

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

69564

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Judge

Case No. 08-ALC-07-0221-CC

Deerfield Plantation Phase II B Property Owners Association.....Appellant,

vs.

South Carolina Department of Health and Environmental Control,  
Deertrack Golf, Inc., and Bill Clark Homes of Myrtle Beach, LLC.....Respondents

PETITION FOR REHEARING

**RECEIVED**  
AUG 23 2013  
SC Court of Appeals

The Respondent Deertrack Golf, Inc., (“Deertrack Golf”) respectfully requests, in accordance with SCACR Rule 221(a) and Rule 240, that this Court reconsider its Order dated August 14, 2013 clarifying its Order dated May 17<sup>th</sup>, 2013. In particular, Deertrack Golf seeks reconsideration of this Court’s determination that the Respondent South Carolina Department of Health and Environmental Control (“DHEC”) had revoked the permit coverage issued to Respondent Deertrack Golf, rendering this appeal moot. For the reasons set forth in the Memorandum supporting this Motion, attached hereto, Deertrack Golf will demonstrate that DHEC has not revoked permit coverage and the parties are entitled to review and resolution of the issues raised in this appeal.

Respectfully submitted,



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[mshahid@nexsenpruet.com](mailto:mshahid@nexsenpruet.com)

August 23, 2013

Attorneys for Respondent Deertrack Golf, Inc.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

DEERFIELD PLANTATION PROPERTY  
OWNERS ASSOCIATION,

Petitioner,

vs.

SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL  
CONTROL AND DEERTRACK GOLF, INC.

Respondents.

Docket No.: 08-ALJ-07-0221-CC

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing **Petition for Rehearing** has been served upon opposing counsel by U.S. Mail, postage pre-paid, to the address as shown below on this 23<sup>rd</sup> day of August, 2013.

Amy E. Armstrong, Esquire  
SC Environmental Law Project  
P.O. Box 1380  
Pawley's Island, SC 29585

Nathan Haber, Esquire  
SCDHEC-OCRM  
1362 McMillan Avenue  
Suite 400  
Charleston, SC 29405

BY: Ruthie Parish

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Judge

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Case No. 08-ALC-07-0221-CC

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Deerfield Plantation Phase II B Property Owners Association.....Appellant,

vs.

South Carolina Department of Health and Environmental Control,  
Deertrack Golf, Inc., and Bill Clark Homes of Myrtle Beach, LLC.....Respondents

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**MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING**

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The Respondent Deertrack Golf, Inc., (“Deertrack Golf”) respectfully requests, in accordance with SCACR Rule 221(a) and Rule 240, that this Court reconsider its Order dated August 14, 2013 clarifying its Order dated May 17<sup>th</sup>, 2013. In particular, Deertrack Golf seeks reconsideration of this Court’s determination that the Respondent South Carolina Department of Health and Environmental Control (“DHEC”) has revoked the permit coverage issued to Respondent Deertrack Golf, rendering this appeal moot. This Court’s ruling is based on the findings that “Deertrack Golf apparently did not reply to” two letters sent by DHEC referencing the permit issued to Deertrack Golf of May 18, 2012 and March 5, 2013. In addition, this Court’s ruling is based on the conclusion that DHEC revoked the permit issued to Deertrack Golf

authorizing stormwater discharges associated with redevelopment of a closed golf course owned by Deertrack Golf. This permit was the underlying basis for the contested case before the lower court and for this appeal.

With regard to DHEC's letter of May 18, 2012, the Appellant filed an action in federal district court, naming Deertrack Golf as a defendant, seeking to have all water features on the closed golf course declared as waters of the United States. (*See Deerfield Plantation Phase II-B Property Owners Association, Inc. v. the United States Army Corps of Engineers, et al.*, C/A No.: 4:09-01023-RBH.) The Corps of Engineers had previously determined that only 1/3rd of an acre, out of approximately 80 acres, were waters of the United States, but this was not acceptable to Appellant and Appellant filed a citizen's suit in federal court. The district court, the Honorable Bryan Harwell, dismissed Appellant's action on July 13, 2011, but then Appellant filed an appeal of the district court's decision with the Fourth Circuit Court of Appeals.

The difference between having 1/3rd of an acre located in the downstream reach of a drainage ditch subject to the jurisdiction of the Army Corps of Engineers under the Federal Clean Water Act, and having every ditch, swale, and irrigation and ornamental pond subject to the Corps' jurisdiction was the difference between being able to redevelop the closed golf course or leave it as a golf course. Moreover, that question had to be resolved before answering the questions from DHEC in the May 18<sup>th</sup> 2012 letter. As of May 18<sup>th</sup>, 2012, that information was still uncertain because of the pendency of Appellant's challenge before the Fourth Circuit Court of Appeals.

The Fourth Circuit Court of Appeals affirmed the district court by Order issued December 26, 2012. At that point Deertrack Golf could respond to DHEC's May 18<sup>th</sup> letter, but Appellant filed a Petition for Rehearing with the Court of Appeals. It wasn't until February 25,

2013, that the Court of Appeals denied the Petition for Rehearing. On March 5, 2013, the Fourth Circuit issued its Mandate declaring its December 26, 2012, Order effective. (See Exhibit A.) On that same date, March 5, 2013, DHEC renewed its request for additional information and Deertrack Golf replied one week later on March 12, 2013. (See Exhibit B.) This was within the time frame provided by DHEC as the March 5, 2013, letter from DHEC included a ten day deadline for response. Consequently, Deertrack Golf believes this Court may have misapprehended the facts in finding that Deertrack Golf did not respond to DHEC.

In addition, the stormwater permit coverage issued on February 29, 2008, was not revoked by DHEC. As is noted in both DHEC letters to the undersigned, the permit is governed by S. C. Code Ann. Reg. 61-9, the National Pollutant Discharge Elimination System (“NPDES”) regulations. These regulations include a specific process for revocation. *See* S. C. Code Ann. Reg. 61-9.122.62 entitled “Modification or revocation and reissuance of permits.” The procedures governing revocation of an NPDES permit are set forth in R. 61-9.124.5, R. 61-9.122.62, and R. 61-9.122.64 and these procedures were not initiated by DHEC.

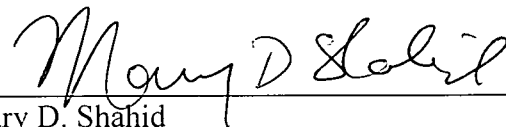
Respondent Deertrack Golf is in possession of an active stormwater permit, under the general NPDES permit governing stormwater discharges from large and small construction activities. That permit was issued February 28, 2008, for a term of five years. That permit did not expire on February 28, 2013, based on the effect of the Permit Extension Joint Resolution of 2013. (See Exhibit C.) Based on this Joint Resolution, this permit is in effect until at least January 1, 2017.

### **CONCLUSION**

This Court’s Order of August 4, 2013, is based on a determination that Deertrack Golf never responded to DHEC and that DHEC revoked Deertrack Golf’s permit. In fact, Deertrack

Golf responded as soon as it obtained finality regarding the federal civil action initiated by Appellants. And, DHEC has not initiated the procedures that lead to revocation or termination of Deertrack Golf's stormwater permit coverage. This case is not moot. The issues raised in this appeal by Appellant are much broader than any application deficiency noted by DHEC in its May 2012 and March 2013 letters, and include the fundamental question of whether the golf course can even be redeveloped<sup>1</sup>. These issues need to be resolved by allowing this case to be briefed, argued, and determined by this Court.

Respectfully submitted,



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August 23, 2013

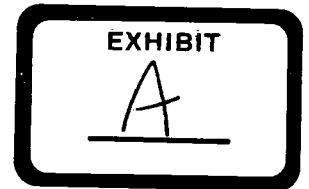
Attorneys for Respondent Deertrack Golf, Inc.

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<sup>1</sup> Appellants object to the ALC's conclusions that the water features on the golf course are not subject to application of S. C. Code Reg. 61-68 and the rules generally applicable to all waters of the State. Appellant argues that under R. 61-68 Respondent Deertrack Golf cannot redevelop if redevelopment requires alteration, filling, and elimination of existing water features on the closed golf course.

FILED: March 5, 2013

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT



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No. 11-1871 (L)  
(4:09-cv-01023-RBH)

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DEERFIELD PLANTATION PHASE II-B PROPERTY OWNERS  
ASSOCIATION, INCORPORATED

Plaintiff - Appellant

v.

UNITED STATES ARMY CORPS OF ENGINEERS, CHARLESTON  
DISTRICT; ROBERT L. VAN ANTWERP, Lieutenant General, in his official  
capacity as Chief of Engineers, US Army Corps of Engineers; TREY JORDAN,  
Lieutenant Colonel, in his official capacity as District Engineer, US Army Corps of  
Engineers, Charleston District; UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; LISA P. JACKSON, in her official capacity as  
Administrator of the US Environmental Protection Agency; A. STANLEY  
MEIBURG, in his official capacity as Acting Regional Administrator, Region IV,  
US Environmental Protection Agency; DEERTRACK GOLF, INC.

Defendants - Appellees

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No. 11-2253  
(4:09-cv-01023-RBH)

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DEERFIELD PLANTATION PHASE II-B PROPERTY OWNERS

ASSOCIATION, INCORPORATED

Plaintiff - Appellee

v.

DEERTRACK GOLF, INC.

Defendant - Appellant

and

UNITED STATES ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT; ROBERT L. VAN ANTWERP, in his official capacity as Chief of Engineers, US Army Corps of Engineers; TREY JORDAN, Lieutenant Colonel, in his official capacity as District Engineer, US Army Corps of Engineers, Charleston District; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; LISA P. JACKSON, in her official capacity as Administrator of the US Environmental Protection Agency; A. STANLEY MEIBURG, in his official capacity as Acting Regional Administrator, Region IV, US Environmental Protection Agency

Defendants

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M A N D A T E

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The judgment of this court, entered 12/26/2012, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

**Colwell, Angelica M.**

**From:** Shahid, Mary D.  
**Sent:** Tuesday, March 12, 2013 5:46 PM  
**To:** nathan.haber (haberm@dhec.sc.gov)  
**Cc:** Colwell, Angelica M.; Smith, Richard; tbevins@etsengineers.com  
**Subject:** FW: Scanned document from ecopy Station [IWOV-NPCHAR1.FID576433]  
**Attachments:** Deertrac2.pdf

Nathan: In response to the remand please see the attached which may explain some of my confusion regarding what we are being asked to do.

1. Completed and accepted NOI submitted by Deertrack Golf, Inc. for Patrick Shaad. Thomas Bevins is shown as the SWPPP preparer and he still is the project engineer. The operator is shown to be Bill Clark Homes.
2. Real Estate Purchase Agreement between Deertrack and Bill Clark. Hence the reason that Bill Clark is shown as the operator - they had the property under contract.
3. PERMIT - issued to Patrick Shaad for Deertrack Golf, Inc., - not issued to Bill Clark Homes - I have no idea why the permit letter salutation is to Jeff Farrell because it went to Patrick Shaad
4. Termination Agreement - See #2 - the NPDES permit is irrevocably transferred, conveyed and assigned (to the extent it even needed to be since it was issued to Shaad ) from BC Homes to Shaad.

So, does Shannon want us to change the operator? It was correct at the time and might still be correct when we conclude the matter in the Court of Appeals - BC might enter into a new contract to purchase with Shaad. Obviously we know we need to modify the permit to tell OCRM who the new operator will be when and if we ever get through these legal challenges and can market the property. Right now we don't know who it is. Not sure why that is such a big deal to the staff if it is, and why it merits stopping the progress of the appeal.

As for the information regarding the drainage ditch - or RPW - your form asks if there are perennial, intermittent, ephemeral streams or wetlands. This was determined to be a RELATIVELY PERMANENT WATER with a connection to a TRADITIONAL NAVIGABLE WATER. That category isn't on your form and the reason it isn't on it is because in 2007 when we applied for permit coverage there was no Rapanos guidance (came out in 2008) which established these new jurisdictional categories.

We understand that the terms and conditions of the General Permit, in 2006, would have required us to have a 404 in place for the downstream outfall BUT AS YOU KNOW IN 2006 AND UNTIL MARCH OF 2010 THERE WERE NO FEDERALLY JURISDICTIONAL WATERS ON THE SITE. The permit was valid when issued. And, it wasn't until late December of 2012 that we got finality on the Corps' issues when the Fourth Circuit Court of Appeals affirmed the District Court. Up until that point Amy and her clients were pushing to have every single ditch and pond declared jurisdictional. So, I'm not sure how we could have fixed that until we got the Fourth Circuit's decision.

Now we know - we have .34 and only .34 acres of (it might be .37 - I get confused and don't have it in front of me) of RPW and we qualify for NW 29, upon submittal of appropriate mitigation. As I have shown you our NW permit looks exactly like our plans and is consistent with our plans. I don't get why we have to fill out a whole new NOI - particularly when the NOI in 2006 didn't even ask about RPW's. In my mind the way to fix this is what I have always suggested - 1) avoidance; or 2) obtain 404 permit coverage during the pendency of review of the ALC's Order which is what I'm doing. But asking me to fill out a whole new permit application and seek a new review seems excessive.

As for the waters of the State - I could take the form that we submitted, redact the "no" next to IV(A)(B)(1) and check yes - then calculate the acres of ponds being filled and provide that information. If that is what you need to keep this appeal moving I'll do it gladly.

And as relates to the Horry County revisions. I did ask that those be withdrawn until we get through this process. I'm sure they probably do necessitate some changes to the permit BUT Horry County refuses to entertain those revisions until we have finality on the permit. Then they will look at revisions, issue their approval, and then we come back before OCRM if necessary to get modifications. BUT we at that point don't open our client up to more of the same challenges (can't fill the ponds, can't fill the interconnected ditches, plan causes more flooding instead of less flooding, etc. etc.) The doors on those issues will be closed by res judicata and collateral estoppel.

I am so sorry I was rude today - under so much pressure right now with this project and just trying to keep it moving toward completion. I just want a better understanding of how to get through this without increasing exposure to my client until the fundamental issues are resolved. And the staff's letter following the remand didn't make sense to me but at a minimum we had to wait out the federal challenge and then work on the Nationwide which is what we have been doing.

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MShahid@nexsenpruet.com

[www.nexsenpruet.com](http://www.nexsenpruet.com)

-----Original Message-----

From: ecopy Station  
Sent: Tuesday, March 12, 2013 5:05 PM  
To: Shahid, Mary D.  
Subject: Scanned document from ecopy Station



Notice of Intent (NOI) for Stormwater Discharges from Large and Small Construction Activities, NPDES General Permit SCR100000

For official use only
File number: 26-07-04-13 / 58619
Permit number: SCR10G097 / 40125
Submission package complete: 4/30
Public Notice Start Date (OCRM only): 5/4/07

For official use only
S.C. Department of Health & Environmental Control
Office of Ocean & Coastal Resource Management
APPROVED FOR CONSTRUCTION ONLY
Approved by: [Signature]
Certification Issued Date: 2/15/08
NPDES Issued Date: 2/29/08
NPDES Coverage #: SCR10G097

Submission of an NOI constitutes notice that the entity identified in Section I intends to be authorized under SCR100000. Instructions on page 4.
Date: 04 / 24 / 2007

Project/ Site Name: Old South Course - Phase I County: Horry
Do you want this project to be considered for the Expedited Permitting Program (EPP)? Yes No (See instructions.)

I. Project Information
Project Owner/ Operator (Company or person): Deertrack Golf, Inc.
Permit Contact (if owner is company): Mr. Patrick Shaad Company EIN:
Mailing Address: 150 Major Reynolds Place City: Knoxville State: TN Zip: 37919
Phone: (Day) (865) 637-2674 (Mobile) (Fax)

II. Property Information
A. Site Location (street address, nearest intersection, etc.): off of Platt Blvd., Deerfield Community
City/ Town (if in limits): Latitude: 33° 37' 00" N Longitude: -78° 59' 00" W
Tax map # (list all): 191-00-01-068
B. Property Owner (if different from section I above):
Mailing Address: City: State: Zip:
Phone: (Day)

III. Site Information
A. Disturbed area (to the nearest tenth of an acre): 53.5 Total area: 84.6
B. Is this project part of a Larger Common Plan for Development or Sale (LCP)? Yes No
If yes, what is the previous state permit number? Previous NPDES number: SCR10
LCP/ Overall Development Name: Old South Course
C. Start Date (MM/DD/YYYY): 04 / 01 / 2007 Completion Date: 05 / 01 / 2008
D. Is this site located on Indian Lands? Yes No If yes, name of reservation.
E. Type of Activity (check all that apply):
Commercial Residential: Single-family Linear (Roads, utility lines, etc.) Other:
Institutional Residential: Multi-family Site Preparation (No new impervious)
F. Are there any flooding problems downstream or adjacent to this site? Yes No
G. Is this NOI being submitted in response to a Notice to Comply issued by S.C. DHEC? Yes No
H. Is any part of the property located inside an MS4 or urbanized area? Yes No
If yes, list the MS4 operator or urbanized area name: Myrtle Beach

IV. Waterbody Information
A. Nearest receiving waterbody(s): Dogwood Lake Distance to this waterbody (feet): 1,500
Next/Nearest named receiving waterbody(s): Atlantic Ocean
B. Wetlands/ Waters of the State

Table with 4 columns: Category, On the site?, If yes, delineated/identified?, Impacts?, Amount of impacts. Rows include Waters of the US/State, Perennial stream(s), Intermittent stream(s), Ephemeral stream(s), Jurisdictional wetlands, Non-jurisdictional wetlands, and Other (List).

2. If yes for impacts in item B.1, has a USA COE permit been applied for or obtained for those impacts? Yes No N/A If yes, list the permit/ application number.

DHEC 2017 07/2004 ETS - 2006028

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Deertrack Golf, Inc.
OCRM - 0009

Handwritten initials and date: SA 11/27/08

**C. Impaired Waterbodies**

Do stormwater (SW) discharges from the site drain to a watershed that drains to a DHEC WQ monitoring site (WQMS)...

- 1. Listed on the most current 303(d) List for Impaired Waters?
a. If yes for (1), is there an unimpaired WQMS between your site and the impaired WQMS?
b. If no for (a), list the waterbody... List the impairment(s).
c. Will construction SW discharges from your site contain the pollutant(s) of impairment?
d. If yes for (c), will use of the selected BMPs ensure that the site's discharges will not contribute to or cause further water quality standard violations?
2. For which a TMDL(s) has been developed?
a. If yes for (2), list the waterbody... List the impairment(s).
b. Has the standard been attained for the impairment(s)?
c. If no for (b), will construction SW discharges from your site contain the pollutant of impairment?
d. If yes for (c), are your discharges consistent with the assumptions and requirements of the TMDL(s)?
e. If no for (d), will use of the selected BMPs ensure that the site's discharges will not contribute to or cause further water quality standard violations?

D. Are S.C. Navigable Waters (SCNW) on the site? If yes, list the SCNW:
Will any construction activities cross over or occur in, under, or through the SCNW?
If yes, then describe activity (e.g., road crossing, sub aqueous utility line).
Has an SCNW permit been issued for this site?
If yes, list permit number and corresponding activities.

**V. Operator Information**

A. SWPPP Preparer: Thomas P. Bevins, P.E. S.C. Registration #: 13899
Company/ Firm: Engineering & Technical Services, Inc. S.C. COA #: 0439
Mailing Address: Post Office Box 2040 City: Pawleys Island State: SC Zip: 29585
Phone: (Day) (843) 237-3002 (Mobile) (843) 385-8882 (Fax) (843) 237-2269
Email address (optional): tbevins@etsengineers.com
B. Operator of Day-to-Day Site Activities (ODSA) (Company or person): Bill Clark Homes of MB
Site Contact (if ODSA is company): Will Weaver
Mailing Address: 600 North Azalea Dr., Suite 5 City: Surfside Beach State: SC Zip: 29575
Phone: (Day) (843) 293-8440 (Mobile) (Fax) (843) 839-1593

**VI. Signatures and Certifications**

A. One copy of the SWPPP, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 14 of the Code of Laws of SC, 1976 as amended, pursuant to Regulation 72-300 et seq., and in accordance with the terms and conditions of SCR 100000. (This should be person identified in Section V.A.)
Please check one. [X] Engineer [ ] Tier 3 Land Surveyor [ ] Landscape Architect

Thomas P. Bevins, P.E. [Signature] 13899
Printed name of SWPPP Preparer Signature of SWPPP Preparer S.C. Registration #

B. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR 100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the Department of Health and Environmental Control and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity. (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.)

Jeffrey Farrell [Signature] Area Manager
Printed name of Project Owner/Operator Signature of Project Owner/Operator Title/ Position

DHEC-2817 (07/2006)

## REAL ESTATE PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made and entered into as of the 2nd day of Sept, 2005, by and between DEERTRACK GOLF, INC., a South Carolina corporation ("Seller") and BILL CLARK HOMES OF MYRTLE BEACH, LLC, a South Carolina limited liability company ("Purchaser").

### RECITALS:

Seller owns certain property in Horry County, South Carolina consisting of approximately 158 acres, more or less, which is known as the South Golf Course at Deer Track holes 1-18 and is described on Exhibit A attached hereto (the "Property").

Purchaser desires to purchase such property in three phases, to be shown on a drawing to be attached hereto as Exhibit B (the "Preliminary Plan"), within sixty (60) days of the Effective Date hereof.

In consideration of the promises hereinafter contained, the parties hereto hereby agree as follows:

### ARTICLE ONE

#### SALE

Subject to the terms, conditions and provisions set forth below, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy from Seller all of Seller's right, title and interest in and to the property described on Exhibit A attached hereto consisting of approximately one-third of the total acres, to be identified as Phase 1 on the Preliminary Plan (the "Phase 1 Parcel"), approximately one-third of the total acres, to be identified as Phase 2 on the Preliminary Plan (the "Phase 2 Parcel"), which must be adjacent to the Phase 1 Parcel, and approximately one-third of the total acres, to be identified as Phase 3 on the Preliminary Plan (the "Phase 3 Parcel") together with all improvements thereon and all easements, rights and appurtenances thereto (collectively, the "Property"). Provided however, that until such time as Purchaser has acquired the entire Property, Seller shall have the right to reserve (i) an easement, over the roadways within each of the Phase 1 Parcel and the Phase 2 Parcel, and (ii) a utility easement which will permit Seller to connect to any utilities installed or caused to be installed by Purchaser, to include water, sanitary sewer, storm sewer and electric. Such easement/easements shall be terminated at the Phase 3 Parcel Closing. The exact size and legal description of each phase shall be determined in accordance with Section 5.2, but shall be substantially as outlined in the Preliminary Plan. Notwithstanding anything herein to the contrary, and to the extent permitted by law, Seller shall retain all rights to provide cable television service to the Property.

### ARTICLE TWO

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

To induce the Purchaser to enter into this Agreement, Seller makes the representations, warranties and covenants hereinafter contained in addition to the representations, warranties and covenants elsewhere contained in this Agreement, each of which is material to and is relied upon by Purchaser. Seller represents, warrants and covenants as follows:



**Section 2.1. Title to Property.** Seller is the sole owner of good, fee simple, marketable title to all of the Property.

**Section 2.2. Hazardous Materials.** To the best of Seller's actual knowledge, (i) no pollutant, contaminant, hazardous waste, or toxic substance (the "Contaminants") has been released, stored, or disposed on the Property in violation of any Environmental Regulations (as defined below), (ii) the Property has been operated in compliance with all applicable federal, state, and local laws and regulations concerning environmental matters and hazardous wastes or toxic substances, including but not limited to RCRA, CERCLA, SARA, and any other or similar environmental law (the "Environmental Regulations"), and (iii) although Seller has conducted no independent investigation and has commissioned no environmental studies of the Property, the Seller has no actual knowledge of the presence of any Contaminants on the Property in forms or concentrations that violate any Environmental Regulations.

**Section 2.3. Current Zoning of Property.** To the best of Seller's knowledge, the Property is presently zoned "R-7" under the zoning ordinances of Horry County, and Seller has not received notice, nor does Seller have any reason to believe that the Property is, or would be, subject to a change in zoning.

**Section 2.4. Rights of Others in, and to the Property.** To the best of Seller's knowledge, the Property is not now, nor, has it ever been, subject to any membership or other golf rights which would extend for a period in excess of one (1) year from the date of this Agreement. Seller further represents and warrants that, upon thirty (30) days prior written notice from Purchaser, and following the expiration of the Inspection Period, Seller shall cease accepting golf play upon the nine hole portion of the current golf course improvements, any portion of which is included in the Property which comprises the Phase 1 Parcel, and shall close that portion of the Property for commercial activity from the date of such notice by Purchaser until the Closing. Further, upon thirty (30) days prior notice from Purchaser, and following the Phase 1 Parcel Closing, and provided that any portion of the remaining golf course improvements are located on the Phase 2 Parcel, Seller shall cease accepting golf play upon the remaining golf course improvements including in the Phase 2 Parcel, and shall close that portion of the Property for commercial activity from the date of such notice by Purchaser until the Phase 2 Parcel Closing.

**Section 2.5. Compliance with Applicable Laws.** To the best of Seller's knowledge, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Property. Performance of this Agreement will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound. Seller shall comply, at its sole expense, with any and all environmental and other applicable rules, regulations, and conditions of existing and future development or operational permits (except that compliance with any development or operational permits obtained by Purchaser shall be at Purchaser's sole expense).

**Section 2.6. No Pending Actions.** To the best of Seller's knowledge, there are no legal actions, suits or other legal or administrative proceedings, pending or threatened, that affect the Property or any portion thereof, nor has Seller any knowledge that any such action is presently contemplated.

**Section 2.7. Access.** To the best of Seller's knowledge, the Property has full, free and adequate access to and from public highways and roads, and Seller has no knowledge of any fact

or condition which would result in the termination of such access. Further, Seller covenants and agrees to executed such documents are may be required, in the reasonable discretion of Purchaser, in order to assure its lenders, contractors, suppliers, agents, employees, utility providers, concessionaires, third party purchasers, successors and assigns of perpetual and legal access to the Property.

**Section 2.8. No Commitments.** To the best of Seller's knowledge, no written or verbal commitments have been made to any governmental authority, utility company, school board, church or other religious body, or any homeowners association, or to any other organization, group, or individual, relating to the Property which would impose an obligation upon Purchaser or their successors or assigns to make any contribution or dedications of money or land or to construct, install, or maintain any improvements or a public or private nature on or off the Property.

**Section 2.9. Accuracy of Information.** To the best of Seller's knowledge, all information furnished to Purchaser by or on behalf of Seller prior to the execution hereof or pursuant to the provisions of this Agreement is true, accurate and correct, in all material respects and fairly and accurately reflects the condition or statement of facts reported to be described or represented thereby. Seller further warrants that, in the event that any such facts such change during the term of this Agreement, Seller will notify Purchaser of such change in a timely manner.

**Section 2.10. Special Assessments.** To the best of Seller's knowledge, Seller has not received notice, either oral or written, and has no knowledge that any governmental or quasi-governmental agency or authority intends to commence construction of any special or off-site improvements or impose any special or other assessment against the Property or any part thereof.

**Section 2.11. Not a Foreign Person.** Seller is not a "Foreign Person" as defined in the Internal Revenue Service Code Withholding Section.

### ARTICLE THREE

#### PURCHASE PRICE

The purchase price (the "Purchase Price") to be paid by Purchaser for all of the Property shall be [REDACTED] Dollars (the "Per Acre Purchase Price") per acre, subject to the adjustments and prorations set forth herein, and the exact acreage to be determined by survey referenced in Section 5.2. The Purchase Price shall be payable as follows: (a) payment of [REDACTED] Dollars (the "Earnest Money") to Long, Ragsdale & Waters, P.C., 1111 Northshore Drive, N.W., Suite 5-700, Knoxville, TN 37919 ("Escrow Agent") concurrently with the execution and delivery of this Agreement (which will be held in an escrow account), (b) payment at the Closing of the Phase 1 Parcel of an amount equal to the total acreage of the Phase 1 Parcel, which shall be a minimum of one-third of the total acreage of the Property, multiplied by the Per Acre Purchase Price, less the amount of all Earnest Money paid through the date of such Closing, in immediately available funds, (c) payment at the Closing of the Phase 2 Parcel of the sum equal to the total acreage of the Phase 2 Parcel, which shall be a minimum of one-third of the total acreage of the Property, multiplied by the Per Acre Purchase Price, plus interest which will accrue at a rate of five percent (5%) based on a 360 day year, following the date of Closing of the Phase 1 Parcel, until the Closing of the Phase 2 Parcel, in immediately available funds, and (d) payment at the Closing of the Phase 3 Parcel of the sum equal to the total acreage of the Phase 3 Parcel, multiplied by the

Per Acre Purchase Price, plus interest which will accrue at a rate of five percent (5%) based on a 360 day year, following the closing of the Phase 1 Parcel, until the Closing of the Phase 3 Parcel, in immediately available funds. Notwithstanding the above, Purchaser may elect to increase to size of any of the Phase Parcels, and in such event, the amount in excess of one-third of the total acreage for any particular Phase Parcel shall be deemed a partial satisfaction of the required acreage for the next successive Parcel, and the amounts due under this provision shall be increased, or decreased, as the case may be, on a pro-rata basis.

#### ARTICLE FOUR

#### PRE-CLOSING EXAMINATIONS, INSPECTIONS, STUDIES AND TESTS

**Section 4.1. Physical Tests and Studies.** Within five (5) business days after the execution of this Agreement, Seller will deliver to Purchaser copies of all title insurance policies, surveys, environmental reports, geotechnical reports and real estate tax bills, related to the Property which are available to Seller. Purchaser and its representatives shall have the right, at Purchaser's sole cost, expense and risk, to conduct such physical tests and studies of the Property and obtain such samples thereof as the Purchaser may deem appropriate, including without limitation intended, soils tests, groundwater tests, waste water system tests and inspections, engineering inspections, hazardous substances tests and inspections and air quality tests. Purchaser shall promptly repair any damage to the Property which may result from the exercise of Purchaser's rights under this Section 4.1 and shall indemnify and save Seller harmless from and against any claims relating to personal injury, property damage and mechanics liens arising from Purchaser's activities under this Section 4.1. The foregoing indemnity shall survive Closing or the termination of this Agreement. All such examinations and studies shall be completed during the period ending one hundred twenty (120) days after the date of this Agreement. (Such period shall be referred to herein as the "Inspection Period"). Without limiting the foregoing, the parties shall use their best efforts to complete the following to its satisfaction before the expiration of the Inspection Period, each of which shall constitute a condition of Closing:

(a) Purchaser shall prepare a concept plan for the phased development of the Property which shall be acceptable to Seller in its reasonable discretion;

(b) Seller, at Seller's expense, shall cause the Property to be subdivided, and platted in accordance with Exhibit B attached hereto (as such Exhibit B may be amended during the Inspection Period), and subject to applicable subdivision regulations or Horry County;

(c) Seller and Purchaser shall agree to the terms of easements, covenants and restrictions for the phased development of the Property (the "ECR") which shall establish reciprocal easements for access and utilities for the Property and shall provide that Seller shall have a reasonable right of approval of site layout and covenants for so long as it owns any portion of the Property.

(d) The Property shall not be the subject of any moratorium or other development restriction which would prevent Purchaser's immediate development of the Property for residential purposes, subject to the submission and approval of applicable permits and plans. Provided, however, that in the event such a moratorium or development restriction should exist, the date of Closing shall be extended by a number of days equal to the days for which such moratorium or development restriction persists, but in no event shall the Closing be extended for more than two hundred seventy (270) days. Should such a moratorium or development restriction

exist for more than two hundred seventy (270) days, Purchaser shall have the option of (i) Closing at the end of the two hundred seventy day period or (ii) terminate this Agreement whereupon all Earnest Money shall be returned by the escrow Agent, to the Purchaser, and the parties shall have no further rights or obligations hereunder.

**Section 4.2. Right to Terminate.** Purchaser shall have the right to terminate this Agreement for any reason without any liability or obligation under this Agreement, by notice given to the Seller prior to the expiration of the Inspection Period. In addition, in the event that the conditions set forth in subsections 4.1 (b) and 4.1 (c) have not been met to the reasonable satisfaction of the Seller prior to the expiration of the Inspection Period, Seller may terminate this Agreement by giving notice to Purchaser. If Purchaser does not give notice of termination under this Section 4.2, the Escrow Agent shall deliver the Earnest Money to the Seller and the Purchaser shall deliver to the Seller the additional sum of Ninety Thousand Dollars (\$90,000.00) which shall be Additional Earnest Money. All Earnest Money (including the Additional Earnest Money) deposited shall then be nonrefundable except as provided in Sections 7.4; 9.2 and 10.1.

**Section 4.3. As Is.** Purchaser acknowledges and agrees that, except as otherwise expressly set forth herein, Seller has not made and will not make any representations or warranties, express or implied, pertaining to the Property, its condition or any other matters whatsoever, and that Purchaser will be relying solely on its own inspections and investigations with respect to the Property, its condition and all other matters whatsoever. In addition, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "as is, where is," with all faults and defects, whether patent or latent, as of the Closing Date.

## ARTICLE FIVE

### SURVEY, TITLE, HAZARDOUS SUBSTANCE REPORT, ACCESS

**Section 5.1. Title Insurance Commitment/Policy.** Not later than 60 days before the expiration of the Inspection Period, Purchaser shall at Purchaser's option and expense, obtain and deliver to Seller, a current title insurance commitment (the "Commitment") for an owner's extended coverage policy of title insurance (the "Title Policy"), on an ALTA Form acceptable to Purchaser from a title insurance company acceptable to Purchaser (the "Title Insurance Company"), in the amount of the Purchase Price, insuring Purchaser as the owner of fee simple title to the Property subject only to the Permitted Encumbrances (as defined in Section 5.4).

**Section 5.2. Survey.** Not later than sixty (60) days before the expiration of the Inspection Period, the Purchaser shall obtain, at the Purchaser's expense, a survey of the Property (the "Survey"), satisfying the minimum standard detail requirements for land title surveys most recently adopted by the American Land Title Association ("ALTA") and the American Congress on Surveying and Mapping. Purchaser shall deliver a copy thereof to Seller upon Purchaser's receipt thereof, and such Survey will establish the boundaries and acreage of the Phase 1 Parcel, the Phase 2 Parcel and the Phase 3 Parcel, provided that such boundaries are substantially as shown on Exhibit A, and provided further that the Purchase Price shall not be adjusted.

**Section 5.3. Hazardous Materials Report; Termite Report.** Purchaser may, at Purchaser's option and expense, obtain on or before the expiration of the Inspection Period, a Phase I Environmental Survey (the "Environmental Survey") of the Property, and, if necessary, a Phase II Environmental Survey. The Environmental Survey shall be addressed to both Seller and Purchaser, and a copy of the Environmental Survey shall be delivered to Seller.

**Section 5.4. Purchaser's Objections.** If the Purchaser has any objection to the Commitment, the Survey or the Environmental Report, or the state of title or facts reflected in the Commitment, the Survey or the Environmental Report, the Purchaser shall give the Seller written notice (the "Objection Notice") of such objection no later than forty-five (45) days prior to the expiration of the Inspection Period. The Seller shall have the right, but not the obligation, (i) to cure any title defect or eliminate any exception in the Commitment to which the Purchaser objects; (ii) to correct any state of facts shown on the Survey to which Purchaser has objected; or (iii) to address the conditions disclosed in the Environmental Report in a manner satisfactory to Purchaser. Seller shall notify Purchaser if Seller is unable or unwilling to take the remedial action within ten (10) days. If the Seller is unable or unwilling to cure or eliminate or correct as requested in an Objection Notice, within ten (10) days after the Objection Notice is given, the Purchaser shall elect to either (i) waive such defects, exceptions or state of facts and accept title to the Property subject to such defects, exceptions or state of facts without reduction of the Purchase Price (except that Purchaser shall be entitled to satisfy any monetary liens or encumbrances against the Property out of the Purchase Price at Closing) or (ii) terminate this Agreement whereupon, the parties shall have no further rights or obligations hereunder. Should Purchaser elect to accept title, survey and environmental conditions based upon the above-noted reports, the Purchaser shall notify the Seller in writing of such acceptance. Purchaser's failure to give such notice to Seller within thirty (30) days after the Objection Notice has been given shall be deemed to be an election by Purchaser to terminate this Agreement. All matters of title and survey to which Purchaser fails to object within the time period specified above, and all such matters to which the Purchaser has objected, but has waived such objections under clause (i) of the fourth preceding sentence, shall be deemed to be "Permitted Encumbrances."

## ARTICLE SIX

### CLOSING

**Section 6.1. Closing Date.** Subject to the provisions of Section 4.1(d) above, the consummation of the purchase and sale herein contemplated shall occur in three (3) separate closings which shall be referred to herein as the "Phase 1 Closing", the "Phase 2 Closing" and the "Phase 3 Closing" and together as the "Closings." The Closing of the sale of the Phase 1 Parcel shall take place no later than thirty (30) days after the expiration of the Inspection Period (the "Phase 1 Closing Date"). The Closing of the sale of the Phase 2 Parcel shall take place no later than one (1) year after the Phase 1 Closing (the "Phase 2 Closing Date"). The Closing of the sale of the Phase 3 Parcel shall take place no later than one (1) year after the Phase 2 Closing (the "Phase 3 Closing Date"). Purchaser shall give Seller at least five (5) days prior written notice of each Closing Date.

**Section 6.2. Place of Closing.** The Closing shall take place in Myrtle Beach in such manner (including exchange of documents via the mail), as may be designated by Purchaser in the notice given under Section 6.1 or as mutually agreed upon by Seller and Purchaser.

## ARTICLE SEVEN

### CONSUMMATION OF SALE AND CONDITIONS TO CLOSING

The Closing shall be consummated as follows:

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Section 7.1. Phase 1 Closing. At the Phase 1 Closing, the parties shall execute and deliver the following:

(a) Special Warranty Deed. Seller shall execute and deliver a special warranty deed, in form and substance satisfactory to Purchaser, with full covenants of title, in recordable form duly executed by Seller and conveying to Purchaser good, fee simple, and insurable marketable title to the Phase 1 Parcel with the legal description provided in the Survey, subject only to the Permitted Encumbrances; and

(b) Owner's Affidavit. Seller shall execute and deliver an Affidavit in form satisfactory to the Title Company, stating that all bills have been paid for any improvements to the Phase 1 Parcel and sufficient to allow the Title Company to remove any "standard" exceptions contained in the Commitment relating to lien claims and tenants in possession;

(c) Authority of Seller. Seller shall execute and deliver documentation (including resolutions, if applicable) in form and substance satisfactory to Purchaser evidencing the fact that Seller has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents described herein; and

(d) Non-Foreign Statement. Seller shall execute and deliver a sworn statement that Seller is not a "foreign person" or a non-resident alien as defined by the Internal Revenue Code and the regulations promulgated thereunder in the form required by Treas. Regs. Section 1445; and

(e) Releases. Seller shall execute, or cause to be executed and delivered, releases of any mortgages or liens on the Phase 1 Parcel;

(f) ECR. Seller shall execute and record the ECR, the form of which Purchaser shall have approved during the Inspection Period, which shall encumber the entire Property not less than five (5) days prior to the Phase 1 Closing;

(g) Subdivision Plat. Seller shall record the approved subdivision plat, which shall create the Phase 1 Parcel not less than five (5) days prior to the Phase 1 Closing;

(h) Purchase Price. The Purchaser shall pay to the Seller the balance of the Purchase Price for the Phase 1 Parcel adjusted for the prorations provided in Article 8;

Section 7.2. Phase 2 Closing. At the Phase 2 Closing, the parties shall execute and deliver the following:

(a) Special Warranty Deed. Seller shall execute and deliver a special warranty deed, in form and substance satisfactory to Purchaser, with full covenants of title, in recordable form duly executed by Seller and conveying to Purchaser good, fee simple, and insurable marketable title to the Phase 2 Parcel with the legal description provided in the Survey, or the Phase 2 Parcel subdivision plat, subject only to the Permitted Encumbrances; and

(b) Owner's Affidavit. Seller shall execute and deliver an Affidavit in form satisfactory to the Title Company, stating that all bills have been paid for any improvements to the Phase 2 Parcel and sufficient to allow the Title Company to remove any "standard" exceptions contained in the Commitment relating to lien claims and tenants in possession;

*(Handwritten initials)*

(c) Authority of Seller. Seller shall execute and deliver documentation (including resolutions, if applicable) in form and substance satisfactory to Purchaser evidencing the fact that Seller has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents described herein; and

(d) Non-Foreign Statement. Seller shall execute and deliver a sworn statement that Seller is not a "foreign person" or a non-resident alien as defined by the Internal Revenue Code and the regulations promulgated thereunder in the form required by Treas. Regs. Section 1445; and

(e) Releases. Seller shall execute, or cause to be executed and delivered releases of any mortgages or liens on the Phase 2 Parcel;

(f) Phase 2 Parcel Subdivision Plat. The Seller shall record the subdivision plat required to create the Phase 2 Parcel not less than five (5) days prior to the Phase 2 Closing;

(g) Purchase Price. The Purchaser shall pay to the Seller the balance of the purchase Price for the Phase 2 Parcel adjusted for the prorations provided in Article 8;

Section 7.3. Phase 3 Closing. At the Phase 2 Closing, the parties shall execute and deliver the following:

(a) Special Warranty Deed. Seller shall execute and deliver a special warranty deed, in form and substance satisfactory to Purchaser, with full covenants of title, in recordable form duly executed by Seller and conveying to Purchaser good, fee simple, and insurable marketable title to the Phase 3 Parcel with the legal description provided in the Survey or the subdivision plat which created the Phase 2 Parcel and the Phase 3 Parcel, subject only to the Permitted Encumbrances; and

(b) Owner's Affidavit. Seller shall execute and deliver an Affidavit in form satisfactory to the Title Company, stating that all bills have been paid for any improvements to the Phase 3 Parcel and sufficient to allow the Title Company to remove any "standard" exceptions contained in the Commitment relating to lien claims and tenants in possession;

(c) Authority of Seller. Seller shall execute and deliver documentation (including resolutions, if applicable) in form and substance satisfactory to Purchaser evidencing the fact that Seller has the full and unrestricted lawful power to enter into and carry out the terms of this Agreement and execute and deliver the documents described herein; and

(d) Non-Foreign Statement. Seller shall execute and deliver a sworn statement that Seller is not a "foreign person" or a non-resident alien as defined by the Internal Revenue Code and the regulations promulgated thereunder in the form required by Treas. Regs. Section 1445; and

(e) Releases. Seller shall execute and deliver releases of any mortgages or liens on the Phase 3 Parcel;

(f) Purchase Price. The Purchaser shall pay to the Seller the balance of the Purchase Price for the Phase 3 Parcel adjusted for the prorations provided in Article 8;

**Section 7.4. Further Conditions to Purchaser's Obligations.** The following conditions must occur and/or be satisfied as an additional condition precedent to Purchaser's obligation to consummate the purchase and sale herein contemplated (unless waived by Purchaser) and if such conditions are not met to the satisfaction of Purchaser, the Purchaser may terminate this Agreement:

(a) Seller shall be able to deliver marketable, insurable title to the Property subject only to the Permitted Encumbrances;

(b) There shall be no condemnation or eminent domain proceedings pending or threatened against the Property or any part thereof and neither party shall have received any notice, written or oral, of the desire of any public authority or other entity to take or use the Property or any part thereof.

**Section 7.5 Title Insurance Premiums; Documentary Transfer Fees and Taxes; Survey Cost.** Purchaser shall pay all recording costs imposed on or in connection with the recording of the deed or deeds for the Property. Seller shall pay all deed stamps, documentary stamps or transfer fees for the deed. Purchaser shall pay all premiums and other costs associated with the Title Policy and the Commitment, and the costs of the Survey.

**Section 7.6. Real Estate Commission.** Seller and Purchaser each warrant to the other that no broker or agent has been engaged by it in connection with the negotiation and/or consummation of this Agreement, other than Al Olivetti ("Olivetti"), as the agent of Seller, and for which Seller shall assume the obligation of all fees and commissions due Olivetti, and, with the exception of Olivetti, each hereby indemnifies and holds the other harmless from and against any and all claims of any other broker or agent so claiming

**Section 7.7. Costs of the Parties.** All costs or expenses of performance of obligations hereunder and the consummation of the transactions contemplated herein which have not been specifically assumed by either party under the terms hereof shall be borne by the party incurring such cost or expense.

## ARTICLE EIGHT

### CLOSING ADJUSTMENTS AND APPORTIONMENTS.

All of the items of income and expense customarily apportioned in similar real estate transactions shall be apportioned or adjusted between the Seller and the Purchaser. All apportionments and adjustments shall be made as of 11:59 P.M. on the Closing Date, except those items which are not susceptible of determination on the Closing Date or which this Article 8 expressly provides are to be determined on a subsequent date, which shall be apportioned or adjusted after the Closing, but computed as of the Closing Date. To the extent that the apportionments and adjustments at the Closing are not based upon final figures or there are any errors or omissions in the calculation or determination thereof, promptly after notice of such final figures or errors or omissions, the Parties shall readjust or reapportion and make the payment required as a result thereof.

Seller and Purchase agree that Purchaser shall assume the obligations of any "roll-back" or other taxes resulting from the change in use of the Property ("Roll-Back Taxes"), provided that in the event such Roll-Back Taxes should exceed Ten Thousand and No/100 (\$10,000.00) Dollars, in the aggregate, Seller shall assume the obligation for such excess amount.

## ARTICLE NINE

### RISK OF LOSS

Section 9.1. **Risk of Loss.** The risk of loss or damage (the "Loss") to the Property by condemnation, eminent domain or similar actions or proceedings or threat thereof (collectively a "Taking"), or by fire or other casualty (collectively a "Casualty") shall be borne by the Seller through the Closing Date and thereafter shall be borne by the Purchaser.

Section 9.2. **Effect of Loss.** In the event of a Loss which occurs prior to the Closing and the damage cannot be repaired at a cost of less than \$5,000.00, then the Purchaser shall, within ten (10) days after written notice thereof from Seller, elect either (i) to terminate this Agreement and all liabilities and obligations under this Agreement or (ii) to consummate the purchase of the Property, and at the Closing the Seller shall provide the Purchaser with an assignment of the casualty insurance (including without limitation intended, fire or other hazard insurance and any rent loss or business interruption insurance) proceeds together with a credit against the Purchase Price in an amount equal to the deductible under the applicable insurance policy (collectively the "Insurance Proceeds") to the Purchaser, or any assignment of the condemnation award to the Purchaser, whichever is applicable. Clause (ii) above shall apply if the amount of loss is less than \$ 5,000.00.

## ARTICLE TEN

### DEFAULT: REMEDIES ON DEFAULT

Section 10.1. **Default; Liquidated Damages.** Purchaser and Seller acknowledge that it would be extremely impracticable and difficult to ascertain the actual damage which would be suffered by Seller if Purchaser fails to consummate the purchase and sale contemplated herein (for any reason other than Seller's failure, refusal or inability to perform any of Seller's covenants and agreements hereunder or the failure of any other of the conditions to Purchaser's obligation to close hereunder). Based on all those considerations, Purchaser and Seller have agreed that the damage to Seller would reasonably be expected to amount to the Earnest Money. Accordingly, if Seller has performed its covenants and agreements hereunder but Purchaser has breached its covenants and agreements hereunder and has failed, refused or is unable to consummate the purchase and sale contemplated herein by the Closing Date, then Escrow Agent shall pay the Earnest Money to Seller as full and complete liquidated damages or Seller shall be entitled to seek and recover specific performance. Upon Seller's receipt of such payment, as above provided, no party to this Agreement shall have any liability to any other party to this Agreement; and this Agreement shall in its entirety be deemed null, void and of no further force and effect, provided that the indemnity set forth in Section 4.1 shall survive. If Seller has breached any of its material covenants and/or material agreements under this Agreement in any material manner and/or has failed, refused or is unable to consummate the purchase and sale contemplated herein by the Closing Date (for any reason other than Purchaser's failure, refusal or inability to perform any of Purchaser's covenants and agreements hereunder or the failure of any other of the conditions to Seller's obligation to close hereunder), the Purchaser shall be entitled to seek and recover specific performance or the Escrow Agent, upon the request of Purchaser, shall return the Earnest Money to Purchaser and the Purchaser shall be entitled to recover, in addition to the Earnest Money, from Seller its actual out-of-pocket costs and expenses up to a maximum of One Hundred Thousand Dollars (\$ 100,000.00).

**Section 12.4. Governing Law.** This Agreement shall be governed by and construed under the laws of South Carolina.

**Section 12.5. Article Headings.** The article headings as herein used are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or limit the provisions or scope of any Article.

**Section 12.6. Date Hereof.** For purposes of this Agreement, the date hereof shall mean the latest date of execution of this Agreement by all parties hereto.

**Section 12.7. Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required. All such counterparts shall collectively constitute a single agreement.

**Section 12.8. Time of Essence.** TIME IS OF THE ESSENCE OF THIS AGREEMENT.

**Section 12.9. Subsequent Documentation.** Seller and Purchaser agree that they will, at any time, prior to, at or after Closing, duly execute and deliver to the other any additional documents and instruments which are customary and which must necessarily be executed in order to consummate the purchase and sale contemplated herein, and the failure of Purchaser or Seller to demand such documents or instruments at or before the Closing shall not alleviate the obligation of the parties to execute and deliver same at any time, upon the demand.

**Section 12.10. Assignment.** The Purchaser may freely assign the rights and delegate the duties assumed by it as a result hereof to an entity in which the Purchaser or any shareholder, officer, or employee of Purchaser holds more than a 50% ownership interest (the "Permitted Assignee") but to no other person or entity. No further assignment of this Agreement by the Purchaser or the Permitted Assignee shall be permitted without Seller's prior written approval. Any such assignment or delegation shall not release or excuse Purchaser from its liability to Seller under this Agreement. Upon the written assignment by Purchaser delivered to Seller, Seller agrees to accept the performance of the Permitted Assignee and to perform this Agreement for the benefit of Purchaser's Assignee. Seller may assign the rights and delegate the duties assumed by it as a result hereof without the prior written consent of the Purchaser, but such assignment or delegation shall not release or excuse the Seller from its liability to the Purchaser under this Agreement.

**Section 12.11. Tax-Deferred Exchange.** Notwithstanding any other provision of this Agreement to the contrary, the parties recognize that Seller may affect a tax-deferred exchange in connection with the conveyance of the Property. Purchaser agrees to cooperate to the extent reasonably requested by Seller, in connection with the timing and terms of the conveyance described herein and to execute such additional instruments as may be reasonably requested by Seller in connection with any such exchange and compliance with the provisions of the Internal Revenue Code and the regulations thereunder. In addition, Purchaser acknowledges that Seller may assign this Agreement in connection with such an exchange. However, Purchaser will not accept title to property to be exchanged for the Property in a tax-deferred exchange. Seller agrees to use an intermediary for the exchange of property.

### **ARTICLE THIRTEEN**

## NOTICES

Notices hereunder shall be given to the parties set forth below and shall be made by hand delivery, facsimile, overnight delivery or by regular mail. If given by regular mail, the notice shall be deemed to have been given within a required time if deposited in the U.S. Mail, postage prepaid, within the time limit. For the purpose of calculating time limits which run from the giving of a particular notice the time shall be calculated from actual receipt of the notice. Time shall run only on business days which, for purposes of this Agreement shall be any day other than a Saturday, Sunday or legal public holiday. Notices shall be addressed as follows:

If to Seller:

Deertrack Golf, Inc.  
c/o The Carolina Company  
150 Major Reynolds Place  
Knoxville, TN 37919  
Fax No.: (865) 637-4105  
Attn: Michael Schaad

With a Required Copy to:

Dennis B. Ragsdale, Esq.  
Long, Ragsdale & Waters, P.C.  
1111 Northshore Drive, N.W.  
Suite 5-700  
Knoxville, TN 37919-4074  
Fax No. : (865) 584-6084

If to Purchaser:

Bill Clark Homes of  
Myrtle Beach, LLC  
Greenville, NC 27858  
Fax No. : (252) 355-2806  
Attn: James Migliore

With a Required Copy to:

Robert S. Guyton, P.C.  
1298 Professional Drive, Suite B  
Myrtle Beach, SC 29577  
Fax No.: (843) 839-2111  
Attn: Shep Guyton, Esq.

## ARTICLE FOURTEEN

### ARBITRATION

All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be decided by mandatory and binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") currently in effect unless the parties mutually agree otherwise. The following procedures shall apply:

(a) Demand for arbitration shall be filed in writing with the other party to this Agreement and with the AAA. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(b) No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the parties hereto and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented by the parties to this Agreement shall

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be specifically enforceable in accordance with applicable law and any court having jurisdiction thereof.

(c) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(d) All filing fees and AAA costs associated with the arbitration itself shall be paid for by the party who files the notice of arbitration; provided, however, that all such expenses shall be recovered by the filing party in the event said party prevails. The prevailing party also shall recover from the nonprevailing party all attorneys' fees and costs, including fees and costs for legal assistants and expert witnesses, and including all fees and costs incurred relative to any challenge or appeal of the arbitration award, or confirmation by a court of law. Any issues regarding who is the prevailing party shall be determined by the arbitration panel.

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

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

"PURCHASER":

BILL CLARK HOMES OF MYRTLE BEACH, LLC

By: *Jayme Howell* 9-1-05  
Its *AREA MGR.*

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

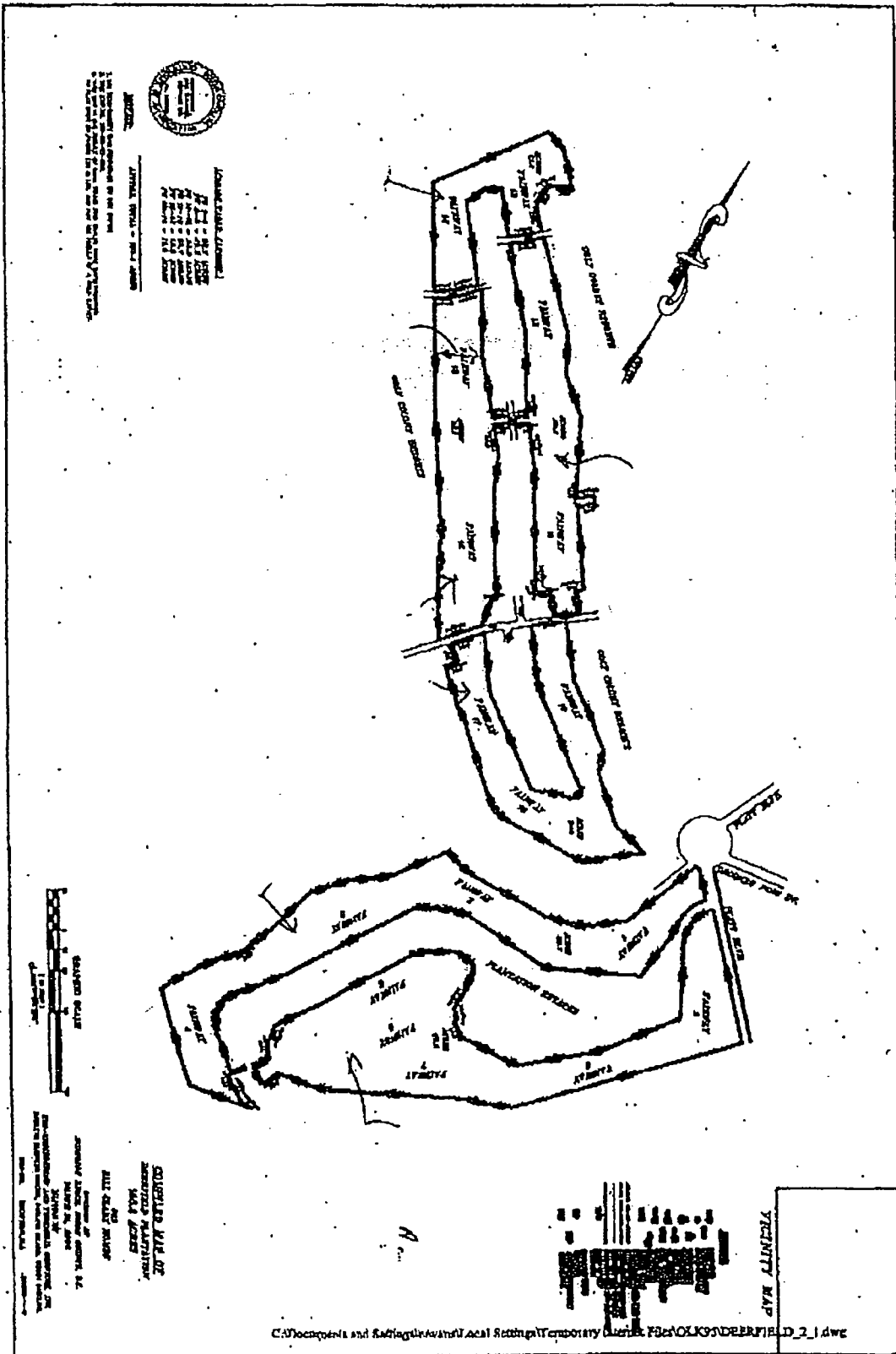
"SELLER"

DEERTRACK GOLF, INC.

By: *[Signature]*  
Its *President*  
9-2-05

*(Handwritten mark)*

Exhibit "A"



Deertrack Golf, Inc.  
Deertrack - 0015

(Handwritten initials)

AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS AMENDMENT TO CONTRACT FOR PURCHASE AND SALE (the "Amendment") is made by and between DEERTRACK GOLF, INC., A South Carolina Corporation (hereinafter referred to as "Seller"), and BILL CLARK HOMES OF MRYTLE BEACH, LLC, a South Carolina LLC (hereinafter referred to as "Purchaser") this \_\_\_ day of December, 2005.

WHEREAS, THE Seller and Purchaser entered into a REAL ESTATE PURCHASE AGREEMENT (the "Agreement") for the sale and purchase of the property described on Exhibit "A" to the Agreement, hereafter called the "Property", which Agreement was accepted by Seller and Purchaser on September 2, 2005, and the Seller and Purchaser have agreed to an amendment, as hereafter described.

THEREFORE, for a good and valuable consideration, and the mutual agreements of this Amendment, Seller and Purchaser agree as follows:

1. Purchaser shall have an additional thirty (30) days Inspection Period (the "Additional Inspection Period") after the end of the originally agreed upon one hundred twenty (120) day Inspection Period to complete Purchaser's inspection of the Property.
2. The Closing of the sale of the Phase 1 Parcel shall take place no later than thirty (30) days after the expiration of the Additional Inspection Period.
3. In all other respects except as amended herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals.

SELLER:

DEERTRACK GOLF, INC.

By: 

Its: President

Date: 12-23-05

PURCHASER:

BILL CLARK HOMES OF MRYTLE BEACH, LLC

By: 

Its: DIVISION PRESIDENT

Date: 12-21-05

AGENCY AGREEMENT

This Agency Agreement is made this 25<sup>th</sup> day of July, 2006 by and between

Deertrack Golf, Inc., a South Carolina corporation, its successors and assigns (hereinafter "Deertrack Golf"), and

Jeff Farrell, a resident of Horry County, South Carolina, his personal representatives, heirs and assigns (hereinafter "Agent").

WITNESSETH:

WHEREAS, Deertrack is the owner of a certain tract or parcel of real estate located in Horry County, South Carolina which is commonly known as the south Deertrack Golf Course and is identified as all of the real property identified as TMS 191-00-01-068 (the "Property"); and

WHEREAS, Deertrack has entered into a certain real estate sales contract (the "Contract") wherein it has agreed to sell, transfer and convey and Bill Clark Homes has agreed to purchase the Property on the terms and conditions set forth therein; and LLC

WHEREAS, the Horry County Council is proposing an ordinance which, if passed, would have the effect of downzoning the Property to a zone that would not allow the development of the Property for residential purposes; and

WHEREAS, the parties realize that it is imperative that they, among other things, obtain approval for development plans for the Property prior to the passage of the proposed ordinance; and

WHEREAS, in order to facilitate the submittal and approval of development plans for the Property, the parties which to enter into this Agreement for the purpose of allowing Agent to act as the agent of Deertrack Golf for preparing, executing, submitting and obtaining the approval of development plans for the Property prior to the passage of the ordinance; and

NOW, THEREFORE, for in consideration of Ten Dollars (\$10.00) and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Appointment as Agent. Deertrack Golf hereby appoints Agent as its agent to do each and all of the following:
  - a. To prepare, execute, submit and diligently pursue the approval of all those certain development plans for the Property which were prepared by ETS dated \_\_\_\_\_ and are identified as drawing numbers \_\_\_\_\_ (the "Plans").

TO BE DETERMINED UPON COMPLETION OF PLANS

Agent shall not have the authority to make any material changes to the Plans without first obtaining the prior consent of Deertrack Golf;

b. To appear for and on behalf of Deertrack Golf at all meetings and hearings relating to the submission and approval of the Plans;

2. Limitation on Powers: Agent shall have no authority whatsoever to do any of the following on behalf of Deertrack Golf:

- a. execute any deeds or other instruments of conveyance;
- b. take any action that would or could have the effect of changing the current zoning of the Property;
- c. enter into or execute any contracts on behalf of Deertrack Golf with respect to the performance of any work on or the providing of any materials to the Property;
- d. enter into or execute any maps or subdivision plats other than those which are in accordance with that certain ALTA/ASCM Land-Title Survey prepared by ETS-Engineering and Technical Services, Inc. dated January 31, 2006; or
- e. perform or authorize the performance of any construction, excavating, improvement, grading or other work on the Property;

3. Costs and Expense: Notwithstanding anything contained in this Agreement to the contrary, all costs and expenses incurred by Agent in the preparation, submission and approval of the Plans shall be the sole responsibility of the Agent.

4. Duration of Agency: The agency granted herein may be terminated at anytime by Deertrack Golf communicating the same to the Agent, either orally or in writing. Upon such communication, all the authority of the Agent under this Agreement shall immediately cease.

If not sooner terminated, the agency granted herein shall automatically expire upon the earlier occurrence: (i) the date upon which Deertrack Golf conveys the Property to Bill Clark Homes pursuant to the Contract; or (ii) the date that the proposed ordinance (downzoning the Property from R-7 to a less desirable zone) is passed by the Horry County Council.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Deertrack Golf:

Agent:

Deertrack Golf, Inc.

By:

Patrick J. Schmitt, President

Witness:

Jeff Farris

Witness: Margee Lamer

BOARD:  
Elizabeth M. Hagood  
Chairman  
Edwin H. Cooper, III  
Vice Chairman  
Steven G. Kisner  
Secretary



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment*

BOARD:  
Henry C. Scott  
Paul C. Aughtery, III  
Glenn A. McCall  
Coleman F. Buckhouse, MD

February 29, 2008

PATRICK SHAAD  
DEERTRACK GOLF INC  
150 MAJOR REYNOLDS PL  
KNOXVILLE TN 37919

RE: OLD SOUTH COURSE, PHASE 1, Horry County  
File number: 26-07-04-13

*POJ*  
*11*

Dear Jeffrey Farrell:

The Department of Health and Environmental Control (Department or DHEC) has reviewed and approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on February 29, 2008. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities SCR100000 (2006 CGP), this project has been granted coverage under the 2006 CGP. This project's general permit coverage number is SCR10G097. The total disturbed area for this site is 53.5 acres. This NPDES coverage expires on 02/28/2013, 5 years from the date of issuance.

See attached DHEC Office of Ocean and Coastal Resource Management (DHEC-OCRM) certification approved 02/15/2008 for additional conditions related to the Coastal Zone Consistency determination.

Because this project or larger common plan for development disturbs 10 or more acres, monthly reports must be submitted to the Department for the above-referenced site. Please refer to SCR100000, mainly Section 3.10, for information about requirements for inspections and monthly reporting. Your first monthly report is due on or before April 28, 2008.

Because this project or larger common plan for development disturbs 10 or more acres, a pre-construction meeting must be held onsite with all co-permittees and contractors who are not co-permittees (contractors) prior to that co-permittee or contractor performing construction related work intended to disturb soils at the above-referenced site. Please refer to SCR100000, mainly Section 3.2, for information about requirements for pre-construction meetings and certification of those meetings.

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 17 pond(s) on this site. The survey(s) should show grades, contours, and depths for all ponds and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the pond(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the pond, as built, will function as shown in approved calculations. A new analysis of the pond (routing)

may be necessary. The as-built survey and/ or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

Because this project is part of a larger common plan for development or sale (LCP), all applications for future land-disturbing activities that are part of this LCP (phases, outparcels, etc.) should include the above-referenced file number (26-07-04-13), NPDES coverage number (SCR10G097), and project name (OLD SOUTH COURSE).

The inspections for this site must be performed by qualified personnel who meets the requirements list in Section 3.10.D of the 2006 CGP. Qualified personnel must be one of the following:

1. SWPPP preparer
2. Person under direct supervision of SWPPP preparer
3. Person who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC (see our website for a list of approved courses)
4. Person with registration equivalent of SWPPP preparer
5. Person under direct supervision of person with registration equivalent to SWPPP preparer

The 2006 CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/docs/finalcgp.pdf> or you may request a copy from us via email ([stormwatercgp@dhec.sc.gov](mailto:stormwatercgp@dhec.sc.gov)). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the 2006 CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act) and the Federal Clean Water Act (CWA).

You must notify this DHEC-OCRM Office prior to starting any land-disturbing activity. The address and telephone number of the DHEC-OCRM office are as follows:

S.C. DHEC-OCRM  
927 SHINE AVE  
MYRTLE BEACH SC 29577  
843-238-4528

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the DHEC-OCRM at (843) 238-4528.

A copy of the stamped, approved SWPPP (including a copy the 2006 CGP and signed co-permittee and contractor certifications), NOI, and CGP coverage letter from DHEC must be retained at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction

activities to the date of final stabilization. A copy of the stamped, approved SWPPP must be available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must sign a certification statement as a co-permittee or as a contractor who is not a co-permittee. You are responsible for any contractor who is not a permittee. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each co-permittee and contractor who is not a co-permittee before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action. Failure to comply with the approved SWPPP or the minimum requirements of the 2006 CGP, 1991 Act, or CWA may subject you to applicable penalties.

This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the 2006 CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the 2006 CGP. Please see section 5.1 of the 2006 CGP for more information about termination of coverage.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage. Also, see the enclosed document from the S.C. DHEC Compliance Assurance Division detailing some of the compliance requirements of the 2006 CGP.

If you have any questions or cannot access the referenced websites, please call Tara C Maddock at 843-953-0243.

Sincerely,



Jill C. Stewart, P.E., Manager  
Stormwater Permitting Section

CC: Thomas P Bevins—ENGINEERING AND TECHNICAL SERVICES INC  
Tara C Maddock—Charleston OCRM Office  
Region 6, Myrtle Beach EQC Office  
Jeffrey Farrell, Bill Clark Homes of MB  
Will Weaver, Bill Clark Homes of MB  
Don Trainor (Via Certified Mail)  
Leo Bereths (Via Certified Mail)  
Tony Greco (Via Certified Mail)

Charles Budnick (Via Certified Mail)  
Michael Taylor (Via Certified Mail)  
Grover Perry (Via Certified Mail)  
Cathy Mason (Via Certified Mail)  
Douglas Williams (Via Certified Mail)  
Eric Watson (Via Certified Mail)  
Steven and Joey Brads (Via Certified Mail)  
Anthony DiGulelo (Via Certified Mail)  
Frank Yelinko (Via Certified Mail)  
Jenny Burns (Via Certified Mail)  
John Barclay (Via Certified Mail)  
Ed Booth (Via Certified Mail)

STATE OF SOUTH CAROLINA    )     TERMINATION TO REAL ESTATE  
  )     PURCHASE AGREEMENT  
COUNTY OF HORRY            )

This Termination to Real Estate Purchase Agreement (the "Termination Agreement") is entered into and made effective as of this 23 day of June, 2010, by and between Deertrack Golf, Inc., a South Carolina Corporation ("Seller"), and Bill Clark Homes of Myrtle Beach, LLC, a North Carolina Limited Liability Company ("Purchaser");

WHEREAS, the Seller and Purchaser previously entered into a certain Real Estate Purchase Agreement dated September 2, 2005 (the "Original Contract") wherein Seller agreed to sell, transfer and convey and Purchaser agreed to purchase and acquire certain real property commonly known as the South Golf Course tract at Deertrack Holes 1-18 in Horry County, South Carolina as described in the Contract; and

WHEREAS, Seller and Purchaser subsequently enter into that certain Amendment to Real Estate Purchase Agreement dated December, 2005 (the "First Amendment") wherein they agreed to certain amendments to the Original Contract, and

WHEREAS, Seller and Purchaser subsequently entered into that certain Addendum to Contract of Sale on March 14, 2006 (the "Addendum") for the purposes of, among other things, supplementing and amending certain provisions in the Original Contract and the First Amendment, and;

WHEREAS, Seller and Purchaser subsequently entered into that certain Second Amendment to Real Estate Purchase Agreement (the "Second Amendment") dated February 20, 2009 for the purpose of reconfirming the provisions of the First Amendment of the Original Contract and the Addendum.

WHEREAS, the Purchaser and Seller have agreed to terminate the Original Contract as amended by the First Amendment, the Addendum and the Second Amendment (collectively, the "Contract") subject to the terms and conditions hereinafter set forth, and;

NOW THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the mutual promises set forth herein, and other good and valuable consideration exchanged between the parties, the receipt and sufficiency is hereby acknowledged, the parties hereby agree as follows:

1. Termination. Subject to the terms and conditions set forth herein, Seller and Purchaser hereby agree that the Contract as amended is terminated, except as hereinafter set forth and for those matters surviving the expiration of the Contract, and that neither the Seller nor the Purchaser have any further obligations to each other.

2. Conditions to Termination. Purchaser hereby irrevocably transfers, conveys and assigns to Seller all of Purchaser's rights, title and interests whatsoever in and to all the following:

(i) Conditional preliminary plat approval for redevelopment for Phases 1A and 1B of the Old South Golf Course, Deertrack Subdivision;

(ii) Authorization from the South Carolina Department of Health and Environmental Control for Permit Coverage under NPDES general permit authorizing storm water discharges from large and small construction sites, such authorization issued on February 29, 2008;

(iii) Jurisdictional Wetlands Determination issued by the United States Army Corps of Engineers, Charleston District on August 3, 2006 to Norman Boatwright referencing 152.485 Acre tract, located within Deerfield Plantation also known and designated as the Old South Golf Course Tract;

(iv) Permit Application currently pending before Horry County seeking approval in accordance with Horry Counties Storm Water Ordinance and pertinent ordinances for redevelopment of the Old South Golf Course Tract, in accordance with the conditional preliminary plat approval referenced herein; and

(v) All other permits, governmental approvals, surveys, environmental reports, investigations, studies, development plans, all other development-related documents, and all other due diligence materials relating to the Old South Golf Course Tract, whether now or hereafter in the possession of Purchaser.

Purchaser covenants and agrees to execute such other assignments, documents and other instruments which may be requested by Purchaser from time to time to further evidence the assignment of the above-referenced items.

3. Legal Actions. Purchaser hereby irrevocably transfers, assigns and conveys to Seller all of its rights, title and interests whatsoever in and to the following legal actions,:

(i) Case No. 2008-CP-7692 captioned Deerfield Plantation Phase IIIB Property Owners Association v. Horry County Planning Commission Deertrack Golf, Inc. and Bill Clark Homes of Myrtle Beach, LLC pending in the Horry County Court of Common Pleas; and

(ii) S. C. Court of Appeals, Docket No. 08-ALJ-07-02210-CC Deerfield Plantation Phase II B Property Owners Association vs. SCDHEC, Deerfield Golf, Inc. and Bill Clark Homes of Myrtle Beach, LLC.

With respect to the matters set forth in this Section 3, Purchaser also covenants and agrees to promptly deliver to Seller, which shall be no later than 15 days after the date of this instrument, all files, notes and other documents which Purchaser and its attorneys have related to the above-referenced actions. Purchaser further covenants and agrees to execute such other assignments, pleadings and other documents as may be requested by Seller from time to time, to evidence the assignment made herein.

4. Agreement to Cooperate. The Purchaser hereby covenants and agrees to cooperate with Seller in all matters relating to the matters set forth in Section 2 and Section 3

above including, without limitation, executing any such forms or notices required by Horry County, the South Carolina Department of Health and Environmental Control, United States Corps of Engineers or any other state or federal agency and such other documents as may be reasonably requested by Seller from time to time

5. Earnest Money. Upon receipt by the Seller of fully executed notices of transfer for the approval referenced in Section 2, together with the due diligence materials etc. referenced in Section 2 and the copies of the files for the actions referenced in Section 3 above, the Seller agrees to authorize the law firm of Long, Ragsdale & Waters, PC with offices in Knox County, Tennessee (the "Escrow Agent") to release to Purchaser the sum of \$85,000 from the \$100,000 earnest money previously deposited by Purchaser in accordance with the terms of the Contract. Purchaser and Seller further agree that Escrow Agent shall pay the sum of \$15,000 from the earnest money deposit to Engineering and Technical Services, Inc. (ETS) in payment of the outstanding invoices submitted by ETS related to its prior work related to the subject property and the litigation related thereto; provided, that nothing contained in this Section 5 nor in this Agreement shall be construed as an admission or assumption of liability or responsibility by Seller, its owners, officers, attorneys, agents or representatives for any work previously performed by ETS related to either the subject property and/or the litigation related thereto.

6. Termination. Seller and Purchaser hereby agree that following the completion and performance of the above described items that the Contract will be terminated, and that neither Seller nor Purchaser shall have any further duties or obligations to each other thereunder except for those matters set forth in this Termination Agreement and those matters set forth in the Contract as surviving the termination thereof.

7. Counterparts; Facsimile Signatures. This Agreement may be executed by the parties hereto in multiple counterparts, all of which, when executed by all parties to be bound hereby, shall constitute one original Agreement. Signatures of parties hereon which are received by facsimile transmission shall be deemed to be valid and binding signatures.

8. Miscellaneous.

A. Use of Captions and Headings. The captions and headings used in this Termination Agreement are for the purpose of convenience only and in no way define, describe or limit the scope or intent of this Termination Agreement or any of the provisions thereof.

B. Use of Gender and Number. The gender and number used in this Termination Agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine, feminine or neuter gender, corporate or other form, and the singular shall likewise include the plural.

C. No Presumption from Draftsmanship. In the event of a dispute involving the interpretation or construction of this Termination Agreement involving Seller, Purchaser and/or any other party or parties, it shall be deemed that this Termination Agreement was jointly drafted by all parties to the dispute, and no rule of construction or presumption shall be asserted in favor or to the detriment of Seller, Purchaser, or any other party based upon the identity of the party actually drafting this Termination Agreement.

E. Proper Execution. This Termination Agreement shall have no binding force or effect on either of the parties, shall not constitute an offer, and shall not confer any rights upon either of the parties or impose any obligations upon either of the parties irrespective of any reliance thereon, change of position or partial performance unless and until such time as both the Parties shall have executed this Termination Agreement.

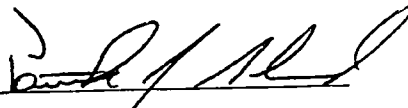
F. Provisions Severable. If any term of this Termination Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Termination Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Termination Agreement shall be valid and enforceable to the fullest extent permitted by law.

[Signature Page To Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement to be effective as of the date first written above.

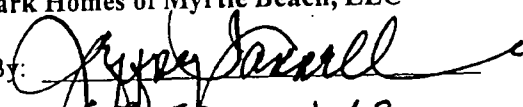
**SELLER:**

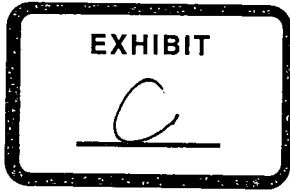
**Deertrack Golf, Inc.**

By:   
Its: President

**PURCHASER:**

**Bill Clark Homes of Myrtle Beach, LLC**

By:   
Its: GENERAL MGR.



This Notice was published in the S.C. State Register July 26 26, 2013:  
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

**NOTICE OF GENERAL PUBLIC INTEREST**

July 26, 2013

**Notice:**

In regard to **H.3774**

**A JOINT RESOLUTION TO SUSPEND THE RUNNING OF CERTAIN GOVERNMENTAL APPROVALS AFFECTING THE DEVELOPMENT OF REAL PROPERTY WITHIN THE STATE FOR THE PERIOD BEGINNING JANUARY 1, 2013 AND ENDING DECEMBER 31, 2016; AND TO PROVIDE GOVERNMENTAL ENTITIES ISSUING SUCH APPROVALS SHALL PUBLISH NOTICE IN THE STATE REGISTER LISTING THE TYPES OF THESE APPROVALS IT ISSUES AND NOTING THE SUSPENSION OF THE RUNNING OF THE PERIOD OF THE APPROVAL AND TO PROVIDE AN EXCEPTION FOR UNITS OF LOCAL GOVERNMENT. (Referred to as Permit Extension Joint Resolution of 2013.)**

Section 6 of the Permit Extension Joint Resolution of 2013 requires that the Department of Health and Environmental Control (“DHEC”) list the types of development approvals that are provided for in that Joint Resolution.

**Synopsis:**

The Permit Extension Joint Resolution of 2013, ratified by the South Carolina General Assembly on June 19, 2013, and approved by the Governor on June 20, 2013, suspends the running of the time periods of the following DHEC development approvals that are current and valid at any point during the period beginning January 1, 2013 and ending December 31, 2016.

All development approvals are effective when issued, subject to applicable appeal procedures, and may be used at any time prior to the expiration of the time period as extended by the joint resolution. The joint resolution suspends the running of the time period for approvals during the four-year period from January 1, 2013, through December 31, 2016. For development approvals that were issued prior to January 1, 2013, the running of the time period is suspended during the four-year period, and any time that remained on a development approval on January 1, 2013, starts running again on January 1, 2017. For development approvals issued between January 1, 2013, and December 31, 2016, the time period begins to run on January 1, 2017.

If there are any questions concerning this notice, please contact Ms. Shelly Wilson via electronic mail at [shelly.wilson@dhec.sc.gov](mailto:shelly.wilson@dhec.sc.gov) or by phone at 803.898.3138. A copy of this legislation (also named H.3774) can be found electronically at [http://www.scstatehouse.gov/sess120\\_2013-2014/bills/3774.htm](http://www.scstatehouse.gov/sess120_2013-2014/bills/3774.htm).

<b>Permit Regulation</b>	<b>Permit Type/Description</b>
<b>Solid Waste Management</b>	
R. 61-107.19	Class 1 Landfill, land clearing debris
R. 61-107.19	Class 2 Landfill, construction and demolition debris
R. 61-107.19	Class 3 Landfill, municipal solid waste

Permit Regulation	Permit Type/Description
R. 61-107.3	Waste Tire Facility (collection, processing, disposal)
R. 61-107.279	Used Oil Facility (collection, processing, marketing, burning)
R. 61-107.15	Land Application
R. 61-107.6	Solid Waste Transfer Station
R. 61-107.10	Research, Development, & Demonstration
R. 61-107.6	Solid Waste Processing Facility
R. 61-107.18	Off-Site Treatment of Contaminated Soils
R. 61-107.19	Structural Fill
R. 61-107.11	Composting/Woodgrinding Facility
R. 61-107.12	Incinerator/Pyrolysis Facility
R. 61-79	Hazardous Waste Permits
R. 61-63	Radioactive Waste Licenses
<b>Mining</b>	
R. 89-10 through 89-350	Individual Mine Permit (>5 acres)
R. 89-10 through 89-350	General Mine Permit (<5 acres)
<b>Air Quality</b>	
R. 61-62.1.II.A	Construction Permits Exceptions This extension does not apply to the following: 1-Construction permits issued under R. 61-62.5 Standard No. 7 Prevention of Significant Deterioration (PSD); 2- Construction permits issued under R. 61-62.43 Case by Case Maximum Achievable Control Technology (MACT) Determinations for Constructed and Reconstructed Major Sources; 3- Facilities with non-PSD construction permits that have not begun construction prior to July 01, 2011 and whose potential project emissions, without enforceable permit limitations, trigger PSD for Greenhouse Gases; 4- Construction permits issued to sources that were not subject to New Source Performance Standards (NSPS) (40CFR60) or MACT (40CFR63) at the time of permit issuance, but NSPS or MACT was triggered afterwards due to date of "commence construction" as defined in the rules.
R. 61-62.1.II. D	General Construction Permits
R. 61-62.1.II. E.	Synthetic Minor Construction Permits
R. 61-62.1.II. I.	Registration Permits
<b>Water</b>	
R.61-58	Drinking Water Construction Permits
R.61-67	Wastewater Construction Permits
R.61-56	Permit to Construct and Operate: Onsite Wastewater System (Septic Tank Permits)
R.61-51	Recreational Waters Construction Permits
R.61-9	NPDES General Permit For Stormwater Discharges From Large and Small Construction Activities

Permit Regulation	Permit Type/Description
	(General permit coverage: SCR100000) Note: New standards imposed by federal regulations and the federal NPDES construction general permit for stormwater discharges must still be met by project operators as they become effective.
R.61-43	Construction of Agricultural Animal Facilities
R.61-101	401 Water Quality Certifications
R.19-450	Permits for Construction in Navigable Waters
R.61-87	Underground Injection Control Permit to Construct
R.61-113	Groundwater Withdrawal Permit to Construct
R.72-3	Permit to Construct, Repair, Alter or Remove a Dam
R.72-300	State Stormwater Construction Permits
<b>Ocean &amp; Coastal Resource Management (OCRM)</b>	
R.30	Direct Critical Area Permits, including individual and general permits.