. There are no suits, proceedings or other litigation (including proceedings by or before any governmental board or agency) by or against Buyer existing, pending or, to the best of Buyer's knowledge, threatened, which would materially adversely affect Buyer's business or property or the ability of Buyer to perform its obligations under this Agreement.

(g) No Conflict or Default. Neither the execution and delivery of this Agreement, nor compliance with the terms and provisions hereof, including without limitation, the consummation of the transactions contemplated hereby, will violate any statute, regulation or ordinance of any governmental authority, conflict with or result in the breach of any term, condition or provision of any agreement, deed, contract, mortgage, indenture, legal obligation or instrument to which the Buyer is a party or by which its property is bound or may be bound or affected, or constitute a default (or an event which, with the lapse of time or the giving of notice, or both, would constitute a default) thereunder, or result in the creation or imposition of any lien, charge or encumbrance, or restriction of any nature whatsoever with respect to any of its property, or give to others any interest or rights, including, without limitation, rights of termination,

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acceleration or cancellation in or with respect to the property or the business of Buyer.

(h) Acknowledgement. Buyer hereby acknowledges (i) Buyer has received from Seller any and all documentation and information requested by Buyer in the course of performing its due diligence; (ii) that no representation or warranty of any kind whatsoever has been made by Seller regarding the financial data and information furnished to Buyer by Seller on the Property; and (iii) that such financial data and information on the Property, may not be and probably is not reliable. Buyer has, therefore, conducted its own independent investigation and analysis of the financial condition of the businesses relating to the Property upon which Buyer has expressly relied in making this offer. Buyer further acknowledges (i) that Buyer has conducted its own physical inspection and investigation of the condition of the Property and other matters relating to the present use and Buyer's proposed use of the Property upon which it has relied in making this offer, (ii) that Seller has made no representation or warranty or any kind whatsoever regarding the merchantability, fitness or suitability of the Property for any particular purpose whatsoever, and (iii) that Buyer is purchasing the Property in its "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition; and (iv) that Seller has made and hereby makes no warranty or representation, express or implied, as to the status of Proprietary Rights listed on Exhibit 1.1(g), including, without limitation, their filing status, expiration, active use, contestability, payment of fees, etc., nor shall Seller be liable for the payment of any such delinquent fees or the filing or any delinquent filings and shall not be liable to Buyer

for any failure on the part of Seller to have maintained any Proprietary Rights. Exhibit 5.1 (Permitted Exceptions) is based on title examinations for all Real Property ordered by Seller. Seller has received commitments from Chicago Title Insurance Company for all parcels of the Real Property, copies of which may be obtained from Seller, and Buyer may rely on the issuers, commitments and title matters therein.

(i) Information on Buyer. All information submitted to the Seller or to the Court regarding Buyer and its ability to perform this Agreement is true and correct and Buyer has disclosed all material information requested regarding the Buyer, its financial condition and other matters, to assist Seller and the Court in assessing this offer.

ARTICLE V

COVENANTS OF SELLER

Seller hereby covenants and agrees with Buyer as follows:

Section 5.1. Court Approval. If Seller deems the offer contained herein to be in the best interest of the bankruptcy estates, Seller will make application to the Court for approval of the sale of the Property to Buyer, and subject to the auction procedure set out in the Sales Procedures, Seller will recommend approval of this Agreement at the hearing on the matter and will seek an Order of the Court authorizing the sale of the Property to Buyer, free of all liens and encumbrances, except those exceptions and matters listed on Exhibit 5.1 (the "Permitted Exceptions") and the Assumed Liabilities (Exhibit 2.1) which are hereby approved by Buyer.

Section 5.2. Cooperation. Subject to the Court's approval, Seller will execute, acknowledge and deliver to Buyer subsequent to the

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Time of Closing, all instruments, and other documents, Books and Records, and take all other action, as heretofore agreed or as may be reasonably necessary to effectuate the provisions and intent of this Agreement, and further to assist and cooperate with Buyer by providing copies of all pleadings and other information reasonably available to Seller in connection with the litigation listed on Exhibit 5.2.

Section 5.3. Title Insurance. Upon the acceptance of this Agreement by Seller, Seller agrees to obtain and furnish to Buyer, an abstract or certificate of title of the Real Property, as well as a title commitment or binder for an owner's title insurance policy covering the Real Property from Chicago Title Insurance Company (the "Title Company") which shall show title to be free and clear of all liens and encumbrances, except the Permitted Exceptions. All matters, liens and encumbrances, from which the sale is sought to be free and clear shall show as "Requirements" in the binders. If, within five (5) days of the later of (i) the entry of an Order by the Court approving the sale to Buyer, or (ii) the execution of this Agreement by Seller, Buyer gives notice to Seller of its objection to any title exception(s) other than the Permitted Exceptions or defects in title, Seller shall have fifteen (15) days after receipt of written notice from Buyer of its objection to such exception(s) to remove the same, or to demonstrate to Buyer Seller's diligent efforts to remove the same and evidence of Seller's ability to imminently do so. If Buyer fails to notify Seller of its objection to any exception(s) to title, other than the Permitted Exceptions, within such five (5) day period, any and all such exceptions shall be deemed to be accepted by Buyer and Buyer shall take title subject thereto. If within said fifteen (15) day period any such exception or title defect of which Buyer has timely notified Seller is not

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removed or satisfied to Buyer's satisfaction, or demonstrated that it shall imminently be removed or satisfied (with respect to all such exceptions except title defects) or cured or affirmatively insured against by the Title Company (as to title defects) then at the expiration of said fifteen (15) day period, Buyer may, at Buyer's option (to be exercised by notice to Seller within five (5) days after the expiration of the foregoing fifteen (15) day period), (a) accept the status of title, or (b) terminate this Agreement and receive all funds and documents previously paid or deposited by Buyer and shall return all documents delivered by Seller to Buyer, whereupon both parties shall be released of all obligations under this Agreement. If Buyer does not notify Seller of its election to terminate this Agreement within such five (5) day period, Buyer shall be deemed to have accepted the status of title, and this Agreement shall remain in full force and effect. Upon termination of this Agreement pursuant to this Section 5.3, neither party hereto shall thereafter be under any further liability to the other party hereto, and Seller shall pay all costs of the title examination, title abstract, title commitment or binder.

Section 5.4. Employees. A summary of all employees of Seller projected through November 1, 1987 showing total annual salary and accrued vacation is set out on Exhibit 5.4. Upon acceptance of this Agreement by Seller, Seller shall provide a list of employees, which list sets forth as to each employee, his/her Social Security Number, his/her title or function, his/her rate of compensation and his/her accrued vacation time projected to the Time of Closing. All employees of Seller are employees "at will" and are not subject to any employment contract, collective bargaining agreement or other terms of employment binding on Seller, other than any terms or rights that might arise under Seller's "Personnel Policy Manual" or general employment laws of the State of South Carolina. Buyer agrees that it will employ, as of the Time of

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Closing, all employees listed on the list to be provided at the disclosed compensation but under all other terms of employment which Buyer shall reasonably impose and, except for dismissal for cause, shall continue said employment for at least thirty (30) days after the Time of Closing. In addition, Buyer shall honor all accrued vacation as of the Time of Closing, either by allowing employees to take accrued unused vacation after the Time of Closing or by paying such employees for accrued unused vacation upon termination. Seller shall, prior to the Time of Closing and consistent with efficient operating staff levels, encourage the taking of accrued vacation by the employees and Seller agrees that at the Time of Closing, the total compensation value of accrued vacation of all employees listed on Exhibit 5.4(a) shall not exceed the total therefor shown on Exhibit 5.4. To the extent Buyer is projected to be required to honor accrued vacation in excess of the amount stated above at the Time of Closing, Buyer shall receive at Closing a credit to the Purchase Price as to the projected amount thereof, and shall rebate to Seller after Closing any portion of said credit that Buyer is not actually required to honor. Seller agrees that the list provided pursuant to this section shall not show aggregate compensation or number of employees greater than those shown on Exhibit 5.4

Section 5.5. Possession. Buyer shall be entitled to possession of the Property at the Time of Closing.

Section 5.6. Transitional Provisions. During the period of time from the date of this Agreement to the Time of Closing, the Seller shall:

(a) Operate the businesses conducted at the Real Property or any of the Real Property Leases in substantially the same manner that such businesses were operated at the time of the execution of this Agreement, subject to seasonal changes; and

(b) Upon reasonable notice, afford representatives of Buyer

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access to the Property for purposes of examining and inspecting the Property, including, without limitation, copying the Books and Records, and for purposes of surveying or conducting engineering studies of the Real Property or Real Property Leases. Any such examination or inspection of the Property shall be performed at the sole expense and risk of Buyer. Buyer shall indemnify and hold Seller harmless from and against all costs or expenses and liability relating to any such access, examination and inspection herein granted and shall repair any damage caused by any such entry onto the Real Property or Real Property Leases. Seller agrees that in the event there is a material breach of this Section 5.6 by Seller after the execution of this Agreement, Buyer, but before or after execution of this Agreement by Seller and prior to The Time of Closing, Buyer shall be entitled, upon notice of such default which is not cured prior to the scheduled Time of Closing by Seller, to terminate this Agreement and receive a refund of all earnest money or deposits made hereunder.

ARTICLE VI

COVENANTS OF BUYER

Buyer hereby covenants and agrees with Seller as follows:

Section 6.1. Confidentiality. Unless and until the transactions contemplated hereby have been consummated, Buyer and its officers, directors, trustees or partners, as the case may be, agents and representatives will hold in strict confidence all data and information obtained from Seller or from any employee, agent or representative of Seller, whether pertaining to the financial condition, results of operations, methods of operation, or otherwise, except to the extent that any of the same is required to be disclosed by Buyer or by its officers,

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directors, trustees or partners, as the case may be, agents or representatives in connection with any court action or any proceeding before a governmental regulatory or administrative body or in connection with securing any consent or approval required hereunder.

Section 6.2. Information on Buyer. Within ten (10) days of any request by Seller, Buyer shall furnish to Seller such documents and other information as may be requested by Seller or the Court concerning its owners, its financial condition and other matters relating to Buyer's ability to purchase and to assist Seller and the Court in assessing this offer.

Section 6.3. Access to Property; Books and Records. From and after the Time of Closing, Buyer shall make or cause to be made available to the Seller and its authorized representatives reasonable access during normal business hours to the Property, and Buyer will furnish to Seller such additional information and will cooperate with Seller in such other respects, as Seller may reasonably request to the extent that such access and cooperation are required by Seller or its representatives for financial reporting, taxes or similar purposes or for purposes of conducting claims, evaluation, litigation or administrative proceedings with third parties or governmental agencies.

Section 6.4. Use by Seller of Shared Proprietary Rights. After the Time of Closing, Seller shall be entitled to continue to use personally or transfer to others for their use of those Shared Proprietary Rights

listed on Exhibit 1.1(g)(1).

ARTICLE VII

CLOSING

Section 7.1. Time of Closing. This transaction shall close and all deliveries to be made at the Time of Closing shall take place at the offices of Seller or such other place as is mutually agreed upon between Seller and Buyer at 10:00 a.m., Hilton Head Island, South Carolina time on the later of (a) November 15, 1987, or (b) twenty (20) days after Orders of the Court confirming the sale to the Buyer have been entered, (c) as such date may be extended pursuant to Section 5.3, or (d) at such other place or date as may be agreed upon from time to time in writing by Seller and Buyer (the "Time of Closing"). The "Closing" shall mean the deliveries to be made by Buyer and Seller at the Time of Closing in accordance with this Agreement.

Section 7.2. Deliveries by Seller. At or prior to the Time of Closing, Seller shall deliver to Buyer the following:

(a) Trustee's Limited Warranty Deeds in form of Exhibit 7.2(a), conveying good and sufficient insurable fee simple title to the Real Property to Buyer, free and clear of all liens and encumbrances, except the Permitted Exceptions and such items appearing on any title commitment or binder approved or deemed approved by Buyer as provided in Section 5.3.

(b) Assignments and Assumptions of Real Property Leases in form of Exhibit 7.2(b), assigning, transferring and conveying all of Seller's right, title and interest in and to the Real Property Leases, free and clear of all liens and encumbrances.

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(c) A General Conveyance, Assignment and Bill of Sale in form of Exhibit 7.2(c), conveying, selling, transferring and assigning to Buyer all right, title and interest of Seller to all of the Property other than the Real Property and the Real Property Leases, free and clear of all security interests, liens, charges or encumbrances, except those matters set forth on Exhibit 7.2(c)(i).

(d) Motor Vehicle Certificates of Title to the Vehicles duly endorsed for transfer to Buyer, free and clear of all security interests and liens, charges and encumbrances, except those matters set forth on Exhibit 7.2(d).

(e) Such other separate instruments of sale, conveyance, assignment or transfer that Buyer may reasonably deem necessary or appropriate in order to vest, perfect, confirm or evidence title to all or any part of the Property in Buyer.

(f) A certified copy of the Orders of the Court authorizing the sale of the Property to Buyer.

Section 7.3. Deliveries by Buyer. On or prior to the Time of Closing, Buyer shall deliver to Seller the following:

(a) The Purchase Price in accordance with Section 3.2 as the same may be adjusted by Section 3.4.

(b) Assumption Agreement with respect to the Assumed Liabilities in the form of Exhibit 7.3(b).

(c) Resolutions of the directors, trustees or partners of Buyer, as the case may be, authorizing the execution and delivery of this Agreement by Buyer and the performance of its obligations hereunder, certified by the Secretary or general partners, as the case may be, of Buyer.

Section 7.4. Expenses of Transaction. Seller shall pay the documentary, transfer or intangible taxes relating to the Closing. Buyer will pay all other costs, expenses, and legal fees incurred by it in connection with this Agreement and the transaction contemplated hereby. Buyer will pay Seller's legal fees and expenses for work done by Seller's counsel and which has been requested by Seller for title examinations, which costs shall be limited to fees for work in the title examination and securing the title binders, preparation of this Agreement and its exhibits, work done in relation to or in preparation for the Closing hereunder, assisting potential buyers in their investigation, inspection or due diligence, and in the Closing of this transaction, which work shall be performed at standard rates (for title examination) or at rates charged Seller within the bankruptcy proceeding, but in no event shall Buyer's liability for such fees exceed $30,000.00.

ARTICLE VIII

CONDITIONS PRECEDENT TO OBLIGATIONS

Section 8.1. Conditions to Obligations of Buyer. Each and every obligation of Buyer to be performed at the Closing shall be subject to the satisfaction as of or before the Time of Closing of the following conditions (unless waived in writing by Buyer):

(a) Representations and Warranties. Seller's representations and warranties set forth in Section 4.1 of this Agreement shall have been true and correct in all respects when made and shall be true and correct in all respects at and as of the Time of Closing as if such representations and warranties were made as of the Time of Closing.

(b) Title Insurance. The Title Company shall be willing to issue a title policy based on the commitment delivered pursuant to Section 5.3 at the Time of Closing.

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(c) Bulk Transfer. To the extent required for a sale in a bankruptcy proceeding, Seller shall have complied with all applicable bulk transfer laws.

(d) Approval of Court. The Court shall have approved the sale of the Property to Buyer by issuance of a final Order.

Section 8.2. Conditions to Obligations of Seller. Each and every obligation of Seller to be performed at the Time of Closing shall be subject to the satisfaction, as of or before such time, of the following conditions (unless waived in writing by Seller):

(a) Representations and Warranties. Buyer's representations and warranties set forth in Section 4.2 of this Agreement shall have been true and correct in all respects when made and shall be true and correct in all respects at and as of the Time of Closing as if such representations and warranties were made as of the Time of Closing.

(b) Approval of Court. The Court shall have issued final Orders approving the sale of the Property to Buyer.

ARTICLE IX

CONDEMNATION AND CASUALTY

Section 9.1. Condemnation. In the event of a condemnation proceeding affecting the Real Property or the Real Property Leases, Seller shall give Buyer immediate written notice of such proceeding, and if such condemnation would materially adversely affect the use of the Real Property or the Real Property Leases, Buyer shall have the right to rescind this Agreement and receive a refund of its earnest money deposit. If such condemnation does not materially adversely affect the use of the Real Property or the Real Property Leases on an aggregate basis or if Buyer does not elect to so rescind, this Agreement shall remain in full force and

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effect and Seller will credit to Buyer at Closing any monies received by Seller by reason of such taking; provided, however, at the mutual election of Buyer and Seller, Buyer shall receive from Seller an assignment of all Seller's right, title and interest in and to any condemnation award or offer related to the Property. Upon notice of condemnation, Buyer shall be permitted to participate in and control the proceeding as if Buyer were a party to the action. In such event, such condemnation shall not give rise to a right to rescind by either party, but the parties shall proceed to comply with all terms and conditions of this Agreement and the Closing shall take place as contemplated hereby.

Section 9.2. Risk of Loss and Insurance. If, prior to the Time of Closing, all or a substantial part of the Property is damaged by fire or by any other cause whatsoever, Seller shall promptly give Buyer written notice of such damage. After notice of such damage (from Seller or otherwise), Buyer shall have the option (i) to require Seller to convey the Property at the Time of Closing in its damaged condition and receive an assignment of all of Seller's right, title and interest in and to any claims Seller may have against any responsible parties and/or under the insurance policies covering the Property with the Purchase Price being reduced by the amount of applicable deductibles under such policies, the payment of which deductibles shall thereupon become the liability of the Buyer; or (ii) to terminate this Agreement and receive a refund of all earnest money paid by Buyer pursuant to Section 3.2 of this Agreement.

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ARTICLE X

REMEDIES

Section 10.1. Remedies of Buyer. In the event Seller shall refuse to convey all or any part of the Property or to perform any obligation required of Seller under this Agreement, which refusal is not based upon Orders of the Court or advice of counsel for the bankrupt estates that such conveyance or performance or nonperformance is not authorized or would be a breach of the Seller's duties as Trustee for the bankrupt estates, then Seller may be liable for damages for such refusal and shall be subject to actions for damages and/or specific performance. A refusal by Seller to convey all or any part of the Property or to perform any obligation required of Seller under this Agreement, which refusal is based upon Orders of the Court or upon advice of counsel as set forth above, shall not give Buyer a right to a separate action to sue for damages or specific performance, but shall give Buyer only such rights or remedies as Buyer may have within the bankruptcy cases.

Section 10.2. Remedies of Seller. In the event that Buyer fails or refuses to close the purchase of the Property pursuant to the terms and conditions of this Agreement, Seller shall be entitled to retain the earnest money deposit as liquidated damages inasmuch as damages as a result of such breach hereunder cannot be calculated with any degree of certainty for having the Property withheld from the market and for all Seller's expenses incurred hereunder; or at Seller's option, to bring an action against Buyer for specific performance of this Agreement.

ARTICLE XI

MISCELLANEOUS PROVISIONS

Section 11.1. Notice. All notices and other communications required or permitted under this Agreement shall be deemed to have been

duly given and made if in writing and if served either by personal delivery to the party for whom intended or by being deposited, postage prepaid, certified or registered mail, return receipt requested, in the United States mail bearing the address shown in this Agreement, or such other address as may be designated in writing hereafter by such party:

If to Seller: John F. Curry, Trustee
Hilton Head Holding Corp.
Highway 278 at Wexford Gate - Bldg. B
P. O. Drawer 7000
Hilton Head Island, South Carolina 29938

with a copy to: John C. West, Esq.
West and West, P.A.
P. O. Drawer 13
Hilton Head Island, South Carolina 29938

If to Buyer: Peter W. Bauman, President
Sea Pines Associates, Inc.
9 Bald Eagle Road
Hilton Head Island, SC 29928

with a copy to: Jones, Scheider & Patterson, P.A.
William W. Jones, Jr., Esquire
P. O. Box 7049
Hilton Head Island, SC 29938

Section 11.2. Entire Agreement. This Agreement, the exhibits hereto, and the documents referred to herein embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, oral or written, relative to said subject matter.

Section 11.3. Binding Effect; Assignment. This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon Seller, its successors and assigns, and Buyer, its successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be transferred or assigned

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(by operation of law or otherwise) by Buyer without the prior written consent of Seller. Any transfer or assignment of any of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect.

Section 11.4. Captions. The Article and Section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provision hereof.

Section 11.5. Waiver; Consent. This Agreement may not be changed, amended, terminated, augmented, rescinded or discharged (other than by performance), in whole or in part, except by a writing executed by the parties hereto, and no waiver of any of the provisions or conditions of this Agreement or any of the rights of a party hereto shall be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given or consented thereto. Except to the extent that a party hereto may have otherwise agreed in writing, no waiver by that party of any condition of this Agreement or breach by the other party of any of its obligations or representations hereunder or thereunder shall be deemed to be a waiver of any other condition or subsequent or prior breach of the same or any other condition, obligation or representation by the other party, nor shall any forbearance by the first party to seek a remedy for any noncompliance or breach by the other party be deemed to be a waiver by the first party of its rights and remedies with respect to such noncompliance or breach.

Section 11.6. No Third Party Beneficiaries. Subject to Section 11.3 hereof, nothing herein, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal

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entity, other than the parties hereto, any rights, remedies or other benefits under or by reason of this Agreement.

Section 11.7. Counterparts. This Agreement may be executed in counterparts, which together shall constitute a single instrument. The parties may execute multiple copies of this Agreement, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 11.8. Gender. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine or neuter gender.

Section 11.9. Governing Law. This Agreement shall in all respects be construed in accordance with and governed by the laws of the State of South Carolina and the United States.

Section 11.10. Time of Essence. Time is of the essence of this Agreement.

Section 11.11. Special Provisions. Exhibit 11.1 contains specific provisions which pertain to the Property. The specific provisions of Exhibit 11.11 control over any more general provisions in this Agreement which may conflict therewith.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

AS TO BUYER:

Signed, sealed and delivered
this 15th day of October,
19 84.

Witness

BUYER: SEA PINES ASSOCIATES, INC.

By _____
Title President

And by _____
Title Secretary, Asst.

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Patricia Ann Moten
Witness

AS TO SELLER:

Signed, sealed and delivered this 22nd day of October, 1987.

Witness

Witness

SELLER:

By _____
John F. Curry, Trustee in Bankruptcy for Hilton Head Holdings Corporation

JSP

FILED AT 4:52 O'CLOCK P.M. BEAUFORT COUNTY S.C. RECORDED IN BOOK 490 PAGE 463
NOV 17 1987
REGISTER OF MESNE CONVEYANCE

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EXHIBIT G

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date): 11-17-1987
in OR Book 490 Page 712
This document contains 43 pages.
Pamelia Barker
Register of Deeds - Beaufort County, SC
Oct 8, 2021

J S & P/J P S
16

vc 712

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS (hereinafter "Assignment"), made this 17th day of November, 1987, by and between JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation, debtor in Case Number: 86-03871, United States Bankruptcy Court, District of South Carolina, and HILTON HEAD LIQUIDATION CORP. f/k/a SEA PINES PLANTATION COMPANY, debtor in Case Number: 86-03885, United States Bankruptcy Court, District of South Carolina, (hereinafter "Assignor") and SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation (hereinafter "Assignee"),

W I T N E S S E T H:

WHEREAS, on October 22, 1987 Assignor and Sea Pines Associates, Inc., a South Carolina corporation (hereinafter "Buyer") did enter into an agreement entitled "Asset Purchase Agreement" (hereinafter "Agreement") wherein Buyer agreed to purchase and Assignor agreed to sell certain assets in Sea Pines Plantation (hereinafter "Sea Pines Plantation") consisting of real and personal property, tangible and intangible, owned by the Trustee for the above-referenced debtor corporations (hereinafter "Assets") pursuant to and in accordance with Orders of United States District Judge Solomon Blatt, Jr. dated October 22, and October 26, 1987, as part of that certain adversary proceeding entitled "John F. Curry, Trustee, Plaintiff, vs. Beaufort County Treasurer, et al., Defendants" (Case Number: 87-0232), United States Bankruptcy Court, District of South Carolina, arising out of the Chapter 11 bankruptcy proceedings involving

INITIALS

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Gardner-Matthews Plantation Company (Case No. 86-03801), Hilton Head Hotel Company (Case No. 86-03803), Vacation Resorts Holding, Inc. (Case No. 86-03804), Vacation Resorts, Inc. (Case No. 86-03805) and Hilton Head Holdings Corporation (Case No. 86-03871), Debtors, which orders authorized sale of the Assets free and clear of liens, encumbrances and other interests; and

WHEREAS, Buyer has assigned all of its rights and interests in and to said Agreement to Assignee herein; and

WHEREAS, pursuant to the Agreement, Assignor must convey to Assignee certain rights, powers and privileges originally held by the Sea Pines Plantation Company, its successors and assigns (hereinafter "Company") and now held by Assignor pursuant to recorded covenants and restrictions encumbering the lands of Sea Pines Plantation including the "Declaration of Covenants and Restrictions by Sea Pines Plantation Company, Inc.", dated September 7, 1974 as recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 224 at Page 1036 (hereinafter "74 Covenants"), the "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, etc. which Constitute the Covenants, Running with certain Lands of Sea Pines Plantation Company" dated April 1, 1970 and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 173 at Page 46 (hereinafter "Class "A" Covenants"), the "Restatement and Assignment of Rights, Restrictions, Affirmative Obligations and Conditions which Constitute Covenants Running with the Land in Sea Pines Plantation" dated February 8, 1984 and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Deed Book 390 at Page 179 (hereinafter "Restatement"); and the "Memorandum of Agreement" executed between the Company and the Association of Sea Pines

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Plantation Property Owners dated February 8, 1984 (hereinafter "Memorandum of Agreement"); and

WHEREAS, the parties acknowledge that said rights, powers and privileges are valuable and ownership, management and control of same is essential to Assignee in order to effectively manage, own and operate the Assets;

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby quit claim grant, bargain and assign to Assignee, without any recourse whatsoever, (i) all of its rights as "Company" pursuant to the above-referenced Covenants and Restrictions as hereinafter set forth, and (ii) all other rights Assignor may have necessary and incidental to the proper ownership, management and operation of the Assets, including the following specified rights, powers and privileges:

1. In accordance with the terms of the Agreement, Assignor intends to convey and/or assign to the NFP Entity, the common properties and the responsibility to operate and maintain same and to perform certain community services as referred to in the 74 Covenants. If, at any time hereafter, the NFP Entity, or its assignee or successor, fails (in the reasonable discretion of Assignee) to perform community services as referenced above, in an adequate and timely manner, in all or in any portions of Sea Pines Plantation, then Assignee shall have the right (but not the duty) after fifteen (15) days written notice to and failure to cure or diligently commence to cure such lack of performance within ten (10) days of receipt of such notice on the part of the NFP Entity or its assignee or successor, to perform, correct or otherwise cause the

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performance of the particular community service and to credit the actual cost of such performance against any community services assessment or adjusted gross resort revenue contribution as defined in the 74 Covenants and as may be due from Assignee. The transfer of the obligation and responsibility to perform Community Services to the NFP Entity or any other assignment by Assignor shall be subject to rights of Assignee as set forth herein.

2. Those certain rights and privileges reserved to the "Company" by Article II, Section C(1) of the 74 Covenants to make "minor changes" in golf course land and any other land use category as defined in the 74 Covenants with regard to the property to be conveyed by Assignor to Assignee as set forth in the Agreement.

3. All of its "right of repurchase," in regard to all properties within Sea Pines Plantation as more particularly described in any Restrictions and/or Declarations of record in Beaufort County, South Carolina including those certain Declarations, Covenants and/or Restrictions recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Deed Book 172 at Page 316, Deed Book 260 at Page 1143, Deed Book 209 at Page 1745, and in Deed Book 173 at Page 46; and like Declaration of Covenants of the Sea Pines Plantation Company as Declarant for Class "A" Single Family Residential Areas and Multi-Family Residential Areas within Sea Pines Plantation.

4. All rights reserved unto the "Company" in the Restatement except those granted by Paragraph 3(h) including but not limited to the right to approve the consolidation or subdivision of any lots or other parcels in Sea Pines Plantation. The creation of any density units arising out of the consolidation of lots shall be owned or used at the discretion of Assignee,

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subject however, to the provisions of the Sea Pines Master Plan and recorded covenants and any other applicable restrictions or laws or ordinances.

5. In order to provide adequate run-off of surface water consistent with sound golf course management principles, the right (but not the duty) to direct and control the water level of all lagoons and drainage canals within Sea Pines Plantation that affect the golf course drainage and the right to control all Drains, (as defined in Article II, Paragraph 1 of the 74 Covenants), tidal gates, risers, pumps, valves and any and all other drainage control devices or equipment which are essential to raising or lowering water levels affecting drainage of the golf courses. This right to control drainage includes the right (but not the duty) to maintain all lagoons, water courses, ditches, channels, pipes, culverts, trenches, and all equipment or machinery associated with any and all portions of the drainage system within Sea Pines Plantation that affects the golf courses. Any conveyance by the Assignor of any properties in Sea Pines Plantation to the NFP Entity or any other entity or person shall be made subject to the rights set forth herein.

6. The right to connect roads and driveways, rights-of-ways and easements constructed by Assignee or on property owned by Assignee within Sea Pines Plantation with any other roads or rights-of-ways within Sea Pines Plantation (and the right to install curb cuts on such rights-of-ways), and the right to relocate roadways, easements and rights-of-ways to the extent any such relocation shall not affect the rights of other owners of property within Sea Pines Plantation, and the right to make connections with and to all existing utilities and drainage facilities within Sea Pines Plantation.

7. All rights under the Class "A" Covenants and any and all Sea Pines

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Plantation restrictive covenants related to the ownership and operation of the golf courses and other recreational amenities being purchased by Assignee.

8. Assignor recognizes and acknowledges the necessity of clearly setting forth the rights of Assignee in and to the roadways, entrance ways and gates of Sea Pines Plantation, to enable Assignee to operate its Assets and to achieve optimum revenues and cash flows and to promote the use of its recreational and resort facilities including golf courses, tennis courts, beach facilities, and lodging facilities, consistent with the purpose, intent and scheme of development as set forth in the 74 Covenants. Assignor has the right to establish and control gate policies and assign same in accordance with the 74 Covenants. In recognition of the rights of Assignor set forth herein, Assignor does agree, with respect to the Assets being acquired by Assignee, to restrict its rights and the rights of any of its successors or assigns to change the gate policy in any manner that would in any way adversely affect Assignee's ability to own and operate its Assets within Sea Pines Plantation that it is acquiring from Assignor. Accordingly, by and through these presents, Assignor does establish and designate that certain gate policy which is attached to this Assignment as Exhibit "A" (hereinafter "Policy") as the existing gate policy currently being adhered to in Sea Pines Plantation. Assignor hereby assigns to Assignee, its successors and assigns, its rights of access through the gates of Sea Pines Plantation and over the roadways within Sea Pines Plantation as set forth in the Policy, and hereby covenants that neither Assignor nor any successor of Assignor to either its rights to control gate policy or as owner of the fee in the roadways and gates within Sea Pines Plantation, will impose or institute any change to the Policy that in any way further restricts Assignee or

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Assignee's guests, agents, invitees, employees, contractors, subcontractors, successors, assigns or other persons consistent with the Policy, from entering through the gates of Sea Pines Plantation and traveling over any of the roadways within Sea Pines Plantation to reach, utilize and enjoy any of the Assets, unless such action or change is consented to in writing by Assignee. Examples of actions that would be deemed to be unauthorized restrictions of Assignee's rights to access would include but not be limited the following:

i. The imposition of any higher fees to enter the gates of Sea Pines for Assignees, its successors, assigns, agents, employees, contractors, subcontractors, invitees, or any other authorized personnel of Assignee entering Sea Pines Plantation for use of or service to the Assets.

ii. The re-routing or special routing of traffic attempting to reach the Assets.

iii. Any requirement to obtain any special decals or authority except as set forth in the Policy.

iv. Any limitation on the time that access is allowed beyond that set forth in the Policy.

v. The requirement of any special advance notice to enter the gates beyond those set forth in the Policy.

Contemporaneous with the execution of this Assignment of Rights, Assignor shall grant to Assignee, its successors or assigns, an easement appurtenant to all of its Assets within Sea Pines Plantation consistent with the provisions herein. Any subsequent conveyance by Assignor of any of its rights to control the gate policies for Sea Pines Plantation or any conveyance of Assignor of the roadways and gates of Sea Pines Plantation shall be made subject to this Assignment of Rights, the Policy attached hereto and the easement

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granted by Assignor to Assignee as more fully described above and as set out in a separate document entitled "Easement for Access."

9. All of Assignor's rights as Company under the 74 Covenants to call and/or approve a "Referendum" as defined in the 74 Covenants.

10. The non-exclusive assignment of Assignor's rights, if any, to enforce all covenants and restrictions affecting any properties in and outside Sea Pines Plantation, save and excepting any covenants and restrictions affecting subdivisions commonly known as Point Comfort and North or South Forest Beach.

11. All rights Assignor may have to the extent not inconsistent with any covenants, regulations, agreements, laws, ordinances or otherwise to license and maintain real estate and rental offices within the improvements and on any properties being purchased by Assignee.

12. All rights of ownership in the most current Master Plan of Sea Pines Plantation including the right to initiate, seek and/or approve any proposed change in such and the rights to any and all approvals and/or development rights granted by any regulatory authority and the right, in the event of an appeal of a decision of the Sea Pines Architectural Review Board, for Assignee to appoint an arbitrator to hear such appeal, to the extent such right currently exists in Assignor pursuant to the ASPPPO Settlement Agreement.

13. Assignor's non-exclusive right to plant trees, plants and shrubs; to provide and ensure adequate drainage ways, canals or lagoons; to cut fire breaks; to utilize controlled burning to prevent build-up of excessive "ground fuel" and underbrush contributing to severe damage from uncontrolled forest fires, as described in Article II(B)(1) of the 74 Covenants.

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14. The non-exclusive right to make minor changes in the boundaries of the various categories of designated areas as defined in and limited by Article II(B)(5) of the 74 Covenants.

15. All rights of reversion and/or other future interests in real property, contract rights, personal property or intangibles which are not disposed of upon the winding-up of the Bankruptcy Estate and the dissolution of Hilton Head Liquidation Corp.

The preamble to this Assignment is incorporated herein by reference.

All references to Assignee are intended to include Assignee, its successors and assigns and Buyer, its successors and assigns.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first above written.

WITNESSES:

Carol P. Cramer

Louise R. Lund

ASSIGNOR:

By: John F. Curry
JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation

PINE:RIGHTS1-3:11/15/87bsl
(9th draft)

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me, the undersigned witness, who, on oath, says that s/he saw the within named JOHN F. CURRY, Trustee in Bankruptcy for Hilton Head Holdings Corporation, sign, seal, and as his act and deed, deliver the within written Instrument, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.

Louise R. Lund

SWORN to before me this 17th
day of December, 1987.

Carol P Cramer
Notary Public for South Carolina
My Commission Expires: 11/4/93

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EXHIBIT "A"

GATE POLICY

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GATE POLICY

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SECTION IV

POLICY FOR ISSUANCE OF GATE PASSES

4.01 Visitor Passes (Non-Commercial)

4.01.1 No Charge.

Visitor Passes can be authorized for the following individuals and their guests at no charge:

- Sea Pines Property Owners
- Long Term Renters in Sea Pines
- Employees of the Company (herein defined in Section 4.01.1.6), or other businesses operating commercial lands within Sea Pines Plantation who contribute to the Community Trust Fund according to the provisions of the 1974 Covenants or according to other provisions as contained herein.
- Clients of and/or Real Estate Agents showing property under special circumstances.
- Clients of participating commercial land owners and businesses (see 4.03.4).

4.01.1.1 Sea Pines Property Owners.

When a Property Owner arrives at the Security Office or Sea Pines Welcome Center desiring a temporary pass (arrived with a rental vehicle, traveling with friends, etc.) they should present a Property Owner's ID with their picture on it for verification. If they have one of the old ID's (without a picture) another form of ID should be required and then the Property Owner listing should be checked. The ID's (with the pictures on them) that are not expired are to be honored when carried by the Property Owner without further ID or checking.

4.01.1.2 Government Officials.

U.S. Government Officials, State of South Carolina Officials, Beaufort County Officials and Town of Hilton Head Officials showing valid identification will be admitted through the Gates without having to return to the Security Office to be cleared. If they do go to the Security Office, on presentation of proper identification as an Official of one of the above agencies, they will be issued a daily Gate Pass. Vehicles having an official seal of any of the above agencies as well as vehicles with the following special decals, (1) Utility Company, (2) Hilton Head Holdings and (3) Town of Hilton Head, will be admitted through the Gates without the need for a daily pass.

4.01.1.3 Marriott Ownership Resorts, Inc. (herienafter called "MORI").

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MORI is defined as the Time Share units at Monarch, Swallowtail, Spicebush and some units in the following:

Ketch Court	Plantation Club Villas
Twin Oaks	Port Villas
Racquet Club	Night Heron

MORI will periodically draw passes from the Sea Pines Welcome Center based on their anticipated needs. The owner of the Time Share will receive a pass at the Marriott Welcome Center Office for the length of their stay in the Plantation. (MORI Owners DO NOT receive Sea Pines Property Owner Decals). The passes will be stamped "MARRIOTT GUEST".

Short Term Rentals of MORI are those who rent for one or more nights and are given the same pass as an owner since they are placed in a vacant owner unit or an unsold MORI owned unit.

"TOUR PROSPECTS" are those brought in by MORI to take the Sales Tour and are given a $3.00 daily pass already purchased by MORI.

4.01.1.4 Seascape Owners.

Only original owners of Seascape will be issued free passes. They must present an original owner's ID card. They cannot get guest passes for their friends or guests.

4.01.1.5 Harbour Town Merchants Courtesy Pass.

If a guest comes to the gate with one of the Harbour Town Merchants Courtesy Passes, the guest will be turned into the Officer on duty and the person allowed to enter the Plantation during the hours of 9:00 A.M. and 5:00 P.M., Monday thru Friday.

4.01.1.6 Sea Pines Plantation Company, Inc. (the "Company").

Wherever used in this Gate Policy the term "Company" shall mean SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation, its subsidiaries, successors and assigns including Sea Pines Real Estate Companies, Inc. and all related entities.

The Company has the right to cause the issuance, at no charge to the Company, of annual gate passes for all Company Directors, Officers and employees, to include Company consultants, real estate sales agents and contractors other than those serving in a temporary capacity, in which case temporary passes may be issued. The Company further reserves the right to issue annual or temporary passes to a limited number of Public Officials holding either Town, County, State or Federal Office. The above-described passes will be issued by the Sea Pines Security Office upon the request and authorization of designated Company Officials.

The Company has the right to issue or cause to be issued at no charge to the Company, temporary guest passes to the following categories of Company guests or business clients:

a. Company lodging guests.
b. Business clients of the Company.
c. Real Estate clients of the Company.
d. Visiting VIP's and social guests at company sponsored functions.

The above categories of passes will be issued at the Company managed Welcome Center unless otherwise agreed to by the Company and/or its successors. In addition to the above gate pass authority, Paragraphs 4.01.1; 4.01.1.4; 4.01.1.6; and 4.01.1.7 are applicable to the Company and its tenants. In the event of sale of the Company or its major assets, its successors shall have all the rights, privileges and obligations as expressed in this policy, subject to their acceptance and adherence to the terms of funding Community Services, stated in Article III, Paragraph B of the Declaration of Covenants and Restrictions by Sea Pines Plantation Company, Inc. dated September 7, 1974.

4.01.1.7 Company Real Estate Clients.

All requests must come from Company Sales Agents and given to the Welcome Center Real Estate Receptionist.

The passes are good for one day only if picked up before 2:00 P.M. After that, the pass will be issued for two days (the current and the following day).

The receptionist will log the agent and client's name for follow-up by the Broker-in-Charge.

This temporary pass is for Company prospects only. Each agent is urged to tour with the prospect personally.

4.02 General Information for Temporary Passes.

4.02.1 Who Can Arrange for Passes.

Passes can be arranged for guests either in person at the Sea Pines Welcome Center or by telephone (785-8004) by Sea Pines Property Owners, Long Term Renters in Sea Pines, MORI Time Share Owners and by Company and its employees. Passes are to be issued for a period not to exceed two (2) weeks.

4.02.2 Renewal of Passes.

When passes are issued at the Welcome Center, if they are subject to

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renewal, it will be indicated on the reverse side with a large "R" and the issuing employee's initial.

4.02.3 Issuing of Passes at the Security Office.

Passes may be issued by the Security Office to Sea Pines Property Owners only, while they are traveling in rented/borrowed vehicles or they do not have proper documentation for the issuance of Property Owner Decals. Other passes as may be authorized by the Director.

4.02.4 Colors for Temporary Passes.

The following color for temporary passes will be used for the month indicated unless otherwise instructed by the Director. The color will be issued as indicated starting the FIRST of every month.

January/July .....RED
February/August .....GREEN
March/September .....YELLOW
April/October .....ORANGE
May/November .....BEIGE
June/December .....BLUE

4.03 Daily Commercial Passes.

Basically are issued to anyone not covered in the above instructions.

4.03.1 $3.00 Daily Pass.

Is the charge for four (4) wheel vehicles used by:

All construction workers not working for Sea Pines Company itself.
Contractors and Island Resident Guests.
Tennis or Golf patrons.
Charter Boat patrons.
Retail or Restaurant Customers and visitors or tourists not otherwise provided for herein.

4.03.2 $15.00 Daily Pass.

Is the charge for commercial vehicles with more than four (4) wheels, excluding buses. (see below)

4.03.3 Special Temporary Pass for Contractors.

A pass will be issued to contractors who have purchased the proper commercial decal but due to an accident, breakdown, etc. do not have that vehicle available for a limited time (not to exceed seven days). The Gate Officers will admit them for the period shown on the pass. All passes will be dated and signed by Security Office personnel.

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4.04 $25.00 Bus Passes.

All buses that do not have a permanent Commercial Decal are charged $25.00 for a daily pass. Buses are required to use the Greenwood Gate for entry except for those groups sponsored by the Hilton Head Inn/Sea Scape Guest Convention Services and cleared by proper authority, who may use the Ocean Gate.

4.04.1 Special Information

Bus Drivers and/or Tour Guides will be given the following information (as a printed handout by the duty Dispatcher) together with their daily pass:

"Welcome to Sea Pines Plantation:

There are a few rules we ask you and your group to follow while visiting us:

A. You are authorized to discharge/pickup your passengers at the Sea Pines Center, Harbour Town or South Beach Marina Conference Center only.

   After discharging your passengers, you are to exit the plantation via the Greenwood Gate and park outside the Plantation until time to pickup your passengers.

B. Use the Greenwood Gate only, proceed on Greenwood Drive to Greenwood Circle. If you are going to either the Sea Pines Center or Harbour Town, take the first exit (Lighthouse Rd). If you are going to South Beach Marina, take the second exit (Greenwood Drive), proceed to South Sea Pines Drive, then on to South Beach Marina.

C. There are no tours of the Plantation allowed, remain on the above roads as directed.

D. Do not park along roadsides, Beach walkways or in residential areas.

E. Camping and picnics are prohibited.

F. This pass is not valid for swimming pools, playgrounds, fishing or Beach Club facilities.

G. It is a violation of FEDERAL LAW to feed or otherwise disturb alligators.

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4.05 Bicyclist Passes.

The bicycle paths located within Sea Pines Plantation were constructed with "private" moneys and as such are for the enjoyment of Sea Pines Property Owners, their dependents and guests (of property Owners and/or rental agencies) while residing within Sea Pines Plantation. "Outside" bicycles are not allowed entry.

4.05.1 Sea Pines Owners/Dependents and Guests While Residing in Plantation.

A bicyclist, upon departing from the Plantation, will receive a temporary pass from the Gate Officer which will allow them to re-enter the Plantation with their bicycle. This pass is ONLY for property owners, their dependents and guests (of property owners and/or rental agencies) while temporarily residing within Sea Pines Plantation.

4.06 Entry for Special Sports Events.

Free guest entry into Sea Pines will be granted upon authorization by Company to all ticket holders, authorized guests, participants, sponsors, volunteers and equipment or service suppliers for major annual sports events such as the MCI Heritage Golf Classic; the Family Circle Tennis Tournament; the International Seniors Golf Tournament and to a limited number of other sports events sponsored by the Company or its successor.

4.07 Entry for Scheduled, Civic, Cultural, Religious or Educational Meetings or Events.

Free guest passes will be issued upon a list of names delivered to the Security Office forty-eight (48) hours in advance along with the name and description of the event and its purpose submitted by the Sponsoring Property Owner.

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SECTION V

POLICY FOR ISSUANCE OF DECALS

5.01 General Information

The issuance of decals will be under the control of the Company Administrative Office and will be governed by the following policies:

5.01.1 Definition of 'Commercial' Type Vehicle

For the purposes of this manual and for the issuance of decals, the following are defined as 'Commercial' vehicles and will be issued "Commercial Decals":

a. All flat-bed/stake body trucks.
b. All trucks with a load capacity of more than 1½ tons.
c. All vehicles with permanent lettering/logos on them.
d. All vehicles utilized in providing a delivery service of supplies or equipment to property owners, long term residents, commercial establishments, etc.
e. All vehicles utilized in providing a service to property owners, long term residents, commercial establishments, etc. within Sea Pines Plantation for a livelihood/profit.
f. All vehicles utilized in providing transportation, tours, and sight-seeing services. (See paragraph 5.07.1)
g. All vehicles with work accessories attached or fastened thereto i.e., ladders, pipe racks, tool boxes, etc.
h. In the event of a vehicle not specifically falling within the categories, the Director of Sea Pines Security or an authorized Sea Pines Security Officer will make the final determination as to whether or not the vehicle should be classified as a "Commercial" type.

5.01.2 Definition of Recreational (RV) Vehicle

For the purposes of this manual, a vehicle that is either towed or self propelled, designed with living and sleeping facilities, and/or equipped with water/sewage/electrical hookups, considered to be a self-contained unit, is deemed to be a Recreational Vehicle and as such is not entitled to receive a decal.

A recreational Vehicle may be authorized entry into the Plantation for a maximum of four (4) hours for the purposes of loading and unloading only.

Some vans have large, picture type, side windows and are "fancied up" on the inside and may be classified as an RV for the purchase of a state vehicle licenses, however, as long as they do not project an image of a living and sleeping facility, they will not be treated as

an RV.

5.01.3 Vehicles Not Authorized to Park Overnight in the Plantation

a. Commercial vehicles (see paragraph 5.01.1 above)
b. Recreational (RV) vehicles (see paragraph 5.01.2 above)
c. Dune Buggies (Not allowed entry at any time)
d. Motorcycles (Not allowed entry at any time)
e. Trailers of any kind, except by special permission when they are allowed to remain overnight on an unimproved lot while construction is being completed on that lot.
f. Boats of any kind, unless they can be placed within a closed garage.
g. Campers of any kind.

For a user fee, these vehicles (except boats) may be parked in an area Sea Pines Security has provided for the storage of these vehicles.

5.02 Property Owner Decals

5.02.1 Eligibility

Limited to Property Owners only.

Property owner decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.02.2 Number Authorized

No limit to number of decals issued, subject to the vehicles being registered in the name of the Property Owner/Spouse. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

5.02.3 Verification

Verification of property ownership will be done by the Administrative Office Staff. If the verification cannot be done by records held in the administrative office, Property Records (ext 454) will be called and verification requested from that office. If verification still cannot be accomplished, the property owner will be requested to furnish copies of the Closing Statement, Partnership Agreements, Deeds, etc. Decals will not issued until verification of property ownership is completed.

5.02.4 Documents required

To receive a decal, a valid vehicle registration (or a copy) must be presented. The vehicle must be registered to the property

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owner and/or spouse. If it is a company owned vehicle, it must be verified that the vehicle is for the private full time use of the property owner and not a 'Company Pool' vehicle.

5.02.5 How issued

The decal may be issued in person or by mail provided the above procedures have been completed.

5.02.6 Expiration

These decals will expire when determined by the Sea Pines Company in coordination with the Association of Sea Pines Property Owners and the Director of Security. (Usually every three to four years)

5.02.7 Charge

There is no charge to the Property Owner for their decal or replacement.

5.03 Dependent Decals

5.03.1 Eligibility

Must be a dependent child or step-child, unmarried, 21 years old or less (23 if still in college) of a Property Owner, living full time with parents, and other family members living in household full time.

Dependent decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.03.2 Number Authorized

No limit to number issued , subject to vehicles being registered in the name of the dependent. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

5.03.3 Verification

Verification of dependency will be done by the Administrative Office Staff. If the verification cannot be done by records held in the administrative office, the Property Owner will be contacted and requested to apply for their child and other family members.

5.03.4 Documents required

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the dependent child. The application for a decal must be counter-signed by the parent (Property Owner).

5.03.5 How Issued

The decal may be issued in person or by mail provided the above procedures have been completed.

5.03.6 Expiration

These decals will expire annually, on the last day of November.

5.03.7 Charge

There is no charge to the dependent for their decal or replacements.

5.04 Relative Decals

5.04.1 Eligibility

Limited to immediate family members of a Property Owner. "Immediate family member" is defined as the mother, father, sister, or brother of a Property Owner. Also included as an "immediate family member" are the children of Property Owners in any or all of the following categories:

1. Married
2. Over the age of
3. Not living full time with parents

Relative decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.04.2 Number Authorized

Two (2) decals may be issued for the family of each relative. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

5.04.3 Verification

Verification will be accomplished by the Administrative Office Staff. If the verification cannot be done by records held in the administrative office, the Property Owner will be contacted and requested to apply for their relative.

5.04.4 Documents Required

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the relative applying. The application must be counter-signed by the Property

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Owner.

5.04.5 How Issued

The decals must be applied for in person at the administrative office by the Property Owner.

5.04.6 Expiration

These decals will expire annually, on the last day of November.

5.04.7 Charge

There is a $3.00 charge for each decal issued. A replacement charge of $1.00 will be collected together with the old decal (or pieces).

5.05 Company Employees

5.05.1 Full Time Employees

5.05.1.1 Eligibility

Must be an employee of Company.

Employee decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use with the Plantation, it is for the employee's transportation to and from work.

5.05.1.2 Number Authorized

Two (2) decals may be issued to each employee. If a replacement decal is needed, the old decal (or pieces) must be turned in at the Security Administrative Office.

5.05.1.3 Verification

Verification of employment will be accomplished by the Administrative Office Staff, either by viewing an Employee's ID, or checking the printout of all employees. If verification cannot be accomplished by the above, the Human Resources Office (ext 372) will be contacted.

5.05.1.4 Documents Required

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the employee (or spouse). The application for a decal must be counter-signed by the employee's supervisor or the Director, Human Resources Office (or authorized staff member, Human

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Resources Office).

5.05.1.5 How Issued

Each new employee may be issued one decal by the Director, Human Resources Office (or authorized staff member) at the time of employment. Once completed, copies of the application will be forwarded to the Security Administrative Office.

All other employee decals (additions, renewals, deletions, changes, replacements, etc.) will be issued by the Security Administrative Office staff. During the annual renewal period, separate instructions will be published to all departments.

5.05.1.6 Expiration

These decals will expire annually, on the last day of November.

Upon termination of an employee, the decals must be scraped and returned to the Human Resources Office before the employee can be cleared. The Human Resources Office will notify the Security Administrative Office of the termination in order that the records can be adjusted.

5.05.1.7 Charge

There is no charge to the employee for their decal or a replacement.

5.05.2 Summer Seasonal Employees

5.05.2.1 Eligibility

Must be an employee of Company who has been hired as a "Summer Seasonal" employee.

Employee decals will not be issued for 'commercial type vehicles or RVs and are not intended to be used for any commercial use within the Plantation, it is for the employee's transportation to and from work.

5.05.2.2 Number Authorized

Two (2) decals may be issued to each employee. If a replacement decal is needed, the old decal (or pieces) must be turned in at the Security Administrative Office.

5.05.2.3 Verification

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Verification of employment will be accomplished by the Administrative Office Staff, either by viewing an Employee's ID, or checking the printout of all employees. If verification cannot be accomplished by the above, the Human Resources Office (ext 372) will be contacted.

5.05.2.4 Documents Required

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the employee (or spouse). The application for a decal must be counter-signed by the employee's supervisor or the Director, Human Resources Office (or authorized staff member, Human Resources Office).

5.05.2.5 How Issued

Each new 'Summer Seasonal' employee may be issued one decal by the Director, Human Resources Office (or authorized staff member) at the time of employment, the decal will be cut in half to designate it as a 'SUMMER SEASONAL EMPLOYEE' decal. Once completed, copies of the application will be forwarded to the Security Administrative Office.

All other employee decals (additions, renewals, deletions, changes, replacements, etc.) will be issued by the Security Administrative Office staff.

5.05.2.6 Expiration

These decals will expire as of September 15 each year. Upon termination of an employee, the decals must be scraped and returned to the Human Resources Office before the employee can be cleared. The Human Resources Office will notify the Security Administrative Office of the termination in order that records can be adjusted.

5.05.2.7 Charge

There is no charge to the employee for their decal or a replacement.

5.06 Long Term Renter Decal

5.06.1 Eligibility

Limited to Long Term Renters whose names appear on a written Lease Agreement. Also included are those renters at "Harbour House" who do not have a written Lease Agreement and whose names are on file in the Security Administrative Office.

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A Long Term Renter is defined as one who has a written Lease Agreement for six (6) months or more at the time they apply for a decal.

Long Term Renter Decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.06.2 Number Authorized

No limit to number of decals issued, subject to the vehicle being registered in the name as shown on the Lease Agreement. If a replacement decal is needed, the old decal (or pieces) must be returned to the Security Administrative Office.

5.06.3 Verification

Verification of a Long Term Renter will be accomplished by the Administrative Office Staff.

5.06.4 Documents Required

To receive a decal, a valid vehicle registration (or a copy) must be presented. The vehicle must be registered to the Long Term Renter (or spouse) and/or children (living full time with the renter). A copy of the Lease Agreement must be presented. If the vehicle is a company owned vehicle, it must be verified that the vehicle is for the private full time use of the renter and not a 'Company Pool' vehicle.

5.06.5 How Issued

The decal must be applied for in person at the administrative office.

5.06.6 Expiration

These decals will expire annually, on the last day of November.

5.06.7 Charge

There is no charge to the Long Term Renter for their decal or replacement.

5.07 Island Resident Decals

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5.07.1 Eligibility

Limited to those individuals who do not live in Sea Pines Plantation, but do live on Hilton Head Island or surrounding area at least six (6) months of the year. New applications must be signed by two (2) Sea Pines Property Owners, with address and phone number.

Local transportation, tour and sight-seeing companies may receive an "Island Resident Decal" vice a "Commercial Decal" upon their application for and the approval of their request by the Director of Security. His decision is final in this determination.

Island Resident Decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation except as provided for in the paragraph above.

5.07.2 Number Authorized

No limit to number of decals issued.

5.07.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.07.4 Documents Required

A completed Decal Application with the required signatures.

5.07.5 How Issued

The decal must be applied for in person at the Administrative Office.

5.07.6 Expiration

These decals will expire annually, on the last day of November.

5.07.7 Charge

There is a charge for these decals which is determined prior to November 1st of each year.

5.08 Island Clergy (Island Resident Decal)

5.08.1 Eligibility

Limited to those individuals who are ministers of an organized church on Hilton Head.

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Island Clergy decals will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation, rather, they are intended to be used by the Clergy to visit with their church members.

5.08.2 Number Authorized

Limited to one (1) decal.

5.08.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.08.4 Documents Required

A completed Decal Application and a valid vehicle registration (or a copy) which must be in either the name of the minister or in the name of the church.

5.08.5 How Issued

The decal must be applied for in person at the Administrative Office.

5.08.6 Expiration

These decals will expire annually, on the last day of November.

5.08.7 Charge

There is no charge for these decals.

5.09 Sea Brook Residents (Former Sea Pines Property Owners)

5.09.1 Property Owner Decals are authorized for those individuals who were former owners in Sea Pines Plantation, but now live in Sea Brook. All other residents of Sea Brook are eligible for 'Island Resident' Decals and will be charged the same as other desiring an Island Resident Decal.

Property Owner Decals for this category will not be issued for 'commercial type' vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.09.2 Number Authorized

Limited to two (2) decals. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

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5.09.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.09.4 Documents Required

To receive a decal, a valid vehicle registration (or a copy) must be presented. The vehicle must be in the name of the former property owner (or spouse) and the address on the registration be for Sea Brook.

5.09.5 How Issued

The decal must be issued in person or by mail provided the above procedures have been completed.

5.09.6 Expiration

These decals will expire when determined by the Association of Sea Pines Property Owners and the Director of Security. (Usually every three to four years.)

5.09.7 Charge

There is no charge to the former owner for their decal or replacement.

5.10 Six Oaks Cemetery Plot Owners

5.10.1 Eligibility

Island Resident Decals are authorized to the Principal Heir of a deceased buried in the Six Oaks Cemetery. (Other family members will be issued a One-day Pass as needed.)

Decals for Six Oaks Cemetery Plot Owners will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.10.2 Number Authorized.

Limited to one (1) decal. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

5.10.3 Verification.

Verification will be the responsibility of the Administrative Office Staff. (Check with the Asst V.P. of Community Services)

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5.10.4 Documents Required.

To receive a decal, a valid vehicle registration (or a copy) must be presented. The vehicle must be registered in the name of the owner of the plot(s).

5.10.5 How Issued.

The decal may be issued in person or by mail provided the above procedures have been completed.

5.10.6 Expiration.

These decals will expire annually, on the last day of November.

5.10.7 Charge.

There is no charge to the owner of a plot(s) for their decal or replacement.

5.11 Seascape Owners (Original).

5.11.1 Eligibility.

Island Resident Decals are authorized for those individuals who are original owners of Seascape property.

A decal will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation.

5.11.2 Number Authorized.

Limited to two (2) decals. If a replacement decal is needed, the old decal (or pieces) must be returned to the Administrative Office.

5.11.3 Verification.

Verification will be the responsibility of the Administrative Office Staff thru the use of the Property Owner's Computer Printout. This is accomplished by reading the "Account #" which is an eight (8) digit numeric code. (i.e., 7-00000-01; 7-00000-02; 7-00000-03. The portion underlined indicates the number of times the property has been owned, 01 is the first (original) owner).

5.11.4 Documents Required.

To receive a decal, a valid vehicle registration (or a copy) must be presented. The vehicle must be in the name of the Seascape property owner (or spouse).

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5.11.5 How Issued.

The decal may be issued in person or by mail provided the above procedures have been completed.

5.11.6 Expiration.

These decals will expire when determined by the Association of Sea Pines Property Owners and the Director of Security. (Usually every three to four years)

5.11.7 Charge.

There is no charge to the Seascape owner for their decal or replacement.

5.12 Sea Pines Public Service District Employee (Island Resident Decals).

5.12.1 Eligibility.

Must be an employee of Sea Pines Public Service District.

Island Resident decals will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation, it is for the employee's transportation to and from work.

5.12.2 Number Authorized.

Two (2) decals may be issued to each employee. If a replacement decal is needed, the old decal (or pieces) must be turned in at the Security Administrative Office.

5.12.3 Verification.

Verification of employment will be accomplished by the Administrative Office Staff, of the Sea Pines Public Service District.

5.12.4 Documents Required.

To receive a decal, a valid vehicle registration (or copy) must presented. The vehicle must be registered to the employee (or spouse). The application for a decal must be countersigned by the employee's supervisor.

5.12.5 How Issued.

Must be applied for either by the Supervisor or in person at the Administrative Office.

During the annual renewal period, separate instructions will be furnished to the Sea Pines Public Service Administrative Office.

5.12.6 Expiration.

These decals will expire annually, on the last day of November.

Upon termination of an employee, the decals must be scraped and returned to the Security Department Administrative Office.

5.12.7 Charge.

There is no charge to the employee for their decal or a replacement.

5.13 Sea Pines-Forest Beach Fire Department Employees (Island Resident Decals.

5.13.1 Eligibility.

Must be an employee of Sea Pines-Forest Beach Fire Department.

Island Resident decals will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation, it is for the employee's transportation to and from work.

5.13.2 Number Authorized.

Two (2) decals may be issued to each employee. If a replacement decal is needed, the old decal (or pieces) must be turned in at the Security Administrative Office.

5.13.3 Verification.

Verification of employment will be accomplished by the Administrative Office Staff, of the Sea Pines Forest-Beach Fire Department.

5.13.4 Documents Required.

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the e@ployee (or spouse). The application for a decal must be countersigned by the Chief/Asst. Chief (or their authorized representative) of the Sea Pines-Forest Beach Fire Department.

5.13.5 How Issued.

Must be applied for either by the Supervisor or in person at the Administrative Office.

During the annual renewal period, separate instructions will be

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furnished to the Sea Pines-Forest Beach Fire Department.

5.13.6 Expiration.

These decals will expire annually, on the last day of November.

Upon termination of an employee, the decal must be scraped and returned to the Security Department Administrative Office.

5.13.7 Charge.

There is no charge to the employee for their decal or a replacement.

5.14 Commercial Decals.

Commercial decals authorize entry Monday thru Saturday, 7:00 a.m. to 7:00 p.m. Entry is not allowed on Sunday or between the hours of 7:00 p.m. to 7:00 a.m. except as authorized by the the Director of Security. A special "strip" may be authorized in some cases which will allow entry from 7:00 a.m. to 9:30 p.m. and Monday thru Sunday. Other persons wishing to enter the Plantation after these hours, and for business purposes only, must stop at the Security office for clearance.

5.14.1 Definition.

A commercial decal is required by all persons doing business inside Sea Pines Plantation.

5.14.2 Number Authorized.

There is no restriction on the number of commercial decals, except as noted.

5.14.3 Expiration.

Commercial decals will expire annually, on the last day of November.

5.14.4 Charge.

Charges for commercial decals are placed in six (6) general categories:

	ANNUAL CHARGE.
Employees of Sea Pines Property Owners	$ 0.00
Newspaper Delivery Persons	0.00
Employees of Sea Pines Merchants	25.00
Autos, pick-up trucks and similar size vehicles	50.00
Vehicles with six (6) wheels (Dual wheel)	150.00
Vehicles with more than (6) wheels	250.00

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The above charges are normally pro-rated (half-price) in June of each year. (Employees of Sea Pines Merchants to the next highest dollar.)

5.14.5 Employees of Sea Pines Property Owners.

5.14.5.1 Eligibility

Limited to those individuals who work for one or more Sea Pines Property Owner a minimum of three days per week. To include but not limited to, maids. Nurses in special cases as approved by the Director.

A decal in this category will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation, it is intended for the employees transportation to and from work.

5.14.5.2 Number Authorized.

Limited to one decal. If a replacement is needed, the old decal (or pieces) must be turned in at the Security Administrative Office. This decal cannot be placed on a "commercial type" vehicle, (i.e. vehicles with logos, or more than 4 wheels, etc.)

5.14.5.3 Verification.

Verification will be accomplished by the Administrative Office Staff.

5.14.5.4 Documents Required.

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the employee (or spouse). The application for the decal must be countersigned by the Sea Pines Property Owner(s), indicating the number of days per week the applicant works for them and in what capacity.

5.14.5.5 How Issued.

The decal may be issued in person or by mail provided the above procedures have been complied with.

5.14.6 Employees of Sea Pines Merchants.

5.14.6.1 Eligibility.

Limited to those individuals who are employees of one of the following:

Baileys
Capin's Pharmacy
Camp Hilton Head
Cafe Europa

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C.Q's
Dimatech
Fashion Court
Grocery Bag
Harbour Lights
Harbour Town Grill
Harbour Town Crafts
Harbour Town Marina
Knickers
Le Petit Bateau
Marriott Ownership Resorts, Inc. ("MORI")
Slight Indulgence
Sandpiper
University Shop
Crazy Crab
Demers Gallery
Gatlin's Fine Food
Hales
Harbour Town Bike Rental
Harbour Town Wine & Spirits
Harbour Town Antiques
Harbour Shop
Land's End Tavern
Signes
Shoes, Etc.

A decal in this category will not be issued for "commercial type" vehicles or RVs and are not intended to be used for any commercial use within the Plantation, it is intended for the employees transportation to and from work.

5.14.6.2 Number Authorized.

Limited to one decal. If a replacement is needed, the old decal (or pieces) must be turned in at the Security Administrative Office. This decal cannot be placed on a "commercial type" vehicle, (i.e. vehicles with logos, or more than 4 wheels, etc.)

5.14.6.3 Verification.

Verification will be accomplished by the Administrative Office Staff.

5.14.6.4 Documents Required.

To receive a decal, a valid vehicle registration (or copy) must be presented. The vehicle must be registered to the employee (or spouse). The application for the decal must be countersigned by the Sea Pines Merchant, indicating if the employee is required to work on Sundays (so a strip may be issued if needed).

5.14.6.5 How Issued.

The decal may be issued in person or by mail provided the above procedures have been complied with.

5.15 MOPED Decals

Specific instructions regarding the issuance of permits for the operation of MOPEDS within Sea Pines Plantation are contained in Section VII of this manual. General instructions for the issuance of decals are listed below:

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5.15.1 Eligibility.

Decals will be issued only to Sea Pines Plantation property owners and a number of employees equal to those currently having MOPED licenses.

5.15.2 Number Authorized.

Limited to a total of 150 MOPEDS within the Plantation at any one time.

5.15.3 Verification.

Verification of eligibility will be the responsibility of the Administrative Office Staff. A physical inspection of the MOPED will be made by an authorized Sea Pines Security Officer to determine the brake horse power and condition of the vehicle for safe operation within the Plantation and to insure that it complies with the provisions of Section VII of this manual.

5.15.4 Documents Required.

To receive a decal, proof of ownership by a person eligible as provided for in paragraph 5.13.1 above may be required.

5.15.5 How Issued.

The decal must be issued in person in order that the physical inspection of the MOPED may be accomplished.

5.15.6 Expiration.

These decals will expire annually, on the last day of November.

5.15.7 Charge.

There is no charge for these decals.

J.S & P/J P S

JSP

FILED AT 4:52 O'CLOCK BEAUFORT COUNTY S.C. RECORDED IN BOOK 470 PAGE NOV 17 1987 M
S/Brenda Watts REGISTER OF MESNE CONVEYANCE

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EXHIBIT H

CERTIFIED TRUE COPY
of the document recorded in the Offices of the
Register of Deeds for Beaufort County, S.C., on
(date): 11-17-1987
in OR Book 490 Page 848
This document contains 8 pages.
Amelia Burley
Register of Deeds - Beaufort County SC
Oct 8, 2021 pb

J S & P/J P S

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ASSIGNMENT OF CONTRACT AND LEASES

FOR VALUABLE CONSIDERATION, HILTON HEAD LIQUIDATION CORP., (formerly known as Sea Pines Plantation Company), a South Carolina corporation, by John F. Curry, its Trustee (hereinafter referred to as "Assignor"), does hereby transfer, assign and convey to Sea Pines Plantation Company, Inc., a South Carolina corporation, its successors and assigns (hereinafter referred to as "Assignee") all of Assignor's rights, title and interests now owned or hereafter acquired, in and to all of the contracts and leases between Assignor and the respective parties named, listed and described in Exhibit "A" attached hereto and incorporated herein by this reference.

With respect to the leases herein described, Assignee agrees to assume Assignor's obligations, if any, under each of the leases assigned hereby.

With respect to the contracts herein described, Assignee agrees to assume Assignor's obligations, if any, under each of the contracts assigned hereby.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the 17th day of November, 1987.

INITIALS

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AS TO ASSIGNOR:

ASSIGNOR:

HILTON HEAD LIQUIDATION CORP., formerly known as Sea Pines Plantation Company), a South Carolina corporation

Signed, sealed and delivered in the presence of:

Witness

Witness

By: John F. Curry
Its: Trustee

AS TO ASSIGNEE:

ASSIGNEE:

SEA PINES PLANTATION COMPANY, INC. a South Carolina corporation

Signed, sealed and delivered in the presence of:

Witness

Witness

By:
Its:

Attest:
Its: Sec.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY appeared before me CAROLINE B. BRYAN, who on oath says that she/he saw the within HILTON HEAD LIQUIDATION CORP. (formerly known as Sea Pines Plantation Company), a South Carolina corporation, by John F. Curry, its Trustee, sign the within written instrument, and as its act and deed, deliver the same, and that she/he with MARYANN J. BAYNESS witnessed the execution thereof.

SWORN TO before me this 17th day of November, 1987.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 3/15/97

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT

PERSONALLY appeared before me Caroline B. Bryan, who on oath says that she/he saw the within SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation, by David N. Ayers, its President, sign the within written instrument, and as its act and deed, deliver the same, and that she/he with Maryann J. Bayless witnessed the execution thereof.

Caroline B. Bryan

SWORN TO before me this
17th day of November, 1987.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 3/12/97

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ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

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EXHIBIT "A"

ASSUMPTION OF CONTRACTS
10:11 :/30/87
AUDET PACKAGE: SEA PINES

EXHIBIT 1.1 (h)
LIST OF
VEHICLE LEASES

PAGE 1

LESSOR		DESCRIPTION	EXPIR DATE	MONTHLY AMOUNT	OUTSTANDING THRU 8/31/87	OUTSTANDING 9/1/87 - TERM	TOTAL OUTSTANDING
FORD MOTOR CREDIT	1201	86 FORD CROWN VICTORIA	07/89	389.52	0.00	8958.96	8958.96
FORD MOTOR CREDIT	1202	86 FORD CROWN VICTORIA	07/89	389.58	0.00	8960.34	8960.34
FORD MOTOR CREDIT	1203	86 FORD CROWN VICTORIA	07/89	389.52	0.00	8958.96	8958.96
GMAC	1198	86 GMC VAN (T)	06/89	450.99	0.00	10097.78	10097.78
GMAC	1189	85 GMC VAN (P168237)	05/88	360.19	0.00	3241.71	3241.71
GMAC	1179	84 CHEV.PU T810803 (HZN64	07/87	190.13	0.00		0.00
GMAC	1190	85 GMC VAN (P169234)	05/88	360.19	0.00	3241.71	3241.71
GMAC	1103	85 GMC PU (MKVA10)	03/88	195.44	0.00	1369.62	1369.62
GMAC	1188	85 GMC VAN (DHJ654)	05/88	242.59	0.00	2183.31	2183.31
GMAC	1185	85 GMC VAN (GRV772)	04/88	258.54	0.00	2068.32	2068.32
WORLD OMNI LEASING	1192	85 GMC PU (JRT634)	06/88	211.64	0.00	2116.40	2116.40
					0.00	51197.11	51197.11

ASSIGNMENT OF CONTRACTS
DATE:9/30/87
ASSET PACKAGE: SEA PINES

EXHIBIT 1 h)

LIST OF EQUIPMENT LEASES

LESSOR	DESCRIPTION	EXPIR DATE	MONTHLY AMOUNT	OUTSTANDING THRU 8/31/87	OUTSTANDING 9/1/87 - TERM	TOTAL OUTSTANDING
ACME BUSINESS PRODUCTS	RICOH FT4000 COPIER	2/90	420.00	0.00	12600.00	12600.00
ECONOMICS LAW	DISHWASHER/PLANT CLUB 60M	1/9/91	123.85	247.70	4458.60	4706.30
LOUISIANA LEASING CO.	MAIL ROOM EQUIP	6/89	136.13	0.00	2994.86	2994.86
HIGH FIDE SERVICES	DNY HB EQUIP	5/89	496.41	0.00	9928.20	9928.20
MARSH, INC.	ICE MACHINE/GOLF MAINT	8/91	81.58	COMBINED	4813.22	4813.22
ROBERTSON MARKETING	COMPUTER EQUIPMENT	5/31/89	5092.00	0.00	54339.96	54339.96
SOUTHERN BUSINESS MACHINES	COPIER III GOLF	1/89	63.00	1770.25	1071.00	2841.25
SOUTHERN BUSINESS MACHINES	COPIER SPRC	1/89	63.00	1321.16	1071.00	2392.16
TEXICON	COMPUTER EQUIPMENT	5/88	1.205.00	7230.00	9640.00	16870.00
TEXICON	CHANNEL ATTACHMENT	4/89	91.00	546.00	1729.00	2275.00
TEXICON	COMPUTER EQUIPMENT	5/89	1102.00	6612.00	22040.00	28652.00
TEXICON	CHANNEL ATTACHMENTS	4/89	182.00	1092.00	3458.00	4550.00
TEXITRON FINANCIAL	GOLF CAR15/213	1/07	7322.94	32670.40	21968.82	54639.22
TEXITRON FINANCIAL	GOLF CAR19/74	12/87	3941.50	NOTE 1	11824.50	11824.50
			20320.41	51489.51	161937.16	213426.67

NOTE 1: TEXITRON LEASE INCLUDES $8166/MO. IN PRE-PETITION PAYDOWN. SEPTEMBER PAYMENT NOT REFLECTED IN BALANCE DUE.

DATE:10/1/87
PACKAGE:COMBINED

MARATHON OIL LEASES *

	LESSOR	DESCRIPTION	EXPIR DATE	MONTHLY AMOUNT	TOTAL	$ TO TERM
1	AVCO	EQUIPMENT(EMRO/MARATHON A	12/89	765.86	448443.55	
2	AVCO	EQUIPMENT(EMRO/MARATHON A	12/89	766.40	0.00	
3	AVCO	EQUIPMENT(EMRO/MARATHON A	12/88	2114.21	0.00	
4	AVCO	EQUIPMENT(EMRO/MARATHON A	6/89	739.61	0.00	
6	CARGILL	EQUIPMENT(EMRO/MARATHON A	4/89	805.54	0.00	
7	CARGILL	EQUIPMENT(EMRO/MARATHON A	6/87	764.95	0.00	
8	MCMANN	EQUIPMENT(EMRO/MARATHON A	5/87	890.22	0.00	
9	MCMANN	EQUIPMENT(EMRO/MARATHON A	10/87	123.01	0.00	

* Leases listed in this category are for equipment owned by the Lessor, leased to Marathon Oil under various Master leases and subleased to Seller. Marathon and Seller have agreed that the Sublease shall continue for a period of 90 days after closing on the monthly rental stated on the column "Monthly Amount". If at the end of such time Buyer, Marathon and the Lessor shall not have arrived at a mutually satisfactory pay-off or replacement lease, the sublease shall terminate and Marathon or Lessor shall be entitled to take possession of the equipment.

EXHIBIT "A"

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ROA 606

ORIGINAL DOCUMENT
POOR CONTRAST OR CONDITION

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EXHIBIT "A"

Head Holdings Corp., John F. Curry, Trustee

BY-LAWS OF ADVISORY BOARD OF SEA PINES PLANTATION PROPERTY OWNERS

IRREVOCABLE TRUST AGREEMENT-Sea Pines Community Services

MUSICIAN EMPLOYMENT AGREEMENT-Gregg Russell and Sea Pines Plantation Company

25TH ANNIVERSARY RESOLUTION-Sea Pines Company and Sea Pines Plantation Company.

PGA TOUR, INC. LETTER AGREEMENT WITH SEA PINES PLANTATION COMPANY

AGRONOMY CONSULTING AGREEMENT-PGA Tour, Inc. and Sea Pines Plantation Company

ARTICLES OF JOINT VENTURE OF HERITAGE ASSOCIATES JOINT VENTURE AGREEMENT-Sea Pines Plantation Company and Charles E. Fraser

RESTATEMENT AND ASSIGNMENT OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS AND CONDITIONS WHICH CONSTITUTE COVENANTS RUNNING WITH THE LAND IN SEA PINES PLANTATION;FINAL JUDGEMENT APPROVING SETTLEMENT-ASPPPO and Sea Pines Plantation Company.

AGREEMENT-James Drury d/b/a Recoveries Unlimited and The Hilton Head Company, Inc. and Sea Pines/Vacation Resorts, Inc.

NATIONAL TELEPHONE COMMUNICATIONS MANAGEMENT LETTER AGREEMENT

[redacted]

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EXHIBIT "A"

SEA PINES AREA

EXHIBIT 1.1 (1)

MISCELLANEOUS AGREEMENTS/CONTRACTS

HOME AND VILLA INVENTORY-SHORT TERM

CONSULTING SERVICES AGREEMENT-Joseph B. Fraser, Sea Pines Company and Hilton Head Holdings Corp.

AGREEMENT-MCI Communications Corporation, Hilton Head Holdings Corp., Heritage Classic Corp., John Curry, The Hilton Head Company, Inc., Vacation Resorts Inc., Sea Pines Company, Sea Pines Plantation Company, Vacation Resorts Holdings.

HERITAGE CLASSIC, INC., PGA TOUR, INC. LETTER AGREEMENT

FACILITIES USE AGREEMENT-Heritage Classic Corporation, Hilton Head Holdings, John F. Curry, The Hilton Head Company, Inc. Vacation Resorts, Inc., Sea Pines Company, Vacation Resorts Holdings.

FAMILY CIRCLE LETTER AGREEMENT-Sea Pines Plantation Company and The Family Circle, Inc.

MERCHANDISE AGREEMENT-Sea Pines Plantation Company and Donald O'Quinn's Golf Shop, Inc.

RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT OF DEVELOPMENT UNITS-Heritage Investors II and III and Sea Pines Plantation Company

AGREEMENT-Stanley R. ("Stan") Smith and Hilton Head Holdings Corp.

TRI-PARTY AGREEMENT-American Resorts Properties, Inc.; Sea Pines Plantation Company, and Marriott Ownership Resorts (Easement and Option for Marriott Sales Office).

FOGELMAN PROPERTIES LETTER AGREEMENT-Fogelman Properties, Hilton

EXHIBIT "A"

SEA PINES AREA

USE AND ACCESS AGREEMENTS

25TH ANNIVERSARY RESOLUTION-Sea Pines Company and Sea Pines Plantation Company

SEA PINES

GRANTOR	GRANTEE	AMENITIES
SPPC	Quail Run (Plantation Gates)	Sea Pines Golf & Tennis
SPPC	Marriott Ownership Resorts, Inc. (Heritage Club)	Sea Pines Golf & Tennis
SPPC	Wachovia Mortgage Company (Hilton Head Inn)	Sea Pines Golf & Tennis

DECLARATION OF RIGHTS-GRANTING OF CLUB MEMBERSHIPS

GRANTOR	GRANTEE	AMENITIES
SPC & SPPC	Dwight Andrew Holder Family	Sea Pines Golf & Tennis
SPC & SPPC	David Axene Family	Sea Pines Golf & Tennis
SPC & SPPC	Wendell Spears Family	Sea Pines Golf & Tennis
SPC & SPPC	James Self Family	Sea Pines Golf & Tennis
SPC & SPPC	Doris Miller	SEa Pines Golf & Tennis

JSP

FILED AT 4:53 O'CLOCK P M BEAUFORT COUNTY S.C. RECORDED IN BOOK 490 PAGE 848 NOV 17 1987

REGISTER OF MESNE CONVEYANCE

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EXHIBIT I

CERTIFIED TRUE COPY
of the document recorded in the Office of the
Register of Deeds for Beaufort County, S.C., on
(date): 11-17-1987
in OR Book 490 Page 873
This document contains 7 pages
Register of Deeds - Beaufort County, S.C.
Oct 8, 2021

J, S & P/J P S

38

100287/A.Tourn

873

STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF TOURNAMENT
COUNTY OF BEAUFORT) CONTRACTS AND AGREEMENTS

This ASSIGNMENT made and executed this 17th day of November, 1987, ("the Assignment") SEA PINES PLANTATION COMPANY, INC., A South Carolina Corporation, (hereinafter referred to as the "Assignor"), and THE SOUTH CAROLINA NATIONAL BANK, (hereinafter referred as the "Assignee").

W I T N E S S E T H:

WHEREAS, the Assignor has entered into certain contracts and agreements with MCI Communications Corporation, Heritage Classic Corporation, and the Family Circle Inc. concerning the terms and conditions of the following sporting events taking place in facilities located within Sea Pines Plantation: MCI Heritage Classic Golf Tournament, and The Family Circle Cup (said contracts and agreements are more particularly described in Exhibit A and incorporated herein by reference and hereinafter collectively referred to as "the Contracts"); and

WHEREAS, the Assignee has disbursed or will disburse to or for the account of the Assignor certain loan proceeds in the amount of SEVENTEEN MILLION AND NO/100 ($17,000,000.00) DOLLARS which is evidenced and secured by that certain Promissory Note of Assignor in favor of Assignee dated November 17th, 1987, in the original principal amount of $17,000,000.00 ("the Note") and further evidenced by that certain Credit Agreement dated November 17th, 1987, by and between Assignor and Assignee ("the Credit Agreement"), and secured by that certain Mortgage of Assignor in favor of Assignee dated November 17th 1987, ("the Mortgage"), and further secured by other instruments of security as provided in the Credit Agreement; and

WHEREAS, the Assignor has agreed to and does execute this Assignment as additional security for the payment of the Note;

NOW, THEREFORE, in consideration of Ten and 00/100 ($10.00) Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, the Assignor hereby grants, transfers and assigns to the Assignee its entire interest and rights in and to the Contracts as follows:

(1) The above-stated "WHEREAS" clauses are hereby incorporated herein the same as if repeated verbatim.

(2) Assignor does hereby give, grant, transfer and assign to Assignee all of Assignor's right, title and interest in and

INITIALS

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to the Contracts as security for the payment of the Note and to that extent Assignor does hereby give, grant, and convey to Assignee a security interest in the Contracts and furthermore Assignor hereby empowers and authorizes Assignee to collect all rents, issues, profits, revenues, royalties, rights and benefits of Assignor in the Contracts and apply them to the indebtedness secured hereby. It is understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the Note or a default in the Credit Agreement, and until a default has occurred in the Note or Credit Agreement, the Assignor is authorized to collect and receive said rents, issues, profits, revenues, royalties, rights and benefits.

(3) Assignor agrees to execute any other documents upon the request of Assignee to evidence and perfect Assignee's security interest in the Contracts and Assignee may take such additional action as it deems necessary in order to perfect its security interest and lien in the Contracts in accordance with the Uniform Commercial Code of South Carolina.

(4) Upon information and belief, the Assignor warrants that the Contracts are valid and enforceable and have not been altered, modified or amended in any manner whatsoever save as herein set forth in Exhibit A; that the Contracts are in full force and effect and that no defaults under any of the terms, covenants or conditions thereof have occurred, and that the Contracts set forth the entire agreement between Assignor and the respective parties to the Contracts.

(5) The Assignor agrees that:

(a) The Contracts shall remain in full force and effect irrespective of any merger of the interest of the parties thereunder described;

(b) Assignor shall not terminate, materially modify or materially amend the Contracts or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of the Assignee and that any attempted termination, modification, or amendment of the Contracts without such written consent of Assignee shall be null and void;

(c) Assignor shall deliver to Assignee copies of any and all notices, requests, demands, statements or documents delivered or received by Assignor under the Contracts in accordance with the notice provisions of Section 6.03 of the Credit Agreement;

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(d) Assignor shall not execute any other assignments of the Contracts or any interest therein or any of the rights thereunder;

(e) Assignor shall perform all of Assignor's covenants and agreements as a party under the Contracts and shall not suffer or permit to occur any release of liability of any party or any rights to withhold payment of any amounts thereunder;

(f) Assignor shall, if so requested by the Assignee, enforce the Contracts and all remedies available to the Assignor against any party thereto, in case of any default;

(g) None of the rights or remedies of the Assignee under the Credit Agreement, the Mortgage, or any of the loan documents, shall be delayed or in any way prejudiced by this Assignment;

(h) Assignor shall not exercise any right of election, whether specifically set forth in any of the Contracts or otherwise, which would in any way diminish the other parties' liability or have the effect of shortening the stated term of the Contracts; and

(i) In the exercise of the powers herein granted to the Assignee, no liability shall be asserted or enforced against the Assignee, all such liability being hereby expressly waived and released by the Assignor. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Contracts or under or by reason of this Assignment, and the Assignor shall and does hereby agree to indemnify the Assignee for and to hold it harmless of and from any and all liability, loss or damage which it may or might incur under the Contracts or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Contracts. Should the Assignee incur any such liability, loss or damage under the Contracts or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Assignor shall reimburse the Assignee therefor immediately upon demand. Such attorney's fees and costs shall include, but not be limited to, fees and costs incurred in any phase of litigation, including, but not

limited to, all trials, proceedings and appeals, and all appearances in and connected with any bankruptcy proceedings or creditor's reorganization proceedings.

(j) This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rights, contracts, rents, profits or issues contained in the Mortgage or in any other document.

(k) This Assignment shall include any extensions and renewals of the Contracts and any reference herein to the said Contracts shall be construed as including any such extensions and renewals.

(l) This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor" and "Assignee" wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.

(m) In the event the Assignor defaults in, breaches or fails to perform any one or more of the covenants and agreements contained in this Assignment, this shall constitute a default, breach or failure to perform under the Credit Agreement. All of the rights of the Assignee hereunder shall be cumulative and not in limitation of the Assignee's rights under the terms of said Instruments.

(n) The term of this Assignment shall be until the note and all other indebtedness or obligations of Assignor provided in the Loan Documents is fully paid and satisfied and at the end of said term this Assignment shall be cancelled and terminated and be null and void.

IN WITNESS WHEREOF, the Assignor hereto has caused this assignment to be executed and delivered on the date and year first above written.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me L. W. HEPNER, who, on oath, says that (s)he saw the within named SEA PINES PLANTATION COMPANY, INC. by DAVID N. AXENE, its PRESIDENT, sign the within document, and ROBERT P. HAWKINS, its SECRETARY, attest the same, and that (s)he with MARYANN BAYLESS witnessed the execution thereof.

SWORN to before me this 17TH day of November, 1987

(witness)

Notary Public for South Carolina
My Commission expires: 5/12/89

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Samuel J. Morris III, who, on oath, says that (s)he saw the within named THE SOUTH CAROLINA NATIONAL BANK by Ralph G. Kuhn, its Vice-President, sign the within document, and Mary Ann Matlox, its Ass't Vice-President, attest the same, and that (s)he with Linda S. Moore witnessed the execution thereof.

SWORN to before me this 17th day of November, 1987

(witness)

Notary Public for South Carolina
My Commission expires: Jan. 15, 1996

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11187/ExhibitA

EXHIBIT A TO ASSIGNMENT OF TOURNAMENT CONTRACTS AND AGREEMENTS

1. MCI Agreement.
December 31, 1986 between MCI Communications Corp., Heritage Classic Corp , John Curry [as Trustee for Hilton Head Holdings Corporation, Inc. (hereinafter "HHH Corp."), The Hilton Head Company Inc (hereinafter "HHCO"), Vacation Resorts, Inc. (hereinafter "VRI"), Vacation Resorts Holdings, Inc. (hereinafter "VRHI"), Sea Pines Company (hereinafter "SPCO"), Sea Pines Plantation Company (hereinafter "SPPCO.")], HHH Corp., HHCO, VRI, VRHI, SPCO, SPPCO; MCI becomes sole title sponsor through 1990.

2. Facilities Use Agreement.
February 17, 1987; between Heritage Classic Corp., John Curry (as Trustee for HHH Corp., HHCO, VRI, VRHI, SPCO); agreement sets forth rights and obligations of parties; commence January 31, 1987 and expires December 31, 1987.

3. Family Circle Letter Agreement.
September 25, 1987; between SPPCO and The Family Circle Inc.,; agreement sets forth terms regarding use of SPPCO facilities for the Family Circle Magazine Cup; term will cover 1988 and 1989 Family Circle Cups.

JSP

FILED AT 4:54 O'CLOCK BEAUFORT COUNTY S. C. BOOK B PAGE 490
NOV 17 1987 873
S/Floyd Watts
REGISTER OF MESNE CONVEYANCE

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J, S & P/J P S

D

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887

11287 CA.T

STATE OF SOUTH CAROLINA)
) COLLATERAL ASSIGNMENT OF CONTRACTS
COUNTY OF BEAUFORT)

This ASSIGNMENT made and executed this 17th day of November, 1987, ("the Assignment") by and between SEA PINES PLANTATION COMPANY, INC., A South Carolina Corporation, (hereinafter referred to as the "Assignor"), and THE SOUTH CAROLINA NATIONAL BANK, (hereinafter referred as the "Assignee").

W I T N E S S E T H:

WHEREAS, the Assignor has entered into certain contracts and agreements with the various individuals, corporations, proprietorships, partnerships, and other entities (said contracts and agreements are more particularly described in Exhibit A attached hereto and incorporated herein by reference and hereinafter collectively referred to as the "Contracts"); and

WHEREAS, the Assignee has disbursed or will disburse to or for the account of the Assignor certain loan proceeds in the amount of SEVENTEEN MILLION AND NO/100 ($17,000,000.00) DOLLARS which is evidenced and secured by that certain Promissory Note of Assignor in favor of Assignee dated November 17th, 1987, in the original principal amount of $17,000,000.00 (the "Note") and further evidenced by that certain Credit Agreement dated November 17th, 1987, by and between Assignor and Assignee (the "Credit Agreement"), and secured by that certain Mortgage of Assignor in favor of Assignee dated November 17th, 1987, (the "Mortgage"), and further secured by other instruments of security as provided in the Credit Agreement; and

WHEREAS, the Assignor has agreed to and does execute this Assignment as additional security for the payment of the Note;

NOW, THEREFORE, in consideration of Ten and 00/100 ($10.00) Dollars and other good and valuable consideration, the receipt whereof is hereby acknowledged, the Assignor hereby grants, transfers and assigns to the Assignee its entire interest and rights in and to the Contracts as follows:

(1) The above-stated "WHEREAS" clauses are hereby incorporated herein the same as if repeated verbatim.

(2) Assignor does hereby give, grant, transfer and assign to Assignee all of Assignor's right, title and interest in and

INITIALS

to the Contracts as security for the payment of the Note and to that extent Assignor does hereby give, grant, and convey to Assignee a security interest in the Contracts and furthermore Assignor hereby empowers and authorizes Assignee to collect all rents, issues, profits, revenues, royalties, rights and benefits of Assignor in the Contracts and apply them to the indebtedness secured hereby. It is understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the Note or a default in the Credit Agreement, and until a default has occurred in the Note or Credit Agreement, the Assignor is authorized to collect and receive said rents, issues, profits, revenues, royalties, rights and benefits.

(3) Assignor agrees to execute any other documents upon the request of Assignee to evidence and perfect Assignee's security interest in the Contracts and Assignee may take such additional action as it deems necessary in order to perfect its security interest and lien in the Contracts in accordance with the Uniform Commercial Code of South Carolina.

(4) To the best of Assignor's knowledge, the Assignor warrants that the Contracts are valid and enforceable and have not been altered, modified or amended in any manner whatsoever save as herein set forth in Exhibit A; that the Contracts are in full force and effect and that no defaults under any of the terms, covenants or conditions thereof have occurred, and that the Contracts set forth the entire agreement between Assignor and the respective parties to the Contracts.

(5) The Assignor agrees that:

(a) The Contracts shall remain in full force and effect irrespective of any merger of the interest of the parties thereunder described;

(b) Assignor shall not terminate, materially modify or materially amend the Contracts or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of the Assignee and that any attempted termination, modification, or amendment of the Contracts without such written consent of Assignee shall be null and void;

(c) Assignor shall deliver to Assignee copies of any and all notices, requests, demands, statements or documents delivered or received by Assignor under the Contracts in accordance with the notice provisions of Section 6.03 of the Credit Agreement;

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(d) Assignor shall not execute any other assignments of the Contracts or any interest therein or any of the rights thereunder;

(e) Assignor shall perform all of Assignor's covenants and agreements as a party under the Contracts and shall not suffer or permit to occur any release of liability of any party or any rights to withhold payment of any amounts thereunder;

(f) Assignor shall, if so requested by the Assignee, enforce the Contracts and all remedies available to the Assignor against any party thereto, in case of any default;

(g) None of the rights or remedies of the Assignee under the Credit Agreement, the Mortgage, or any of the loan documents, shall be delayed or in any way prejudiced by this Assignment;

(h) Assignor shall not exercise any right of election, whether specifically set forth in any of the Contracts or otherwise, which would in any way diminish the other parties' liability or have the effect of shortening the stated term of the Contracts; and

(i) In the exercise of the powers herein granted to the Assignee, no liability shall be asserted or enforced against the Assignee, all such liability being hereby expressly waived and released by the Assignor. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Contracts or under or by reason of this Assignment, and the Assignor shall and does hereby agree to indemnify the Assignee for and to hold it harmless of and from any and all liability, loss or damage which it may or might incur under the Contracts or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Contracts. Should the Assignee incur any such liability, loss or damage under the Contracts or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Assignor shall reimburse the Assignee therefor immediately upon demand. Such attorney's fees and costs shall include, but not be limited to, fees and costs incurred in any phase of litigation, including, but not

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limited to, all trials, proceedings and appeals, and all appearances in and connected with any bankruptcy proceedings or creditor's reorganization proceedings.

(j) This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rights, contracts, rents, profits or issues contained in the Mortgage or in any other document.

(k) This Assignment shall include any extensions and renewals of the Contracts and any reference herein to the said Contracts shall be construed as including any such extensions and renewals.

(l) This Assignment shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor" and "Assignee" wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.

(m) In the event the Assignor defaults in, breaches or fails to perform any one or more of the covenants and agreements contained in this Assignment, this shall constitute a default, breach or failure to perform under the Credit Agreement. All of the rights of the Assignee hereunder shall be cumulative and not in limitation of the Assignee's rights under the terms of said Instruments.

(n) The term of this Assignment shall be until the note and all other indebtedness or obligations of Assignor provided in the Loan Documents is fully paid and satisfied and at the end of said term this Assignment shall be cancelled and terminated and be null and void.

IN WITNESS WHEREOF, the Assignor hereto has caused this assignment to be executed and delivered on this 17th day of November, 1987.

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WITNESSES:

ASSIGNOR:

SEA PINES PLANTATION COMPANY, INC.

By: _____

(Its Pres.)

Attest: _____

(Its Sec)

ASSIGNEE:

THE SOUTH CAROLINA NATIONAL BANK

By: _____

(Its Vice Pres)

Attest: _____

(Its Asst. Cash. Pres.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me L. W. HEPNER, who, on oath, says that (s)he saw the within named SEA PINES PLANTATION COMPANY, INC. by DAVID N. AXENE, its President, sign the within document, and ROBERT P. HAWKINS its Secretary attest the same, and that (s)he with MARYANN BAYLESS witnessed the execution thereof.

SWORN to before me this 17th day of NOVEMBER, 1987.

L. W. Hepner
(witness)

Notary Public for South Carolina
My Commission expires: 3/12/97

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me SAMUEL J. MORRIS III, who, on oath, says that (s)he saw the within named THE SOUTH CAROLINA NATIONAL BANK by Ralph G. Kuhn, its Vice-President, sign the within document, and MARY ANN MATTOX, its ~~Secretary~~ Asst. Vice President attest the same, and that (s)he with Linda S. Moore witnessed the execution thereof.

SWORN to before me this 17th day of November, 1987.

(witness)

Linda S. Moore
Notary Public for South Carolina
My Commission expires: Jan 15, 1996

11187/SCH.V

EXHIBIT A

AGREEMENTS AND CONTRACTS:

1. Home and Villa Inventory - Short Term.
Any and all Rental Management Agreements existing as of the date of this Collateral Assignment between Hilton Head Holdings Corporation (hereinafter "HHH Corp.") d/b/a Sea Pines Resorts as manager and individual property owners.

2. Consulting Services Agreement and Amendment.
May 9, 1983; between Sea Pines Plantation Company (hereinafter "SPPCO"), Sea Pines Company (hereinafter "SPCO") Joseph B. Fraser, Jr.; agreement sets forth terms and conditions of consulting services.
March 30, 1987; between SPPCO, SPCO, HHH Corp., Joseph B. Fraser, Jr.

3. MCI Agreement.
December 31, 1986; between MCI Communications Corp., Heritage Classic Corp., John Curry [as Trustee for Hilton Head Holdings Corporation, Inc. (hereinafter "HHH Corp."), The Hilton Head Company, Inc. (hereinafter "HHCO"), Vacation Resorts, Inc. (hereinafter "VRI"), Vacation Resorts Holdings, Inc. (hereinafter "VRHI"), Sea Pines Company (hereinafter "SPCO"), Sea Pines Plantation Company (hereinafter "SPPCO.")], HHH Corp., HHCO, VRI, VRHI, SPCO, SPPCO; MCI becomes sole title sponsor through 1990.

4. Facilities Use Agreement.
February 17, 1987; between Heritage Classic Corp., John Curry (as Trustee for HHH Corp., HHCO, VRI, VRHI, SPCO); agreement sets forth rights and obligations of parties; commence January 31, 1987 and expires December 31, 1987.

5. Family Circle Letter Agreement.
September 25, 1987; between SPPCO and The Family Circle Inc.,; agreement sets forth terms regarding use of SPPCO facilities for the Family Circle Magazine Cup; term will cover 1988 and 1989 Family Circle Cups.

6. Merchandise Agreement; Addendum to Merchandise Agreement.
September 1, 1982; between SPPCO and Donald O'Quinn's Golf Shop, Inc.; agreement sets forth terms of operation and management of merchandise concession at Ocean - Sea Marsh Golf Shop.
June 18, 1987; between SPPCO and Donald O'Quinn's Golf Shop, Inc.; addendum extends term of Agreement for 12 month period

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commencing September 1, 1987 and sets forth terms of operation and management of merchandise concession at Sea Pines Club Golf Pro Shop.

7. Reservation of Rights and Acknowledgement of Development Units.
August 10, 1987; between Heritage Investors II and IV, SPPCO, and the Association of Sea Pines Plantation Property Owners, (hereinafter "ASPPPO"); SPPCO and ASPPPO acknowledge density rights of Heritage Investors II and IV.

8. Stan Smith Agreement and Amendment.
December 10, 1986; between Stanley R. Smith and HHH Corp.; agreement sets forth terms and conditions of retaining Smith to promote the company.
January 8, 1987; between Stanley R. Smith and HHH Corp.; amendment concerns formation of Stan Smith International and use of Smith endorsement.

9. Tri Party Agreement.
April 13, 1984; between American Resorts Properties, Inc., SPPCO, and Marriott Ownership Resorts; agreement concerns easement and option for Marriott Sales Office.

10. Bylaws of Advisory Board of Sea Pines Plantation Property Owners.
as amended through October 21, 1981.

11. Musician Employment Agreement.
April 9, 1985; between SPPCO and Gregg Russell; agreement sets forth terms of employment; term: January 1, 1985 throught December 31, 1989.

12. 25th Anniversary Resolution.
September 9, 1982; Joint Consent Executive Committee, SPCO and SPPCO; resolution concerns benefits extended to particular individuals.
September 7, 1982; Joint Consent Executive committee, SPCO and SPPCO; resolution concerns lifetime benefits to officers.

13. Agronomy Consulting Agreement.
January 5, 1987; between PGA Tour, Inc. and SPPCO (through its Trustee, John Curry); agreement concerns consultative services and recommendations for conditions at Harbour Town Golf Links for PGA Tour and Senior PGA Tour.

14. Restatement and Assignment of Rights, Restrictions, Affirmative Obligations, and Conditions Which Constitute Covenants Running With the Land in Sea Pines.
February 8, 1984

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15. Agreement.
September 10, 1985; between James Drury d/b/a Recoveries Unlimited, HHCO Inc., and SP/VRI; agreement concerns exclusive concession to salvage golf balls from water hazards on golf courses (Shipyard, Port Royal, Harbour Town); Concession Contract: dated April 15, 1984, term expires March 31, 1988.

16. National Telephone Letter Agreement.
May 7, 1987; between National Telephone Systems, Inc. and HHH Corp.; agreement concerns procedures to be used for system management.
April 10, 1987
April 8, 1987
long distance information.

17. Use Rights for 5 Tennis Courts.
Ground Lease: March 1, 1983; between SPPCO and American Resort Properties, Inc.

18. Patent License Agreement:
July 15, 1986; between SPCO and Lee Payne Associates, Inc. whereby SPCO granted to Lee Payne Associates, Inc. an exclusive license to manufacture, market, and sell the Sea Pines Rocking Chair (letters patent of the United States Numbers 238022 and 3909064).

19. Service Mark Agreement:

July 30, 1986; between SPPCO and Lee Payne Associates, Inc. whereby SPPCO granted Lee Payne Associates, Inc. a non-exclusive license to display the Compass Rose, a registered Service Mark of SPPCO.

USE AND ACCESS AGREEMENTS:

20. Covenant Granting Rights: September 16, 1975
Grantor: SPPC
Grantee: Quail Run (Plantation Gates)
Amenities: All Sea Pines Golf and Tennis Amenities, (Grantee must pay annual community services assessment to be eligible)

21. Golf Facilities Use and Access Agreement: May 19, 1987
Grantor: SPPCO
Grantee: Marriott Ownership Resorts, Inc.
Amenitites: Sea Pines Golf Courses (Harbour Town, Ocean, and Sea Marsh Golf Courses)
First Amendment to Golf Facilities Use and Access Agreement: July 17, 1987
Second Amendment to Golf Facilities Use and Access Agreement:

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August 12, 1987
Third Amendment to Golf Facilities Use and Access Agreement:
August 20, 1987

22. Non-Exclusive Easement and Conveyance of Rights:
November __, 1975
Grantor: SPPCO
Grantee: Wachovia Mortgage Co.
Amenities: Sea Pines Golf (Ocean and Sea Marsh Golf Courses, Plantation Club House)

J, S & P/J P S

JSP

FILED AT 4:54 O'CLOCK | BEAUFORT COUNTY S.C | RECORDED IN BOOK 490 PAGE
NOV 17 1987
887
S/Lloyd Dalton
REGISTER OF MESNE CONVEYANCE

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EXHIBIT J

EXHIBIT "C"

571

STATE OF SOUTH CAROLINA :
: AFFIDAVIT
COUNTY OF BEAUFORT :

John F. Curry, being of legal age, hereby swears and avers as follows:

1. I reside at 75 Baynard Park Road, Hilton Head Island, South Carolina 29938.

2. I am the Trustee for Hilton Head Holdings Corporation and its seven subsidiaries (the "Debtors") in their Chapter XI proceedings.

3. By Order dated October 15, 1987, The Honorable Sol Blatt, Jr., United States District Judge, approved the Second Amended Joint Plan of Reorganization (the "Plan") for the Debtors.

4. In accordance with Article X of the Plan, any executory contract which was not specifically accepted under the Plan is rejected. Pursuant to 11 U.S.C. § 365, any person, corporation or other entity suffering any damages from the rejection of any executory contract must file a proof of claim therefor. The filing of a proof of claim is the sole remedy for the rejection of an executory contract.

5. Certain Declarations of Rights were granted by Sea Pines Company and Sea Pines Plantation Company to Philip Schwab and Luther M. Taylor (the "Declarations of Rights") and recorded in the Office of the Register of Mesne Conveyance, Beaufort County, South Carolina, in Deed Book 455 at Page 497 and Deed Book 455 at Page 497, respectively.

6. The Declarations of Rights grant permanent memberships and use privileges to Messrs. Schwab and Taylor and members of their families to existing and future golf courses, related club facilities, tennis centers and racquet clubs within Sea Pines Plantation.

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7. Such Declarations of Rights are executory contracts, which executory contracts were not accepted under the Plan and accordingly, have been rejected.

FURTHER AFFIANT SAYETH NOT.

John F. Curry, Trustee
JOHN F. CURRY

SWORN TO AND SUBSCRIBED
before me on this 17th day
of November, 1987.

Carol P. Gomez (L.S.)
NOTARY PUBLIC

My Commission Expires:
11/4/93

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EXHIBIT K

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41.00

RW 24

STATE OF SOUTH CAROLINA DOCUMENTARY STAMPS

Revenue Stamps Collected State $ 660 County $ 330

Beaufort County, SC

BR.DEED (DEEDS)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

QUIT-CLAIM DEED
BILL OF SALE, STOCK TRANSFER
AND ASSIGNMENT OF RIGHTS

379

09100

This Quit-Claim Deed, Bill of Sale, Stock Transfer and Assignment of Rights made this 26th day of March, 1990, by Hilton Head Holdings Corporation f/k/a Ginn Holding Corporation, Gardner-Matthews Plantation Company, Hilton Head Hotel Company, Vacation Resorts Holding, Inc., Vacation Resorts, Inc., Sea Pines Company, HHC Liquidation Corp., f/k/a The Hilton Head Company, Inc., Hilton Head Company, a Delaware corporation, Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company.

NOW, KNOW ALL MEN BY THESE PRESENTS, that on or about November 24, 1986, Gardner-Matthews Plantation Company (86-03801), Hilton Head Holdings Corporation (86-03802), Hilton Head Hotel Company (86-03803), Vacation Resorts Holding, Inc. (86-03804), Vacation Resorts, Inc. (86-03805), Sea Pines Company (86-03806), Sea Pines Plantation Company (86-03807), The Hilton Head Company, Inc. (86-03808), Hilton Head Holdings Corporation, f/k/a Ginn Holding Corporation (86-03868), Hilton Head Company, a Delaware corporation (86-03869), Sea Pines Plantation Company (86-038070), Hilton Head Holdings Corporation, formerly known as Ginn Holding Corp. (86-03871), Hilton Head Company, a Delaware Corp (86-03884), and Sea Pines Plantation Company (86-03885) (collectively hereinafter sometimes referred to as the "Debtors") filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. On November 24, 1986, United States District Court Judge, Sol Blatt, Jr., withdrew the reference of the above stated cases to the United States Bankruptcy Court and the cases were retained and reserved in the United States District Court pursuant to 28 U.S.C. Sections 157 and 1334;

WHEREAS, by Order of the District Court entered November 26, 1986, John F. Curry was appointed Interim Trustee for the above named Debtors and by Order entered December 23, 1986, was appointed Trustee pursuant to 11 U.S.C. Section 1104, authorized to manage the affairs and operate the businesses of those Debtors pursuant to 11 U.S.C. Section 1108;

WHEREAS, by Order of the Bankruptcy Court for the District of South Carolina, R. Geoffrey Levy was appointed Successor Trustee on March 15, 1988, for the above named Debtors;

WHEREAS, the stock of the companies listed at Exhibit "C" is owned by the Debtors; and

WHEREAS, after proper notice and a hearing held on December 18, 1989, the United States Bankruptcy Court for the District of

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South Carolina entered an Order approving the conveyance of residual assets of the Debtors to Property Research Holdings, Inc., the within named Grantee, which Order became final on December 20, 1989, a copy of which is attached as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, IT IS THE INTENTION OF R. Geoffrey Levy, Trustee of the Debtors, to transfer to Property Research Holdings, Inc, the within named Grantee, all properties, both real and personal, tangible and intangible, wherever located now owned by or to which any of the within named Grantors have claim as more particularly described herein including, but not limited to, all rights, powers and privileges held by all said Grantors pursuant to recorded covenants and restrictions encumbering the within described lands, SAVE AND EXCEPT those specific properties conveyed by deed of even date herewith to the Federal Savings and Loan Insurance Corporation or its designee, and as more particularly described in the Save and Except Clause of Exhibit "B" of this instrument.

NOW, THEREFORE, Hilton Head Holdings Corp. f/k/a Ginn Holding Corporation, Hilton Head Liquidation Corp., f/k/a Sea Pines Plantation Company, Gardner-Matthews Plantation Company, Hilton Head Hotel Company, Vacation Resorts Holding, Inc., Vacation Resorts, Inc., Sea Pines Company, HHC Liquidation Corp., f/k/a The Hilton Head Company, Inc., Hilton Head Company, a Delaware Corporation, by R. Geoffrey Levy, their Trustee (hereinafter collectively referred to as the "Grantor"), in the State aforesaid, and in consideration of the sum of Ten and 00/100 ($10.00) Dollars and other valuable consideration to it in hand paid, at and before the sealing of these presents by Property Research Holdings, Inc., a South Carolina corporation, Post Office Box 7432, Hilton Head Island, South Carolina 29938 (hereinafter referred to as "Grantee"), in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released, assigned, conveyed, transferred, and forever quit-claimed, and by these presents, does remise, release, assign, convey, transfer and forever quit-claim unto the said Grantee, its successors and assigns, all properties, real and personal, tangible and intangible said Grantors may be possessed of or have any rights in or to, or in the future may be possessed of or have rights to including, but not limited to those properties and assets more particularly described at Exhibits "B" and "C" hereto (hereinafter referred to as the "Property")

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

TO HAVE AND TO HOLD, all and singular the Property aforementioned unto the said Grantee, its successors and assigns

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forever, so that neither the said Grantor, its successors and assigns, nor any other person or persons claiming under it or them, at any time hereafter, by any way or means, have, claim or demand any right to title to the aforesaid Property or appurtenances, or any part or parcel thereof, forever.

WITNESS my hand and seal this 26 day of March, in the year of Our Lord One Thousand Nine Hundred Ninety.

WITNESSES:

Sara A Parker

HILTON HEAD HOLDINGS CORP., f/k/a Ginn Holding Corporation,

BY: _____
R. Geoffrey Levy, its Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named HILTON HEAD HOLDINGS CORP., f/k/a Ginn Holding Corporation, by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A Parker
Notary Public for South Carolina
My Commission expires: 9/11/94

*THE WITHIN DEED was prepared by the law firm of Novit, Scarminach & Johnson, P.A., 4th floor, 52 New Orleans Road, Post Office Drawer 14, Hilton Head Island, South Carolina 29938 by Charles A. Scarminach, Esquire.

GARDNER-MATTHEWS PLANTATION COMPANY

BY: _____
R. Geoffrey Levy, its Trustee

_____
Sara A Parker

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named GARDNER-MATTHEWS PLANTATION COMPANY by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A Parker
Notary Public for South Carolina
My Commission expires: 9/11/94

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Sara A Parker

HILTON HEAD HOTEL COMPANY

BY: _____
R. Geoffrey Levy, its Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named HILTON HEAD HOTEL COMPANY by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A Parker
Notary Public for South Carolina
My Commission expires: 9/11/94

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VACATION RESORTS HOLDING, INC.

BY: _____
R. Geoffrey Levy, its Trustee

Sara A Parker

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named VACATION RESORTS HOLDING, INC. by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A Parker
Notary Public for South Carolina
My Commission expires: 9/1/97

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VACATION RESORTS, INC.

BY: _____
R. Geoffrey Levy, its Trustee

Sara A Parker

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named VACATION RESORTS, INC. by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A Parker
Notary Public for South Carolina
My Commission expires: 9/14/94

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SEA PINES COMPANY

BY: _____
R. Geoffrey Levy, its Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named SEA PINES COMPANY by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

_____
Notary Public for South Carolina
My Commission expires: 9/10/94

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HHC LIQUIDATION CORP., f/k/a
THE HILTON HEAD COMPANY, INC.

BY: _____
R. Geoffrey Levy, its Trustee

_____
Sara A. Parker

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named HHC LIQUIDATION CORP., f/k/a THE HILTON HEAD COMPANY, INC. by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

_____
Notary Public for South Carolina
My Commission expires: 9/14/94

HILTON HEAD COMPANY, a Delaware Corporation

BY: _____
R. Geoffrey Levy, its Trustee

_____
Sara A. Parker

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named HILTON HEAD COMPANY, a Delaware Corporation, by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

_____
Notary Public for South Carolina
My Commission expires: 9/4/94

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Sara A. Parker

HILTON HEAD LIQUIDATION CORP. f/k/a
Sea Pines Plantation Company

BY: _____
R. Geoffrey Levy, its Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named HILTON HEAD LIQUIDATION CORP. f/k/a Sea Pines Plantation Company, by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

Sara A. Parker
Notary Public for South Carolina
My Commission expires: 9/4/94

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SEA PINES PLANTATION COMPANY

BY: _____
K. Geoffrey Levy, its Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles A. Scarminach, who, on oath, says that (s)he saw the within named SEA PINES PLANTATION COMPANY by R. Geoffrey Levy, its Trustee, sign the within document, and that (s)he with Sara A. Parker witnessed the execution thereof.

_____
(witness)

SWORN to before me this 26 day of March, 1990.

_____
Notary Public for South Carolina
My Commission expires: 9/4/04

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	
GARDNER-MATTHEWS PLANTATION COMPANY	86-03801
HILTON HEAD HOTEL COMPANY	86-03803
VACATION RESORTS HOLDING, INC.,	86-03804
VACATION RESORTS, INC.,	86-03805
HILTON HEAD HOLDINGS CORPORATION	86-03871
Debtors.	(Chapter 11)

ORDER APPROVING TRUSTEE'S TRANSFER OF PROPERTY

This matter came to be heard before me on September 13, 1989 pursuant to the trustee's notice of his intent to transfer certain property to Federal Savings & Loan Insurance Corporation or its designee. Notice was served on all parties and creditors in interest and was published in The Island Packet as will appear from the Certificates filed herein. Mr. Albert A. Hinton served an objection to the transfer on the trustee, and on September 6, 1989, this court entered an order shortening the time for notice of the hearing. Said order was served on Mr. Hinton on September 6, 1989 as appears by the Certificate of Service filed herein. Mr. Hinton did not appear at the hearing and his objection is, therefore, deemed to have been waived by him.

This court has reviewed the proposed transfer and finds the same to be in accordance with the confirmed Plan of Reorganization and in the best interest of the estate. The

Exhibit "11"

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property which is the subject of this transfer is described as follows:

PARCELS B-1, B-2 AND E, MARKET PLACE
(Estimated Value $300,000

All those certain pieces, parcels or tracts of land, situate lying and being in the Town of Hilton Head Island, Beaufort County, containing 4.17 acres in the aggregate, and being shown and designated as "Parcel B-1, 1.15 Ac.", "Parcel B-2, 0.89 Ac.", and "Parcel E, 2.128 Ac." on a plat of survey of the Market Place prepared by Paul J. Emilius & Associates, dated September 1, 1973, last revised June 17, 1974 and recorded in the R.M.C. Office for Beaufort County, South Carolina in Plat Book 23 at Page 159. Said parcels of land have such size, shape, location, dimensions, metes and bounds as will more fully appear by reference to said plat of survey.

MAINTENANCE AREA - INDIGO RUN PLANTATION
(Estimated Value $40,000)

ALL that certain piece, parcel or tract of land containing 18.234 acres, more or less, located on Hilton Head Island, Beaufort County, South Carolina and designated "18.234 Acres Broad Creek, A Section of Honey Horn Plantation" as shown on that certain Plat of Survey dated June 27, 1980, and prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, South Carolina Registered Land Surveyor (S. C. Reg., L.S. No. 4784).

SAVE AND EXCEPT FROM THE ABOVE DESCRIBED PROPERTY:

ALL that certain piece, parcel or tract of land, containing 11.57 acres, more or less, and designated as Tract H, as shown on a plat entitled "A Plat of 11.57 acres, Tract H for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S. C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985 and recorded in the Office of the R.M.C. for Beaufort County, South Carolina in Plat Book 32 at Page 253.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the trustee, be and he hereby is, authorized to transfer the above described property, free and clear of all liens, to Federal

Savings & Loan Insurance Corporation or its designee.

AND IT IS SO ORDERED.

s/
Wm. Thurmond Bishop, Judge
United States Bankruptcy Court

Columbia, South Carolina

September 14, 1989

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STOCK SALE The Airport Company of Hilton Head Island, Inc.
Amelia Beach Campgrounds Company, Inc.
Bluffton Timber and Land Company
STOCK SALE Cumberland Island Holding Company
Gardner-Matthews Plantation, Inc.
Gardner-Matthews Utility Company, Inc.
STOCK SALE HHC Realty Company
Harbour Town Company
Heritage Real Estate Company
Hilton Head Beach Company, Inc.
NAME SOLD The Hilton Head Company, Inc.
STOCK SALE The Hilton Head Company Realty
Hilton Head Development Corporation
The Hilton Head Golf Club, Inc.
The Hilton Head Hotel Company, Inc.
STOCK SALE Hilton Head Island Realty, Inc.
FORMAT CHANGE 7 Hilton Head Management Co., Inc.
The Hilton Head Racquet Club, Inc.
NAME SOLD Indigo Run Plantation
NAME SOLD Indigo Run Plantation Owner's Association, Inc.
STOCK SALE Lighthouse Realty, Inc.
~~SOLD STOCK SALE~~ ? Northridge Park Landowner's Association, Inc.
NAME SOLD Overlook Restaurant, Inc.
The Plantations of Hilton Head, Inc.
NAME SOLD The Port Royal Country Club, Inc.
NAME SOLD The Port Royal Inn and Country Club, Inc.
" " The Port Royal Inn and Golf Club, Inc.
NAME SOLD Port Royal Plantation, Inc.
River Hills Plantation Company, Inc.
O Sea Pines/Beaufort Real Estate Company, Inc.
O Sea Pines of Charleston, Inc.
NAME SOLD O Sea Pines Company
O Sea Pines Harbour Town Services, Inc.
O Sea Pines Land Company, Inc.
O Sea Pines Management Company, Inc.
O Sea Pines Management Services, Inc.
NAME SOLD O Sea Pines Marketing, Inc.
STOCK SALE O Sea Pines Plantation Company
The Sea Pines Real Estate Companies, Inc.
O Sea Pines Recreation Company, Inc.
O Sea Pines Resorts, Inc.
O Sea Pines Resort Tours, Inc.
NAME SOLD Shipyard Golf Club, Inc.
NAME SOLD Shipyard Plantation, Inc.
" " Shipyard Racquet Club, Inc.
~~Seabrook Realty Co.~~
Tideland Realty of Hilton Head, Inc.
Tideland Realty of Ohio, Inc.
Tideland Timesharing, Inc.
Vacation Resorts, Inc.
Vacation Resort Holdings, Inc.
STOCK SALE Wexford Plantation Homeowners Association, Inc.
STOCK SALE Wexford Plantation Utility Company, Inc.
STOCK SALE Wexford Plantation Yacht Club, Inc.

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BRENDA A. SCHUELER, CLERK
United States Bankruptcy Court
Columbia, South Carolina (7-15)

United States Bankruptcy Court

For the _____ District of SOUTH CAROLINA

In re Gardner-Matthes Plantation Company
Hilton Head Hotel Company
Vacation Resorts Holding, Inc.
Vacation Resorts, Inc.
Hilton Head Holdings Corporation
*Debtor**

Case No. 86-3801,86-3803,86-3804,86-3805,86-3871

JUDGMENT ON DECISION BY THE COURT

This proceeding having come on for trial or hearing before the court, Honorable WM. THURMOND BISHOP, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

It is Ordered and Adjudged

that pursuant to order no. 1-M-2697 the settlement agreement with FSLIC as set forth in said order is approved and that the trustee is authorized to sell to Property Research Holdings, Inc. for the sum of $30,000.00 all the remaining real estate assets, including all rights therein or relating thereto, if any, which the trustee holds at the conclusion of this case.

BRENDA A. SCHUELER
Clerk of Bankruptcy Court

By: Lisa Mumford
Deputy Clerk

P.O. Box 1448
Columbia, S.C. 29202

Date of issuance: December 20, 1989

*Include all names used by debtor within last 6 years

Judgment 12-20-89

396

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:		
GARDNER-MATTHEWS PLANTATION COMPANY	)	86-03801
HILTON HEAD HOTEL COMPANY	)	86-03803
VACATION RESORTS HOLDING, INC.,	)	86-03804
VACATION RESORTS, INC.,	)	86-03805
HILTON HEAD HOLDINGS CORPORATION	)	86-03871
Debtors.	)	(Chapter 11)

ORDER APPROVING PROPERTY TRANSFER

This matter came to be heard before me on December 18, 1989 after notice to all creditors and parties in interest. The notice has been published in The Island Packet as appears by the Certificate of Publication filed herein. Marathon Financc Company had filed an objection but appeared at the hearing and withdrew the same. The Trustee seeks approval of a settlement entered into with the FDIC as Manager for the FSLIC Resolution Fund ("FSLIC") and approval of sale to Property Research Holdings, Inc. of all remaining real estate assets, including all rights therein or relating thereto, if any, which the trustee still holds.

The trustee's settlement with FSLIC is as follows:

(1) The trustee shall disburse to FSLIC or its designee $902,000.00;

(2) The trustee shall disburse to FSLIC or its designee the $30,000.00 proceeds from the sale to Property Research Holdings, Inc., which is herein approved;

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(3) The trustee shall disburse to FSLIC any proceeds received from a note and a mortgage held by the trustee in the principal amount of $40,800.00 from Mr. Gunnar P. Nilsson;

(4) The trustee shall assign to FSLIC or its designee the Nilsson note and mortgage if it has not been earlier paid;

(5) The trustee shall convey to FSLIC or its designee approximately $47,000.00 of unclaimed payments to Class 8A and 8B creditors; the FSLIC shall hold those funds until the expiration of the statutorily required period.

(6) The trustee shall convey to FSLIC or its designee all the remaining real estate assets, declarant rights, contract rights, easements, security interests and other rights, if any, that the trustee holds either within the area commonly known as "Indigo Run Plantation," affecting that area or related in any way to that area.

(7) I find that the value of the above payments and conveyances is $1,027,000.00 which, together with earlier conveyed assets and disbursements, satisfies the trustee's obligation under the earlier FSLIC Settlement Agreement to pay the FSLIC $3,000,000.00, plus interest. I further find that the trustee's proposal to sell to Property Research Holdings, Inc. all the remaining real estate assets, including all rights therein or relating thereto, if any, which the trustee holds at the conclusion of this case for the sum of $30,000.00 is fair and reasonable and should be approved. Wherefore,

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IT IS ORDERED, ADJUDGED AND DECREED that the Settlement Agreement with FSLIC as hereinabove set forth be, and the same is, hereby approved; it is further

ORDERED that the trustee is authorized to sell to Property Research Holdings, Inc. for the sum of $30,000.00 all the remaining real estate assets, including all rights therein or relating thereto, if any, which the trustee holds at the conclusion of this case.

AND IT IS SO ORDERED.

Wm. Thurmond Bishop, Judge
United States Bankruptcy Court

Columbia, South Carolina
December 18, 1989

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EXHIBIT B

Amelia Beach Campground Co., Inc.
Beaufort County Development Corporation
Bluffton Timber and Land Company, Inc.
Core Unit Manufacturing Co., Inc.
Gardner Matthews Utility Co., Inc.
Harbour Town Company
Heritage Real Estate Co., Inc.
Heritage Real Estate Company, Inc.
Hilton Head Beach Company
Hilton Head Beach Company, Inc.
Hilton Head Development Corp.
Hilton Head Development Corporation
Hilton Head Island Transportion Center, Inc.
Hilton Head Management Co., Inc.
Holiday Afloat, Inc.
Kiandra Associates, Inc.
Nantahala Development Co., Inc.
Point South, Inc. f/k/a Twin River Gardens, Inc.
Resort Hotel Development, Inc.
River Hills Plantation Company, Inc.
Sea Camp, Inc.
Sea Oaks Plantation Company
Sea Pines Recreation Company, Inc.
Sea Pines Behavioral Institute
Sea Pines Company (Alabama Domestic)
Sea Pines Harbourtown Services, Inc.
Sea Pines Harbour Town Services, Inc.
Sea Pines Land Company, Inc.
Sea Pines Management Company, Inc.
Sea Pines Management Services, Inc.
Sea Pines Marketing, Inc.
Sea Pines Marketing, Inc.
Sea Pines of Charleston, Inc.
Sea Pines of Virginia, Inc.
Sea Pines Resorts, Inc.
Sea Pines Resort Tours, Inc.
Sea Pines/Beaufort Real Estate Company, Inc.
Sportsgarden, Inc.
The Hilton Head Racquet Club, Inc.
The Hilton Head Hotel Company, Inc.
The Hilton Head Golf Club, Inc.
The Plantation of Hilton Head, Inc.
The Plantations of Hilton Head, Inc.
The Spanish Island Company
Tideland Realty of Hilton Head, Inc.
Tideland Realty of Ohio, Inc.
Tideland Timesharing, Inc.
Vacation Resorts Restaurants, Inc.
Vacation Resorts Management, Inc.
Villa Travel, Ltd.

Exhibit "B"

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Tract 13

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located near the westerly intersection of Greenwood drive and Palmetto Bay Road, and being more particularly shown and described as Parcel B-1 containing 1.15 acres, and Parcel B-2 containing 0.89 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973, revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. for a more detailed description as to the course, metes, bounds, distances and location of the said Parcel B-1 and Parcel B-2, reference may be had to the above referred to plat of record.

Tract 14
(Market Place Lots)

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located the westerly intersection of Greenwood Drive and Palmetto Bay Road, and being more particularly shown and described as Parcel E containing 2.128 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973, revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. For a more detailed description as to the course, metes, bounds, distances and location of the said Parcel E, reference may be had to the above referred to plat of record.

Tract 15

All that certain piece, parcel or tract of land known as Pinefield Cemetery located in the Tract D of Indigo Run Plantation.

Tract 16

All the certain piece, parcel or tract of land containing 18.234 acres, more or less, located on Hilton Head Island, Beaufort County, South Carolina and designated "18.234 Acres Broad Creek, A Section of Honey Horn Plantation," shown on that certain Plat of Survey dated June 27, 1980, and prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, South Carolina Registered Land Surveyor (S.C. Reg., L.S. No. 4784).

BEAUFORT COUNTY TAX MAP REFERENCE

	Dist	Map	Submap	Parcel	Block
1.	550	15		210A	

2. Open space
3. Cemetary
4. 510-11-82/82A-0

Exhibit "C"

Tract 13

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located near the westerly intersection of Greenwood drive and Palmetto Bay Road, and being more particularly shown and described as Parcel B-1 containing 1.15 acres, and Parcel B-2 containing 0.89 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973, revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. for a more detailed description as to the course, metes, bounds, distances and location of the said Parcel B-1 and Parcel B-2, reference may be had to the above referred to plat of record.

Tract 14
(Market Place Lots)

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located the westerly intersection of Greenwood Drive and Palmetto Bay Road, and being more particularly shown and described as Parcel E containing 2.128 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973. revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. For a more detailed description as to the course, metes, bounds, distances and location of the said Parcel E, reference may be had to the above referred to plat of record.

Tract 15

All that certain piece, parcel or tract of land known as Pinefield Cemetery located in the Tract D of Indigo Run Plantation.

Tract 16

All the certain piece, parcel or tract of land containing 18.234 acres, more or less, located on Hilton Head Island, Beaufort County, South Carolina and designated "18.234 Acres Broad Creek, A Section of Honey Horn Plantation," shown on that certain Plat of Survey dated June 27, 1980, and prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, South Carolina Registered Land Surveyor (S.C. Reg., L.S. No. 4784).

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RE/HHH

EXHIBIT B

All properties, both real and personal, tangible and intangible, now owned by or to which the within Grantor has claim to or may have in the future including, but not limited to, all easements, appurtenances, reserved rights under covenants and restrictions of record, repurchase rights, reversion rights, logos, names, licenses, trademarks, service marks, tradenames, copyrights, files, drawings, documents, mineral rights, plats, surveys, corporate records, unassigned sewer and water capacity or rights to payments therefor, tax refunds, accounts receivable, notes receivable, bank deposits, bank accounts including all escrow accounts, letters of credit, deposits with private or public entities, stocks including specifically all the issued and outstanding stock of those corporations listed at Exhibit "C", bonds and other securities, furniture, fixtures and equipment and other property whatsoever, and specifically including any and all properties and rights of any merged, dissolved, or terminated corporations, partnerships or entities which the within Grantor may be a survivor of or successor in interest to including, but not limited to, Forest Beach Corporation, Lighthouse Beach Company, Port Royal Plantation Group, Island Development Corporation, Hilton Head Company, Inc. (a South Carolina Corporation), The Hilton Head Company (a Georgia Corporation), Sea Pines Golf Fairways Company, Sea Pines Home Builders, Inc., Southern States Naval Stores Company and William Hilton Inn Company, wheresoever located anywhere in the world within or without the legal boundaries of the Town of Hilton Head Island and in particular as may be located within or related to or associated with or have any relation whatsoever to the following general areas or parcels of property:

1. Sea Pines: Bounded on the north by the mean high water of Broad Creek and Calibogue Sound, on the east and southeast by the right-of-way of Palmetto Bay Road and the right-of-way of Pope Avenue, on the south by the mean high water of the Atlantic Ocean and on the west by the mean high water of the Atlantic Ocean and Calibogue Sound.

2. North Forest Beach: Bounded on the west by the above described Sea Pines Areas, on the north by Shipyard Plantation, on the east by Shipyard Plantation and Palmetto Dunes, on the south by the mean high water of the Atlantic Ocean.

3. Pope Avenue Commercial: Bounded on the north by Shipyard Plantation, on the east Shipyard Plantation, on the south by the right-of-way of Lagoon Road and on the west by the right-of-way of Pope Avenue.

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4. Palmetto Bay Road and Commercial: Bounded on the north by the mean high water of Broad Creek and Wexford Plantation, on the east by Wexford Plantation, on the south by the right-of-way of Highway 278 and on the west by the right-of-way of Palmetto Bay Road.

5. Wexford Plantation and Long Cove Club: Bounded on the north by the mean high water of Broad Creek, on the east and south by the boundary of the Broad Creek Public Service District, on the south by Shipyard Plantation, Palmetto Dunes and Central Park, and on the west by the above described Palmetto Bay Road Commercial Area.

6. Shipyard Plantation: Bounded on the north by the right-of-way of US Highway 278, on the east by Palmetto Dunes, on the south by the mean high water of the Atlantic Ocean and the above described North Forest Beach Area, on the west by the above described North Forest Beach Area, Pope Avenue Commercial Area, and the right-of-way of Pope Avenue.

7. Palmetto Dunes Resort: Bounded on the north by the mean high water mark of Broad Creek, on the east by the below described Singleton/Bradley Beach and Folly Field Areas, on the south by the mean high water of the Atlantic Ocean and on the west by North Forest Beach Area and Shipyard Plantation as described above and the Wexford Plantation and Long Cove Club Areas as described above.

8. Singleton/Bradley Beach and Folly Field: Bounded on the north by the mean high water mark of Broad Creek, Mid Island Area and Port Royal Plantation, on the east by Port Royal Plantation, on the south by the mean high water of the Atlantic Ocean, and on the west by Palmetto Dunes as described above.

9. Port Royal Plantation: Bounded on the north by Mid-Island Area and the Beach City Road and Bay Gall Areas as described below, on the east by the mean high water of Port Royal Sound and the Atlantic Ocean, on the south and west by the mean high water of the Atlantic Ocean and the Singleton/Bradley Beach and Folly Field Area described above, and on the west by the Mid-Island Area.

10. Mid-Island: Bounded on the north by Old Woodlands/ Industrial Park Area and Northridge Industrial Park, and the Beach City Road and Bay Gall Area, on the east by the Beach City Road and Bay Gall Area and Port Royal Plantation, on the south by Port Royal Plantation and the Singleton/Bradley Beach and Folly Field Area and on the west by the Singleton/ Bradley Beach and Folly Field Area, and the Old Woodlands and Industrial Park Area.

11. Old Woodlands and Industrial Park: Bounded on the north by Indigo Run Plantation and Northridge Industrial Park Area, on

the east by Northridge and Mid-Island Area, on the south by the mean high water of Broad Creek, and on the west by Indigo Run Plantation.

12. Beach City Road and Bay Gall: Bounded on the north by Hilton Head Plantation and the mean high water of Port Royal Sound, on the east by the mean high water of Port Royal Sound, on the south by Port Royal Plantation, Mid-Island Area and Northridge Industrial Park, and on the west by the Mid-Island Area, Northridge Industrial Park, Indigo Run Plantation and Hilton Head Plantation.

13. Hilton Head Plantation: Bounded on the north by the Mount Calvary and Squire Pope Area and the mean high waters of Skull Creek and the Port Royal Sound, on the east by the mean high water of Port Royal Sound and the Beach City and Bay Gall Area, on the south by the Beach City and Bay Gall Area, Indigo Run Plantation and Honey Horn Plantation, on the West by the Mount Calvary and Squire Pope Area and the mean high water of Scull Creek.

14. Mount Calvary and Squire Pope: Bounded on the north by the mean high water of Skull Creek, on the east by Hilton Head Plantation, on the south by Hilton Head Plantation, Honey Horn Plantation and the Jarvis Creek Area and on the west by the Jarvis Creek Area, Jenkins Island and the mean high water of Skull Creek.

15. Spanish Wells: Bounded on the north by the Jarvis Creek Area, on the east by Indigo Run Plantation, on the south by the mean high water of Broad Creek, on the west by Buck Island and the mean high water of Calibogue Sound.

16. Jarvis Creek: Bounded on the north by the Jenkins Island Area and the Mount Calvary and Squire Pope Area, on the east by Honey Horn Plantation and Indigo Run Plantation, on the south by Indigo Run Plantation and the Spanish Wells Area, on the west by the mean high water of Calibogue Sound.

17. Jenkins Island: Bounded on the north by the mean high water of Calibogue Sound and Skull Creek, on the east by the Mount Calvary and Squire Pope Area, on the south by the Jarvis Creek Area and on the west by the mean high water of Calibogue Sound.

18. Buck Island: Bounded on the north by the mean high water of Calibogue Sound, on the east by the Spanish Wells Area and the mean high water of Broad Creek, on the south by the mean high water of Broad Creek and on the west by the mean high water of Calibogue Sound.

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19. Honey Horn Plantation: Bounded on the north by the Mount Calvary and Squire Pope Area and Hilton Head Plantation, on the east by Hilton Head Plantation and Indigo Run Plantation, on the south by Indigo Run Plantation and on the west by the Jarvis Creek Area.

20. Marshland: Bounded on the north by Indigo Run Plantation and Old Woodlands and Industrial Park Area, on the east by Old Woodlands and Industrial Park Area and Singleton/Bradley Beach and Folly Field Area, on the south by the mean high water of Broad Creek and on the west by the Spanish Wells Area.

SAVE AND EXCEPT, all properties, both real and personal, intangible and tangible, wherever located now owned by or to which the within Grantor has claim, specifying or implying any subservience to or relating in any manner to any properties or assets heretofore or in the future conveyed to Southern Floridabanc, The Federal Savings & Loan Insurance Corporation, Resolution Trust Corporation, Receiver for Southern Floridabanc Federal Savings and Loan Association or any designees or assignees thereof, generally including, but not limited to, all easements, appurtenances, reserved rights under covenants and restrictions of record, repurchase rights, reversion rights, logos, names, licenses, trademarks, service marks, tradenames, copyrights, files, drawings, documents, plats, surveys, corporate records, unassigned sewer and water capacity or rights to payments therefor, tax refunds, accounts receivable, notes receivable, bank deposits, bank accounts (including all escrow accounts), letters of credit, deposits with private or public entities, stocks, bonds and other securities and/or commitments or rights of any kind whatsoever related to said properties conveyed to Southern Floridabanc, The Federal Savings and Loan Insurance Corporation, Resolution Trust Corporation, Receiver for Southern Floridabanc Federal Savings & Loan Association, or any designees or assignees thereof, and specifically including the aforesaid rights and properties which may be lying within or related to the properties described as follows:

(CONTINUED ON FOLLOWING PAGE)

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BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	11		1	

137
8 97B

406

TRACT 1

Being all that certain piece, parcel and tract of land located on Hilton Head Island, Beaufort County, south Carolina consisting of 1,285.95 acres, more or less, as shown on that certain plat of survey entitled "A Plat of Indigo Run Plantation, Hilton Head Island, Beaufort County, South Carolina" dated August 5, 1987, by Jerry L. Richardson, S.C. R.L.S. #4784 which is recorded in Plat Book 35, Page 1, in the Office of the Register of Mesne conveyances, Beaufort County, South Carolina, and being more particularly described as follows:

Beginning at the point of commencing, being Sea Pines Circle Control Monument N 117,234.664, E 2,073,336.788, than N 02° 02' 43" W for a distance of 11,313,86 feet to the true Point of Beginning with coordinates of N 128,541.318, E 2; 072,932.983; thence N 15° 19' 08" W for a distance of 842.40 feet to a point; thence S 70° 46' 32" W for a distance of 428.80 feet to a point; thence S 19° 40' 49" E for a distance of 436.79 feet to a point; S 43° 59' 22" W for a distance of 222.5 feet to a point; thence S 08° 15' 36" E for a distance of 171.01 feet to a point; thence S 08° 15' 36" E for a distance of 65.92 feet crossing the right of way of Marshland Road, to a point; thence S 08o 15' 36" E for a distance of 116.81 feet to a point; thence S 14° 32' 47" E for a distance of 218.27 feet to a point; thence S 14° 32' 47" for a distance of 36.99 feet to a point: thence S 14° 31' 18" E for a distance of 405.34 feet to a point; thence S 14° 31' 36" E for a distance of 405.05 feet to a point; thence S 12° 31' 36" for a distance of 12.26 feet to a point; thence N 77° 08' 33" W for a distance of 34.74 feet to a point; thence N 39° 18' 33" W for a distance of 47.49 feet to a point; thence N 48° 50' 53" W for a distance of 47.41 feet to a point; thence N 41° 35' 06" W for a distance of 50.37 feet to a point; thence N 34° 19' 59" W for a distance of 46.91 feet to a point; thence N 40° 25' 06" W for a distance of 47.92 feet to a point; thence N 42° 10' 03" W for a distance of 46.74 feet to a point; thence N 46° 29' 39" W for a distance of 53.75 feet to a point; thence N 51° 51' 53" W for a distance of 47.11 feet to a point; thence N 40° 26' 00" W for a distance of 25.89 feet to a point; thence N 08° 16' 47" W for a distance of 31.12 feet to a point; thence N 08° 16' 47" W for a distance of 218.12 feet to a point; thence N 08° 15' 50" W for a distance of 594.66 feet to a point; thence N 08° 15' 52" W for a distance of 65.92 feet, crossing the right of way of Marshland Road, to a point; thence N 08° 15' 34" W for a distance of 400.15 feet to a point; thence N 87° 10' 42" E for a distance of 56.37 feet to a point; thence N 16° 37' 51" W for a distance of 293.29 feet to a point; thence N 13° 58' 35" W for a distance of 1,060.91 feet to a point; thence N 70° 27' 52" E for a distance of 194.01 feet to a point; thence N 14° 32' 32" W for a distance of 209.85 feet to a point; thence N 14° 32' 32" W for a distance of 522.35 feet to a point; thence N 64° 17' 25" E for a distance of 555.17 feet to a point; thence N 64° 17' 25" E for a distance of 398.23 feet to a point; thence with a circular curve to the left, having a delta of 18° 11' 51", a radius of 2,146.10 feet, an arc of 681.61 feet, a tangent of 343.70 feet, a chord of 678.75 feet, and a chord bearing N 55° 11' 29" E to a point; thence N 46° 05' 33" E for a distance of 440.14 feet to a point; thence with a circular curve to the right, having a delta of 17° 15' 27", a radius of 2,107.19 feet, an arc of 634.69 feet, a tangent of 319.76 feet, a chord of 632.29

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feet, and a chord bearing of N 54° 43' 17" E to a point; thence N 63° 20' 59" E for a distance of 259.84 feet to a point; thence with a circular curve to the left, having a delta of 07° 29' 37", a radius of 4,089.01 feet, an arc of 534.79 feet, a tangent of 267.78 feet, a chord of 534.41 feet, and a chord bearing of N 59° 36' 11" E to a point; thence 55° 51' 22" E for a distance of 1,057.49 feet to a point; thence with a circular curve to the left, having a delta of 17° 51' 01", a radius of 2,892.23, an arc of 901.06 feet, a tangent of 454.21 feet, a chord of 897.42 feet, and a chord bearing of N 46° 55' 52" E to a point; thence N 38° 00' 22" E for a distance of 491.35 feet to a point; thence N 38° 00' 22" E for a distance of 265.15 feet to a point; thence N 61° 07' 32" E for a distance of 804.02 feet to a point; thence N 61° 07' 32" E for a distance of 1,854.57 feet to a point; thence N 62° 06' 39" E for a distance of 927.17 feet to a point; thence N 63° 31' 45" E for a distance of 212.48 feet to a point; thence S 18° 08' 29" E for a distance of 571.50 feet to a point; thence N 65° 03' 30" E for a distance of 384.10 feet to a point; thence N 63° 36' 26" E for a distance of 539.85 feet to a point; thence N 17° 30' 16" E for a distance of 596.80 feet to a point; thence N 61° 04' 27" E for a distance of 847.67 feet to a point; thence N 62° 16' 31" E for a distance of 441.05 feet to a point; thence N 58° 57' 41" E for a distance of 267.87 feet to a point; thence S 79° 02' 06" E for a distance of 18.22 feet to a point; thence S 62° 39' 11" E for a distance of 41.34 feet to a point; thence N 72° 23' 28" E for a distance of 49.55 feet to a point, then N 63° 06' 32" E for a distance of 172.22 feet to a point; thence N 50° 38' 16" E for a distance of 48.07 feet to a point; thence N 41° 28' 16" E for a distance of 110.31 feet to a point; thence N 48° 18' 59" E for a distance of 87.98 feet to a point; thence N 69° 44' 11" E for a distance of 105.78 feet to a point; thence N 72° 13' 15" E for a distance of 102.39 feet to a point; thence N 55° 21' 14" E for a distance of 64.36 feet to a point; thence N 43° 18' 08" E for a distance of 58.84 feet to a point; thence N 35° 19' 28" E for a distance of 108.58 feet to a point; thence N 66° 52' 49" E for a distance of 57.20 feet to a point; thence N 38° 50' 14" E for a distance of 120.16 feet to a point; thence N 28° 08' 49" E for a distance of 65.02 feet to a point; thence N 31° 14' 54" E for a distance of 55.74 feet to a point; thence S 66° 49' 50" E for a distance of 331.42 feet to a point; thence S 09° 17' 08" W for a distance of 87.65 feet to a point; thence with a circular curve to the right, having a delta of 16° 42' 24", a radius of 1,717.06 feet, an arc of 500.67 feet, a tangent of 252.12 feet, a chord of 498.90 feet, and a chord bearing of S 17° 39' 20" W to a point; thence S 25° 59' 32" W for a distance of 266.39 feet to a point; thence S 19° 19' 34" E for a distance of 19.58 feet to a point; thence S 63° 59' 37" W for a distance of 666.58 feet to a point; thence S 19° 35' 27" E for a distance of 573.57 feet to a point; thence S 19° 38' 54" E for a distance of 41.95 feet to a point; thence S 19° 35' 27" E for a distance of 42.72 feet to a point thence N 64° 33' 56" E for a distance of 196.09 feet to a point; thence N 64° 33' 17" E for a distance of 466.73 feet to a point; thence N 19° 21' 48" W for a distance of 223.65 feet to a point; thence N 19° 09' 08" W for a distance of 368.24 feet to a point; thence N 25° 59' 32" E for a distance of 331.70 feet; thence with a circular curve to the left, having a delta of 16° 42' 24", a radius of 1,783.06 feet, an arc of 519.91 feet, a tangent of 261.81 feet, a chord of 518.07 feet, and a chord bearing of N 17°

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38' 21" E to a point; thence N 09° 17' 08" E for a distance of 71.[illegible] feet to a point; thence S 66° 49' 50" E for a distance of 245.29 feet to a point; thence S 72° 04' 36" E for a distance of 222.92 feet to a point; thence with a circular curve to the left, having a delta of 23° 17' 40", a radius of 1,521.49 feet, an arc of 618.58 feet, a tangent of 313.62 feet, a chord of 614.33 feet, and a chord bearing of S 83° 43' 27" E to a point; thence with a circular curve to the left, having a delta of 31° 24' 32", a radius of 2,002.33 feet, an arc of 1,097.65, a tangent of 563.00 feet, a chord of 1,083.96 feet, and a chord bearing of N 68° 55' 27" E to a point; thence N 53° 13' 11" E for a distance of 1,939.72 feet to a point; thence with a circular curve to the right, having a delta of 48° 49' 24", a radius of 1,331.17 feet, an arc of 1,134.33 feet, a tangent of 604.17 feet, a chord of 1,100.32 feet, and a chord bearing of N 77° 37' 53" E to a point; thence S 77° 57' 25" E for a distance of 1,027.38 feet to a point; thence S 11° 56' 34" W for a distance of 930.16 feet to a point; thence S 11° 59' 48" W for a distance of 462.31 feet to a point; thence N 78° 00' 12" W for a distance of 86.74 feet to a point; thence with a circular curve to the right, having a delta of 08° 41' 08", a radius of 175.97 feet, an arc of 26.68 feet, a tangent of 13.36 feet, a chord of 26.65 feet, and a chord bearing of S 65° 06' 06" W to a point; thence with a circular curve to the left, having a delta of 27° 05' 43", a radius of 177.50 feet, an arc of 83.94 feet, a tangent of 42.77 feet, a chord of 83.16 feet, and a chord bearing of S 55° 53' 45" W to a point; thence S 42° 20' 52" W for a distance of 104.79 feet; thence with a circular curve to the right, having a delta of 11° 18' 01", a radius of 415.88 feet, an arc of 82.02 feet, a tangent of 41.14 feet, a chord of 81.89 feet, and a chord bearing of S 47° 59' 54" W to a point; thence S 12° 44' 32" E for a distance of 127.46 feet to a point; thence S 77° 15' 28" W for a distance of 896.73 feet to a point; thence S 77° 07' 07" W for a distance of 201.05 feet to a point; thence N 23° 47' 13" W for a distance of 279.46 feet to a point; thence with a circular curve to the left, having a delta of 13° 39' 40", a radius of 1,068.96 feet, an arc of 254.87 feet, a tangent of 128.04 feet, a chord of 254.27 feet, and a chord bearing N 30° 37' 03" W to a point; thence N 37° 26' 54" W for a distance of 269.87 feet; thence S 57° 17' 43" W for a distance of 207.43 feet to a point; thence S 12° 57' 57" E for a distance of 691.69 feet to a point; thence S 12° 57' 37" E for a distance of 2,360.31 feet to a point; thence S 12° 57' 37" E for a distance of 141.98 feet to a point; thence S 12° 57' 37" E for a distance of 72.17 feet to a point; thence 12° 57' 08" E for a distance of 901.42 feet to a point; thence S 76° 43' 10" W for a distance of 673.26 feet to a point; thence with a circular curve to the left, having a delta of 08° 38' 30", a radius of 1,345.76 feet, an arc of 202.97 feet, a tangent of 101.68 feet, a chord of 202.78 feet, and a chord bearing of S 72° 23' 55" W to a point; thence N 16° 34' 09" W for a distance of 730.00 feet to a point; thence S 64° 57' 38" W for a distance of 326.58 feet to a point; thence S 65° 55' 26" W for a distance of 253.62 feet to a point; thence S 64° 23' 32" W for a distance of 2,753.08 feet to a point; thence N 19° 18' 07" W for a distance of 2,753.08 feet to a point; thence N 19° 18' 07" W for a distance of 222.14 feet to a point; thence S 53° 36' 54" W for a distance of 118.44 feet to a point; thence S 65° 15' 13" W for a distance of 259.98 feet to a point; thence S 58° 38' 52" W for a distance of 136.94 feet to a

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point; thence S 52° 40' 17" W for a distance of 183.62 feet to a point; thence S 57° 30' 11" W for a distance of 197.52 feet to a point; thence S 19° 48' 09" E for a distance of 123.12 feet to a point; thence S 64° 33' 44" W for a distance of 367.09 feet to a point; thence S 64° 43' 15" W for a distance of 190.47 feet to a point; thence S 64° 30' 37" W for a distance of 313.37 feet to a point; thence S 64° 30' 37" W for a distance of 173.05 feet to a point; thence S 19° 40' 23" E for a distance of 175.72 feet to a point; thence with a circular curve to the right, having a delta of 07° 46' 30", a radius of 1,992.00 feet, an arc of 270.32 feet, a tangent of 135.37 feet, a chord of 270.11 feet, and a chord bearing of S 76° 52' 00" W to a point; thence S 82° 47' 34" W for a distance of 106.39 feet to a point; thence with a circular curve to the right, having a delta of 05° 40' 02", a radius of 1,560.68 feet, an arc of 154.37 feet, a tangent of 77.25 feet, a chord of 154.31 feet, and a chord bearing of S 87° 06' 22" W to a point; thence N 21° 35' 29" W for a distance of 24.90 feet to a point; thence N 64° 30' 15" E for a distance of 290.27 feet to a point; thence N 19° 19' 52" W for a distance of 640.87 feet to a point; thence S 56° 52' 43" W for a distance of 639.90 feet to a point; thence S 56° 52' 43" W for a distance of 650.00 feet to a point; thence with a circular curve to the left, having a delta of 20° 41' 51", a radius of 1,941.88 feet, an arc of 701.49 feet, a tangent of 354.61 feet, a chord of 697.68 feet, and a chord bearing of S 78° 32' 39" W to a point; thence with a circular curve to the left, having a delta of 15° 27' 27", a radius of 1,941.88 feet, an arc of 523.88 feet, a tangent of 263.54 feet, a chord of 522.30 feet, and a chord bearing of S 60° 28' 00" W to a point; thence S 52° 44' 20" W for a distance of 514.20 feet to a point; thence S 52° 44' 22" W for a distance of 1,206.83 feet to a point; thence with a circular curve to the right, having a delta of 09° 47' 26", a radius of 3,470.49 feet, an arc of 593.03 feet, a tangent of 297.24 feet, a chord of 592.31 feet and a chord bearing of S 57° 37' 58" W to a point; thence S 62° 31' 39" W for a distance of 1,005.62 feet to a point; thence with a circular curve to the right, having a delta of 11° 26' 37", a radius of 5,308.68 feet, an arc of 1,060.30 feet, a tangent of 531.92 feet, a chord of 1,058.54 feet, and a chord bearing of S 68° 14' 58" W to a point; thence S 73° 58' 16" W for a distance of 735.04 feet to a point; thence with a circular curve to the left, having a delta of 04° 23' 22", a radius of 3,874.88 feet, an arc of 296.86 feet, a tangent of 148.50 feet, a chord of 296.79 feet, and a chord bearing of S 71° 46' 34" W to a point; thence S 69° 34' 09" W for a distance to 1,384.26 feet to a point; thence s 69° 34' 44" W for a distance of 194.92 feet to a point; thence with a circular curve to the right, having a delta of 10° 13' 03", a radius of 2,609.10 feet, an arc of 465.28 feet, a tangent of 233.26 feet, a chord of 464.66 feet, and a chord bearing of S 74° 41' 15" W to the Point of Beginning.

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	11		85	
	7		211	
	"		212	
	"		213	

410

TRACT 2

INDIGO RUN

TRACT D

All that certain piece, parcel or tract of land, containing 83.59 acres, more or less, and designated as Tract D, as shown on a plat entitled "A Plat of 83.59 acres, Tract D for the Ginn Corporation, a Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 257.

TRACT 3

INDIGO RUN

TRACT I-10

All that certain piece, parcel or tract of land, containing 7.85 acres, more or less, and designated as Tract I, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT I-11

All that certain piece, parcel or tract of land, containing 6.80 acres, more or less, and designated as Tract I-11, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT I-12

All that certain piece, parcel or tract of land, containing 11.78 acres, more or less, and designated as Tract I-12, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L.

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BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	7		214	
			215	
			216	
			217	

411

Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT I-13

All that certain piece, parcel or tract of land, containing 7.77 acres, more or less, and designated as Tract I-13, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT I-14

All that certain piece, parcel or tract of land, containing 3.88 acres, more or less, and designated as Tract I-14, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT I-15

All that certain piece, parcel or tract of land, containing 3.77 acres, more or less, and designated as Tract I-15, as shown on a plat entitled "A Plat of Tract I-10 through I-15, 41.86 acres for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT C1

All that certain piece, parcel or tract of land, containing 10.95 acres, more or less, and designated as Tract C1, as shown on a plat entitled, "A Plat of 39.40 acres, Tracts C1 and C2 for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and

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BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	12		253	
	9		889	
	8		321	
	11		83A	

412

recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 353.

TRACT C2

All that certain piece, parcel or tract of land, containing 28.45 acres, more or less, and designated as Tract C1, as shown on a plat entitled, "A Plat of 39.40 acres, Tracts C1 and C2 for the Ginn Corporation. A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 353.

PORT ROYAL TENNIS VILLAGE TRACT

All those certain pieces, parcels or tracts of land containing 10.79 acres and 1.690 acres, more or less, and designated as "Future Development" as shown on a plat entitled "A Plat of 12.48 acres, Port Royal Tennis Village, a Section of Port Royal Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying Co., Inc. dated March 18, 1985 and revised May 14, 1985 and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 254.

TRACT 4

INDIGO RUN

TRACT A

All that certain piece, parcel or tract of land, containing 41.23 acres, more or less, as shown on a plat entitled "A Plat of 44.93 acres for Oxford Mortgage Release, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of coastal Surveying and Engineering co., dated March 29, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 249.

TRACT F

All that certain piece, parcel or tract of land, containing 6.11 acres, more or less, and designated as Tract F, as shown on a plat entitled "A Plat of 6.11 acres, Tract F, A Section of Indigo Run Plantation"

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BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	11		83B	

82A
8 251
252
257
255, 260, 266, 308-320, 102, 253

413

prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 251.

TRACT G

All that certain piece, parcel or tract of land, containing 4.619 acres, more or less, and designated as Tract G, as shown on a plat entitled "A Plat of 4.619 acres, Tract G, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 252.

TRACT H

All that certain piece, parcel or tract of land, containing 11.57 acres, more or less, and designated as Tract H, as shown on a plat entitled "A Plat of 11.57 acres, Tract H for the Ginn Corporation, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 253.

TRACT 5

Parcel I:

All those certain pieces, parcels or lots of land designated as Lots 5, 6, 12, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34, Northridge Park Hilton Head Island, in the County of Beaufort, State of south Carolina and shown on a plat entitled "A Plat of Lots 5, 6, 12, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34, A Section of Northridge Park" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 dated March 13, 1985 and recorded in the Office of the Register of Mesne conveyances for Beaufort County, South Carolina in Plat Book 32 at Page 250.

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Parcel II:

All roads and open spaces with Northridge Park, including without limit those shown on the following plats filed of record in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina:

(a) Plat Book 31 at Page 14;
(b) Plat Book 31 at Page 16;
(c) Plat Book 31 at Page 177;
(d) Plat Book 31 at Page 220;
(3) Plat Book 31 at Page 226;
(f) Plat Book 31 at Page 227;
(g) Plat Book 32 at Page 46;
(h) Plat Book 32 at Page 116;
(i) Plat Book 32 at Page 138;
(j) Plat Book 32 at Page 133;
(k) Plat Book 33 at Page 13;
(l) Plat Book 33 at Page 14;
(m) Plat Book 33 at Page 34;
(n) Plat Book 33 at Page 196;
(o) Plat Book 34 at Page 124; and
(p) Plat Book 35 at Page 23.

TRACT 6

TRACT B2

All that certain piece, parcel or tract of land, containing 34.93 acres, more or less, and designated as Tract B2, as shown on a plat entitled "A Plat of 60.92 acres, Tracts B1 and B2, A Section of Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated March 26, 1985, and recorded in the R.M.C. Office for Beaufort County, South Carolina in Plat Book 32 at Page 251.

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	8		323	

TRACT 7

TRACT E

All that certain piece, parcel or tract of land, containing 60.93 acres, more or less, and designated as Tract E, as shown on a plat entitled "A Plat of 60.93 acres, Tract E for the Ginn Corporation, A Section of

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	11		83	

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Indigo Run Plantation" prepared by Jerry L. Richardson, S.C. Reg. L.S. No. 4784 of Coastal Surveying and Engineering Co., Inc., dated April 1, 1985, and recorded in the Office of the Clerk of Court of Beaufort County, South Carolina in Plat Book 32 at Page 248.

(CONTINUED NEXT PAGE)

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PRH.legal

Tract 13

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located near the westerly intersection of Greenwood drive and Palmetto Bay Road, and being more particularly shown and described as Parcel B-1 containing 1.15 acres, and Parcel B-2 containing 0.89 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973, revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. for a more detailed description as to the course, metes, bounds, distances and location of the said Parcel B-1 and Parcel B-2, reference may be had to the above referred to plat of record.

Tract 14
(Market Place Lots)

All those certain pieces, parcels or tracts of land, with improvements thereon, if any, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being located the westerly intersection of Greenwood Drive and Palmetto Bay Road, and being more particularly shown and described as Parcel E containing 2.128 acres as shown on a survey prepared by Paul J. Emilius, Registered Land Surveyor #4176, dated August 13, 1973, revised October 29, 1973, revised December 6, 1973, revised June 13, 1974, and revised June 17, 1974, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 23 at Page 159. For a more detailed description as to the course, metes, bounds, distances and location of the said Parcel E, reference may be had to the above referred to plat of record.

Tract 15

All that certain piece, parcel or tract of land known as Pinefield Cemetery located in the Tract D of Indigo Run Plantation.

Tract 16

All the certain piece, parcel or tract of land containing 18.234 acres, more or less, located on Hilton Head Island, Beaufort County, South Carolina and designated "18.234 Acres Broad Creek, A Section of Honey Horn Plantation," shown on that certain Plat of Survey dated June 27, 1980, and prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, South Carolina Registered Land Surveyor (S.C. Reg., L.S. No. 4784).

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ALL that certain piece, parcel or tract of land lying and being within Indigo Run Plantation, Hilton Head Island, Beaufort County, South Carolina, containing 25.99 Acres, more or less, and being designated as "Tract B-1, 25.99 Ac." on that certain plat of survey "A Plat of 60.92 Acres, Tracts B-1 & B-2, a Section of Indigo Run Plantation: dated March 26, 1985, and prepared by Coastal Surveying and Engineering Co., Inc., Jerry L. Richardson, South Carolina Registered Land Surveyor No. 4784, which plat has been recorded in the Office of the RMC for Beaufort County, South Caorlina in Plat Book 33 at Page 7.

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
510	8		332	

FURTHER SAVE AND EXCEPT the following listed Hilton Head Holding Corp bank accounts and deposits therein which shall be retained by the Trustee:

Earnest Money Account	SCN	730058971
Operating Account	NCNB	745012654
Claims Distribution A	SCN	730056058
Claims Distribution B	SCN	730056041
Vacation Resorts, Inc. Group Benefit Plan	NCNB	745085252

FURTHER SAVE AND EXCEPT the following tax refund and account receivables.

South Carolina Tax Commission refund of approximately $13,000.00 for overpayment of license fee.

$10,000.00 account receivable from Summey Building Systems or its assigns or successors for EMA Assessment Port Royal Corridor.

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RE.HHH5

EXHIBIT C

Amelia Beach Campground Co., Inc.
Beaufort County Development Corporation
Bluffton Timber and Land Company, Inc.
Core Unit Manufacturing Co., Inc.
Gardner Matthews Utility Co., Inc.
Harbour Town Company
Heritage Real Estate Co., Inc.
Hilton Head Beach Company
Hilton Head Beach Company, Inc.
Hilton Head Development Corp.
Hilton Head Island Transportation Center, Inc.
Hilton Head Management Co., Inc.
Holiday Afloat, Inc.
Holiday Homes
Honey Horn Plantation, a South Carolina corporation
Island Development Corporation
Kiandra Associates, Inc.
Nantahala Development Co., Inc.
Point South, Inc. f/k/a Twin River Gardens, Inc.
Port Royal Plantation Group
Resort Hotel Development, Inc.
River Hills Plantation Company, Inc.
Sea Camp, Inc.
Sea Oaks Plantation Company
Sea Pines Recreation Company, Inc.
Sea Pines Behavioral Institute
Sea Pines Company (Alabama Domestic)
Sea Pines Harbourtown Services, Inc.
Sea Pines Harbour Town Services, Inc.
Sea Pines Land Company, Inc.
Sea Pines Management Company, Inc.
Sea Pines Management Services, Inc.
Sea Pines Marketing, Inc.
Sea Pines of Charleston, Inc.
Sea Pines of Virginia, Inc.
Sea Pines Resorts, Inc.
Sea Pines Resort Tours, Inc.
Sea Pines/Beaufort Real Estate Company, Inc.
Southern States Naval Stores Co.
Sportsgarden, Inc.
The Hilton Head Racquet Club, Inc.
The Hilton Head Hotel Company, Inc.
The Hilton Head Golf Club, Inc.
The Plantation of Hilton Head, Inc.
The Plantations of Hilton Head, Inc.
The Spanish Island Company
Tideland Realty of Hilton Head, Inc.
Tideland Realty of Ohio, Inc.
Tideland Timesharing, Inc.
Vacation Resorts Restaurants, Inc.
Vacation Resorts Management, Inc.
Villa Travel, Ltd.

RECORDED THIS 18 DAY OF April 1990 IN BOOK 44 PAGE 1145
FEES, $ Mary A. Dowling
AUDITOR BEAUFORT COUNTY, S. C.

Dowling
FILED AT 9:57 O'CLOCK A M
BEAUFORT COUNTY S.C.
APR 2 1990
RECORDED IN BOOK 550 PAGE 379
REGISTER OF MESNE CONVEYANCES

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EXHIBIT L

HILTON HEAD HOLDINGS
CORPORATION

March 15, 1988

Mr. Francis Webster
Sea Pines Associates, Inc.
P.O. Box 7000
Hilton Head Island, SC 29938

SUBJECTS: Sea Pines Post Closing Adjustments

Dear Francis:

As I understand from Marc Puntereri and Joel Piassick, as the result of their meeting with you and Dan Womble, the attached Post Closing Adjustment sheet as compiled by Bob Milhous of Arthur Young represents all outstanding amounts that were to have been adjusted after the closing of the Sea Pines Associates purchase of assets, except for the various utility prorations which Bob Milhous of Arthur Young and Allen Pice of Sea Pines Plantation Company, Inc. are currently reviewing. Accordingly, as indicated in the attached accounting, we request that you submit a check in the amount of ~~$93,125~~ to Hilton Head Holdings representing the full amount due, ~~including the $50,000 escrow held by Wes Jones for the so-called "Gentsch" lawsuit.~~ Once we have received the accounting from Bob Milhous on the utility prorations, we shall invoice you.

,336

This accounting represents all of the claims the Estate has against Sea Pines Associates and all of your claims against the Estate pertaining to the Closing. Our signatures on this letter and the Post Closing Adjustment Statement attached will acknowledge this fact and mutually release both parties from further claims related to the closing of the Asset Purchase Agreement, short of any discovery of new information.

Thank you for your consideration.

Sincerely,

John F. Curry
Trustee

By: _____
John F. Curry, Trustee

By: _____
Francis S. Webster, Treasurer
Sea Pines Associates, Inc.

JFC/rjs
cc: Dan Womble
Joel Piassick, Esq.
Marc Puntereri
Bob Milhous

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2017-CP-07-01057
)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOT, LLC)	
)	**DEFENDANTS LYNDA H. JOHNSON AND CHARLES S. GIANONNE'S MOTION FOR ATTORNEY'S FEES AND COSTS**
Plaintiffs,)	
)	
v.)	
)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,)	
)	
Defendants.)	
)	

Defendants Lynda H. Johnson and Charles S. Giannone ("Johnson and Giannone"), by and through their undersigned counsel, request and move for this Court to award attorney's fees and costs to Johnson and Giannone as the prevailing parties in this litigation. As explained herein, Johnson and Giannone are the prevailing parties and entitled to an award of the fees and costs incurred in the defense of the litigation.

BACKGROUND

Plaintiffs initiated this action against Johnson and Giannone, as well as Defendant Sea Pines Resort, LLC. The Second Amended Complaint alleges that Johnson and Giannone breached a contract with Plaintiff Bittmint, LLC dated March 17, 2017. **Second Am. Compl. ¶¶ 12, 20-24.** A copy of the Contract Johnson and Giannone were alleged to have breached was attached as exhibit A to the Second Amended Complaint. **Second Am. Compl., at Ex. A.** That contract provides in pertinent part that "[i]n the event of litigation commenced because of a default hereunder, **the prevailing partie(s) in such litigation *shall* be entitled to recover attorneys fees**

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and court costs from the non prevailing partie(s)." **Second Am. Compl., at Ex. A (bold and italics added).**

This case went to trial on February 28, 2022. On March 2, 2022, after the Plaintiffs rested their case, the Court granted the Defendants' Motion for a Directed Verdict. The Court ruled that Plaintiff had not put forth evidence from which any jury could conclude that Johnson and Giannone breached the contract. Johnson and Giannone are prevailing parties in the litigation and entitled to attorneys fees and costs from Bittmint, LLC.

Johnson and Giannone, seek an award of the following, which are further supported by the affidavit of John P. Linton, Jr, Esq. attached hereto as exhibit 1.

	Attorney's Fees	$193,228.50
	Costs	$11,123.67
TOTAL		**$204,352.17**

The contract provides that the prevailing party **shall** be awarded attorneys fees and costs. Johnson and Giannone are the prevailing parties and are entitled to an award of the fees and costs incurred in the defense of the litigation against them. Pursuant to an indemnity agreement between Sea Pines Resort, LLC and Lynda Johnson/Charles Gianonne, Sea Pines Resort, LLC has been responsible for paying the fees incurred in the defense of Lynda Johnson and Charles Gianonne.[1]

The fees and costs are reasonable and consistent with factors typically considered by courts in awarding fees including, but not limited to, 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) fees

[1] A copy of the indemnity agreement, as amended, is available for *in camera* review. To protect the common interest and attorney client privilege concerns, a copy is not attached to this filing.

customarily charged in the locality for similar services; and 5) beneficial results obtained. For all these reasons, Johnson and Gianonne request an award of fees and costs as provided herein. This motion is supported by the pleadings, orders and filings in the case; the evidence at and results of the trial; the affidavit attached hereto; and such legal memorandum that may be filed in further support of the request.

Respectfully submitted,

WALKER GRESSETTE & LINTON, LLC

s/ John P. Linton, Jr.
G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
P.O. Box 22167
Charleston, SC 29413
Tel: 843-727-2200
walker@wglfirm.com
linton@wglfirm.com

ATTORNEYS FOR DEFENDANT SEA PINES RESORT, LLC

Charleston, South Carolina
March 14, 2022

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOT, LLC Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **AFFIDAVIT OF FEES AND COSTS BY JOHN P. LINTON, JR.**

Personally appeared before me John P. Linton, Jr. who being duly sworn, testifies as follows:

1. I offer this Affidavit as testimony, under oath and under penalty of perjury, stating and affirming that I have personal knowledge of the facts set forth herein, that I am competent to testify to the matters set forth herein, and that all statements included herein are truthful and accurate.
2. I am over the age of eighteen. I am a member of Walker Gressette & Linton, LLC, formerly known as Walker Gresssette Freeman & Linton, LLC ("the firm"), in Charleston, SC.
3. The firm represents the Defendants in this action, which was commenced on May 26, 2017 by the filing of the Complaint.
4. The firm is handling this matter on an hourly basis. My hourly rate has been $300 and $350 per hour. Trenholm Walker's has been $390 and $400 per hour. The associate rate has been $250 and $275 per hour. The paralegal's rate is $110. The rates are reasonable and consistent with those customarily charged in this locality for similar legal services. The

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rates have changed once, at the beginning of 2022, since the filing of the action. The rates are consistent with those charged by the firm to other clients for similar services.

5. The work undertaken in this action consists of tasks and actions required for litigation of moderate difficulty and complexity like this case. The tasks devoted to this matter have included, but are not limited to, communications and conferences with the clients and witnesses, written discovery, document review and document production, multiple depositions, two mediations, motion practice, legal research, drafting legal memoranda, and preparing for trial as well as trying the case.

6. Trenholm Walker has substantial experience handling business and property litigation at the trial and appellate levels. He graduated from the University of Virginia, Phi Beta Kappa, in 1974 and from the University of South Carolina School of Law, *cum laude*, in 1978. He was admitted to the South Carolina Bar in 1978. Mr. Walker served as a law clerk from 1978 to 1979 to the Honorable Robert F. Chapman, U.S. District Court Judge. He is AV-rated, the highest rating offered by Martindale-Hubbell®. Additionally, he is a fellow of the American College of Trial Lawyers, which is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. He is a fellow in the American Board of Trial Advocates, called ABOTA, as well as being a fellow in Litigation Counsel of America, both of those being other honorary organizations of trial lawyers where one must be selected by one's litigation peers who are fellows in the organizations. Among other recognitions, he was selected by other lawyers in South Carolina as one of the top 10 lawyers in South Carolina in 2021 in the polling conducted by Super Lawyers®.

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7. I graduated from Wofford College, *cum laude*, in 2007 and the University of South Carolina School of Law, *cum laude*, 2010. Following law school, I clerked for Senior United States District Court Judge P. Michael Duffy. I have substantial experience handling business and property litigation at both the trial and appellate level. I have been recognized by Best Lawyers® in the area of commercial litigation and have also been included as a rising star in plaintiff's litigation by the Super Lawyers® publication. I am AV-rated, the highest rating offered by Martindale Hubbell. Trenholm Walker and I have been handling cases of this nature together since 2012.

8. As of March 11, 2022, the firm's fees for handling this matter, total $193,228.50[1] as reflected in the chart below.[2]

2017-2021	Title	Hourly Rate	Number of hours	total
G. Trenholm Walker	Member	$390	81.9	$31,941.00
John P. Linton, Jr.	Member	$300	303.9	$91,170.00
Jennifer Ivey	Associate	$250	8.1	$2,025.00
Nancy Jane Dennis	Paralegal	$110	95.2	$10,472.00
2022				
G. Trenholm Walker	Member	$400	56.8	$22,720.00
John P. Linton, Jr.	Member	$350	77.7	$27,195.00

[1] The rates for this matter were adjusted at the beginning of 2022, as such the fees are broken down into two categories: 2017-2021 and 2022.

[2] Walker Gressette & Linton, LLC will make the details bills available for *in camera* review to the extent the Court would like to review the details bills in addition to the statement of fees included in this affidavit.

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James Clement	Associate	$275	14.7	$4,042.50
Nancy Jane Dennis	Paralegal	$110	33.3	$3,663.00

9. The undersigned believes the fees are reasonable and consistent with factors typically considered by courts in awarding fees including 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) fee customarily charged in the locality for similar services; and 5) beneficial results obtained.

10. Additionally, the firm has advanced costs in the amount of $11,123.67 as reflected by the attached spreadsheet, see Ex. 1

11. All attorney's fees and litigation expenses discussed in the preceding paragraphs were reasonably and necessarily incurred in this case. Pursuant to an indemnity agreement between Sea Pines Resort, LLC and Lynda Johnson/Charles Gianonne, Sea Pines Resort, LLC has been responsible for paying the fees incurred in the defense of the case.[3]

FURTHER AFFIANT SAYETH NOT.

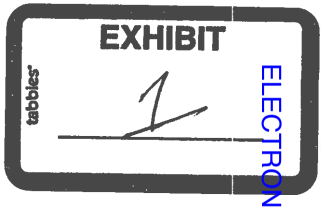
John P. Linton, Jr.

Sworn this 14 Day
of March, 2022

Notary Public for South Carolina

My Commission Expires: August 11, 2026

[3] A copy of the indemnity agreement, as amended, is available for *in camera* review. To protect the common interest and attorney client privilege concerns, a copy is not attached to this filing.



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Date	Description	Amount
3/6/2018	Beaufort County Common Pleas	$ 31.74
5/25/2018	Tupper Grimsley Dean & Canaday - mediation fee	$ 436.88
5/24/2018	Travel to and from Beaufort for mediation	$ 78.26
6/28/2018	Travel to Beaufort for hearing on Motion to Compel (141 miles - Prorata)	$ 38.43
8/21/2018	Beaufort County Clerk - filing fee	$ 31.74
11/13/2018	Travel to and from hearing in Beaufort	$ 75.10
3/1/2019	Beaufort County Clerk of Court - filing fee	$ 31.74
4/30/2019	Travel to Hilton Head (210 miles)	$ 121.80
5/1/2019	Travel to Hilton Head (210 miles), meal	$ 141.27
5/9/2019	Coastal Court Reporting	$ 365.75
5/9/2019	Coastal Court Reporting	$ 258.50
5/1/2019	Travel to Hilton Head (210 miles), meal	$ 141.27
6/21/2019	Travel to Hilton Head (210 miles) for depositions	$ 141.27
6/27/2019	Travel to Hilton Head (210 miles) for depositions	$ 141.27
6/21/2019	Lunch at Bess Deli with Rob Bender	$ 22.02
7/11/2019	Coastal Court Reporting - Michael Mogil deposition	$ 782.50
7/11/2019	Coastal Court Reporting - Amir Bitton deposition	$ 708.30
7/11/2019	Coastal Court Reporting - Alon Mintz deposition	$ 1,176.50
7/11/2019	Coastal Court Reporting - Lynda Johnson deposition	$ 242.00
7/22/2019	Butler Snow - mediation fee	$ 2,475.00
7/23/2019	Synovus - records per subpoena	$ 103.30
11/20/2019	Beaufort County Courthouse for Motion for Summary Judgment hearing (137.8 miles)	$ 79.92
11/20/2020	Beaufort County Clerk	$ 31.74
10/6/2021	Travel to Beaufort Courthouse, Sea Pines and return (217 miles, meal)	$ 135.45
10/8/2021	Prolegal - Trial boards	$ 442.54
10/8/2021	Prolegal - Trial boards	$ 398.94
10/8/2021	Prolegal - Trial board	$ 88.84
10/12/2021	Mona Manley - transcript of court hearing	$ 170.00
10/11/2021	Travel to and from courthouse (137.8 miles)	$ 77.17
10/10/2021	Travel to and from Beaufort, hotel, meals (138 miles)	$ 302.50
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
1/5/2022	Travel to and from Beaufort County Court house, meal (137.8 miles)	$ 92.92
3/3/2022	Travel to/from Beaufort for Trial (mileage, hotel, and meals)	$ 698.27
3/3/2022	Travel to and from Beaufort County Court house (3 days of travel for Trial)	$ 260.80
3/3/2022	Travel to and from Beaufort County Court house for Trial	$ 86.94
3/3/2022	Travel to and from Beaufort County Court house for Trial (mileage, hotel, meal)	$ 554.30
	TOTAL	**$ 11,123.67**

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOT, LLC Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND THE ORDER GRANTING DEFENDANTS MOTION FOR A DIRECTED VERDICT**

Defendants Lynda H. Johnson and Charles S. Giannone ("Johnson and Giannone") and Sea Pines Resort, LLC ("Sea Pines") (collectively, "Defendants"), respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion to Reconsider and to Alter or Amend the Order Granting Defendants' Motion for a Directed Verdict (the "Motion"). For all the reasons explained herein, the Motion should be denied in its entirety.

Contrary to Plaintiffs' arguments in the Motion, the only evidence at trial was that Sea Pines had every right to exercise its right of first refusal under the applicable covenants that were entered into evidence. Plaintiffs' own lawyer communicated to Sea Pines, in writing, that it had the right of first refusal and offered the properties at issue for sale to Sea Pines when he sought to have Sea Pines waive the right. There was no reason for Plaintiffs' lawyer to seek a waiver if no right existed. In the Motion, Plaintiffs rely entirely on arguments that, even though possessed by Sea Pines, the right of first refusal was no longer legally valid and enforceable. For the reasons put forward by Defendants in response to Plaintiff's motions in limine, Plaintiffs failed to establish the invalidity of the right of first refusal on any of the grounds asserted. Further, as to Plaintiffs'

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final grounds for the Motion, there was no evidence at trial that Sea Pines failed to exercise the right in a timely and proper manner.

EVIDENCE AT TRIAL

The only evidence at trial was that Sea Pines is the holder of the applicable right of first refusal. Specifically, Section 19 of the covenants, dated January 25, 1973, imposed by Lighthouse Beach Company on commercial properties in Harbour Town and recorded in Deed Book 206, Page 1143 (the "Commercial Use Covenants")[1] provides as in pertinent part:

> 19. In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty(30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. . . .

Ex. 1 at Pls. Trial Ex. 1. Plaintiffs agree that these are the applicable covenants that created the right of first refusal in the "Company," and was later transferred by assignment to Sea Pines. It is this right that Sea Pines exercised to purchase Shops 6 and 8 of the Mariners Way Horizontal Property Regime in Harbour Town (jointly referred to as the "Property"), when it was provided written notice of the price and terms of a proposed sale between Plaintiff Bittmint, LLC ("Bittmint"), as buyer and Defendants Lynda Johnson and Charles Giannone (the "Individual Defendants"), a sister and brother, as seller.

The contract of purchase and sale provided that Bittmint's purchase would only proceed if Sea Pines waived its right of first refusal. See Ex. 1 at Pls. Trial Ex. 11 (Section 6 included a

[1] There was also evidence at trial that Sea Pines is the holder of other distinct rights of first refusal contained within other recorded real property covenants in the Sea Pines community.

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condition that "Seller(s) shall obtain all appropriate waivers and approvals from Sea Pines … within thirty (30) days from the date of the execution" of contract.); (Section 7 specifically stated that no closing would be set until ninety (90) days after all relevant waivers and approvals are obtained by Seller.). The testimony at trial from all parties was that Bittmint agreed to undertake responsibility for obtaining the waivers from Sea Pines that are referenced by the contract.

Bittmint's lawyer, Michael Mogil, submitted the request for waiver of the right of first refusal to Sea Pines on April 13, 2017. Ex. 1 at Defs. Trial Ex. 9 (waiver request submitted to Sea Pines by Bittmint). Mogil also provided a copy of the contract to Sea Pines when Sea Pines requested it after receiving the request for waiver from Mogil to determine whether or not to waive its right of first refusal.

The waiver request submitted by Bittmint stated "[t]he above referenced property is hereby offered for sale to the company [i.e., Sea Pines] pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above. ***It is hereby understood by all parties that the company has (30) business days from receipt of this offer in which to determine its re-purchase option***." Ex. 1 at Defs. Trial Ex. 9 (double emphasis added). Mogil testified what his office sent to Sea Pines was a standard form that lawyers use in all real estate transactions in Sea Pines. The fact that the right of first refusal is so well established that lawyers, including Mogil, utilize a standard form for real estate transactions in Sea Pines is additional evidence of the validity of Sea Pine's right of first refusal.

The undisputed evidence was that the contract was provided to Sea Pines by Bittmint's lawyer on April 17, 2017, four days after he submitted the request for waiver. The only evidence at trial was that April 17, 20217 was the first date Sea Pines received the signed contract and could review all its terms and conditions. By e-mail dated May 2, 2017, Sea Pines' real estate attorney,

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Simon Fraser, informed Mogil that Sea Pines was exercising its right to purchase the property for the contract price of $580,000. Ex. 1 at Pls. Trial Ex. 18. On May 12, 2017, Sea Pines closed on its purchase of the Property.

On the third day of the trial, Plaintiffs rested their case, without putting on any proof, through exhibits or testimony, of any of the following:

- No proof was offered that Sea Pines is not the holder of the right of first refusal under the Commercial Use Covenants.
- No proof was offered that Sea Pines exercised the right of first refusal in any manner that was unlawful.
- No proof was offered that the Individual Defendants breached the contract.
- No proof was offered that Sea Pines' actions were not the proper exercise of a legal right and fully justified.
- No proof was offered from which a jury could have found Plaintiffs suffered damages without speculating.
- No proof was offered that Sea Pines exercised its right of first refusal in an untimely manner.

The Court granted Defendants' motion for a directed verdict on all causes of action. Plaintiffs' Motion rehashes the arguments that were rejected at trial and impermissibly includes new arguments that were not advanced at trial. As explained herein, the decision to grant the motion for a directed verdict was correct and the Court should DENY the Motion.

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DISCUSSION

1. The Court properly granted a directed verdict on Plaintiffs cause of action for violation of the common law rule against perpetuities.[2]

In the Motion, Plaintiffs again argue that the right of first refusal was legally unenforceable because they contend it violates the common law rule against perpetuities, even though the common law rule against perpetuities has been *superseded* by statute. As explained in this section, the Court correctly determined the common law rule against perpetuities does not invalidate the right of first refusal and correctly granted the motion for a directed verdict against Plaintiffs on this theory.

South Carolina has enacted a version of the Uniform Statutory Rule Against Perpetuities, S.C. Code § 27-6-10 et seq., which provides "that a nonvested interest violates the statutory rule against perpetuities if it fails to satisfy either the common law rule against perpetuities time period or the statutory 90-year wait-and-see time period.[3] Abrams v. Templeton, 320 S.C. 325, 328, 465 S.E.2d 117, 120 n. 5 (Ct. App. 1995); Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 628 S.E.2d 902, 917, 368 S.C. 342, 369 (Ct. App. 2006) (citing to the statutory rule). By its terms, South Carolina's statutory rule against perpetuities *expressly* supersedes the common law rule against perpetuities:

This chapter supersedes the common law rule against perpetuities.

S.C. Code § 27-6-80 (bold added). Thus, the common law rule no longer applies under South Carolina law.

[2] Plaintiffs' Third Cause of Action seeks damages against Sea Pines for violation of the common law rule against perpetuities. See Second Amend. Compl. ¶¶ 35-39. Plaintiffs have acknowledged in their filings there is no such cause of action for damages.
[3] Plaintiffs do not appear to dispute that there is no violation of the statutory rule.

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Despite the statutory language, Plaintiffs continue to assert that the common law rule was not superseded as to "nondonative transfers"[4]. Plaintiffs misconstrue the statute. It provides that certain "nondonative transfers" are excepted from any rule against perpetuities. S.C. Code § 27-6-50. The statute does not state or suggest in any way that the common law rule, which the statute supersedes, comes back to life when a right falls into the exception. Quite the opposite. No rule against perpetuities applies to the exceptions.

At the outset, it is worth noting that the bold language above states that the "chapter" supersedes the common law and Plaintiffs argue that part of the chapter (S.C. Code § 27-6-50) means that the common law applies. There is no basis in the statutory language for Plaintiffs' argument.

If there was any doubt as to the clear meaning of the statute, which there is not, the report of National Conference of Commissioners on Uniform State Laws, the drafters of the model statute that was adopted, made clear that the statutory rule against perpetuities is intended to replace the common law rule:

- "In line with long-standing scholarly commentary, Section 4(1) [the exclusison for nondonative transfers] excludes nondonative transfers from the Statutory Rule. ***The Rule Against Perpetuities is an inappropriate instrument of social policy to use as a control on such arrangements***. . . . ." (double emphasis added).

- "Since the Common-law Rule Against Perpetuities is superseded by this Act . . . ***a nonvested property interest, power of appointment, or other arrangement excluded from the Statutory Rule by this section is not subject to any rule against perpetuities, statutory or otherwise***." (double emphasis added).

- "Paragraph (1) [the exclusion for nondonative tranfers"] is therefore inconsistent with decisions holding the Common-law Rule to be applicable to the following types of property interests or arrangements when created in a nondonative, commercial-type transaction. . . preemptive rights in the nature of a right of first refusal. .."

[4] This term is not defined and there are no South Carolina cases defining what is, or is not, a nondonative transfer. Further, Plaintiffs have not cited any case holding that real property covenants are a nondonative transfer.

Ex. 2 at 11 & 57.

Unwilling to accept the clear and unambiguous wording of the statute, Plaintiffs hang their hat on a North Carolina case that addressed a right of first refusal that originated in a lease. See New Bar P'ship v. Martin, 221 N.C. App. 302, 729 S.E.2d 675 (2012). New Bar P'ship does not involve a right of first refusal that was imposed by an original developer in real property covenants that was part of the plan of development and clearly intended to apply to all properties subject to it. More important, many cases follow the South Carolina statutory language and are consistent with the reporter's comments. See, e.g., Atlantic Richfield Company v. Whiting Oil and Gas Corporation, 320 P.3d 1179, 1187 (Colo. 2014) (explaining that Colorado's Statutory Rule Against Perpetuities Act, which is modelled on the USRAP, replaces the common law rule for nonvested interests created after May 31, 1991). Shaver v. Clanton, 31 Cal.Rptr.2d 595, 598, 26 Cal.App.4th 568, 574 (Cal. App. 4 Dist.,1994) (explaining that since the adoption of the Uniform Act, the common law rule against perpetuities, which California had applied to commercial transactions, including such interests such as rights of first refusal, "is now irrelevant to such transactions.").

Moreover, the cases cited by Plaintiffs do not hold that real property covenants are "nondonative transfers." See, e.g., Buck v. Banks, 668 N.E.2d 1259 (Ind. Ct. App. 1996) (addressing an installment sales contract) and New Bar P'ship v. Martin, 221 N.C. App. 302, 729 S.E.2d 675 (2012) (addressing a commercial lease). Here, the right of first refusal at issue originates from real property covenants that run with the land, not a commercial lease.

Finally, even assuming the now-superseded common law rule against perpetuities applied here, there is no controlling law that would justify a finding that the right of first refusal violates said rule. Plaintiffs rely on one case -- Webb v. Reames, 326 S.C. 444, 485 S.E.2d 384 (Ct. App. 1997). Webb involved a deed transferring property for $64 that purported to give the grantor's

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heirs a right into perpetuity to repurchase the same property for $64, regardless of the value of the property. The right of first refusal was not contained within real property covenants applicable to all sellers and did not provide, as is the case here, that the property had to be purchased at the same price and on the same terms as the proposed sale. As the facts in Webb clearly illustrate that right of first refusal was intended for a particular individual under limited circumstances.

While our appellate courts have not addressed that issue (and shouldn't because the common law rule has been superseded), a 2006 Court of Appeals opinion, after mentioning Webb, noted the following:

> Greenwood Development cites to ***numerous cases from other jurisdictions upholding repurchase provisions similar to that in the 1981 Covenants, and rejecting application of the rule against perpetuities, where the right to repurchase the property is for the same price the owner is willing to sell to a third party***. Weber v. Texas Co., 83 F.2d 807, 808 (5th Cir.1936), Cambridge Co. v. East Slope Inv. Corp., 700 P.2d 537, 542 (Colo.1985); Shiver v. Benton, 251 Ga. 284, 304 S.E.2d 903, 906–07 (1983); cf. **S.C. Code Ann. § 27–6–60(B)** (holding that under *370 the Uniform Statutory Rule Against Perpetuities, courts must reform a disposition that was created before July 1, 1987 by inserting a savings clause that preserves the transferor's plan of distribution "within the limits of the rule against perpetuities"). We decline to resolve this issue because there is no justiciable controversy surrounding the right of first refusal provision

Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 628 S.E.2d 902, 917, 368 S.C. 342, 369–70 (Ct. App. 2006) (emphasis and double emphasis added).

Simply put, the right of first refusal in the Commercial Use Covenants exercised by Sea Pines is not invalid and unenforceable under the common law rule against perpetuities.

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2. **The Court properly granted Defendants' motion for a directed verdict on Plaintiffs' cause of action for invalid assignment because the right was assignable as a matter of law and the only evidence at trial was that Sea Pines is holder of the right of first refusal by assignment. There was no evidence and no testimony that Sea Pines is not the holder of the right of first refusal under the Commercial Use Covenants.**

i. The only evidence at trial was that Sea Pines is the holder of the right of first refusal.

The only evidence at trial is that Sea Pines is the holder of the right of first refusal provided for in the Commercial Use Covenants. No witness testified that those rights have not been assigned to Sea Pines. Steve Birdwell testified that the rights of the Company under the Commercial Use Covenants, including the right of first refusal, have been assigned to Sea Pines. There was no exhibit or testimony admitted that conflicted with Birdwell's testimony that the right of first refusal has been assigned to Sea Pines and Sea Pines is the holder of the right of first refusal.

Plaintiffs had the burden of putting forth evidence from which a jury could reasonably find that the right of first refusal was not assigned to Sea Pines. Plaintiffs did not do that. It's worth noting, as described in the fact section of this brief, Plaintiffs' own lawyer recognized that Sea Pines was the holder of the right of first refusal, requested a waiver of the right and provided Sea Pines a copy of the contract so that it could evaluate whether to exercise the right of first refusal. The evidence at trial was that at the time Sea Pines indicated it would exercise its right of first refusal, all parties were operating under the shared (and accurate) understanding that Sea Pines is the holder of the right of first refusal.

ii. The Court correctly rejected Plaintiffs' argument that the right of first refusal that was assigned to Sea Pines long ago was not assignable.

Plaintiffs' only argument contesting the assignment of the right of first refusal to Sea Pines is their contention that the assignment from Lighthouse Beach Company to Sea Pines Plantation rendered the right personal and Sea Pines Plantation Company did not have the right, as the assignee, to assign the right. Plaintiffs assert the right "died" with Sea Pine Plantation Company.

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The Court should reject this argument for the same reasons it earlier rejected it. The evidence at trial was clear that the rights of Lighthouse Beach Company under its Commercial Use Covenants were not personal rights, were intended to run with the land, and are fully assignable, including the right of first refusal. For example, the covenants provide as follows:

- Whenever used herein, the term "the Company" shall refer to LIGHTHOUSE BEACH COMPANY, its ***successors and assigns***. (double emphasis added).

- All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, ***the successors and assigns, if any, of the Company*** . . . (double emphasis added).

Ex. 1 at Pls. Trial Ex. 1, pp 2, 15. The evidence at trial was that the right of first refusal was assigned to Sea Pines Plantation Company in 1977 and then through further assignments, assigned to Defendant Sea Pines Resort, LLC. There was no evidence at trial to contradict Steve Birdwell's testimony.

Instead, Plaintiffs contend, as a matter of law, the 1977 assignment to Sea Pines Plantation Company converted the right, which by its very terms runs with the land and is assignable, to a personal right that could not be assigned. See Ex. 1 at Pls. Trial Ex. 1 (Commercial Use Covenants).

An assignment is a "a transfer of property or some other right from one person to another, which confers a complete and present right in the subject matter to the assignee." 6 Am. Jur. 2d *Assignment* § 1 (2012). ". . . [C]ontract rights are freely assignable today, unlike in medieval times." Osprey, Inc. v. Cabana Ltd. P'ship, 340 S.C. 367, 381, 532 S.E.2d 269, 277 (2000); see also Auto-Owners Ins. Co. v. Potter, 242 F. App'x 94, 104 (4th Cir. 2007) ("Contracts are freely assignable in general; however, *contracts that expressly state that they are not assignable are an exception* to that general principle.") (emphasis added). The Restatement of Contracts reflects that

unless precluded by a contract, rights are generally assignable. See Restatement (Second) of Contracts § 317 (1981) (A contractual right can be assigned unless. . . "assignment is validly precluded by contract."); see also Assessing Assignability: Transferring Contractual Rights or Obligations, Practical Law Legal Update 5-546-6326 ("As a general rule, stemming from the law's preference for the free alienation of property, contractual rights are freely assignable and contractual obligations are freely delegable.").

Plaintiffs cite to only non-binding decisions of courts outside of South Carolina, none of which are on point. Those cases involved limited rights of first refusal that were clearly intended to be personal to the holder, unlike the right of first refusal in this case, which was just one of many rights of the original master developer embodied in covenants that expressly run with the land and apply to all the properties encumbered by them.

Furthermore, as explained in more detail in the section below addressing Plaintiffs' argument regarding judicial notice, the United States District Court and Bankruptcy Court for the District of South Carolina approved the assignment of the right of first refusal when it was held by Sea Pines Plantation Company by virtue of the 1977 assignment. Therefore, in addition to the other reasons discussed above, Plaintiffs' arguments are an impermissible, collateral attack on the orders of the federal courts approving the transfer. See Venture Engineering, Inc. v. Tishman Constr. Corp. of South Carolina, 360 S.C. 156, 163, 600 S.E.2d 547, 550 (Ct. App. 2004) ("When a bankruptcy court's order is erroneous, it is correctable only through the federal court and, under the circumstances, the trial court and this court are required to accept the bankruptcy court's order as it was rendered and entered."). The assignments approved by those federal courts cannot be challenged in this lawsuit. For that additional reason, the Court properly granted the motion for a directed verdict as to this legal argument of Plaintiffs.

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3. <u>Plaintiffs' arguments that Sea Pines did not exercise its right of first refusal in a timely manner should be rejected</u>.

i. <u>The right of first refusal was exercised within a timely manner.</u>

Plaintiffs assert in their Motion that the right of first refusal was not exercised in a timely manner. Plaintiffs cherry pick wording from the right of first refusal in the Commercial Use Covenants and assert that a non-binding letter of intent signed by only one of the Individual Defendants somehow triggered Sea Pines' time within which to exercise the right of first refusal. <u>See</u> Ex. 1 at Pls. Trial Ex. 10 (stating the letter being signed is "non binding"). Plaintiffs' argument makes no sense and is inconsistent with the proof at trial.

The provision provides as follows:

> 19. ***In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty(30) days after receipt of written notice of the price and terms***, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation. Or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

Ex. 1. at Pls. Trial Ex. 1 (double emphasis added). The language is clear. The property must be offered for sale to Sea Pines, and Sea Pines has 30 days from receipt of *written notice of the price and terms of the sale* within which to decide whether to exercise its right of first refusal. The only evidence at trial was that the non-binding letter of intent did not offer the Property for sale to Sea

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Pines. The was no evidence that Sea Pines actually received a copy of the nonbinding letter of intent. Further, the only evidence was that the nonbinding letter of intent was not even signed by both sellers.

The only evidence at trial was Sea Pines did not receive written notice of the price and terms of the proposed sale until Mogil sent the contract to Sea Pines on April 17, 2017. The undisputed evidence at trial was that Sea Pines communicated to Plaintiffs' counsel that it was exercising its right of first refusal on May 2, 2017, far less than 30 days after receipt of written notice of the contract and its terms. It is undisputed that Sea Pines closed on the purchase of the Property May 12, 2017, which is 25 days after written notice.

Further undercutting Plaintiffs' argument is that Plaintiffs' own lawyer sent a request for waiver dated April 13, 2017, that stated as follows:

> "[t]he above referenced property is hereby offered for sale to the company [i.e., Sea Pines] pursuant to the same terms & price contacted in the current contract of sale with the bona fide purchaser(s) referenced above. ***It is hereby understood by all parties that the company has (30) business days from receipt of this offer in which to determine its re-purchase option***."

Ex. 1 at Defs. Trial Ex. 9. As a matter of law, based on the evidence at trial, Sea Pines exercised its right of first refusal in a timely and proper manner.

ii. <u>The court should reject Plaintiffs' argument that the right of first refusal was not exercised within a timely manner for the additional reason that Plaintiff did not plead that the right was not timely exercised.</u>

Additionally, it is worth pointing out that while one of Plaintiffs' primary arguments in the Motion is the argument that the right of first refusal was not exercised timely, Plaintiffs have not asserted that claim in the lawsuit. The complaint has been amended twice and the Second Amended Complaint does not include any reference to the timeliness of Sea Pines' exercising of

the right of first refusal. See Second Amend. Compl. For this additional reason, the Motion on this ground should be denied.

iii. Plaintiffs' new argument, raised for the first time in the instant motion, that Sea Pines was required to investigate if and when an offer was made on a particular commercial property should be rejected.

Plaintiffs assert in their Motion that Sea Pines had a duty to investigate whether there was a contract between the Individual Defendants and Bittmint prior to the time Bittmint contacted Sea Pines and requested the waiver. There is no basis in the Commercial Use Covenants or any legal authority for this duty to investigate. The Commercial Use Covenants are clear and unambiguous -- the right of first refusal is not triggered until written notice of price and terms of a proposal sale are provided to Sea Pines. Plaintiffs' new argument is inconsistent with the facts and the law and must be rejected.

iv. Plaintiffs' new argument, raised for the first time in the instant motion, that Sea Pines allegedly failed to match the terms contract and that alleged failure terminated the right of first refusal should be rejected.

Plaintiffs assert in their Motion that Sea Pines did not comply with Section 19 because it supposedly did not perform every single term of the contract when it purchased the Property. Plaintiffs' only argument on this point is that Sea Pines closed on the purchase for the full amount instead of providing separate checks for earnest money and the balance of the purchase price.

There was no need for Sea Pines to put down earnest money since it committed to close outright when it acted on its right of first refusal and proceeded straight to closing. It completed the transaction in its entirety before the close of the 30-day window. The out of state case cited by Plaintiffs is readily distinguishable in that it involved a contract that required an earnest money deposit at the time the contract was entered and the party exercising the right of first refusal never

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paid the money required by the contract. See Smith v. Hevro Realty Corp., 507 A.2d 980, 986, 199 Conn. 330, 341 (Conn. 1986).

Additionally, the earnest money provision became immaterial because Sea Pines tendered the full purchase price.

For these reasons, this new argument must also be denied as a matter of law.

4. **The Court correctly declined to take judicial notice of voluminous documents Plaintiffs sought to admit into evidence without a foundation or witness with personal knowledge of the documents.**

Plaintiffs requested that the Court take judicial notice of facts in voluminous documents that they also sought to be admitted into evidence as exhibits without any foundation or through any witness. The Court correctly denied the request. Plaintiffs did not formally proffer the documents.

Plaintiffs' argument on reconsideration is that the documents it wanted to introduce without a foundation or through a witness, are relevant, self-authenticating and fall under certain hearsay exceptions. Even if a document is relevant, authentic, and not hearsay, it does not follow that the document should be automatically admitted into evidence without any witness with knowledge of the document or any foundation for the admission of the document. Further, Rule 201, SCRE, does not involve admitting documents into evidence. Rather, it authorizes the Court to take notice of widely known, undisputed facts and instruct the jury on them. Rule 201 (g) ("Instructing Jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed."). Plaintiffs never identified the particular facts in the recorded instruments and orders that it claimed were widely known and irrefutable. Instead, Plaintiffs sought to admit the actual documents into evidence which reflects a basic misunderstanding of judicial notice under Rule 201. The Court correctly denied Plaintiffs' request for judicial notice.

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5. The documents sought to be entered by Plaintiffs through judicial notice further show that Defendants are entitled to judgment as a matter of law.

Significantly, the documents Plaintiffs attached to their Motion actually hurt their case and further disprove their positions. For example, Defendants point to the following assignment, approved by the federal court, which shows on its face that the right of first refusal was assignable and assigned. As part of the Chapter 11 bankruptcy of Sea Pines Plantation Company and related entities, its court-appointed trustee agreed to sell the assets of Sea Pines Plantation Company " . . . pursuant to and in accordance with Orders of Unites States District Judge Solomon Blatt, Jr. dated October 22, and October 26, 1987." See Pls.' Mot. to Reconsider, Ex. G, Assignment of Rights, dated Nov. 17, 1987, at 1. The asset purchase agreement, which was approved by the federal district court, assigned to Sea Pines Plantation Company, Inc. multiple assets, including specifically the "'right of repurchase,' in regard to all properties within Sea Pines Plantation as more particularly described in any Restrictions and/or Declarations of record in Beaufort County, South Carolina . . . ." (Id. at 4).

As stated above, the only evidence at trial was that these rights were all later assigned to Sea Pines Resort, LLC. Had the Court allowed Plaintiffs to introduce this evidence without a witness testifying to it, it would have only further undercut Plaintiffs' case.

6. Additional reasons the court should deny the Motion and Defendants were entitled a directed verdict.

i. The contract was contingent on Sea Pines waiving its right of first refusal, which it did not do.

The Court properly directed the verdict as to the cause of action for breach of contract against the Individual Defendants because performance of the contract was contingent on obtaining a waiver from Sea Pines of its right of first refusal and Sea Pines decided to exercise its right of first refusal. See generally, M & M Group, Inc. v. Holmes, 666 S.E.2d 262, 267, 379 S.C.

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468, 478 (Ct. App. 2008) (clause of contract that stated purchaser's obligation to purchase was contingent on purchaser's ability to secure financing was condition precedent and purchaser was relived of performance when condition precedent was not met). The only evidence in the case was that the contract required all waivers be obtained prior to a closing and that Bittmint undertook to request the waiver of the right of first refusal from Sea Pines. The required waiver of the right of first refusal was never obtained, and Sea Pines exercised its right. Because obtaining the waiver was a condition precedent to closing and that condition was not satisfied, the only evidence is that the Individual Defendants did not breach the contract with Bittmint.

ii. Because there was no breach of contract Plaintiffs causes of action that require a breach of contract failed.

Because there was no breach of contract, the Court properly granted the directed verdict as to all the remaining causes of action that depend upon a determination that the Individual Defendants breached the contract: the cause of action for intentional interference with a contract, third party beneficiary, and set aside a deed. See generally, Dutch Fork Development Group II, LLC v. SEL Properties, LLC, 753 S.E.2d 840, 844, 406 S.C. 596, 604 (2012) (elements of tortious interference with a contract).

iii. There was no evidence at trial that Sea Pines was not fully justified in pursuing its own legal rights.

The Court correctly granted the motion for a directed verdict as to the cause of action for intentional interference with a contract because Sea Pines' exercise of the right of first refusal was justified. Sea Pines simply exercised its legal rights. A cause of action for tortious interference with a contract requires an *intentional* procurement of its breach and the *absence of justification*. See Broach v. Carter, 732 S.E.2d 185, 189, 399 S.C. 434, 443 (Ct. App. 2012) (reversing jury

verdict for tortious interference with a contract because the defendant was justified in his actions). There was no evidence at trial of a lack of justification for Sea Pines' actions.

iv. There is no cause of action for damages for violation of the common law rule against perpetuities, invalid assignment, and statute of repose.

The Court correctly granted the motion for a directed verdict on Plaintiffs causes of action for damages for violation of the common law rule against perpetuities, invalid assignment, and statute of repose because there is no cause of action for damages for those claims. Plaintiffs conceded in a prior court filing that these causes of action "may not be actionable claims under South Carolina law." See (**Pls. Mem. of Points and Authorities filed November 20, 2019 at fn. 6**). Plaintiffs are correct that these causes of action are not actionable. See Dema v. Tenet Physician Services-Hilton Head, Inc., 678 S.E.2d 430, 433, 383 S.C. 115, 121–22 (2009) ("Where not expressly provided, a private right of action may be created by implication if the legislation was enacted for the special benefit of the private party. . . . If the overall purpose of the statute is to aid society and the public in general, the statute is not enacted for the special benefit of a private party."). The order granting a directed verdict was correct as to these causes of for this additional reason.

v. There was no evidence at trial substantiating the claim seeking the deed be set aside.

The Court properly granted the motion for directed verdict/involuntary nonsuit as to the cause of action seeking to set aside a deed because no evidence at trial supported, any recognized basis for setting aside a deed. See generally, Donnan v. Mariner, 339 S.C. 621, 529 S.E.2d 754 (Ct. App. 2000) (An action to set aside a deed for lack of delivery is an action at law.); Skipper v. Perrone, 674 S.E.2d 510 (Ct. App. 2009) (An action to set aside deed on basis of undue influence is an action in equity). The only alleged reason stated in the Second Amended Complaint for this Court to set aside the deed is that Bittmint entered into a contract to purchase the Property. Bittmint

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failed to establish any grounds required to set aside a deed and the Court properly granted a directed verdict as to that cause of action.

vi. There was no evidence the Individual Defendants intended to benefit HTSS through the opportunity for a new lease following the proposed sale of the Property to Bittmint.

The Court properly granted the motion for a directed verdict on HTSS's cause of action for third party beneficiary for the additional reasons that the contract does not specify that HTSS is a third-party beneficiary of the contract or suggest that it would be benefited through a new lease. "In order to determine whether the parties intended [a nonsignatory] to be a third party beneficiary, we must look within 'the four corners of the [contract].'" R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n, 384 F.3d 157, 164 (4th Cir. 2004) (citing Gardner v. Mozingo, 293 S.C. 23, 358 S.E.2d 390, 392 (1987)). When there is no evidence that the parties to a contract intended to benefit a third party, a directed verdict is appropriate. Helms Realty, Inc. v. Gibson-Wall Co., 611 S.E.2d 485, 488, 363 S.C. 334, 340 (2005) (citation omitted). Here, the only evidence was that the contract provided the Property would be sold subject to the existing lease, which has been fully honored by Sea Pines. For this additional reason, the Court properly granted a directed verdict.

vii. No evidence to support the interference with prospective contractual relations cause of action.

The Court properly granted the motion for a directed verdict as to HTSS's cause of action for interference with prospective contractual relations for the additional reason that there was no proof at trial that Sea Pines knew the terms of any allegedly contemplated lease between Bittmint and HTSS and it is undisputed there is no evidence Sea Pines purchased the Property for any reason other than its own business reasons:

> an essential element to the cause of action for intentional interference with prospective contractual relations requires that the interference be for an improper purpose or by improper methods. "Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest

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> any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." Southern Contracting, Inc. v. H.C. Brown Constr. Co., 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct.App.1994).

Eldeco, Inc. v. Charleston County School Dist., 642 S.E.2d 726, 732, 372 S.C. 470, 482 (2007) (affirming the circuit court's grant of a directed verdict motion on a claim for intentional interference with prospective contractual relations on the basis that the exercise of a legal right does not constitute an improper motive or improper purpose and stating that there was no evidence to suggest any purpose or motive by the defendant other than the protection of his rights). Therefore, the Court properly granted the directed verdict for this additional reason.

viii. Plaintiffs failed to prove any damages

The law requires proof of damages must not be speculative. See generally, South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122-123, 113 S.E.2d 329, 335-336 (1960) (". . . required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy"); Bensch v. Davidson, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (2003); Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981) (in order for damages to be recoverable, evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy; while neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of amount of loss or damage is not required).

Plaintiffs did not admit any evidence in the trial from which a jury could have rendered a damages verdict in their favor. Plaintiffs' witnesses testified they had been allegedly damaged,

but never testified as to the amount or calculation of any damages. For this additional reason, the Court properly granted the directed verdict on all damages causes of action.

CONCLUSION

For all these reasons, the Court should deny the Motion.

Respectfully submitted,

WALKER GRESSETTE & LINTON, LLC

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March 28, 2022

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS**

Plaintiffs, Bittmint, LLC (Bittmint") and Harbour Town Surf Shop, LLC ("HTSS") respectfully submit this memorandum of law in opposition to Defendants' Motion for Attorneys' fees and court costs. Defendants' motion should be denied for the following reasons: (1) the original contract between Bittmint and Defendants, Lynda Johnson ("Johnson") and Charles Giannone ("Giannone") was extinguished immediately upon Defendant, SPR exercising its purported Right of First Refusal ("ROFR"); (2) Time has to be apportioned. In addition, attorneys worked on behalf of Sea Pines Resort defenses, and (3) Some of the expenses Defense Counsel seeks to recover are not allowed.

Background

On March 17, 2017, Plaintiff, Bittmint and Defendants, Johnson and Giannone entered into a contract for the purchase and sale of the commercial real property known as Shops 6 & 8 of the Mariner's Way Horizontal Property Regime located in the Harbour Town basin in the Sea Pines community on Hilton Head Island, South Carolina (Shop 6 and Shop 8 are collectively referred to as the "Surf Shop Property"). On May 2, 2017, Defendant, Sea Pines Resort, LLC ("SPR") exercised its purported Right of First Refusal and took over Plaintiff's contract with Defendants Johnson and Giannone. Plaintiffs believed that SPR either isn't the holder of a valid ROFR or it was exercised in a manner that is improper. Plaintiffs then instituted this action for breach of contract, among other causes of actions.

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Argument

1. That attorneys' fees are recoverable if expressly provided for in a contract between parties is an exception to the over 200-year-old "American rule," which holds that each party must bear its own costs for litigation, regardless of the outcome.[1] So, while attorney fees are permitted per the original contracts between Bittmint and Defendants Johnson and Giannone, when Defendant SPR exercised its purported ROFR on May 2, 2017, those original contracts terminated. It is a simple fact of contract law; where there is an offer and acceptance, a binding contract results. *SC Code § 36-2-206 (2017)* As no South Carolina cases are directly on point; it is appropriate to look to other jurisdictions for guidance. One often-cited case is *Northern Plains Alliance v. Mitzel*, 663 N.W.2d 169, 172 (N.D. 2003), quoting from *Houtchens v. United Bank of Colorado Springs, N.A., 797 P.2d 814, 815 (Colo.Ct.App. 1990)* and *Harper v. Great Salt Lake Council, Inc., 976 P.2d 1213, 1217* holds that ("The moment the right of first refusal is exercised, the contract between the original buyer and seller is no longer in effect.") When SPR exercised its purported FOFR, the offer, and Defendants Johnson and Giannone accepted, a new binding contract was formed between SPR and Defendants Johnson and Giannone. Consequently, the original contract between Bittmint and Johnson and Giannone terminated. Steve Birdwell testified that SPR took over Bittmint's Contact when it exercised its purported ROFR. Another more recent case out of Florida, which is similar to the instant case, holds: "Acceptance of an option for the sale of land within the time allowed and according to its terms converts the option into a binding executory contract of sale." *Acquisition Tr. Co. v. Laurel Pinebrook, LLC*, 301 So. 3d 397, 402 (Fla. Dist. Ct. App. 2020)

Therefore, since the contracts between Bittmint and Defendants Johnson and Giannone terminated, there is no basis for this Court to grant Defendants' motion for attorney fees, and as such, the motion should be denied.

2. In addition, time has to be apportioned appropriately. Should the Court find that the original contract is still in effect, the contract provision permitting the award of attorney fees pertains only to the defense of Johnson and Giannone. Attorneys Linton and Walker were hired to

[1] John Leubsdorf, Toward a History of the American Rule on Attorney Fee Recovery, 47 LAW & CONTEMP. PROBS. 9, 29 (Winter 1984). "Exceptions to the rule grew in number and importance, usually grounded on the same concern for incentives and disincentives [to encourage or discourage meritorious litigation]."

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defend SPR. According to the motion, SPR agreed to indemnify Johnson and Giannone. Without seeing the exact terms of the indemnification agreement, I can only speculate that SPR entered into an agreement with Jonhson and Giannone to protect them from potential liability in action for breach of contract. However, it is uncontroverted that Defense counsel exerted a tremendous amount of effort in this litigation on behalf of SPR, who was not a party to the original contract and has no valid basis for making a claim for attorneys fees. Therefore, if fees and costs are awarded at all, that award should be reduced by 50% of the permitted fees and costs.

3. Should the Court find the original contract binding, it states in relevant part, "in the event of litigation… the prevailing partie(s) in such litigation shall be entitled to recover attorneys fees and court costs." Therefore, any expense related to travel time, meals, and lodging should not be allowed.

CONCLUSION

Based on the aforementioned factual and legal reasons, Plaintiffs request that the Court deny Defendants' motion for Attorney Fees.

Respectfully Submitted,

COFFEY KUBEC, LLP

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March 28, 2022
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ELECTRONICALLY FILED - 2022 Apr 04 5:18 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)) BITTMINT, LLC and HARBOUR TOWN SURF SHOT, LLC)) Plaintiffs,)) v.)) LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,)) Defendants.)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS LYNDA H. JOHNSON AND CHARLES S. GIANONNE'S REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES AND COSTS**

Defendants Lynda H. Johnson and Charles S. Giannone ("Johnson and Giannone"), by and through their undersigned counsel respectfully submit this Reply to Plaintiffs' Response in Opposition to their Motion for Fees and Costs. Plaintiffs make only three arguments in opposition to the motion, two of which are resolved, as further explained herein, by Johnson and Giannone limiting the request for an award of fees and costs. The third argument should be rejected as is explained below.

Plaintiffs assert that the attorney's fees should be limited to 50% of the total amount because the undersigned represented all the Defendants. Plaintiffs also assert that expenses for travel, meals and lodging should not be included as costs because the contract only provides that "court costs" are recoverable. While there are arguments to the contrary, Johnson and Giannone will limit their request to 50% of the total amount of fess, which is $96,614.25. Johnson and Giannone will also reduce the request for an award of costs by deleting the contested expenses (expenses for travel, meals and lodging) from the request, reducing the amount of costs sought to $7004.39. See Ex. 1. Therefore, the Court need not address Plaintiffs' arguments related to the

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amount of fees and costs sought. Johnson and Giannone will voluntarily limit the request as follows:

	Attorney's Fees	$96,614.25
	Costs	$7004.39
TOTAL		**$103,618.64**

Plaintiffs' only other argument is that when Sea Pines Resort, LLC exercised its right of first refusal, the original contract between Bittmint, LLC and Johnson and Giannone terminated. According to Plaintiffs, Johnson and Giannone are not entitled to fees and costs under the contract for that reason. Plaintiffs cite a few out of state cases, none of which even address a claim for fees and costs under a contract provision entitling the prevailing party in litigation to an award. Plaintiffs' argument makes no sense and should be rejected.

The suit alleges a contract and that Johnson and Giannone breached the contract. See Second Am. Compl. ¶¶ 12, 19-24. The contract allegedly breached was attached to the Second Amended Complaint and entered into evidence at trial. Plaintiffs asserted Johnson and Giannone breached the contract, but the Court granted a directed verdict. That contract provides in pertinent part that "[i]n the event of litigation commenced because of a default hereunder, **the prevailing partie(s) in such litigation *shall* be entitled to recover attorneys fees and court costs** from the non prevailing partie(s)." **Second Am. Compl., at Ex. A (bold and italics added).**

There is simply no basis for Plaintiffs' argument that Johnson and Giannone are not entitled to an award of fees and costs. Therefore, Johnson and Giannone request this Court grant the motion, as limited herein, and award fees and costs as stated in the above chart. Because Bittmint, LLC is the party to the contract, the award should be entered against Bittmint, LLC.

Respectfully submitted,

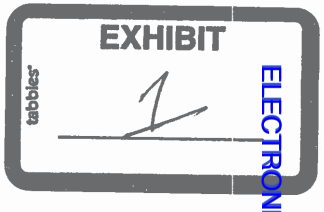
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Date	Description	Amount
3/6/2018	Beaufort County Common Pleas	$ 31.74
5/25/2018	Tupper Grimsley Dean & Canaday - mediation fee	$ 436.88
~~5/24/2018~~	~~Travel to and from Beaufort for mediation~~	~~$ 78.26~~
~~6/28/2018~~	~~Travel to Beaufort for hearing on Motion to Compel (141 miles - Prorata)~~	~~$ 38.43~~
8/21/2018	Beaufort County Clerk - filing fee	$ 31.74
~~11/13/2018~~	~~Travel to and from hearing in Beaufort~~	~~$ 75.10~~
3/1/2019	Beaufort County Clerk of Court - filing fee	$ 31.74
~~4/30/2019~~	~~Travel to Hilton Head (210 miles)~~	~~$ 121.80~~
~~5/1/2019~~	~~Travel to Hilton Head (210 miles), meal~~	~~$ 141.27~~
5/9/2019	Coastal Court Reporting	$ 365.75
5/9/2019	Coastal Court Reporting	$ 258.50
~~5/1/2019~~	~~Travel to Hilton Head (210 miles), meal~~	~~$ 141.27~~
~~6/21/2019~~	~~Travel to Hilton Head (210 miles) for depositions~~	~~$ 141.27~~
~~6/27/2019~~	~~Travel to Hilton Head (210 miles) for depositions~~	~~$ 141.27~~
~~6/21/2019~~	~~Lunch at Bess Deli with Rob Bender~~	~~$ 22.02~~
7/11/2019	Coastal Court Reporting - Michael Mogil deposition	$ 782.50
7/11/2019	Coastal Court Reporting - Amir Bitton deposition	$ 708.30
7/11/2019	Coastal Court Reporting - Alon Mintz deposition	$ 1,176.50
7/11/2019	Coastal Court Reporting - Lynda Johnson deposition	$ 242.00
7/22/2019	Butler Snow - mediation fee	$ 2,475.00
7/23/2019	Synovus - records per subpoena	$ 103.30
~~11/20/2019~~	~~Beaufort County Courthouse for Motion for Summary Judgment hearing (137.8 miles)~~	~~$ 79.92~~
11/20/2020	Beaufort County Clerk	$ 31.74
~~10/6/2021~~	~~Travel to Beaufort Courthouse, Sea Pines and return (217 miles, meal)~~	~~$ 135.45~~
~~10/8/2021~~	~~Prolegal - Trial boards~~	~~$ 442.54~~
~~10/8/2021~~	~~Prolegal - Trial boards~~	~~$ 398.94~~
~~10/8/2021~~	~~Prolegal - Trial board~~	~~$ 88.84~~
10/12/2021	Mona Manley - transcript of court hearing	$ 170.00
~~10/11/2021~~	~~Travel to and from courthouse (137.8 miles)~~	~~$ 77.17~~
~~10/10/2021~~	~~Travel to and from Beaufort, hotel, meals (138 miles)~~	~~$ 302.50~~
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
10/10/2021	Beaufort County Clerk - motion in limine	$ 31.74
~~1/5/2022~~	~~Travel to and from Beaufort County Court house, meal (137.8 miles)~~	~~$ 92.92~~
~~3/3/2022~~	~~Travel to/from Beaufort for Trial (mileage, hotel, and meals)~~	~~$ 698.27~~
~~3/3/2022~~	~~Travel to and from Beaufort County Court house (3 days of travel for Trial)~~	~~$ 260.80~~
~~3/3/2022~~	~~Travel to and from Beaufort County Court house for Trial~~	~~$ 86.94~~
~~3/3/2022~~	~~Travel to and from Beaufort County Court house for Trial (mileage, hotel, meal)~~	~~$ 554.30~~
	TOTAL	~~$ 11,123.67~~

$7,004.39