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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

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

v.

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

RECORD ON APPEAL
VOLUME I

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INDEX

VOLUME I

Orders

Form 4 Order: Motion for Directed Verdict Was Granted, filed Sept. 27, 2022 1

Order, re: Attorney's Fees and Costs, filed June 6, 2022 4

Order, re: Motion to Reconsider Denied, filed May 24, 2022 7

Form 4 Order: Motion for Fees Granted, filed May 24, 2022 10

Verbal Order, Transcript pp. 359-378, issued March 2, 2022 13

Form 4 Order: Denying Motion for Partial Summary Judgment and Motion to Amend Complaint; Granting Motion to Disqualify, filed Jan. 20, 2022 33

Form 4 Order: Granting Defendants Leave to Amend Answers, filed January 27, 2021 36

Form 4 Order Denying Plaintiff's Motion for Summary Judgment, filed Jan. 13, 2020 39

Form 4 Order Denying Defendant's Motion for Summary Judgment, filed Jan. 13, 2020 ... 42

Order Referring Case to Master in Equity, filed June 20, 2018 45

Order Vacating Reference to Master in Equity, filed Feb. 6, 2019 47

Pleadings

Lis Pendens, filed May 10, 2017 49

Summons and Verified Complaint, filed May 26, 2017 51

Answer of Resort, filed July 27, 2017 64

Answer of Giannone and Johnson, filed July 27, 2017 69

Amended Complaint, filed Oct. 31, 2018 75

Second Amended Complaint with exhibit, filed Dec. 19, 2018 88

Jury Demand, filed Dec. 26, 2018 108

Answer of Defendants Giannone and Johnson to Second Amended Complaint, filed Jan. 3, 2019 109

Answer of Defendant Resort to Second Amended Complaint, filed Jan. 3, 2019 118

Amended Answer of Defendants Giannone and Johnson to Second Amended Complaint, filed Jan. 27, 2021 128

Amended Answer of Defendant Resort to Second Amended Complaint, filed Jan. 27, 2021 137

Motions

Plaintiffs' Motion for Summary Judgment, filed June 27, 2019 148

Defendants' Motion for Summary Judgment, filed July 15, 2019 151

Affidavit of Birdwell in Support of Summary Judgment, filed July 15, 2019 158

Plaintiffs' Memorandum of Points and Authorities, filed Nov. 20, 2019 232

Defendants' Motion for Partial Summary Judgment, filed Sept. 24, 2021 257

Defendants' Motion in Limine (re: Damages), filed Oct. 10, 2021 259

Defendants' Motion in Limine (re: Harbour Town Surf Damages), filed Oct. 10, 2021 262

Defendants' Motion in Limine (re: Dead Man's Statute), filed Oct. 10, 2021 276

Defendants' Motion in Limine (re: Opinion Testimony), filed Oct. 10, 2021 283

Plaintiffs' Memorandum in Opposition to Motion for Partial Summary Judgment, filed Jan. 2, 2022 304

Plaintiffs' First Motion in Limine (re: Right of First Refusal), filed Feb. 25, 2022 311

Plaintiffs' Second Motion in Limine (re: Right of First Refusal), filed Feb. 25, 2022 317

Plaintiffs' Third Motion in Limine (re: Right of First Refusal), filed Feb. 25, 2022 323

Defendants' Memorandum in Support of Motions in Limine and exhibits, filed Feb. 28, 2022 327

Defendants' Memorandum in Opposition to Plaintiffs' First Motion in Limine filed March 2, 2022 432

Defendants' Memorandum in Opposition to Plaintiffs' Second Motion in Limine filed March 2, 2022 440

VOLUME II

Plaintiffs' Motion to Reconsider and Exhibits, filed March 11, 2022 455

Defendants' Motion for Attorney's Fees and Costs, and Affidavit in Support, filed March 14, 2022 674

Defendants' Opposition to Motion to Reconsider, filed March 28, 2022 681-1

Plaintiffs' Response in Opposition to Motion for Fees and Costs, filed Mar. 28, 2022 682

Defendants' Reply to Response in Opposition to Motion for Fees, filed Apr. 4, 2022 686

VOLUME III

Transcripts and Exhibits

Trial, Feb. 28, 2022-March 2, 2022 690

Amir Bitton,
Direct Examination by Mr. Kubec 764
Cross-Examination by Mr. Walker 806

Robert Bender,
Direct Examination by Mr. Kubec 817
Cross-Examination by Mr. Linton 848
Re-Direct Examination by Mr. Kubec 853

Lynda Johnson,
Direct Examination by Ms. Coffey 856
Cross-Examination by Mr. Linton 887

Alon Mintz,
Direct Examination by Mr. Kubec 890
Cross-Examination by Mr. Linton 908
Re-Direct Examination by Mr. Kubec 913

Michael Mogil,
Direct by Ms. Coffey 922

Steve Birdwell,

Direct Examination by Mr. Kubec 964
Cross-Examination by Mr. Walker 1023
Re-Direct Examination by Mr. Kubec 1029

End of Plaintiff's Case in Chief

Motion for Directed Verdict,
By Mr. Walker 1030

Argument in Opposition,
By Mr. Kubec and Ms. Coffey 1039

The Court's Ruling 1059

Continued Arguments 1059

Transcript of hearing, May 18, 2022 1068

VOLUME IV

Exhibits

Clerk of Court's List of Trial Exhibits (filed March 2, 2022) 1093
Plaintiff's Exhibit 1 1095
Plaintiff's Exhibit 2 1113
Plaintiff's Exhibit 3 1119
Plaintiff's Exhibit 8a 1135
Plaintiff's Exhibit 8b 1136
Plaintiff's Exhibit 8c 1137
Plaintiff's Exhibit 8d 1140
Plaintiff's Exhibit 8e 1141
Plaintiff's Exhibit 9 1144
Plaintiff's Exhibit 10 1150
Plaintiff's Exhibit 11 1151
Plaintiff's Exhibit 13 1154
Plaintiff's Exhibit 14a 1155
Plaintiff's Exhibit 14b 1156
Plaintiff's Exhibit 14c 1159
Plaintiff's Exhibit 14d 1160
Plaintiff's Exhibit 15c 1161
Plaintiff's Exhibit 15d 1162
Plaintiff's Exhibit 17c 1163
Plaintiff's Exhibit 18 1164
Plaintiff's Exhibit 20 1165
Plaintiff's Exhibit 22 1166

Plaintiff's Exhibit 24 1169
Plaintiff's Exhibit 25b 1170
Plaintiff's Exhibit 26a 1171
Plaintiff's Exhibit 26b 1177
Plaintiff's Exhibit 27 1178
Plaintiff's Exhibit 28 1179
Plaintiff's Exhibit 29a 1180
Plaintiff's Exhibit 30a 1183
Plaintiff's Exhibit 30b 1184
Plaintiff's Exhibit 31a 1185
Plaintiff's Exhibit 32 1187
Plaintiff's Exhibit 33 1195
Plaintiff's Exhibit 34 1281
Defendant's Exhibit 9 1282

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP0701057

Bittmint Llc	**Harbor Town Surf Shop Llc**	**Lynda H Johnson Charles S Giannone**	**Sea Pines Resort Llc**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

ORDER INFORMATION

This matter was on the February 28, 2022 CP Jury Trial Roster with Judge Bentley Price. On March 2, 2022, Judge Price GRANTED the Defendant's Motion for a Directed Verdict.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ELECTRONICALLY FILED - 2022 Sep 27 4:38 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Honorable Bentley D. Price	**2766**	9/12/2022
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **this day of March, 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **this day of March, 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Michael W. Mogil 2 Corpus Christie Place Ste. 303 Hilton Head Island, SC 29928
Maureen T. Coffey 18 Executive Park Rd. Suite 3 Hilton Head Island, SC 29928
Edward Michael Kubec 18 Executive Park Rd. Suite 3 Hilton Head Island, SC 29928

John Phillips Linton Jr. PO Box 22167 Charleston, SC 29413
George Trenholm Walker PO Drawer 22167 Charleston, SC 29413-2167

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jerri Ann Roseneau - Clerk of Court

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2022 Sep 27 4:38 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Sep 27 4:38 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Jun 06 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2017-CP-07-01057
	)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOT, LLC	)	
	)	**ORDER AWARDING ATTORNEY'S FEES AND COURT COSTS TO LYNDA H. JOHNSON AND CHARLES S. GIANONNE'S**
Plaintiffs,	)	
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	
	)	

The matter came before the Court upon Defendants Lynda H. Johnson and Charles S. Giannone's ("Johnson and Giannone"), Motion for Attorney's Fees and Costs ("Motion"). Johnson and Gianonne filed the instant motion on March 14, 2022, seeking attorney's fees and court costs as the prevailing party in this litigation[1], which was initiated by Bittmint, LLC.

Along with the Motion, Johnson and Giannone filed the Affidavit of their counsel John P. Linton, Jr., which stated that the total fees incurred by the Defendants in the litigation were $193,228.50 and the litigation costs were $11,123.67. Bittmint filed a response to the motion on March 28, 2022, asserting among other things that the attorney's fees should be reduced by 50% and the costs should not include certain costs such as travel time, meals and lodging costs. On April 4, 2022, Johnson and Giannone filed a reply brief, agreeing to limit the claim for fees to the 50% suggested by Bittmint, LLC and reduce the costs by those challenged by Bittmint, LLC.

[1] At trial the Court granted Defendants' motion for a directed verdict and has denied the Plaintiffs' motion to reconsider that ruling.

ELECTRONICALLY FILED - 2022 Jun 06 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

This matter came before the Court for a hearing on May 18,2022, at which time counsel for Johnson and Giannone affirmed, as stated in the reply brief, that the Motion is limited to seeking $96,614.25 in Attorney's fees and $7004.39 in court costs, for a total amount of $103,618.64. Plaintiffs filed a memorandum opposing the Motion, but did not present oral argument at the Motion hearing. The Court issued a Form 4 Order on May 24, 2022, granting the motion for fees and costs. The Court now issues this formal order finding that, having considered all of the filings and argument before the court, including the applicable factors for awarding fees and costs to the prevailing party in the litigation, Johnson and Giannone are hereby awarded $96,614.25 in attorney's fees and $7004.39 in court costs, for a total amount of $103,618.64. The clerk is directed to enter a **JUDGMENT** against Bittmint, LLC in the amount of **$103,618.64**. The judgement should be entered in favor of Lynda H. Johnson and Charles S. Giannone.

[order to be signed electronically on the following page]

ELECTRONICALLY FILED - 2022 Jun 06 4:23 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 May 24 1:50 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Bittmint, LLC et al. Plaintiff, vs. Lynda H. Johnson, et al. Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-07-0157 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

The Plaintiff Bittmint, LLC filed a motion asking this Court to reconsider its Order. This matter came before the Court on May 18, 2022 in Beaufort County.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson

[1] Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Plaintiff's motion, the Court hereby DENIES Plaintiff Bittmint, LLC's Motion for Reconsideration.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

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ELECTRONICALLY FILED - 2022 May 24 1:50 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0701057

Bittmint Llc et al
PLAINTIFF(S)

Lynda H Johnson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

This matter came before the Court as Defendant Lynda H. Johnson's Motion for Attorney's Fees and Costs heard on May 18, 2022.

Defendant Lynda H. Johnson's Motion for Attorney's Fees and Costs is granted. Defense counsel should file fee and cost affidavits for the exact amount of fees and costs incurred. If parties need an additional order enforcing the payment of fees and costs, they should contact the Court.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/24/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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ROA 10

Court Reporter:

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ELECTRONICALLY FILED - 2022 May 24 1:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

I'm going to take a couple of minutes to take a look at everything. In the event that I don't grant the directed verdict as to all claims, how many witnesses do y'all have?

MR. WALKER: We have one, maybe two. May I have about ten minutes to simplify with my witness?

THE COURT: To do what?

MR. WALKER: Just to meet with my witness to -- I think we can cull a lot out.

THE COURT: Take all the time that you need. Just let me know when you're ready.

MR. WALKER: Just have ten minutes?

THE COURT: Yeah, just tell one of the deputies or bailiffs that you're ready and I'll come back out.

MR. WALKER: Excellent. Thank you, Your Honor. Thank you for your accommodation.

THE COURT: Sure.

(Short recess.)

THE COURT: All right. So let's talk. I have some questions. All right. Here's the way I see this case: There was a contract and negotiation entered on behalf of Bittmint and Ms. Johnson. Mr. Giannone is just here by product of he was a co-owner and he just enjoyed the trial and all of my humor.

I don't know why they made y'all stay here, but maybe you enjoyed a little bit of it.

Anyway, so byproduct of that, Mr. Mogil is obviously made aware by his clients that they intend to purchase said property from Ms. Johnson. Sea Pines Resort, I assume through Danny Dennison, who may or may not be the head of this real estate administration, somebody some way sends him this waiver, which he then indicates that he has not sent to his clients, but he sends it over.

The waiver obviously says that based on the contractural relationship, which we all agree at this point in time was in existence between Ms. Johnson and Bittmint, indicates that they are going to sell the property from Lynda Johnson and Charles Giannone to the purchaser, Bittmint, for the sales price of $580,000. It comes to the attention of the real estate administration and it says that no less than 30 days prior to the proposed closing date. However, the closing date on this document is TBD, so there's no violation of anything there.

It later says that the above referenced property is hereby offered for sale to the company. I assume Sea Pines Resort, the company. Pursuant to the same terms and price, same terms and price, which is the lease agreement, which is currently by the surf shop, and the price, which is $580,000, contained in the current contract of sale, which was between Bittmint and Ms. Johnson, with the bonafide purchaser referenced above, Bittmint. It is hereby

understood by all parties, Bittmint and Ms. Johnson, that the company has 30 days, Sea Pines, from receipt of this offer, this, which would be an offer of sale, in which to determine its repurchase option, i.e., whether, in fact, it has the right of first refusal.

All right. This document then gets circulated, is my understanding, and, ultimately, gets circulated up to the top dog in these cases. And they have extensive negotiations or communications via e-mail about whether, in fact, they would like to exercise their right of first refusal.

At this point in time, the way I see it, Ms. Johnson is stuck. She has nowhere to go. They either come in and pluck this right away and take it for the 580, or they agree not to exercise their right and she's stuck contractually selling it to them. So she's got no dog in this fight. All right. She did what she was supposed to do. She entered into a contract with the people that came to her that said they wanted to purchase the property and she did everything correctly. She gave them a fair price. And then she's stuck. That's the way I see her role in all of this. She has no -- nothing that she can do. They're either going to take it from her and buy it for that amount. I don't think she -- in my opinion, I don't even think she could renegotiated with Sea Pines at all. I think Sea Pines is

stuck with that.

Now, I think she could go back and renegotiate with them and that may have made Sea Pines get stuck into a higher price, you see what I'm saying? I think maybe she could have contractually went back and said eh, I don't know, Sea Pines has got deep pockets, which is what she probably should have done, and gone back to them and said eh, they'll pay 750 because they've got deeper pockets than y'all do. Which she didn't, so she only got stuck with the 580. That's the way I see her role and responsibility in all of this.

In doing so, they, being -- so the question then begs, is it a legal question or is it a factual question whether, in fact, Sea Pines Resort had the right of first refusal based on the assignments? The question is, is that a legal question or is that a factual question through the covenants?

What is your opinion?

MR. WALKER: In my opinion, it's a legal question.

THE COURT: Okay.

MR. WALKER: I don't think that the jury is equipped to make a legal call. You construe the instrument. So it would be a legal call.

THE COURT: Okay.

MR. WALKER: And depending on what Your Honor does, we

do not think that they have proved they don't have the right, which is what they had to do. They put in the original covenants and assignment, but they didn't have anybody come to say they don't have the right. They just left it hanging. They could have had an expert. It's a legal question.

THE COURT: Correct me where I'm wrong. Beach Company Developer, correct?

MR. WALKER: This is a hypothetical?

THE COURT: No, this is factual. So the original developer is Beach Company when they did the covenant -- I mean, Lighthouse. Assigned it to Sea Pines, whichever one, association or LLC, correct?

MR. WALKER: Sea Pines Plantation Company, yes, sir.

THE COURT: And then their allegation is that when the bankruptcy occurred, that one time single assignment to Sea Pines Plantation exhausted, it was over. So when the new Sea Pines came in and purchased all the rights that they had through the bankruptcy court, which was assigned through bankruptcy court and I guess Judge Blatt had some involvement, that they, the new owners, did not acquire the original rights by the -- I'm going to call the Plantation because it's easier to keep it like that.

MR. WALKER: That's my understanding of their theory, that it was a non-transferrable right when it was

transferred from Lighthouse to Sea Pines Plantation Company. And we argued that in the Motion in Limine, correct. We say it was transferrable because you look at the intent, you look at the covenant and all the things that we brought up and they say it's not because it lacked the magic word. We disagree vigorously. And the bankruptcy court allowed the assignment, approved the assignment.

THE COURT: Go ahead.

Thank you, Mr. Walker.

I'm thinking through this with y'all. Go ahead.

MR. KUBEC: (Inaudible) Sea Pines Plantation (inaudible).

THE COURT: Right, in 1986, it went bankrupt and it was gone, correct.

MR. KUBEC: Our position is when it contacts the bankruptcy, that first right of refusal died in the bankruptcy or it's still either in the context of bankruptcy and it never got passed through to them because there was a sale of assets (inaudible) --

THE COURT: Well, let me stop you there and ask you this question: If that is, in fact, true and accurate, why would Sea Pines Resort ever create a document such as this? This document would be null and void and there's no reason for anybody to ever have it.

The other concern that I have is that the property

owners had -- where's the letter?

Lorraine, would you hand me the letter?

MS. COFFEY: Your Honor, I think I could clear this up real quick.

THE COURT: Hold on, I want to see this letter.

Thank you very much. Sorry about that.

So in April, we have the waiver. May, we have the sale. And in June, every -- apparently, the only way that I could read into this circumstantially is that the president of Sea Pines had been getting some type of heat or somebody -- it got to him that the residents were concerned because they had exercised this right and they had bought this commercial property. He felt as though it was a concern that he needed to address with all the property owners. So in doing so, if they weren't on notice prior to the letter, they sure as heck were on notice at this point in time.

Well, the owners of the condominium complexes must have known that there was some type of right of, they call it repurchase because they got scared about it to some extent because he wrote a letter trying to dispel their concerns. Because he says in here that there's been considerable misinformation being circulated regarding Sea Pines Resorts' right of repurchase, which has been included in the Sea Pines covenants for over 40 years. And it only applies, which we agree, when an owner wants to sell a property in

Sea Pines. Obviously, Sea Pines can't go in and just say we're going to take your property. It's the right of first refusal. They have to say I don't want to live here anymore. I'm moving to, God forbid, I don't know, Charleston.

So with that being said, they then -- the way I gathered his testimony was the reason that they didn't -- or he was dispelling the concerns about buying all these residential properties was they didn't want to be property managers. That's the way I gathered that. That they are a business for money, they do restaurants, they do golf courses, they do commercial property and the last thing they want to do is be one huge HOA. That's the way I took that testimony from him. If I'm wrong, sorry I'm wrong.

Well, I'm kind of right based on the letter. Further, we believe it would be nearly impossible to assemble any significant number of sellers to even create a manageable property, meaning you have to have 80 units to have an HOA. And why would you have an HOA for one unit if one person wants to -- if they want to go out and buy these?

He says in the event the resort has an interest in purchasing residential property, we are working with homeowners to assure them a full value and possibly even a premium value if they choose to sell. That sentence really wouldn't matter because they would be stuck with the

agreement that they have between the buyer and the purchaser. They may be just saying they would throw a little something on top of it. Our purchase offers assure values to you plus other significant benefits to the sellers.

To some degree, it's correct. It says the resort believes its purchase proposal is a huge benefit to sellers, not a liability. He's correct to the extent that if the buyer bails on them or they don't have the right amount that Sea Pines can come in and purchase it even if the other buyer maybe can't get funding or something along those lines. So it would be a benefit to have two buyers. Basically, you always have a backup buyer that potentially could purchase the property at all times. Right?

We will continue to acquire commercial properties to benefit the town. We can work out acceptable terms. Once again, we believe sellers of commercial properties should consider this process as a benefit for multiple reasons. We are also planning to build a new -- then they're building some kind of --

Lorraine, those are the originals. Will you take those?

Yes, sir -- well, yes, ma'am, I'm sorry, you said you wanted to address it.

MS. COFFEY: The assignment that we're talking about

only applies to the commercial properties that come out of Lighthouse Beach Corporation. There are other several commercial properties which are not governed by the original 1973 commercial covenants out of Lighthouse Beach because Sea Pines Plantation Company also had other properties, like in the south beach area. So those covenants are not impaired by this assignment for the Lighthouse Beach commercial property. And, in fact, the residential covenants of 1974, there's no assignment there either.

So the assignment really is particular to the Lighthouse Beach properties commercially as covenants, which only -- you know, those are Harbor Town properties, but there's a lot of other covenants and right of first refusals that would not die necessarily because of the assignment. The assignment is limited to the Lighthouse Beach properties in that chain.

So it doesn't get rid of the entire right of first refusal for all of Sea Pines Plantation. It should under a rule against perpetuities argument, but under the assignment argument, that is limited just to the properties that go on the chain of Lighthouse Beach. There's a lot of other commercial properties that are in Sea Pines that do not get their chain back to Lighthouse Beach. Very limited.

THE COURT: I see what you're saying.

All right. Anybody want to address that or no?

MR. WALKER: Well, I understood her to say that -- and perhaps, I'm wrong, that these particular covenants apply to Harbor Town, but there are other commercial properties, such as commercial properties in south beach, different parts. So we don't think it changes the focus of this inquiry, which is on the commercial use covenants of Harbour Town. That's where we are. I think it's more than --

THE COURT: Was that developed by Lighthouse?

MR. WALKER: They originally developed it and they sold properties, yeah. It was meant to govern the commercial properties at Harbour Town. And she's absolutely right, there's other covenants at south beach. They have other covenants, different grantor, all that stuff, but we're focused only on --

THE COURT: I understand.

Give me two seconds.

(Short recess.)

THE COURT: All right. Please be seated.

Ms. Coffey, I understand what your argument is, so correct me if I'm wrong, that Sea Pines, obviously, moving forward has developed a lot of property in the Resort, I would assume. And in doing so, since they were the original builders and developers, they get to create whatever covenants that they want for those properties. Is there anything that's indicating that for Harbour Town, which was

not developed by Sea Pines, it was developed by Lighthouse, that they have been operating under the auspices that they adopted the covenants and have been living under those covenants because they didn't develop the property and they can't change them because they inherited them from Lighthouse?

So what I'm saying is this, Sea Pines over here on this side says well, as to Harbour Town, we're stuck. We don't get to create new covenants because we inherited them when we purchased the property out of bankruptcy from Lighthouse, and so they are operating under that auspice that they have no way of changing it because they can't. But they can do whatever the heck they want over here because they are the developer and they can create any covenant that they want. It's over.

All right. I'll grant the motion for a directed verdict. You have 15 days from today's date to file any motions that you would like. And if there's anything further, I will be here the rest of the day. I will be here tomorrow and I'll be here Friday, but as far as this --

MR. KUBEC: Your Honor, I don't understand that logic at all --

THE COURT: I --

MR. KUBEC: -- can you please explain that to us?

THE COURT: Yes. The reason, in my opinion, that they,

being Sea Pines, have been creating that document and they have a separate and complete entity that handles the purchase of these properties in Sea Pines, which is --

Lorraine, hand it back to me, please.

They have created -- they, being Sea Pines Resort, under Harbour Town purchase of properties, in that restricted area, what you had on the video, they inherited that property. They inherited those covenants. They inherited those restrictions. But when they purchased the rights and assignments that they -- what do y'all call it? I keep calling it Beach Company.

MR. WALKER: Lighthouse was the original, but it's now Resorts.

THE COURT: Right. So Sea Pines has been working under the auspices that they can't create anything new because they can't. They purchased the rights and assigns from Lighthouse. So they have created an entirely separate company, which is real estate administration -- not company, a sector of Sea Pines, which sends these out to everybody that wants to purchase the property because they know that they have the right of a first refusal as to those properties that they inherited that were developed by Lighthouse. How hard is that -- that's not hard to understand?

MR. KUBEC: (Inaudible).

THE COURT: And I'm telling you that from a legal standpoint they did.

MR. KUBEC: You've made a decision?

THE COURT: That's correct.

MR. KUBEC: Saying the right was assigned to Sea Pines Resort, LLC?

THE COURT: That's correct. So your appeal will be based on that.

Fair enough?

MR. KUBEC: One argument. Let me back up. Give me a moment, it's important, Your Honor.

THE COURT: You've got to create your record. I don't disagree with you in the slightest.

MR. KUBEC: When we came in here, the discussion focused on this piece of paper here, this contract, right?

THE COURT: Correct.

MR. KUBEC: Which the rights still has its foundation in the Lighthouse Beach covenant, correct?

THE COURT: Yes.

MR. KUBEC: Okay. So there's evidentiary facts in dispute. There's a letter of intent that was sent out on January 31st, a piece of paper that went -- that Ms. Johnson testified, and Mr. Mintz testified, also, that within a week after that letter of intent wound up in Sea Pines' hands.

So let's just give them the benefit of the doubt, it's

February 10th, 2017. Sea Pines is sitting on that February 10th, 2017. Thirty days go by, nothing. We're at March 10th, 2017, nothing. Nothing. That right is gone, it's toast. Because they did not exercise it within that 30-day period.

Then we come along to this piece of paper, which is on April 13, '17, a month after the right expired the first time. So it's a question of fact, is this a contract? Is this a new contract, basically? It's not signed by Mr. Mogil, it's not signed by Mr. Mintz, it's not signed by Mr. Bitton, it's not signed by anybody. It's just a piece of paper.

It said after the right that came from the 1973 covenants that they showed -- that they never have any evidence saying they got their hands on, it expired. It doesn't exist anymore. So is this question of fact, is this a new contract that resets that 30-day period? Question of law, question of fact? I believe it's a question of fact.

THE COURT: All right. Your record is clear.

Anything further?

MR. KUBEC: Nothing from the Defendants, Your Honor.

THE COURT: All right. Thank y'all very much. 15 days from --

MR. KUBEC: Your Honor, actually, there's no ruling with regard to the rule against perpetuities. I'd like to

have a definitive ruling on how that applies to this case.

THE COURT: All right. First cause of action, as to breach of contract against Defendants Johnson and Giannone, I find that there is no breach whatsoever. As I indicated before, Ms. Johnson entered into a contract with the purchasers of Bittmint. Sea Pines exercised its right to purchase it at that exact same price. No other amendments were made to the contractural relationship or obligations under that lease and I find that Sea Pines was going to have to buy that from Ms. Johnson as is. And they did exactly that. They exercised their right of first refusal. They purchased from Defendant Johnson. Obviously, the lease was an encumbrance upon that purchase and, therefore, there's no breach whatsoever, so I find that Ms. Johnson and Mr. Giannone did not -- there was no breach of contract and they're out of the case.

Second cause of action, interference with the contractural relationship against Defendant Resort. Is that the tortious interference?

MR. WALKER: That's correct, Your Honor.

THE COURT: All right. I find that Sea Pines did not tortuously interfere whatsoever with the contract whatsoever, that the negotiations were held on behalf of Ms. Johnson and Bittmint, that they had no right or obligation or anything whatsoever in negotiating the price or the

encumbrances or the leases that would come along with the actual property itself. And that their obligation under their contract with the seller, Ms. Johnson, that if they, in fact, invoke their right to purchase the property under their right of first refusal, they must purchase it with the exact same terms and conditions in which she negotiated. And that's exactly what they did. So tortious interference is being dismissed.

The 1973 covenants, this is under the third cause of action, which is the rule against perpetuities against the Defendant Sea Pines. The '73 covenants right to repurchase clause is not an enforceable right because, as worded, it is a preemptive right that is a contingent nonvested interest in that the owners might never choose to sell the property. It is therefore an interest not conditioned on an event certain to occur within 21 years of a person and being or at all which clearly is a violation of the common law rule against perpetuity.

As a direct and proximate result of Resorts ill-conceived reliance on an invalid clause, the Resort has unlawfully interfered with Bittmint's contract of sale. Plaintiffs have sustained and are entitled to recover damages in the amount to be determined at trial, including without limitation costs, tortious interference of contract.

As a further result of their actions -- all right,

well, I find that they did have the right. Obviously, that is based on the belief that -- or the Plaintiffs' belief that the Lighthouse Beach Company document entitled Commercial Use Covenants dated January 25th, 1973, this applicability of the '73 covenants to this transaction, Plaintiff strongly denies. I have indicated in my ruling that I believe that it did apply and that the Beach Company vested those rights -- I mean, that Sea Pines received those rights from Lighthouse and have been operating in the auspices for the entire time that they were, in fact, bound by that obligation.

All right. I've already made my ruling as to invalid assignment of rights against the Defendant Sea Pines.

I am obviously going to deny the fifth cause of action to set aside the deed against the Defendants.

Third party beneficiary, I don't believe that there has been any actual damages whatsoever to the third party beneficiary.

Violation of statute of repose, I reject that one in its entirety.

Intentional interference with perspective contractual relationships against Defendant Resort, what's that one?

MR. WALKER: That's the surf shop, Hilton Head Surf Shop. It's not a party to the contract, says it would have entered a new lease at less money. And because the Resort

exercised the right of first refusal, it was unable to do that and that was an intentional unjustified interference with their potential contract.

THE COURT: All right. I find there was no intent.

And, obviously, I am not going to require any form of specific performance because under the terms of the contract, I find that Sea Pines had every right to purchase the property.

Anything further?

MR. KUBEC: Nothing from the Defendant, Your Honor.

THE COURT: All right. Well, again, as I indicated, 15 days from today's date to file any motions. I'll be happy to hear them. I will be available for anything that anybody needs for the rest of the week as well.

Thank y'all very much.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

August 19, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0701057

Bittmint Llc et al
PLAINTIFF(S)

Lynda H Johnson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

This matter came before the Court as Defendant Sea Pines Resort, LLC's Motion for Partial Summary Judgment, Defendant Sea Pines Resort, LLC's Motion to Disqualify Michael Mogil and Plaintiff Bittmint, LLC's Motion to Amend the Second Amended Complaint heard on January 5, 2022.

Defendant Sea Pines Resort, LLC's Motion for Partial Summary Judgment is denied.
Defendant Sea Pines Resort, LLC's Motion to Disqualify Michael Mogil is granted.
Plaintiff Bittmint, LLC's Motion to Amend the Second Amended Complaint is denied.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/19/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Jan 20 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Court Reporter:

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

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ELECTRONICALLY FILED - 2022 Jan 20 8:40 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0701057

Bittmint Llc et al
PLAINTIFF(S)

Lynda H Johnson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

Defendant Sea Pines Resort, LLC's Motion to Amend Answer to Second Complaint is granted. The Court further orders this case remain under the original scheduling order which is in place. If ever any issues with the trial date shall arise, the parties shall contact the Court in order to keep the set trial date.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/27/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Jan 27 12:47 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Court Reporter:

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ELECTRONICALLY FILED - 2021 Jan 27 12:47 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Jan 27 12:47 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0701057

Bittmint Llc et al
PLAINTIFF(S)

Lynda H Johnson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

Plaintiff's Motion for Summary Judgment was filed on June 27, 2019 and was heard by this Court on November 20, 2019. Summary Judgment is properly granted when viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, when there are no genuine issues of material fact, and when the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[T]he nonmoving party … is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 270-71, 826 S.E.2d 609, 614 (2019). This Court finds that the Defendant submitted at least a scintilla of evidence sufficient to Deny Plaintiff's Motion for Summary Judgment.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/13/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Jan 13 4:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Court Reporter:

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ELECTRONICALLY FILED - 2020 Jan 13 4:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2020 Jan 13 4:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0701057

Bittmint Llc et al
PLAINTIFF(S)

Lynda H Johnson et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

Defendant's Motion for Summary Judgment was filed on July 15, 2019 and was heard by this Court on November 20, 2019. Summary Judgment is properly granted when viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, when there are no genuine issues of material fact, and when the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[T]he nonmoving party … is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Huffman v. Sunshine Recycling, LLC, 426 S.C. 262, 270-71, 826 S.E.2d 609, 614 (2019). This Court finds that the Plaintiff submitted at least a scintilla of evidence sufficient to Deny Defendant's Motion for Summary Judgment.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/13/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ROA 42

ELECTRONICALLY FILED - 2020 Jan 13 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Court Reporter:

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

ELECTRONICALLY FILED - 2020 Jan 13 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2020 Jan 13 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc , plaintiff, et al VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2018 Jun 20 11:13 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO: 2017CP0701057**
	)	
Bittmint Llc	)	**ORDER REFERRING NON-JURY ACTION TO THE BEAUFORT COUNTY MASTER IN EQUITY**
	)	
Plaintiff(s)	)	
	)	
vs.	)	
	)	
Lynda H Johnson	)	
	)	
Defendant(s)	)	
	)	

Pursuant to an Order of the South Carolina Supreme Court this Non-Jury matter is now referred to the Beaufort County Master in Equity with Finality. The Plaintiff is responsible for paying the Reference Fee pursuant to South Carolina Code of Laws Section 14-11-310. ($100.00 for Partition Actions and Foreclosures and $50.00 for all other cases); **however, if the Plaintiff's case is over, any remaining party seeking Affirmative Relief will be responsible for paying the fee**. The Reference Fee shall be paid within 30 days from the date this Order is signed or the Master will dismiss the case for non-payment of the Reference Fee.

IT IS SO ORDERED:

_____

Jerri Roseneau
Beaufort County Clerk of Court

Dated: _____
Beaufort, South Carolina

ELECTRONICALLY FILED - 2018 Jun 20 11:13 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

ELECTRONICALLY FILED - 2019 Feb 06 2:17 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2017-CP-07-01057
Bittmint, LLC, et al., **Plaintiff(s)**, vs. Lynda H. Johnson, et al., **Defendant(s).**	)	**ORDER** **(not ending case)**

This came before me January 11th, 2019 on Plaintiffs' Motion to Set Aside the Order of Reference and Transfer to the Jury Trial Docket. After hearing from parties, I hereby grant the motion. The Order of Reference filed on June 20th, 2018 is hereby vacated and the case is transferred to the Jury Trial Docket.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

February _____, 2019
Beaufort, South Carolina

ELECTRONICALLY FILED - 2019 Feb 06 2:17 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Beaufort Common Pleas

Case Caption: Bittmint Llc VS Lynda H Johnson , defendant, et al

Case Number: 2017CP0701057

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2017 May 10 3:28 PM - BEAUFORT - COMMON PLEAS - CASE#2017LP070262

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
BITTMINT, LLC	)	CIVIL ACTION NO.: 2017-CP-07-
	)	
Plaintiffs	)	
v.	)	**NOTICE OF LIS PENDENS**
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC	)	
	)	
Defendants	)	
	)	
	)	
	)	

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for Beaufort County, South Carolina, by the above named Plaintiff against the above named Defendants, for enforcement of a contract to purchase the subject real property herein, and for damages and other relief, and which action impacts upon the following prescribed real property, to wit:

Shop 6 of the Mariner's Way Horizontal Property Regime:

All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 6 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0006

AND

Shop 8 of the Mariner's Way Horizontal Property Regime:

All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 8 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0008

Hilton Head Island, South Carolina
May 10, 2017

By: /s/ Michael W. Mogil

Michael W. Mogil, Attorney, SC Bar # 011933
Law Office of Michael W. Mogil, P.A.
2 Corpus Christie, Ste. 303
Hilton Head Island, SC 29928
Telephone: 843-785-8110
Fax: 843-785-9676
Attorney for Plaintiff

ELECTRONICALLY FILED - 2017 May 10 3:28 PM - BEAUFORT - COMMON PLEAS - CASE#2017LP0700262

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
BITTMINT, LLC	)	CIVIL ACTION NO.: 2017-CP-07-
	)	
Plaintiff	)	SUMMONS
v.	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC	)	
	)	
Defendants	)	
	)	
	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at the Mogil Law Firm, 2 Corpus Christie Place, Ste. 303, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiffs will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

YOU WILL ALSO TAKE NOTICE that the Plaintiff may move for an order of reference or that the Court may issue a general order of reference of this action to a master or special referee, pursuant to Rule 53, South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, TO PERSON WHOM RESIDE WITH MINOR DEFENDANTS NAMED HEREIN WHOM ARE UNDER FOURTEEN YEARS OF AGE AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian or guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment, if necessary, will be made by the Plaintiff.

/s/ Michael W. Mogil

MOGIL LAW FIRM
Michael W. Mogil, SC Bar # 11933
2 Corpus Christie, Ste. 303
Hilton Head Island, SC 29928
(843) 785-8110
Email mmogil@mogillaw.com

Attorney for Plaintiff

Dated this 26th of May, 2017
Hilton Head Island, South Carolina

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	
BITTMINT, LLC	)	CIVIL ACTION NO.: 2017-CP-07-
	)	
Plaintiff	)	COMPLAINT
v.	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC	)	
	)	
Defendants	)	
	)	
	)	
	)	

The Plaintiff, Bittmint, LLC, for its Complaint against the Defendants Lynda H. Johnson, Charles S. Giannone and Sea Pines Resort, LLC, would respectfully show unto the Honorable Court as follows:

1. Plaintiff Bittmint, LLC is a South Carolina Limited Liability Company operating on Hilton Head Island, South Carolina. Bittmint owns real property on Hilton Head, including a commercial condominium adjacent to the property which is the subject of this lawsuit.

2. Defendants Lynda H. Johnson and Charles S. Giannone (hereinafter "Johnson and Giannone") are upon information and belief residents of Beaufort County, South Carolina. Upon information and belief, Johnson and Giannone are brother and sister. At all times relevant herein, Shop 6 and Shop 8 of the Mariners Way Horizontal Property Regime in Harbour Town, hereinafter also referred to as the "Property", were owned by Defendants Johnson and Giannone by virtue of inheritance from their mother in or around 2016.

3. Defendant Sea Pines Resort, LLC (hereinafter also referred to as "Sea Pines") is upon information and belief a Virginia Limited Liability company operating in and around Sea Pines

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Plantation, Hilton Head Island, South Carolina.

4. Shop 6 and Shop 8 Mariners Way are commercial condominium units in Harbour Town which have been used for business and/or retail purposes for at least the previous 30 years. The Property herein is more specifically defined as:

Shop 6 of the Mariner's Way Horizontal Property Regime:

All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 6 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0006

AND

Shop 8 of the Mariner's Way Horizontal Property Regime:

All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 8 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0008

5. The Harbour Town Surf Shop, LLC, an entity with common ownership to Bittmint, LLC, has leased and used the Property as a retail store since 2010. Harbour Town Surf Shop, LLC is presently leasing the property by virtue of a lease entered into between it and Defendant's

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

predecessor in interest in 2015.

6. On or about March 17, 2017, Bittmint, LLC as Purchaser entered into a Contract of Sale to purchase the Property from Defendants Johnson and Giannone for the price of $580,000.00. A copy of the Contract of Sale is attached hereto.

7. In connection with the Contract of Sale, a request for a Waiver was transmitted to Sea Pines Resort on or about April 14, 2017, pursuant to historical transaction protocols regularly performed in real estate settlements involving property in Sea Pines Plantation, without any reference or knowledge of the source or authority for such Waivers.

8. On or about May 2, 2017, Plaintiff's attorney received a copy of a letter issued by Sea Pines on that same date to Defendants Johnson and Giannone, informing all parties hereto that Sea Pines was exercising its "right to purchase" the subject Property for the same price as set forth in the Contract.

9. Immediately thereafter, Plaintiffs members communicated with Defendants' Johnson and Giannone that the Plaintiff intended to continue with its Contract to purchase the Property, and on or about May 9, 2017, Plaintiff, through its counsel, formally notified Defendants Johnson and Giannone, through their counsel, that Plaintiff intended to proceed with its Contract to purchase the subject property, and stated its demand that Defendants cease from conveying the Property to Sea Pines.

10. A Lis Pendens was filed in connection this action on May 10, 2017.

11. Defendants Johnson and Giannone conveyed the Property to Sea Pines by Deed recorded May 12, 2017.

<u>For a First Cause of Action (Breach of Contract) against Johnson and Giannone</u>

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

12. Plaintiff restates the allegations of paragraphs 1 through 11 herein.

13. Defendants Johnson and Giannone are and were under binding contract to sell the Property to Plaintiff as of March 17, 2017.

14. Despite constructive and actual notice from Plaintiffs that Plaintiffs intended to proceed under the Contract, Defendants conveyed title to the Property to Sea Pines Resort, LLC.

15. Defendants' conveyance of the Property to Sea Pines Resort, who was not a party to its Contract with Plaintiff, and without assignment or consent given by Plaintiff, is a breach of Defendants' contract with Plaintiff.

16. As a result of Defendants' breach, Plaintiff requests that the Court order that the Defendants specifically perform their duties under the Contract of Sale and to convey the subject Property to Plaintiff under the terms of the Contract of Sale.

17. As a further result of Defendants' breach, Plaintiff's have been damaged in amount to be determined at trial, including attorney fees, costs, economic loss, and consequential damages, and request that the Court award it damages suffered as a result of the Defendants' breach.

<u>For a Second Cause of Action (Interference with a Contractual Relationship) against Sea Pines Resort, LLC</u>

18. Plaintiff restates its allegations set forth in paragraphs 1-15 herein.

19. Plaintiff entered into a valid and binding Contract of Sale with Defendants Johnson and Giannone.

20. Sea Pines was provided with express knowledge of said Contract of Sale by virtue of communications from both parties.

21. Sea Pines required and induced Defendants Johnson and Giannone to breach their duties

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

under the Contract of Sale.

22. Upon information and belief, Sea Pines communicated with Defendants Johnson and Giannone prior to its issuance of its notice dated May 2, 2017.

23. Upon information and belief, the justification stated by Sea Pines for its actions is invalid. To wit, Plaintiff alleges that the covenants and rights claimed by Sea Pines are vague, void, and unenforceable, and further that the procedures followed with respect to the subject Property were not proper.

24. Plaintiff further alleges that Sea Pines was and is estopped from its action by the equitable doctrines of waiver, selective enforcement, and unclean hands.

25. As a result of Sea Pines' actions, Plaintiff herein is damaged in an amount to be proven at trial.

26. As a result of Sea Pines' actions, Defendants Johnson and Giannone are and have been damaged.

27. As a further result of Sea Pines actions, third parties have been, or are potentially damaged in amounts to be proven at trial.

<u>For a Third Cause of Action (Set Aside Deed) against Johnson, Giannone and Sea Pines Resort, LLC</u>

28. Plaintiff restates its allegations set forth in paragraphs 1 through 27 herein.

was and is in contravention of its Contract of Sale with Johnson and Giannone, and further, that said conveyance is against the laws of the State of South Carolina and covenants of the Sea Pines Resort. A cursory review of the public records reflects that in the thirty (30) days prior to the filing of this lawsuit, or from April 26 through May 25, 2017, a waiver was issued and recorded

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

by Sea Pines for approximately 47 property transactions within Sea Pines, with the subject Property being the only Property in a transaction of public record in which Sea Pines attempted to exercise its alleged right of purchase.

29. Sea Pines action was unfair to Plaintiff and to the Defendants Johnson and Giannone and third parties.

30. As a result of the conveyance to Sea Pines, Plaintiff and third parties have been and continue to be irreparably harmed.

31. Plaintiff requests that the Court exercise its powers in equity, and issue as its Order an order rescinding and/or setting aside the Deed of conveyance from Johnson and Giannone to Sea Pines Resort, LLC and restoring title to the Property as it existed prior to May 12, 2017.

WHEREFORE, Plaintiff Bittmint, LLC requests unto the Honorable Court that a judgment be entered in its favor and against Defendants Johnson, Giannone and Sea Pines Resort, LLC in the following particulars:

a. For an Order requiring Johnson and Giannone to convey the Property to Plaintiff;

b. For damages in favor of Plaintiff and against all parties, under Plaintiff's cause of action for breach of contract against Johnson and Giannone;

c. For damages against Sea Pines Resort, LLC for interference with their contract, in an amount to be proven at trial;

d. For an Order setting aside the Deed of given by Johnson and Giannone to Sea Pines purporting to convey the Property;

e. For such other relief as the Honorable Court deems just and proper.

Hilton Head Island, South Carolina
May 26, 2017

By: /s/ Michael W. Mogil

Michael W. Mogil, Attorney, SC Bar # 011933
Law Office of Michael W. Mogil, P.A.
2 Corpus Christie, Ste. 303
Hilton Head Island, SC 29928
Telephone: 843-785-8110
Fax: 843-785-9676
Attorney for Plaintiff

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF BEAUFORT)

The Plaintiff, BITTMINT, LLC, by its Co-Managing Member, Amir Bitton, first being duly sworn, deposes, and upon his oath, says that he has read the Averments, as set forth in the attached Complaint in this case and, further, that the Averments, as set forth in that Pleading, are true and correct, based upon his own knowledge, save and except those allegations which remain upon information and belief and, as to those, he believes them to be true.

BITTMINT, LLC

By: _____
Amir Bitton

Its: Co-Managing Member

Taken, subscribed, and sworn to, before me,
this 26 day of May, 2017.

_____
Notary Public for South Carolina
My Commission expires: 01/26/2027

SARAH BORNSTEIN HOWARD
Notary Public-State of South Carolina
My Commission Expires
January 26, 2027

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

OFFER AND CONTRACT FOR SALE OF REAL PROPERTY

Purchaser: **Bittmint, LLC and/or its Assigns**

Address: 130 Arrow Road, Hilton Head Island, SC 29928

hereby agrees to purchase from Seller: **Lynda Johnson and Charles Giannone**

1. PROPERTY DESCRIPTION. And Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in Beaufort County, South Carolina and being described as follows:

Street Address: 147 Lighthouse Road, Ste. A and 147 Ste B, Hilton Head Island, SC 29928
Legal and TMS: Shop (Lot) No. 6 and Shop (Lot) 8 of the Mariners Way Horizontal Property Regime IV

Seller represents that the property is connected to public [x]water [x]sewer [ ] other_____

2. PURCHASE PRICE. The total purchase price of the property is ..... $ 580,000.00

A. Earnest money deposited herewith **Mogil Law Firm, Escrow**.....$ 2000.00

B. Additional money to be paid within 5 days of acceptance.....$

C. Mortgage Financing—First Mortgage Loan... See Section 3.....$ 498,800.00

D. Balance of Cash at Closing.....$ 79,200.00

3. FINANCING CONTINGENCY. If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County. Purchaser shall use best efforts to obtain such loan and shall supply any prospective lender with such information as shall be requested within 45 days from the execution of this contract, and shall pay usual charges therefor. Purchaser shall execute and deliver the mortgage instruments and other papers customarily used by such institution. This financing contingency is a limited one and must be satisfied on or before **seventy five (75) days from the date of execution hereof.** If Purchaser's bona fide application to such lender shall be denied, Purchaser may, by written notice either elect to: (a) waive the financing contingency, in which event this Contract shall remain in full force and effect; or (b) terminate this Contract for failure to obtain financing. If Purchaser elects to terminate, its Earnest Money Deposit shall be returned in full. Purchaser has the affirmative obligation to provide written notice as to its decision on this condition. Notice is to be provided to the Seller directly or to the Listing Agency at the address(es) set forth herein. If no notice is received within the applicable time period for this contingency, it is presumed that Purchaser has waived the financing contingency.

Purchaser _____
Seller _____
Seller _____

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4. FURNISHING, SYSTEMS. The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following: [] Refrigerator; [] Freezer; [] Washer; [] Dryer; [] Stove; [] Microwave; [] Dishwasher; [ ] Ceiling Fans; [ ] Irrigation System; [ ] Pool Equipment; [ ] Septic System; [x Furnished; [ ] Other: Property conveyed. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of closing.

5. WOOD INFESTATION REPORT. Seller agrees to provide at its/their expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 30 days of the Closing. If infestation or insufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the cost of such repair.

6. OTHER TERMS. Other terms and conditions of this contract are: Purchaser is acquiring property in "As Is" condition subject to the warranties set forth in Sections 4 and 5 above. Seller (s) shall obtain all appropriate waivers and approvals from Sea Pines and the applicable horizontal property regime within thirty (30) days from the date of execution hereof. Property is sold subject to existing lease(s) with Harbourtown Surf Shop, LLC. This Contract binds both Seller(s) who own title to separate parcels—Lynda Johnson holds title to Lot/parcel 6 and Charles Giannone holds title to Lot/parcel 8. However, Purchaser's obligation to perform and close on parcel A and/or parcel B is, at Purchaser's option, conditioned upon both parcel A and parcel B closing.

7. DATE OF CLOSING. The closing of this Contract shall take place on or before the date ninety (90) days after all relevant waivers and approvals are obtained by Seller, or forty five (45) days after financing has been approved pursuant to Section 3 hereto, whichever date is later (the "Closing") in Beaufort County at the office of the Purchaser's attorney or other offices stipulated by the Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing.

8. CONDITION OF PROPERTY. Purchaser has inspected the premises and, subject to the terms set forth above in Section 4, is purchasing the Property in its present condition, "As is".

9. RISK OF LOSS AND DAMAGE. In case the Property is wholly or partially damaged by fire, storm, or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder.

10. PRORATIONS. All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser and Seller shall be responsible for each of their costs and expenses related to the closing as per custom in Beaufort County, South Carolina. Purchaser shall be responsible for the Hilton Head Island real estate transfer fee, if applicable. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-9-310 (amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

Purchaser

Seller

Seller

11. TITLE. Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with stamps affixed and with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments, and free and clear of all liens, tax liens and encumbrances except as set forth above. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for Hilton Head Island, South Carolina, title shall be deemed to be marketable. Purchase acknowledges that the Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. The deed shall be prepared in the name of **Bittmint, LLC (or its assigns),** and delivered to the offices of Purchaser's attorney or stipulated place of Closing.

12. DEPOSITS/DEFAULT. All money deposited hereunder shall be applied towards the purchase price at Closing. Upon failure of either party to comply with the terms hereof within the stipulated time, and after receipt of written notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. In the event of litigation commenced because of a default hereunder, the prevailing partie(s) in such litigation shall be entitled to recover attorney fees and court costs from the non prevailing partie(s).

IN WITNESS WHEREOF, the undersigned parties have executed this Contract the date set forth opposite their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

3/17/17 Eddie F. Date:

Purchaser: Bittmint, LLC by Alon Mintz its Manager

3/17/17 Date:

Seller: Lynda Johnson

3/17/17

Seller: Charles Giannone

ELECTRONICALLY FILED - 2017 May 26 4:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2017-CP-07-01057
	)	
BITTMINT, LLC,	)	
	)	
Plaintiff,	)	**ANSWER OF SEA PINES**
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	
	)	

TO: MOGIL LAW FIRM, ATTORNEYS FOR PLAINTIFF

Defendant Sea Pines Resort, LLC ("Sea Pines") by and through its undersigned attorneys, answers the Complaint ("Complaint") of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Sea Pines admits, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. In response to the allegations of Paragraph 4 of the Complaint, Sea Pines admits so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbor Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraph 4 of the Complaint, Sea Pines craves

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

4. In response to the allegations of Paragraph 5 of the Complaint, Sea Pines admits, upon information and belief, in as much as they allege Harbour Town Surf Shop, LLC is leasing the Subject property pursuant to a lease entered into between it and Lynda H. Johnson and Charles S. Giannone's predecessor in title. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore denies the allegations and demands strict proof thereof.
5. In response to the allegations of Paragraph 6 of the Complaint, Sea Pines craves reference to the Contract, and denies any allegations inconsistent therewith.
6. In response to the allegations of Paragraph 7 of the Complaint, Sea Pines admits the allegations in as much as they allege that Plaintiff sent a request for a waiver on or about April 14, 2017. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 7, and therefore deny the allegations and demand strict proof thereof.
7. In response to the allegations of Paragraph 8 of the Complaint, Sea Pines admits the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 8, and therefore denies the allegations and demands strict proof thereof.
8. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 9, and therefore denies the allegations and demands strict proof thereof.

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

9. Sea Pines admits that a Lis Pendens was filed as alleged in Paragraph 10 of the Complaint, and further alleges that such filing is meritless.

10. In response to the allegations of Paragraph 11 of the Complaint, Sea Pines craves reference to the publicly filed Deed and denies any allegations inconsistent herewith.

11. With respect to the allegations in Paragraph 12 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

12. In response to the allegations of Paragraph 13 of the Complaint, Sea Pines admits that Johnson and Giannone were under contract to sell the Property, subject to the right of Sea Pines' right of first refusal.

13. Sea Pines admits the allegations of Paragraph 14 of the Complaint in as much as they allege that Johnson and Giannone conveyed title to the Subject Properties to Sea Pines. The remaining allegations of Paragraph 14 of the Complaint are not directed to Sea Pines and therefore, no response is required; however to the extent any response is required, Sea Pines denies the allegations and demands strict proof thereof.

14. The allegations of Paragraphs 15, 16, and 17 of the Complaint express conclusions of law which Sea Pines in not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations therein and demands strict proof thereof.

15. With respect to the allegations in Paragraph 18 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

16. In response to the allegations of Paragraph 19 of the Complaint, Sea Pines admits that Johnson and Giannone were under contract to sell the Subject Properties to Plaintiff, but states that said

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

contact was subject to the right of Sea Pines' legal right of first refusal. Sea Pines denies the remaining allegations of Paragraph 19.

17. In response to the allegations of Paragraph 20 of the Complaint, Sea Pines admits that it was provided with express knowledge of the contract.

18. Sea Pines denies the allegations of Paragraph 21 of the Complaint.

19. Sea Pines admits the allegations of Paragraph 22 of the Complaint.

20. The allegations contained in Paragraphs 23, 24, 25, 26, and 27 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 23, 24, 25, 26, and 27 of the Complaint.

21. With respect to the allegations in Paragraph 28 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

22. Sea Pines denies the allegations contained in Paragraphs 29 and 30 of the Complaint, and demands strict proof thereof.

23. The allegations contained in Paragraph 31 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraph 31 of the Complaint

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

24. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

25. Defendant would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

FOR AN ADDITIONAL DEFENSE
(Laches, Repose, Waiver, Estoppel and Unclean Hands)

26. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

27. To the extent Plaintiff had any cognizable claims, they are barred by the doctrines of laches, repose, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

28. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

29. Defendant would show that Plaintiff's claims are barred because of a failure of condition precedent.

WHEREFORE, Defendant Sea Pines having fully answered the Complaint respectfully prays for the dismissal of the Plaintiff's Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiff; and for all such other relief as the Court deems equitable, just, and proper.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

s/ John P. Linton, Jr.
G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
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ATTORNEYS FOR DEFENDANT
SEA PINES PROPERTIES, LLC

Charleston, South Carolina
July 27, 2017

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2017-CP-07-01057
	)	
BITTMINT, LLC,	)	
	)	
Plaintiff,	)	**ANSWER**
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	
	)	

TO: MOGIL LAW FIRM, ATTORNEYS FOR PLAINTIFF

Defendants Lynda H. Johnson and Charles S. Giannone ("Defendants") by and through there undersigned attorneys, answer the Complaint ("Complaint") of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. In response to the allegations of Paragraph 4 of the Complaint, Defendants admit so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbor Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraph 4 of the Complaint, Defendants crave

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

4. In response to the allegations of Paragraph 5 of the Complaint, Defendants admit upon information and belief in as much as they allege Harbour Town Surf Shop, LLC is leasing the Subject property pursuant to a lease entered into between it and Defendant's predecessor in title. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore deny the allegations and demand strict proof thereof.
5. In response to the allegations of Paragraph 6 of the Complaint, Defendants crave reference to the attached contract ("Contract"), and deny any allegations inconsistent therewith.
6. In response to the allegations of Paragraph 7 of the Complaint, Defendants admit the allegations in as much as they allege that Plaintiff sent a request for a waiver to Sea Pines. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 7, and therefore deny the allegations and demand strict proof thereof.
7. In response to the allegations of Paragraph 8 of the Complaint, Defendants admit the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 8, and therefore deny the allegations and demand strict proof thereof.
8. In response to the allegations of Paragraph 9 of the Complaint, Defendants deny the first sentence and admit the second sentence.

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

9. Defendants admit that a Lis Pendens was filed as alleged in Paragraph 10 of the Complaint, and further allege that such filing is meritless.

10. In response to the allegations of Paragraph 11 of the Complaint, Defendants crave reference to the publicly filed Deed and deny any allegations inconsistent therewith.

11. With respect to the allegations in Paragraph 12 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

12. In response to the allegations of Paragraph 13 of the Complaint, Defendants admit that they were under contract to sell the Property to Plaintiff, but state that said contact was subject to the right of Sea Pines' legal right of first refusal.

13. In response to the allegations of Paragraph 14 of the Complaint, Defendants admit they conveyed title to the Subject Properties to Sea Pines. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 14, and therefore deny the allegations and demand strict proof thereof.

14. The allegations of Paragraphs 15, 16 and 17 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations and demand strict proof thereof.

15. With respect to the allegations in Paragraph 18 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

16. In response to the allegations of Paragraph 19 of the Complaint, Defendants admit that they were under contract to sell the Subject Properties to Plaintiff, but state that said contact was

subject to the right of Sea Pines' legal right of first refusal. Defendants deny any remaining allegations of Paragraph 19.

17. The allegations contained in Paragraph 20 of the Complaint are not directed to Defendants and therefore, no response is required; however, to the extent any response is required, Defendants admit upon information and belief that Sea Pines had express knowledge of the Contract.

18. The allegations of Paragraph 21 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations and demand strict proof thereof.

19. Defendants admit the allegations of Paragraph 22 of the Complaint.

20. The allegations contained in Paragraphs 23, 24, 25, 26, and 27 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 22, 23, 24, 25, 26, and 27 of the Complaint.

21. With respect to the allegations in Paragraph 28 of the Complaint, Defendants re-allege and incorporate by reference its responses to the allegations contained in the preceding paragraphs. In response to the remaining allegations of Paragraph 28 of the Complaint, Defendants state that the remaining allegations contained in Paragraphs 28 of the Complaint express conclusions of law which Defendants are not required to admit or deny. Defendants also state in response that the remaining allegations of Paragraph 28 that they crave refence to the allegedly publicly filed documents and deny any allegation inconsistent therewith. To the extent any additional response is required, Defendants deny the allegations contained in Paragraph 28 of the Complaint.

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

22. Defendants deny the allegations contained in Paragraphs 29 and 30 of the Complaint, and demand strict proof thereof.

23. The allegations contained in Paragraph 31 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraph 31 of the Complaint.

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

24. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

25. Defendants would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Laches, Repose, Waiver, Estoppel and Unclean Hands)

26. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

27. To the extent Plaintiff had any cognizable claims, they are barred by the doctrines of laches, repose, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

28. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

29. Defendants would show that Plaintiff's claims are barred because of a failure of condition precedent.

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

WHEREFORE, Defendants having fully answered the Complaint respectfully pray for the dismissal of the Plaintiff's Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiff; and for all such other relief as the Court deems equitable, just, and proper.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

s/ John P. Linton, Jr.
G. Trenholm Walker (S.C. Bar #5777)
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ATTORNEYS FOR DEFENDANT
SEA PINES PROPERTIES, LLC

Charleston, South Carolina

July 27, 2017

ELECTRONICALLY FILED - 2017 Jul 27 3:54 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO: 2017-CP-07-01057
BITTMINT, LLC HARBOR TOWN SURF SHOP, LLC	)	
	)	AMENDED COMPLAINT
Plaintiffs,	)	(Jury Trial Demanded)
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	

The Plaintiffs, Bittmint, LLC and Harbor Town Surf Shop, LLC, complaining of the Defendants, allege:

PROLOGUE

1. Plaintiff, Bittmint, LLC (hereinafter referred to as "Bittmint") is a South Carolina Limited Liability Company operating on Hilton Head Island in Beaufort County, South Carolina.

2. Plaintiff, Bittmint, owns real property on Hilton Head, including a commercial condominium adjacent to the property which is the subject of this lawsuit.

3. The Plaintiff, Harbor Town Surf Shop, LLC (hereinafter referred to as "HTSS"), is a South Carolina Limited Liability Company operating as a retail store since 2010 in Harbor Town on Hilton Head Island in Beaufort County, South Carolina.

4. HTSS is an entity with common ownership to Bittmint.

5. HTSS is the tenant of the real property that is the subject of this litigation, by virtue of a lease that was entered into between it and the Defendant's predecessor in

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

interest in 2015.

6. The Defendants, Lynda H. Johnson and Charles S. Giannone (hereinafter referred to as "Johnson and Giannone") are, upon information and belief, residents of Beaufort County, South Carolina.

7. Upon information and belief, the Defendants Johnson and Giannone are brother and sister.

8. The Defendant, Sea Pines Resort, LLC (hereinafter also referred to as "Resort") is a limited liability company organized and existing under the laws of the State of Virginia which maintains its principal place of business, as well as a general agent, on Hilton Head Island, Beaufort County, South Carolina.

9. The Defendant, Sea Pines Resort, LLC is a for profit company that owns and manages real estate and rental operations, as well as a number of commercial enterprises, primarily located within Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina.

10. At all times relevant herein, Shop 6 and Shop 8 of the Mariners Way Horizontal Property Regime in Harbor Town, in Sea Pines Plantation, on Hilton Head Island, in Beaufort County, South Carolina (hereinafter also referred to as the "Property") were owned by Defendants Johnson and Giannone by virtue of an inheritance from their mother in or around 2016.

11. Shop 6 and Shop 8 of the Mariners Way Horizontal Property Regime are commercial condominium units in Harbor Town which have been used for business and/or retail purposes for at least the previous 30 years. The Property herein is more

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

specifically defined as:

> Shop 6 of the Mariner's Way Horizontal Property Regime:
> All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 6 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
> Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
>
> TMS No.: R550-017-000-1093-0006
>
> AND
>
> Shop 8 of the Mariner's Way Horizontal Property Regime:
> All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 8 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
> Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.
>
> TMS No.: R550-017-000-1093-0008.

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

12. On or about March 17, 2017, Bittmint, as purchaser, entered into a written contract of sale to purchase the Property from Defendants Johnson and Giannone for the price of $580,000.00. ("Contract of Sale"). A copy of the Contract of Sale is attached hereto as exhibit "A".

13. In connection with the Contract of Sale, a request for a Waiver was transmitted by Bittmint to Resort on or about April 14, 2017, pursuant to historical transaction protocols regularly performed in real estate settlements involving property in Sea Pines Plantation, without any reference or knowledge of the source or authority for such Waivers.

14. On or about May 2, 2017, Plaintiff's attorney received a copy of a letter issued by Resort on that same date to Johnson and Giannone, informing all parties hereto that the Resort was exercising its "right to purchase" the subject Property for the same price as set forth in the Contract of Sale.

15. Immediately thereafter, Plaintiffs' members notified the Johnson and Giannone of their belief that the Resort did not possess a valid right to repurchase and therefore the Plaintiffs intended to proceed with its Contract of Sale to purchase the subject Property.

16. On or about May 9, 2017, Plaintiff, through its counsel, formally notified Johnson and Giannone, through their counsel, that Bittmint intended to proceed with its Contract of Sale to Purchase the subject Property, and stated its demand that Defendants cease from conveying the Property to Resort.

17. A Lis Pendens was filed in connection this action on May 10, 2017.

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

18. Johnson and Giannone conveyed the Property to Resort by way of a Deed recorded May 12, 2017.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract against Defendants Johnson and Giannone)

19. The allegations of paragraphs 1 through 18 are hereby adopted and by express reference made a part of this First Cause of Action.

20. Johnson and Giannone are and were under binding contract to sell the Property to Bittmint as of March 17, 2017.

21. Despite constructive and actual notice from Plaintiffs that Plaintiffs intended to proceed under the Contract of Sale, Johnson and Giannone conveyed title to the Property to Resort.

22. Defendants' conveyance of the Property to the Resort, who was not a party to its Contract of Sale with Plaintiff Bittmint and without assignment or consent given by Plaintiffs, is a breach of Defendants' contract with Bittmint.

23. As a direct and proximate result of Defendants' breach Bittmint, requests the Court to order that the Defendants specifically perform their duties under the Contract of Sale to convey the subject Property to Bittmint, under the terms of the Contract of Sale.

24. As a further direct and proximate result of Defendants' breach, the Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss, and consequential damages, and request that the Court award them damages suffered as a result of the Defendants'

breach.

FOR A SECOND CAUSE OF ACTION

(Interference with a Contractual Relationship against Defendant Resort)

25. The allegations of paragraphs 1 through 22 are hereby adopted and by express reference made a part of this Second Cause of Action.

26. Bittmint entered into a valid and binding Contract of Sale with Defendants Johnson and Giannone.

27. Resort was provided with express knowledge of said Contract of Sale by virtue of communications from both parties.

28. Resort required and induced Johnson and Giannone to breach their duties under the Contract of Sale.

29. Upon information and belief, the Resort communicated with Defendants Johnson and Giannone prior to the issuance of its notice to exercise its purported right to repurchase that was dated May 2, 2017.

30. Upon information and belief, the Resort's alleged justification to intervene was spurious. To wit, Plaintiff alleges that the covenants and rights that the Resort relied upon are vague, void, and unenforceable,

31. Further, upon information and belief, if there were covenants and rights pertaining to a right to repurchase, an averment that is expressly denied, the procedures that were followed to exercise said alleged right, with respect to the subject Property were not proper.

32. Plaintiff further alleges that Resort was and is estopped from its action by the

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

equitable doctrines of waiver, selective enforcement, and unclean hands.

33. As a direct and proximate result of Resort's tortious interference with the Plaintiff Bittmint's Contract of Sale, Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, as well as punitive damages, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

34. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A THIRD CAUSE OF ACTION

(Violation of the Common Law Rule against Perpetuities against Defendant Resort)

35. The allegations of paragraphs 1 through 22 and 25-32 are hereby adopted and by express reference made a part of this Third Cause of Action.

36. Upon in formation and belief, the Resort is relying on an alleged right to repurchase clause, contained in the 1973 Commercial Use Covenants (hereinafter referred to as "73 Covenants") document. The applicability of the 73 Covenants to this transaction, Plaintiffs' strongly deny.

37. The 73 Covenants' right to repurchase clause is not an enforceable right because, as worded, it is a pre-emptive right that is a contingent, non-vested interest in that the owner might never choose to sell the property. It is, therefore, an interest not conditioned on an event certain to occur within 21 years of a person in being or at all;

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

which clearly is a violation of the common law rule against perpetuity.

38. As a direct and proximate result of Resort's ill-conceived reliance on an invalid clause, the Resort has unlawfully interfered with Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

39. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A FOURTH CAUSE OF ACTION

(Invalid assignment of Rights against Defendant Resort)

40. The allegations of paragraphs 1 through 22 and 25-32 and 36- 37 are hereby adopted and by express reference made a part of this Fourth Cause of Action.

41. Upon information and belief, the Resort relied upon the applicability of the right to repurchase paragraph, the validity of which Plaintiffs deny, that is contained in the 73 Covenants.

42. Plaintiffs, upon information and belief, allege that the right to repurchase clause contained in the 73 Covenants is invalid because the Resort is not a successor in interest of the Lighthouse Beach Company and any alleged interest in or of an assignment of a right to repurchase, again the validity of which Plaintiffs expressly deny, was erroneously adhered to.

43. As a direct and proximate result of Resort's erroneous belief that there was a

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

valid assignment of an enforceable right to repurchase, the existence of which Plaintiffs deny, the Resort has unlawfully interfered with the Plaintiff Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

44. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A FIFTH CAUSE OF ACTION

(Set Aside Deed against Defendants)

45. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 as well as 41-42 are hereby adopted and by express reference made a part of this Fifth Cause of Action.

46. Upon information and belief, the actions of the Resort were and are in contravention of its Contract of Sale with Johnson and Giannone, and further, that said conveyance is against the laws of the State of South Carolina and covenants of the Sea Pines Resort. A cursory review of the public records reflects that in the thirty (30) days prior to the filing of this lawsuit, or from April 26 through May 25, 2017, a waiver was issued and recorded by Sea Pines for approximately 47 property transactions within Sea Pines, with the subject Property being the only Property in a transaction of public record in which Resort attempted to exercise its alleged right of purchase.

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

47. The Resort's tortious interference with the Contract of Sale between Bittmint and Defendants Johnson and Giannone was unfair to Plaintiffs as well as third parties.

48. As a result of the unlawful conveyance to the Resort, Plaintiffs and third parties have been and continue to be irreparably harmed.

49. Plaintiffs request that the Court exercise its powers in equity, and issue as its Order an order rescinding and/or setting aside the Deed of conveyance from Defendants Johnson and Giannone to Resort and restoring title to the Property as it existed prior to May 12, 2017.

FOR A SIXTH CAUSE OF ACTION

(Third Party Beneficiary by Plaintiff HTSS against Defendants)

50. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 and 41-42 as well as 46-48 are hereby adopted and by express reference made a part of this Sixth Cause of Action.

51. HTSS is and was the tenant in the subject Property at Shop 6 and Shop 8. HTSS also operates its store in adjacent, separate real property owned by Plaintiff Bittmint, which was purchased without objection from Resort. The leased spaces and Bittmint's wholly owned space are connected internally and currently operate as one contiguous business location. HTSS's current lease for the Shop 6 and Shop 8 space expires in 2021 and includes a tenant option to extend its lease for an additional five-year term until 2026.

52. Bittmint and its principals entered into the subject contract of sale for a number of purposes, including to ensure that HTSS could extend its lease indefinitely to

maximize the stability and value of HTSS' business. Bittmint's principals stated this purpose to Johnson and Giannone during negotiations towards the Contract of Sale between the parties.

53. The Defendants Johnson and Giannone had actual knowledge that Bittmint and is principals entered into the subject Contract of Sale to purchase the Property for the primary purpose of ensuring that HTSS would be able to renew its lease for the Property indefinitely, at the option of the same owner(s).

54. Resort had actual knowledge that Bittmint and is principals entered into the subject Contract of Sale to purchase the Property for the primary purpose of ensuring that HTSS would be able to renew its lease for the space the Property indefinitely, at the option of the same owner(s).

55. The statements by Bittmint to Johnson and Giannone, and the status of the parties, ensured that it was clear to all parties herein that HTSS was and is an intended beneficiary of the subject Contract for Sale.

56. Resort's actions to interfere with Bittmint's Contract of Sale harmed HTSS, as the intended beneficiary of said transaction.

57. Johnson and Giannone's actions in failing to perform their contractual obligations to sell the Property to Bittmint harmed HTSS, as the intended beneficiary of said transaction.

58. As a result of Defendants' actions, HTSS, as the intended beneficiary of the transaction, has been damaged by an amount to be proven at trial.

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

FOR A SEVENTH CAUSE OF ACTION

(Violation of the Statute of Repose against Defendant Resort)

59. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 and 41-42 and 46-48 as well as 51-58 are hereby adopted and by express reference made a part of this Seventh Cause of Action.

60. Upon in formation and belief, the Resort is relying on an alleged right to repurchase clause contained in the 73 Covenants. The applicability of the 73 Covenants to this transaction, Plaintiffs' strongly deny.

61. The 73 Covenants' right to repurchase clause is not an enforceable right because it violates the Statute of Repose.

62. As a direct and proximate result of Resort's ill-conceived reliance on an invalid clause, the Resort has unlawfully interfered with Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

WHEREFORE, Plaintiffs Bittmint and HTSS request unto the Honorable Court that a judgment be entered in their favor and against Defendants Johnson, Giannone and Resort in the following particulars:

a. For an Order requiring specific performance of Bittmint's Contract of Sale with Johnson and Giannone to convey the Property to Bittmint;

b. For damages in favor of Plaintiffs and against all parties, under Plaintiff's cause of action for breach of contract against Johnson and Giannone;

c. For damages, including punitive damages, in favor of Plaintiffs against Resort for interference with the Contract of Sale, in an amount to be proven at trial;

d. For an Order setting aside the Deed of given by Johnson and Giannone to Resort purporting to convey the Property;

e. For such other relief as the Honorable Court deems just and proper.

Hilton Head Island, South Carolina
October 31, 2018

By: /s/ Michael W. Mogil

Michael W. Mogil, Attorney, SC Bar # 011933
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Attorney for Plaintiffs

By: /s/ Edward Kubec

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Attorney for Plaintiffs

ELECTRONICALLY FILED - 2018 Oct 31 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **AMENDED SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Second Amended Complaint to said Plaintiffs' attorney, Michael Mogil, at the Mogil Law Firm, 2 Corpus Christie Place, Ste. 303, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Second Amended Complaint within the time aforesaid, Plaintiffs will apply to the Court for the relief demanded in the Second Amended Complaint, including the rendering of judgment by default against you.

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

By: /s/ Michael W.Mogil
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By: /s/ Maureen T. Coffey
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Attorneys for Plaintiffs

December 19, 2018

Hilton Head Island, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	CIVIL ACTION NO.: 2017-CP-07-1057
BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC,	)	
	)	SECOND AMENDED COMPLAINT
Plaintiffs,	)	
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	

The Plaintiffs, Bittmint, LLC and Harbour Town Surf Shop, LLC, complaining of the Defendants, allege:

PROLOGUE

1. Plaintiff Bittmint, LLC (hereinafter referred to as "Bittmint") is a South Carolina Limited Liability Company operating on Hilton Head Island in Beaufort County, South Carolina.

2. Plaintiff Bittmint, owns real property on Hilton Head Island, including a commercial condominium adjacent to the property which is the subject of this lawsuit.

3. Plaintiff Harbour Town Surf Shop, LLC (hereinafter referred to as "HTSS"), is a South Carolina Limited Liability Company, operating as a retail store since 2010 in Harbour Town on Hilton Head Island in Beaufort County, South Carolina.

4. HTSS is an entity with common ownership to Bittmint.

5. HTSS is the tenant of the real property that is the subject of this litigation, by virtue of a lease that was entered into between it and the Defendants Lynda H. Johnson and Charles S. Giannone in 2015.

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

6. Defendants Lynda H. Johnson and (hereinafter referred to as "Johnson") and Charles S. Giannone (hereinafter referred to as "Giannone") are, upon information and belief, residents of Beaufort County, South Carolina.

7. Upon information and belief, Johnson and Giannone are brother and sister.

8. Defendant Sea Pines Resort, LLC (hereinafter also referred to as "Resort") is a limited liability company organized and existing under the laws of the State of Virginia which maintains its principal place of business, as well as a general agent, on Hilton Head Island, Beaufort County, South Carolina.

9. Defendant Resort is a for profit company that owns and manages real estate and rental operations, as well as a number of commercial enterprises, primarily located within Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina.

10. At all times relevant herein, Shop 6 and Shop 8 of the Mariners Way Horizontal Property Regime in Harbour Town, in Sea Pines Plantation, on Hilton Head Island, in Beaufort County, South Carolina (hereinafter also referred to as the "Property") were owned by Johnson and Giannone by virtue of an inheritance from their mother in or around 2016.

11. The Property is a commercial condominium unit in Harbour Town that, upon information and belief, has been used for business and/or retail purposes for at least the previous 30 years. The Property herein is more specifically defined as:

> Shop 6 of the Mariner's Way Horizontal Property Regime:
>
> All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 6 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0006

AND

Shop 8 of the Mariner's Way Horizontal Property Regime:

All that certain commercial condominium unit lying and being at Harbour Town in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Shop Number 8 of the Mariner's Way Horizontal Property Regime LXIV, and being more particularly shown and described by reference to the Master Deed of FITM Corporation, establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of February, 1977, and being recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 245 at Page 899.
Subject to all conditions, restrictions, covenants as may be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

TMS No.: R550-017-000-1093-0008.

12. On or about March 17, 2017, Bittmint, as purchaser, entered into a written contract of sale to purchase the Property from Johnson and Giannone for the price of $580,000.00. ("Contract of Sale"). A copy of the Contract of Sale is attached hereto as exhibit "A".

13. In connection with the Contract of Sale, a request for a Waiver was transmitted by Bittmint to Resort on or about April 14, 2017, pursuant to historical transaction protocols regularly performed in real estate settlements involving property in Sea Pines Plantation, without any reference or knowledge of the source or authority for such Waivers.

14. On or about May 2, 2017, Plaintiff's attorney received a copy of a letter issued by Resort on that same date to Johnson and Giannone, informing all parties hereto that the Resort was

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

exercising its "right to purchase" the subject Property for the same price as set forth in the Contract of Sale.

15. Immediately thereafter, Plaintiffs' members notified Johnson and Giannone of their belief that Resort did not possess a valid right to repurchase and therefore the Plaintiffs intended to proceed with its Contract of Sale to purchase the subject Property.

16. On or about May 9, 2017, Bittmint, through its counsel, formally notified Johnson and Giannone, through their counsel, that Bittmint intended to proceed with its Contract of Sale to Purchase the subject Property, and Bittmint stated its demand that Defendants cease from conveying the Property to Resort.

17. A Lis Pendens was filed in connection this action on May 10, 2017.

18. Johnson and Giannone conveyed the Property to Resort by way of a Deed recorded May 12, 2017.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract against Defendants Johnson and Giannone)

19. The allegations of paragraphs 1 through 18 are hereby adopted and by express reference made a part of this First Cause of Action.

20. Johnson and Giannone are and were under binding contract to sell the Property to Bittmint as of March 17, 2017.

21. Despite constructive and actual notice from Plaintiffs that Plaintiffs intended to proceed under the Contract of Sale, Johnson and Giannone conveyed title to the Property to Resort.

22. Defendants' conveyance of the Property to the Resort, who was not a party to its Contract of Sale with Plaintiff Bittmint and without assignment or consent given by Plaintiffs, is

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

a breach of Defendants' contract with Bittmint.

23. As a direct and proximate result of Defendants' breach Bittmint, requests the Court to order that the Defendants specifically perform their duties under the Contract of Sale to convey the subject Property to Bittmint, under the terms of the Contract of Sale.

24. As a further direct and proximate result of Defendants' breach, the Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss, and consequential damages, and request that the Court award them damages suffered as a result of the Defendants' breach.

FOR A SECOND CAUSE OF ACTION

(Interference with a Contractual Relationship against Defendant Resort)

25. The allegations of paragraphs 1 through 22 are hereby adopted and by express reference made a part of this Second Cause of Action.

26. Bittmint entered into a valid and binding Contract of Sale with Defendants Johnson and Giannone.

27. Resort was provided with express knowledge of said Contract of Sale by virtue of communications from both parties.

28. Resort required and induced Johnson and Giannone to breach their duties under the Contract of Sale.

29. Upon information and belief, the Resort communicated with Johnson and Giannone prior to the issuance of its notice to exercise its purported right to purchase that was dated May 2, 2017.

30. Upon information and belief, the Resort's alleged justification to intervene was

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

spurious. To wit, Plaintiff alleges that the covenants and rights that the Resort relied upon are vague, void, and unenforceable.

31. Further, upon information and belief, if there were covenants and rights pertaining to a right to purchase, an averment that is expressly denied, the procedures that were followed to exercise said alleged right, with respect to the subject Property were not proper.

32. Plaintiff further alleges that Resort was and is estopped from its action by the equitable doctrines of waiver, selective enforcement, and unclean hands.

33. As a direct and proximate result of Resort's tortious interference with the Plaintiff Bittmint's Contract of Sale, Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, as well as punitive damages, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

34. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A THIRD CAUSE OF ACTION

(Violation of the Common Law Rule against Perpetuities against Defendant Resort)

35. The allegations of paragraphs 1 through 22 and 25-32 are hereby adopted and by express reference made a part of this Third Cause of Action.

36. Upon information and belief, the Resort is relying on a claimed right to purchase the Property based on a purported right of first refusal contained in a declaration of restricted covenants created by the Lighthouse Beach Company in a document entitled "Commercial Use Covenants" dated January 25, 1973 (hereinafter referred to as "73 Covenants"). The applicability

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of the 73 Covenants to this transaction, Plaintiffs' strongly deny.

37. The 73 Covenants' right to repurchase clause is not an enforceable right because, as worded, it is a pre-emptive right that is a contingent, non-vested interest in that the owner might never choose to sell the property. It is, therefore, an interest not conditioned on an event certain to occur within 21 years of a person in being or at all; which clearly is a violation of the common law rule against perpetuity.

38. As a direct and proximate result of Resort's ill-conceived reliance on an invalid clause, the Resort has unlawfully interfered with Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

39. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A FOURTH CAUSE OF ACTION

(Invalid assignment of Rights against Defendant Resort)

40. The allegations of paragraphs 1 through 22 and 25-32 and 36- 37 are hereby adopted and by express reference made a part of this Fourth Cause of Action.

41. Upon information and belief, the Resort relied upon the applicability of the right to repurchase paragraph, the validity of which Plaintiffs deny, that is contained in the 73 Covenants.

42. Plaintiffs, upon information and belief, allege that the right to repurchase clause contained in the 73 Covenants is invalid because the Resort is not a successor in interest of the Lighthouse Beach Company and any alleged interest in or of an assignment of a right to

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

repurchase, again the validity of which Plaintiffs expressly deny, was erroneously adhered to.

43. As a direct and proximate result of Resort's erroneous belief that there was a valid assignment of an enforceable right to repurchase, the existence of which Plaintiffs deny, the Resort has unlawfully interfered with the Plaintiff Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

44. As a further result of the actions of Resort, third parties have been, or are potentially damaged in amounts to be proven at trial.

FOR A FIFTH CAUSE OF ACTION

(Set Aside Deed against Defendants)

45. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 as well as 41-42 are hereby adopted and by express reference made a part of this Fifth Cause of Action.

46. Upon information and belief, the actions of the Resort were and are in contravention of its Contract of Sale with Johnson and Giannone, and further, that said conveyance is against the laws of the State of South Carolina and covenants of the Sea Pines Resort. A cursory review of the public records reflects that in the thirty (30) days prior to the filing of this lawsuit, or from April 26 through May 25, 2017, a waiver was issued and recorded by Sea Pines for approximately 47 property transactions within Sea Pines, with the subject Property being the only Property in a transaction of public record in which Resort attempted to exercise its alleged right of purchase.

47. The Resort's tortious interference with the Contract of Sale between Bittmint and Defendants Johnson and Giannone was unfair to Plaintiffs as well as third parties.

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

48. As a result of the unlawful conveyance to the Resort, Plaintiffs and third parties have been and continue to be irreparably harmed.

49. Plaintiffs request that the Court exercise its powers in equity, and issue as its Order an order rescinding and/or setting aside the Deed of conveyance from Defendants Johnson and Giannone to Resort and restoring title to the Property as it existed prior to May 12, 2017.

FOR A SIXTH CAUSE OF ACTION

(Third Party Beneficiary by Plaintiff HTSS against Defendants)

50. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 and 41-42 as well as 46-48 are hereby adopted and by express reference made a part of this Sixth Cause of Action.

51. HTSS is and was the tenant in the subject Property at Shop 6 and Shop 8. HTSS also operates its store in adjacent, separate real property owned by Plaintiff Bittmint, which was purchased without objection from Resort. The leased spaces and Bittmint's wholly owned space are connected internally and currently operate as one contiguous business location. HTSS's current lease for the Shop 6 and Shop 8 space expires in 2021 and includes a tenant option to extend its lease for an additional five-year term until 2026.

51. Bittmint and its principals entered into the subject contract of sale for a number of purposes, including to ensure that HTSS could extend its lease indefinitely to maximize the stability and value of HTSS' business. Bittmint's principals stated this purpose to Johnson and Giannone during negotiations towards the Contract of Sale between the parties.

52. The Defendants Johnson and Giannone had actual knowledge that Bittmint and is principals entered into the subject Contract of Sale to purchase the Property for the primary purpose of ensuring that HTSS would be able to renew its lease for the Property indefinitely, at

the option of the same owner(s).

53. Resort had actual knowledge that Bittmint and is principals entered into the subject Contract of Sale to purchase the Property for the primary purpose of ensuring that HTSS would be able to renew its lease for the space the Property indefinitely, at the option of the same owner(s).

54. The statements by Bittmint to Johnson and Giannone, and the status of the parties, ensured that it was clear to all parties herein that HTSS was and is an intended beneficiary of the subject Contract for Sale.

55. Resort's actions to interfere with Bittmint's Contract of Sale harmed HTSS, as the intended beneficiary of said transaction.

56. Johnson and Giannone's actions in failing to perform their contractual obligations to sell the Property to Bittmint harmed HTSS, as the intended beneficiary of said transaction.

57. As a result of Defendants' actions, HTSS, as the intended beneficiary of the transaction, has been damaged by an amount to be proven at trial.

FOR A SEVENTH CAUSE OF ACTION

(Violation of the Statute of Repose against Defendant Resort)

58. The allegations of paragraphs 1 through 22 and 25-32 and 36-37 and 41-42 and 46-48 as well as 51-56 are hereby adopted and by express reference made a part of this Seventh Cause of Action.

59. Upon in formation and belief, the Resort is relying on an alleged right to repurchase clause contained in the 73 Covenants. The applicability of the 73 Covenants to this transaction, Plaintiffs' strongly deny.

60. The 73 Covenants' right to repurchase clause is not an enforceable right because it

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

violates the Statute of Repose.

61. As a direct and proximate result of Resort's ill-conceived reliance on an invalid clause, the Resort has unlawfully interfered with Bittmint's Contract of Sale. Plaintiffs have sustained and are entitled to recover damages in amount to be determined at trial, including without limitation, costs, economic loss such as lost profits, and request that the Court award the Plaintiffs the damages suffered as a result of the Defendants' tortious interference of contract.

FOR AN EIGHTH CAUSE OF ACTION

(Intentional Interference with Prospective Contractual

Relations against Defendant Resort)

62. The allegations of paragraphs 1 through 22 and 25-32, 36-37, 41-42, 46-48, 51-56 and 59 to 61 are hereby adopted and by express reference made a part of this Eighth Cause of Action.

63. HTSS is and was the tenant in the Property out of which it operates a retail store. The adjacent but separate real property, described as Shop 5 of the Mariner's Way Horizontal Property Regime in Sea Pines Plantation, is owned by Bittmint.

64. HTSS and Bittmint, through their common ownership, mutually intended, expected and verbally agreed for Bittmint to acquire the Property to provide HTSS' with continued and uninterrupted use of the Property as a retail store, or otherwise, through a long-term lease containing terms more favorable to Plaintiffs, including an occupancy term far longer period than under the current lease with Defendants.

65. Defendant Resort intentionally interfered with HTSS' intended and expected long-term use of the Property for an improper purpose and/or by improper methods.

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

a. The 73 Covenants expressly provide that its restrictions and covenants were intended to safeguard against the environmental impact of commercial development in Sea Pines Plantation. Specifically, the 73 Covenants state:

> "WHEREAS, LIGHTHOUSE BEACH COMPANY desires to make, publish and record a declaration of restrictive covenants affecting certain properties designated for commercial use and desires to have said restrictive covenants filed in the Office of the Clerk of Court for Beaufort County, South Carolina, reserving the right in each instance to add additional restrictive covenants in respect to said properties, and
>
> WHEREAS, LIGHTHOUSE BEACH COMPANY recognizes that said properties are situate in an environmentally sensitive area and that any development of said property is a matter of concern to both the developing party and the Community-at-large, and
>
> WHEREAS, LIGHTHOUSE BEACH COMPANY desires to insure that all properties now, or hereafter, owned by it are developed pursuant to an orderly plan which contemplates among other things the environmental impact on the Community-at-large of any proposed developmental scheme for such properties."

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

b. The 73 Covenants were not intended to benefit the commercial interests of a single or predominate commercial landowner or operator in Sea Pines Plantation.

c. Plaintiffs allege, upon information and belief, that the Resort has engaged in an improper pattern and practice to utilize the right of first refusal to further its own economic and commercial interests within Sea Pines Plantation in contravention of and in utter disregard of the intended purpose of the 73 Covenants.

d. Plaintiffs further allege that the Resort's method of obtaining properties, such as the subject Property, is improper in that the purported purchase right pursuant to which Resort strong-arms third parties into selling properties is based on a right of first refusal that is void and unenforceable or has been waived or is not owned by Resort.

66. As a direct and proximate result of Resort's action, HTSS has suffered damages, including lost profits, costs, consequential and punitive damages, in an amount to be proven at trial.

WHEREFORE, Plaintiffs Bittmint and HTSS request unto the Honorable Court that a judgment be entered in their favor and against Defendants Johnson, Giannone and Resort in the following particulars:

a. For an Order requiring specific performance of Bittmint's Contract of Sale with Johnson and Giannone to convey the Property to Bittmint;

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

b. For damages in favor of Plaintiffs and against all parties, under Plaintiff's cause of action for breach of contract against Johnson and Giannone;

c. For damages, including punitive damages, in favor of Plaintiffs against Resort for interference with the Contract of Sale and Plaintiff HTSS' prospective contractual relations, in an amount to be proven at trial;

d. For an Order rescinding the sale of the Property by Johnson and Giannone to Resort and setting aside the Deed of given by Johnson and Giannone to Resort purporting to convey the Property; and

e. For such other relief as the Honorable Court deems just and proper.

Hilton Head Island, South Carolina
December 3, 2018

By: /s/ Michael W. Mogil

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2 Corpus Christie, Ste. 303
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Attorney for Plaintiffs

By: /s/ Edward Kubec

Edward Kubec, Attorney, SC Bar # 76576
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EXHIBIT A

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

OFFER AND CONTRACT FOR SALE OF REAL PROPERTY

Purchaser: **Bittmint, LLC and/or its Assigns**

Address: 130 Arrow Road, Hilton Head Island, SC 29928

hereby agrees to purchase from Seller: **Lynda Johnson and Charles Giannone**

1. PROPERTY DESCRIPTION. And Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in Beaufort County, South Carolina and being described as follows:

Street Address: 147 Lighthouse Road, Ste. A and 147 Ste B, Hilton Head Island, SC 29928
Legal and TMS: Shop (Lot) No. 6 and Shop (Lot) 8 of the Mariners Way Horizontal Property Regime IV

Seller represents that the property is connected to public [x]water [x]sewer [ ] other_____

2. PURCHASE PRICE. The total purchase price of the property is ..... $ 580,000.00

A. Earnest money deposited herewith **Mogil Law Firm, Escrow**.....$ 2000.00

B. Additional money to be paid within 5 days of acceptance.....$

C. Mortgage Financing—First Mortgage Loan… See Section 3.....$ 498,800.00

D. Balance of Cash at Closing.....$ 79,200.00

3. FINANCING CONTINGENCY. If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County. Purchaser shall use best efforts to obtain such loan and shall supply any prospective lender with such information as shall be requested within 45 days from the execution of this contract, and shall pay usual charges therefor. Purchaser shall execute and deliver the mortgage instruments and other papers customarily used by such institution. This financing contingency is a limited one and must be satisfied on or before **seventy five (75) days from the date of execution hereof.** If Purchaser's bona fide application to such lender shall be denied, Purchaser may, by written notice either elect to: (a) waive the financing contingency, in which event this Contract shall remain in full force and effect; or (b) terminate this Contract for failure to obtain financing. If Purchaser elects to terminate, its Earnest Money Deposit shall be returned in full. Purchaser has the affirmative obligation to provide written notice as to its decision on this condition. Notice is to be provided to the Seller directly or to the Listing Agency at the address(es) set forth herein. If no notice is received within the applicable time period for this contingency, it is presumed that Purchaser has waived the financing contingency.

Purchaser _____
Seller _____
Seller _____

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4. FURNISHING, SYSTEMS. The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following: [] Refrigerator; [] Freezer; [] Washer; [] Dryer; [] Stove; [] Microwave; [] Dishwasher; [ ] Ceiling Fans; [ ] Irrigation System; [ ] Pool Equipment; [ ] Septic System; [x Furnished; [ ] Other: Property conveyed. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of closing.

5. WOOD INFESTATION REPORT. Seller agrees to provide at its/their expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 30 days of the Closing. If infestation or insufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the cost of such repair.

6. OTHER TERMS. Other terms and conditions of this contract are: Purchaser is acquiring property in "As Is" condition subject to the warranties set forth in Sections 4 and 5 above. Seller (s) shall obtain all appropriate waivers and approvals from Sea Pines and the applicable horizontal property regime within thirty (30) days from the date of execution hereof. Property is sold subject to existing lease(s) with Harbourtown Surf Shop, LLC. This Contract binds both Seller(s) who own title to separate parcels—Lynda Johnson holds title to Lot/parcel 6 and Charles Giannone holds title to Lot/parcel 8. However, Purchaser's obligation to perform and close on parcel A and/or parcel B is, at Purchaser's option, conditioned upon both parcel A and parcel B closing.

7. DATE OF CLOSING. The closing of this Contract shall take place on or before the date ninety (90) days after all relevant waivers and approvals are obtained by Seller, or forty five (45) days after financing has been approved pursuant to Section 3 hereto, whichever date is later (the "Closing") in Beaufort County at the office of the Purchaser's attorney or other offices stipulated by the Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing.

8. CONDITION OF PROPERTY. Purchaser has inspected the premises and, subject to the terms set forth above in Section 4, is purchasing the Property in its present condition, "As is".

9. RISK OF LOSS AND DAMAGE. In case the Property is wholly or partially damaged by fire, storm, or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder.

10. PRORATIONS. All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser and Seller shall be responsible for each of their costs and expenses related to the closing as per custom in Beaufort County, South Carolina. Purchaser shall be responsible for the Hilton Head Island real estate transfer fee, if applicable. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-9-310 (amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

Purchaser

Seller

Seller

11. TITLE. Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with stamps affixed and with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments, and free and clear of all liens, tax liens and encumbrances except as set forth above. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for Hilton Head Island, South Carolina, title shall be deemed to be marketable. Purchase acknowledges that the Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. The deed shall be prepared in the name of **Bittmint, LLC (or its assigns),** and delivered to the offices of Purchaser's attorney or stipulated place of Closing.

12. DEPOSITS/DEFAULT. All money deposited hereunder shall be applied towards the purchase price at Closing. Upon failure of either party to comply with the terms hereof within the stipulated time, and after receipt of written notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. In the event of litigation commenced because of a default hereunder, the prevailing partie(s) in such litigation shall be entitled to recover attorney fees and court costs from the non prevailing partie(s).

IN WITNESS WHEREOF, the undersigned parties have executed this Contract the date set forth opposite their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

3/17/17 Eddie F. Date:

Purchaser: Bittmint, LLC by Alon Mintz its Manager

3/17/17

Seller: Lynda Johnson

3/17/17

Seller: Charles Giannone

ELECTRONICALLY FILED - 2018 Dec 19 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **DEMAND FOR JURY TRIAL**

The Plaintiffs, Bittmint, LLC and Harbour Town Surf Shop, LLC, hereby demand a trial by jury.

By: /s/ Michael W.Mogil
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By: /s/ Maureen T. Coffey
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Attorneys for Plaintiffs

December 21, 2018

Hilton Head Island, South Carolina

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2017-CP-07-01057
)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC,)	
)	
Plaintiffs,)	**ANSWER OF LYNDA H. JOHNSON, AND CHARLES S. GIANNONE TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
v.)	
)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,)	
)	
Defendants.)	
_____)	

TO: MOGIL LAW FIRM and COFFEYKUBEC, LLP, ATTORNEYS FOR PLAINTIFF

Defendants Lynda H. Johnson and Charles S. Giannone ("Defendants") by and through their undersigned attorneys, answer the Second Amended Complaint ("Complaint") of the Plaintiffs herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4, and therefore deny the allegations and demand strict proof thereof.
4. In response to the allegations of Paragraph 5 of the Complaint, Defendants admit, upon information and belief, in as much as they allege Harbour Town Surf Shop, LLC is leasing the

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Subject property pursuant to a lease entered into between it and Defendants' predecessor in title. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore deny the allegations and demand strict proof thereof.

5. Defendants admit the allegations of Paragraphs 6 and 7 of the Complaint.

6. The allegations of Paragraphs 8 and 9 of the Complaint are not directed to Defendants and therefor no response is required. To the extent a response is required, Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraphs 8 and 9, and therefore deny the allegations and demand strict proof thereof.

7. In response to the allegations of Paragraphs 10 and 11 of the Complaint, Defendants admit so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbour Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraphs 10 and 11 of the Complaint, Defendants crave reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

8. In response to the allegations of Paragraph 12 of the Complaint, Defendants crave reference to the Contract, and deny any allegations inconsistent therewith.

9. In response to the allegations of Paragraph 13 of the Complaint, Defendants admit the allegations in as much as they allege that Bittmint sent Sea Pines a request for a waiver. Defendants are without sufficient knowledge and information to form a belief as to the truth

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of the remaining allegations of Paragraph 13, and therefore deny the allegations and demand strict proof thereof.

10. In response to the allegations of Paragraph 14 of the Complaint, Defendants admit the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 14, and therefore deny the allegations and demand strict proof thereof.
11. Defendants deny the allegations of Paragraph 15.
12. Defendants admit the allegations of Paragraph 16.
13. Defendants admit that a Lis Pendens was filed as alleged in Paragraph 17 of the Complaint, and further allege that such filing is meritless.
14. In response to the allegations of Paragraph 18 of the Complaint, Defendants crave reference to the publicly filed Deed and denies any allegations inconsistent herewith.
15. With respect to the allegations in Paragraph 19 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.
16. In response to the allegations of Paragraph 20 of the Complaint, Defendants admit they were under contract to sell the Property to Bittmint, subject to Sea Pines' right of first refusal and deny any allegation that the contract was not subject to Sea Pines' right of first refusal.
17. Defendants admit the allegations of Paragraph 21 of the Complaint in as much as they allege that they conveyed title to the Subject Properties to Sea Pines. The remaining allegations of Paragraph 21 of the Complaint express conclusions of law which Defendants are not required

to admit or deny. To the extent any response is required, Defendants deny the allegations therein and demand strict proof thereof.

18. The allegations of Paragraphs 22, 23, and 24 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations therein and demand strict proof thereof.

19. With respect to the allegations in Paragraph 25 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

20. The allegations of Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the Complaint are not directed to Defendants and therefore no response is required. To the extent a response is required, Defendants deny the allegations and demand strict proof thereof.

21. With respect to the allegations in Paragraph 35 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

22. The allegations of Paragraphs 36, 37, 38, and 39 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required, Defendants deny the allegations of Paragraphs 36, 37, 38, and 39 of the Complaint and demand strict proof thereof.

23. With respect to the allegations in Paragraph 40 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

24. The allegations of Paragraphs 41, 42, 43, and 44 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required,

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Defendants deny the allegations of Paragraphs 41, 42, 43, and 44 of the Complaint and demand strict proof thereof.

25. With respect to the allegations in Paragraph 45 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

26. The allegations contained in Paragraph 46 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 46 of the Complaint. In response to the remaining allegations of Paragraph 46 of the Complaint, Defendants crave reference to the publicly filed documents concerning the referenced real property transactions.

27. The allegations contained in Paragraphs 47, 48, and 49 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 47, 48, and 49 of the Complaint.

28. With respect to the allegations in Paragraph 50 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

29. In response to the allegations of the first Paragraph 51 of the Complaint, Defendants crave reference to the lease referenced in the allegations and deny any allegation inconsistent therewith. By way of additional response, Defendants admit upon information and belief that the leased spaces and Bittmint's general store have been connected internally. Defendants deny the additional allegations of the first Paragraph 51 of the Complaint.

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

30. Defendants are without sufficient information to form an opinion as to the allegations of the second Paragraph 51 of the Complaint and therefore deny the same.

31. The allegations of Paragraph 52 of the Complaint are denied.

32. The allegations of Paragraph 53 are not directed to Defendants and therefore no response is required. To the extent a response is required, Defendants are without sufficient information to form a belief as to the truth of the allegations and therefore deny the allegations and demand strict proof thereof.

33. The allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint.

34. With respect to the allegations in Paragraph 58 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

35. The allegations of Paragraphs 59, 60, and 61 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required, Defendants deny the allegations of Paragraphs 59, 60, and 61 of the Complaint and demand strict proof thereof.

36. With respect to the allegations in Paragraph 62 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

37. The allegations of Paragraphs 63, 64, 65, and 66 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required,

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Defendants deny the allegations of Paragraphs 63, 64, 65, and 66 of the Complaint and demand strict proof thereof.

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

38. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

39. Defendants would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Laches, Waiver, Estoppel and Unclean Hands)

40. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

41. To the extent Plaintiffs had any cognizable claims, they are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

42. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

43. Defendants would show that Plaintiffs' claims are barred because of a failure of condition precedent.

FOR AN ADDITIONAL DEFENSE
(failure to mitigate damages)

44. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

45. Defendants would show that Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(ripeness)

46. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

47. Defendants would show that Plaintiffs' claims are barred because the claims are not ripe for adjudication.

FOR AN ADDITIONAL DEFENSE
(punitive damages unconstitutional)

48. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

49. Defendants deny that they are liable for any punitive and/or exemplary damages. Defendants aver that any award of punitive damages against them would violate the constitutional safeguards provided under the Constitution of the United States of America, and the Constitution of South Carolina, in that punitive damages violate due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government and violate the proscription against excessive fines.

FOR AN ADDITIONAL DEFENSE
(reservation of right to amend)

50. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

51. Defendants reserve the right to amend this Answer and their affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

WHEREFORE, Defendants having fully answered the Complaint respectfully prays for the dismissal of the Plaintiffs' Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiffs; and for all such other relief as the Court deems equitable, just, and proper.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC
s/ John P. Linton, Jr.
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John P. Linton, Jr. (S.C. Bar #79130)
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ATTORNEYS FOR DEFENDANTS
LYNDA H. JOHNSON AND CHARLES S. GIANNONE

Charleston, South Carolina
January 3, 2019

ELECTRONICALLY FILED - 2019 Jan 03 4:32 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2017-CP-07-01057
	)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC	)	
	)	
Plaintiff,	)	**ANSWER OF SEA PINES RESORT, LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	
	)	

TO: MOGIL LAW FIRM and COFFEYKUBEC, LLP, ATTORNEYS FOR PLAINTIFFS

Defendant Sea Pines Resort, LLC ("Sea Pines" or "Defendant") by and through its undersigned attorneys, answers the Second Amended Complaint ("Complaint") of the Plaintiffs herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Sea Pines admits, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4, and therefore denies the allegations and demands strict proof thereof.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4. In response to the allegations of Paragraph 5 of the Complaint, Sea Pines admits, upon information and belief, in as much as they allege Harbour Town Surf Shop, LLC is leasing the Subject property pursuant to a lease entered into between it and Lynda H. Johnson and Charles S. Giannone's predecessor in title. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore denies the allegations and demands strict proof thereof.
5. The allegations of Paragraphs 6 and 7 of the Complaint are not directed to Sea Pines and therefor no response is required. To the extent a response is required, Sea Pines admits, upon information and belief, the allegations of Paragraphs 6 and 7 of the Complaint.
6. Sea Pines admits the allegations of Paragraph 8 in as much as they allege that Sea Pines is a Virginia Limited Liability company with its principal place of business in Beaufort County, South Carolina. The remaining allegations contained in Paragraph 8 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the remaining allegations contained in Paragraph 8 of the Complaint.
7. Sea Pines admits the allegations of Paragraph 9 of the Complaint.
8. In response to the allegations of Paragraphs 10 and 11 of the Complaint, Sea Pines admits so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbour Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraphs 10 and 11 of the Complaint, Sea Pines craves reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

9. In response to the allegations of Paragraph 12 of the Complaint, Sea Pines craves reference to the Contract, and denies any allegations inconsistent therewith.

10. In response to the allegations of Paragraph 13 of the Complaint, Sea Pines admits the allegations in as much as they allege that Bittmint sent a request for a waiver on or about April 14, 2017. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 13, and therefore denies the allegations and demands strict proof thereof.

11. In response to the allegations of Paragraph 14 of the Complaint, Sea Pines admits the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 14, and therefore denies the allegations and demands strict proof thereof.

12. The allegations of Paragraphs 15 and 16 of the Complaint are not directed to Sea Pines and therefore no response is required; to the extent a response is required Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraphs 15 and 16, and therefore denies the allegations and demands strict proof thereof.

13. Sea Pines admits that a Lis Pendens was filed as alleged in Paragraph 17 of the Complaint, and further alleges that such filing is meritless.

14. In response to the allegations of Paragraph 18 of the Complaint, Sea Pines craves reference to the publicly filed Deed and denies any allegations inconsistent herewith.

15. With respect to the allegations in Paragraph 19 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

16. The allegations of Paragraphs 20, 21, 22, 23, and 24 of the Complaint are not directed to Sea Pines and further express conclusions of law to which no response is required. To the extent a response is required, Sea Pines denies the allegations and demands strict proof thereof.
17. With respect to the allegations in Paragraph 25 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.
18. In response to the allegations of Paragraph 26 of the Complaint, Sea Pines admits that Johnson and Giannone were under contract to sell the Subject Properties to Bittmint, but states that said contact was subject to Sea Pines' legal right of first refusal. Sea Pines denies any remaining allegations of Paragraph 26.
19. In response to the allegations of Paragraph 27 of the Complaint, Sea Pines admits the allegations in as much as they allege Sea Pines was provided with express knowledge of the contract. Sea Pines denies any other allegations of Paragraph 27 of the Complaint.
20. Sea Pines denies the allegations of Paragraph 28 of the Complaint.
21. Sea Pines admits the allegations of Paragraph 29 of the Complaint.
22. The allegations contained in Paragraphs 30, 31, 32, 33, and 34 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 30, 31, 32, 33, and 34 of the Complaint.
23. With respect to the allegations in Paragraph 35 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

24. In response to the allegation of Paragraph 36, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 36 of the Complaint.

25. The allegations contained in Paragraphs 37, 38, and 39 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 37, 38, and 39 of the Complaint.

26. With respect to the allegations in Paragraph 40 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

27. In response to the allegation of Paragraph 41, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 41 of the Complaint.

28. The allegations contained in Paragraphs 42, 43, and 44 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 42, 43, and 44 of the Complaint.

29. With respect to the allegations in Paragraph 45 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

30. The allegations contained in Paragraph 46 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 46 of the Complaint. In response to the remaining allegations of Paragraph 46 of the Complaint, Sea Pines craves reference to the publicly filed documents concerning the referenced real property transactions.

31. The allegations contained in Paragraphs 47, 48, and 49 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 47, 48, and 49 of the Complaint.

32. With respect to the allegations in Paragraph 50 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

33. In response to the allegations of the first Paragraph 51 of the Complaint, Sea Pines craves reference to the lease referenced in the allegations and denies any allegations inconsistent therewith. By way of additional response, Sea Pines admits upon information and belief that the leased spaces and Bittmint's general store have been connected internally. Sea Pines denies the additional allegations of the first Paragraph 51 of the Complaint.

34. Sea Pines is without sufficient information to form an opinion as to the allegations of the second Paragraph 51 of the Complaint and therefore denies the same.

35. The allegations of Paragraph 52 of the Complaint are not directed to Sea Pines and therefore no response is required. To the extent a response is required, Sea Pines denies the allegations and demands strict proof thereof.

36. The allegations of Paragraph 53 of the Complaint are denied.

37. The allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint.

38. With respect to the allegations in Paragraph 58 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

39. In response to the allegation of Paragraph 59, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 59 of the Complaint.

40. The allegations contained in Paragraphs 60 and 61 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 60 and 61 of the Complaint.

41. With respect to the allegations in Paragraph 62 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

42. Sea Pines admits upon information and belief the allegations of Paragraph 63 of the Complaint.

43. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 64, and therefore denies the allegations and demands strict proof thereof.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

44. The allegations contained in Paragraph 65 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraph 65 of the Complaint.

45. In response to the allegations of Paragraph 65 a of the Complaint, Sea Pines craves reference to the referenced covenants and denied any allegation inconsistent therewith.

46. The allegations contained in Paragraphs 65 b, c, and d, and 66 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 65 b, c, and d, and 66 of the Complaint.

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

47. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

48. Defendant would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Laches, Waiver, Estoppel and Unclean Hands)

49. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

50. To the extent Plaintiff had any cognizable claims, they are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

51. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

52. Defendant would show that Plaintiffs' claims are barred because of a failure of condition precedent.

FOR AN ADDITIONAL DEFENSE
(failure to mitigate damages)

53. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

54. Defendant would show that Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(ripeness)

55. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

56. Defendant would show that Plaintiffs' claims are barred because the claims are not ripe for adjudication.

FOR AN ADDITIONAL DEFENSE
(lawfulness)

57. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

58. Defendant would show that Plaintiffs' claims are barred because Sea Pines's complained of actions were lawful, conducted in good faith without improper purpose, without improper methods and without malice.

FOR AN ADDITIONAL DEFENSE
(punitive damages unconstitutional)

59. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jan 03 4:33 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

60. Defendant denies that it is liable for any punitive and/or exemplary damages. Defendant avers that any award of punitive damages against it would violate the constitutional safeguards provided under the Constitution of the United States of America, and the Constitution of South Carolina, in that punitive damages violate due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government and violate the proscription against excessive fines.

FOR AN ADDITIONAL DEFENSE
(reservation of right to amend)

61. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

62. Defendant reserves the right to amend this Answer and their affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

WHEREFORE, Defendant Sea Pines having fully answered the Complaint respectfully prays for the dismissal of the Plaintiffs' Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiffs; and for all such other relief as the Court deems equitable, just, and proper.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC
s/ John P. Linton, Jr.
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John P. Linton, Jr. (S.C. Bar #79130)
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ATTORNEYS FOR DEFENDANT SEA PINES RESORT,

Charleston, South Carolina
January 3, 2019

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2017-CP-07-01057
)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC,)	
)	**AMENDED**
Plaintiffs,)	**ANSWER OF LYNDA H. JOHNSON, AND CHARLES S. GIANNONE TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
v.)	
)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,)	
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Defendants.)	

TO: MOGIL LAW FIRM and COFFEYKUBEC, LLP, ATTORNEYS FOR PLAINTIFF

Defendants Lynda H. Johnson and Charles S. Giannone ("Defendants") by and through their undersigned attorneys, answer the Second Amended Complaint ("Complaint") of the Plaintiffs herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Defendants admit, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4, and therefore deny the allegations and demand strict proof thereof.
4. In response to the allegations of Paragraph 5 of the Complaint, Defendants admit, upon information and belief, in as much as they allege Harbour Town Surf Shop, LLC is leasing the

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Subject property pursuant to a lease entered into between it and Defendants' predecessor in title. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore deny the allegations and demand strict proof thereof.

5. Defendants admit the allegations of Paragraphs 6 and 7 of the Complaint.

6. The allegations of Paragraphs 8 and 9 of the Complaint are not directed to Defendants and therefor no response is required. To the extent a response is required, Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraphs 8 and 9, and therefore deny the allegations and demand strict proof thereof.

7. In response to the allegations of Paragraphs 10 and 11 of the Complaint, Defendants admit so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbour Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraphs 10 and 11 of the Complaint, Defendants crave reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

8. In response to the allegations of Paragraph 12 of the Complaint, Defendants crave reference to the Contract, and deny any allegations inconsistent therewith.

9. In response to the allegations of Paragraph 13 of the Complaint, Defendants admit the allegations in as much as they allege that Bittmint sent Sea Pines a request for a waiver. Defendants are without sufficient knowledge and information to form a belief as to the truth

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of the remaining allegations of Paragraph 13, and therefore deny the allegations and demand strict proof thereof.

10. In response to the allegations of Paragraph 14 of the Complaint, Defendants admit the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Defendants are without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 14, and therefore deny the allegations and demand strict proof thereof.
11. Defendants deny the allegations of Paragraph 15.
12. Defendants admit the allegations of Paragraph 16.
13. Defendants admit that a Lis Pendens was filed as alleged in Paragraph 17 of the Complaint, and further allege that such filing is meritless.
14. In response to the allegations of Paragraph 18 of the Complaint, Defendants crave reference to the publicly filed Deed and denies any allegations inconsistent herewith.
15. With respect to the allegations in Paragraph 19 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.
16. In response to the allegations of Paragraph 20 of the Complaint, Defendants admit they were under contract to sell the Property to Bittmint, subject to Sea Pines' right of first refusal and deny any allegation that the contract was not subject to Sea Pines' right of first refusal.
17. Defendants admit the allegations of Paragraph 21 of the Complaint in as much as they allege that they conveyed title to the Subject Properties to Sea Pines. The remaining allegations of Paragraph 21 of the Complaint express conclusions of law which Defendants are not required

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

to admit or deny. To the extent any response is required, Defendants deny the allegations therein and demand strict proof thereof.

18. The allegations of Paragraphs 22, 23, and 24 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations therein and demand strict proof thereof.

19. With respect to the allegations in Paragraph 25 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

20. The allegations of Paragraphs 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the Complaint are not directed to Defendants and therefore no response is required. To the extent a response is required, Defendants deny the allegations and demand strict proof thereof.

21. With respect to the allegations in Paragraph 35 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

22. The allegations of Paragraphs 36, 37, 38, and 39 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required, Defendants deny the allegations of Paragraphs 36, 37, 38, and 39 of the Complaint and demand strict proof thereof.

23. With respect to the allegations in Paragraph 40 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

24. The allegations of Paragraphs 41, 42, 43, and 44 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required,

Defendants deny the allegations of Paragraphs 41, 42, 43, and 44 of the Complaint and demand strict proof thereof.

25. With respect to the allegations in Paragraph 45 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

26. The allegations contained in Paragraph 46 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 46 of the Complaint. In response to the remaining allegations of Paragraph 46 of the Complaint, Defendants crave reference to the publicly filed documents concerning the referenced real property transactions.

27. The allegations contained in Paragraphs 47, 48, and 49 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 47, 48, and 49 of the Complaint.

28. With respect to the allegations in Paragraph 50 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

29. In response to the allegations of the first Paragraph 51 of the Complaint, Defendants crave reference to the lease referenced in the allegations and deny any allegation inconsistent therewith. By way of additional response, Defendants admit upon information and belief that the leased spaces and Bittmint's general store have been connected internally. Defendants deny the additional allegations of the first Paragraph 51 of the Complaint.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

30. Defendants are without sufficient information to form an opinion as to the allegations of the second Paragraph 51 of the Complaint and therefore deny the same.

31. The allegations of Paragraph 52 of the Complaint are denied.

32. The allegations of Paragraph 53 are not directed to Defendants and therefore no response is required. To the extent a response is required, Defendants are without sufficient information to form a belief as to the truth of the allegations and therefore deny the allegations and demand strict proof thereof.

33. The allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint express conclusions of law which Defendants are not required to admit or deny. To the extent any response is required, Defendants deny the allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint.

34. With respect to the allegations in Paragraph 58 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

35. The allegations of Paragraphs 59, 60, and 61 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required, Defendants deny the allegations of Paragraphs 59, 60, and 61 of the Complaint and demand strict proof thereof.

36. With respect to the allegations in Paragraph 62 of the Complaint, Defendants re-allege and incorporate by reference their responses to the allegations contained in the preceding paragraphs.

37. The allegations of Paragraphs 63, 64, 65, and 66 of the Complaint are not directed to Defendants and therefore no responses are required. To the extent a response is required,

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Defendants deny the allegations of Paragraphs 63, 64, 65, and 66 of the Complaint and demand strict proof thereof.

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

38. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

39. Defendants would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Laches, Waiver, Estoppel and Unclean Hands)

40. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

41. To the extent Plaintiffs had any cognizable claims, they are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

42. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

43. Defendants would show that Plaintiffs' claims are barred because of a failure of condition precedent.

FOR AN ADDITIONAL DEFENSE
(failure to mitigate damages)

44. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

45. Defendants would show that Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(ripeness)

46. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

47. Defendants would show that Plaintiffs' claims are barred because the claims are not ripe for adjudication.

FOR AN ADDITIONAL DEFENSE
(punitive damages unconstitutional)

48. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

49. Defendants deny that they are liable for any punitive and/or exemplary damages. Defendants aver that any award of punitive damages against them would violate the constitutional safeguards provided under the Constitution of the United States of America, and the Constitution of South Carolina, in that punitive damages violate due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government and violate the proscription against excessive fines.

FOR AN ADDITIONAL DEFENSE
(punitive damages statutory cap)

50. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

51. Defendants assert that any award of punitive damages are subject to and limited by the applicable provisions of S.C. Code Ann. § 15-32-530.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

FOR AN ADDITIONAL DEFENSE
(reservation of right to amend)

52. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

53. Defendants reserve the right to amend this Answer and their affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

WHEREFORE, Defendants having fully answered the Complaint respectfully pray for the dismissal of the Plaintiffs' Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiffs; and for all such other relief as the Court deems equitable, just, and proper. Defendants further specifically plead that Plaintiffs are liable to Defendants and/or Sea Pines Resort, LLC for all attorney's fees in this litigation in the event that Defendants and/or Sea Pines Resort, LLC are prevailing parties, as provided for in the Contract for Sale of Real Property executed on March 17, 2017.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC
s/ John P. Linton, Jr.
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John P. Linton, Jr. (S.C. Bar #79130)
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ATTORNEYS FOR DEFENDANTS
LYNDA H. JOHNSON AND CHARLES S. GIANNONE

Charleston, South Carolina
January 27, 2021

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2017-CP-07-01057
)	
BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC)	
)	**AMENDED**
Plaintiff,)	**ANSWER OF SEA PINES RESORT, LLC TO PLAINTIFFS' SECOND AMENDED COMPLAINT**
)	
v.)	
)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,)	
)	
Defendants.)	
)	

TO: MOGIL LAW FIRM and COFFEY|KUBEC, LLP, ATTORNEYS FOR PLAINTIFFS

Defendant Sea Pines Resort, LLC ("Sea Pines" or "Defendant") by and through its undersigned attorneys, answers the Second Amended Complaint ("Complaint") of the Plaintiffs herein as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied and proof thereof is demanded, including those in the prayer for relief and the WHEREFORE clause.
2. Sea Pines admits, upon information and belief, the allegations of Paragraphs 1, 2, and 3 of the Complaint.
3. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 4, and therefore denies the allegations and demands strict proof thereof.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4. In response to the allegations of Paragraph 5 of the Complaint, Sea Pines admits, upon information and belief, in as much as they allege Harbour Town Surf Shop, LLC is leasing the Subject property pursuant to a lease entered into between it and Lynda H. Johnson and Charles S. Giannone's predecessor in title. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 5, and therefore denies the allegations and demands strict proof thereof.
5. The allegations of Paragraphs 6 and 7 of the Complaint are not directed to Sea Pines and therefor no response is required. To the extent a response is required, Sea Pines admits, upon information and belief, the allegations of Paragraphs 6 and 7 of the Complaint.
6. Sea Pines admits the allegations of Paragraph 8 in as much as they allege that Sea Pines is a Virginia Limited Liability company with its principal place of business in Beaufort County, South Carolina. The remaining allegations contained in Paragraph 8 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the remaining allegations contained in Paragraph 8 of the Complaint.
7. Sea Pines admits the allegations of Paragraph 9 of the Complaint.
8. In response to the allegations of Paragraphs 10 and 11 of the Complaint, Sea Pines admits so much of the allegations that allege the Shop 6 and Shop 8 Mariners Way, Hilton Head Island, SC 29928 (the "Subject Properties") are commercial condominium units in Harbour Town and that the Subject Properties have been used for business/retail purposes for at least the last 30 years. With respect to the remaining allegations of Paragraphs 10 and 11 of the Complaint, Sea Pines craves reference to the publicly filed documents in the chain of title and deny any allegations inconsistent therewith.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

9. In response to the allegations of Paragraph 12 of the Complaint, Sea Pines craves reference to the Contract, and denies any allegations inconsistent therewith.

10. In response to the allegations of Paragraph 13 of the Complaint, Sea Pines admits the allegations in as much as they allege that Bittmint sent a request for a waiver on or about April 14, 2017. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 13, and therefore denies the allegations and demands strict proof thereof.

11. In response to the allegations of Paragraph 14 of the Complaint, Sea Pines admits the allegations in as much as they allege that Sea Pines exercised its right to purchase the Subject Properties and that Sea Pines issued a letter to that effect. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the remaining allegations of Paragraph 14, and therefore denies the allegations and demands strict proof thereof.

12. The allegations of Paragraphs 15 and 16 of the Complaint are not directed to Sea Pines and therefore no response is required; to the extent a response is required Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraphs 15 and 16, and therefore denies the allegations and demands strict proof thereof.

13. Sea Pines admits that a Lis Pendens was filed as alleged in Paragraph 17 of the Complaint, and further alleges that such filing is meritless.

14. In response to the allegations of Paragraph 18 of the Complaint, Sea Pines craves reference to the publicly filed Deed and denies any allegations inconsistent herewith.

15. With respect to the allegations in Paragraph 19 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

16. The allegations of Paragraphs 20, 21, 22, 23, and 24 of the Complaint are not directed to Sea Pines and further express conclusions of law to which no response is required. To the extent a response is required, Sea Pines denies the allegations and demands strict proof thereof.

17. With respect to the allegations in Paragraph 25 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

18. In response to the allegations of Paragraph 26 of the Complaint, Sea Pines admits that Johnson and Giannone were under contract to sell the Subject Properties to Bittmint, but states that said contact was subject to Sea Pines' legal right of first refusal. Sea Pines denies any remaining allegations of Paragraph 26.

19. In response to the allegations of Paragraph 27 of the Complaint, Sea Pines admits the allegations in as much as they allege Sea Pines was provided with express knowledge of the contract. Sea Pines denies any other allegations of Paragraph 27 of the Complaint.

20. Sea Pines denies the allegations of Paragraph 28 of the Complaint.

21. Sea Pines admits the allegations of Paragraph 29 of the Complaint.

22. The allegations contained in Paragraphs 30, 31, 32, 33, and 34 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 30, 31, 32, 33, and 34 of the Complaint.

23. With respect to the allegations in Paragraph 35 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

24. In response to the allegation of Paragraph 36, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 36 of the Complaint.

25. The allegations contained in Paragraphs 37, 38, and 39 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 37, 38, and 39 of the Complaint.

26. With respect to the allegations in Paragraph 40 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

27. In response to the allegation of Paragraph 41, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 41 of the Complaint.

28. The allegations contained in Paragraphs 42, 43, and 44 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 42, 43, and 44 of the Complaint.

29. With respect to the allegations in Paragraph 45 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

30. The allegations contained in Paragraph 46 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 46 of the Complaint. In response to the remaining allegations of Paragraph 46 of the Complaint, Sea Pines craves reference to the publicly filed documents concerning the referenced real property transactions.

31. The allegations contained in Paragraphs 47, 48, and 49 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 47, 48, and 49 of the Complaint.

32. With respect to the allegations in Paragraph 50 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

33. In response to the allegations of the first Paragraph 51 of the Complaint, Sea Pines craves reference to the lease referenced in the allegations and denies any allegations inconsistent therewith. By way of additional response, Sea Pines admits upon information and belief that the leased spaces and Bittmint's general store have been connected internally. Sea Pines denies the additional allegations of the first Paragraph 51 of the Complaint.

34. Sea Pines is without sufficient information to form an opinion as to the allegations of the second Paragraph 51 of the Complaint and therefore denies the same.

35. The allegations of Paragraph 52 of the Complaint are not directed to Sea Pines and therefore no response is required. To the extent a response is required, Sea Pines denies the allegations and demands strict proof thereof.

36. The allegations of Paragraph 53 of the Complaint are denied.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

37. The allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 54, 55, 56, and 57 of the Complaint.

38. With respect to the allegations in Paragraph 58 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

39. In response to the allegation of Paragraph 59, Sea Pines admits the allegations in as much as they allege the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 include a right of repurchase, among other sets of covenants providing for such a right to repurchase. Sea Pines denies the remaining allegations of Paragraph 59 of the Complaint.

40. The allegations contained in Paragraphs 60 and 61 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 60 and 61 of the Complaint.

41. With respect to the allegations in Paragraph 62 of the Complaint, Sea Pines re-alleges and incorporates by reference its responses to the allegations contained in the preceding paragraphs.

42. Sea Pines admits upon information and belief the allegations of Paragraph 63 of the Complaint.

43. Sea Pines is without sufficient knowledge and information to form a belief as to the truth of the allegations of Paragraph 64, and therefore denies the allegations and demands strict proof thereof.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

44. The allegations contained in Paragraph 65 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraph 65 of the Complaint.

45. In response to the allegations of Paragraph 65 a of the Complaint, Sea Pines craves reference to the referenced covenants and denied any allegation inconsistent therewith.

46. The allegations contained in Paragraphs 65 b, c, and d, and 66 of the Complaint express conclusions of law which Sea Pines is not required to admit or deny. To the extent any response is required, Sea Pines denies the allegations contained in Paragraphs 65 b, c, and d, and 66 of the Complaint.

FOR AN ADDITIONAL DEFENSE

(Failure to State a Claim)

47. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

48. Defendant would show that the allegations of the Complaint fail to state a claim sufficient to constitute a cause of action and/or causes of action against them.

FOR AN ADDITIONAL DEFENSE
(Laches, Waiver, Estoppel and Unclean Hands)

49. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

50. To the extent Plaintiff had any cognizable claims, they are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR AN ADDITIONAL DEFENSE
(Failure of Condition Precedent)

51. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

52. Defendant would show that Plaintiffs' claims are barred because of a failure of condition precedent.

FOR AN ADDITIONAL DEFENSE
(failure to mitigate damages)

53. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

54. Defendant would show that Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to mitigate their alleged damages.

FOR AN ADDITIONAL DEFENSE
(ripeness)

55. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

56. Defendant would show that Plaintiffs' claims are barred because the claims are not ripe for adjudication.

FOR AN ADDITIONAL DEFENSE
(lawfulness)

57. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

58. Defendant would show that Plaintiffs' claims are barred because Sea Pines's complained of actions were lawful, conducted in good faith without improper purpose, without improper methods and without malice.

FOR AN ADDITIONAL DEFENSE
(punitive damages unconstitutional)

59. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

60. Defendant denies that it is liable for any punitive and/or exemplary damages. Defendant avers that any award of punitive damages against it would violate the constitutional safeguards provided under the Constitution of the United States of America, and the Constitution of South Carolina, in that punitive damages violate due process and equal protection guarantees, place an undue burden on interstate commerce, violate the right to assembly and petition the government and violate the proscription against excessive fines.

FOR AN ADDITIONAL DEFENSE
(punitive damages statutory cap)

61. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

62. Defendants assert that any award of punitive damages are subject to and limited by the applicable provisions of S.C. Code Ann. § 15-32-530.

FOR AN ADDITIONAL DEFENSE
(reservation of right to amend)

63. Each and every allegation set forth in the preceding paragraphs is realleged and reiterated as if fully set forth herein.

64. Defendant reserves the right to amend this Answer and its affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

WHEREFORE, Defendant Sea Pines having fully answered the Complaint respectfully prays for the dismissal of the Plaintiffs' Complaint with prejudice pursuant to the denials and defenses asserted above, that the costs of this action be taxed to Plaintiffs; and for all such other relief as the Court deems equitable, just, and proper. Defendant Sea Pines further specifically

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

pleads that Plaintiffs are liable to Defendant Sea Pines and/or Defendants Johnson and Giannone for all attorney's fees in this litigation in the event that Defendant Sea Pines and/or Defendants Johnson and Giannone are prevailing parties, as provided for in the Contract for Sale of Real Property executed on March 17, 2017.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC
s/ John P. Linton, Jr.
G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
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ATTORNEYS FOR DEFENDANT SEA PINES RESORT,

Charleston, South Carolina
January 27, 2021

ELECTRONICALLY FILED - 2021 Jan 27 3:42 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jun 27 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

TO: THE DEFENDANTS AND THEIR COUNSEL:

PLEASE TAKE NOTICE Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, by and through its undersigned counsel, will move before the Presiding Judge of the Beaufort County Court of Common Pleas, at the Beaufort County Courthouse in Beaufort, South Carolina, to be heard on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Plaintiffs partial summary judgment, as to the First Cause of Action for Breach of Contract, the Second Cause of Action for Interference with a Contractual Relationship, the Third Cause of Action for Violation of the Common Law Rule Against Perpetuities, the Sixth Cause of Action for Breach of Contact (as to a Third-Party Beneficiary) and the Seventh Cause of Action for Violation of the Statute of Repose. Plaintiffs' respectfully set forth that there are no material issues of fact in dispute relating to these claims, and the Plaintiffs are therefore entitled to judgment on same as a matter of law, on the following grounds:

1. Plaintiff Bittmint, LLC ("Bittmint") and Defendants Lynda H. Johnson and Charles S. Giannone (collectively the "Johnson Defendants") entered into a written contract on March 17, 2017 (the "Contract") for Bittmint to purchase Shop 6 and Shop 8 of the Mariners Way Horizontal Property Regime in Harbour Town, in Sea Pines Plantation, on Hilton Head Island, in Beaufort County, South Carolina (the "Property") from the Johnson Defendants.

ELECTRONICALLY FILED - 2019 Jun 27 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

2. Bittmint's acquisition of the Property was intended to benefit, and would have benefitted, Plaintiff Harbour Town Surf Shop, LLC ("HTSS") inasmuch as Bittmint would have leased the Property to HTSS for an extended period after the acquisition.
3. Before the closing of the Property sale, Defendant Sea Pines Resort, LLC ("SPR") interfered with the sale by exercising a purported right of first refusal relating to the Property, whereupon the Johnson Defendants then sold the Property to SPR, instead of Bittmint, for the same price set forth in the Contract.
4. SPR's interference with the existing Contract between Bittmint and the Johnson Defendants was unjustified and unlawful because:
    a. SPR's right of first refusal violates the common law rule of perpetuities and is void and unenforceable as a matter of law;
    b. SPR's attempted exercise of the right of first refusal violates South Carolina Code Section 15-3-380 rendering the right of first refusal invalid and unenforceable as a matter of law; and
    c. SPR failed to exercise the right of first refusal in a timely manner.
5. Bittmint and HTSS, and their principals, have suffered damages as a result of the Johnson Defendants' breach of contract and SPR's unlawful and unjustified intentional interference with said Contract.

This motion is and shall be supported by the pleadings and discovery conducted during the litigation of this action, as well as any such affidavit(s) and memoranda as may be submitted, the applicable statutory and common law of the State of South Carolina and any additional grounds that may be identified to the Court before or at the hearing on this motion.

WHEREFORE, Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, for the reasons set forth hereinabove, hereby pray that this Court provide them the relief described hereinabove, as well as any such other and further relief as this Court deems just and proper.

Respectfully Submitted,

COFFEY KUBEC, LLP

By: /s/ Maureen T. Coffey_____
Maureen T. Coffey, Esq. (S.C. Bar #5918)
1 Corpus Christi Place, Suite 105
Hilton Head Island, SC 29928
(843) 422-4488
mcoffey@coffeykubec.com

Attorney for Plaintiffs

June 27, 2019
Hilton Head Island, SC

ELECTRONICALLY FILED - 2019 Jun 27 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

TO: COFFEY|KUBEC, LLP, AND LAW OFFICES OF MICHAEL W. MOGIL, ATTORNEYS FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorneys, hereby give notice that ten days after the service of this Notice of Motion and Motion for Summary Judgment, or as soon thereafter as counsel may be heard, will move before the presiding judge for the Court of Common Pleas, Beaufort County, pursuant to Rule 56, SCRCP, for summary judgment in their favor as to all claims in the Second Amended Complaint. In support of the motion, Defendants rely on the pleadings, the written discovery and depositions to date, the Affidavit of Steven P. Birdwell in support of the motion filed simultaneously herewith, the applicable law, and any memorandum of law that may be filed.

There are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law on the following claims for the following reasons:

(1) The contract between Plaintiff Bittmint, LLC ("Bittmint") and Defendants Johnson and Giannone was contingent on obtaining a waiver from Defendant Sea Pines Resort, LLC ("Sea Pines") of its right of first refusal. It is undisputed that this waiver was requested

by counsel for Bittmint but was not obtained. Therefore, Defendants are entitled to judgment as a matter of law on the First Cause of Action for breach of contract.

(2) For the reasons set forth in (1), Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Second Cause of Action for tortious interference with a contract because there was no breach of the contract.

(3) Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Second Cause of Action for tortious interference with a contract because Sea Pines was justified in pursuing its own legal rights by exercising its right of first refusal, the validity of which was undisputed and recognized by Bittmint at the time counsel for Bittmint requested a waiver of Sea Pines' right of first refusal.

(4) Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Second Cause of Action for tortious interference with a contract based on alleged improper procedures or alleged selective enforcement in the exercise of the right of first refusal in that there is no cause of action for allegedly using improper means and/or being selective in the exercise of a right of first refusal.

(5) In addition to their being no cause of action for allegedly using improper means in the exercise of a right of first refusal, Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Second Cause of Action for tortious interference with a contract because it is undisputed the record establishes Sea Pines did not employ improper means or methods. Counsel for Plaintiffs initiated the communication with Sea Pines in writing requesting Sea Pines waive its right of first refusal and providing a draft waiver stating "[t]he above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

above. It is hereby understood by all parties that the company has (30) business days from receipt of this offer in which to determine its re-purchase option."

(6) Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Second Cause of Action for tortious interference with a contract based on the theories of waiver, estoppel, and unclean hands. Such equitable doctrines are equitable defenses and cannot provide the basis for an affirmative claim for legal damages as alleged by Plaintiffs.

(7) Even if the doctrine of equitable estoppel applied, which it does not, Sea Pines is entitled to judgment as a matter of law as to the Second Cause of Action because Plaintiffs cannot establish the elements of equitable estoppel, including proof of a misrepresentation, justifiable reliance, and a change of position in reliance thereon. It is undisputed that counsel for Plaintiffs initiated the communication with Sea Pines in writing requesting Sea Pines waive its right of first refusal and providing a draft waiver stating "[t]he above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser(s) referenced above. It is hereby understood by all parties that the company has (30) business days from receipt of this offer in which to determine its re-purchase option."

(8) Defendants are entitled to judgment as a matter of law as to Plaintiffs' Third Cause of Action because there is no cause of action for legal damages for alleged violation of the Rule Against Perpetuities. The common law rule against perpetuities was superseded by S.C. Code § 276-10, et. seq.

(9) Defendants are entitled to judgment as a matter of law as to Plaintiffs' Third Cause of Action because the common law rule against perpetuities was superseded by S.C. Code § 276-10, et. seq.

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

(10) Defendants are entitled to judgment as a matter of law as to Plaintiffs' Third Cause of Action based on the theory that the right of first refusal is a property interest that is not assured to vest within 21 years after the death of a life in being because it is undisputed that with regard to the property at issue the alleged interest vested less than ninety years after its creation.

(11) Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Fourth Cause of Action in that there is no cause of action for alleged "Invalid Assignment of Rights."

(12) Sea Pines is entitled to judgment as a matter of law as to Plaintiffs' Fourth Cause of Action for alleged "Invalid Assignment of Rights" with respect to the applicable covenants of Lighthouse Beach Company. The undisputed proof is that Sea Pines is the successor to such rights and that such rights were assigned to Sea Pines.

(13) Defendants are entitled to judgment as a matter of law as to Plaintiffs' Fifth Cause of Action seeking to set aside the deeds to the property at issue. Plaintiffs have not alleged nor proven a legal or equitable basis for setting aside the deeds.

(14) Defendants are entitled to judgment as a matter of law as to the Sixth Cause of Action by Plaintiff Harbour Town Surf Shop, LLC ("HTSS") as an alleged third-party beneficiary of the contract of purchase and sale. As a matter of law, Plaintiff HTSS was not a third-party beneficiary. The contract between Bittmint and Defendants Johnson and Giannone did not specify HTSS as a third-party beneficiary of that contract. Further, there is no evidence that any of the Defendants knew of the terms of any contemplated lease between Bittmint and HTSS as an alleged third-party beneficiary of that contract.

(15) Defendants are entitled to judgment as a matter of law as to the Sixth Cause of Action by Plaintiff HTSS as an alleged third-party beneficiary of the contract of purchase and sale.

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Even if HTSS was a third-party beneficiary, which it was not, there was no breach of contract, as stated in (1) above.

(16) Defendants are entitled to judgment as a matter of law as to the Sixth Cause of Action by Plaintiff HTSS as an alleged third-party beneficiary of the contract of purchase and sale. Even if HTSS was a third-party beneficiary, which it was not, a third-party beneficiary has no separate claim for breach of contract where the contracting party itself has brought a claim for breach of contract.

(17) As to Plaintiffs' Seventh Cause of Action, there is no implied or express right of action for alleged violation of S. C. Code §15-3-380 or any statute of repose under South Carolina law.

(18) As to Plaintiffs' Seventh Cause of Action, S. C. Code §15-3-380 is inapplicable, as a matter of law, to Sea Pines' exercise of its right of first refusal.

(19) As to Plaintiffs' Seventh Cause of Action, Plaintiffs have no standing to assert the provisions of S. C. Code §15-3-380 because they are neither a party in possession nor a party holding color of legal title.

(20) Sea Pines is entitled to judgment as a matter of law as to Plaintiff HTSS's Eighth Cause of Action for tortious interference with prospective contractual relations, for all the reasons previously stated, including but not limited to: (a) there was no breach of the contract of purchase and sale; (b) there is no proof Sea Pines knew of the alleged prospective contract with Bittmint; and, (c) it is undisputed that Sea Pines' exercise of the right of first refusal was justified.

(21) Defendants are entitled to judgment as a matter of law as to the following damages claimed by Plaintiffs:

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

a) As to Plaintiffs' claim that the individual members of the Plaintiff entities are entitled to emotional damages, Plaintiffs' failed to plead emotional damages, the individual members of the Plaintiff entities are not parties and cannot claim damages, and emotional damages are not recoverable for the causes of action alleged by Plaintiffs as a matter of law.

b) Bittmint's alleged damages for lost profits and other lost future financial benefits are speculative as a matter of law.

c) HTSS's alleged damages for lost profits and other lost future financial benefits if Bittmint was its landlord or if it ran a food service operation are speculative as a matter of law.

d) Plaintiffs' damages for the cost of improvements made to join the subject property with the general store and to purchase food service equipment are not recoverable because the only evidence is that both occurred prior to March 17, 2017, the date of the contract between Defendants Johnson and Giannone and Bittmint.

e) HTSS's attorneys' fees are unrecoverable as a matter of law.

f) Bittmint's attorneys' fees are unrecoverable as a matter of law because there was no breach of the contract with Johnson and Giannone. Alternatively, Bittmint's attorneys' fees are unrecoverable because Bittmint never sent Defendants Johnson and Giannone a notice of default (as required under the contract) prior to instituting this action.

g) HTSS's damages for the distraction of its principal managers is unrecoverable as matter of law.

For the reasons explained above, Defendants' Motion should be granted and costs and attorney's fees awarded to Defendants.

ELECTRONICALLY FILED - 2019 Jul 15 4:05 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

s/ John P. Linton, Jr.
G. Trenholm Walker (S.C. Bar #5777)
John P. Linton, Jr. (S.C. Bar #79130)
P.O. Drawer 22167
Charleston, SC 29413
Tel: 843-727-2200
Email: walker@wgfllaw.com
E-mail: linton@wgfllaw.com

July 15, 2019

ATTORNEYS FOR DEFENDANTS

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2017-CP-07-01057
BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC,	)	
Plaintiffs,	)	
	)	**AFFIDAVIT OF STEVEN P. BIRDWELL**
vs.	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Steven P. Birdwell, who being duly sworn, avers and states the following:

1. I am a resident of Beaufort County, South Carolina, over eighteen years of age, and competent to testify about the matters stated herein based on my own personal knowledge, except those stated to be upon information and belief which I have reason to believe are true.
2. I am President of Sea Pines Resort, LLC, one of the Defendants herein.
3. In this lawsuit, Plaintiffs have alleged that Sea Pines Resort, LLC is not a successor or assign of the Lighthouse Beach Company with regard to certain rights under the Commercial Use Covenants dated January 25, 1973, recorded at Deed Book 206, Page 1143 in Beaufort County Register of Deeds.
4. Attached hereto as **Exhibit A** is a true and accurate copy of an Assignment of Rights, recorded at Deed Book 490, Page 712 in Beaufort County Register of Deeds.

5. Attached hereto as **Exhibit B** is a true and accurate copy of an Agreement for Final Settlement of Issues Outstanding Between Sea Pines Plantation Company, Inc. and the Trustee.

6. Attached hereto as **Exhibit C** is a true and accurate copy of an Assignment of Rights recorded at Deed Book 520, Page 1907 in Beaufort County Register of Deeds.

7. On March 14, 2007, certain entities executed a Deed, Bill of Sale, and Assignment of Rights to SPR recorded at Deed Book 2539, Page 1193, in Beaufort County Record of Deeds, a true and accurate copy of which is attached hereto as **Exhibit D**.

FURTHER AFFIANT SAYETH NAUGHT.

Steven P. Birdwell

SWORN BEFORE ME
this 15 day of July, 2019

Notary Public for the State of Tennessee
My Commission Expires: 7/17/2021

LORI KAY SCARBROUGH
NOTARY PUBLIC AT LARGE
WILLIAMSON COUNTY, TN

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

J.S & P/J P S
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STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF RIGHTS
COUNTY OF BEAUFORT)

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

W I T N E S S E T H:

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

INITIALS

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

The preamble to this Assignment is incorporated herein by reference.

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

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

WITNESSES:

Carol P. Garner

Louise R. Lund

ASSIGNOR:

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

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

Louise R. Lund

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

722

EXHIBIT "A"

GATE POLICY

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

GATE POLICY

TABLE OF CONTENTS

SECTION IV	POLICY FOR ISSUANCE OF GATE PASSES	PAGE NUMBER
4.01	VISITOR PASSES (NON-COMMERCIAL)	IV-1
4.01.1	NO CHARGE	IV-1
4.01.1.1	SEA PINES PROPERTY OWNERS	IV-1
4.01.1.2	GOVERNMENT OFFICIALS	IV-1
4.01.1.3	MARRIOTT OWNERSHIP RESORTS	IV-1
4.01.1.4	SEASCAPE OWNERS	IV-2
4.01.1.5	HARBOUR TOWN MERCHANTS COURTESY PASS	IV-2
4.01.1.6	SEA PINES PLANTATION COMPANY, INC. (THE "COMPANY")	IV-2
4.01.1.7	COMPANY REAL ESTATE CLIENTS	IV-3
4.02	GENERAL INFORMATION FOR TEMPORARY PASSES	IV-3
4.02.1	CAN ARRANGE FOR PASSES	IV-3
4.02.2	RENEWAL OF PASSES	IV-3
4.02.3	ISSUING OF PASSES AT THE SECURITY OFFICE	IV-4
4.02.4	COLORS FOR TEMPORARY PASSES	IV-4
4.03	DAILY COMMERCIAL PASSES	IV-4
4.03.1	$3.00 DAILY PASS	IV-4
4.03.2	$15.00 DAILY PASS	IV-4
4.03.3	SPECIAL TEMPORARY PASS FOR CONTRACTORS	IV-4
4.04	$25.00 BUS PASS	IV-5
4.04.1	SPECIAL INFORMATION	IV-5
4.05	BICYCLIST PASSES	IV-5

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4.05.1	SEA PINES OWNERS/DEPENDANTS AND GUESTS WHILE RESIDING IN PLANTATION	IV-6
4.06	ENTRY FOR SPECIAL SPORTS EVENTS	IV-6
4.07	ENTRY FOR SCHEDULED, CIVIC, CULTURAL, RELIGIOUS OR EDUCATIONAL MEETINGS OR EVENTS.	IV-7

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

SECTION IV

POLICY FOR ISSUANCE OF GATE PASSES

4.01 Visitor Passes (Non-Commercial)

4.01.1 No Charge.

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

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

4.01.1.1 Sea Pines Property Owners.

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

4.01.1.2 Government Officials.

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

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

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

4.01.1.4 Seascape Owners.

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

4.01.1.5 Harbour Town Merchants Courtesy Pass.

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

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

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

4.01.1.7 Company Real Estate Clients.

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

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

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

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

4.02 General Information for Temporary Passes.

4.02.1 Who Can Arrange for Passes.

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

4.02.2 Renewal of Passes.

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

4.02.3 Issuing of Passes at the Security Office.

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

4.02.4 Colors for Temporary Passes.

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

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

4.03 Daily Commercial Passes.

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

4.03.1 $3.00 Daily Pass.

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

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

4.03.2 $15.00 Daily Pass.

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

4.03.3 Special Temporary Pass for Contractors.

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4.04 $25.00 Bus Passes.

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

4.04.1 Special Information

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

"Welcome to Sea Pines Plantation:

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

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

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

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

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

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

E. Camping and picnics are prohibited.

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4.05 Bicyclist Passes.

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

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

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

4.06 Entry for Special Sports Events.

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

TABLE OF CONTENTS

		PAGE NUMBER
SECTION V	POLICY FOR ISSUANCE OF DECALS	
5.01	GENERAL INFORMATION	V-1
5.01.1	DEFINITION OF 'COMMERCIAL' TYPE VEHICLES	V-1
5.01.2	DEFINITION OF RECREATIONAL (RV) VEHICLE	V-1
5.01.3	VEHICLES NOT AUTHORIZED TO PARK OVERNIGHT IN THE PLANTATION	V-2
5.02	PROPERTY OWNER DECALS	V-2
5.02.1	ELIGIBILITY	V-2
5.02.2	NUMBER AUTHORIZED	V-2
5.02.3	VERIFICATION	V-2
5.02.4	DOCUMENTS REQUIRED	V-2
5.02.5	HOW ISSUED	V-3
5.02.6	EXPIRATION	V-3
5.02.7	CHARGE	V-3
5.03	DEPENDENT DECALS	V-3
5.03.1	ELIGIBILITY	V-3
5.03.2	NUMBER AUTHORIZED	V-3
5.03.3	VERIFICATION	V-3
5.03.4	DOCUMENTS REQUIRED	V-3
5.03.5	HOW ISSUED	V-4
5.03.6	EXPIRATION	V-4
5.03.7	CHARGE	V-4

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.04	RELATIVE DECALS	V-4
5.04.1	ELIGIBILITY	V-4
5.04.2	NUMBER AUTHORIZED	V-4
5.04.3	VERIFICATION	V-4
5.04.4	DOCUMENTS REQUIRED	V-4
5.04.5	HOW ISSUED	V-5
5.04.6	EXPIRATION	V-5
5.04.7	CHARGE	V-5
5.05	SEA PINES EMPLOYEES	V-5
5.05.1.1	ELIGIBILITY	V-5
5.05.1.2	NUMBER AUTHORIZED	V-5
5.05.1.3	VERIFICATION	V-5
5.05.1.4	DOCUMENTS REQUIRED	V-5
5.05.1.5	HOW ISSUED	V-6
5.05.1.6	EXPIRATION	V-6
5.05.1.7	CHARGE	V-6
5.05.2.2	ELIGIBILITY	V-6
5.05.2.2	NUMBER AUTHORIZED	V-6
5.05.2.3	VERIFICATION	V-6
5.05.2.4	DOCUMENTS REQUIRED	V-7
5.05.2.5	HOW ISSUED	V-7
5.05.2.6	EXPIRATION	V-7
5.05.2.7	CHARGE	V-7
5.06	LONG TERM RENTER DECALS	V-7
5.06.1	ELIGIBILITY	V-7

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.06.2	NUMBER AUTHORIZED	V-8
5.06.3	VERIFICATION	V-8
5.06.4	DOCUMENTS REQUIRED	V-8
5.06.5	HOW ISSUED	V-8
5.06.6	EXPIRATION	V-8
5.06.7	CHARGE	V-8
5.07	ISLAND RESIDENT	V-8
5.07.1	ELIGIBILITY	V-9
5.07.2	NUMBER AUTHORIZED	V-9
5.07.3	VERIFICATION	V-9
5.07.4	DOCUMENTS REQUIRED	V-9
5.07.5	HOW ISSUED	V-9
5.07.6	EXPIRATION	V-9
5.07.7	CHARGE	V-9
5.08	ISLAND CLERGY (ISLAND RESIDENT DECAL)	V-9
5.08.1	ELIGIBILITY	V-9
5.08.2	NUMBER AUTHORIZED	V-10
5.08.3	VERIFICATION	V-10
5.08.4	DOCUMENTS REQUIRED	V-10
5.08.5	HOW ISSUED	V-10
5.08.6	EXPIRATION	V-10
5.08.7	CHARGE	V-10
5.09	SEA BROOK RESIDENTS (FORMER SEA PINES PROPERTY OWNERS)	V-10
5.09.1	ELIGIBILITY	V-10
5.09.2	NUMBER AUTHORIZED	V-10

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.09.3	VERIFICATION	V-11
5.09.4	DOCUMENTS REQUIRED	V-11
5.09.5	HOW ISSUED	V-11
5.09.6	EXPIRATION	V-11
5.09.7	CHARGE	V-11
5.10	SIX OAKS CEMETERY PLOT OWNERS	V-11
5.10.1	ELIGIBILITY	V-11
5.10.2	NUMBER AUTHORIZED	V-11
5.10.3	VERIFICATION	V-11
5.10.4	DOCUMENTS REQUIRED	V-12
5.10.5	HOW ISSUED	V-12
5.10.6	EXPIRATION	V-12
5.10.7	CHARGE	V-12
5.11	SEA SCAPE OWNERS (ORIGINAL)	V-12
5.11.1	ELIGIBILITY	V-12
5.11.2	NUMBER AUTHORIZED	V-12
5.11.3	VERIFICATION	V-12
5.11.4	DOCUMENTS REQUIRED	V-12
5.11.5	HOW ISSUED	V-13
5.11.6	EXPIRATION	V-13
5.11.7	CHARGE	V-13
5.12	SEA PINES PUBLIC SERVICE DISTRICT EMPLOYEE (ISLAND RESIDENT DECALS)	V-13
5.12.1	ELIGIBILITY	V-13
5.12.2	NUMBER AUTHORIZED	V-13
5.12.3	VERIFICATION	V-13

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.12.4	DOCUMENTS REQUIRED	V-13
5.12.5	HOW ISSUED	V-13
5.12.6	EXPIRATION	V-14
5.12.7	CHARGE	V-14
5.13	SEA PINES-FOREST BEACH FIRE DEPARTMENT EMPLOYEES (ISLAND RESIDENT DECALS)	V-14
5.13.1	ELIGIBILITY	V-14
5.13.2	NUMBER AUTHORIZED	V-14
5.13.3	VERIFICATION	V-14
5.13.4	DOCUMENTS REQUIRED	V-14
5.13.5	HOW ISSUED	V-14
5.13.6	EXPIRATION	V-15
5.13.7	CHARGE	V-15
5.14	COMMERCIAL DECALS	V-15
5.14.1	DEFINITION	V-15
5.14.2	NUMBER AUTHORIZED	V-15
5.14.3	EXPIRATION	V-15
5.14.4	CHARGE	V-15
5.14.5	EMPLOYEES OF SEA PINES PROPERTY OWNERS	V-16
5.14.5.1	ELIGIBILITY	V-16
5.14.5.2	NUMBER AUTHORIZED	V-16
5.14.5.3	VERIFICATION	V-16
5.14.5.4	DOCUMENTS REQUIRED	V-16
5.14.5.5	HOW ISSUED	V-16
5.14.6	EMPLOYEES OF SEA PINES MERCHANTS	V-16
5.14.6.1	ELIGIBILITY	V-16

5.14.6.2	NUMBER AUTHORIZED	W-117
5.14.6.3	VERIFICATION	W-117
5.14.6.4	DOCUMENTS REQUIRED	W-117
5.14.6.5	HOW ISSUED	W-117
5.15	MOPED DECALS	W-117
5.15.1	ELIGIBILITY	W-118
5.15.2	NUMBER AUTHORIZED	W-118
5.15.3	VERIFICATION	W-118
5.15.4	DOCUMENTS REQUIRED	W-118
5.15.5	HOW ISSUED	W-118
5.15.6	EXPIRATION	W-118
5.15.7	CHARGE	W-118

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

SECTION V

POLICY FOR ISSUANCE OF DECALS

5.01 General Information

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

5.01.1 Definition of 'Commercial' Type Vehicle

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

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

5.01.2 Definition of Recreational (RV) Vehicle

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

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

an RV.

5.01.3 Vehicles Not Authorized to Park Overnight in the Plantation

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

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

5.02 Property Owner Decals

5.02.1 Eligibility

Limited to Property Owners only.

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

5.02.2 Number Authorized

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

5.02.3 Verification

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

5.02.4 Documents required

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

5.02.5 How issued

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

5.02.6 Expiration

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

5.02.7 Charge

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

5.03 Dependent Decals

5.03.1 Eligibility

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

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

5.03.2 Number Authorized

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

5.03.3 Verification

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

5.03.4 Documents required

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.03.5 How Issued

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

5.03.6 Expiration

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

5.03.7 Charge

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

5.04 Relative Decals

5.04.1 Eligibility

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

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

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

5.04.2 Number Authorized

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

5.04.3 Verification

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

5.04.4 Documents Required

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701657

Owner.

5.04.5 How Issued

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

5.04.6 Expiration

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

5.04.7 Charge

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

5.05 Company Employees

5.05.1 Full Time Employees

5.05.1.1 Eligibility

Must be an employee of Company.

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

5.05.1.2 Number Authorized

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

5.05.1.3 Verification

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

5.05.1.4 Documents Required

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Resources Office).

5.05.1.5 How Issued

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

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

5.05.1.6 Expiration

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

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

5.05.1.7 Charge

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

5.05.2 Summer Seasonal Employees

5.05.2.1 Eligibility

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

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

5.05.2.2 Number Authorized

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

5.05.2.3 Verification

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

5.05.2.4 Documents Required

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

5.05.2.5 How Issued

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

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

5.05.2.6 Expiration

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

5.05.2.7 Charge

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

5.06 Long Term Renter Decal

5.06.1 Eligibility

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

5.06.2 Number Authorized

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

5.06.3 Verification

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

5.06.4 Documents Required

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

5.06.5 How Issued

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

5.06.6 Expiration

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

5.06.7 Charge

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

5.07 Island Resident Decals

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701097

5.07.1 Eligibility

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

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

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

5.07.2 Number Authorized

No limit to number of decals issued.

5.07.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.07.4 Documents Required

A completed Decal Application with the required signatures.

5.07.5 How Issued

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

5.07.6 Expiration

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

5.07.7 Charge

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

5.08 Island Clergy (Island Resident Decal)

5.08.1 Eligibility

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

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

5.08.2 Number Authorized

Limited to one (1) decal.

5.08.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.08.4 Documents Required

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

5.08.5 How Issued

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

5.08.6 Expiration

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

5.08.7 Charge

There is no charge for these decals.

5.09 Sea Brook Residents (Former Sea Pines Property Owners)

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

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

5.09.2 Number Authorized

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

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5.09.3 Verification

Verification will be the responsibility of the Administrative Office Staff.

5.09.4 Documents Required

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

5.09.5 How Issued

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

5.09.6 Expiration

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

5.09.7 Charge

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

5.10 Six Oaks Cemetery Plot Owners

5.10.1 Eligibility

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

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

5.10.2 Number Authorized.

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

5.10.3 Verification.

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.10.4 Documents Required.

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

5.10.5 How Issued.

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

5.10.6 Expiration.

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

5.10.7 Charge.

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

5.11 Seascape Owners (Original).

5.11.1 Eligibility.

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

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

5.11.2 Number Authorized.

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

5.11.3 Verification.

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

5.11.4 Documents Required.

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

5.11.5 How Issued.

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

5.11.6 Expiration.

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

5.11.7 Charge.

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

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

5.12.1 Eligibility.

Must be an employee of Sea Pines Public Service District.

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

5.12.2 Number Authorized.

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

5.12.3 Verification.

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

5.12.4 Documents Required.

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

5.12.5 How Issued.

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

5.12.6 Expiration.

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

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

5.12.7 Charge.

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

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

5.13.1 Eligibility.

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

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

5.13.2 Number Authorized.

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

5.13.3 Verification.

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

5.13.4 Documents Required.

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

5.13.5 How Issued.

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

During the annual renewal period, separate instructions will be

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

furnished to the Sea Pines-Forest Beach Fire Department.

5.13.6 Expiration.

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

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

5.13.7 Charge.

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

5.14 Commercial Decals.

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

5.14.1 Definition.

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

5.14.2 Number Authorized.

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

5.14.3 Expiration.

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

5.14.4 Charge.

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

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

5.14.5 Employees of Sea Pines Property Owners.

5.14.5.1 Eligibility

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

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

5.14.5.2 Number Authorized.

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

5.14.5.3 Verification.

Verification will be accomplished by the Administrative Office Staff.

5.14.5.4 Documents Required.

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

5.14.5.5 How Issued.

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

5.14.6 Employees of Sea Pines Merchants.

5.14.6.1 Eligibility.

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

Baileys	Camp Hilton Head
Capin's Pharmacy	Cafe Europa

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

5.14.6.2 Number Authorized.

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

5.14.6.3 Verification.

Verification will be accomplished by the Administrative Office Staff.

5.14.6.4 Documents Required.

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

5.14.6.5 How Issued.

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

5.15 MOPED Decals

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

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

754

5.15.1 Eligibility.

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

5.15.2 Number Authorized.

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

5.15.3 Verification.

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

5.15.4 Documents Required.

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

5.15.5 How Issued.

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

5.15.6 Expiration.

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

5.15.7 Charge.

There is no charge for these decals.

J.S & P/J P S

JSP

FILED AT 4:52 O'CLOCK BEAUFORT COUNTY S. C. RECORDED IN BOOK 496 PAGE NOV 17 1987 M

S/Brenda Dalton REGISTER OF MESNE CONVEYANCE

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STATE OF SOUTH CAROLINA)
)
)
COUNTY OF BEAUFORT)

AGREEMENT FOR FINAL SETTLEMENT OF ISSUES OUTSTANDING BETWEEN SEA PINES PLANTATION COMPANY, INC. AND THE TRUSTEE

THIS AGREEMENT made and entered into this 7 day of December, 1988, by and between R. GEOFFERY LEVY, as Trustee in Bankruptcy for Sea Pines Company, Inc., Sea Pines Company, Sea Pines Plantation and Hilton Head Liquidation Corp., a South Carolina coporation, formerly known as Sea Pines Plantation Company, Plantation, debtors (hereinafter "the Trustee") and SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation (hereinafter "Sea Pines"),

W I T N E S S E T H:

That for and in consideration of the mutual promises of the parties and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree to be bound, each to the other, as follows:

1. The Trustee agrees to diligently undertake such action as is required to gain Court approval for the following transfers of rights and property and upon gaining such approval to promptly execute all documents necessary to effect same:

A. Conveyance by the Trustee to Sea Pines of all that certain parcel of real estate situate at the intersection of Pope Avenue and Highway 278, Hilton Head Island, South Carolina commonly known as the Sea Pines Circle.

B. Assignment by the Trustee to Sea Pines of the names "The Hilton Head Company, Inc.", "Hilton Head Company, Inc." "The Hilton Head Company" and "Hilton Head Company" and all use and other rights appertaining thereto.

C. Assignment by the Trustee to Sea Pines of all rights held, owned, possessed, controlled or exercisable by the Trustee, as successor in interest to Sea Pines Company, Sea Pines Plantation, Sea Pines Company, Inc., and Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company, all debtors in various bankruptcy actions filed under Chapter 11 of the United States Bankruptcy Code, and their subsidiaries, predecessors in interest (including Lighthouse Beach Company, Sea Pines Land Company, Inc., the Hilton Head Company, the Hilton Head Land Company, the Sea Pines Plantation Company, Inc., Charles E. Fraser, J. B. Fraser, J. B. Fraser, Jr., Olin S. Fraser, G. B. Boroughs, F. F. Rambo and Mrs. Pearl C. Fraser) and affiliated companies, including all rights as grantor, company or declarant under various recorded and unrecorded deeds and land use covenants and declarations thereof, including all rights of repurchase and all architectural review rights, rights to approve commercial land uses, building design, land use plans, utility systems, signage, and plot plans, for Sea Pines Plantation and those other areas of Hilton Head Island, South Carolina more particularly designated on that Plat attached to

Exhibit A

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this Agreement as Exhibit "A", including property bordering Cordillo Parkway known as the First Baptist Church property, the Fraser Presbyterian Conference Center property and the commercial land in Palm Forest Subdivision, and certain other property including the Hilton Head Inn Property and the Forest Beach tennis courts area. It is specifically agreed that the declarant rights held by the Trustee as successor to the Hilton Head Company, Inc. pertaining to areas outside of the boundaries of Sea Pines Plantation and those declarant rights/duties under the 1967 and 1974 Sea Pines Covenants being conveyed to Community Services Associates, Inc. are not hereby assigned to Sea Pines.

D. Execution of a full and complete release of Sea Pines from any and all claims, actions, causes of actions, demands or liability with respect to any transaction, act or matter occurring prior to the date of execution of this Settlement Agreement including a full and complete release from any liability for commissions due or allegedly due for the sale of properties at Ocean Point, 12 Black Tern, and the Ginn House and from the following accounts payable, which the trustee agrees to pay in full:

(1) Telephone directory advertising for the real estate companies - $5000.00

(2) Kennickel Printing Company - $3800.00

(3) Internal Revenue Service lien - $197.00

2. At such time as the Trustee produces a court order authorizing it to take the above-specified actions and tenders to Sea Pines such documents as are reasonably required to effect same, Sea Pines will contemporaneously thereof tender to the Trustee certified funds in the sum of Fifteen Thousand ($15,000.00) Dollars cash. In the event the Trustee after using reasonable diligence is unable to obtain court approval, then Sea Pines shall have no obligation to make payment of the Fifteen Thousand Dollars ($15,000.00) referred to above and this Agreement shall be null and void.

3. It is the intention of the Trustee and Sea Pines that the settlement described herein shall be a full, final and complete settlement among the parties of claims that one may have against the other, and shall be in enlargement of and in addition to that settlement reached between the parties as outlined in that certain letter from the former trustee, John F. Curry, to Francis Webster, Jr. dated March 15, 1988, a copy of which is attached to this Agreement as Exhibit "B". For purposes of this release, Sea Pines shall include Sea Pines Associates, Inc., a South Carolina corporation, Sea Pines Real Estate Companies, Inc., a South Carolina corporation, HHC Realty Company, Inc. and all related, subsidiary or affiliated companies, and all officers and directors thereof.

Executed by and among the parties on the day and date specified above.

HILTON HEAD LIQUIDATION CORP., A SOUTH CAROLINA CORPORATION

By: _____
R. Geoffery Levy

SEA PINES PLANTATION COMPANY, INC.

APPROVED AS TO FORM CPC

_____
David N. Axene

PINE:SP.1:11-16-88:css

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Exhibit B

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DEC 14 1988
G. CAUTHEN, CLERK
United States Bankruptcy Court
Columbia, South Carolina

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

GARDNER MATTHEWS PLANTATION COMPANY	86-03801
HILTON HEAD HOTEL COMPANY	86-03803
VACATION RESORTS HOLDINGS, INC.	86-03804
VACATION RESORTS, INC.	86-03805
HILTON HEAD HOLDINGS CORPORATION	86-03871
DEBTORS.	

JUDGMENT

This proceeding having come on for trial or hearing before the court, Honorable WM. THURMOND BISHOP, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

It is Ordered and Adjudged that the Settlement Agreement for Final Settlement of Issues Outstanding Between Sea Pines Plantation Company, Inc. and the Trustee is hereby approved and the Trustee is directed to consummate said Agreement according to the terms thereof.

George B. Cauthen
Clerk of Court
United States Bankruptcy Court

Dated: December 14, 1988

By: Kiss Mayl

at Columbia, South Carolina

[Seal of the U.S. Bankruptcy Court]

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

FILED

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

1988 DEC 13 PM 12:57
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	
GARDNER-MATTHEWS PLANTATION COMPANY	86-03801
HILTON HEAD HOTEL COMPANY	86-03803
VACATION RESORTS HOLDING, INC.,	86-03804
VACATION RESORTS, INC.,	86-03805
HILTON HEAD HOLDINGS CORPORATION	86-03871
Debtors.	(Chapter 11)
	ORDER APPROVING SETTLEMENT

This matter comes before me for approval of a Settlement Agreement entered into by and between Sea Pines Plantation Company, Inc. and R. Geoffrey Levy as Trustee in bankruptcy. It appears that Notice of the Trustee's Motion for Approval of the Settlement Agreement was served on all parties in interest on November 17, 1988 and was published in The Island Packet on November 20, 1988 as appear from the Certificate of Service and Certificate of Publication filed herein. More than 15 days have elapsed and no objections have been served or filed to said proposed Settlement as appears by the Affidavit of No Objections filed by the Trustee.

This Court has examined the Settlement Agreement, the original of which is attached hereto as Exhibit A and incorporated herein by reference, and finds the same to be fair and reasonable and in the best interest of the estate. It is,

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

therefore,

ORDERED, ADJUDGED, AND DECREED that the Settlement Agreement annexed hereto as Exhibit A is hereby approved and the Trustee is directed to consummate said Agreement according to the terms thereof.

SO ORDERED this 13 day of December, 1988, at Columbia, South Carolina.

William Thurmond Bishop, Judge

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Jul 15 4:35 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSIGNMENT OF RIGHTS

FOR TEN AND NO/100 ($10.00) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, R. GEOFFREY LEVY, Trustee in Bankruptcy for Hilton Head Liquidation Corp., a South Carolina corporation (hereinafter "Trustee") does hereby convey, assign and release unto SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation, (hereinafter "Sea Pines") the following rights and interests:

All rights held, owned, possessed, controlled or exerciseable by the Trustee, as successor in interest to and on behalf of the Sea Pines Plantation Company, Sea Pines Company, Sea Pines Company, Inc. and Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company, all of which are debtors in various bankruptcy actions filed under Chapter 11 of the United States Bankruptcy Code, and their subsidiaries, predecessors in interest (including Lighthouse Beach Company, Sea Pines Land Company, Inc., the Hilton Head Company, the Hilton Head Land Company, the Sea Pines Plantation Company, Inc., Charles E. Fraser, J. B. Fraser, J. B. Fraser, Jr., Olin S. Fraser, G. B. Boroughs, F. F. Rambo and Mrs. Pearl C. Fraser) and affiliated Companies, including all rights as grantor, company or declarant under various recorded and unrecorded deeds and land use covenants and declarations thereof, including all rights of repurchase and all rights of review and approval of architectural plans, utility systems, signage and plot plans (hereinafter "Declarant Rights"), for all of Sea Pines Plantation and for those other areas of Hilton Head Island, South Carolina more particularly designated on that Plat attached hereto as Exhibit "A" and incorporated herein by reference, including all of the property bordering Greenwood Drive and Pope Avenue not heretofore conveyed to third parties by the Trustee and the property bordering Cordillo Parkway known as the First Baptist Church property, the Fraser Presbyterian Conference Center property (Christian Conference Center property) and the commercial land in Palm Forest Subdivision, and certain other property including the Hilton Head Inn property and Forest Beach Tennis Courts area.

It is the intent of the parties that the Trustee convey hereby to Sea Pines all Declarant Rights for Sea Pines Plantation except for those under the 1967 and 1974 Sea Pines Covenants which have heretofore been conveyed to Community Services Associates, Inc., by document dated in December, 1988.

Executed this 12 day of January, 1989.

TRUSTEE

By: _____
R. Geoffrey Levy

_____
Marie Snyder

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

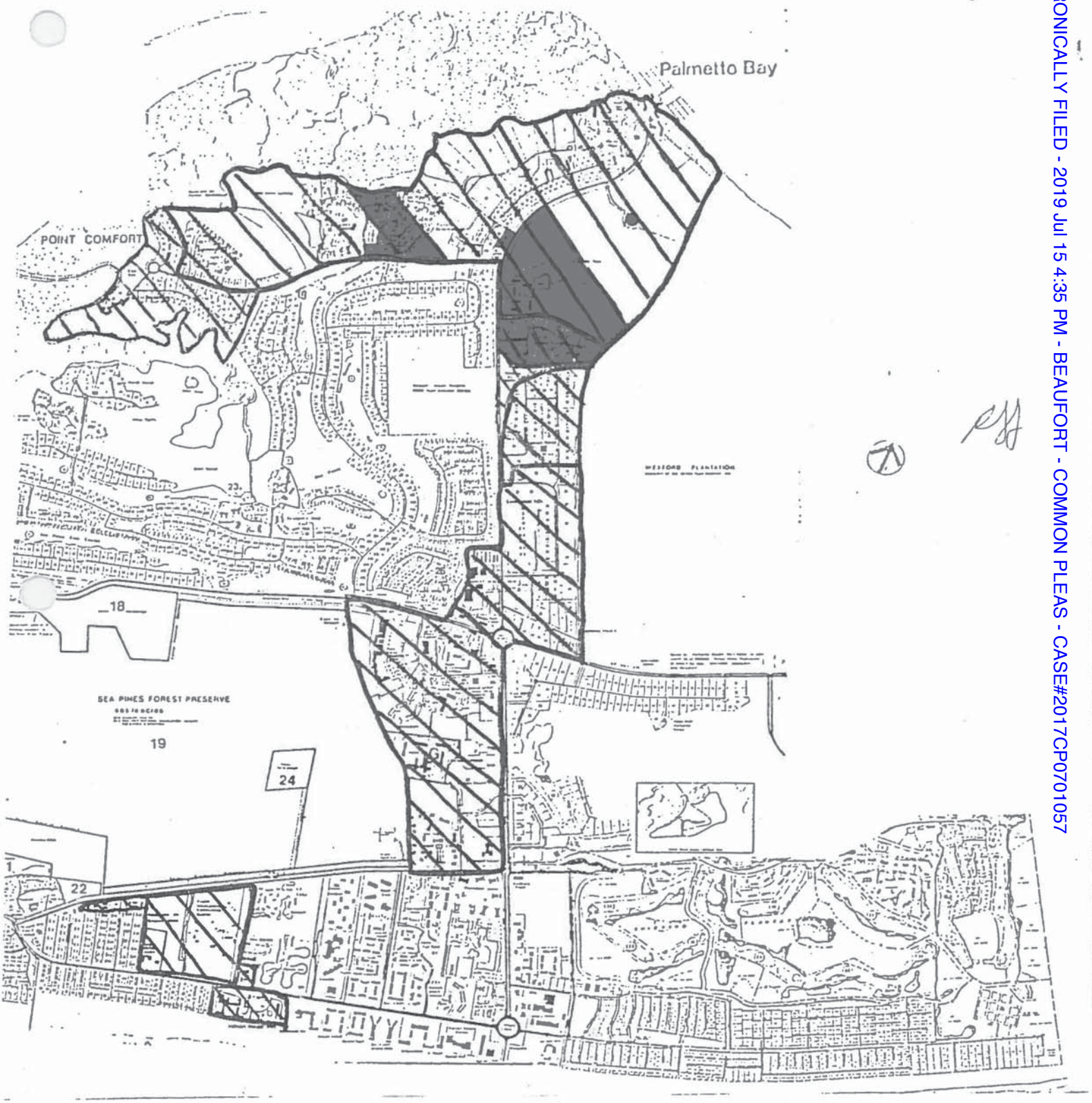
SWORN to before me this 12th
day of January 1989.

Notary Public for South Carolina
My Commission Expires: 8-10-94

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Exhibit A to Assignment of Declarant Rights



Indicates areas where Declarant Rights are being conveyed by Trustee to Sea Pines

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HILTON HEAD HOLDINGS
CORPORATION

March 15, 1988

Mr. Francis Webster
Sea Pines Associates, Inc.
P.O. Box 7000
Hilton Head Island, SC 29938

SUBJECTS: Sea Pines Post Closing Adjustments

Dear Francis:

As I understand from Marc Puntereri and Joel Piassick, as the result of their meeting with you and Dan Womble, the attached Post Closing Adjustment sheet as compiled by Bob Milhous of Arthur Young represents all outstanding amounts that were to have been adjusted after the closing of the Sea Pines Associates purchase of assets, except for the various utility prorations which Bob Milhous of Arthur Young and Allen Rice of Sea Pines Plantation Company, Inc. are currently reviewing. Accordingly, as indicated in the attached accounting, we request that you submit a check in the amount of ~~$93,126~~ to Hilton Head Holdings representing the full amount due, ~~including the $50,000 escrow held by Wes Jones for the so-called "Gemstone" lawsuit~~. Once we have received the accounting from Bob Milhous on the utility prorations, we shall invoice you.

This accounting represents all of the claims the Estate has against Sea Pines Associates and all of your claims against the Estate pertaining to the Closing. Our signatures on this letter and the Post Closing Adjustment Statement attached will acknowledge this fact and mutually release both parties from further claims related to the closing of the Asset Purchase Agreement, short of any discovery of new information.

Thank you for your consideration.

Sincerely,

John F. Curry
Trustee

By: _____
John F. Curry, Trustee

By: _____
Francis S. Webster, Treasurer
Sea Pines Associates, Inc.

JFC/rjs
cc: Dan Womble
Joel Piassick, Esq.
Marc Puntereri
Bob Milhous

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POST CLOSING ADJUSTMENT STATEMENT
SEA PINES ASSET SALE

SELLER: John F. Curry, Trustee in Bankruptcy for Hilton Head Holdings Corporation

PURCHASER: Sea Pines Plantation Company

DATE: March 11, 1988

1.	Leases as per Note A of Closing Statement	$32,673	
	Less: HSH Food Service Prepetition payment SPA agrees to pay on behalf of the Estate	(496)	$ 32,177
2.	Inventory @ November 13, 1987	$440,423	
	Cash in Banks	9,451	
	Less: Closing Statement Amount	(450,000)	
			$ (126)
3.	Personal Property Adjustment --Closing Statement approximated '87 Taxes @	31,661	
	--Actual per C. Atwood's analysis and workpaper = $30,180 X 317/365	26,211	
	Total Prorated Amount		5,450
4.	Closing Statement Item #21 "Funds for SCN Equipment Notes" included two SCN Notes (truck and equipment) and a lease of HSH Food Services. The lease payoff amount of = $8,450 should not have been included as payoff. SPA has assumed said lease per Exhibit 1.1(h) of contract.		8,450

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5. In addition, proration of Nov. monthly payments for the two notes and lease were not included in Item #13 of closing statement:

SCN note pd.	$ 404
SCN note pd.	563
HSH pd.	496
	$1,464
	X 13/30

634

6. Closing Statement Item #21:

$11,186 estimated
11,192 actual (6)

(Per Webster's and Womble's notes)

7. Closing Statement Note F: Refunds due from Vendors (per Michele List as of 11/13/87) = $18,544
actual collectable 15,669

8. Closing Statement Note I:
Tenant rental payments and net adjustments
(As per M. J. O'Neill's schedule 2/12/88)

--Camp Hilton Head	(See Note A)
--Southeast Club Mgmt.	(102)
--Signe's World	(2,500)
--ATH Associates	(703)
--University of Hilton Head	(See Note A)
--HBT Bike Rental	(See Note A)
Total	(3,305)

9. Personal Property Taxes:

ASPPO Personal Property
(Landscape Maintenance portion which was part of total Sea Pines property taxes prorated at closing)
($342,594.41 X .105 X .1849 X 48/365) (875)

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10. Real Estate Taxes:

Sea Pines Tract G (10 Acres) Hilton Head
Prep portion was part of total
Sea Pines Property Taxes Prorated at
Closing:
($11,271.52 - 365 X 48 X 10/33.9) (437)

11. Payroll for Port Royal and Shipyard Security and Landscape Maintenance Employees:

John Ehlers
(11/14/87 - 2/14/88)
($9,122.96 X 1.1) (with G&A expenses
incurred by SPA) (10,035)

12. Moving Expenses:

Larry Swingle (1,000)*

Barry Molik (1,010)

*Estimate based on Molik expense and no further adjustments will be made.

13. Accounting/Payables Time: (12,500)
See Note B

14. Closing Statement Item #9

Home & Villa
Customer Deposits overstated:

Estimated	123,750	
Actual (494 X $250) =	(123,500)	250

15. Utility Bills Proration (to be determined and billed separately)

~~16. Return of "Gemstone" Case Escrow~~ ~~50,000~~

Total owed to Seller from Purchaser ~~$83,426~~

#33,336

NOTES:

(A) Purchaser will continue to attempt to collect balances due under certain tenant lease agreements from Camp Hilton Head, University of Hilton Head and HBT Bike Rental. Purchaser has agreed to refund to

the Seller rents collected applied to the period prior to the Sea Pines Closing of November 13, 1987.

(B) Purchaser agrees that the "accounting/payables time" amount is all inclusive of work performed to date and future filing of various tax reports resulting from the Seller's 1987 activities pursuant to the Asset Purchase Agreement and discussions between John Curry and Francis Webster.

APPROVED:

By: _____
John F. Curry, Trustee

By: _____
Francis S. Webster, Treasurer
Sea Pines Associates, Inc.

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JSP-607

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9628

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ASSIGNMENT OF RIGHTS

FOR TEN AND NO/100 ($10.00) DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, R. GEOFFREY LEVY, Trustee in Bankruptcy for Hilton Head Liquidation Corp., a South Carolina corporation (hereinafter "Trustee") does hereby convey, assign and release unto SEA PINES PLANTATION COMPANY, INC., a South Carolina corporation, (hereinafter "Sea Pines") the following rights and interests:

All rights held, owned, possessed, controlled or exerciseable by the Trustee, as successor in interest to and on behalf of the Sea Pines Plantation Company, Sea Pines Company, Sea Pines Company, Inc. and Hilton Head Liquidation Corp. f/k/a Sea Pines Plantation Company, all of which are debtors in various bankruptcy actions filed under Chapter 11 of the United States Bankruptcy Code, and their subsidiaries, predecessors in interest (including Lighthouse Beach Company, Sea Pines Land Company, Inc., the Hilton Head Company, the Hilton Head Land Company, the Sea Pines Plantation Company, Inc., Charles E. Fraser, J. B. Fraser, J. B. Fraser, Jr., Olin S. Fraser, G. B. Boroughs, F. F. Rambo and Mrs. Pearl C. Fraser) and affiliated Companies, including all rights as grantor, company or declarant under various recorded and unrecorded deeds and land use covenants and declarations thereof, including all rights of repurchase and all rights of review and approval of architectural plans, utility systems, signage and plot plans (hereinafter "Declarant Rights"), for all of Sea Pines Plantation and for those other areas of Hilton Head Island, South Carolina more particularly designated on that Plat attached hereto as Exhibit "A" and incorporated herein by reference, including all of the property bordering Greenwood Drive and Pope Avenue not heretofore conveyed to third parties by the Trustee and the property bordering Cordillo Parkway known as the First Baptist Church property, the Fraser Presbyterian Conference Center property (Christian Conference Center property) and the commercial land in Palm Forest Subdivision, and certain other property including the Hilton Head Inn property and Forest Beach Tennis Courts area.

It is the intent of the parties that the Trustee convey hereby to Sea Pines all Declarant Rights for Sea Pines Plantation except for those under the 1967 and 1974 Sea Pines Covenants which have heretofore been conveyed to Community Services Associates, Inc., by document dated in December, 1988.

Executed this 12 day of January, 1989.

TRUSTEE

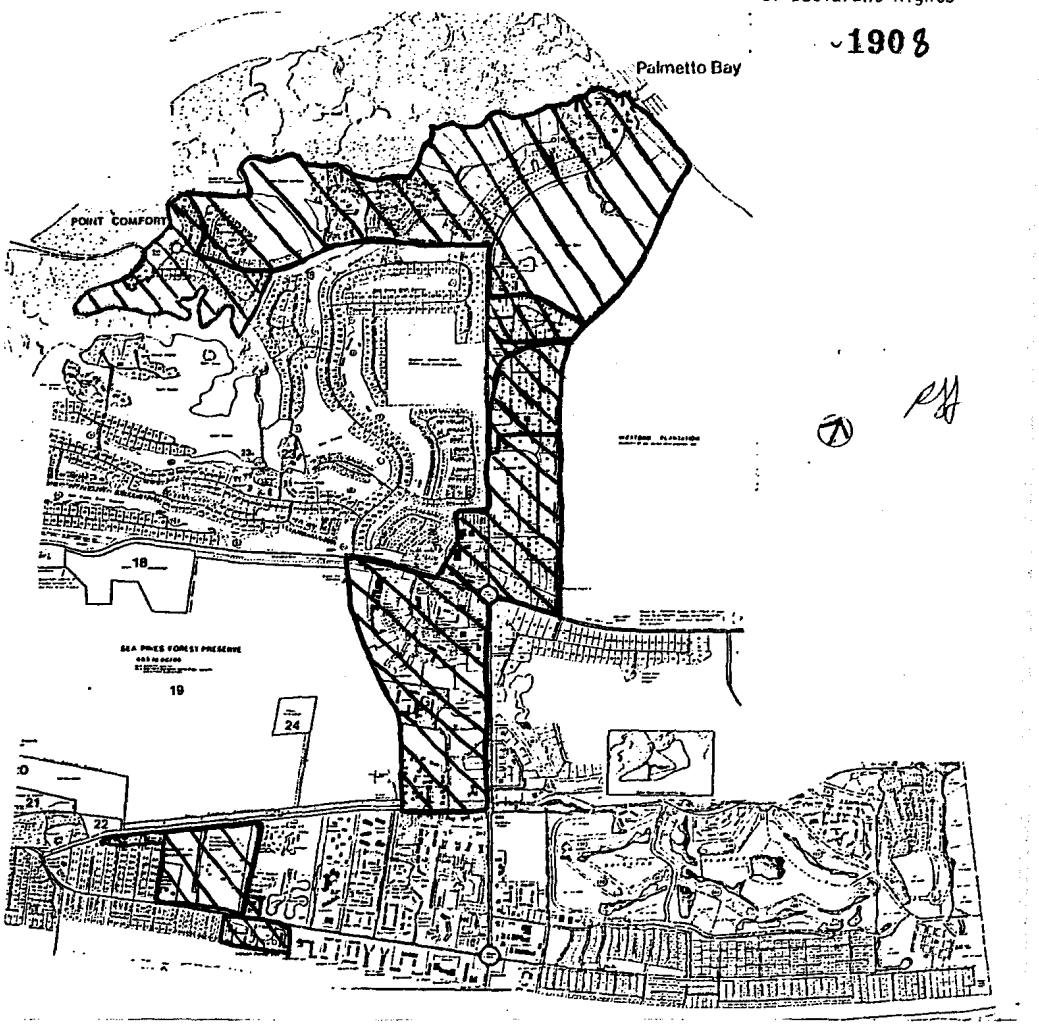
By: R. Geoffrey Levy

-1-

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Exhibit A to Assignment
of Declarant Rights

-1908



Indicates areas where Declarant Rights are being conveyed by Trustee to Sea Pines

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1909

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

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

SWORN to before me this 12th day of January 1989.

Notary Public for South Carolina
My Commission Expires: 8-10-97

Q S+P

FILED AT 11:07 | BEAUFORT COUNTY S. C. | RECORDED IN BOOK 520 PAGE 1907
JAN 17 1989
Floyd S. Dalton
REGISTER OF MESNE CONVEYANCE

Return: R. Rhodes Shrum-7049 HHF LC 29938

12 pgs
1B
JPSN

Exhibit D

BEAUFORT COUNTY SC- ROD
BK 02539 PGS 1193-1204
DATE: 03/20/2007 08:36:08 AM
INST # 2007021741 RCPT# 477937

#1

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DEED
BILL OF SALE AND
ASSIGNMENT OF RIGHTS

This Deed, Bill of Sale, and Assignment of Rights ("Agreement") is made this 14th day of March, 2007, by Sea Pines Company, Inc. f/k/a Sea Pines Plantation Company, Inc. ("Sea Pines'), a South Carolina corporation; Sea Pines Forest Preserve Conservation Association, Inc., a Delaware corporation ("SPFCA"); Tide Pointe, Inc., a South Carolina corporation ("TP"); Sea Pines/Tide Pointe, Inc., a South Carolina corporation ("SPTP"); Sea Pines Real Estate Company, Inc., a South Carolina corporation ("SPRCO"); Lighthouse Realty, Inc., a South Carolina corporation ("LRI"); RG Subsidiary Corporation, a South Carolina corporation ("RG"); The Fifth Golf Course Club, Inc. (FGCC"), a Delaware corporation; and Sea Pines Associates, Inc. ("SPA"), a South Carolina Corporation, collectively as Grantor, and Sea Pines Resort, LLC, a Virginia limited liability company, P.O. Drawer 7000, Hilton Head Island, South Carolina, 29938 as Grantee.

WHEREAS, that on or about November 24, 1986 Sea Pines Plantation Company filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code, Case No. 86-03807. On November 24, 1986, United States District Court Judge, Sol Blatt, Jr., withdrew the reference of this case to the United States Bankruptcy Court and the case was retained and reserved in the United States District Court pursuant to 28 U.S.C. Sections 157 and 1334; and

WHEREAS, by Order of the District Court entered November 26, 1986, John F. Curry was appointed Interim Trustee for the above-named Debtor and by Order entered December 23, 1986, was appointed Trustee pursuant to 11 U.S.C. Section 1104, authorized to manage the affairs and operate the businesses of this Debtor, among others, pursuant to 11 U.S.C. Section 1108; and

WHEREAS, after proper notice and a hearing, the United States Bankruptcy Court for the District of South Carolina entered an Order approving the conveyance of various assets of the Debtor; and

WHEREAS, John F. Curry, as Trustee, did execute and record various deeds, easements, assignments, and other conveyances to Sea Pines, including but expressly not limited to those certain assets and rights listed and described in the documents set forth on Exhibit A ("Bankruptcy Assets"); and

WHEREAS, in addition, Sea Pines, SPFCA, TP, SPTP, SPRCO, LRI, RG, FGCC, and SPA have from time to time acquired other assets, including real and personal properties, intangibles, declarant rights and other assets. These rights and assets include but expressly are not limited to those described on Exhibit B attached hereto. The Bankruptcy Assets and all other assets and rights described herein and on Exhibits A and B of any kind are hereinafter referred to collectively as "Property";

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WHEREAS, on or about January 15, 1992, Sea Pines Plantation Company, Inc. changed its name to Sea Pines Company, Inc.;

WHEREAS, on or about March 17, 2005, RG was merged into SPA;

WHEREAS, on or about March 14, 2006, Sea Pines, SPFCA, TP, SPTP, SPRCO, LRI, and FGCC were merged into SPA;

WHEREAS, on or about March 15, 2006, SPA was dissolved and all of its remaining Property and rights of any nature and kind were transferred or were intended to be transferred to the Grantee;

WHEREAS, as part of its duties and obligations of winding up its affairs under Section 33-31-1406 of the South Carolina Code of Laws (1976), as well as under applicable Delaware law (SPFCA and FGCC) , Sea Pines, SPFCA, TP, SPTP, SPRCO, LRI, RG, FGCC, and SPA wish to execute this Agreement in order to properly confirm and document the conveyance and transfer of all Property of any nature or kind to the Grantee, effective March 15, 2006.

NOW, THEREFORE, Sea Pines, SPFCA, TP, SPTP, SPRCO, LRI, RG, FGCC, and SPA, for and in consideration of the sum of Ten and No/100 ($10.00) Dollars and no other valuable consideration, to it in hand paid by Sea Pines Resort, LLC, P.O. Drawer 7000, Hilton Head Island, SC 29938, the receipt whereof is hereby acknowledged, has granted, bargained, released, assigned, conveyed, transferred, and forever quit-claimed, and by these presents, does grant, bargain, release, assign, convey, transfer, and forever quit-claim unto the said Grantee, its successors and assigns, the Property, as well as all real and personal, tangible and intangible, and all rights of any nature and kind said Grantor may be possessed of or have any rights in and to, or in the future may be possessed of or have rights to.

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

[LEFT INTENTIONALLY BLANK]

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

Witness its hand and seal this 14th day of March, 2007.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

Marion Logan

Marion Logan

GRANTOR:

SEA PINES COMPANY, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

SEA PINES ASSOCIATES, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: Chief Executive Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Sea Pines Company, Inc. and Sea Pines Associates, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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SEA PINES FOREST PRESERVE
CONSERVATION ASSOCIATION, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Sea Pines Forest Preserve Conservation Association, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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TIDE POINTE, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Tide Pointe, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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SEA PINES/TIDE POINTE, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Sea Pines/Tide Pointe, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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SEA PINES REAL ESTATE
COMPANY, INC.

By: Michael E. Lawrence
Michael E. Lawarence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Sea Pines Real Estate Company, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

LIGHTHOUSE REALTY, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of Lighthouse Realty, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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RG SUBSIDIARY CORPORATION

By: Beverley W. Armstrong
Beverley W. Armstrong
Its: Vice-President

STATE OF VIRGINIA)
City)
~~COUNTY~~ OF Richmond)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for the State of Virginia, do hereby certify that Beverley W. Armstrong, the duly authorized representative of RG Subsidiary Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Notary Public for: Virginia
My Commission Expires: August 15, 2007

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THE FIFTH GOLF COURSE CLUB, INC.

By: Michael E. Lawrence
Michael E. Lawrence
Its: President

Marion Logan

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Michael E. Lawrence, the duly authorized representative of The Fifth Golf Course Club, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND AND SEAL this the 14th day of March, 2007.

Marion Logan
Notary Public for: South Carolina
My Commission Expires: 3-12-2014

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EXHIBIT A

Partial Listing of Bankruptcy Conveyance Documents

	Date	Document	Beaufort County Register of Deeds Recording Information
1.	4/17/87	Bill of Sale	N/A
2.	4/17/87	Assignment of Proprietary Rights	N/A
3.	4/17/87	Assumption Agreement	410/522
4.	4/17/87	Deed	490/415
5.	4/17/87	Deed	490/502
6.	4/17/87	Deed	490/542
7.	4/17/87	Deed	490/599
8.	4/17/87	Deed	490/603
9.	4/17/87	Easement	490/606
10.	11/17/87	Deed	490/613
11.	11/17/87	Assignment of Rights	490/663
12.	11/17/87	Assignment of Rights	490/712
13.	11/17/87	Easement	490/755
14.	11/17/87	Easement	490/760
15.	11/17/87	Easement	490/766
16.	11/17/87	Easement	490/771
17.	11/17/87	Easement	490/784
18.	11/17/87	Easement	490/789
19.	11/17/87	Assignment	490/848
20.	1/12/89	Assignment	520/1907
21.	1/12/89	Assignment	520/1910
22.	1/12/89	Deed	520/1912

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EXHIBIT B

1) **Parcel 1 – Artist Area –** All that certain piece, parcel or tract of land containing 2.49 acres , shown and designated as "Artist Area" on a plat entitled " A Plat of 2.49 Acres ARTIST AREA, a Portion of Harbour Town" dated October 8, 1974, and recorded at the Beaufort County Register of Deeds at Plat Book 29 a t Page 226.

TMS # 550-17-000-1122

Derivation: DB 490 P 415

2) **Parcel 2** - All properties, both real and personal, tangible and intangible, now owned by or to which the within Grantor has claim to or may have in the future including, but not limited to, all land, easements, appurtenances, density units, family dwelling units, reserved rights under covenants and restrictions of record, declarant rights of any nature or kind, repurchase rights, reversion rights, logos, names, licenses, trademarks, service marks, trade names, copyrights, files, drawings, documents, mineral rights, plats, surveys, corporate records, unassigned sewer and water capacity or rights to payments therefore, tax refunds, accounts receivable, notes receivable, bank deposits, bank accounts including all escrow accounts, letters of credit, deposits with private or public entities, stocks, bonds and other securities, furniture, fixtures and equipment and other property whatsoever, and specifically including any and all properties and rights of any merged, dissolved, or terminated corporations, partnerships or entities which the within Grantor may be a survivor of or successor in interest wheresoever located anywhere in the world , within or without the legal boundaries of Beaufort County, South Carolina.

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

1. INTRODUCTION

This case involves the validity of a right of first refusal to purchase commercial property in Sea Pines Plantation ("Sea Pines") on Hilton Head Island purportedly held by Defendant Sea Pines Resort, LLC ("SPR"). The enforceability of this right of first refusal presents an extremely important issue for not only the parties in this litigation but also for all commercial property owners in Sea Pines.

The Harbour Town Surf Shop ("Surf Shop") is a retail business operating in the Harbour Town area of Sea Pines. It is owned by two local businessman, Amir Bitton and Alon Mintz (through their ownership of Plaintiff Harbour Town Surf Shop, LLC), who also own and manage the neighboring Harbour Town General Store. For many years, the Surf Shop leased its retail space but when presented with an opportunity to acquire the property in early-2017, Bitton and Mintz, through Plaintiff Bittmint, LLC, contracted to purchase the Surf Shop property from its owners, Defendants Lynda Johnson and Charles Giannone. Bitton and Mintz intended and agreed that Bittmint, LLC would lease the Surf Shop property to Harbour Town Surf Shop, LLC after the purchase.

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

The transaction never happened. It was thwarted by SPR, which intervened and acquired the property pursuant to its exercise of a claimed right of first refusal to match any purchase offer on the property.

The undisputed facts show that SPR's interference with Bittmint, LLC's contract to purchase the Surf Shop property is unlawful.

First, SPR does not have a valid and enforceable right of first refusal because:

- SPR does not hold and/or never acquired a valid right of first refusal;
- The right of first refusal violates the rule against perpetuities rendering it void ab initio; and
- SPR is estopped from or otherwise precluded by South Carolina Code §15-3-380 from exercising the right of first refusal.

Second, even if SPR is determined to have a valid right of first refusal, its use of said right is unenforceable in this instance because:

- SPR failed to exercise the right of first refusal in a timely manner;
- SPR exercised the right of first refusal in a wrongful manner.

Therefore, premised on the invalidity of the right of first refusal, Bittmint, LLC is entitled to summary judgment as a matter of law on its causes of action for breach of contract against Lynda Johnson and Charles Giannone and for intentional interference with a contractual relationship against SPR. Likewise, Harbour Town Surf Shop, LLC is entitled to summary judgment as a matter of law on its causes of action for interference with prospective contractual relations against SPR and for breach of contract (as a Third-Party Beneficiary) against Lynda Johnson and Charles Giannone.

2. STATEMENT OF FACTS

A. The Parties and the Subject Property

Plaintiff Harbour Town Surf Shop, LLC ("HTSS") has owned and operated the Surf Shop, a retail store located in the Harbour Town section of Sea Pines Plantation, since 2010. (Bitton Aff., ¶3.) From 2010 to early-2015, the Surf Shop occupied a commercial unit known as Shop 6

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of the Mariner's Way Horizontal Property Regime that HTSS leased from the property's then owner, Lorraine Giannone. (Bitton Aff., ¶4.) In February 2015, the Surf Shop expanded into the adjacent commercial unit, Shop 8 of the Mariner's Way Horizontal Property Regime, the wall between the two units was removed and HTTS entered into a new lease with Lorraine Giannone covering both Shop 6 and Shop 8 (collectively referred to as the "Surf Shop Property"). (Bitton Aff., ¶4.)

In 2016, Plaintiff Bittmint LLC ("Bittmint") acquired the neighboring Harbour Town General Store ("General Store") located in commercial unit known as Shop 5 of the Mariner's Way Horizontal Property Regime (the "General Store Property").[1] (Bitton Aff., ¶6.) Bittmint has leased the General Store Property to HTSS, which manages the General Store, since the 2016 acquisition. (Bitton Aff., ¶6.)

B. Preliminary Negotiations and the Letter of Intent

Plaintiffs' principals, Amir Bitton and Alon Mintz, have long desired to own the Surf Shop Property and, over several years, they engaged in frequent discussions and preliminary negotiations with Lorraine Giannone and her daughter, Lynda Johnson, about acquiring the property. (Bitton Aff., ¶7.)

Lorraine Giannone passed away in the summer of 2016 and ownership of the Surf Shop Property passed to her children, Lynda Johnson and Charles Giannone (collectively the "Sellers"). At this point, Bitton and Mintz, who now owned the neighboring General Store Property, continued their consistent dialogue with Lynda Johnson about the possibility of purchasing the Surf Shop Property. (Bitton Aff., ¶8.) Meanwhile, SPR's executives engaged in similar discussions with Lynda Johnson about purchasing the Surf Shop Property. (Bender Dep. 17:13-18:1; 18:18-23; 21:22-23:15; Ex. 32-33; Birdwell Dep. 25:8-27:21; 30:3-14, Ex. 3).[2]

On January 31, 2017, Bittmint submitted a written letter of intent to the Sellers offering to purchase the Surf Shop Property for $580,000. (Bitton Aff., ¶10 and Ex A.) Lynda Johnson

[1] Bittmint was formed in 2014 for the primary purpose of acquiring and managing commercial real estate. Amir Bitton and Alon Mintz are the only members of both HTSS and Bittmint. (Bitton Aff., ¶¶3 and 5.)

[2] Exhibits association with deposition testimony are referenced numerically and exhibits submitted by affidavit are referenced alphabetically in this Memorandum. All cited deposition testimony and related exhibits are attached to the Affidavit of Ed Kubec.

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

communicated this offer to SPR the same day. (Bender Dep. 35:8-22; 38:4-18; Exs. 32-33.) The next day, February 1, 2017, Rob Bender, SPR's Director of Recreation and Marine Operations, sent an e-mail to Steve Birdwell, President of SPR and Cliff McMakin, Director of Resort Development for SPR, stating:

> Lynda Johnson called me yesterday to tell me that the tenant of the Surf Shop was dropping off an offer for the space and she was going to give to her attorney to move forward on the sale. She said the offer was going to be $580,000 … I told her that we are continuing to evaluate our interest. I suggest the three of us touch base on this soon. (Bender Dep. 38: 4-13; Ex. 34; Birdwell Dep., 32:14-34:25; 36:21-23; Ex. 4.)

Even though the offer was communicated to SPR as early as January 31, 2017, no one from SPR ever contacted Plaintiffs seeking any further information about this offer. (Bender Dep., 44:1-46:12; Birdwell Dep., 63:22-64:4.)

C. The Contract

On March 17, 2017, Bittmint entered into a written contract of sale to purchase the Surf Shop Property from the Sellers for $580,000 (the "Contract"). (Bitton Aff., ¶11 and Ex. B.) Meanwhile, Bitton and Mintz agreed that once Bittmint acquired the Surf Shop Property it would lease it to HTTS for at least five years and HTTS would pay rent to Bittmint in an amount sufficient to cover Bittmint's carrying costs (mortgage, assessments and taxes) plus an additional $500 per month. Bitton and Mintz further agreed that Plaintiffs would evaluate the lease terms for the Surf Shop Property every five years thereafter. (Bitton Aff., ¶12 and Ex. C.)

Because Sellers did nothing to progress the transaction to closing other than have their closing attorney order a title update for Shop 6, Plaintiffs' attorney, Mike Mogil, as an accommodation to the Sellers, submitted a Request for Waiver and/or Assessments to SPR on April 14, 2017. This is a standard form generated by SPR used in real property transactions in Sea Pines. (Mogil Dep., 54:18-55:16; 59:20-62:13.)

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

D. SPR'S Intervention and Exercise of the Right of First Refusal

As part of its strategic development plans for Sea Pines, SPR's management is ever vigilant of pursuing potential opportunities to expand its commercial holdings in the area. (Birdwell Dep., 28:22-29:10; 82:19-85:11). The Surf Shop Property was one such opportunity, as evidenced by a memo authored by SPR management on April 20, 2017 concerning the property, which states in part:

> With the master planning efforts underway for the Harbour Town area, management believes owning additional retail space in Harbour Town works strategically with the vision of improving and expanding the guest experience all the while growing the profitability of Harbour Town. Additionally, management believes that the space is listed at an attractive price.

(Birdwell Dep., Ex. 6.)

This memo was submitted by SPR's executive management to Matt Goodwin, Chairman of SPR and a principal of the Riverstone Group, LLC, the parent company of SPR, seeking his approval of the deal. (Birdwell Dep., 47-15:48:2.) The memo concluded with a "recommendation to exercise our right to purchase the property at the contract price of $580,000." (Birdwell Dep., 48:14-24, Ex. 7.) Goodwin immediately responded: "Let's buy it … It would be helpful to look at a financial model showing the returns in the meantime *before we possibly redevelop or want to use the space for ourselves*…" (Birdwell Dep., 50:17-52:25; 53:2-21, Ex. 8) (emphasis added.) Soon after, SPR's executives were proclaiming that the property "is certainly a good buy at this price" and were informing the chairmen of Sea Pines' two primary property owners' associations that SPR was exercising its right of first refusal for a "strategic purpose." (Birdwell Dep., 64:5-25; 71:21-79:6; 86:20-25, Exs. 14 and 19.)

On or about May 2, 2017, SPR, though its attorney, informed the Sellers and Bittmint's attorney that SPR was exercising its right of first refusal to purchase the Surf Shop Property from the Sellers at the same $580,000 price the Sellers contracted to sell it to Bittmint. (Bitton Aff., ¶13; Birdwell Dep., 77:15-19, Ex.18.)

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

E. Plaintiffs' Response to SPR's Actions

Bittmint immediately challenged the validity of SPR's right of first refusal and SPR's exercise of the right on the Surf Shop Property and demanded that the Sellers honor the Contract. (Bitton Aff., ¶14 and Ex. D.) The demand was ignored causing Bittmint to file a Lis Pendens on the property on May 10, 2017. (Bitton Aff., ¶14 and Ex. E.)

Meanwhile, due to the uncertainty caused by SPR's interference with the Contract, HTTS made a written offer to the Sellers on May 10, 2017 seeking to extend HTSS' lease for Surf Shop Property for two additional five-year option periods. (Bitton Aff., ¶15 and Ex. F.) If accepted, HTSS would have controlled an option to occupy the Surf Shop Property through 2035. The Sellers rejected the offer after SPR, even though it did not yet own the Surf Shop Property, refused to allow the Sellers to extend the lease. (Bitton Aff., ¶15.)

On or about May 11, 2017 or May 12, 2017, SPR purchased the Surf Shop Property from the Sellers for $580,000. (Kubec Aff., ¶¶ 3-4 and Exs. L and M.) HTTS has leased the Surf Shop Property from SPR ever since. (Bitton Aff., ¶18.)

The Complaint for this action was filed on May 26, 2017.

F. The 1973 Commercial Covenants and the Right of First Refusal

In 1973, the Lighthouse Beach Company, a South Carolina limited partnership, published and recorded a Declaration of Rights, Restrictions, Affirmative Obligations and Covenants affecting commercial use properties in Sea Pines. The Declaration is self-described as the "Commercial Use Covenants dated January 25, 1973" and it was recorded on February 15, 1973 ("73 Covenants"). (Coffey Aff., Ex I.)

The 73 Covenants expressly provide that its restrictions and covenants were intended to safeguard against the environmental impact of commercial development in Sea Pines. Specifically, the 73 Covenants state, in part:

> WHEREAS, LIGHTHOUSE BEACH COMPANY desires to make, publish and record a declaration of restrictive covenants affecting certain properties designated for commercial use and desires to have said restrictive covenants filed in the Office of the Clerk of Court for Beaufort County, South Carolina, reserving the right in

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

each instance to add additional restrictive covenants in respect to said properties, and

WHEREAS, LIGHTHOUSE BEACH COMPANY recognizes that said properties are situate in an environmentally sensitive area and that any development of said property is a matter of concern to both the developing party and the Community-at-large, and

WHEREAS, LIGHTHOUSE BEACH COMPANY desires to insure that all properties now, or hereafter, owned by it are developed pursuant to an orderly plan which contemplates among other things the environmental impact on the Community-at-large of any proposed developmental scheme for such properties.

(Coffey Aff., Ex I at pp. 1-2.)

There is nothing in 73 Covenants that either mandates or suggests that the covenants were intended to benefit the commercial interests of a single or predominate commercial landowner or operator in Sea Pines.

Section 19 of the 73 Covenants sets forth the right of first refusal (or preemptive right) that SPR relied on to acquire the Surf Shop Property. (Birdwell Dep., Ex. 21.)

> In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation, or the consolidation or merger of another corporation into it,

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

(Coffey Aff., Ex. I at p.11.) SPR readily acknowledges that the right of first refusal is an important right to the company and its management. (Birdwell Dep., 79:7-81:19; 130:16-131:25.)

G. Assignment of the Right of First Refusal and Sea Pines Bankruptcy

The right of first refusal in the 73 Covenants was assigned to the Sea Pines Plantation Company by an Assignment of Option to Repurchase dated April 14, 1977 (the "1977 Assignment") (Coffey Aff., Ex. J.) The Assignment provides that "[i]t was intended by the parties that all rights to waive and benefit accruing from said option to repurchase in Lighthouse Beach Company should inure to Sea Pines Plantation Company." (Coffey Aff., Ex. J at p. 1.)

The 1977 Assignment's specific language of conveyance is:

> The Prospect Company[3], as liquidating partner of Lighthouse Beach Company, hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company, a South Carolina corporation doing business on Hilton Head Island in Beaufort County, South Carolina, all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation on Hilton Head Island in Beaufort County, South Carolina, which was owned, possessed and seized unto Lighthouse Beach Company and the Said Prospect Company, as liquidating partner of Lighthouse Beach Company.

(Coffey Aff., Ex. J at p. 2.) Notably absent from this conveyance language is any granting language to Sea Pines Plantation Company's successors, assigns or transferees.

In 1986, Sea Pines Plantation Company, the assignee of the right of first refusal, filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of South Carolina

[3] The Lighthouse Beach Company, LP was dissolved per an agreement dated December 12, 1975 and the plan of dissolution provided for the Prospect Company, a general partner, to act as liquidating partner. (Coffey Aff., Ex. J at p. 1.)

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

(Coffey Aff., Ex. K at p. 1).[4] (Sea Pines Plantation Company's bankruptcy case was consolidated with numerous others and all of which are collectively referred hereafter as the "Sea Pines Bankruptcy".) On or about November 17, 1987, the Sea Pines Bankruptcy judge, the Honorable Sol Blatt, Jr., issued an Order Confirming the Second Amended Joint Plan of Reorganization (the "Plan Order") (Coffey Aff., Ex K at pp 6-19.) The Plan Order held, among other things, that:

- Confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors except such further reorganization and liquidation as is contemplated by the Plan. *There is no successor to the Debtors under the Plan*. (Coffey Aff., Ex. K at p. 10, ¶13.) (emphasis added.)
- As of the Effective Date all property of the Debtors sold pursuant to the Sales Procedures shall be free and clear of all claims and interests of creditors and equity security holders with any valid existing claims or interests being transferred to the proceeds thereof, except for the obligations that are imposed or continued in the Plan or this Order and all other properties of the Debtors will be sold or transferred free and clear of all liens, claims and encumbrances in accordance with the Plan or abandoned consistent with the provisions of Section 554 of the Bankruptcy Code. (Coffey Aff., Ex. K at p. 13.)
- That the assumption by the Trustee of each contract or unexpired lease on the "List of Assumed Executory Contracts and Unexpired Leases (hereinafter the "List")" filed with this Court on October 9, 1987, and the rejection of all other executory contracts and unexpired leases is hereby approved: provided, however, that any of such contracts or leases contained in the List which are not sold or assigned by the Trustee as a part of an Asset Group pursuant to Article XIV of the Plan can be rejected by the Trustee on or before November 15, 1987 by filing a Notice of Rejection thereof with the Court and serving said notice on the other party to the executory contract. Claims arising from the rejection of such executory contracts or unexpired leases shall be filed on or before December 15, 1987 and served on

[4] During the bankruptcy, Sea Pines Plantation Company amended its Articles of Incorporation to change its name to Hilton Head Liquidation Corp. so the buyer of the Sea Pines Assets could use the name Sea Pines Plantation Company, Inc. (Coffey Aff., Ex.K at pp. 2-3; 30-35.)

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

counsel for the Proponents or shall be forever barred and discharged. (Coffey Aff., Ex. K at p. 17.)

On October 22, 1987, the bankruptcy trustee, John F. Curry, entered into an Asset Purchase Agreement pursuant to which the debtors (including Sea Pines Plantation Company) were to sell the"Sea Pines Assets" to a third-party. (Coffey Aff., Ex. K at p.2.) On October 26, 1987, Judge Blatt, Jr. signed an Order Authorizing Sale of the Debtors' Sea Pines Assets, in an adversary proceeding within the Sea Pines Bankruptcy (the "1987 Sale Order"). (Coffey Aff., Ex. K at p. 36.) The 1987 Sale Order authorized the bankruptcy trustee to sell Sea Pines Assets free and clear of all liens, encumbrances and claims and further defined and itemized those certain liens, encumbrances and other interests that the "Sea Pines Assets" would be sold free and clear of. (Coffey Aff., Ex. K at pp. 37-45.) Neither the 73 Covenants nor the 1977 Assignment is referenced in the 1987 Sale Order.

On or about November 17, 1987, Sea Pines Plantation (a/k/a Hilton Head Liquidation Corp.) executed both a Limited Warranty Deed (Coffey Aff., Ex. K.) and an Assignment of Contract and Leases (Kubec Aff., Ex. P) granting and transferring its interests in the "Sea Pines Assets" to a third-party purchaser, the newly formed Sea Pines Plantation Company, Inc. Neither the 73 Covenants nor the 1977 Assignment is referenced in the Limited Warranty Deed or the Assignment of Contract and Leases.

Also, on November 19, 1987, Sea Pines Plantation Company (a/k/a Hilton Head Liquidation Corp.) executed an Assignment of Rights to Sea Pines Plantation Company, Inc. The Assignment purports to assign certain rights of Sea Pines Plantation Company, including all of its "right of repurchase". Again, neither the 1973 Covenants nor the 1977 Assignment is referenced in the Assignment. (Birdwell Aff., Ex. A.)

3. LEGAL ARGUMENT

A. Standard for Summary Judgment

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings,

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E. 802 (2009). "Summary judgment is proper whe[n] plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). "If triable issues exist, those issues must go to the jury." *Id*.

B. Plaintiffs' Motion for Summary Judgment

Plaintiffs seek summary judgment as to the (1) First Cause of Action for Breach of Contract, (2) Second Cause of Action for Interference with a Contractual Relationship, (3) Third Cause of Action for Violation of the Common Law Rule Against Perpetuities, (4) Sixth Cause of Action for Breach of Contact (as to a Third-Party Beneficiary) and (5) Seventh Cause of Action for Violation of the Statute of Repose.[5]

The threshold issue in this case is a determination of the validity or enforceability of SPR's right of first refusal. Plaintiffs challenge its validity on alternative grounds. Plaintiffs first contend that SPR never acquired the right of first refusal through an effective assignment or transfer of rights. However, in the event a valid transfer or assignment to SPR is found to exist, Plaintiffs additionally contend that the right of first refusal is no longer operative due to two legal theories – the common law rule against perpetuities and the 40-year limitations period per S.C. Code §15-3-380. Finally, the Plaintiffs contend that to the extent SPR held a valid right of first refusal, it did not exercise the right of first refusal on a timely basis in this instance.

Once the invalid or unenforceable nature of the right of first refusal is established, Plaintiffs' claims for breach of contract, intentional interference with contractual relations and

[5] Plaintiffs did not seek summary judgment of their (1) Fourth Cause of Action for Invalid Assignment of Rights, (2) Fifth Cause of Action to Set Aside Deed and (3) Eighth Cause of Action for Intentional Interference with Prospective Contractual Relations. However, since Defendants seek summary judgment of these claims, Plaintiffs address the factual and legal basis for these claims in this Memorandum in response to Defendants' Motion for Summary Judgment.

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

intentional interference with prospective contractual relations arising out of the purchase contract follow suit.[6]

i. SPR Never Acquired the Right of First Approval

The genesis of the right of first refusal is traced back to the 73 Covenants. The declarant, Lighthouse Beach Company, is long defunct. In its wake is a tortuous path of property right transfers passing through a maze of bankruptcies, corporate reorganizations, shell companies and other defunct entities. When all was said and done, the right of first refusal never reached SPR's hands due to (1) an improper assignment and (2) death by way of bankruptcy.

a. The Right of First Refusal Was No Longer Assignable

The Lighthouse Beach Company (through its liquidating partner, the Prospect Company) assigned the right of first refusal in the 1973 Covenants to the Sea Pines Plantation Company pursuant to the 1977 Assignment. The explicit language of the 1977 Assignment converted the right of first refusal to a personal right of the assignor, Sea Pines Plantation Company, and rendered the right of first refusal non-assignable in the future.

The prevailing rule in the United States is that rights of first refusal are personal and therefore unassignable unless the instrument granting the right of first refusal states the contrary. *Malone v. Flattery*, 797 N.W.2d 624 (Iowa Ct. App. 2011 ("rights of first refusal are presumed to be personal and are not ordinarily construed as transferable or assignable unless the particular clause granting the right refers to successors or assigns or the instrument otherwise clearly shows that the right was intended to be transferable or assignable."); *Park Station v. Bosse*, 835 A.2d. 646, 655, 378 Md. 122, 137 (Md. 2003).

The clear intent of the parties to the 1977 Assignment was to assign the right of first refusal exclusively unto Sea Pines Plantation Company and not also to its successors, assigns or

[6] Plaintiffs recognize that their Third Cause of Action for Violation of the Common Law Rule Against Perpetuities, Fourth Cause of Action for Invalid Assignment of Rights and the Seventh Cause of Action for Violation of the Statute of Repose may not be actionable claims under South Carolina law. Although not pled as claims for declaratory relief, in essence, Plaintiffs seek a declaratory determination invalidating the right of first refusal based on each of these three distinct legal theories. Plaintiffs request that the Court consider these allegations as claims for declaratory relief pursuant to Rule 8(f), SCRCP. ("Pleadings are to be liberally construed to do substantial justice to all parties.") See *S.C. Nat'l Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct.App.1986)("It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial.")

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

transferees. This intent is evidenced by (a) the stated intention ("[i]t was intended by the parties that all rights … should inure to Sea Pines Plantation Company") and (b) the grant ("hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company … all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation …"). The granting language of "successors, assigns or transferees" is intentionally excluded and there simply was no contemplation that the right of first refusal restriction should carry on to anyone other than the Sea Pines Plantation Company. *See Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("[T]he maxim 'Expressio unius est exclusio alterius' is defined as: "When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred." (quoting *Little v. Town of Conway*, 171 S.C. 27, 31, 171 S.E. 447, 448 (1933)); *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C. 113, 119, 463 S.E.2d 600, 604 (1995) (the enumeration of particular things excludes something else not mentioned). The exclusivity to Sea Pines Plantation Company is further evidenced by the fact that right of first refusal is the only right emanating from the 73 Covenants this was included in the 1977 Assignment.

Inasmuch as the right of first refusal was personal in nature to Sea Pines Plantation Company, it could not have been assigned to anyone else, including SPR. Thus, the right of first refusal expired along with the extinguishment of its owner, the Sea Pines Plantation Company, in a subsequent bankruptcy (discussed below) pre-dating the corporate existence of SPR.

b. <u>The Right of First Refusal Did Not Survive Bankruptcy</u>

Even assuming the right of first refusal could be assigned, it nevertheless did not survive the Sea Pines Bankruptcy.

Section 365 of the Bankruptcy Code states in part that a trustee may, subject to the court's approval may "assume or reject" any executory contract of the debtor. 11 U.S.C. §365(a). The 1977 Assignment is an executory contract[7] that was rejected under Bankruptcy Code §365. The

[7] Most federal courts, including those in the 4th Circuit, follow the well-known Countryman definition of an executory contract as one where "the obligations of both the bankrupt entity and the other party to the contract are so far unperformed that the failure of either party to complete performance would constitute a material breach excusing the performance of the other." See Countryman, Executory Contracts in Bankruptcy: Part 1, 57 Minn. Law Rev 439, 460 (1973). *In re Garrison-Ashburn, L.C.*, 253 B.R. 700, 708 (Bankr. E.D. Va. 2000). The majority of courts have held

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

1977 Assignment cannot be deemed to have been assumed and sold as a part of the Sea Pines Assets sale in the Sea Pines Bankruptcy given that there is no reference to the 1977 Assignment in the bankruptcy court's 1987 Sale Order approving the sale or the Warranty Deed or the Assignment of Contract and Leases or the Assignment in 1987 purporting the transfer all of the debtors' "right of repurchase". The party buying the Sea Pines Assets in the bankruptcy case had actual notice of what was and what was not being transferred. Any covenants, which are encumbrances, if not specifically reserved, assumed and assigned are then rejected. Neither the 1973 Covenants nor the 1977 Assignment were listed as assumed and assigned in the 1987 Sale Order and are therefore both deemed rejected. In fact, the right of first refusal could never have been assumed and assigned for the reasons mentioned above.

Moreover, Sea Pines Plantation Company ceased to exist after the Sea Pines Bankruptcy (as noted in the Plan Order finding "there is no successor to the Debtors under the Plan") and it could not have transferred any rights post-mortem. Accordingly, the right of first refusal contained in the 1977 Assignment was executory in nature, was not assumed and assigned, is deemed rejected and therefore did not survive the Sea Pines Bankruptcy sale of Sea Pines Assets in 1987. See *In re Ichiban, Inc*., No. 06-10316-RGM (Bankr. E.D. Va., Jun. 30, 2014) (a right of first refusal in the company's operating agreement was an executory contract that was rejected by the trustee's failure to assume it); Kubec Aff., Ex. Q at ¶4.)

Section 363 of the US Bankruptcy Code permits the trustee to sell debtor's property "free and clear" of any interest in such property of an entity other than the estate. 11 U.S.C. §363(f). The sale of Sea Pines Assets in the Sea Pines Bankruptcy was designated a §363 free and clear sale per the bankruptcy court Plan Order and 1987 Sales Order. Restrictive covenants on property sold by a bankruptcy trustee are "encumbrances" for purposes of a bankruptcy court order approving sale of property free and clear of encumbrances. *Marathon Finance Co. v. HHC Liquidation Corp.*, 325 S.C. 589, 607, 483 S.E.2d 757, 766 (S.C.App.1997). One such encumbrance to the Sea Pines Assets is the right of first refusal assigned to Sea Pines Plantation Company per the 1977 Assignment. See *In re Daufuskie Island Properties, LLC*, 431 B.R. 626,

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that rights of first refusals are executory contracts subject to rejection under Bankruptcy Code §365. See *In re CB Holding Corp*., 448 B.R. 684 (Bankr. D. Del. 2011) and cases cited therein.

643 (Bankr. D.S.C. 2010) (repurchase right is a type of interest subject to discharge pursuant to 11 U.S.C.§363(f)). The bankruptcy court did not carve out an exception to the free and clear release for the right of first refusal when the Sea Pines Assets were sold. Thus, the right of first refusal died in the bankruptcy.

The undisputed evidence shows that SPR never acquired a valid right of first refusal due to the lack of its assignability and its expiration in the Sea Pines Bankruptcy. As a result, SPR could not have lawfully interfered with the Contract to sell the Surf Shop Property to Bittmint.

ii. SPR's Right of First Refusal is Void Because it Violates the Applicable Rule Against Perpetuities

a. The Common Law and the Webb Case Are Controlling Law

The common law rule against perpetuities is that "[n]o interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest." *Abrams v. Templeton*, 320 S.C. 325, 327, 465 S.E.2d 117, 119 (Ct.App.1995). The seminal case in South Carolina applying the rule against perpetuities to a right of first refusal is *Webb v. Reames*, 326 S.C. 444, 485 S.E.2d 384 (Ct.App.1997), in which the Court of Appeals held that a right of first refusal was a perpetual option that violated the rule against perpetuities.

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

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

Webb, 326 S.C. at 446.

In reversing the trial court holding that the right did not violate the rule against perpetuities, the Court of Appeals held:

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> We agree with Webb's contention challenging the validity of the right of first refusal. This pre-emptive right is a contingent, nonvested interest in that the grantee or the grantee's heirs might never choose to sell the property. It is an interest not conditioned on an event certain to occur. See R. Cunningham, W. Stoebuck, D. Whitman, *The Law of Property* § 3.18, at 132 (2d ed. 1993) ("A pre-emptive right merely requires the owner, when and if he decides to sell, to offer the property first to the holder of the pre-emptive right so that he may . . . buy at a price set out in the pre-emption agreement."). The right represented an attempt by the grantor Blease to reserve to himself, his heirs, and assigns a perpetual option to purchase the property described at the price of $64. Because the right or interest was one that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter, the interest violates the rule against perpetuities and is therefore void. *Atchison v. Englewood*, 463 P.2d 297 (Colo. 1969); Henderson v. Bell, 173 P. 1124 (Kan. 1918); *Ferrero Constr. Co. v. Dennis Rourke Corp.*, 536 A.2d 1137 (Md. 1988); *Pace v. Culpepper*, 347 So.2d 1313 (Miss. 1977); 61 Am.Jur.2d *Perpetuities and Restraints on Alienation* § 65, at 75 (1981); see Cunningham et al., supra, at 132-33 n. 23 (listing cases holding a pre-emptive right subject to the rule against perpetuities); *Love v. Love*, 208 S.C. 363, 374, 38 S.E.2d 231, 236 (1946) ("It is not enough that a contingent event may happen, or even that it will probably happen, within the limits of the Rule against Perpetuities; if it can possibly happen beyond those limits, an interest conditioned on it is too remote."); see also S.C. Code Ann. § 27-6-60 (B) (1991) (savings clause provision of the Uniform Statutory Rule Against Perpetuities)."

Webb, 326 S.C. at 446-47.

In this instance, the right of first refusal was declared by the Lighthouse Beach Company, (SPR's alleged predecessor-in-interest to such right) in 1973, forty-four years before SPR attempted to exercise the right to acquire the Surf Shop Property. Similar to the right holder in *Webb*, SPR sought to reserve in itself a perpetual option to purchase the Surf Shop Property. As in *Webb*, because SPR's "right or interest was one that might not vest either within a life in being

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

at the time of the creation of the interest or until later than 21 years thereafter, the interest violates the rule against perpetuities and is therefore void." *Webb*, 326 S.C. at 446.

Webb remains the controlling law in South Carolina and its holding follows the majority view. See, e.g., *New Bar P'ship v. Martin*, 729 S.E.2d 675 (N.C. Ct. App. 2012); *Lake of the Woods Assoc. v. McHugh*, 238 Va. 1 (Va. 1989). But see, *Old Port v. Old Port*, 986 So. 2d 1279, 1280 (Fla. 2008).

b. The Statutory Rule Is Inapplicable

Defendants contend that the common law rule is inapplicable and the Statutory Rule Against Perpetuities ("SRAP") set forth in S.C. Code §27-6-10, et seq. should be applied. Defendants' reliance on SRAP is misplaced.

S.C. Code §27-6-20 (A) provides that a nonvested property interest is invalid unless (1) when the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or (2) the interest either vests or terminates within ninety years after its creation.

However, SRAP at S.C. Code §27-6-50 (1) expressly states that SRAP does not apply to nondonative transactions like the one at issue. S. C. Code §27-6-50 (1) (Section 27-6-20 does not apply to "a nonvested property interest … arising out of a nondonative transfer" except for certain exceptions that are inapplicable to this commercial transaction.) See *Buck v. Banks*, 668 N.E.2d 1259, 1260-61 (Ind. Ct. App. 1996) (the Uniform Statutory Rule Against Perpetuities does not apply to a pre-emptive right to purchase real property which is a nonvested property interest arising out of a nondonative transfer); *New Bar P'ship v. Martin*, supra, 729 S.E.2d at 683.

SPR's right of first refusal is void ab initio under prevailing precedent in South Carolina law. Accordingly, SPR had absolutely no right to interfere with Bittmint's contractual right to purchase the Surf Shop Property from the Sellers.

iii. SPR's Assertion of an Interest in the Subject Property Through the Right of First Refusal is Barred by the Forty Year Statute in South Carolina Code Section 15-3-380

South Carolina Code §15-3-380 provides:

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

The Forty-Year Statute is a statute of repose, meaning that any right not invoked by the right holder within the applicable forty-year period is eliminated. See *Sutton v. Clark*, 59 S.C. 440, 452, 38 S.E. 150 (1901) (holding that former S. C. Code §109, the predecessor to §15-3-380, is a statute of repose); *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993) (statutes of limitations and statutes of repose are conceptually different; the running of a statute of limitations bars a remedy; the running of a statute of repose extinguishes both the right and the remedy) (citing *Goad v. Celotex Corp.*, 831 F.2d 508, 511 (4th Cir. 1987), cert. denied, 487 U.S. 1218, 108 S.Ct. 2871, 101 L.Ed.2d 906 (1988).

Under the plain language of S.C. Code §15-3-380, a failure to invoke a right to enforce an "interest" in the Surf Shop Property or to "recover" the Surf Shop Property for a period of more than forty years after the right holder's actual possession of the property operates as an absolute bar to the right holder's claim. Here, neither SPR nor its predecessors possessed the Surf Shop Property for more than 40 years[8] prior to SPR's invoking its rights for the first time in 2017 by either exercising the right of first refusal or by defending its rights in this action starting in 2017.

SPR first sought to invoke and enforce its right of first refusal in the Surf Shop Property over 40 years after anyone in its lineage possessed the property. Because SPR failed to invoke enforcement or assert its right of first refusal in Surf Shop Property for a period of more than 40 years, the possession thereof by the Sellers is "deemed valid against the world after the lapse of such a period," and SPR's claimed interest by virtue of the right of first refusal is barred.

[8] Lighthouse Beach Company, LP transferred title to the Sea Pines Plantation Company on September 24, 1973. (Kubec Aff., ¶5, Ex. N.) Sea Pines Plantation Company transferred title to Citizens & Southern Realty Investors on March 11, 1976. (Kubec Aff., ¶6, Ex. O.) Citizens & Southern Realty Investors was not affiliated with Sea Pines Plantation Company or Lighthouse Beach Company, LP in any manner whatsoever. (Birdwell Dep., 122:1-16; 123:25-124:19.)

Therefore, SPR had no right to interfere with Bittmint's contractual right to purchase the Surf Shop Property from the Sellers.

iv. SPR's Attempted Exercise of the Right of First Refusal Was Untimely and Invalid

The undisputed evidence shows that SPR knew about Bittmint's offer to purchase the Surf Shop Property for $580,000 by January 31, 2017 but SPR did not inform Sellers or Bittmint about its exercise of the right until May 2, 2019. The exercise was untimely since it was not made within the thirty days required by the right of first refusal.

SPR may contend that its receipt of the Contract or the Waiver Request, and not the January 31, 2017 offer, triggers the thirty-day exercise period. However, the 73 Covenants are, at best, ambiguous as to the triggering event and should be construed against SPR.

The first clause of the right of first refusal provides:

> In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price . . . .

(Coffey Aff., Ex I, ¶19.)

The second clause provides:

> . . . and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company.

(Coffey Aff., Ex. I, ¶19.)

A contract is ambiguous when the terms of the contract are inconsistent on their face or are reasonably susceptible of more than one interpretation. *Hawkins v. Greenwood Development*

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Corp., 328 S.C. 585, 592, 493 S.E. 2d 875, 878 (Ct. App. 1997). The language in the two clauses of ¶ 19 is inconsistent. The first clause requires the property to be "offered for sale" to SPR and SPR has thirty days to exercise its option. There is no requirement that the offer be made in writing. The second clause permits the seller to sell if SPR fails to exercise its option within thirty days after receipt of a written "notice" of price and terms.

Any restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property. *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). Any ambiguity should be construed against the drafter of the language (See *Duncan v. Little*, 384 S.C. 420, 425, 682 S.E.2d 788, 790 (2009)) and in favor of transferability of the property. As such, the 1973 Covenants should be construed to require SPR to exercise the right of first refusal within thirty days of the Sellers' communication of the offer.

Here, the Sellers informed SPR about Bittmint's offer - identifying the property, price and buyer - on January 31, 2017, some ninety days before SPR exercised the right of first refusal. These terms were sufficient to form a contract to purchase real property[9] and SPR should have tendered its exercise of the right of first refusal within thirty days of its receipt of the offer. See *Paccar Inc. v. Elliot Wilson Capitol Trucks LLC*, 923 F. Supp. 2d 745, 757 (D. Md. 2013) (once the holder of the right of first refusal receives sufficient notice of the terms so as to allow it to make a considered choice, the burden shifts to the right holder to make reasonable efforts to clarify any confusion regarding uncertain terms within a reasonable time); *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 785 (Minn.2004) (finding that right of first refusal holder had sufficient notice of essential terms of real property sale based on receipt of an unsigned purchase agreement and by failing to inquire further concerning sales terms and to exercise the right in a reasonable time had forfeited the right of first refusal); *Roeland v. Trucano*, 214 P.3d 343, 349 (Alaska 2009) (a three page Memorandum of Understanding which—was only a "framework for entering binding arrangements in the future," and which included no definite price—was sufficient to trigger the duty to investigate by the right of first refusal holder); *Van Dam v. Spickler*, 968 A.2d 1040, 1043 (Me.2009) (an oral statement of the price for the sale of land is sufficient notice to require the holder of the right to make further inquiries).

[9] A contact for the purchase of real property requires the amount of the purchase, the name of the vendor and vendee and the location and identity of the property to be sold. *Speed v. Speed*, 213 S.C. 401, 409, 49 S.E.2d 588 (1948).

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

As of January 31, 2017, SPR clearly had the essential information it needed to decide whether to exercise. Yet, it made no further inquiry about the transaction and sat on its assent for three months before invoking the right of first refusal. This delay is contrary to the 73 Covenants and the law. Thus, SPR's exercise of the right of first refusal was untimely made thereby rendering it unenforceable.

v. The Waiver Request Made by Bittmint's Attorney is Irrelevant

As part of the purchase transaction, Bittmint's attorney submitted a Request for Waiver and/or Assessments to SPR. SPR contends that this action by Bittmint's attorney somehow validates the right of first refusal.

The Request for Waiver is a red herring that is completely irrelevant to this case. First, Bittmint's owners did not authorize or even know about the Request for Waiver at the time it was made by the closing attorney.[10] Second, if the right of first refusal was never acquired by SPR or is void ab initio per the Rule Against Perpetuities or was barred by S.C. Code §15-3-380 or was untimely exercised by SPR for the reasons set forth above, the act of seeking a Request for Waiver does not breathe life into a non-existent or dead right.

vi. Bittmint is Entitled to Summary Judgment on the First Cause of Action for Breach of Contract

The Sellers readily admit they were under contract to sell the Surf Shop Property to Bittmint but "subject to [SPR's] right of first refusal." Answer to Second Amended Complaint, ¶19. Given that SPR is precluded from lawfully invoking such right, as discussed above, the Sellers were obligated to sell the Surf Shop Property to Bittmint. The Sellers' refusal and failure to abide by the Contract is a breach giving rise to damages.

Bittmint has incurred damages from lost rental income of $15,000 to date (and accruing at a rate of $500 per month) (Bitton Aff., ¶19(a)), approximate renovation and kitchen equipment costs

[10] Moreover, the standard Request for Waiver and/or Assessments form prepared by SPR, which was used in this case, provides: "The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser (s) referenced above." This language renders the form thoroughly non-sensical in that it is impossible for the putative ***purchaser***, in this case Bittmint, to offer the subject property to sale to the right of first refusal holder.

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of $65,000 (Bitton Aff.., ¶19(b)) and potential loss on the appreciation of fair market value of the Surf Shop Property.

In addition to monetary damages, the Plaintiffs are further entitled to the equitable remedy of rescission, and they seek an order from the Court rescinding the purchase transaction and setting aside the deed conveying the Surf Shop Property to SPR.

vii. HTSS is Entitled to Summary Judgment on the Sixth Cause of Action as a Third-Party Beneficiary of the Contract

"Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third-party is not, as such, recoverable by the plaintiff." *Fabian v. Lindsay*, 410 S.C. 475, 483, 765 S.E.2d 132, 139 (2014). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." *Id.*

Here, the undisputed evidence demonstrates that the Sellers and Bittmint intended to create a direct benefit to HTTS. First and foremost, the Contract specifically states that the "Property is sold subject to existing lease(s) with Harbourtown Surf Shop, LLC." (Bitton Aff., Ex. B.) Secondly, it is undisputed that Sellers were fully aware of the Plaintiffs' intent to continue HTTS as the tenant pursuant to a lease with Bittmint after Bittmint acquired the property.

At the time the Contract was made, HTTS' lease with the Sellers for the Surf Shop Property had over twenty-eight months remaining on its term and HTTS possessed an option to renew the term for an additional five years. After SPR acquired the Surf Shop Property, the same lease remained in place but HTTS paid rent to SPR in excess of the rent that HTTS would have paid to Bittmint. As a result, HTSS has been damaged in the amount of $47,768. (Bitton Aff., ¶20(a).)

viii. Bittmint is Entitled to Summary Judgment on its Second Cause of Action for Intentional Interference with Contract

To establish a claim for intentional interference with a contractual relationship, Bittmint must prove: (1) a contract, (2) defendants' knowledge of the contract, (3) defendants' intentional

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

procurement of its breach, (4) the absence of justification by defendants and (5) damage resulting from the breach. *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993).

The first two elements, the existence of the Contract and SPR's knowledge of such, are unchallenged. The third element of intentional procurement of breach is conclusively established by SPR's mere exercise of the right of first refusal, an act by SPR clearly intended to cause the Sellers to sell the property to SPR rather than to Bittmint. As for the fourth element, lack of justification, it is clear that SPR had no justification to interfere with the Contract in the absence of a valid or enforceable right of first refusal

The damages recoverable for intentional interference are not measured by contract rules. The injured party can recover from the tortfeasor (a) the pecuniary loss of the benefits of the contract, (b) consequential losses for which the interference is the legal cause and (c) emotional distress or actual harm to reputation if they are reasonably to be expected to result from the interference. Thus, the actual damages under the contract claim and tort claim will be coextensive only with respect to the lost benefits of the contract which were a direct and natural consequence of the breach, or within the contemplation of the contracting parties. *Collins Music Co., Inc. v. Smith*, 332 S.C. 145, 147-48, 503 S.E.2d 481 (Ct. App. 1998).

As discussed above, Bittmint's damages include lost benefits of the Contract and consequential losses of at least $80,000.

ix. SPR Intentionally Interfered with HTSS' Prospective Contractual Relations with Bittmint

To recover on a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove that (1) the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods and (3) that the interference caused injury to the plaintiff. *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990). If a defendant acts for more than one purpose, his improper purpose must predominate in order to create liability. *Id*. As an alternative to establishing an improper purpose, the plaintiff may prove that the defendant's method of interference was improper under the circumstances. *Id*. While it is not necessary that the interfering party intend

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

harm, it is necessary that he intend to interfere with a prospective contract. *Eldeco, Inc. v. Charleston Cnty. Sch. Dist*., 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

Interference with prospective contractual relations is essentially interference with the formation of a future or expected but yet unrealized contract, as distinguished from interference with the performance of a contract that already exists. In this case, the uncontroverted evidence shows that Bittmint, upon its acquisition of the Surf Shop Property, intended to lease the property to HTSS for at least five years for an amount significantly less than HTSS continues to pay SPR. However, the intended lease transaction was thwarted by SPR's invalid and wrongful exercise of the right of first refusal.

It is undisputed that SPR intended to interfere with the Contract by exercising the right of first refusal.

Plaintiffs' have also proffered substantial evidence showing that SPR's use of the right was improper inasmuch as SPR sought to strong-arm Sea Pines commercial property owners (the Sellers) into selling their property to SPR, in lieu of a third-party, to simply further SPR's own economic and commercial interests within Sea Pines.

The utilization of the right of first refusal by SPR to foster the expansion of its commercial interests in Sea Pines, to the possible detriment of commercial property owners, was done clearly in contravention of and in utter disregard of the intended purpose of the 73 Covenants. The 73 Covenants expressly provide that its restrictions and covenants were intended to be used as a protective shield to safeguard against the environmental impact of commercial development in Sea Pines. Instead, SPR transforms the right of first refusal into a sword, yet another component in its weapons arsenal to achieve its stated goal of expanding its commercial interests in Sea Pines. The right of first refusal was never intended to be used by the predominate Sea Pines commercial landowner in an exploitive manner against other existing or potential Sea Pines property owners because it was "a good buy at this price" or to further a "strategic purpose" to "redevelop or "use the space for ourselves." As such, the evidence shows that SPR's use of the right of first refusal was improper. See *Johns v. Amtrust Underwriters, Inc.*, 996 F. Supp. 2d 413, 421 (D.S.C. 2014) (the improper purpose or methods prong may be satisfied where a plaintiff can demonstrate undue influence, duress, intimidation, or where the defendant "knows that the interference is certain or substantially certain to occur as a result of [the defendant's] action.")

ELECTRONICALLY FILED - 2019 Nov 20 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

As a result of SPR's interference with the prospective lease between HTSS and Bittmint, HTSS was compelled to pay rent to SPR (which assumed an existing lease between HTSS and the Sellers) rather than a much-reduced lease rate contemplated by HTSS and Bittmint. Moreover, HTSS was denied all other rights of ownership which can be used to its financial advantage. As a result, HTTS has incurred damages of at least $47,768 due to SPR's interference with the prospective lease between HTTS and Bittmint. (Bitton Aff., ¶20(a).)

4. CONCLUSION

Based on the aforementioned factual and legal reasons, Plaintiffs request that the Court declare the right of first refusal unenforceable and grant summary judgment (1) in favor of Bittmint on the First Cause of Action for Breach of Contract and Second Cause of Action for Intentional Interference with Contractual Relations and (2) in favor in HTSS on the Sixth Cause of Action for Breach of Contract (as a Third Party Beneficiary) and the Eighth Cause of Action for Intentional Interference with Prospective Contractual Relations. In addition, Plaintiffs request that the Court deny Defendants' motion for summary judgment in its entirety.

Respectfully Submitted,

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November 16, 2019
Hilton Head Island, SC

ELECTRONICALLY FILED - 2021 Sep 24 3:34 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: COFFEY|KUBEC, LLP, AND LAW OFFICES OF MICHAEL W. MOGIL, ATTORNEYS FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned attorneys, hereby give notice that ten days after the service of this Notice of Motion and Motion for Partial Summary Judgment and Alternatively to Clarify the Issues for Trial and Require a Pretrial Election Between Inconsistent Remedies, or as soon thereafter as counsel may be heard, will move before the presiding judge for the Court of Common Pleas, Beaufort County, pursuant to Rule 56, SCRCP, for partial summary judgment as to Plaintiffs' third cause of action for violation of common law rule against perpetuities, fourth cause of action for invalid assignment of rights, and seventh cause of action for violation of statute of repose. Plaintiffs have conceded in a prior court filing that these causes of action "may not be actionable claims under South Carolina law." See (**Pls. Mem. Of Points and Authorities filed November 20, 2019 at fn. 6**). Plaintiffs are bound by that admission. In that same filing, Plaintiffs suggested that although they had not sought any relief under the South Carolina Declaratory Judgement Act, these claims could be treated as claims for a declaratory determination. There are no claims plead seeking a declaratory

judgment. Defendants are entitled to partial summary judgment as to the three causes of action Plaintiffs concede are not actionable, as well as on the unpled claim for declaratory judgment.

For the reasons explained above, Defendants' Motion should be GRANTED.

WALKER, GRESSETTE, FREEMAN, & LINTON, LLC

s/ John P. Linton, Jr.
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September 24, 2021 *ATTORNEYS FOR DEFENDANTS*

ELECTRONICALLY FILED - 2021 Sep 24 3:34 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 1:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE (BITTMINT, LLC DAMAGES)**

COMES NOW DEFENDANTS AND HEREBY MOVE IN LIMINE AS FOLLOWS:

As explained herein, the Court should rule in limine that certain evidence and testimony relating to Plaintiff Bittmint, LLC's alleged damages is inadmissible.

Bittmint initiated this case against Sea Pines Resort, LLC ("Sea Pines") and Lynda Johnson and Charles Giannone (the "Individual Defendants") (collectively, "Defendants") asserting a number of causes of action and seeking damages from the Defendants. The case involves Sea Pine's decision to exercise its right of first refusal and acquire Shops 6 and 8 of the Mariners Way Horizontal Property Regime (jointly referred to as the "Property") from the Individual Defendants. Bittmint seeks money damages for which it has not provided any evidence in discovery, of which no witness has personal knowledge, and that are unrecoverable as a matter of law.

Defendants ask this Court to rule in limine that certain testimony and evidence it anticipates Bittmint may try to admit is inadmissible. Specifically, Defendants move as follows:

ELECTRONICALLY FILED - 2021 Oct 10 1:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

1. Defendants move to exclude any testimony or evidence as to Bittmint's alleged damages for the opportunity costs by forgoing conditional loan approval under prevailing commercial loan rates at the time it sought to purchase the subject property or any damages concerning Bittmint's alleged loss of undefined opportunities or benefits of the bargain of the contract. These alleged damages are speculative as matter of law. See generally, South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122-123, 113 S.E.2d 329, 335-336 (1960) (". . . required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy"); Bensch v. Davidson, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (2003). Further, as explained in Defendants' motion in limine regarding HTSS's alleged damages, Plaintiffs have not produced a witness to testify as to the terms of any conditional loan approve that Plaintiffs would have accepted. Such testimony or evidence should be excluded under Rules 403, 602, 801, and 802 SCRE
2. Defendants move to exclude any testimony or evidence as to alleged increased costs of occupancy for the subject property in an amount exceeding $2,000 per month. These alleged damages are speculative as a matter of law, there is no witness with personal knowledge of these alleged costs. Further the alleged damages would be damages claimed by the occupant of the properties and are therefore unrecoverable by Bittmint when it is undisputed Bittmint never contemplated occupying the subject property. Such testimony or evidence should be excluded under Rules 403, 602, 801, and 802 SCRE.
3. Defendants move to exclude any testimony or evidence as to Bittmint's alleged damages for diminution in value of a third-party business, Harbourtown Surf Shop, LLC, which are

unrecoverable by Bittmint as a matter of law. See generally, Yadkin Brick Co., Inc. v. Materials Recovery Co., 529 S.E.2d 764, 768, 339 S.C. 640, 647 (Ct. App. 2000) (affirming directed verdict on Yadkin's claim for diminution in property value, because Yadkin failed to show a permanent injury to the property.).

4. Defendants move to exclude any testimony or evidence as to Plaintiffs' alleged damages for the cost of improvements made to join the property which is the subject of the lawsuit with the adjacent general store and to purchase food service equipment. As explained in Defendants' motion in limine regarding HTSS's alleged damages, these alleged damages are not recoverable, and any evidence or testimony as to those alleged damages is not admissible, because the only evidence is that both occurred prior to March 17, 2017, the date of the contract between Defendants Johnson and Giannone and Bittmint. Therefore, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

WALKER GRESSETE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.
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ATTORNEYS FOR DEFENDANTS

October 10, 2021
Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Oct 10 1:58 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE (HARBOUR TOWN SURF SHOP, LLC DAMAGES)**

COMES NOW DEFENDANTS AND HEREBY MOVE IN LIMINE AS FOLLOWS:

As explained herein, the Court should rule in limine that certain evidence and testimony relating to Plaintiff Harbour Town Surf Shop, LLC's ("HTSS") alleged damages is inadmissible.

Bittmint, LLC ("Bittmint") initiated this case against Sea Pines Resort, LLC ("Sea Pines") and Lynda Johnson and Charles Giannone (the "Individual Defendants") (collectively, "Defendants") asserting a number of causes of action and seeking damages from the Defendants. The case involves Sea Pine's decision to exercise its right of first refusal and acquire Shops 6 and 8 of the Mariners Way Horizontal Property Regime (jointly referred to as the "Property") from the Individual Defendants. HTSS is the tenant at the Property. Following its acquisition of the Property, Sea Pines fully honored the lease that was in place at the time of its acquisition. Nonetheless, HTSS has sued Defendants seeking damages. Defendants ask this Court to rule in limine that certain testimony and evidence it anticipates HTSS may try to admit is inadmissible. Specifically, Defendants move as follows:

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

1. Defendants move to exclude any testimony or evidence as to alleged damages for the alleged difference between the amount HTSS pays to Sea Pines in rent and the alleged contemplated rent HTSS would have paid to Bittmint if Bittmint had acquired the property. The only witness identified to testify as to HTSS's alleged damages is Alon Mintz. Mr. Mintz does not have personal knowledge of the alleged damages and the damages are speculative as a matter of law. See Ex. 1 (deposition excerpts); Ex 2 (damages analysis). Mr. Mintz testified in his deposition that his lawyers created the damages analysis and he only provided them one piece of information, the amount of Bittmint's contemplated mortgage loan. He does not know if the interest rate used in the calculation was accurate or not. While he thought the interest rate would vary, he did not know the extent to which it would vary. He did not know if the contemplated mortgage terms were 20 or 30 years. Mr. Mintz even testified in his deposition that he has no recollection of any commitment by any bank to finance Bittmint's purchase on the terms used in HTSS's damages calculation. For these reasons the damages calculation and any testimony concerning the calculation is inadmissible. Further, the damages calculation is inadmissible hearsay and includes inadmissible hearsay. Such testimony or evidence should be excluded under Rules 403, 602, 801, and 802 SCRE.
2. Defendants move to exclude any testimony or evidence as to HTSS's alleged damages for the cost of improvements made to join the Property with the adjacent general store and to purchase food service equipment. Those alleged damages are not recoverable, and any evidence or testimony as to those alleged damages is not admissible, because the only evidence is that both occurred prior to March 17, 2017, the date of the contract between

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Defendants Johnson and Giannone and Bittmint. Ex. 3 and Ex. 4 (deposition excerpts). Such testimony or evidence should also be excluded under Rules 401, 402, 403, SCRE.

3. Defendants move to exclude any testimony or evidence as to HTSS's claim that the individual members of the Plaintiff entities are entitled to emotional damages. Plaintiffs did not plead emotional damages. The individual members of the Plaintiff entities are not parties and cannot claim damages. Further, emotional damages are not recoverable for the causes of action alleged by Plaintiffs as a matter of law. Further, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

4. Defendants move to exclude any testimony or evidence as to HTSS's alleged damages for lost profits and other lost future financial benefits it claims it would have gained had Bittmint been its landlord or if it ran a food service operation because those alleged damages are speculative as a matter of law. See generally, South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122-123, 113 S.E.2d 329, 335-336 (1960) (". . . required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy"); Bensch v. Davidson, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (2003). Further, such testimony or evidence should be excluded under Rules 401, 402, 403, 602, SCRE.

5. Defendants move to exclude any testimony or evidence as to HTSS's damages for the distraction of its principal managers, undefined lost opportunities and befits of the bargain. Plaintiffs have not disclosed or provided evidence of any admissible damages in these areas. Further, Plaintiffs did not plead damages for distraction. The individual members

of the Plaintiff entities are not parties and cannot claim damages for their distraction. Further, these alleged damages are not recoverable as a matter of law. Further, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

Therefore, as explained above, the Court should exclude in limine the testimony and evidence discussed above.

WALKER GRESSETTE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.

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ATTORNEYS FOR DEFENDANTS

October __, 2021

Charleston, South Carolina

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

----------/

The deposition of ALON MINTZ, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Naomi McCracken,Stenographic Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 21st, day of June 2019, commencing at or about the hour of 9:04 a.m.

week --

A Um-hmm.

Q -- in discovery. This is four pages. Is this what you were just referring to? Is this the calculation of BittMint's expenses?

A Yes, I believe so.

Q It's titled -- the first page is titled "Harbour Town Surf Shop, LLC Lease Differential Analysis."

A This is between the mortgage and the rent differences.

Q Okay. So who prepared this document?

A My lawyer.

Q When was it prepared?

A I'm not sure the date that it was prepared.

Q Okay. Did you play a role in preparing this?

A No.

Q Did you provide any of the information?

A Just, I guess, the loan amount. But I mean, they had -- my lawyers had those numbers from the contract, so I guess they analyzed it.

Q Okay. And so if we look at the

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

assumptions here, we've got a principal loan amount, $498,800, which is the amount list as the mortgage amount in the contract --

A Right.

Q -- correct?

A Yes.

Q Interest rate 429 [sic] percent; where does that come from?

A I believe that it would be the rate at that time for the -- for the loan.

Q And what are you basing that on?

A The interest rate at that time.

Q Just generally?

A Yes. Again, I didn't prepare it, so I could not answer you on that part. But I believe it was -- that's the interest rate at that time for 2017 for a commercial loan.

Q And what are you basing that on?

A I believe that's what we would have based on the bank we want to take the loan from, NBSC.

Q And was that interest rate 4.29 percent --

A Yes.

Q -- in a commitment letter from NBSC?

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I'm not sure if it was 4.29 or 4.5 percent, it could be.
Q So it could have been 4.5?
A It could be.
Q Could it have been five?
A No.
Q And why couldn't it have been five?
A Because I don't think at that time at The General Store, we had the same interest rate for 4 1/2 percent. And it was at the same time, and I believe I asked my banker about that and he told me at that time, it would be also be 4 1/2 percent.
Q When did you ask your banker about that? Back then when were contemplating the purchase?
A I think about that time and also after that.
Q When after that?
A I don't remember exactly when it was.
Q Well, was it during this lawsuit?
A Yeah.
Q Okay. So you called them and asked them what the interest rate was back then?
A Yeah. I actually met with him. But,

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

yeah, I would ask him that. And I believe at that time, also, the offer we got from the bank was that way.

Q And you're talking about what you referred to as a pre-approval letter?

A Yes.

Q Okay. And you would agree -- well, you said you didn't know whether you got a loan commitment letter; correct?

MR. KUBEC: Object to form.

THE WITNESS: Yeah. I don't remember the title of the form we got from the bank.

BY MR. LINTON:

Q Okay. And the term says 30 years here.

A Okay.

Q And do you remember if the pre-approval letter said 30 years?

A Again, like I said before, it could be 30, it could be 20 years; I'm not sure.

Q And was it a fixed rate or was there a balloon after a certain number of years?

A After five years, I think.

Q So you think it was five years, and then the interest rate would adjust?

A I believe so.
Q Okay. Do you know what it would adjust to?
A No.
Q Do you know if it would just adjust to whatever the market rate was?
A I'm not sure how they do that, if they locked it or not. I'm not sure.
Q So if --
A I'm not a banker. I don't know.
Q So is it possible that the loan you were contemplating could've adjusted to 15 percent after 5 years, if that was the market rate for commercial loans?
A I don't -- I don't -- I'm not sure. He actually explained it to me. I'm trying to remember now going back about the loan because I believe he said there's two options, they'll fluctuate, but they increase and it changes by the rate market or you lock it every five years and then renew by the terms of the interest at that time, so --
Q And had you made a decision as to which one of those options you were going to take with respect to BittMint's purchase?

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Not complete, no.
Q Okay. So you hadn't decided what the terms of your financing would be for the BittMint purchase?
A Whatever -- whatever we discussed. I mean, can you rephrase it? Can you ask, again, the question because I want to make sure I understand it before I --
Q Yeah. So you just explained that the banker told you at the time that there could be different options for the way the interest rate would work; correct?
A Yes.
Q Sometimes you could lock it in for a certain number of years and then it would change --
A Yeah. But we -- okay. I'm sorry.
Q -- to a market rate. And there were other options and ways to deal with that.
A Right.
Q And my question is: Had you determined what option you were going to use --
A Yes.
Q -- with regard --
A Yes. The five years.

A For five years, yeas.
Q Okay. So the bank -- no bank has ever offered you 4.29 percent at a fixed rate for 30 years to finance this purchase; correct?
A Again, I have to check for what -- what they proposed me and the number, but I want to make sure it's matching or not matching to this.
Q Will you check it and provide that to us?
A Yes.
Q Okay. Thank you.
Will you provide all the documents with the bank concerning this proposed loan?
A Yes.
Q Okay. Thank you.
But sitting here today, you don't have any recollection of any commitment from any bank to finance $498,000 -- $498,800 at a rate -- fixed rate of 4.29 percent for 30 years, do you?
A I don't recall that. But I have to check into that.
Q But you don't have any recollection of it sitting here today?
MR. KUBEC: Objection to form.
BY MR. LINTON:

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Let's look at the second page of this exhibit. It says "depreciation," and see where it says "land value, zero. Improvements, $580,000."

Did you prepare this part of this document?

A No.

Q Did you provide any information to anyone for this?

A No.

Q Do you know who prepared this?

A My lawyer.

Q Okay. And do you know which lawyer?

A Liv Penn (phonetic).

Q And do you know of a reason why the land has no value for shops six and eight on this depreciation analysis?

A I'm not sure.

Q Do you know why the depreciation period is 39 years?

A No. I'm not sure.

Q Would you agree with me that this depreciation analysis would change if some portion of the proposed purchase price of $580,000 was allocated to land value?

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I would assume that it would change, the amount would change.
Q And would you agree with me that if the depreciation period were different than 39 years, that that would change the analysis as well?
A But if so -- the numbers change, they're changing, yes.
Q Do you know what the depreciation rate is in here?
A Do you mean the percentage, or --
Q Correct.
A No, I don't know the percentage.
Q All right. So is it -- well, let's go back at the first page. So the box on the far, right-hand corner, on the top, kind of in middle of the page, it says --
A Right.
Q -- "Tax Effect."
A Right.
Q That appears to be the depreciation amount deduction, and there's a column for "Benefit loss."
A Um-hmm.
Q And after looking at that depreciation

ELECTRONICALLY FILED - 2021 Oct 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE (Dead Man's Statute)**

COMES NOW DEFENDANTS AND HEREBY MOVE IN LIMINE AS FOLLOWS:

Defendants move to exclude any testimony or evidence as to Plaintiffs, or its members, assertions or claims that they had communications with Lorraine Giannone prior to her death concerning Plaintiffs, or its members, desire to purchase the property that is the subject of this case. Any testimony concerning communications with Mrs. Giannone are inadmissible under SC Code 19-11-20 and is hearsay to which no exception applies. See S.C. Code §19-11-20; See Rule 801, 802, 803, 804, SCRE. That statute, the Dead Man's statute, prohibits any person who has an interest in the litigation from testifying concerning communications or transactions with a deceased person if the testimony could affect the testifying person's interest. See generally, Osterneck v. Osterneck, 649 S.E.2d 127, 131, 374 S.C. 573, 580 (Ct. App. 2007) (noting that the "Dead Man's" statute, bars the testimony of a person with an interest from testifying regarding a conversation with a deceased individual.).

Plaintiffs have asserted in this case that Amir Bitton, one of the members of both Plaintiff entities, had communications with their former landlord, Lorraine Giannone, regarding the Plaintiffs and its members' desire to purchase the property that is the subject of this case. See generally, Ex. 1, Bitton Aff. ¶¶4-7. Mrs. Giannone passed away in 2016. See Ex. 1, Bitton Aff. ¶ 8. Plaintiffs and the members of the Plaintiff entities have an interest in the litigation. Pursuant to the dead man's statute and hearsay rules the Court must prohibit and exclude testimony about any verbal communications with Mrs. Giannone.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.
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ATTORNEYS FOR DEFENDANTS

October 10, 2021
Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **AFFIDAVIT OF AMIR BITTON [IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT]**

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Amir Bitton, who after first being duly sworn, states:

1. My name is Amir Bitton. I am over 18 years of age, and competent to testify about the matters stated herein based on my own personal knowledge, except those stated to be upon information and belief which I have reason to believe are true.

2. I have been a resident of Hilton Head Island, South Carolina since 1990 and during that time I have owned and/or managed several businesses in the Hilton Head Island and Bluffton area.

3. One of these businesses is the Harbour Town Surf Shop ("Surf Shop"), a retail store located in the Harbour Town section of Sea Pines Plantation. My business partner, Alon Mintz, and I opened the Surf Shop in 2010 and formed the Harbour Town Surf Shop, LLC ("HTSS") to own and operate Surf Shop. We are the sole members of HTSS and we have co-managed the Surf Shop for the past nine years.

4. From 2010 to early-2015, the Surf Shop occupied a commercial property known as Shop 6 of the Mariner's Way Horizontal Property Regime in Harbour Town that HTSS leased from its then owner, Lorraine Giannone. In February 2015 we expanded the Surf Shop into the adjacent commercial unit, Shop 8 of the Mariner's Way Horizontal Property Regime, knocked

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2021 Oct 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

down the wall between the two units and entered into a new lease with Ms. Giannone covering both Shop 6 and Shop 8 (collectively referred to as the "Surf Shop Property").

5. In 2014, Alon Mintz and I formed Bittmint, LLC ("Bittmint") for the primary purpose of acquiring and managing commercial real estate. We are the only members of Bittmint.

6. In 2016 Bittmint acquired the Harbour Town General Store ("General Store") and the commercial property, Shop 5 of the Mariner's Way Horizontal Property Regime (the "General Store Property"), from which it operates. The General Store is located next to the Surf Shop. Bittmint has leased the General Store Property to HTSS, which took over ownership and operations of the General Store business, since the 2016 acquisition.

7. I had wanted to acquire the Surf Shop Property for many years, as I believed that owning the property would enhance the value of the Surf Shop business and would make for a sound strategic investment. I first asked Ms. Giannone about acquiring the Surf Shop Property several years ago and, over the years, I often discussed my interest in acquiring the property with both Ms. Giannone and her daughter, Lynda Johnson.

8. Ms. Giannone passed away in the summer of 2016. I was told that her children, Lynda Johnson and Charles Giannone (collectively the "Sellers"), would inherit the Surf Shop Property. During the second half of 2016, Alon Mintz and I continued to talk with Lynda Johnson about the possibility of purchasing the Surf Shop Property.

9. In January 2017, in anticipation of acquiring the Surf Shop Property and with the Sellers' authorization, we removed the wall between the General Store Property and the Surf Shop Property to form a combined commercial space for the two business. We also started construction renovations and purchased equipment needed to enhance our food sales operations in the combined space.

10. On January 31, 2017, Bittmint submitted a written letter of intent to the Sellers offering to purchase the Surf Shop Property for $580,000. A true and correct copy of the letter of intent is attached hereto as Exhibit A. I am informed and believe that Lynda Johnson communicated this offer to employees or agents of Sea Pines Resort, LLC ("SPR") on January 31, 2017.

11. On March 17, 2017, Bittmint entered into a written contract of sale to purchase the Surf Shop Property from the Sellers for $580,000 (the "Contract"). A true and correct copy of the Contract is attached hereto as Exhibit B.

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2021 Oct 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

12. As part of our overall business objectives for owning and managing retail properties in Sea Pines, Mr. Mintz and I had decided and agreed that should Bittmint acquire the Surf Shop Property it would lease it to HTTS and HTTS would pay rent to Bittmint in an amount sufficient to cover Bittmint's carrying costs (mortgage, assessments and taxes) plus an additional $500 per month. We further agreed to evaluate the lease terms for the Surf Shop Property every five years. This agreement is documented in a business plan for Bittmint prepared back in 2016, a true and correct copy of which is attached hereto as Exhibit C.

13. On or about May 2, 2017, Simon Fraser, Esq., an attorney representing SPR, informed the Sellers and our attorney, Mike Mogil, Esq., that SPR was exercising its "right of first refusal" to purchase the Surf Shop Property from the Sellers at the same $580,000 price that the Sellers contracted to sell it to Bittmint.

14. Bittmint, through Mr. Mogil, immediately challenged the validity of SPR's right of first refusal and SPR's exercise of the right on the Surf Shop Property and demanded that the Sellers honor the Contract. These demands included a letter from Mr. Mogil dated May 9, 2017, a true and correct copy of which is attached hereto as Exhibit D. Our demands were ignored by SPR and its attorneys, as shown by the documents attached hereto as Exhibit E. Mr. Mogil recorded a Lis Pendens on the property on behalf of Bittmint on May 10, 2017.

15. Due to the uncertainty caused by SPR's interference with our Contract with the Sellers, Alon Mintz and I decided to make a written offer to the Sellers on May 10, 2017 seeking to extend HTSS' lease for Surf Shop Property for two additional five-year option periods. If accepted, HTSS would have controlled an option to occupy the Surf Shop Property through 2035. This offer was rejected by the Sellers and, I am informed and believe, the rejection was caused by SPR's refusal to allow the Sellers to extend the lease. A true and correct copy of our offer and related e-mails are attached hereto as Exhibit F.

16. On May 11, 2017, we offered, through HTSS, to increase our purchase price for the Surf Shop Property to $590,000. This offer was also rejected by the Sellers. A true and correct copy of this offer, communicated by e-mail from Mr. Mogil to the Sellers' closing attorney, is attached hereto as Exhibit G.

17. On or about May 11, 2017 or May 12, 2017, SPR purchased the Surf Shop Property from the Sellers for $580,000.

18. HTSS continues to occupy the Surf Shop Property and pays rent to SPR.

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2021 Oct 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

19. Bittmint has suffered economic damages caused by the Sellers' failure to sell and the Surf Shop Property to Bittmint and by SPR's interference with the Contract. These damages include the following:

a. Lost income to Bittmint from the expected lease on the Surf Shop Property to HTSS of $500 per month for the past 30 months, amounting to $15,000.

b. $65,000 to remove the wall between the Grocery Store Property and the Surf Shop Property and for renovations and kitchen equipment for food service operations based on contemplated ownership of the Surf Shop Property and the adjoining Grocery Store Property. This cost includes labor and equipment. I do not have receipts for each expense and some of the labor was either paid by cash or the work was done by me and Mr. Mintz. A true and correct copy of invoices and receipts for these expenses are attached hereto as Exhibit H.

c. The Contract contains a term allowing the prevailing party to recover their attorneys' fees and costs in a litigation resulting from a default of the Contract. Bittmint will seek to enforce this provision if it prevails on its breach of contract claim in this action.

20. HTSS has suffered economic damages caused by the Sellers failure to sell the Surf Shop Property to Bittmint and by SPR's interference with HTSS' prospective lease agreement with Bittmint for the Surf Shop Property. These damages include the following:

a. $47,768 in excess rent paid to SPR by HTSS above the amount HTTS would have paid Bittmint. This sum is net of tax considerations and assumes a $498,800 loan to Bittmint with a 10-year balloon, 20-year amortization period and a fixed interest rate of 4.85%. This amount increases by approximately $3,000 per month.

FURTHER AFFIANT SAYEHT NAUGHT.

Amir Bitton

Sworn to and subscribed before me

this 8 day of November 2019

Notary Public, State of South Carolina
My Commission Expires: 9-8-2025

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2021 Oct 10 2:01 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:12 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2017-CP-07-01057
	)	
BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC,	)	
	)	
Plaintiffs,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION IN LIMINE (OPINION TESTIMONY)**
	)	
v.	)	
	)	
LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC,	)	
	)	
Defendants.	)	
	)	

COMES NOW DEFENDANTS AND HEREBY MOVE IN LIMINE AS FOLLOWS:

1. Defendants move to exclude any opinion testimony as to the following:

    a. Whether the rights of first refusal included in the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185 are vague, void or unenforceable;

    b. Whether the rights of first refusal included in the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185 are void or unenforceable under the common law rule against perpetuities; and

    c. Whether the Defendant Sea Pines Resort, LLC is a successor or assign to the rights of the declarant/company with regard to the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185.

    d. Whether the following are valid and enforceable assignments:

        i. Assignment of Option to Repurchase recorded at Deed Book 246 at Page 2087 Beaufort County Register of Deeds;

        ii. Assignment of Rights recorded at Deed Book 490, Page 712 in Beaufort County Register of Deeds;

iii. Assignment of Rights recorded at Deed Book 520 at Page 1907 Beaufort County Register of Deeds; and

iv. Deed, Bill of Sale and Assignment of Rights recorded at Deed Book 2539 at Page 1193 Beaufort County Register of Deeds.

Under Rule 701, lay witnesses can only offer opinion testimony when such an opinion would "not require special knowledge, skill, experience or training." Rule 701, SCRE. The above arguments issues are legal issues and any lay opinion testimony as to those issues is inadmissible. Further, Plaintiffs have not named any experts in this case. Therefore, no opinion testimony should be admitted under Rule 702, SCRE. Finally, Bittmint, LLC's attorney Michael Mogil testified in his deposition that he would not offer any opinion testimony at the trial of the case. See Ex. 1.

Therefore, for these reasons, the Court should grant this motion and exclude any opinion testimony (lay or expert) in limine.

WALKER GRESSETE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.

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ATTORNEYS FOR DEFENDANTS

October 10, 2021
Charleston, South Carolina

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

----------/

The deposition of MICHAEL MOGIL, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Kyle J. Saniga, Certified Court Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 27th day of June 2019, commencing at or about the hour of 10:16 a.m.

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Q Okay. Well when I asked you whether you reviewed the covenants that Mr. Fraser sent you you mentioned that you felt like there were -- you've reviewed them since and there's a host of issues that are contained in the lawsuit.

A Yeah.

Q And I'm trying to find out, are you -- you've been identified as a witness to talk about the contract, Sea Pines' exercise of the right of first refusal and Sea Pines' interference with the contract and so what I'm trying to figure out is if you're intending to discuss whether -- the enforceability of those covenants.

A As a lawyer advocating a client position, yes. As a personal opinion, no, unless you ask me to explain an answer. If you ask me to review them and do I find them applicable I would say, yes, I've since reviewed them and, no, I don't -- not sure they're applicable but I'm not giving expert opinions that's -- as a witness on that. Just stating my belief in response to your question.

Q Okay. Well I guess we'll -- we'll have to get to that. Let's look at Exhibit 7.

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Q Can you tell me today what those issues are that you were referring to?
A Again you -- that would be -- I'm not testifying as an expert. I think the pleadings in the case speak for themselves.
Q Okay. So you're not prepared to go into detail about these covenants?
A Not as deposition testimony, no. I'm not an expert, no, I'm -- as a -- in court I could make the argument as counsel advocating a position but as a fact witness I'm not going to tell you what the covenants are about.
Q Okay. And just so I'm clear because it is a unique scenario to be both the lawyer for a party and a witness for that party in the same trial.
I just want to make sure that when we go try this case I know what's going to happen.
Do I understand you correctly that you may stand up from counsel table and make an argument to the judge regarding the covenants but you are not going to stand on the witness stand under oath as a witness and discuss the enforceability or applicability of covenants?
A That's correct.

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motivation.

Q And we've already covered that you'll not be representing any opinions as to the various covenants at issue in this case?

A That's correct.

Q Okay.

(Whereupon, a short break was taken.)

BY MR. LINTON:

Q Mr. Mogil, you mentioned that you've been involved as an attorney for the -- for various entities that Mr. Bitton and Mintz are involved in and you mentioned that you've reviewed and advised them on a number of leases.

A Yes.

Q And I just want to make sure I understand correctly how things unfolded.

The 2015 lease for Shops 6 and 8 at Mariners Way, were you involved in that lease at all?

A Not to my recollection. I don't believe I was.

Q Okay.

A And you can ask them that but I think that it was prepared by somebody for the other

Exhibit 2
HTSS 0015

HARBOUR TOWN SURF SHOP, LLC - LEASE DIFFERENTIAL ANALYSIS

ASSUMPTIONS	
Assumed Purchase Date	5/1/2017
Principal Amount	$498,800.00
Interest Rate	4.29%
Term (Years)	30
Tax Rate	20.00%

Lease Payments				Loan Payments		Difference		Tax Effect		
Year Start	Year End	Monthly	Annual	Monthly	Annual	Monthly	Annual	Depreciation	Deduction	Benefit/(Loss)
5/1/2017	1/31/2018	4,520.83	36,166.64	2,465.49	19,723.93	2,055.34	16,442.71	2,974.36	4,401.91	(1,427.56)
2/1/2018	1/31/2019	4,520.83	54,249.96	2,465.49	29,585.89	2,055.34	24,664.07	2,974.36	6,675.94	(3,701.58)
2/1/2019	1/31/2020	4,520.83	54,249.96	2,465.49	29,585.89	2,055.34	24,664.07	2,974.36	6,752.21	(3,777.85)
2/1/2020	1/31/2021	4,908.33	58,899.96	2,465.49	29,585.89	2,442.84	29,314.07	2,974.36	7,761.82	(4,787.46)
2/1/2021	1/31/2022	4,908.33	58,899.96	2,465.49	29,585.89	2,442.84	29,314.07	2,974.36	7,844.90	(4,870.55)
2/1/2022	1/31/2023	5,037.50	60,450.00	2,465.49	29,585.89	2,572.01	30,864.11	2,974.36	8,241.64	(5,267.28)
2/1/2023	1/31/2024	5,037.50	60,450.00	2,465.49	29,585.89	2,572.01	30,864.11	2,974.36	8,332.15	(5,357.80)
2/1/2024	1/31/2025	5,166.67	62,000.04	2,465.49	29,585.89	2,701.18	32,414.15	2,974.36	8,736.64	(5,762.28)

Debt

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Beginning Balance	$498,800.00	$490,449.71	$481,734.07	$472,637.09	$463,142.08	$453,231.63	$442,887.56	$432,090.90
Total Payment	29,586	29,586	29,586	29,586	29,586	29,586	29,586	29,586
Interest Expense	21,236	20,870	20,489	20,091	19,675	19,242	18,789	18,317
Principal Paydown	8,350	8,716	9,097	9,495	9,910	10,344	10,797	11,269
Ending Balance	**490,450**	**481,734**	**472,637**	**463,142**	**453,232**	**442,888**	**432,091**	**420,822**

DAMAGES				
	6/1/2019	7/1/2019	8/1/2019	9/1/2019
Excess Rent	$50,968.75	$53,434.24	$55,899.73	$58,365.22
Less: Tax Effect	-$6,388.42	-$6,703.24	-$7,018.07	-$7,332.89
Total	$44,580.33	$46,731.00	$48,881.66	$51,032.33



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Exhibit 2
HTSS 0016

DEPRECIATION	
Land Value	0
Improvements	$580,000.00
Depreciation Period	39
Annual Depreciation	$14,871.79
Assumed Tax Rate	20%
Depreciation Tax Benefit	$2,974.36

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Exhibit 2
HTSS 0017

AMORTIZATION SCHEDULE

Annual Interest Rate	4.29%
Years	30
Payments Per Year	12
Amount	$498,800.00

Payment Number	Payment	Principal	Interest	Balance
				$498,117.72
1	($2,465.49)	($682.28)	($1,783.21)	$497,433.00
2	($2,465.49)	($684.72)	($1,780.77)	$496,745.83
3	($2,465.49)	($687.17)	($1,778.32)	$496,056.21
4	($2,465.49)	($689.62)	($1,775.87)	$495,364.12
5	($2,465.49)	($692.09)	($1,773.40)	$494,669.55
6	($2,465.49)	($694.56)	($1,770.93)	$493,972.51
7	($2,465.49)	($697.05)	($1,768.44)	$493,272.97
8	($2,465.49)	($699.54)	($1,765.95)	$492,570.93
9	($2,465.49)	($702.04)	($1,763.45)	$491,866.38
10	($2,465.49)	($704.55)	($1,760.94)	$491,159.31
11	($2,465.49)	($707.07)	($1,758.42)	$490,449.71
12	($2,465.49)	($709.60)	($1,755.89)	$489,737.58
13	($2,465.49)	($712.13)	($1,753.36)	$489,022.90
14	($2,465.49)	($714.68)	($1,750.81)	$488,305.67
15	($2,465.49)	($717.23)	($1,748.26)	$487,585.87
16	($2,465.49)	($719.80)	($1,745.69)	$486,863.50
17	($2,465.49)	($722.37)	($1,743.12)	$486,138.54
18	($2,465.49)	($724.95)	($1,740.54)	$485,411.00
19	($2,465.49)	($727.55)	($1,737.95)	$484,680.85
20	($2,465.49)	($730.15)	($1,735.34)	$483,948.10
21	($2,465.49)	($732.76)	($1,732.73)	$483,212.72
22	($2,465.49)	($735.38)	($1,730.11)	$482,474.71
23	($2,465.49)	($738.01)	($1,727.49)	$481,734.07
24	($2,465.49)	($740.64)	($1,724.85)	$480,990.78
25	($2,465.49)	($743.29)	($1,722.20)	$480,244.83
26	($2,465.49)	($745.95)	($1,719.54)	$479,496.22
27	($2,465.49)	($748.62)	($1,716.88)	$478,744.92
28	($2,465.49)	($751.29)	($1,714.20)	$477,990.95
29	($2,465.49)	($753.98)	($1,711.51)	$477,234.27
30	($2,465.49)	($756.67)	($1,708.82)	$476,474.89
31	($2,465.49)	($759.38)	($1,706.11)	$475,712.80
32	($2,465.49)	($762.09)	($1,703.40)	$474,947.98
33	($2,465.49)	($764.82)	($1,700.67)	$474,180.43
34	($2,465.49)	($767.55)	($1,697.94)	$473,410.14
35	($2,465.49)	($770.30)	($1,695.20)	$472,637.09
36	($2,465.49)	($773.05)	($1,692.44)	$471,861.27
37	($2,465.49)	($775.81)	($1,689.68)	$471,082.69
38	($2,465.49)	($778.59)	($1,686.90)	$470,301.32
39	($2,465.49)	($781.37)	($1,684.12)	$469,517.15
40	($2,465.49)	($784.16)	($1,681.33)	$468,730.19
41	($2,465.49)	($786.97)	($1,678.52)	$467,940.41
42	($2,465.49)	($789.78)	($1,675.71)	$467,147.80
43	($2,465.49)	($792.60)	($1,672.89)	$466,352.37
44	($2,465.49)	($795.44)	($1,670.05)	$465,554.08
45	($2,465.49)	($798.28)	($1,667.21)	$464,752.95
46	($2,465.49)	($801.13)	($1,664.36)	$463,948.95
47	($2,465.49)	($804.00)	($1,661.49)	$463,142.08
48	($2,465.49)	($806.87)	($1,658.62)	$462,332.32
49	($2,465.49)	($809.76)	($1,655.73)	$461,519.67
50	($2,465.49)	($812.65)	($1,652.84)	$460,704.11
51	($2,465.49)	($815.56)	($1,649.93)	$459,885.56
52	($2,465.49)	($818.47)	($1,647.02)	$459,064.02
53	($2,465.49)	($821.40)	($1,644.09)	$458,239.48
54	($2,465.49)	($824.33)	($1,641.16)	$457,411.92
55	($2,465.49)	($827.28)	($1,638.21)	$456,581.36
56	($2,465.49)	($830.23)	($1,635.26)	$455,747.77
57	($2,465.49)	($833.20)	($1,632.29)	$454,911.16
58	($2,465.49)	($836.17)	($1,629.32)	$454,071.51
59	($2,465.49)	($839.16)	($1,626.33)	$453,228.82
60	($2,465.49)	($842.16)	($1,623.33)	$452,383.08
61	($2,465.49)	($845.17)	($1,620.32)	$451,534.28
62	($2,465.49)	($848.19)	($1,617.30)	$450,682.41
63	($2,465.49)	($851.22)	($1,614.27)	$449,827.46
64	($2,465.49)	($854.27)	($1,611.22)	$448,969.42
65	($2,465.49)	($857.32)	($1,608.17)	$448,108.28
66	($2,465.49)	($860.39)	($1,605.10)	$447,244.03
67	($2,465.49)	($863.47)	($1,602.02)	$446,376.64
68	($2,465.49)	($866.56)	($1,598.93)	$445,506.10
69	($2,465.49)	($869.66)	($1,595.83)	$444,632.41
70	($2,465.49)	($872.78)	($1,592.71)	$443,755.56
71	($2,465.49)	($875.91)	($1,589.58)	$442,875.53
72	($2,465.49)	($879.05)	($1,586.44)	$441,992.31
73	($2,465.49)	($882.21)	($1,583.28)	$441,105.88
74	($2,465.49)	($885.38)	($1,580.11)	$440,216.23
75	($2,465.49)	($888.56)	($1,576.93)	$439,323.35
76	($2,465.49)	($891.76)	($1,573.73)	$438,427.23
77	($2,465.49)	($894.97)	($1,570.52)	$437,527.85
78	($2,465.49)	($898.20)	($1,567.29)	$436,625.21
79	($2,465.49)	($901.43)	($1,564.06)	$435,719.29
80	($2,465.49)	($904.69)	($1,560.80)	$434,810.08
81	($2,465.49)	($907.95)	($1,557.54)	$433,897.57
82	($2,465.49)	($911.23)	($1,554.26)	$432,981.75
83	($2,465.49)	($914.52)	($1,550.97)	$432,062.60
84	($2,465.49)	($917.83)	($1,547.66)	$431,140.09
85	($2,465.49)	($921.15)	($1,544.34)	$430,214.22
86	($2,465.49)	($924.48)	($1,541.01)	$429,284.97
87	($2,465.49)	($927.83)	($1,537.66)	$428,352.32
88	($2,465.49)	($931.19)	($1,534.30)	$427,416.25
89	($2,465.49)	($934.56)	($1,530.93)	$426,476.75
90	($2,465.49)	($937.95)	($1,527.54)	$425,533.80
91	($2,465.49)	($941.35)	($1,524.14)	$424,587.39
92	($2,465.49)	($944.77)	($1,520.72)	$423,637.50
93	($2,465.49)	($948.20)	($1,517.29)	$422,684.12
94	($2,465.49)	($951.65)	($1,513.84)	$421,727.24
95	($2,465.49)	($955.11)	($1,510.38)	$420,766.84
96	($2,465.49)	($958.58)	($1,506.91)	$419,802.90
97	($2,465.49)	($962.07)	($1,503.42)	$418,835.41
98	($2,465.49)	($965.57)	($1,499.92)	$417,864.34
99	($2,465.49)	($969.09)	($1,496.40)	$416,889.69
100	($2,465.49)	($972.62)	($1,492.87)	$415,911.44
101	($2,465.49)	($976.17)	($1,489.32)	$414,929.59
102	($2,465.49)	($979.73)	($1,485.76)	$413,944.12
103	($2,465.49)	($983.31)	($1,482.18)	$412,955.01
104	($2,465.49)	($986.91)	($1,478.58)	$411,962.26
105	($2,465.49)	($990.52)	($1,474.97)	$410,965.86
106	($2,465.49)	($994.14)	($1,471.35)	$409,965.79
107	($2,465.49)	($997.78)	($1,467.71)	$408,962.04
108	($2,465.49)	($1,001.44)	($1,464.05)	$407,954.60
109	($2,465.49)	($1,005.10)	($1,460.39)	$406,943.47
110	($2,465.49)	($1,008.79)	($1,456.70)	$405,928.68
111	($2,465.49)	($1,012.49)	($1,453.00)	$404,910.19
112	($2,465.49)	($1,016.21)	($1,449.28)	$403,888.00
113	($2,465.49)	($1,019.94)	($1,445.55)	$402,862.06
114	($2,465.49)	($1,023.69)	($1,441.80)	$401,832.37
115	($2,465.49)	($1,027.45)	($1,438.04)	$400,798.92
116	($2,465.49)	($1,031.23)	($1,434.26)	$399,761.69
117	($2,465.49)	($1,035.03)	($1,430.46)	$398,720.66
118	($2,465.49)	($1,038.84)	($1,426.65)	$397,675.82
119	($2,465.49)	($1,042.67)	($1,422.82)	$396,627.15
120	($2,465.49)	($1,046.51)	($1,418.98)	$395,574.64
121	($2,465.49)	($1,050.37)	($1,415.12)	$394,518.27
122	($2,465.49)	($1,054.24)	($1,411.25)	$393,458.03
123	($2,465.49)	($1,058.13)	($1,407.36)	$392,393.90
124	($2,465.49)	($1,062.04)	($1,403.45)	$391,325.86
125	($2,465.49)	($1,065.96)	($1,399.53)	$390,253.90
126	($2,465.49)	($1,069.89)	($1,395.60)	$389,178.01
127	($2,465.49)	($1,073.84)	($1,391.65)	$388,098.17
128	($2,465.49)	($1,077.81)	($1,387.68)	$387,014.36
129	($2,465.49)	($1,081.79)	($1,383.70)	$385,926.57
130	($2,465.49)	($1,085.79)	($1,379.70)	$384,834.78
131	($2,465.49)	($1,089.80)	($1,375.69)	$383,738.98
132	($2,465.49)	($1,093.83)	($1,371.66)	$382,639.15
133	($2,465.49)	($1,097.88)	($1,367.61)	$381,535.27
134	($2,465.49)	($1,101.94)	($1,363.55)	$380,427.33
135	($2,465.49)	($1,106.02)	($1,359.47)	$379,315.31
136	($2,465.49)	($1,110.12)	($1,355.37)	$378,199.19
137	($2,465.49)	($1,114.24)	($1,351.25)	$377,078.95
138	($2,465.49)	($1,118.37)	($1,347.12)	$375,954.58
139	($2,465.49)	($1,122.53)	($1,342.96)	$374,826.05
140	($2,465.49)	($1,126.70)	($1,338.79)	$373,693.35
141	($2,465.49)	($1,130.89)	($1,334.60)	$372,556.46
142	($2,465.49)	($1,135.11)	($1,330.38)	$371,415.35
143	($2,465.49)	($1,139.34)	($1,326.15)	$370,270.01
144	($2,465.49)	($1,143.60)	($1,321.89)	$369,120.41
145	($2,465.49)	($1,147.87)	($1,317.62)	$367,966.54
146	($2,465.49)	($1,152.16)	($1,313.33)	$366,808.38
147	($2,465.49)	($1,156.48)	($1,309.01)	$365,645.90
148	($2,465.49)	($1,160.82)	($1,304.67)	$364,479.08
149	($2,465.49)	($1,165.18)	($1,300.31)	$363,307.90
150	($2,465.49)	($1,169.57)	($1,295.92)	$362,132.33
151	($2,465.49)	($1,173.98)	($1,291.51)	$360,952.35
152	($2,465.49)	($1,178.41)	($1,287.08)	$359,767.94
153	($2,465.49)	($1,182.86)	($1,282.63)	$358,579.08
154	($2,465.49)	($1,187.34)	($1,278.15)	$357,385.74
155	($2,465.49)	($1,191.83)	($1,273.66)	$356,187.91
156	($2,465.49)	($1,196.35)	($1,269.14)	$354,985.56
157	($2,465.49)	($1,200.89)	($1,264.60)	$353,778.67
158	($2,465.49)	($1,205.45)	($1,260.04)	$352,567.22
159	($2,465.49)	($1,210.03)	($1,255.46)	$351,351.19
160	($2,465.49)	($1,214.64)	($1,250.85)	$350,130.55
161	($2,465.49)	($1,219.26)	($1,246.23)	$348,905.29
162	($2,465.49)	($1,223.91)	($1,241.58)	$347,675.38
163	($2,465.49)	($1,228.57)	($1,236.92)	$346,440.81
164	($2,465.49)	($1,233.26)	($1,232.23)	$345,201.55
165	($2,465.49)	($1,237.97)	($1,227.52)	$343,957.58
166	($2,465.49)	($1,242.71)	($1,222.78)	$342,708.87
167	($2,465.49)	($1,247.46)	($1,218.03)	$341,455.41
168	($2,465.49)	($1,252.24)	($1,213.25)	$340,197.17
169	($2,465.49)	($1,257.04)	($1,208.45)	$338,934.13
170	($2,465.49)	($1,261.87)	($1,203.62)	$337,666.26
171	($2,465.49)	($1,266.72)	($1,198.77)	$336,393.54
172	($2,465.49)	($1,271.59)	($1,193.90)	$335,115.95
173	($2,465.49)	($1,276.49)	($1,189.00)	$333,833.46
174	($2,465.49)	($1,281.41)	($1,184.08)	$332,546.05
175	($2,465.49)	($1,286.36)	($1,179.13)	$331,253.69
176	($2,465.49)	($1,291.33)	($1,174.16)	$329,956.36
177	($2,465.49)	($1,296.33)	($1,169.16)	$328,654.03
178	($2,465.49)	($1,301.35)	($1,164.14)	$327,346.68
179	($2,465.49)	($1,306.40)	($1,159.09)	$326,034.28
180	($2,465.49)	($1,311.47)	($1,154.02)	$324,716.81
181	($2,465.49)	($1,316.57)	($1,148.92)	$323,394.24
182	($2,465.49)	($1,321.69)	($1,143.80)	$322,066.55
183	($2,465.49)	($1,326.84)	($1,138.65)	$320,733.71
184	($2,465.49)	($1,332.01)	($1,133.48)	$319,395.70
185	($2,465.49)	($1,337.21)	($1,128.28)	$318,052.49
186	($2,465.49)	($1,342.44)	($1,123.05)	$316,704.05
187	($2,465.49)	($1,347.69)	($1,117.80)	$315,350.36
188	($2,465.49)	($1,352.97)	($1,112.52)	$313,991.39
189	($2,465.49)	($1,358.28)	($1,107.21)	$312,627.11
190	($2,465.49)	($1,363.62)	($1,101.87)	$311,257.49
191	($2,465.49)	($1,368.98)	($1,096.51)	$309,882.51
192	($2,465.49)	($1,374.37)	($1,091.12)	$308,502.14
193	($2,465.49)	($1,379.79)	($1,085.70)	$307,116.35
194	($2,465.49)	($1,385.24)	($1,080.25)	$305,725.11
195	($2,465.49)	($1,390.71)	($1,074.78)	$304,328.40
196	($2,465.49)	($1,396.21)	($1,069.28)	$302,926.19
197	($2,465.49)	($1,401.74)	($1,063.75)	$301,518.45
198	($2,465.49)	($1,407.30)	($1,058.19)	$300,105.15
199	($2,465.49)	($1,412.88)	($1,052.61)	$298,686.27
200	($2,465.49)	($1,418.50)	($1,047.00)	$297,261.77
201	($2,465.49)	($1,424.14)	($1,041.35)	$295,831.63
202	($2,465.49)	($1,429.82)	($1,035.68)	$294,395.81
203	($2,465.49)	($1,435.52)	($1,029.97)	$292,954.29
204	($2,465.49)	($1,441.26)	($1,024.23)	$291,507.03
205	($2,465.49)	($1,447.03)	($1,018.46)	$290,054.00
206	($2,465.49)	($1,452.83)	($1,012.66)	$288,595.17
207	($2,465.49)	($1,458.66)	($1,006.83)	$287,130.51
208	($2,465.49)	($1,464.52)	($1,000.97)	$285,659.99
209	($2,465.49)	($1,470.41)	($995.08)	$284,183.58
210	($2,465.49)	($1,476.33)	($989.16)	$282,701.25
211	($2,465.49)	($1,482.28)	($983.21)	$281,212.97
212	($2,465.49)	($1,488.26)	($977.23)	$279,718.71
213	($2,465.49)	($1,494.27)	($971.22)	$278,218.44
214	($2,465.49)	($1,500.31)	($965.18)	$276,712.13
215	($2,465.49)	($1,506.38)	($959.11)	$275,199.75
216	($2,465.49)	($1,512.48)	($953.01)	$273,681.27
217	($2,465.49)	($1,518.61)	($946.88)	$272,156.66
218	($2,465.49)	($1,524.77)	($940.72)	$270,625.89
219	($2,465.49)	($1,530.96)	($934.53)	$269,088.93
220	($2,465.49)	($1,537.18)	($928.31)	$267,545.75
221	($2,465.49)	($1,543.43)	($922.06)	$265,996.32
222	($2,465.49)	($1,549.71)	($915.78)	$264,440.61
223	($2,465.49)	($1,556.02)	($909.47)	$262,878.59
224	($2,465.49)	($1,562.36)	($903.13)	$261,310.23
225	($2,465.49)	($1,568.73)	($896.76)	$259,735.50
226	($2,465.49)	($1,575.13)	($890.36)	$258,154.37
227	($2,465.49)	($1,581.56)	($883.93)	$256,566.81
228	($2,465.49)	($1,588.02)	($877.47)	$254,972.79
229	($2,465.49)	($1,594.51)	($870.98)	$253,372.28
230	($2,465.49)	($1,601.03)	($864.46)	$251,765.25
231	($2,465.49)	($1,607.58)	($857.91)	$250,151.67
232	($2,465.49)	($1,614.16)	($851.33)	$248,531.51
233	($2,465.49)	($1,620.78)	($844.71)	$246,904.73
234	($2,465.49)	($1,627.42)	($838.07)	$245,271.31
235	($2,465.49)	($1,634.10)	($831.39)	$243,631.21
236	($2,465.49)	($1,640.81)	($824.68)	$241,984.40
237	($2,465.49)	($1,647.55)	($817.94)	$240,330.85
238	($2,465.49)	($1,654.33)	($811.16)	$238,670.52
239	($2,465.49)	($1,661.14)	($804.35)	$237,003.38
240	($2,465.49)	($1,667.98)	($797.51)	$235,329.40
241	($2,465.49)	($1,674.86)	($790.63)	$233,648.54
242	($2,465.49)	($1,681.77)	($783.72)	$231,960.77
243	($2,465.49)	($1,688.72)	($776.77)	$230,266.05
244	($2,465.49)	($1,695.70)	($769.79)	$228,564.35
245	($2,465.49)	($1,702.72)	($762.77)	$226,855.63
246	($2,465.49)	($1,709.77)	($755.72)	$225,139.86
247	($2,465.49)	($1,716.86)	($748.63)	$223,417.00
248	($2,465.49)	($1,723.98)	($741.51)	$221,687.02
249	($2,465.49)	($1,731.14)	($734.35)	$219,949.88
250	($2,465.49)	($1,738.33)	($727.16)	$218,205.55
251	($2,465.49)	($1,745.56)	($719.93)	$216,453.99
252	($2,465.49)	($1,752.82)	($712.67)	$214,695.17
253	($2,465.49)	($1,760.12)	($705.37)	$212,929.05
254	($2,465.49)	($1,767.45)	($698.04)	$211,155.60
255	($2,465.49)	($1,774.82)	($690.67)	$209,374.78
256	($2,465.49)	($1,782.22)	($683.27)	$207,586.56
257	($2,465.49)	($1,789.66)	($675.83)	$205,790.90
258	($2,465.49)	($1,797.13)	($668.36)	$203,987.77
259	($2,465.49)	($1,804.64)	($660.85)	$202,177.13
260	($2,465.49)	($1,812.18)	($653.31)	$200,358.95
261	($2,465.49)	($1,819.76)	($645.73)	$198,533.19
262	($2,465.49)	($1,827.38)	($638.11)	$196,699.81
263	($2,465.49)	($1,835.03)	($630.46)	$194,858.78
264	($2,465.49)	($1,842.72)	($622.77)	$193,010.06
265	($2,465.49)	($1,850.45)	($615.04)	$191,153.61
266	($2,465.49)	($1,858.21)	($607.28)	$189,289.40
267	($2,465.49)	($1,866.01)	($599.48)	$187,417.39
268	($2,465.49)	($1,873.85)	($591.64)	$185,537.54
269	($2,465.49)	($1,881.72)	($583.77)	$183,649.82
270	($2,465.49)	($1,889.63)	($575.86)	$181,754.19
271	($2,465.49)	($1,897.58)	($567.91)	$179,850.61
272	($2,465.49)	($1,905.57)	($559.92)	$177,939.04
273	($2,465.49)	($1,913.59)	($551.90)	$176,019.45
274	($2,465.49)	($1,921.66)	($543.83)	$174,091.79
275	($2,465.49)	($1,929.76)	($535.73)	$172,156.03
276	($2,465.49)	($1,937.91)	($527.58)	$170,212.12
277	($2,465.49)	($1,946.09)	($519.40)	$168,260.03
278	($2,465.49)	($1,954.32)	($511.17)	$166,299.71
279	($2,465.49)	($1,962.58)	($502.91)	$164,331.13
280	($2,465.49)	($1,970.89)	($494.60)	$162,354.24
281	($2,465.49)	($1,979.24)	($486.25)	$160,369.00
282	($2,465.49)	($1,987.62)	($477.87)	$158,375.38
283	($2,465.49)	($1,996.05)	($469.44)	$156,373.33
284	($2,465.49)	($2,004.52)	($460.97)	$154,362.81
285	($2,465.49)	($2,013.03)	($452.46)	$152,343.78
286	($2,465.49)	($2,021.58)	($443.91)	$150,316.20
287	($2,465.49)	($2,030.17)	($435.32)	$148,280.03
288	($2,465.49)	($2,038.81)	($426.68)	$146,235.22
289	($2,465.49)	($2,047.48)	($418.01)	$144,181.74
290	($2,465.49)	($2,056.20)	($409.29)	$142,119.54
291	($2,465.49)	($2,064.96)	($400.53)	$140,048.58
292	($2,465.49)	($2,073.76)	($391.73)	$137,968.82
293	($2,465.49)	($2,082.61)	($382.88)	$135,880.21
294	($2,465.49)	($2,091.50)	($373.99)	$133,782.71
295	($2,465.49)	($2,100.43)	($365.06)	$131,676.28
296	($2,465.49)	($2,109.41)	($356.08)	$129,560.87
297	($2,465.49)	($2,118.43)	($347.06)	$127,436.44
298	($2,465.49)	($2,127.50)	($337.99)	$125,302.94
299	($2,465.49)	($2,136.61)	($328.88)	$123,160.33
300	($2,465.49)	($2,145.77)	($319.72)	$121,008.56
301	($2,465.49)	($2,154.97)	($310.52)	$118,847.59
302	($2,465.49)	($2,164.22)	($301.27)	$116,677.37
303	($2,465.49)	($2,173.51)	($291.98)	$114,497.86
304	($2,465.49)	($2,182.85)	($282.64)	$112,309.01
305	($2,465.49)	($2,192.24)	($273.25)	$110,110.77
306	($2,465.49)	($2,201.68)	($263.81)	$107,903.09
307	($2,465.49)	($2,211.16)	($254.33)	$105,685.93
308	($2,465.49)	($2,220.69)	($244.80)	$103,459.24
309	($2,465.49)	($2,230.27)	($235.22)	$101,222.97
310	($2,465.49)	($2,239.90)	($225.59)	$98,977.07
311	($2,465.49)	($2,249.58)	($215.91)	$96,721.49
312	($2,465.49)	($2,259.31)	($206.18)	$94,456.18
313	($2,465.49)	($2,269.09)	($196.40)	$92,181.09
314	($2,465.49)	($2,278.92)	($186.57)	$89,896.17
315	($2,465.49)	($2,288.80)	($176.69)	$87,601.37
316	($2,465.49)	($2,298.73)	($166.76)	$85,296.64
317	($2,465.49)	($2,308.71)	($156.78)	$82,981.93
318	($2,465.49)	($2,318.74)	($146.75)	$80,657.19
319	($2,465.49)	($2,328.82)	($136.67)	$78,322.37
320	($2,465.49)	($2,338.95)	($126.54)	$75,977.42
321	($2,465.49)	($2,349.13)	($116.36)	$73,622.29
322	($2,465.49)	($2,359.36)	($106.13)	$71,256.93
323	($2,465.49)	($2,369.64)	($95.85)	$68,881.29
324	($2,465.49)	($2,379.97)	($85.52)	$66,495.32
325	($2,465.49)	($2,390.35)	($75.14)	$64,098.97
326	($2,465.49)	($2,400.79)	($64.70)	$61,692.18
327	($2,465.49)	($2,411.28)	($54.21)	$59,274.90
328	($2,465.49)	($2,421.82)	($43.67)	$56,847.08
329	($2,465.49)	($2,432.41)	($33.08)	$54,408.67
330	($2,465.49)	($2,443.05)	($22.44)	$51,959.62
331	($2,465.49)	($2,453.75)	($11.74)	$49,499.87
332	($2,465.49)	($2,464.50)	($1.00)	$47,029.37
333	($2,465.49)	($2,475.30)	$9.79	$44,548.07
334	($2,465.49)	($2,486.16)	$20.63	$42,055.91
335	($2,465.49)	($2,497.07)	$31.52	$39,552.84
336	($2,465.49)	($2,508.04)	$42.45	$37,038.80
337	($2,465.49)	($2,519.06)	$53.43	$34,513.74
338	($2,465.49)	($2,530.13)	$64.46	$31,977.61
339	($2,465.49)	($2,541.26)	$75.53	$29,430.35
340	($2,465.49)	($2,552.44)	$86.65	$26,871.91
341	($2,465.49)	($2,563.67)	$97.82	$24,302.24
342	($2,465.49)	($2,574.96)	$109.04	$21,721.28
343	($2,465.49)	($2,586.30)	$120.30	$19,128.98
344	($2,465.49)	($2,597.70)	$131.61	$16,525.28
345	($2,465.49)	($2,609.15)	$142.96	$13,910.13
346	($2,465.49)	($2,620.66)	$154.36	$11,283.47
347	($2,465.49)	($2,632.22)	$165.81	$8,645.25
348	($2,465.49)	($2,643.84)	$177.31	$5,995.41
349	($2,465.49)	($2,655.51)	$188.86	$3,333.90
350	($2,465.49)	($2,667.24)	$200.45	$666.66
351	($2,465.49)	($666.66)	$0.00	$0.00

Yearly Amounts		
	Payment	Interest
Year 1	-$29,585.89	-$21,235.60
Year 2	-$29,585.89	-$20,870.25
Year 3	-$29,585.89	-$20,488.91
Year 4	-$29,585.89	-$20,090.88
Year 5	-$29,585.89	-$19,675.44
Year 6	-$29,585.89	-$19,241.82
Year 7	-$29,585.89	-$18,789.23
Year 8	-$29,585.89	-$18,316.83
Year 9	-$29,585.89	-$17,823.77
Year 10	-$29,585.89	-$17,309.14

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Exhibit 2
HTSS 0018

52	($2,465.49)	($818.47)	($1,647.02)	$459,885.64	172	($2,465.49)	($1,255.99)	($1,209.50)	$337,067.07	292	($2,465.49)	($1,927.37)	($538.12)	$148,596.25
53	($2,465.49)	($821.40)	($1,644.09)	$459,064.24	173	($2,465.49)	($1,260.48)	($1,205.01)	$335,806.59	293	($2,465.49)	($1,934.26)	($531.23)	$146,661.99
54	($2,465.49)	($824.34)	($1,641.15)	$458,239.90	174	($2,465.49)	($1,264.98)	($1,200.51)	$334,541.61	294	($2,465.49)	($1,941.17)	($524.32)	$144,720.82
55	($2,465.49)	($827.28)	($1,638.21)	$457,412.62	175	($2,465.49)	($1,269.50)	($1,195.99)	$333,272.11	295	($2,465.49)	($1,948.11)	($517.38)	$142,772.70
56	($2,465.49)	($830.24)	($1,635.25)	$456,582.38	176	($2,465.49)	($1,274.04)	($1,191.45)	$331,998.06	296	($2,465.49)	($1,955.08)	($510.41)	$140,817.63
57	($2,465.49)	($833.21)	($1,632.28)	$455,749.17	177	($2,465.49)	($1,278.60)	($1,186.89)	$330,719.47	297	($2,465.49)	($1,962.07)	($503.42)	$138,855.56
58	($2,465.49)	($836.19)	($1,629.30)	$454,912.98	178	($2,465.49)	($1,283.17)	($1,182.32)	$329,436.30	298	($2,465.49)	($1,969.08)	($496.41)	$136,886.48
59	($2,465.49)	($839.18)	($1,626.31)	$454,073.80	179	($2,465.49)	($1,287.76)	($1,177.73)	$328,148.54	299	($2,465.49)	($1,976.12)	($489.37)	$134,910.35
60	($2,465.49)	($842.18)	($1,623.31)	$453,231.63	180	($2,465.49)	($1,292.36)	($1,173.13)	$326,856.18	300	($2,465.49)	($1,983.19)	($482.30)	$132,927.17
61	($2,465.49)	($845.19)	($1,620.30)	$452,386.44	181	($2,465.49)	($1,296.98)	($1,168.51)	$325,559.20	301	($2,465.49)	($1,990.28)	($475.21)	$130,936.89
62	($2,465.49)	($848.21)	($1,617.28)	$451,538.23	182	($2,465.49)	($1,301.62)	($1,163.87)	$324,257.59	302	($2,465.49)	($1,997.39)	($468.10)	$128,939.50
63	($2,465.49)	($851.24)	($1,614.25)	$450,686.99	183	($2,465.49)	($1,306.27)	($1,159.22)	$322,951.32	303	($2,465.49)	($2,004.53)	($460.96)	$126,934.97
64	($2,465.49)	($854.28)	($1,611.21)	$449,832.70	184	($2,465.49)	($1,310.94)	($1,154.55)	$321,640.38	304	($2,465.49)	($2,011.70)	($453.79)	$124,923.27
65	($2,465.49)	($857.34)	($1,608.15)	$448,975.36	185	($2,465.49)	($1,315.63)	($1,149.86)	$320,324.75	305	($2,465.49)	($2,018.89)	($446.60)	$122,904.38
66	($2,465.49)	($860.40)	($1,605.09)	$448,114.96	186	($2,465.49)	($1,320.33)	($1,145.16)	$319,004.42	306	($2,465.49)	($2,026.11)	($439.38)	$120,878.27
67	($2,465.49)	($863.48)	($1,602.01)	$447,251.48	187	($2,465.49)	($1,325.05)	($1,140.44)	$317,679.37	307	($2,465.49)	($2,033.35)	($432.14)	$118,844.92
68	($2,465.49)	($866.57)	($1,598.92)	$446,384.91	188	($2,465.49)	($1,329.79)	($1,135.70)	$316,349.58	308	($2,465.49)	($2,040.62)	($424.87)	$116,804.30
69	($2,465.49)	($869.66)	($1,595.83)	$445,515.25	189	($2,465.49)	($1,334.54)	($1,130.95)	$315,015.04	309	($2,465.49)	($2,047.92)	($417.58)	$114,756.39
70	($2,465.49)	($872.77)	($1,592.72)	$444,642.48	190	($2,465.49)	($1,339.31)	($1,126.18)	$313,675.73	310	($2,465.49)	($2,055.24)	($410.25)	$112,701.15
71	($2,465.49)	($875.89)	($1,589.60)	$443,766.58	191	($2,465.49)	($1,344.10)	($1,121.39)	$312,331.63	311	($2,465.49)	($2,062.58)	($402.91)	$110,638.57
72	($2,465.49)	($879.03)	($1,586.47)	$442,887.56	192	($2,465.49)	($1,348.91)	($1,116.59)	$310,982.72	312	($2,465.49)	($2,069.96)	($395.53)	$108,568.61
73	($2,465.49)	($882.17)	($1,583.32)	$442,005.39	193	($2,465.49)	($1,353.73)	($1,111.76)	$309,628.99	313	($2,465.49)	($2,077.36)	($388.13)	$106,491.25
74	($2,465.49)	($885.32)	($1,580.17)	$441,120.07	194	($2,465.49)	($1,358.57)	($1,106.92)	$308,270.43	314	($2,465.49)	($2,084.78)	($380.71)	$104,406.47
75	($2,465.49)	($888.49)	($1,577.00)	$440,231.58	195	($2,465.49)	($1,363.42)	($1,102.07)	$306,907.01	315	($2,465.49)	($2,092.24)	($373.25)	$102,314.23
76	($2,465.49)	($891.66)	($1,573.83)	$439,339.92	196	($2,465.49)	($1,368.30)	($1,097.19)	$305,538.71	316	($2,465.49)	($2,099.72)	($365.77)	$100,214.51
77	($2,465.49)	($894.85)	($1,570.64)	$438,445.07	197	($2,465.49)	($1,373.19)	($1,092.30)	$304,165.52	317	($2,465.49)	($2,107.22)	($358.27)	$98,107.29
78	($2,465.49)	($898.05)	($1,567.44)	$437,547.02	198	($2,465.49)	($1,378.10)	($1,087.39)	$302,787.42	318	($2,465.49)	($2,114.76)	($350.73)	$95,992.53
79	($2,465.49)	($901.26)	($1,564.23)	$436,645.76	199	($2,465.49)	($1,383.03)	($1,082.47)	$301,404.39	319	($2,465.49)	($2,122.32)	($343.17)	$93,870.21
80	($2,465.49)	($904.48)	($1,561.01)	$435,741.28	200	($2,465.49)	($1,387.97)	($1,077.52)	$300,016.42	320	($2,465.49)	($2,129.90)	($335.59)	$91,740.31
81	($2,465.49)	($907.72)	($1,557.78)	$434,833.56	201	($2,465.49)	($1,392.93)	($1,072.56)	$298,623.49	321	($2,465.49)	($2,137.52)	($327.97)	$89,602.79
82	($2,465.49)	($910.96)	($1,554.53)	$433,922.60	202	($2,465.49)	($1,397.91)	($1,067.58)	$297,225.58	322	($2,465.49)	($2,145.16)	($320.33)	$87,457.63
83	($2,465.49)	($914.22)	($1,551.27)	$433,008.38	203	($2,465.49)	($1,402.91)	($1,062.58)	$295,822.67	323	($2,465.49)	($2,152.83)	($312.66)	$85,304.80
84	($2,465.49)	($917.49)	($1,548.00)	$432,090.90	204	($2,465.49)	($1,407.92)	($1,057.57)	$294,414.75	324	($2,465.49)	($2,160.53)	($304.96)	$83,144.27
85	($2,465.49)	($920.77)	($1,544.72)	$431,170.13	205	($2,465.49)	($1,412.96)	($1,052.53)	$293,001.79	325	($2,465.49)	($2,168.25)	($297.24)	$80,976.02
86	($2,465.49)	($924.06)	($1,541.43)	$430,246.07	206	($2,465.49)	($1,418.01)	($1,047.48)	$291,583.78	326	($2,465.49)	($2,176.00)	($289.49)	$78,800.02
87	($2,465.49)	($927.36)	($1,538.13)	$429,318.71	207	($2,465.49)	($1,423.08)	($1,042.41)	$290,160.70	327	($2,465.49)	($2,183.78)	($281.71)	$76,616.24
88	($2,465.49)	($930.68)	($1,534.81)	$428,388.04	208	($2,465.49)	($1,428.17)	($1,037.32)	$288,732.53	328	($2,465.49)	($2,191.59)	($273.90)	$74,424.65
89	($2,465.49)	($934.00)	($1,531.49)	$427,454.03	209	($2,465.49)	($1,433.27)	($1,032.22)	$287,299.26	329	($2,465.49)	($2,199.42)	($266.07)	$72,225.23
90	($2,465.49)	($937.34)	($1,528.15)	$426,516.69	210	($2,465.49)	($1,438.40)	($1,027.09)	$285,860.87	330	($2,465.49)	($2,207.29)	($258.21)	$70,017.94
91	($2,465.49)	($940.69)	($1,524.80)	$425,576.00	211	($2,465.49)	($1,443.54)	($1,021.95)	$284,417.33	331	($2,465.49)	($2,215.18)	($250.31)	$67,802.77
92	($2,465.49)	($944.06)	($1,521.43)	$424,631.94	212	($2,465.49)	($1,448.70)	($1,016.79)	$282,968.63	332	($2,465.49)	($2,223.10)	($242.39)	$65,579.67
93	($2,465.49)	($947.43)	($1,518.06)	$423,684.51	213	($2,465.49)	($1,453.88)	($1,011.61)	$281,514.75	333	($2,465.49)	($2,231.04)	($234.45)	$63,348.63
94	($2,465.49)	($950.82)	($1,514.67)	$422,733.69	214	($2,465.49)	($1,459.08)	($1,006.42)	$280,055.68	334	($2,465.49)	($2,239.02)	($226.47)	$61,109.61
95	($2,465.49)	($954.22)	($1,511.27)	$421,779.47	215	($2,465.49)	($1,464.29)	($1,001.20)	$278,591.38	335	($2,465.49)	($2,247.02)	($218.47)	$58,862.58
96	($2,465.49)	($957.63)	($1,507.86)	$420,821.84	216	($2,465.49)	($1,469.53)	($995.96)	$277,121.86	336	($2,465.49)	($2,255.06)	($210.43)	$56,607.53
97	($2,465.49)	($961.05)	($1,504.44)	$419,860.79	217	($2,465.49)	($1,474.78)	($990.71)	$275,647.08	337	($2,465.49)	($2,263.12)	($202.37)	$54,344.41
98	($2,465.49)	($964.49)	($1,501.00)	$418,896.30	218	($2,465.49)	($1,480.05)	($985.44)	$274,167.02	338	($2,465.49)	($2,271.21)	($194.28)	$52,073.20
99	($2,465.49)	($967.94)	($1,497.55)	$417,928.37	219	($2,465.49)	($1,485.34)	($980.15)	$272,681.68	339	($2,465.49)	($2,279.33)	($186.16)	$49,793.87
100	($2,465.49)	($971.40)	($1,494.09)	$416,956.97	220	($2,465.49)	($1,490.65)	($974.84)	$271,191.03	340	($2,465.49)	($2,287.48)	($178.01)	$47,506.39
101	($2,465.49)	($974.87)	($1,490.62)	$415,982.10	221	($2,465.49)	($1,495.98)	($969.51)	$269,695.04	341	($2,465.49)	($2,295.66)	($169.84)	$45,210.74
102	($2,465.49)	($978.35)	($1,487.14)	$415,003.74	222	($2,465.49)	($1,501.33)	($964.16)	$268,193.71	342	($2,465.49)	($2,303.86)	($161.63)	$42,906.88
103	($2,465.49)	($981.85)	($1,483.64)	$414,021.89	223	($2,465.49)	($1,506.70)	($958.79)	$266,687.02	343	($2,465.49)	($2,312.10)	($153.39)	$40,594.78
104	($2,465.49)	($985.36)	($1,480.13)	$413,036.53	224	($2,465.49)	($1,512.08)	($953.41)	$265,174.93	344	($2,465.49)	($2,320.36)	($145.13)	$38,274.41
105	($2,465.49)	($988.89)	($1,476.61)	$412,047.64	225	($2,465.49)	($1,517.49)	($948.00)	$263,657.44	345	($2,465.49)	($2,328.66)	($136.83)	$35,945.75
106	($2,465.49)	($992.42)	($1,473.07)	$411,055.22	226	($2,465.49)	($1,522.92)	($942.58)	$262,134.53	346	($2,465.49)	($2,336.98)	($128.51)	$33,608.77
107	($2,465.49)	($995.97)	($1,469.52)	$410,059.26	227	($2,465.49)	($1,528.36)	($937.13)	$260,606.17	347	($2,465.49)	($2,345.34)	($120.15)	$31,263.43
108	($2,465.49)	($999.53)	($1,465.96)	$409,059.73	228	($2,465.49)	($1,533.82)	($931.67)	$259,072.34	348	($2,465.49)	($2,353.72)	($111.77)	$28,909.70
109	($2,465.49)	($1,003.10)	($1,462.39)	$408,056.62	229	($2,465.49)	($1,539.31)	($926.18)	$257,533.03	349	($2,465.49)	($2,362.14)	($103.35)	$26,547.57
110	($2,465.49)	($1,006.69)	($1,458.80)	$407,049.94	230	($2,465.49)	($1,544.81)	($920.68)	$255,988.22	350	($2,465.49)	($2,370.58)	($94.91)	$24,176.98
111	($2,465.49)	($1,010.29)	($1,455.20)	$406,039.65	231	($2,465.49)	($1,550.33)	($915.16)	$254,437.89	351	($2,465.49)	($2,379.06)	($86.43)	$21,797.92

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

----------/

The deposition of ALON MINTZ, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Naomi McCracken,Stenographic Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 21st, day of June 2019, commencing at or about the hour of 9:04 a.m.

option term. And it says, during the first option term, this --

A It says it's to extend this another two five years after the current five years.

Q So you would agree that the purpose of this amendment that's Exhibit 5 was to extend the lease until 2035?

A Yes. I would guess that, yes. I would assume that, yes.

Q And the Section 2 also includes the rent going up by a thousand dollars at certain points in the extension; is that right?

A Yes.

Q And this was -- was signed by you; correct --

A Yes.

Q -- and Mr. Bitton --

A Yes.

Q -- on behalf of Harbour Town Surf Shop?

A Correct.

Q And this was done May 10, 2017.

A Okay.

Q And was this done at a time when you knew that Sea Pines was going to be acquiring the property?

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I don't remember the exact dates, if I knew that at that time or not. I don't recall exactly.

Q Well, let's look back at the exhibit. If you'd look back at Exhibit 4 --

A Okay.

Q That's not the right exhibit. Sorry. Let's look back at Exhibit 3. This is that -- the contract for BittMint's purchase of shops six and eight.

Does that appear to be March 17th of 2017?

A Correct.

Q So this is --

A That's after.

Q This is a month and a half or so -- May 10th -- after March 17th? More than a month.

A Okay.

Q So would you agree that this amendment to the commercial lease was drafted at a time when you knew Sea Pines was going to be purchasing the property?

A It was close to that time frame. So, again, it was only a guess because I don't remember exactly the day that it happened. So I

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

months.

Q Was it during the time she was sick you were negotiating with Lynda for the purchase of shops six and eight?

A I don't -- I don't remember when she passed away, her mom. So I would -- well, we started talking to Lynda back in 2016. Yeah, I believe 2016. I can't remember exactly when, the particular date.

Q And so the first two bullet points, July of 2016 -- you know, this appears to have been signed July 28th or -9th of 2016. So were these things that were going on that you were memorializing or were those goals for --

A Which part?

Q The first two things under "business goals and objectives -- "

A To purchase --

Q -- "short-term."

A -- the property of The General Store.

Q Um-hmm.

A And the second one after that, "negotiation with Lynda. Lynda was ongoing and the The General Store already occurred.

Q Okay. And then it says, "Winter of

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

2017, join units A, B, C together."

So that reflects that you were going to join A, B, and C together before any purchase of the surf shop; correct?

A Correct.

Q And you did that?

A Yes.

Q You joined all three of them together before you were under contract to purchase the surf shop; correct?

A Correct.

Q All right. So that wasn't something that you had to own the surf shop to do; they let you do it under the lease; right?

A Yes.

Q And who paid for that?

A For breaking the wall?

Q Um-hmm.

A BittMint.

Q Why did BittMint pay for that?

Let me ask you this: Was the wall between shop six and eight in The General Store?

A Yes.

Q Okay. So BittMint paid for it after it bought The General Store?

A Yes.
Q Okay. But it was not under contract to purchase shops six and eight at that time?
A No.
Q Okay. All right. "After purchasing Surf Shop property, create one lease from BittMint, LLC to Harbour Town Surf Shop, LLC that pays mortgage, taxes, insurance, assessments and $500 of profit every month for five years."
A Correct.
Q So this says that you were going to, sort of, do the transaction you were describing earlier where BittMint would get whatever the mortgage was plus 500 bucks a month?
A Right.
Q Well, mortgage, taxes and the regime fees --
A Right.
Q -- plus $500?
A Correct.
Q So under this analysis -- under your plan and objectives, did it matter what the mortgage was to BittMint?
A Would it matter what the mortgage is to

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

---------/

The deposition of AMIR BITTON, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Naomi McCracken,Stenographic Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 21st, day of June 2019, commencing at or about the hour of 1:52 p.m.

we do most of the renovations because it's the slow season. So that's when enter the renovations. So, again, it can be between October, November to January to February, give or take.

Q Okay.

A Specifically, I don't remember, to be honest with.

Q But it was done before BittMint entered into a contract to buy the property from Johnson and Giannone?

A Correct.

Q And is that -- is that the work that involved taking the wall down?

A Yes, sir.

Q And you got permission from Johnson and Giannone?

A Correct.

Q And there's really been no issue with that? Sea Pines hadn't asked you to put the wall back up?

A They asked the question why we took the wall and if we can put it back in again and who gave us the approval for it and so forth. And I said the owner, the prior owners, you know.

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q And what did they say?
A They didn't say anything.
Q They said "Okay"; right?
A They never said anything.
Q They stopped asking about the wall once they found out it was approved work; right?
A Well, they asked if we could put the wall back once we -- if we decide to leave or whatever, and I said yes.
Q And you said yes?
A Of course. I have to. By law, if they own the property and I leave the premises and they want me to put the wall up, I have to.
Q And you've also alleged that you have damages for purchasing food service equipment an amount to be proven at trial, but a minimum of $30,000.
A Correct.
Q And BittMint was going to purchase that?
A I'm not sure who was going to purchase that. But I don't deal with the bureaucracy of paperwork, what company did what. But we're about to buy equipment. We purchased a hood.
Q You purchased a hood?

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Yeah. Because the hood that existed was tore up and was rusted, so we had to purchase all the pipe on the inside that goes all the way to the exit of the fan. And the hood itself -- the inside, all the inside parts, we had rebuild and refurbish everything.

Q Some of the hood was moved, though?

A The whole hood was moved.

Q So you only purchased the inside of the hood, not the actual hood?

A Well, basically, it's buying the whole hood, because all you have is just the cover.

Q So is that the only thing that's been bought to date?

A No. We bought refrigerators. We bought freezers. I can't recall all the different equipment, new equipment that we thought we were going to need.

Q Well, do you have a list of all those?

A I can come up with the list.

Q Where is that stuff?

A Some of it is in storage. Some of it's in the store.

Q And you have invoices for all of it?

A Should have.

ELECTRONICALLY FILED - 2021 Oct 10 2:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Can you provide those to us, please?
A Of course.
Q And have you asked Sea Pines as the landlord if you can install that equipment?
A It was prior to them, so --
Q When did you buy all that?
A Back in January.
Q So before you went under contract to purchase the property?
A Correct.
Q But do you have it. Now, have you asked Sea Pines if you can install it?
A No.
Q So you don't know, they might say "fine"?
A They'll never let me. I know that. Why even bother?
Q But you haven't asked.
A When they came with the inspection to fix the little license plate and they want me to fix wires from 1970, I knew that they're here to just play with me so there's no sense to it. Go in there -- I knew that we were going to -- if I had a chance, you know, to take it to court, I will. So that's why I stopped everything.

ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Comes now the Plaintiffs, in opposition to the Defendants' Motion for Partial Summary Judgment would state as shown below.

1. INTRODUCTION[1]

This case involves the validity of a right of first refusal to purchase commercial property in Sea Pines Plantation ("Sea Pines") on Hilton Head Island purportedly held by Defendant Sea Pines Resort, LLC ("SPR").

The Harbour Town Surf Shop ("Surf Shop") is a retail business operating in the Harbour Town area of Sea Pines. It is owned by two local businessmen, Amir Bitton and Alon Mintz (through their ownership of Plaintiff, Harbour Town Surf Shop, LLC), who also own and manage the neighboring Harbour Town General Store. For many years, the Surf Shop leased its retail space, but when presented with an opportunity to acquire the property in early-2017, Bitton and Mintz, through Plaintiff Bittmint, LLC ("Bittmint"), contracted to purchase the Surf Shop property from its owners, Defendants Lynda Johnson and Charles Giannone. Bitton and Mintz intended and agreed that Bittmint would lease the Surf Shop property to Harbour Town Surf Shop, LLC ("HTTS") after the purchase.

[1] Plaintiffs adopt and incorporate into this Opposition all legal argument and factual evidence presented in their Memorandum of Points and Authorities and supporting Affidavits filed in November 2019 in opposition to Defendants' prior motion for summary judgment.

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The transaction never happened. It was thwarted by SPR, which intervened and acquired the property pursuant to its exercise of a claimed right of first refusal to match any purchase offer on the property. The evidence will show that SPR's interference with Bittmint's contract to purchase the Surf Shop property is unlawful.

SPR does not have a valid and enforceable right of first refusal because, among other reasons:

- SPR does not hold and/or never acquired a valid right of first refusal;
- The right of first refusal violates the common rule against perpetuities rendering it void ab initio; and
- SPR is estopped from or otherwise precluded by South Carolina Code §15-3-380 from exercising the right of first refusal.

Whether partially embodied in the three causes of action subject to this motion or as independent legal rights directly relevant with respect to Plaintiffs' other causes of action, the validity of the right of first refusal is a central issue in this action, particularly pertinent to the determination of the justification of SPR's actions.

2. LEGAL ARGUMENT

A. Standard for Grant of Summary Judgment

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all the inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E. 802 (2009). "Summary judgment is proper whe[n] plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Rothrock v.*

ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Copeland, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). "If triable issues exist, those issues must go to the jury." *Id*.

B. There Are No New Facts or Evidence Since Defendants' Prior Motion for Summary Judgment on the Same Claims was Denied

Defendants argue that Plaintiffs' third cause of action for violation of the common law rule against perpetuities, fourth cause of action or invalid assignment of rights, and seventh cause of action for violation of the statute of repose should be dismissed. Defendants filed a motion for summary judgment on July 15, 2019, which motion was heard by the Court on November 20, 2019, and denied on January 13, 2020. Defendants' prior motion for summary judgment sought dismissal of the same causes of action in the current partial motion for summary judgment - Plaintiffs' third, fourth and seventh claims.

While it is true that a denial of a motion for summary judgment is interlocutory, Rule 43(*l*), SCRCP, provides, "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, **no subsequent motion upon the same set of facts** shall be made to any other judge in that action." See *Dorrell v. S.C. Dept. of Transp*., 361 S.C. 312, 325, 605 S.E.2d 12, 19 (2004) (permitting a second summary judgment before a different judge after a previously denied motion for summary judgment only if new evidence is gathered); *Charleston County Department of Social Services v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (S.C. 1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another.")

Prior to the filing of Defendants' initial summary judgment motion on July 15, 2019, extensive discovery was conducted by both sides. Since the denial of Defendants' summary judgment motion on January 13, 2020, there has been no further discovery, no new evidence, no change in facts, and no change in law. In fact, as of the last scheduling order of January 31, 2020, all parties were ready for trial and the trial was most recently scheduled for second the week of October 11, 2021. There has been no new evidence in this matter since the denial of Defendants' first summary judgment motion on January 30, 2020, a motion in which Defendants sought dismissal of the same three causes of actions at issue in Defendants' current motion for partial summary judgment. Therefore, Defendants' current motion for partial summary judgment should be denied.

ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

C. Liberal Construction of Pleadings to do Substantial Justice

"*Pleadings are to be liberally construed to do substantial justice to all parties.*" Rule 8(f), SCRCP; *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct.App. 2000), aff'd as modified on other grounds, 354 S.C. 416, 581 S.E.2d 169 (2003). Plaintiffs' have pled and, throughout the entire course of this action, both parties have litigated the three legal theories, stylized as distinct causes of action, at issue: (1) violation of the common law rule against perpetuities, (2) invalid assignment of rights and (3) violation of the statute of repose set forth South Carolina Code §15-3-380. The determination of these three legal rights is essential with respect to findings on the validity of SPR's claimed right of first refusal and SPR's justification for causing the defendant sellers to sell the subject property to SPR and not to Plaintiff Bittmint.

The invalidation of the right of first refusal is integrally and inexorably intertwined with Plaintiffs' remaining causes of action: (1) Bittmint's breach of contract claim against Defendants Johnson and Giannone, (2) Bittmint's interference with contractual relations claim against SPR, (3) HTSS' claim for interference with prospective economic advantage against Defendant SPR and (4) HTSS' claim as a third-party beneficiary of the underlying contract. See, e.g., Second Amended Complaint ¶30, ¶¶36-38, ¶40-43, ¶¶45-46, ¶¶58-61, ¶62.

Defendants' base their motion on a reference made in a footnote in Plaintiffs' Memorandum of Points and Authorities filed opposition to Defendants' previous motion for summary judgment which stated that the three causes of action (violation of the common law rule against perpetuities, invalid assignment of rights, and violation of the statute of repose) ***may*** not be distinct causes of action and should have been better pled as a request for declaratory relief. However, there is no rule compelling Plaintiffs to seek redress for the wrongs committed against them through a declaratory judgment.

It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial. *S.C. Nat'l Bank v. Joyner,* 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct. App.1986). The original Complaint, which included these three causes of action, was filed on May 26, 2017. Defendants were put on notice and have been aware of Plaintiffs' legal theories, facts, and inferences for over four years. Both sides have substantially litigated this case, including discovery and prior

ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

summary judgment motions involving the subject claims and the legal theories, and have undergone two failed mediation attempts.

Plaintiffs allege and contend that Defendant SPR does not have a valid right of first refusal with regards to the subject property. Plaintiffs' third cause of action, violation of the common law rule against perpetuities, states that the right of first refusal clause that Defendants relied upon violates the rule against perpetuities and is void ab initio. Plaintiffs' fourth cause of action states a claim that the right of first refusal is derived from a prior assignment of the right that is invalid for a number of fact-specific reasons. The seventh cause of action states that the right of first refusal is invalid because it violates the forty-year limitations period set forth South Carolina Code §15-3-380.

Defendant SPR's ill-conceived reliance on an invalid right of first refusal clause caused it to unlawfully interfere with Bittmint's contract to purchase the subject property. As a direct result, Plaintiffs have sustained damages and are entitled to recover an amount to be determined at trial. While perhaps inartfully pled, Plaintiffs third, fourth and seventh causes of action do state facts and inferences that can reasonably be deduced therefrom which could entitle Plaintiffs to relief under anyone one of the legal theories espoused. See *Moore v. City of Columbia*, 284 S.C. 278, 283, 326 S.E.2d 157, 160 (Ct. App. 1985) (substantial justice is accomplished by denying a challenge to inartfully drawn but meritorious pleadings). Therefore, Defendants' motion for partial summary judgment should be dismissed.

D. Plaintiffs Are Not Required to Make a Pre-Trial Election of Remedies

Defendants motion for partial summary judgment also seeks to "require a pretrial election between inconsistent remedies" by the Plaintiffs. However, the mere cryptic reference made by Defendants provides inadequate notice to inform Plaintiffs or the Court of the specific claims and remedies at issue and is grounds, in itself, to deny any proffered motion.

To the extent the motion seeks to have Plaintiffs make a pre-trial election between damages and equitable relief arising out of Defendants' breach of contract, the motion likewise fails. Election of remedies requires a plaintiff to choose between two different remedies allowed by law on the same set of facts. Its purpose is to prevent a plaintiff from recovering twice. However, there is no requirement that this election takes place prior to the start of trial. *Oaks at Rivers Edge Prop. Owners Ass'n, Inc. v. Daniel Island Riverside Developers, LLC*, 420 S.C. 424,

ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

443, 803 S.E.2d 475, 485 (Ct. App. 2017). Plaintiffs can plead and prove alternative theories until all questions of fact and law have been determined. For example, the case can go to the jury on all causes of action supported by the evidence at trial, with election required after verdict but before judgment is entered. See *Brown v. Felkel*, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995)(the plaintiff should have a full opportunity to prove his claim to some form of relief, but he should not receive a double recovery; (*Nichols v. State Farm Mutual Automobile Insurance Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983) (circuit judge allowed case to go to jury on two causes of action but after verdict entered judgment on only one cause of action to prevent double recovery). "As its name states, the doctrine applies to the election of 'remedies' not the election of 'verdicts.'" *Oaks at Rivers Edge Prop. Owners Ass'n, Inc*., 420 S.C. at 443.

Moreover, the election of remedies principle has no application where two separate causes of action, each based on different facts, exist. *Harmon v. Jenkins*, 282 S.C. 189, 197, 318 S.E.2d 371 (Ct. App. 1984). Nor does it apply where different plaintiffs assert different cause of action entitling them to relief. In the instant case, Plaintiff Bittmint should be permitted to recover under both the breach of contract and the tortious interference of contract claims because each cause of action involves a different defendant and a different set of facts. Likewise, the same is true with respect to Plaintiff HTTS' claims for interference with prospective economic advantage (against Defendant SPR) and third-party beneficiary of the contract (against Defendants Johnson and Giannone).

The law does not require Plaintiffs to make a pre-trial election of remedies.

3. CONCLUSION

Based on the aforementioned factual and legal reasons, Plaintiffs request that the Court deny Defendants' motion for partial summary judgment and deny Defendants' request that Plaintiffs make an election of remedies prior to the verdict being entered.

Respectfully Submitted,

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s/Maureen T. Coffey

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ELECTRONICALLY FILED - 2022 Jan 02 5:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' MOTION IN LIMINE NO. 1** **RE: EVIDENCE OF RIGHT OF FIRST REFUSAL** **(NEVER ACQUIRED BY DEFENDANT SEA PINES RESORT, LLC)**

PLEASE TAKE NOTICE THAT Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, by and through the undersigned counsel, hereby moves for an *Order in Limine* barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative with regard to the claimed existence of a right of first refusal, Plaintiffs move for an *Order in Limine* restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

This motion is based on the grounds that the probative value of any evidence relating to the existence and exercise of the purported right of first refusal is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury in that the right of first refusal is unenforceable as a matter of law because the right of first refusal extinguished with the

dissolution of Sea Pines Plantation Company and Defendant Sea Pines Resort, LLC never acquired the right of first refusal.

I. STATEMENT OF FACTS

Plaintiff Harbour Town Surf Shop, LLC ("HTSS") has owned and operated the Surf Shop, a retail store located in the Harbour Town section of Sea Pines Plantation, since 2010. From 2010 to early-2015, the Surf Shop occupied a commercial unit known as Shop 6 of the Mariner's Way Horizontal Property Regime and, in February 2015, the Surf Shop expanded into the adjacent commercial unit, Shop 8 of the Mariner's Way Horizontal Property Regime (Shop 6 and Shop 8 are collectively referred to as the "Surf Shop Property").

On March 17, 2017, Plaintiff Bittmint, LLC entered into a written contract to purchase the Surf Shop Property from its owners, Defendants Lynda H. Johnson and Charles S. Giannone (collectively the "Sellers") for $580,000 (the "Contract").

On or about May 2, 2017, before the Contract closed and the Surf Shop Property was transferred to Bittmint, Defendant Sea Pines Resort, LLC ("SPR"), though its attorney, informed the parties to the Contract that SPR was exercising a claimed right of first refusal to purchase the Surf Shop Property from the Sellers at the same $580,000 price. The Sellers then sold the Surf Shop Property to SPR.

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

> In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

price and terms, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation, or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

The right of first refusal in the 73 Covenants was assigned by the Lighthouse Beach Company to the Sea Pines Plantation Company by an Assignment of Option to Repurchase dated April 14, 1977 (the "1977 Assignment"). (**Request for Judicial Notice, #1**.) The Assignment provides that "[i]t was intended by the parties that all rights to waive and benefit accruing from said option to repurchase in Lighthouse Beach Company should inure to Sea Pines Plantation Company."

The 1977 Assignment's specific language of conveyance is:

The Prospect Company[1], as liquidating partner of Lighthouse Beach Company, hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company, a South Carolina corporation doing business on Hilton Head Island in Beaufort County, South Carolina, all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation on Hilton Head Island in Beaufort County, South Carolina, which was owned, possessed and seized unto Lighthouse Beach Company and the Said Prospect Company, as liquidating partner of Lighthouse Beach Company.

[1] The Lighthouse Beach Company, LP was dissolved per an agreement dated December 12, 1975 and the plan of dissolution provided for the Prospect Company, a general partner, to act as liquidating partner.

(**Request for Judicial Notice, #1**.)

Notably absent from this conveyance language is any granting language to Sea Pines Plantation Company's successors, assigns or transferees. (**Request for Judicial Notice, #2**.) Sea Pines Plantation Company, after changing its name to Hilton Head Liquidation Corp. in 1987, was dissolved in 1991. (**Request for Judicial Notice, #3 and #4**.)

II. PLAINTIFFS' CLAIMS

Plaintiff Bittmint has sued the Sellers for breach of the Contract and SPR for tortious interference with the Contract. Plaintiff HTSS has sued the Sellers as a third-party beneficiary of the Contract and SPR for tortious interference with HTSS' prospective contractual relations. A primary issue in this case is the enforceability of the right of first refusal used by SPR to thwart Bittmint's acquisition of the Surf Shop property.[2]

III. LEGAL ARGUMENT

A. The Right of First Refusal Was Not Assignable

The genesis of the right of first refusal is traced back to the 73 Covenants. The declarant, Lighthouse Beach Company, is long defunct, but before its demise the Lighthouse Beach Company (through its liquidating partner, the Prospect Company) assigned the right of first refusal in the 1973 Covenants to the Sea Pines Plantation Company pursuant to the 1977 Assignment. However, a by-product of 1977 Assignment, due to the explicit language in the assignment, was to convert the right of first refusal to a personal right of the assignor, Sea Pines Plantation Company. Once the right of first refusal became a personal right it was rendered non-assignable in the future.

The prevailing rule in the United States is that rights of first refusal are personal and therefore unassignable unless the instrument granting the right of first refusal states the contrary. *Malone v. Flattery*, 797 N.W.2d 624 (Iowa Ct. App. 2011) ("rights of first refusal are presumed to be personal and are not ordinarily construed as transferable or assignable unless the particular clause granting the right refers to successors or assigns or the instrument otherwise clearly shows that the right was intended to be transferable or assignable."); 6A C.J.S. Assignments §36 (rights

[2] Plaintiffs have also alleged separate causes of action for (1) violation of the common law rule against perpetuities, (2) invalid assignment of rights, (3) action to set aside deed and (4) violation of the Statute of Repose.

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

of first refusal are presumed to be personal, and are thus not assignable unless either the clause granting the right refers to successors or assigns or the instrument clearly shows that the right was intended to be assignable).

The clear and unambiguous intent of the parties to the 1977 Assignment was to assign the right of first refusal exclusively unto Sea Pines Plantation Company and not also to its successors, assigns or transferees. This intent is evidenced by (a) the stated intention ("[i]t was intended by the parties that all rights … should inure to Sea Pines Plantation Company") and (b) the grant ("hereby transfers, sets-over, assigns, and conveys unto Sea Pines Plantation Company … all rights, obligations, benefits, including the right to waive, all repurchase options in real property within Sea Pines Plantation …"). The granting language of "successors, assigns or transferees" is intentionally excluded and there simply was no contemplation that the right of first refusal should carry on to anyone other than the Sea Pines Plantation Company. *See Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("[T]he maxim 'Expressio unius est exclusio alterius' is defined as: "When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred." (quoting *Little v. Town of Conway*, 171 S.C. 27, 31, 171 S.E. 447, 448 (1933)); *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners, Inc.*, 320 S.C. 113, 119, 463 S.E.2d 600, 604 (1995) (the enumeration of particular things excludes something else not mentioned). The exclusivity to Sea Pines Plantation Company is further evidenced by the fact that right of first refusal is the only right emanating from the 73 Covenants that was included in the 1977 Assignment.

Inasmuch as the right of first refusal was personal in nature to Sea Pines Plantation Company, it could not have been assigned to anyone else, including SPR. Thus, the right of first refusal expired along with the extinguishment of its owner, the Sea Pines Plantation Company, and it was never assigned to Defendant SPR.

IV. CONCLUSION

In conclusion, Plaintiffs ask this Court for an order barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the

exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative, and solely with regard to the ***claimed existence*** of a purported right of first refusal, Plaintiffs move for an Order in Limine restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

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ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' MOTION IN LIMINE NO. 2** **RE: EVIDENCE OF RIGHT OF FIRST REFUSAL** **(VOID DUE TO COMMON LAW RULE AGAINST PERPETUITIES)**

PLEASE TAKE NOTICE THAT Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, by and through the undersigned counsel, hereby moves for an *Order in Limine* barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative with regard to the claimed existence of a right of first refusal, Plaintiffs move for an *Order in Limine* restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

This motion is based on the grounds that the probative value of any evidence relating to the existence and exercise of the purported right of first refusal is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury in that the right of first

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

refusal is void and unenforceable as a matter of law because the right of first refusal violates the common law rule against perpetuities.

I. STATEMENT OF FACTS AND PLAINTIFFS' CLAIMS

The factual background and summary of Plaintiffs' claims are set forth in Plaintiffs' Motion in Limine No.1 filed concurrently with the present Motion.

II. LEGAL ARGUMENT

A. SPR's Right of First Refusal is Voided by The Common Law Rule Against Perpetuities

The common law rule against perpetuities is that "[n]o interest is good unless it must vest, if at all, no later than twenty-one years after some life in being at the creation of the interest." *Abrams v. Templeton*, 320 S.C. 325, 327, 465 S.E.2d 117, 119 (Ct.App.1995). The seminal case in South Carolina applying the rule against perpetuities to a right of first refusal is *Webb v. Reames*, 326 S.C. 444, 485 S.E.2d 384 (Ct.App.1997), which holds that a right of first refusal is a perpetual option that violates the rule against perpetuities.

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

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

Webb, 326 S.C. at 446.

In reversing the trial court holding that the right did not violate the rule against perpetuities, the Court of Appeals held:

> We agree with Webb's contention challenging the validity of the right of first refusal. This pre-emptive right is a contingent, nonvested interest in that the grantee or the grantee's heirs might never choose to sell the property. It is an interest not

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

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

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

In this instance, the right of first refusal was declared by the Lighthouse Beach Company, (SPR's alleged predecessor-in-interest to such right) in 1973, forty-four years before SPR attempted to exercise the right to acquire the Surf Shop Property. Similar to the right holder in *Webb*, SPR sought to reserve in itself a perpetual option to purchase the Surf Shop Property. As in *Webb*, because SPR's "right or interest was one that might not vest either within a life in being at the time of the creation of the interest or until later than 21 years thereafter, the interest violates the rule against perpetuities and is therefore void." *Webb*, 326 S.C. at 446.

Webb remains the controlling law in South Carolina and its holding follows the majority view. See, e.g., *New Bar P'ship v. Martin*, 729 S.E.2d 675 (N.C. Ct. App. 2012) (the common law

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

rule against perpetuities voids commercial property interests established without reference to any measuring life because such interest is not certain to terminate or vest within 21 years); *Lake of the Woods Assoc. v. McHugh*, 238 Va. 1 (Va. 1989). But see, *Old Port v. Old Port*, 986 So. 2d 1279, 1280 (Fla. 2008).

The North Carolina *New Bar* case is particularly on point. That case involved a commercial lease that provided for an initial term of five years and granted the original tenant an option to renew for three additional five-year periods. The lease also provided the original tenant with an option to purchase the property during the first five-year term of the lease and a right of first refusal to purchase the property during any subsequent five-year term of the lease should the option to renew be invoked. The tenant assigned its interest in the lease to a successor tenant at which time the landlord and the successor tenant amended the lease to extend the option to renew by four additional five-year periods. The landlord then sold the property without informing the original or successor tenants and the successor tenant filed suit. *New Bar*, 729 S.E.2d 675, 679.

The trial court dismissed the successor tenant's claims finding that the right of first refusal violated the common law rule against perpetuities. In affirming the dismissal, the *New Bar* court recognized that "[f]or property interests established without reference to any measuring life (like the lease at issue here), the common law RAP voids any interest not certain to terminate or vest within 21 years." *Id* at 683. Because "the amendments to the initial lease explicitly extended the renewal terms of the initial lease, and by extension, New Bar's right of first refusal, until … some 35 years after the December 1993 creation of the right", the court found that the "right of first refusal violates the common law RAP and . . . is void." *Id*. at 685.

Likewise, in this instance the right of first refusal relied on by SPR does not refer to any measuring life and is thus perpetual and void under the common law rule against perpetuities.

B. <u>The Statutory Rule Against Perpetuities Is Inapplicable</u>

Defendants contend that the common law rule is inapplicable and the Statutory Rule Against Perpetuities ("SRAP") set forth in S.C. Code §27-6-10, et seq. should be applied. Defendants' reliance on SRAP is misplaced.

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Section 27-6-20 (A) of the SRAP provides that a nonvested property interest is invalid unless (1) when the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or (2) the interest either vests or terminates within ninety years after its creation. S.C. Code §27-6-20 (A).

However, SRAP at S.C. Code §27-6-50 (1) expressly states that SRAP does not apply to nondonative transactions like the one at issue. S. C. Code §27-6-50 (1) (Section 27-6-20 does not apply to "a nonvested property interest … arising out of a nondonative transfer" except for certain exceptions that are inapplicable to this commercial transaction.) See *New Bar P'ship v. Martin*, supra, 729 S.E.2d at 683 (the Uniform Statutory Rule Against Perpetuities did not replace the common law rule against perpetuities as to a right of first refusal arising from nondonative transfers); *Buck v. Banks*, 668 N.E.2d 1259, 1260-61 (Ind. Ct. App. 1996) (the Uniform Statutory Rule Against Perpetuities does not apply to a pre-emptive right to purchase real property which is a nonvested property interest arising out of a nondonative transfer).

SPR's right of first refusal is void ab initio under prevailing precedent set forth in *Webb* and the common law rule against perpetuities. The SRAP did not replace this established common law.

III. CONCLUSION

In conclusion, Plaintiffs ask this Court for an order barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative, and solely with regard to the ***claimed existence*** of a purported right of first refusal, Plaintiffs move for an Order in Limine restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference

with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

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ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFFS' MOTION IN LIMINE NO. 3** **RE: EVIDENCE OF RIGHT OF FIRST REFUSAL** **(40-YEAR STATUTE OF REPOSE)**

PLEASE TAKE NOTICE THAT Plaintiffs Bittmint, LLC and Harbour Town Surf Shop, LLC, by and through the undersigned counsel, hereby moves for an *Order in Limine* barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative with regard to the claimed existence of a right of first refusal, Plaintiffs move for an *Order in Limine* restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

This motion is based on the grounds that the probative value of any evidence relating to the existence and exercise of the purported right of first refusal is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury in that the right of first

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

refusal is void and unenforceable as a matter of law because the right of first refusal violates the common law rule against perpetuities.

I. STATEMENT OF FACTS AND PLAINTIFFS' CLAIMS

The factual background and summary of Plaintiffs' claims are set forth in Plaintiffs' Motion in Limine No.1 filed concurrently with the present Motion.

II. LEGAL ARGUMENT

A. SPR's Claim of Interest in the Subject Property Through the Right of First Refusal is Barred by the Forty Year Statute in South Carolina Code Section 15-3-380

South Carolina Code §15-3-380 provides:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

The Forty-Year Statute is a statute of repose, meaning that any right not invoked by the right holder within the applicable forty-year period is eliminated. See *Sutton v. Clark*, 59 S.C. 440, 452, 38 S.E. 150 (1901) (holding that former S. C. Code §109, the predecessor to §15-3-380, is a statute of repose); *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993) (statutes of limitations and statutes of repose are conceptually different; the running of a statute of limitations bars a remedy; the running of a statute of repose extinguishes both the right and the remedy) (citing *Goad v. Celotex Corp.*, 831 F.2d 508, 511 (4th Cir. 1987), cert. denied, 487 U.S. 1218, 108 S.Ct. 2871, 101 L.Ed.2d 906 (1988).

Under the plain language of S.C. Code §15-3-380, the failure to claim an interest in the Surf Shop Property for a period of more than forty years operates as an absolute bar to SPR's claim. The right of first refusal was created in 1973 as embodied in the 73 Covenants. SPR

ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

exercised its right of first refusal for the first time on this Property in 2017. Neither SPR nor its predecessors possessed the Surf Shop Property for more than 40 years prior to SPR's invoking its rights to the subject property some 44 years after the creation of the interest.

Because SPR failed to invoke enforcement or assert its right of first refusal in Surf Shop Property for a period of more than 40 years, the possession thereof by the Sellers is "deemed valid against the world after the lapse of such a period," and SPR's claimed interest by virtue of the right of first refusal is barred. Therefore, SPR had no right to interfere with Bittmint's contractual right to purchase the Surf Shop Property from the Sellers.

III. CONCLUSION

In conclusion, Plaintiffs ask this Court for an order barring Defendants from offering, referring, or alluding to, any evidence or eliciting any details at trial with respect to (1) the existence of a purported right of first refusal held by Defendant Sea Pines Resort, LLC and (2) the exercise of a purported right of first refusal by Defendant Sea Pines Resort, LLC in connection with the purchase of the subject property of this action.

In the alternative, and solely with regard to the ***claimed existence*** of a purported right of first refusal, Plaintiffs move for an Order in Limine restricting the relevancy of any evidence offered, referred to or alluded to at trial concerning the claimed existence of a purported right of first refusal by Defendant Sea Pines Resort, LLC exclusively to Defendant Sea Pines Resort, LLC's defenses to Plaintiffs' causes of action for (1) tortious interference with contract and (2) tortious interference with prospective contractual relations arising out of the alleged interference with a contact of sale for the subject property between Plaintiff Bittmint, LLC and Defendants Lynda H. Johnson and Charles S. Giannone.

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ELECTRONICALLY FILED - 2022 Feb 25 3:20 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTIONS LIMINE**

Defendants Sea Pines Resort, LLC ("Sea Pines") and Lynda Johnson and Charles Giannone (the "Individual Defendants") (collectively, "Defendants") respectfully submit this Memorandum of Law in Support of four Motions in Limine filed by Defendants on October 10, 2021. Those four motions are as follows:

- Motion in Limine as to certain damages claimed by Plaintiff Harbour Town Surf Shop, LLC ("HTSS").
- Motion in Limine as to certain damages claimed by Plaintiff Bittmint, LLC ("Bittmint").
- Motion in Limine to exclude opinion testimony concerning the legal enforceability and interpretation of certain legal instruments.
- Motion in Limine, pursuant to the dead man's statute and hearsay rules, to preclude any testimony concerning oral conversations with the former owner of the property at issue in the case, who is deceased.

For the reasons explained herein, all four motions should be granted, and the evidence and testimony excluded in limine.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

BACKGROUND

Overview

This case concerns a right of first refusal on certain commercial property in the Sea Pines community on Hilton Head Island. It is undisputed that the property was under contract for sale to Bittmint and that Bittmint, through its attorney, sent Sea Pines a request to waive its right of first refusal that indicated all parties agreed that Sea Pines had 30 days to exercise its right. Sea Pines then exercised its right and closed on the purchase within those 30 days. Then, even though it had recognized Sea Pine's right of first refusal, Bittmint began to claim the right was not enforceable and ultimately initiated this lawsuit against Sea Pines and the sellers of the property. In this case, Bittmint (and a related entity, HTSS) seek to challenge Sea Pines's exercise of its right of first refusal and seek monetary damages from both Sea Pines and the Individual Defendants, the sellers of the property.

The Property and Right of First Refusal

The Individual Defendants, a sister and brother, were the owners of two adjacent retail condominium units that they inherited from their mother after her death -- Shops 6 and 8 of the Mariners Way Horizontal Property Regime in Harbour Town within Sea Pines (jointly referred to as the "Property"). HTSS had a long-term lease on the Property when Sea Pines purchased it and continues to rent the Property for its retail business known as the Surf Shop. Sea Pines has honored that lease. Bittmint owns the retail condominium next door to the Property where it operates a General Store. Bittmint and HTSS have the same members.[1] On March 17, 2017, Bittmint entered into a contract to buy the Property from the Individual Defendants.

[1] HTSS rents the General Store unit from Bittmint. Amir Bitton and Alon Mintz are each 50% members in both HTSS and Bittmint.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Like the covenants in most resort communities, the covenants for Sea Pines grant the master developer a right of first refusal on real estate sales within the community. This right allows the developer a modicum of control over the development in the planned community if it chooses to exercise the right. Sea Pines is the current master developer under the Sea Pines covenants and holds this right of first refusal.

In Sea Pines, the separate residential and commercial covenants each reserve to the developer this right of first refusal. Section 19 of the real property covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 (the "Commercial Use Covenants") provides as follows:

> 19. ***In the event the owner desires to sell a Commercial. Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price, and should the Company fail or refuse, within thirty(30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price***, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation. Or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

(double emphasis added). The residential covenants in Sea Pines contain a similar right of first refusal in Section 10, that reads as follows:

> In the event the owner desires to sell a residential site within Sea Pines Plantation . . . then said property shall be offered for sale to the Company for the same price at which the highest bona-fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> said property at this price; and should the Company fail or refuse, within thirty (30) days after receipt of written notice of the price and terms, to exercise its option to purchase said property at the offered price, then the owner of said property shall have the right to sell said property subject, however, to all covenants and limitations herein contained.

Deed Book 124, Page 35. There are other sets of covenants that also provide Sea Pines certain rights within the development.

Bittmint's 2016 acquisition of the unit next door to the Property

Bittmint purchased the commercial condominium unit housing the General Sore in 2016. Notably, after Bittmint entered into the contract to purchase the general store (but before closing), that contract and a request for a waiver of the right of first refusal were submitted to Sea Pines for review. See Ex. 1, Mintz 28:24-29:2 (contract first submitted to Sea Pines for a waiver); Ex. 2, Bitton 15:13-17:24 (Bitton testifying that he found out before entering into the contract to buy the Property that Bittmint had sent a waiver of the right of first refusal to Sea Pines prior to closing on the general store and that Sea Pines did not exercise its right with regard to the general store). Sea Pines did not exercise its right of first refusal with respect to that unit, and Bittmint ultimately closed on that purchase. See Ex. 1, Mintz 29:3-17 (more than 30 days lapsed without Sea Pines exercising its right of first refusal so the closing occurred); Ex. 2, Bitton 15:13-17:24.

Sea Pines' acquisition of the Property

In the spring of 2017, after Bittmint had purchased the unit where it operates the General Store, the Individual Defendants entered into a contract to sell the Property to Bittmint for $580,000 ("the contract"). Ex. 3, Contract. As refenced above, both members of Bittmint, Alon Mintz and Amir Bitton, testified in their depositions that because of their experience when they acquired the General Store they understood *prior* to contracting to purchase the Property that Sea Pines had a right of first refusal with respect to any contract to purchase the Property. See Ex.1,

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Mintz 30:1-18 (he was aware from the General Store purchase that Sea Pines had to either waive its right of first refusal or not exercise it for 30 days); Ex. 1, Mintz 41:14-17 (aware of Sea Pines right of first refusal at time of contract on the Property); Ex. 2, Bitton 15:13-18:2 (Bitton understood a couple of months after the General Store purchase that Sea Pines has a right of first refusal that it did not exercise with regard to that purchase).

Further, Mrs. Johnson discussed Sea Pines' right of first refusal with at least one member of Bittmint prior to entering into the contract to sell the Property:

> A. . . . When we were going back and forth on the price of the shop. ***I just remember saying that's awful low. Sea Pines might take it for that price*** and I believe one of them said -- and again I can't recall exactly -- that they usually don't take -- they had just dealt with Sea Pines with the General Store, so.
>
> Q. They weren't concerned?
>
> A. They weren't concerned, yes.

Ex 4, Johnson 36: 5-13 (double emphasis added); Ex.4, Johnson 85:24-86:9 (Johnson stating that both the Individual Defendants and Bittmint understood that the contract was contingent on Sea Pines not exercising its right of first refusal).; Ex.4, Johnson 20:18-21:4 (Johnson stating all parties knew Sea Pines had a right of first refusal prior to entering into the contract).

The contract of purchase and sale for the Property provided that a ". . . term and *condition[]* of th[e]. . . contract [that] Seller (s) shall obtain all appropriate ***waivers and approvals from Sea Pines*** and the applicable horizontal property regime within thirty (30) days from the date of execution hereof." Ex. 3 at ¶6 (double emphasis added). The contract also specifically stated that no closing would be set until "***ninety (90) days after all relevant waivers and approvals are obtained*** by Seller." Ex. 3 at ¶ 7 (double emphasis added). Both Bittmint and Michael Mogil, the lawyer it selected to handle the closing, have testified that the contract contemplates that the sale would occur ***only*** if Sea Pines declined to exercise its right of first refusal or waived its right of

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

first refusal. Specifically, Amir Bitton testified that his attorney contemplated that a waiver of Sea Pines' right of first refusal was one of the waivers contemplated by the contract. Ex. 2, Bitton 36:20-37:2 (waiver from Sea Pines contemplated as part of paragraph 7 on the contract). Mogil agreed that the contract provisions stating that there would be no closing without all appropriate waivers was a reference to Sea Pines' waiver of its right of first refusal, although he inexplicably stated he no longer believes a waiver is required:

> Q But you would agree that a waiver of the right of first refusal from Sea Pines would be one of the relevant waivers and approval referred to in paragraph seven?
>
> A ***I would agree that that would be something that we were contemplating in paragraph seven.*** I'm not agreeing that it was required. I'm saying that would have been one of the matters that we were addressing, yes.

Ex. 5, Mogil 43:7-13 (double emphasis added).

While the contract stated that the *seller* would request the needed waivers from Sea Pines, it is undisputed that Bittmint, the *buyer*, acting through Mogil, undertook the responsibility of requesting a waiver from Sea Pines. See Ex. 4, Johnson 45:17-21 (stating that she wanted Bittmint's lawyer to handle requesting the waiver of the right of first refusal so she would not have to pay her lawyer for that task); Ex. 5, Mogil, 61:14-19 (Mogil admitting he was asked by his client to submit the waiver request to Sea Pines).

At the request of Bittmint, Mogil, contacted Sea Pines about waiving its right of first refusal. Mogil e-mailed Rob Bender with Sea Pines and stated:

> I represent the Contract Purchaser for 147 Lighthouse Road, Stes. A and B (Shop 6 and 8 Mariners Way). In connection with the standard SPR waiver, I was asked by my client to contact you for further processing.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> Please let me know the process or what further information SPR might need. Historically, this is usually processed by the Seller side, but the Seller informed my client that I should be in contact

See Ex. 6, Mogil deposition exhibit 5. His e-mail did not include any details of the contemplated transaction, other than the address of the Property. Rob Bender responded to Mogil stating that the process should be handled as it was when Bittmint purchased the unit housing the General Store. Id. On April 14, 2017, Mogil's office sent Sea Pines a request for a waiver of the right of first refusal which stated "[***t]he above referenced property is hereby offered for sale to the company*** pursuant to the same terms & price contacted in the current contract of sale with the bona fide purchaser(s) referenced above. ***It is hereby understood by all parties that the company has (30) business days from recipe of this offer in which to determine its re-purchase option***." Ex. 7 , waiver request (double emphasis added); see also, Ex. 8, exhibit 2 to Mogil deposition (e-mail from Mogil's firm to Sea Pines with first page of waiver request attached); Ex. 5, Mogil 56:17-59:1 (Mogil testifying that the waiver request that included the language quoted above was sent by his office to Sea Pines for its consideration).

On April 17, 2017, three days after Mogil's office sent Sea Pines the request for waiver, Rob Bender e-mailed Mogil and requested a copy of the contract that has not yet been provided. See Ex. 6, Mogil deposition exhibit 5 ("I wanted to let you know that we have received a copy of the Request for Waiver for the two suites at 147 Lighthouse Road. We would like to receive a copy of the sales contract as we review this waiver request please. . ."). Mogil responded that same day and provided a copy of the contract for purchase and sale of the Property. See Ex. 6, Mogil deposition exhibit 5 ("Rob, attached is executed Contract relating to the Waiver Request.").

Approximately two weeks later, by e-mail dated May 2, 2017, Sea Pines' real estate attorney, Simon Fraser, informed Mogil that Sea Pines was exercising its right to purchase the

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

property for the contract price of $580,000. See Ex. 9, Mogil deposition exhibit 6.

On May 12, 2017, Sea Pines closed on its purchase of the Property. Bittmint had filed a lis pendens on May 10, 2017, and later initiated this lawsuit.

The Complaint has been amended twice, including to add HTSS as a plaintiff. The Second Amended Complaint alleges that the covenants including the right of first refusal are "vague, void, and unenforceable" and further that "the procedures followed with respect to the subject Property were not proper." Second Am. Compl. ¶¶ 30 & 31. The Second Amended Complaint also asserts that Sea Pines acted improperly because Sea Pines did not exercise the right (and executed a waiver) for 47 unrelated transactions in the 30 days prior to this sale. Second Am. Compl. ¶ 46. The Second Amended Complaint includes 8 causes of action, at least 7 of which appear to be claims by Plaintiffs for damages. The case is set for trial on February 28, 2022. Defendants have filed four motions in limine and submit this memorandum of law in support of those motions. Each motion is addressed below.

DISCUSSION

A. Motion in Limine (HTSS damages)[2]

Defendants ask this Court to exclude, in limine the following damages asserted by HTSS[3]:

1. HTSS's claimed damages associated with a hypothetical decrease in rent payments if Bittmint had purchased the Property should be excluded for several reasons.

HTSS, the tenant in the Property, has not asserted any breach of the lease or wrongful conduct by Sea Pines as its landlord. Instead, HTSS seeks damages for an alleged difference between the

[2] There are numerous legal reasons that HTSS's claims fail as a matter and all HTSS's claims should be dismissed and/or a verdict directed on all of HTSS's claims. The purpose of the motion in limine is to address the evidentiary issues associated with HTSS's claimed damages.

[3] HTSS's claimed damages are stated in its answers to interrogatories dated June 15, 2019, attached hereto as Exhibit 10. Interrogatory number 3 concerns the damages claimed by HTSS.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

amount HTSS pays to Sea Pines in rent and the alleged hypothetical rent HTSS would have paid to Bittmint if Bittmint had acquired the property. The only witness identified to testify as to HTSS's alleged damages is Alon Mintz.

Mintz does not have personal knowledge of the alleged damages and the damages are speculative as a matter of law. HTSS has presented a "Lease Differential Analysis" as the only calculation of these alleged damages. See Ex. 11 (damages analysis). Mintz testified in his deposition that his lawyers created the document and he provided them only one piece of information, the amount of the mortgage loan Bittmint would have sought if it had been able to purchase the Property:

> Q It's titled -- the first page is titled "Harbour Town Surf Shop, LLC Lease Differential Analysis."
>
> A This is between the mortgage and the rent differences.
>
> Q Okay. So who prepared this document?
>
> A My lawyer.
>
> Q When was it prepared?
>
> A I'm not sure the date that it was prepared.
>
> ***Q Okay. Did you play a role in preparing this?***
>
> ***A No.***
>
> Q Did you provide any of the information?
>
> A Just, I guess, the loan amount. But I mean, they had -- my lawyers had those numbers from the contract, so I guess they analyzed it.

Ex. 1 Mintz 87:7-24 (double emphasis added). Mintz testified he does not know if the interest rate used in the calculation was accurate or not. Ex. 1 Mintz 88:7-89:4. While he thought the interest rate would vary, he did not know the extent to which it would vary. Id. He did not know if the

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

contemplated mortgage term was 20 or 30 years, whether it would be a fixed or adjustable rate, or what terms Bittmint would have been able to obtain if a lender had been willing to make a loan. Ex. 1 Mintz 90:15-92:1; Ex 1 Mintz 99:1-100:2. Most significant of all, Mintz testified in his deposition that he has no recollection of any commitment by any bank to finance Bittmint's purchase on the terms used in HTSS's damages calculation:

> [Q] But sitting here today, you don't have any recollection of any commitment from any bank to finance $498,000 -- $498,800 at a rate -- fixed rate of 4.29 percent for 30 years, do you?
>
> A I don't recall that. But I have to check into that.

Ex. 1 Mintz 98:16-21. See also, Ex. 2, Bitton 91:25-96:3 (discussing at length that the lawyers used information obtained during discovery to prepare the damages analysis with little to no input from Bittmint or HTSS and that all the assumptions were made by the lawyers). According to the only witness identified to talk about these damages, this analysis was conceived by HTSS's lawyers. It has no basis in fact. The assumptions used in the analysis were just made up by HTSS's lawyers. Any testimony or exhibit concerning these damages is inadmissible for at least the following independent reasons:

i. No witness with personal knowledge of the alleged damages

Any evidence or testimony as to these damages is inadmissible because there is no witness identified to testify as to these alleged damages that has firsthand knowledge of damages. SCRE 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."). Mintz, the only witness identified to testify as to these damages, was very clear in his deposition that he had no knowledge of the analysis/calculation created by HTSS's lawyers. Therefore, these damages must be excluded.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ii. A damages analysis prepared by HTSS's lawyers is inadmissible hearsay.

Mintz testified that HTSS's lawyers prepared the damages analysis, with essentially no input from HTSS. The analysis is an out of court statement by HTSS's lawyers offered for the truth of the matter asserted, namely HTSS's alleged damages. The analysis is inadmissible hearsay, and no exception applies. SCRE 801 (definition of hearsay); 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute."). For this additional reason the evidence related to these claimed damages is inadmissible.

iii. A damages analysis with no factual basis is speculative and inadmissible as a matter of law.

As is clear from Mintz's testimony, the major inputs into the alleged damages analysis were not based on any facts known by Mintz but instead conceived by HTSS's lawyers. It is entirely speculative whether a loan would have been made, the conditions of that loan, and whether Bittment could have complied with those conditions, because Plaintiff never obtained a loan commitment from a bank. For this same reason, any assumptions as to the interest rate, interest rate adjustment, loan term, or amortization schedule are speculative as well. Proof of speculative damages is inadmissible. See generally, South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122-123, 113 S.E.2d 329, 335-336 (1960) (". . . required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy"); Bensch v. Davidson, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (2003). For this additional reason these claimed damages should be excluded in limine.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

2. Proof of damages related to alleged costs expended ***prior to*** entering the contract of purchase and sale of the Property is irrelevant and therefore inadmissible.

HTSS's seeks to recover alleged damages for the cost of improvements made to join the Property with the adjacent General Store and to purchase food service equipment, all of which occurred prior to March 17, 2017, the date of the contract between the Individual Defendants and Bittmint. For example, Mintz testified that the work to join the units together was done during the winter of 2017, before there was any contract for Bittmint to purchase the Property:

> Q Okay. And then it says, "Winter of 2017, join units A, B, C together." So that reflects that you were going to join A, B, and C together before any purchase of the surf shop; correct?
>
> A Correct.
>
> Q And you did that?
>
> A Yes.
>
> ***Q You joined all three of them together before you were under contract to purchase the surf shop; correct?***
>
> ***A Correct.***
>
> Q All right. So that wasn't something that you had to own the surf shop to do; they let you do it under the lease; right?
>
> A Yes.

Ex. 1 Mintz 120:25-121:15 (double emphasis added); see also, Ex. 1 Mintz 122:2-4; Ex. 2 Bitton, 63:9-18. As to the alleged purchase of food service equipment, Bitton testified that was all done prior to the contract for purchase and sale of the Property:

> Q And you've also alleged that you have damages for purchasing food service equipment an amount to be proven at trial, but a minimum of $30,000.
>
> * * *
>
> Q You purchased a hood?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

> A Yeah. Because the hood that existed was tore up and was rusted, so we had to purchase all the pipe on the inside that goes all the way to the exit of the fan. And the hood itself -- the inside, all the inside parts, we had rebuild and refurbish everything.
>
> * * *
>
> Q So is that the only thing that's been bought to date?
>
> A No. We bought refrigerators. We bought freezers. I can't recall all the different equipment, new equipment that we thought we were going to need.
>
> * * *
>
> ***Q When did you buy all that?***
>
> ***A Back in January.***
>
> ***Q So before you went under contract to purchase the property?***
>
> ***A Correct.***

Ex. 2, Bitton 64:14-66:13 (double emphasis added). These damages predate the contract between the Individual Defendants and Bittmint. As a matter of fact and law, those expenses cannot have been incurred in reliance on the purchase of the Property they were already renting. These alleged expenditures have no relevance to the claims asserted and must be excluded. See SCRE 401 (definition of relevant evidence); 402 ("Evidence which is not relevant is not admissible."). Further, any slight probative value, of which there is none, would be substantially outweighed by the unfair prejudice in allowing HTSS to assert damages in reliance on a nonexistent contract. SCRE 403.

3. Emotional damages claimed by the individual member of HTSS are inadmissible.

HTSS asserts that the individual members of the Plaintiff entities are entitled to emotional damages. Plaintiffs did not plead emotional damages. The individual members of the Plaintiff

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

entities are not parties and cannot claim damages. Further, emotional damages are not recoverable for the causes of action alleged by Plaintiffs as a matter of law. Further, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

4. Speculative claims lost profits are inadmissible.

HTSS also claims damages for lost profits caused by lost food service opportunities. Mintz testified that no analysis had been done to determine any lost profits claimed by HTSS:

> Q . . . And so just to make sure I understand your testimony correct, ***you have not done any sort of analysis*** as to how much it would cost to outfit the space and pay for the food, pay for employee time, get appropriate permitting to do food service, and the cost of the food and how much revenue you could generate in selling food; is that correct?
>
> A ***Right***. I don't have it currently analyzed.

Ex. 1, Mintz 160:7-16 (double emphasis added). See also, Ex. 1 Mintz 160:7-161:21 (Mintz testifying that he does not have the experience to create an admissible analysis of lost profits as its related to a food service venture); see also, Ex. 2 Bitton 104:14-18 ("Q . . . Now let's talk about the lost profits caused by lost food service opportunities. Have you documented that in any way? A[.] No, because I can't").

Based on the lack of any admissible analysis of the alleged lost profits, the Court must exclude any testimony or evidence as to HTSS's alleged damages for lost profits and other lost future financial benefits it claims it would have gained had Bittmint been its landlord or if it ran a food service operation—those alleged damages are speculative as a matter of law. See generally, South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122-123, 113 S.E.2d 329, 335-336 (1960); Bensch v. Davidson, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (2003). Further, such testimony or evidence should be excluded under Rules 401, 402, 403, 602 of the South

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Carolina Rules of Evidence because the evidence is not relevant, and Mintz does not have the personal knowledge required to testify as to any such claimed damages.

5. HTSS's claimed damages for distraction of its principal managers is inadmissible as a matter of law and must be excluded.

HTSS also asserts damages for the distraction of its principal managers and undefined lost opportunities and befits of the bargain. Plaintiffs have not disclosed or provided evidence of any admissible damages in these areas. Further, Plaintiffs did not plead damages for distraction, which are not recoverable as a matter of law. The individual members of the Plaintiff entities are not parties and cannot claim damages for their distraction. Further, these alleged damages are not recoverable as a matter of law. Further, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

6. HTSS cannot recover any damages at all because it was not a party to the contract.

HTSS was not a party to the contract of sale. Because it was not a party to the contract, HTSS cannot recover damages for breach of that contract or tortious interference with that contract. For all of these reasons, the Court should grant Defendant's Motion in Limine as to HTSS's damages in full.

B. Motion in Limine (Bittmint Damages)[4]

Defendants ask this Court to exclude, in limine, the following damages asserted by Bittmint[5]:

[4] There are numerous legal reasons that Bittmint claims fail as a matter and all Bittmint's claims should be dismissed and/or a verdict directed on all of Bittmint's claims. The purpose of the motion in limine is to address the evidentiary issues associated with Bittmint's claimed damages.

[5] Bittmint's claimed damages are stated in its supplemental answers to interrogatories dated June 15, 2019, attached hereto as Ex. 10. Interrogatory number 3 concerns the damages claimed by Bittmint. The Motion in Limine also include a request to exclude any testimony or evidence as to alleged increased costs of occupancy for the subject property in an amount exceeding $2,000 per month and to exclude testimony or evidence of alleged damages for diminution in value of a third-

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

1. Bittmint's alleged damages for lost opportunity costs and undefined benefits of the bargain are speculative and otherwise inadmissible.

Bittmint seeks damages for the alleged lost opportunity costs by forgoing conditional loan approval under prevailing commercial loan rates at the time it sought to purchase the Property and an alleged loss of undefined opportunities or benefits of the bargain. These damages are inadmissible for the same reason as HTSS's claimed lease differential damages discussed above.

There is no admissible evidence of what interest rate or terms Bittmint could have obtained, no commitment by any bank to make a loan and no witness with personal knowledge of any specific loan that would have been made to Bittmint. Bittmint seeks as damages $500 a month in profit it claims it would have received from HTSS had it purchased the Property, even though there was never any contract to that effect. See Ex. 2, Bitton 97:7-98:7 and 61:10-62:9 (stating that there was never a contract/lease between Bittmint and HTSS relating to renting the Property). Specifically, Bittmint claims it would have rented to HTSS for a value equal to its mortgage, taxes and regime fees plus $500 per month. Id. However, Bitton candidly admitted *there is no way to know* what HTSS's rent payment would have been in the hypothetical situation because there is no evidence of what Bittmint's mortgage and other expenses would have been. Id. (admitting that ". . . the only thing that would tell us what BittMint's expenses would be, we would have to know what BittMint's mortgage was going to be").

As explained in detail in the section above concerning HTSS's similar damages, these alleged damages are speculative as a matter of law, there is no witness with personal knowledge of the claimed damages and the lawyers' analysis is inadmissible hearsay.

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party business, Harbourtown Surf Shop, LLC. However, pursuant to its supplemental answers to interrogatories, Bittmint is no longer asserting those claimed damages.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

2. Bittmint's claimed damages related to the purchase of food service equipment.

Putting aside whether HTSS and Bittmint can claim the same damages twice related to the alleged purchase of food service equipment, the claimed damages should be excluded because the equipment was purchased before the contract of purchase and sale was signed. As explained above in detail, Bitton testified that the purchase of food service equipment preceded the contract for purchase and sale of the Property. Ex. 2, Bitton 64:14-66:13. Neither the contract nor its alleged breach caused Bittmint to incur these costs.

These alleged expenditures have no relevance to the case and must be excluded. See SCRE 401 (definition of relevant evidence); 402 ("Evidence which is not relevant is not admissible."). Further, any slight probative value, of which there is none, would be substantially outweighed by the unfair prejudice in allowing Bittmint to assert damages in reliance on a nonexistent contract. See SCRE 403.

3. Bittmint's claimed damages for distraction of its principal managers is inadmissible as a matter of law and must be excluded.

Like HTSS, Bittmint, also asserts damages for the distraction of its principal managers (the same two individuals) and undefined lost opportunities and befit of the bargain. As stated above, Plaintiffs have not disclosed or provided evidence of any admissible damages in these areas. Further, Plaintiffs did not plead damages for distraction, which are not recoverable as a matter of law. The individual members of the Plaintiff entities are not parties and cannot claim damages for their distraction. Further, these alleged damages are not recoverable as a matter of law. Further, such testimony or evidence should be excluded under Rules 401, 402, 403, SCRE.

C. Motion in Limine (Opinion Testimony)

Defendants believe that Plaintiff may seek to admit evidence or testimony concerning the legal enforceability and effect of certain assignment documents and court orders, without any expert

witness designated. Specifically, Defendants believe Plaintiff may seek to admit testimony or evidence as to the following nonexclusive list of opinions:

a. Whether the rights of first refusal included in the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185 are vague, void or unenforceable.

b. Whether the rights of first refusal included in the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185 are void or unenforceable under the common law rule against perpetuities.

c. Whether the Defendant Sea Pines Resort, LLC is a successor or assign to the rights of the declarant/company with regard to the real property covenants, recorded in Deed Book 206, Page 1143; Deed Book 124, Page 35; Deed Book 173, Page 46; Deed Book 92, Page 152; and Deed Book 128, Page 185.

d. Whether the following are valid and enforceable assignments:

    i. Assignment of Option to Repurchase recorded at Deed Book 246 at Page 2087 Beaufort County Register of Deeds.

    ii. Assignment of Rights recorded at Deed Book 490, Page 712 in Beaufort County Register of Deeds;

    iii. Assignment of Rights recorded at Deed Book 520 at Page 1907 Beaufort County Register of Deeds;

    iv. Deed, Bill of Sale and Assignment of Rights recorded at Deed Book 2539 at Page 1193 Beaufort County Register of Deeds.

Under Rule 701, lay witnesses can only offer opinion testimony when such an opinion would "not require special knowledge, skill, experience or training." Rule 701, SCRE; see generally, Fowler v. Nationwide Mut. Fire Ins. Co., 764 S.E.2d 249, 252, 410 S.C. 403, 410 (Ct. App. 2014) (Volunteer fire chief's testimony that fire was unintentional and that a "V pattern" indicated fire's origin did not consist of permissible perceptions from a lay witness, even though chief extinguished fire; those statements were opinions that required special knowledge, skill, experience, or training to be properly made).

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

The above issues, and any similar issues as to the enforceability and/or legal effect of legal documents, are legal in nature and any lay opinion testimony as to those issues is inadmissible. A lay witness cannot review legal documents and offer opinions as to their legal force or effect. Further, Plaintiffs have not named any experts in this case. Therefore, no opinion testimony should be admitted under Rule 702, SCRE.

It is worth noting that Plaintiffs' attorney Michael Mogil testified in his deposition that he would not offer any opinion testimony at the trial of the case. See Ex. 5, Mogil 75:7-23; 77:6-25; 97:2-5 ("Q[.] And we've already covered that you'll not be representing any opinions as to the various covenants at issue in this case? A[.] That's correct.").

Therefore, for these reasons, the Court should grant this motion and exclude any opinion testimony (lay or expert) in limine.

D. Motion in Limine (Dead Man's Statute)

To the extent that Plaintiffs, or its members, attempt to testify at trial regarding any conversations with the former owner of the Property, Lorraine Giannone, prior to her death, such testimony must be excluded. Plaintiffs have asserted in this case that Amir Bitton, one of the members of both Plaintiff entities, had communications with their former landlord, Lorraine Giannone, regarding Bittmint and its members' desire to purchase the property that is the subject of this case. See generally, Ex. 12, Bitton Aff. ¶¶4-7. Mrs. Giannone passed away in 2016. See Ex. 12, Bitton Aff. ¶ 8. Plaintiffs and the members of the Plaintiff entities have an interest in the litigation. Pursuant to the dead man's statute and hearsay rules the Court must prohibit and exclude testimony about any verbal communications with Mrs. Giannone.

Any testimony as to these alleged conversations with the deceased former owner of the Property are inadmissible under South Carolina Code § 19-11-20 and is hearsay to which no

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

exception applies. See S.C. Code §19-11-20; See Rule 801, 802, 803, 804, SCRE. The statute, known as the Dead Man's statute, prohibits any person who has an interest in the litigation from testifying concerning communications or transactions with a deceased person if the testimony could affect the testifying person's interest. See generally, Osterneck v. Osterneck, 649 S.E.2d 127, 131, 374 S.C. 573, 580 (Ct. App. 2007) (noting that the "Dead Man's" statute, bars the testimony of a person with an interest from testifying regarding a conversation with a deceased individual.). Here, Bittmint and its members have an interest in the litigation and seek to testify regarding alleged conversations with a deceased person to aid in their case. Such testimony is precluded by the Dead Man's statute. Further, such testimony would be an out of court statement offered for the truth of the matter asserted and is inadmissible hearsay to which no exception applies. Therefore, for these reasons, any testimony regarding any such conversations is inadmissible.

CONCLUSION

For the reasons explained above, the Court should grant all four motions in lime, exclude HTSS and Bittmint's damages, rule that no opinion testimony is admissible, and preclude Plaintiffs from offering self-serving testimony regarding years-old, alleged out of court conversations with a deceased person.

WALKER GRESSETTE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.
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February 25, 2022

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

BITTMINT, LLC vs LYNDA H. JOHNSON
2017-CP-07-01057 - ALON MINTZ

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

---/

The deposition of ALON MINTZ, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Naomi McCracken,Stenographic Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 21st, day of June 2019, commencing at or about the hour of 9:04 a.m.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I'm not sure if it was listed for sale. But since we were next door to him -- we were operating The Harbour Town Surf Shop next to him, we would see him on a daily basis. So that's how we got into that.

Q So you negotiated the sales price directly with him?

A Correct.

Q Okay. And did that include the purchase of the real estate and The General Store business?

A Yes. It was some -- yes, altogether.

Q And what was that purchase price?

A It was $900,000.

Q Okay. And did you sign a written contract for that purchase?

A Yes.

Q And was that contract submitted to Sea Pines for pursuant to the right of first refusal?

A I would assume that. They went through the seller, not through my side. So I would assume that -- that they did.

Q Do you know whether it was submitted to Sea Pines?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A From my understanding, it was submitted.
Q And Sea Pines decided not to exercise its right of first refusal on that purchase; correct?
A Well, from my understanding, the seller, John, never got any answer from Sea Pines regarding that issue. And it passed 30 days, so I believe our lawyer -- he went back to Sea Pines regarding this issue. That's as far as I know regarding that transaction.
Q So you understand that if they don't exercise it within 30 days, then you can close on the sale of the property?
A I don't know that. That's what I heard. That's what they told me at that time, I guess.
Q And who is "they"?
A John, the seller.
Q Okay. And so you were aware, as far as back the purchase of The General Store, that a sale of commercial property, that Sea Pines has a right of first refusal?
A Can you repeat the question? I'm sorry.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q So you were aware, from your experience with The General Store, from purchasing it, that before you could buy a commercial property in that area, Sea Pines had a right of first refusal to -- it either had to say no or wait 30 days?

A I heard that there is something like that, yes.

Q Okay. When did you first hear about that?

A I guess when the time passed and were willing to close on the property. And then they called me that we could go ahead and close, and that's it. So I guess at that time.

Q Okay. And do you know if the contract was submitted to Sea Pines for the purchase of The General Store?

A As far as my understanding, yes.

Q Okay. And we already talked a little bit about this, I just want to make sure I have the details right.

Synovus issued a mortgage for BittMint to purchase the General Store; correct?

MR. KUBEC: Objection to form.

BY MR. LINTON:

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I'm sorry. Can you repeat that?
Q From your experience with purchasing The General Store, you knew that Sea Pines had a right of first refusal over the purchase; right?
A Well, I never really got into the first right of refusal since I never dealt with it with the purchase of The General Store. I only dealt with it after I saw that they actually exercised it, saying they have the right to do so, and they exercised their right. Until then, I wasn't really into that information. I heard about it, again, from John prior to that, but really, I never put any thought into it.
Q So you were aware of it, but it wasn't something you were -- you were dealing with?
A Exactly. I wasn't really dealing with it.
Q Okay. And some point, you agreed to the terms to purchase shops six and eight --
A Correct.
Q -- on behalf of BittMint; right?
A Correct.
MR. KUBEC: Are we going to reuse the same -- let's just go off the record.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

week --

A Um-hmm.

Q -- in discovery. This is four pages. Is this what you were just referring to? Is this the calculation of BittMint's expenses?

A Yes, I believe so.

Q It's titled -- the first page is titled "Harbour Town Surf Shop, LLC Lease Differential Analysis."

A This is between the mortgage and the rent differences.

Q Okay. So who prepared this document?

A My lawyer.

Q When was it prepared?

A I'm not sure the date that it was prepared.

Q Okay. Did you play a role in preparing this?

A No.

Q Did you provide any of the information?

A Just, I guess, the loan amount. But I mean, they had -- my lawyers had those numbers from the contract, so I guess they analyzed it.

Q Okay. And so if we look at the

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

assumptions here, we've got a principal loan amount, $498,800, which is the amount list as the mortgage amount in the contract --

A Right.

Q -- correct?

A Yes.

Q Interest rate 429 [sic] percent; where does that come from?

A I believe that it would be the rate at that time for the -- for the loan.

Q And what are you basing that on?

A The interest rate at that time.

Q Just generally?

A Yes. Again, I didn't prepare it, so I could not answer you on that part. But I believe it was -- that's the interest rate at that time for 2017 for a commercial loan.

Q And what are you basing that on?

A I believe that's what we would have based on the bank we want to take the loan from, NBSC.

Q And was that interest rate 4.29 percent --

A Yes.

Q -- in a commitment letter from NBSC?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I'm not sure if it was 4.29 or 4.5 percent, it could be.
Q So it could have been 4.5?
A It could be.
Q Could it have been five?
A No.
Q And why couldn't it have been five?
A Because I don't think at that time at The General Store, we had the same interest rate for 4 1/2 percent. And it was at the same time, and I believe I asked my banker about that and he told me at that time, it would be also be 4 1/2 percent.
Q When did you ask your banker about that? Back then when were contemplating the purchase?
A I think about that time and also after that.
Q When after that?
A I don't remember exactly when it was.
Q Well, was it during this lawsuit?
A Yeah.
Q Okay. So you called them and asked them what the interest rate was back then?
A Yeah. I actually met with him. But,

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

yeah, I would ask him that. And I believe at that time, also, the offer we got from the bank was that way.

Q And you're talking about what you referred to as a pre-approval letter?

A Yes.

Q Okay. And you would agree -- well, you said you didn't know whether you got a loan commitment letter; correct?

MR. KUBEC: Object to form.

THE WITNESS: Yeah. I don't remember the title of the form we got from the bank.

BY MR. LINTON:

Q Okay. And the term says 30 years here.

A Okay.

Q And do you remember if the pre-approval letter said 30 years?

A Again, like I said before, it could be 30, it could be 20 years; I'm not sure.

Q And was it a fixed rate or was there a balloon after a certain number of years?

A After five years, I think.

Q So you think it was five years, and then the interest rate would adjust?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I believe so.
Q Okay. Do you know what it would adjust to?
A No.
Q Do you know if it would just adjust to whatever the market rate was?
A I'm not sure how they do that, if they locked it or not. I'm not sure.
Q So if --
A I'm not a banker. I don't know.
Q So is it possible that the loan you were contemplating could've adjusted to 15 percent after 5 years, if that was the market rate for commercial loans?
A I don't -- I don't -- I'm not sure. He actually explained it to me. I'm trying to remember now going back about the loan because I believe he said there's two options, they'll fluctuate, but they increase and it changes by the rate market or you lock it every five years and then renew by the terms of the interest at that time, so --
Q And had you made a decision as to which one of those options you were going to take with respect to BittMint's purchase?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Not complete, no.
Q Okay. So you hadn't decided what the terms of your financing would be for the BittMint purchase?
A Whatever -- whatever we discussed. I mean, can you rephrase it? Can you ask, again, the question because I want to make sure I understand it before I --
Q Yeah. So you just explained that the banker told you at the time that there could be different options for the way the interest rate would work; correct?
A Yes.
Q Sometimes you could lock it in for a certain number of years and then it would change --
A Yeah. But we -- okay. I'm sorry.
Q -- to a market rate. And there were other options and ways to deal with that.
A Right.
Q And my question is: Had you determined what option you were going to use --
A Yes.
Q -- with regard --
A Yes. The five years.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A For five years, yeas.
Q Okay. So the bank -- no bank has ever offered you 4.29 percent at a fixed rate for 30 years to finance this purchase; correct?
A Again, I have to check for what -- what they proposed me and the number, but I want to make sure it's matching or not matching to this.
Q Will you check it and provide that to us?
A Yes.
Q Okay. Thank you.
Will you provide all the documents with the bank concerning this proposed loan?
A Yes.
Q Okay. Thank you.
But sitting here today, you don't have any recollection of any commitment from any bank to finance $498,000 -- $498,800 at a rate -- fixed rate of 4.29 percent for 30 years, do you?
A I don't recall that. But I have to check into that.
Q But you don't have any recollection of it sitting here today?
MR. KUBEC: Objection to form.
BY MR. LINTON:

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Let's look at the second page of this exhibit. It says "depreciation," and see where it says "land value, zero. Improvements, $580,000."

Did you prepare this part of this document?

A No.

Q Did you provide any information to anyone for this?

A No.

Q Do you know who prepared this?

A My lawyer.

Q Okay. And do you know which lawyer?

A Liv Penn (phonetic).

Q And do you know of a reason why the land has no value for shops six and eight on this depreciation analysis?

A I'm not sure.

Q Do you know why the depreciation period is 39 years?

A No. I'm not sure.

Q Would you agree with me that this depreciation analysis would change if some portion of the proposed purchase price of $580,000 was allocated to land value?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A I would assume that it would change, the amount would change.
Q And would you agree with me that if the depreciation period were different than 39 years, that that would change the analysis as well?
A But if so -- the numbers change, they're changing, yes.
Q Do you know what the depreciation rate is in here?
A Do you mean the percentage, or --
Q Correct.
A No, I don't know the percentage.
Q All right. So is it -- well, let's go back at the first page. So the box on the far, right-hand corner, on the top, kind of in middle of the page, it says --
A Right.
Q -- "Tax Effect."
A Right.
Q That appears to be the depreciation amount deduction, and there's a column for "Benefit loss."
A Um-hmm.
Q And after looking at that depreciation

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

months.

Q Was it during the time she was sick you were negotiating with Lynda for the purchase of shops six and eight?

A I don't -- I don't remember when she passed away, her mom. So I would -- well, we started talking to Lynda back in 2016. Yeah, I believe 2016. I can't remember exactly when, the particular date.

Q And so the first two bullet points, July of 2016 -- you know, this appears to have been signed July 28th or -9th of 2016. So were these things that were going on that you were memorializing or were those goals for --

A Which part?

Q The first two things under "business goals and objectives -- "

A To purchase --

Q -- "short-term."

A -- the property of The General Store.

Q Um-hmm.

A And the second one after that, "negotiation with Lynda. Lynda was ongoing and the The General Store already occurred.

Q Okay. And then it says, "Winter of

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

2017, join units A, B, C together."

So that reflects that you were going to join A, B, and C together before any purchase of the surf shop; correct?

A Correct.

Q And you did that?

A Yes.

Q You joined all three of them together before you were under contract to purchase the surf shop; correct?

A Correct.

Q All right. So that wasn't something that you had to own the surf shop to do; they let you do it under the lease; right?

A Yes.

Q And who paid for that?

A For breaking the wall?

Q Um-hmm.

A BittMint.

Q Why did BittMint pay for that?

Let me ask you this: Was the wall between shop six and eight in The General Store?

A Yes.

Q Okay. So BittMint paid for it after it bought The General Store?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Yes.
Q Okay. But it was not under contract to purchase shops six and eight at that time?
A No.
Q Okay. All right. "After purchasing Surf Shop property, create one lease from BittMint, LLC to Harbour Town Surf Shop, LLC that pays mortgage, taxes, insurance, assessments and $500 of profit every month for five years."
A Correct.
Q So this says that you were going to, sort of, do the transaction you were describing earlier where BittMint would get whatever the mortgage was plus 500 bucks a month?
A Right.
Q Well, mortgage, taxes and the regime fees --
A Right.
Q -- plus $500?
A Correct.
Q So under this analysis -- under your plan and objectives, did it matter what the mortgage was to BittMint?
A Would it matter what the mortgage is to

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

a minimum of $50,000.

And we talked some about this already, didn't we?

A Right.

Q Have we fully covered that?

A I believe so.

Q Okay. And so just to make sure I understand your testimony correct, you have not done any sort of analysis as to how much it would cost to outfit the space and pay for the food, pay for employee time, get appropriate permitting to do food service, and the cost of the food and how much revenue you could generate in selling food; is that correct?

A Right. I don't have it currently analyzed.

Q You're just saying $50,000?

A I looked at the -- yeah. I would assume that's about right.

Q But there's no documentation or analysis or calculation to back that up?

A Not here today, no.

Q Are you going to produce one?

A We can, yeah.

Q Does one exist right now?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A No.
Q So $50,000 just felt good, just felt just about right?
A Felt about right for what's the potential.
Q And you mentioned that you previously owned a deli; correct?
A Correct.
Q But you have not named yourself as an expert witness of any kind; correct?
A No. Just -- I just been in the business for four to five years. It's all from experience.
Q But you're not claiming that you have experience significant enough to be qualified as an expert to testify as to calculations of how much --
A I'm not.
Q -- a particular entity can make off of food service; correct?
A Correct.
Q And then last damage claimed by Harbour Town Surf Shop is lost opportunity, benefit of the bargain from the subject contract in an amount to be proven at trial.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

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The deposition of AMIR BITTON, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Naomi McCracken, Stenographic Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 21st, day of June 2019, commencing at or about the hour of 1:52 p.m.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

and Alon own together, did we cover all of that in his deposition?

A Yes.

Q Is there anything that you need to add about the other entities that you-all own together?

A I think he pretty much covered it.

Q Let's talk about the purchase of The General Store. That was by BittMint; correct?

A Correct.

Q And when was that?

A 2016, July of 2016 we did the purchase.

Q And was a waiver sent to Sea Pines to ask them to waive their right of first refusal as part of that transaction?

A In the first transaction of The General Store, we didn't have a clue what was going on. We didn't know about the first refusal. We didn't know nothing and our lawyers took care of everything. From what -- today, I know a lot more about the first right of -- the option and whatever you exercise. But back then, we didn't do nothing.

After the fact -- after the deal got closed and everything, I was doing some, you

know, reading and stuff like that. And then I read that the sellers were the ones responsible to send the waiver. But that's after we closed on the commercial, and I understood that Sea Pines refused to sign a waiver or didn't want to sign a waiver for some reason.

And there was an e-mail by the seller's lawyer to protect us and them that, you know, saying that Sea Pines never responded to any of our requests for a waiver and so forth. But that's after the fact that I knew that. But before the purchase, we didn't about that right.

Q And so what you're referring to is an e-mail saying the 30 days has passed and so --

A Something along that line.

Q Okay. And remember to let me finish.

A Sorry.

Q Yeah. And you said you found out about it after the fact, being after the fact of the purchase of The General Store?

A Correct.

Q And when did you find out about that?

A A couple months, I think, later.

Q Okay. So before you went under contract to buy the shops six and eight?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Say it again.
Q So you found out after your purchase of The General Store that as part of that purchase, there had been a waiver sent to the Sea Pines and that Sea Pines let the waiver of the right of first refusal sit for 30 days so you were able to buy The General Store?
A Apparently that's what happened.
Q And you found that out after you bought the General Store?
A Correct.
Q But before you bought and you went under contract to buy --
A Yes.
Q Let me finish -- shops six and eight?
A (Nonverbal response.)
Q And to the best of your recollection, it was a couple of months after you bought The General Store that you found out that this whole right of first refusal existed?
A It was through the winter of 2016. You know, the end of the year because that's when I had time to send them some paperwork and go through it.
Q Okay. So you were looking at those

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

e-mails you were talking about?
A Yes.
Q With the seller's lawyer and Sea Pines?
A And our lawyer.
Q And your lawyer?
A (Nonverbal response.)
Q Was Michael Mogil your lawyer in that transaction?
A Yes.
Q Do you remember the purchase price of The General Store?
A 900.
Q And that was for the property, but also the business as well?
A Correct.
Q Okay. And what was in The General Store when you bought it?
A Referring to what?
Q Other than the four walls, what was in there? Was there inventory in there?
A No. Four walls.
Q It had closed down?
A Um-hmm. It was a dump, basically.
Q Did it have -- so it had no merchandise in there?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

MR. KUBEC: Objection to form.

THE WITNESS: I leave it to the judgment of the lawyer, what they need to do. They know. They deal with those things every day. So I don't know what exactly and what kind of documents they need to get to that closing. So I wasn't sure what waivers and what documents and what they need from who and what.

BY MR. LINTON:

Q But I mean, you agree it says, "All relevant waivers and approvals must be obtained before closing"?

A I agree. You need some documents from the bank, you need some documents from here for closing. So I'm not sure what it's referring to, what waivers and what documentation they need, so --

Q Let's look at paragraph six above. The second sentence says, "Seller shall obtain all appropriate waivers and approvals from Sea Pines."

So do you think a waiver and approval from Sea Pines is one of those that would be

relevant in paragraph 7?

A I guess my attorney was thinking so.

Q And do you know of any notice of default that was ever sent to Johnson and Giannone?

MR. KUBEC: Objection to form.

THE WITNESS: I don't know.

BY MR. LINTON:

Q Do you know if any notice of default was ever sent to Sea Pines?

A I don't know.

MR. KUBEC: Same objection.

BY MR. LINTON:

Q Now, do you -- Alon had pretty extensive testimony about what might have been in the bank application, which I understand we're going to try to get from you.

Did he say anything that was inaccurate that you want to correct, or was his testimony, to the best of your recollection, too, on that topic?

A Well, you went over a lot of stuff with him, so I cannot recollect or remember everything. But you're referring to what?

Q I'm just referring to BittMint -- the

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

BittMint is entitled to $500 per month that it would've received in rent in profit; is that right?

A Okay.

Q Is that right? Are you alleging that?

A My attorney write all the allege requests and all that. So, yes, we sit down together and I guess whatever he writes, it's okay.

Q Well, I mean, as I understand it, the allegation is that Harbour Town Surf Shop was going to rent from BittMint at a price that would be whatever BittMint's mortgage was, no matter what it was, the fees, the taxes, all of BittMint's expenses plus $500 a month. Is that --

A Correct.

Q Is that what you're alleging?

A Correct.

Q Okay. And is that written down anywhere?

A We drafted something a long time ago that, you know --

Q Is that in a contract?

A I think it's just a draft, not a

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

contract. Just between me and Alon.
Q But there was never a lease agreement between BittMint and Harbour Town Surf Shop?
A I believe we have a lease on part of the -- on the part that BittMint owns and we have another lease with Sea Pines.
Q For shops six and eight?
A For shops six and eight. We never purchased, so there was a future plan on it.
Q And then BittMint is claiming damages for improvements made to join the subject property with The General Store. How much did that cost?
A The renovation project cost us roughly around -- I'm guesstimating. I need to go over invoices and materials and contractors and so forth. But I think it's about 50 grand.
Q And are you going to provide those?
A Yeah. I can provide you with the invoices.
Q And when was that work done?
A January of 2017.
Q Okay.
A I think January or February. The winter of -- between 2016 and 2017, that's when

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

we do most of the renovations because it's the slow season. So that's when enter the renovations. So, again, it can be between October, November to January to February, give or take.

Q Okay.

A Specifically, I don't remember, to be honest with.

Q But it was done before BittMint entered into a contract to buy the property from Johnson and Giannone?

A Correct.

Q And is that -- is that the work that involved taking the wall down?

A Yes, sir.

Q And you got permission from Johnson and Giannone?

A Correct.

Q And there's really been no issue with that? Sea Pines hadn't asked you to put the wall back up?

A They asked the question why we took the wall and if we can put it back in again and who gave us the approval for it and so forth. And I said the owner, the prior owners, you know.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q And what did they say?
A They didn't say anything.
Q They said "Okay"; right?
A They never said anything.
Q They stopped asking about the wall once they found out it was approved work; right?
A Well, they asked if we could put the wall back once we -- if we decide to leave or whatever, and I said yes.
Q And you said yes?
A Of course. I have to. By law, if they own the property and I leave the premises and they want me to put the wall up, I have to.
Q And you've also alleged that you have damages for purchasing food service equipment an amount to be proven at trial, but a minimum of $30,000.
A Correct.
Q And BittMint was going to purchase that?
A I'm not sure who was going to purchase that. But I don't deal with the bureaucracy of paperwork, what company did what. But we're about to buy equipment. We purchased a hood.
Q You purchased a hood?

A Yeah. Because the hood that existed was tore up and was rusted, so we had to purchase all the pipe on the inside that goes all the way to the exit of the fan. And the hood itself -- the inside, all the inside parts, we had rebuild and refurbish everything.

Q Some of the hood was moved, though?

A The whole hood was moved.

Q So you only purchased the inside of the hood, not the actual hood?

A Well, basically, it's buying the whole hood, because all you have is just the cover.

Q So is that the only thing that's been bought to date?

A No. We bought refrigerators. We bought freezers. I can't recall all the different equipment, new equipment that we thought we were going to need.

Q Well, do you have a list of all those?

A I can come up with the list.

Q Where is that stuff?

A Some of it is in storage. Some of it's in the store.

Q And you have invoices for all of it?

A Should have.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Can you provide those to us, please?
A Of course.
Q And have you asked Sea Pines as the landlord if you can install that equipment?
A It was prior to them, so --
Q When did you buy all that?
A Back in January.
Q So before you went under contract to purchase the property?
A Correct.
Q But do you have it. Now, have you asked Sea Pines if you can install it?
A No.
Q So you don't know, they might say "fine"?
A They'll never let me. I know that. Why even bother?
Q But you haven't asked.
A When they came with the inspection to fix the little license plate and they want me to fix wires from 1970, I knew that they're here to just play with me so there's no sense to it. Go in there -- I knew that we were going to -- if I had a chance, you know, to take it to court, I will. So that's why I stopped everything.

purchase of the property with the surf shop, assign the back room of the surf shop, modify The General Store to serve hot breakfast and lunches."

Is that modification, you're talking about the installation of the food service equipment that you had purchased?

A Some of it was going to The General Store and the -- we wanted it because we needed a big enough space by DHEC requirement for extra prep area. So we needed an extra space and we were thinking once we purchased shops six and eight, we were going to assign that back room for an extra -- like to expand the kitchen.

Q So to make it big enough for DHEC requirements?

A Yes.

Q And that would involve taking a wall down?

A Yes.

Q And have you asked Sea Pines, as the landlord, whether they will allow you to do that?

A No.

Q All right. Let's look at Exhibit 7.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Are you familiar with this --
A Yes.
Q -- spreadsheet? Who prepared this?
A My lawyer.
Q Okay. And do you know what the purpose of preparing this was?
A Yeah. Just to show the difference between rent and mortgage.
Q Okay. And you see the box in the top left-hand corner of the first page that says "Assumptions"?
A Yes, sir.
Q Would you agree with me that all the numbers in this exhibit depend upon the accuracy of those assumptions?
A I believe -- say it again.
Q Do the legitimacy of the numbers in this exhibit depend upon those assumptions. So in other words -- let's take an example. The term -- it says it's assumed that the term of your mortgage would be 30 years; correct?
A Correct.
Q You would agree with me that if the actual term of the mortgage was 20 years, that would make a big difference; right?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A Yes.
Q So the box where it shows the monthly and annual loan payments below that, those monthly and annual loan payments would be different if it was 20 years instead of 30 years?
A For sure.
Q It would be much higher?
A Correct.
Q Okay. The same thing with the interest rate. It says 4.29 percent. If that was 4.5 percent, it would make a difference in those numbers in that increment; correct?
A Slightly, yes.
Q Okay. And let's look at the second page of the exhibit. Do you see where it says "Depreciation"?
A Uh-huh.
Q And you've got land value as zero. Did you provide that land value?
A No. Actually, I think my attorney took everything from whatever Sea Pines presented us in their calculation of what depreciation they were going to have and what rate they were going to get and everything. And that's where he took

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

it from.

Q And when did Sea Pines provide that to you? In discovery?

A I believe so.

Q Okay. Are you talking about the forecast that they did before purchasing the property?

A Correct.

Q Okay. So your attorney took that information for depreciation numbers?

A I believe so.

Q What about the assumptions on the first page? Did you provide that information to him?

A No.

Q Do you know where that information came from?

A I believe he took it from the same paper, from whatever Sea Pines did.

Q So he took it from something in Sea Pines documents as to what a loan to Sea Pines might look like?

A Yes. If I recall, back in the deposition, they presented to us with a loan that they were supposed to take and what's the percentage and show a spreadsheet of how much,

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

you know, they would pay and cover over the years. So he took the information from there.

Q So this is not based on a loan that NBSC was going to make to --

A No.

Q -- BittMint? Was that a "no"?

A No.

Q I'm sorry.

A I said no.

Q We might have talked over each other a little bit. Sorry.

The same thing, if you go to the third page, which is the amortization schedule, it has those same numbers on the top left-hand corner, annual interest rate, 4.29, years, 30 years. Do you see that?

A Yes, sir.

Q And the same question: Is it your testimony that that came from something in Sea Pines's production --

A Yes.

Q -- about the loan it may have on the property?

A Yes, sir.

Q Okay. And it did not come from

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

information about a loan that BittMint was going to get?

A Correct.

(Whereupon, a discussion was held off the record.)

BY MR. LINTON:

Q Let's talk about the Harbour Town Surf Shop damages. All right?

The same question with attorney fees. Harbour Town Surf Shop has claimed attorney fees. Do you know how much Harbour Town Surf Shop has paid?

A Not really.

Q And Alon is best person to asked about that?

A If he knows it, yeah. He has to go and get it all together, you know.

Q Okay. The next one is the difference between the amount of rent Harbour Town Surf Shop pays to Sea Pines Resort and the contemplated rent payment BittMint had the sale of the subject property to BittMint been completed. This difference is approximately $46,000 and continues to accrue at a current rate of $1,200 per month.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A It's actually $2,100. It's a mistake.
Q $2,100 a month?
A Yeah.
Q And so -- and is the math right now $2,100 times 24 months is $46,000?
A Plus interest and so forth, yeah.
Q Okay. And so is that analysis the difference between the amount of rent that Harbour Town Surf Shop pays to Sea Pines under the lease that is Exhibit 1 the contemplated rent payment to BittMint. That payment to BittMint -- as I understand it, that contemplated rent payment was all of BittMint's expenses including the mortgage, taxes, regime fees plus $500 a month?
A I lost you. Say it again.
Q The contemplated rent payment to BittMint, was that BittMint's proposed mortgage plus $500 per month?
A Correct.
Q And I should say it was the mortgage plus taxes and regime fees, the other expenses?
A Yes, sir.
Q Plus $500 profit?
A They call it a triple-net.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Plus $500 a month?
A Correct.
Q But -- so the only thing that would tell us what BittMint's expenses would be, we would have to know what BittMint's mortgage was going to be; correct?
A I believe so.
Q Okay. Next thing is damages for improvements made to join the subject property with The General Store and to purchase food service equipment in an amount to be proven a trial, but at a minimum of $30,000.
We've already talked about that as a BittMint damage, both of those. Are these BittMint's damages or are these Harbour Town Surf Shop damages?
A I'm not sure how they wrote it down. But some goes to that, some goes to that. You can split it, if you want. I'm not sure. I didn't draft that, so I don't know what they alleged over there.
Q So do you know -- when you did the work to join The General Store and shops six and eight, who paid for that work?
A Harbour Town Surf Shop because BittMint

Q Okay. The next one is damages for lost profits for Harbour Town Surf Shop caused by loss of food service opportunities and the distraction of Harbour Town Surf Shop's principal managers.

Now, we've just covered the distraction part; right?

A Semi-what.

Q Semi?

A Yeah.

Q Okay. But have we covered it fully, your distractions?

A I guess.

Q Okay. Now let's talk about the lost profits caused by lost food service opportunities.

Have you documented that in any way?

A No, because I can't.

Q Have you hired a restaurant or food service consultant to show how you've lost profits in that area?

A No. But what we did is we added some food items when we took over and we saw the increase in sales, so -- and statistically -- I read a lot about the different, you know,

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

OFFER AND CONTRACT FOR SALE OF REAL PROPERTY

Purchaser: **Bittmint, LLC and/or its Assigns**

Address: 130 Arrow Road, Hilton Head Island, SC 29928

hereby agrees to purchase from Seller: **Lynda Johnson and Charles Giannone**

1. PROPERTY DESCRIPTION. And Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in Beaufort County, South Carolina and being described as follows:

Street Address: 147 Lighthouse Road, Ste. A and 147 Ste B, Hilton Head Island, SC 29928
Legal and TMS: Shop (Lot) No. 6 and Shop (Lot) 8 of the Mariners Way Horizontal Property Regime IV

Seller represents that the property is connected to public [x]water [x]sewer [ ] other_____

2. PURCHASE PRICE. The total purchase price of the property is ..... $ 580,000.00

A. Earnest money deposited herewith **Mogil Law Firm, Escrow**.....$ 2000.00

B. Additional money to be paid within 5 days of acceptance.....$

C. Mortgage Financing—First Mortgage Loan… See Section 3.....$ 498,800.00

D. Balance of Cash at Closing.....$ 79,200.00

3. FINANCING CONTINGENCY. If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County. Purchaser shall use best efforts to obtain such loan and shall supply any prospective lender with such information as shall be requested within 45 days from the execution of this contract, and shall pay usual charges therefor. Purchaser shall execute and deliver the mortgage instruments and other papers customarily used by such institution. This financing contingency is a limited one and must be satisfied on or before **seventy five (75) days from the date of execution hereof.** If Purchaser's bona fide application to such lender shall be denied, Purchaser may, by written notice either elect to: (a) waive the financing contingency, in which event this Contract shall remain in full force and effect; or (b) terminate this Contract for failure to obtain financing. If Purchaser elects to terminate, its Earnest Money Deposit shall be returned in full. Purchaser has the affirmative obligation to provide written notice as to its decision on this condition. Notice is to be provided to the Seller directly or to the Listing Agency at the address(es) set forth herein. If no notice is received within the applicable time period for this contingency, it is presumed that Purchaser has waived the financing contingency.

Purchaser _____

Seller _____

Seller _____

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

4. FURNISHING, SYSTEMS. The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following: [] Refrigerator; [] Freezer; [] Washer; [] Dryer; [] Stove; [] Microwave; [] Dishwasher; [ ] Ceiling Fans; [ ] Irrigation System; [ ] Pool Equipment; [ ] Septic System; [x Furnished; [ ] Other: Property conveyed. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of closing.

5. WOOD INFESTATION REPORT. Seller agrees to provide at its/their expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 30 days of the Closing. If infestation or insufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the cost of such repair.

6. OTHER TERMS. Other terms and conditions of this contract are: Purchaser is acquiring property in "As Is" condition subject to the warranties set forth in Sections 4 and 5 above. Seller (s) shall obtain all appropriate waivers and approvals from Sea Pines and the applicable horizontal property regime within thirty (30) days from the date of execution hereof. Property is sold subject to existing lease(s) with Harbourtown Surf Shop, LLC. This Contract binds both Seller(s) who own title to separate parcels—Lynda Johnson holds title to Lot/parcel 6 and Charles Giannone holds title to Lot/parcel 8. However, Purchaser's obligation to perform and close on parcel A and/or parcel B is, at Purchaser's option, conditioned upon both parcel A and parcel B closing.

7. DATE OF CLOSING. The closing of this Contract shall take place on or before the date ninety (90) days after all relevant waivers and approvals are obtained by Seller, or forty five (45) days after financing has been approved pursuant to Section 3 hereto, whichever date is later (the "Closing") in Beaufort County at the office of the Purchaser's attorney or other offices stipulated by the Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing.

8. CONDITION OF PROPERTY. Purchaser has inspected the premises and, subject to the terms set forth above in Section 4, is purchasing the Property in its present condition, "As is".

9. RISK OF LOSS AND DAMAGE. In case the Property is wholly or partially damaged by fire, storm, or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder.

10. PRORATIONS. All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser and Seller shall be responsible for each of their costs and expenses related to the closing as per custom in Beaufort County, South Carolina. Purchaser shall be responsible for the Hilton Head Island real estate transfer fee, if applicable. Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-9-310 (amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

Purchaser AM

Seller

Seller

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

11. TITLE. Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with stamps affixed and with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments, and free and clear of all liens, tax liens and encumbrances except as set forth above. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for Hilton Head Island, South Carolina, title shall be deemed to be marketable. Purchase acknowledges that the Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. The deed shall be prepared in the name of **Bittmint, LLC (or its assigns),** and delivered to the offices of Purchaser's attorney or stipulated place of Closing.

12. DEPOSITS/DEFAULT. All money deposited hereunder shall be applied towards the purchase price at Closing. Upon failure of either party to comply with the terms hereof within the stipulated time, and after receipt of written notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. In the event of litigation commenced because of a default hereunder, the prevailing partie(s) in such litigation shall be entitled to recover attorney fees and court costs from the non prevailing partie(s).

IN WITNESS WHEREOF, the undersigned parties have executed this Contract the date set forth opposite their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

3/17/17 Eddie T. Date:

Purchaser: Bittmint, LLC by Alon Mintz its Manager

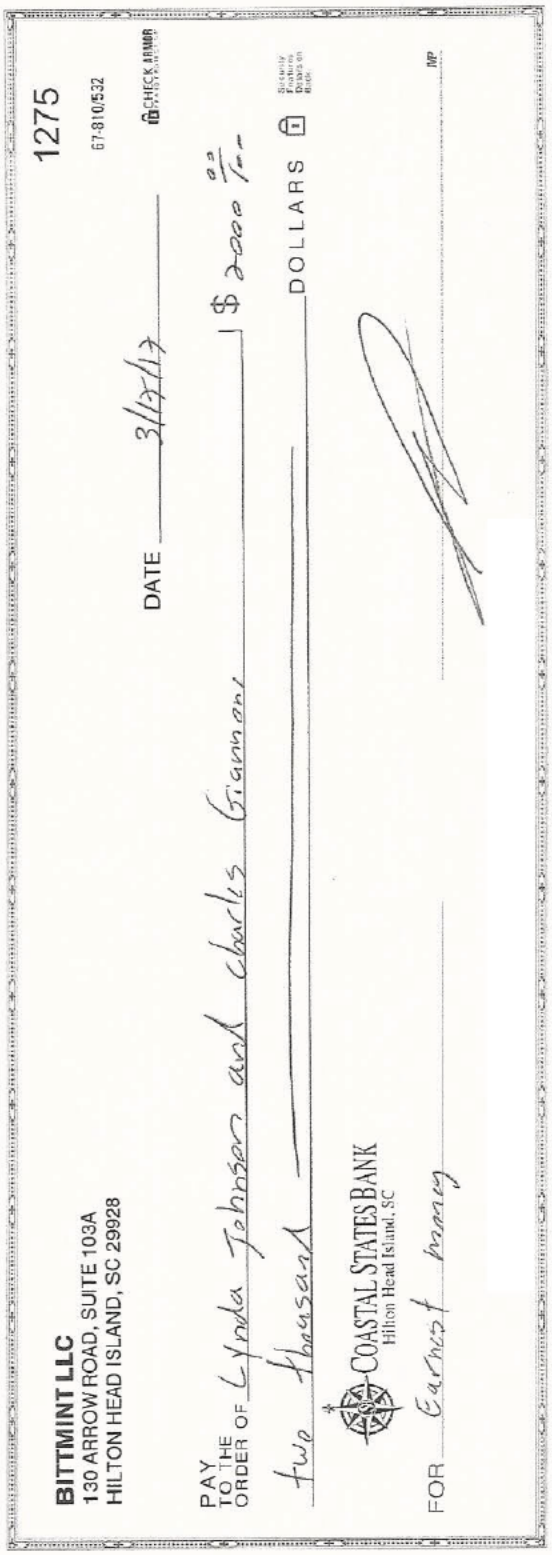
3/17/17 Date:

Seller: Lynda Johnson

3/17/17 Date:

Seller: Charles Giannone

Exhibit 3



1275

67-810/532

CHECK ARMOR

BITTMINT LLC
130 ARROW ROAD, SUITE 103A
HILTON HEAD ISLAND, SC 29928

DATE 3/17/17

PAY TO THE ORDER OF Lynda Johnson and Charles Giannone $ 2000 00/100

two thousand DOLLARS

COASTAL STATES BANK
Hilton Head Island, SC

FOR Earnest money

MP

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

----------/

The deposition of LYNDA H. JOHNSON, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Kyle J. Saniga, Certified Court Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 27th day of June 2019, commencing at or about the hour of 2:58 p.m.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Absolutely, oh yeah, sure, no, yes. I mean, yeah, no one's expecting you to like recall everything --

A Yeah. Two and-a-half years I can't remember what I had for lunch yesterday.

Q Right, absolutely. I'm right there with you, trust me.

A Okay.

Q So but I'm just -- just as -- to the best of your knowledge, knowing that you haven't reviewed these documents at all does this purport to be -- do you understand this as a Letter of Intent for purchase of real property?

A Yeah.

Q And what does that mean to you?

A That means --

MR. LINTON: Object to form.

THE WITNESS: That means that Alon and Amir were trying to buy our shops.

BY MS. COFFEY:

Q Uh-huh.

A For the sum of 580,000 and that we were accepting their offer.

Q Okay.

A But we all knew that Sea Pines had to

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

have first right of refusal, so.
Q Oh you did know that?
A Yes. Everybody -- everybody knows that in Sea Pines.
Q Really?
A (Witness nods head.)
Q I've lived in Sea Pines my whole life and I just -- this case is the first I've heard of it. Of course I'd --
A Have you ever purchased property in Sea Pines?
Q No.
A Well, that's why.
Q Yeah. Well my mother has and she did not know about it either but -- no I take that -- yeah, it is in my mother's name but my father probably did the purchase. The 580.
A Uh-huh.
Q How did you get to that number, do you recall?
A Well that was for two shops.
Q Uh-huh.
A So I believe that's a number they -- we went back and forth a little bit on the price and that's the number we came up with.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

conversation about it.

Q You did?

A Yes.

Q Do you recall when that was?

A When we were going back and forth on the price of the shop. I just remember saying that's awful low. Sea Pines might take it for that price and I believe one of them said -- and again I can't recall exactly -- that they usually don't take -- they had just dealt with Sea Pines with the General Store, so.

Q They weren't concerned?

A They weren't concerned, yes.

Q Okay, all right, okay.

(Whereupon, Plaintiff's Exhibit Number 8 was marked for identification.)

BY MS. COFFEY:

Q The first notation if you can read it's hard. It's in the upper left-hand corner. It says 11-8-16.

A Okay.

Q And I think it has --

A Square footage and stuff like that.

Q Some information on it.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

point we believed that Sea Pines would -- I mean I don't understand all this.

Q Okay.

A Am I supposed to be reviewing it.

Q No, no. Just --

A Okay.

Q Wait a second. I'm -- the one I'm trying to ask you about is -- I'm not finding right now.

A Okay.

Q And it looks like maybe -- anyway, the one I was going to ask you about is not here. It was on April 3rd. You had -- you had asked them to contact -- you had asked them to have their lawyer contact Sea Pines on April 3rd.

A Okay.

Q Which I'm not finding it. I'm just wondering why you want their lawyer instead of your lawyer?

A Probably because my lawyer's expensive.

MR. LINTON: Object to the form.

BY MS. COFFEY:

Q But it's a flat rate, is it not, the closing?

A I have no idea. I have no idea.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A No.
Q And did you own both shops 6 and 8 or did your brother own one?
A My brother owned one.
Q Okay. You were asked whether if Sea Pines offered you 580, you and your brother for the two project -- properties, Shops 6 and 8 --
A Uh-huh.
Q -- if Bittmint offered you 580 whether you would have a preference as to who to sell to, do you remember that?
A I remember her asking me that, yes.
Q And do you remember what she said?
A Do I remember what she said?
Q What you said?
A Oh what I said. I said I would have sold it the boys then.
Q And -
A Bittmint and Alon and Amir.
Q Did that happen in this case? Did you get to pick between Sea Pines and Alon and Amir?
A No because of the right of first refusal.
Q And did everybody involved in the contract to sell Shops 6 and 8 understand that

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

that contract was contingent on --
A Yes.
Q -- getting Sea Pines to waive its right of first refusal?
A Yes.
Q Okay. And that was understood by everyone before the contract was entered, correct?
A Correct.
Q Now, you were asked about the sale of Shops 6 and 8 to Sea Pines whether there was a written contract with Sea Pines.
A Uh-huh.
Q Because at one point I think you mentioned that you had -- your -- you had to sell to Sea Pines because of the contract.
A Right.
Q Do you recall a separate written document with Sea Pines or were you referring to the fact that Sea Pines had exercised it's right of first refusal on the contracts that you had with Bittmint?
A I was probably -- I was referring to the fact but I could have had a written document. I don't recall. Again, you'd have to

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BITTMINT, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2017-CP-07-01057

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

Defendants.

----------/

The deposition of MICHAEL MOGIL, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Kyle J. Saniga, Certified Court Reporter and Notary Public, at the Law Offices of Coastal Court Reporting & Video Inc., One Corpus Christi Place, Suite 107, The Executive Center, Hilton Head, South Carolina, on the 27th day of June 2019, commencing at or about the hour of 10:16 a.m.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

contingent, it doesn't specify which waivers or approvals, it just says the seller has to get everything because we didn't order title at this time so we kind of were putting it to them and you've got to get everything done that needs to be get done.

Q But you would agree that a waiver of the right of first refusal from Sea Pines would be one of the relevant waivers and approval referred to in paragraph seven?

A I would agree that that would be something that we were contemplating in paragraph seven. I'm not agreeing that it was required. I'm saying that would have been one of the matters that we were addressing, yes.

Q Okay. And so if the seller was unable to obtain that, the contract it was -- the contract was -- let me start that whole question over.

The contract was contingent upon the sellers being able to obtain that waiver from Sea Pines at the right of first refusal?

A I would say that then it would have been up to the purchaser if they wanted to close or not.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

PDF, the e-mail with the attachment but I -- the only way I could say for sure is if I checked and made sure that it was the same form that she sent.

Q Is there anything other than perhaps a one or two day difference in the date that you think would be different?

A Well can I check?

Q Sure. Why don't we take a five-minute break and you check it.

A Because I don't want to say that this is what she sent if it wasn't.

Q No, I understand.

(Whereupon, a short break was taken.)

BY MR. LINTON:

Q Mr. Mogil, we just took a break so that you could pull up the e-mail that is Exhibit 2 and look at the attachment. Could you tell us what you found on your computer?

A Yeah, the document that was produced to you, which was the e-mail was actually not forwarded to me, it was obtained through my review of Sarah's e-mail account. She dont' work for me anymore but I have her pass code.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

In response to the production requests for my file I included that because it was part of our digital file and that was an e-mail with two e-mails identical to each other sent on April 14th which attached the one page that's dated April 13th.

Q So it's just -- so if we look at Exhibit 4, the first page of Exhibit 4 is the attachment to the e-mail?

A Correct. And the rest of it --

Q Is not?

A -- was not attached to the e-mail from Sarah.

Q Okay. And so the first page of Exhibit 4 was sent by Sarah in your office to Sea Pines on the date of that e-mail?

A To mlogan@seapines.

Q Okay. And so and Exhibit 4 lists the legal address as Shops 6 and 8 Mariners Way at Harbour Town. Do you see that? Legal address, Shops 6 and 8 Mariners Way?

A Yes.

Q And is that the property that is the subject of this lawsuit?

A I believe so.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q And it lists the sellers as Lynda Johnson and Charles Giannone?
A Yes.
Q Were those the sellers in the contract that is marked as Exhibit 1 to your deposition?
A Yes.
Q And it lists the purchases as Bittmint, LLC. Was that the purchaser to that contract?
A Yes.
Q And it lists the sales price as $580,000. Was that the consideration stated in Exhibit 1?
A Yes.
Q And then at the bottom of this document that was sent by your office to Sea Pines it states, the above referenced property is hereby offered for sale to the company pursuant to the same terms and price contained in the current contract of sale with the bona fide purchaser referenced above.
It is hereby understood by all parties that the company has 30-day -- 30 business days from receipt of this offering which to determine its repurchase option. Did I read that correctly?

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

A That's what it says, yes.
Q Have you ever seen the second two pages of that exhibit?
A I don't -- I may have seen it but not with these names in it in connection with other closings. It looks like a form because it has Sea Pines information filled in and all these covenants and books and pages filled in, so it looks like it was created by somebody other than me.
Q Okay.
A It's all -- it's clear that date is entered and then it spits out this form.
Q Okay.
A The computer spits it out.
(Whereupon, Defendant's Exhibit Number 5 was marked for identification.)
BY MR. LINTON:
Q All right. Mr. Mogil, I've handed you what's been marked as Exhibit 5 and it is four e-mails and what I'd like to do is start with the one that is at the bottom of the first page and spills over onto the second page, which is the first in time I believe, Monday April 3rd

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

seller informed my client that I should be in contact with you.

So they -- somebody may have asked, I don't know if they asked me or Sarah, said that the seller is not doing this or asking us if we can do it, so that's why we did it.

Q And we'll get to the second part but the first part does say I was asked by my client to contact you for further processing, correct?

A When I say I, meaning my firm, yeah.

Q Your firm was asked by your client?

A Correct. I don't know if it was me or Sarah or mark who they talked to but, yeah.

Q But this e-mail indicates that your client asked your firm to contact Sea Pines?

A Correct.

Q To process a waiver of the right of first refusal?

A Uh-huh, yes.

Q Now the second paragraph, which you were referring to, indicates that the seller has historically done this but the seller informed my client that I should be in contact with you, is that correct?

A Correct.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Okay. Well when I asked you whether you reviewed the covenants that Mr. Fraser sent you you mentioned that you felt like there were -- you've reviewed them since and there's a host of issues that are contained in the lawsuit.

A Yeah.

Q And I'm trying to find out, are you -- you've been identified as a witness to talk about the contract, Sea Pines' exercise of the right of first refusal and Sea Pines' interference with the contract and so what I'm trying to figure out is if you're intending to discuss whether -- the enforceability of those covenants.

A As a lawyer advocating a client position, yes. As a personal opinion, no, unless you ask me to explain an answer. If you ask me to review them and do I find them applicable I would say, yes, I've since reviewed them and, no, I don't -- not sure they're applicable but I'm not giving expert opinions that's -- as a witness on that. Just stating my belief in response to your question.

Q Okay. Well I guess we'll -- we'll have to get to that. Let's look at Exhibit 7.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Q Can you tell me today what those issues are that you were referring to?
A Again you -- that would be -- I'm not testifying as an expert. I think the pleadings in the case speak for themselves.
Q Okay. So you're not prepared to go into detail about these covenants?
A Not as deposition testimony, no. I'm not an expert, no, I'm -- as a -- in court I could make the argument as counsel advocating a position but as a fact witness I'm not going to tell you what the covenants are about.
Q Okay. And just so I'm clear because it is a unique scenario to be both the lawyer for a party and a witness for that party in the same trial.
I just want to make sure that when we go try this case I know what's going to happen.
Do I understand you correctly that you may stand up from counsel table and make an argument to the judge regarding the covenants but you are not going to stand on the witness stand under oath as a witness and discuss the enforceability or applicability of covenants?
A That's correct.

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

motivation.

Q And we've already covered that you'll not be representing any opinions as to the various covenants at issue in this case?

A That's correct.

Q Okay.

(Whereupon, a short break was taken.)

BY MR. LINTON:

Q Mr. Mogil, you mentioned that you've been involved as an attorney for the -- for various entities that Mr. Bitton and Mintz are involved in and you mentioned that you've reviewed and advised them on a number of leases.

A Yes.

Q And I just want to make sure I understand correctly how things unfolded.

The 2015 lease for Shops 6 and 8 at Mariners Way, were you involved in that lease at all?

A Not to my recollection. I don't believe I was.

Q Okay.

A And you can ask them that but I think that it was prepared by somebody for the other

Exhibit 6

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Mogil 0014

RE: Purchase of 147 Lighthouse Road Ste A and B Waiver

From: mmogil@mogillaw.com
Sent: Mon, Apr 17, 2017 at 11:48 am
To: Rob Bender
Cc: Sarah Bornstein

Bittmint Purchase Unit 6 and 8 Mariners Way Harbourtown Executed Contract.pdf (1.9 MB)

Rob, attached is executed Contract relating to the Waiver Request.



Michael Mogil

-----Original Message-----
From: "Rob Bender" <RBender@seapines.com>
Sent: Monday, April 17, 2017 11:22am
To: "mmogil@mogillaw.com" <mmogil@mogillaw.com>
Subject: RE: Purchase of 147 Lighthouse Road Ste A and B Waiver

Hello Michael,
I wanted to let you know that we have received a copy of the Request for Waiver for the two suites at 147 Lighthouse Road. We would like to receive a copy of the sales contract as we review this waiver request please. It can be emailed to me directly.
Many Thanks,
Rob

From: Rob Bender
Sent: Monday, April 03, 2017 4:10 PM
To: 'mmogil@mogillaw.com'
Subject: RE: Purchase of 147 Lighthouse Road Ste A and B Waiver

Michael,
It is my understanding that your firm handled the closing for your client in 2016 for the purchase of the General Store in Harbour Town and thus completed all the necessary paperwork at that time for the waiver. This transaction is no different from that previous transaction and should be handled the same.
Sincerely,
Rob

From: mmogil@mogillaw.com [mailto:mmogil@mogillaw.com]
Sent: Monday, April 03, 2017 12:48 PM
To: Rob Bender
Subject: Purchase of 147 Lighthouse Road Ste A and B Waiver

Rob,

I represent the Contract Purchaser for 147 Lighthouse Road, Stes. A and B (Shop 6 and 8 Mariners Way). In connection with the standard SPR waiver, I was asked by my client to contact you for further processing.

Please let me know the process or what further information SPR might need. Historically, this is usually processed by the Seller side, but the Seller informed my client that I should be in contact

Exhibit 6

Mogil 0015

with you.

Michael Mogil

Michael W. Mogil
Mogil Law Firm
2 Corpus Christie, Ste. 303
Hilton Head Island, SC 29928
Tel 843-785-8110
Web: www.mogillaw.com

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Exhibit 7

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

The Sea Pines Resort

Return To:
Danny Dennison
Sea Pines Resort, LLC
32 Greenwood Drive
Hilton Head Island, SC 29928
fax: (843) 842-1907
ddennison@seapines.com

cc:
CSA Administrative Offices
ATTN: Santonia Chisolm
175 Greenwood Drive
Hilton Head Island, SC 29928
fax: (843) 671-4027

REQUEST FOR WAIVER and/or ASSESSMENTS

DATE: April 13, 2017

ATTORNEY: Law Office of Michael W. Mogil ATTN: Sarah
2 Corpus Christie Place, Ste. 303
Hilton Head Isl, SC 29928

Phone: 843-785-8110
Fax: 843-785-9676

REPRESENTING: SELLER: _____ PURCHASER: X

CLOSING DATE: TBD

REAL ESTATE BROKER: None

LEGAL ADDRESS: Shop 6 & 8 Mariners Way HPR LXIV, Harbour Town

BEAUFORT COUNTY PROPERTY IDENTIFICATION NUMBER:

DISTRICT: 550 MAP: 17 PARCEL: 1093 BLOCK: 006 & 008

SELLER: Lynda Johnson and Charles Giannone
address 1
address 2
city state zip

PURCHASER: Bittmint, LLC
130 Arrow Road, Suite 103A
Hilton Head Island, SC 29928

SALES PRICE: 580,000.00

HOME: n/a FURNISHED: n/a UNFURNISHED: _____ LOT: _____

This form must be received by Real Estate Administration no less than 30 business days prior to the proposed closing date. Processing this request starts at that time but his form may be submitted earlier. Any information omitted or inaccurate (i.e. property description) will delay processing. Waiver and assessments will be mailed to requesting attorney. The above referenced property is hereby offered for sale to the company pursuant to the same terms & price contained in the current contract of sale with the bona fide purchaser (s) referenced above. It is hereby understood by all parties that the company has thirty (30) business days from receipt of this offer in which to determine its re-purchase option.

Exhibit 8
Mogil 0013

ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

[redacted]

-----Original Message-----
From: sarah@mogillaw.com
Sent: Friday, April 14, 2017 8:54am
To: mlogan@seapines.com
Subject: Waiver Request. Shops 6 & 8 Harbour Town



Marion,

Please see the attached request.
Thank you,

Sarah Bornstein-Howard
Law Office of Michael W. Mogil, P.A.
2 Corpus Christi Place, Suite 303
Hilton Head Island, SC 29928
(P) 843-785-8110 / (f) 843-785-9676
Email: sarah@mogillaw.com

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STATE OF SOUTH CAROLINA }
}
COUNTY OF BEAUFORT }

WAIVER OF PURCHASE OPTION

THIS AGREEMENT is made and entered into this _____day of _____, 201__, by and between SEA PINES RESORT, LLC, a Virginia limited liability company having an office and place of business at Hilton Head Island, South Carolina, and **Bittmint, LLC** [hereinafter referred to as " Purchaser"], as follows:

WHEREAS, Lynda Johnson and Charles Giannone [hereinafter referred to as "Seller"] has conveyed or is conveying to **Bittmint, LLC** certain property more particularly described as **Shop 6 & 8 Mariners Way HPR LXIV, Harbour Town**.

WHEREAS, SEA PINES RESORT, LLC [hereinafter referred to as "Company"] holds an option to purchase said Property pursuant to rights it holds by way of assignment, such rights being contained in certain covenants and restrictions recorded in the office of the Register of Deeds for Beaufort County, South Carolina, and imposed on the Property by the Company (the "Covenants"); and

WHEREAS, the Covenants provide that should Seller desire to sell the Property, the Property must be offered for sale to the Sea Pines Resort, LLC at the same price at which the highest bona fide offer has been made for the Property, and Sea Pines Resort, LLC shall have thirty [30] days after receipt of written notice of the price and terms within which to purchase the Property at this price; and

WHEREAS, the Seller desires to sell the Property to the Purchaser who has made the highest bona fide offer for the Property; and

WHEREAS, the Purchaser wishes to induce the Company to waive its option to purchase the Property in order that the Purchaser might purchase the Property; and

WHEREAS, the Company is willing to waive its option in accordance with terms and conditions of this agreement.

NOW, THEREFORE, in consideration of the premises, and of the further consideration of ONE AND NO/100[$1.00] DOLLAR to SEA PINES RESORT, LLC, paid in hand by the Seller, at and before the sealing of these Presents, the receipt and sufficiency of which is hereby acknowledged, SEA PINES RESORT, LLC. and the Purchaser agree as follows:

1. The Company hereby waives its option granted under the Covenants to purchase the Property from the Seller.

2. The waiver hereby granted applies only with respect to the purchase of the Property by the Purchaser from the Seller. It does not apply to the purchase of the Property by any other Purchaser from the Seller or to the purchase of the Property by any subsequent purchaser from the Purchaser.

3. The Purchaser covenants and agrees that he/she will faithfully comply with the provisions of this Agreement and all covenants of record affecting the Property described above which may include, without limitation, that certain "Declaration of Covenants and Agreement of 1988 for the Transfer of Properties, Reserved Rights and Obligations of Hilton Head Liquidation Corporation to Community Services Associates, Inc." recorded in the office of the Register of Deeds of Beaufort County, South Carolina in Deed Book 519 at Page 1161, that certain "Declaration of Covenants and Restrictions by Sea Pines Company, Inc." recorded in the office of the Register for Mesne Conveyances of Beaufort County, South Carolina in Deed Book 224 at Page 1036, the "Declaration of Rights, Restrictions, Covenants Running with Certain Lands of Sea Pines Company [Class "A: Covenants, April 1, 1970]" recorded in the office of the Register of Deeds in Deed Book 173 at Page 46, and the "Declaration of Rights, Restrictions, Affirmative obligations, Conditions, Etc., which Constitute Covenants Running with Certain Lands of Lighthouse Beach Company [Class "B" Multi Family Covenants, April 1, 1970]" recorded in Deed Book 172 at Page 316.

4. The Purchaser hereby agrees that no building, fence or other structure shall be erected on the Property nor shall any alteration be made to the exterior appearance of any improvements or structure on the Property without the Purchaser first having obtained the approval of the Sea Pines Architectural Review Board.

5. The Purchaser hereby acknowledges his obligation to prevent the development of any

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7. This Agreement is binding upon the heirs, personal representatives, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused these Presents to be executed as of the date and year first above written.

WITNESSES:

_____

_____

_____

_____

PURCHASER

_____

_____

SEA PINES RESORT, LLC

_____
Steven P. Birdwell
President

FOR PURCHASERS:

STATE OF _____)
)
COUNTY OF _____)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this ____ day of _____, 201___, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared the above-referenced PURCHASER, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within Waiver of Right of Repurchase, who acknowledged the due execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____

Notary Public for _____

My Commission Expires:_____

FOR SEA PINES RESORT, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY that on this ____ day of _____, 201___, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared the above-referenced authorized representative of SEA PINES RESORT, LLC, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Waiver of Right of Repurchase, who acknowledged the due execution thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

_____
Notary Public for South Carolina

My Commission Expires:_____

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Exhibit 9

Mogil 0020

Sea Pines Resort, LLC Purchase of Shops #6 & #8, Mariners Way, fromJohnson & Giannone

From: Simon Fraser <sfraser@fraserallen.com>
Sent: Tue, May 9, 2017 at 3:52 pm
To: 'mmogil@mogillaw.com'
Cc: 'Meredith Bannon'



Commerical Use Covs-Lighthouse Beach Co (206p1143).pdf (1.3 MB)

Mike,

The applicable repurchase option is contained in the Commercial Use Covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 (copy attached - see section 19).

I do not believe that the Sea Pines Resort, LLC will back off its intention to purchase this property.

Simon Fraser
Fraser & Allen, LLC
10 Palmetto Business Park, Suite 101 (zip 29928)
P.O. Box 5098
Hilton Head Island, SC 29938
Tel: (843) 785-3311 ext: 1030
Direct Dial: (843) 686-3310
Fax: (843) 785-3312
sfraser@fraserallen.com

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Exhibit 9

Mogil 0021

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RE: Johnson/Gianonne Sale to Bittmint, LLC - Shop # 5 & # 8,Mariner's Way HPR

From: Simon Fraser
Sent: Tue, May 9, 2017 at 2:26 pm
To: 'mmogil@mogillaw.com'

Mike, the additional covenants which apply to Class B and commercial lands are in DB124p35; DB172p316 and DB209p1745. These CCRs include a repurchase option.

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From: mmogil@mogillaw.com [mailto:mmogil@mogillaw.com]
Sent: Tuesday, May 09, 2017 12:50 PM
To: Simon Fraser
Subject: RE: Johnson/Gianonne Sale to Bittmint, LLC - Shop # 5 & # 8, Mariner's Way HPR

Simon, we should further discuss this issue. The Covenants references you sent are consistent with what I had found online, and each by their terms appear to only govern Class A residential sites. Without even reaching to the procedures that are intended be followed in instances where the Company intends to exercise its rights , I did not find any rights of first refusal which apply to the commercial areas of Sea Pines, including Mariners Way.

My client desires to purchase the property and without the benefit of additional information,

Exhibit 9

Mogil 0022

objects and does hereby confirm its objection to the exercise by Sea Pines of an option to repurchase Shop 6 and Shop 8, and does hereby request that Sea Pines withdraw its intent to exercise and permit the parties under contract to proceed with the transaction as stated.

I am available to discuss further at your convenience.

Mike Mogil

-----Original Message-----
From: "Simon Fraser" <sfraser@fraserallen.com>
Sent: Monday, May 8, 2017 4:30pm
To: "'mmogil@mogillaw.com'" <mmogil@mogillaw.com>
Subject: RE: Johnson/Gianonne Sale to Bittmint, LLC - Shop # 5 & # 8, Mariner's Way HPR

Mike, the right of first refusal appears in several places: Deed Book 173, Page 46; Deed Book 92, Page 152 and Deed Book 128, Page 185.

Simon Fraser
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P.O. Box 5098
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Tel: (843) 785-3311 ext: 1030
Direct Dial: (843) 686-3310
Fax: (843) 785-3312
sfraser@fraserallen.com

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Exhibit 9

Mogil 0023

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From: mmogil@mogillaw.com [mailto:mmogil@mogillaw.com]
Sent: Thursday, May 04, 2017 5:38 PM
To: Simon Fraser
Subject: RE: Johnson/Gianonne Sale to Bittmint, LLC - Shop # 5 & # 8, Mariner's Way HPR

Simon,

Please refer me to the Covenant, By Law or other provision(s) under which Sea Pines Resort LLC elects its right of first refusal for the subject property, and if possible, any additional documents or references which guide how said rights are exercised. I was briefly looking online and could not find it at first glance.

Michael Mogil

-----Original Message-----
From: "Simon Fraser" <sfraser@fraserallen.com>
Sent: Tuesday, May 2, 2017 4:03pm
To: "'mmogil@mogillaw.com'" <mmogil@mogillaw.com>
Cc: "'Jeff Herriman'" <JHerriman@seapines.com>
Subject: Johnson/Gianonne Sale to Bittmint, LLC - Shop # 5 & # 8, Mariner's Way HPR

Michael,

I am representing the Sea Pines Resort, LLC which has elected to exercise its right of first refusal to purchase Shop No. 6 and Shop No. 8, Mariners Way Horizontal Property Regime LXIV. It is my understanding that the purchase price is $580,000. I am also sending out letters today to the sellers notifying them of this action (copies attached). Please let me know who is representing the sellers, and I will also notify him/her.

I also called and left you a voicemail message about this matter.

Please let me know what date you have that you gave notice to Sea Pines Resort, LLC of the purchase price and terms of this transaction. I do not believe the sellers have given notice to Sea Pines Resort, LLC. It would be helpful to know when you believe proper and full notice was given to Sea Pines Resort, LLC.

Please do not hesitate to call me if you wish to discuss this matter further.

Sincerely,

Simon Fraser
Fraser & Allen, LLC
10 Palmetto Business Park, Suite 101 (zip 29928)
P.O. Box 5098
Hilton Head Island, SC 29938
Tel: (843) 785-3311 ext: 1030
Direct Dial: (843) 686-3310
Fax: (843) 785-3312

Exhibit 9

Mogil 0024

sfraser@fraserallen.com

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **PLAINTIFF HARBOUR TOWN SURF SHOP, LLC'S RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES**

TO: THE DEFENDANTS AND THEIR COUNSEL:

Plaintiff Harbour Town Surf Shop, LLC (hereinafter referred to as "Plaintiff" or "HTSS"), through its undersigned counsel, responds to Defendants' First Set of Interrogatories in accordance with Rule 33 of the South Carolina Rules of Civil Procedure. These interrogatory responses are continuing, and the answers shall be supplemented or amended if further information becomes known or available to Plaintiff prior to the trial of this case to the extent required by the South Carolina Rules of Civil Procedure.

PRELIMINARY STATEMENT

1. Plaintiff's investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Plaintiff's right to rely on other facts or documents at trial.

2. By making the accompanying responses and objections to Plaintiff's requests for documents and interrogatory, Plaintiff does not waive, and hereby expressly reserves, the right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency,

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3. Set forth an itemized statement of all damages claimed to have been sustained by the Surf Shop.

Response:

(a) Attorneys' fees and costs incurred in enforcing the Contract (as a third-party beneficiary) in an amount to be determined upon completion of the action.

(b) The difference between the amount of rent that HTSS pays to Sea Pines Resort, LLC and the contemplated rent payment to Bittmint had the sale of the subject property to Bittmint been completed. This difference is approximately $46,000 and continues to accrue at a current rate of $1,200 per month.

(c) Damages for improvements made to join the subject property with general store and to purchase food service equipment in an amount to be proven at trial, but at a minimum of $30,000.

(d) Damages for emotional distress to Plaintiff's principals caused by Defendants' tortious actions in an amount to be proven at trial, but at a minimum of $25,000.

(e) Damages for lost profits of HTSS caused by lost food service opportunities and the distraction of HTSS' principal managers resulting from Defendants' tortious actions and breach of contract in an amount to be proven at trial, but at a minimum of $50,000.

(f) Lost opportunity/benefit of bargain from the subject Contract in an amount to be proven at trial.

Reference is further made to documents produced by Plaintiffs.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Response: Plaintiff has not designated an expert witness as of the date hereof.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known

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10. For any agreement identified in responses to interrogatory 9 above, identify the terms of the agreement and the expected benefits to the Surf Shop from any such agreement.

Response: Bittmint and HTSS contemplated a lease duration of at least 20 years with lease payments made by HTSS in a sufficient amount to cover Bittmint's ongoing costs relating to the subject property (including mortgage, assessments, regime fees and insurance) plus an additional sum to Bittmint. Reference is further made to documents produced by Plaintiffs.

11. For any prospective agreement identified in response to interrogatory 9 above, state whether the Surf Shop was unsuccessful in acquiring the expected contract.

Response: The expected contract could not be completed due to Defendants' actions.

12. Identify with specificity the statements referred to in paragraphs 51 and 54 of the Second Amended Complaint.

Response: During negotiations of the Contact, Bittmint's principals explained to Ms. Johnson that Bittmint desired to purchase the property for a number of purposes, including to ensure that HTSS could extend its lease indefinitely to maximize the stability and value of its business. Plaintiff believes that Sea Pines Resort, LLC, through its employees, agents and representatives, was made aware of Plaintiffs' intended use of the subject property.

13. With regard to the verbal agreement alleged in paragraph 64 of the Second Amended Complaint, identify with specificity all terms of the alleged agreement that were agreed upon verbally.

Response: Refer to Plaintiff's Responses to Interrogatory No. 10.

Respectfully Submitted,

COFFEY KUBEC, LLP

By: /s/ Maureen T. Coffey
Maureen T. Coffey, Esq. (S.C. Bar #5918)
CoffeyKubec, LLP
1 Corpus Christi Place, Suite 105
Hilton Head Island, SC 29928
(843) 422-4488
mcoffey@coffeykubec.com

HARBOUR TOWN SURF SHOP, LLC - LEASE DIFFERENTIAL ANALYSIS

ASSUMPTIONS	
Assumed Purchase Date	5/1/2017
Principal Amount	$498,800.00
Interest Rate	4.29%
Term (Years)	30
Tax Rate	20.00%

Lease Payments				Loan Payments		Difference		Tax Effect		
Year Start	Year End	Monthly	Annual	Monthly	Annual	Monthly	Annual	Depreciation	Deduction	Benefit/(Loss)
5/1/2017	1/31/2018	4,520.83	36,166.64	2,465.49	19,723.93	2,055.34	16,442.71	2,974.36	4,401.91	(1,427.56)
2/1/2018	1/31/2019	4,520.83	54,249.96	2,465.49	29,585.89	2,055.34	24,664.07	2,974.36	6,675.94	(3,701.58)
2/1/2019	1/31/2020	4,520.83	54,249.96	2,465.49	29,585.89	2,055.34	24,664.07	2,974.36	6,752.21	(3,777.85)
2/1/2020	1/31/2021	4,908.33	58,899.96	2,465.49	29,585.89	2,442.84	29,314.07	2,974.36	7,761.82	(4,787.46)
2/1/2021	1/31/2022	4,908.33	58,899.96	2,465.49	29,585.89	2,442.84	29,314.07	2,974.36	7,844.90	(4,870.55)
2/1/2022	1/31/2023	5,037.50	60,450.00	2,465.49	29,585.89	2,572.01	30,864.11	2,974.36	8,241.64	(5,267.28)
2/1/2023	1/31/2024	5,037.50	60,450.00	2,465.49	29,585.89	2,572.01	30,864.11	2,974.36	8,332.15	(5,357.80)
2/1/2024	1/31/2025	5,166.67	62,000.04	2,465.49	29,585.89	2,701.18	32,414.15	2,974.36	8,736.64	(5,762.28)

Debt

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Beginning Balance	$498,800.00	$490,449.71	$481,734.07	$472,637.09	$463,142.08	$453,231.63	$442,887.56	$432,090.90
Total Payment	29,586	29,586	29,586	29,586	29,586	29,586	29,586	29,586
Interest Expense	21,236	20,870	20,489	20,091	19,675	19,242	18,789	18,317
Principal Paydown	8,350	8,716	9,097	9,495	9,910	10,344	10,797	11,269
Ending Balance	**490,450**	**481,734**	**472,637**	**463,142**	**453,232**	**442,888**	**432,091**	**420,822**

DAMAGES				
	6/1/2019	7/1/2019	8/1/2019	9/1/2019
Excess Rent	$50,968.75	$53,434.24	$55,899.73	$58,365.22
Less: Tax Effect	-$6,388.42	-$6,703.24	-$7,018.07	-$7,332.89
Total	$44,580.33	$46,731.00	$48,881.66	$51,032.33



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Exhibit 11
HTSS 0016

DEPRECIATION	
Land Value	0
Improvements	$580,000.00
Depreciation Period	39
Annual Depreciation	$14,871.79
Assumed Tax Rate	20%
Depreciation Tax Benefit	$2,974.36

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Exhibit 11

AMORTIZATION SCHEDULE

Annual Interest Rate	4.29%
Years	30
Payments Per Year	12
Amount	$498,800.00

Payment Number	Payment	Principal	Interest	Balance
				$498,117.72
1	($2,465.49)	($682.28)	($1,783.21)	$497,433.00
2	($2,465.49)	($684.72)	($1,780.77)	$496,745.83
3	($2,465.49)	($687.17)	($1,778.32)	$496,056.21
4	($2,465.49)	($689.62)	($1,775.87)	$495,364.12
5	($2,465.49)	($692.09)	($1,773.40)	$494,669.55
6	($2,465.49)	($694.56)	($1,770.93)	$493,972.51
7	($2,465.49)	($697.05)	($1,768.44)	$493,272.97
8	($2,465.49)	($699.54)	($1,765.95)	$492,570.93
9	($2,465.49)	($702.04)	($1,763.45)	$491,866.38
10	($2,465.49)	($704.55)	($1,760.94)	$491,159.31
11	($2,465.49)	($707.07)	($1,758.42)	$490,449.71
12	($2,465.49)	($709.60)	($1,755.89)	$489,737.58
13	($2,465.49)	($712.13)	($1,753.36)	$489,022.90
14	($2,465.49)	($714.68)	($1,750.81)	$488,305.67
15	($2,465.49)	($717.23)	($1,748.26)	$487,585.87
16	($2,465.49)	($719.80)	($1,745.69)	$486,863.50
17	($2,465.49)	($722.37)	($1,743.12)	$486,138.54
18	($2,465.49)	($724.95)	($1,740.54)	$485,411.00
19	($2,465.49)	($727.55)	($1,737.95)	$484,680.85
20	($2,465.49)	($730.15)	($1,735.34)	$483,948.10
21	($2,465.49)	($732.76)	($1,732.73)	$483,212.72
22	($2,465.49)	($735.38)	($1,730.11)	$482,474.71
23	($2,465.49)	($738.01)	($1,727.49)	$481,734.07
24	($2,465.49)	($740.64)	($1,724.85)	$480,990.78
25	($2,465.49)	($743.29)	($1,722.20)	$480,244.83
26	($2,465.49)	($745.95)	($1,719.54)	$479,496.22
27	($2,465.49)	($748.62)	($1,716.88)	$478,744.92
28	($2,465.49)	($751.29)	($1,714.20)	$477,990.95
29	($2,465.49)	($753.98)	($1,711.51)	$477,234.27
30	($2,465.49)	($756.67)	($1,708.82)	$476,474.89
31	($2,465.49)	($759.38)	($1,706.11)	$475,712.80
32	($2,465.49)	($762.09)	($1,703.40)	$474,947.98
33	($2,465.49)	($764.82)	($1,700.67)	$474,180.43
34	($2,465.49)	($767.55)	($1,697.94)	$473,410.14
35	($2,465.49)	($770.30)	($1,695.20)	$472,637.09
36	($2,465.49)	($773.05)	($1,692.44)	$471,861.27
37	($2,465.49)	($775.81)	($1,689.68)	$471,082.69
38	($2,465.49)	($778.59)	($1,686.90)	$470,301.32
39	($2,465.49)	($781.37)	($1,684.12)	$469,517.15
40	($2,465.49)	($784.16)	($1,681.33)	$468,730.19
41	($2,465.49)	($786.97)	($1,678.52)	$467,940.41
42	($2,465.49)	($789.78)	($1,675.71)	$467,147.80
43	($2,465.49)	($792.60)	($1,672.89)	$466,352.37
44	($2,465.49)	($795.44)	($1,670.05)	$465,554.08
45	($2,465.49)	($798.28)	($1,667.21)	$464,752.95
46	($2,465.49)	($801.13)	($1,664.36)	$463,948.95
47	($2,465.49)	($804.00)	($1,661.49)	$463,142.08
48	($2,465.49)	($806.87)	($1,658.62)	$462,332.32
49	($2,465.49)	($809.76)	($1,655.73)	$461,519.67
50	($2,465.49)	($812.65)	($1,652.84)	$460,704.11
51	($2,465.49)	($815.56)	($1,649.93)	$459,885.47
52	($2,465.49)	($818.48)	($1,647.01)	$459,063.73
53	($2,465.49)	($821.41)	($1,644.08)	$458,239.87
54	($2,465.49)	($824.36)	($1,641.13)	$457,413.86
55	($2,465.49)	($827.31)	($1,638.18)	$456,585.69
56	($2,465.49)	($830.28)	($1,635.21)	$455,755.33
57	($2,465.49)	($833.26)	($1,632.23)	$454,922.77
58	($2,465.49)	($836.25)	($1,629.24)	$454,087.99
59	($2,465.49)	($839.25)	($1,626.24)	$453,250.98
60	($2,465.49)	($842.27)	($1,623.22)	$452,411.72
61	($2,465.49)	($845.29)	($1,620.20)	$451,570.19
62	($2,465.49)	($848.33)	($1,617.16)	$450,726.36
63	($2,465.49)	($851.38)	($1,614.11)	$449,880.22
64	($2,465.49)	($854.44)	($1,611.05)	$449,031.78
65	($2,465.49)	($857.51)	($1,607.98)	$448,181.01
66	($2,465.49)	($860.60)	($1,604.89)	$447,327.91
67	($2,465.49)	($863.69)	($1,601.80)	$446,472.47
68	($2,465.49)	($866.80)	($1,598.69)	$445,614.68
69	($2,465.49)	($869.92)	($1,595.57)	$444,754.52
70	($2,465.49)	($873.05)	($1,592.44)	$443,891.98
71	($2,465.49)	($876.19)	($1,589.30)	$443,027.04
72	($2,465.49)	($879.34)	($1,586.15)	$442,159.70
73	($2,465.49)	($882.51)	($1,582.98)	$441,289.94
74	($2,465.49)	($885.68)	($1,579.81)	$440,417.76
75	($2,465.49)	($888.87)	($1,576.62)	$439,543.14
76	($2,465.49)	($892.07)	($1,573.42)	$438,666.07
77	($2,465.49)	($895.28)	($1,570.21)	$437,786.54
78	($2,465.49)	($898.51)	($1,566.98)	$436,904.53
79	($2,465.49)	($901.74)	($1,563.75)	$436,020.03
80	($2,465.49)	($904.99)	($1,560.50)	$435,133.04
81	($2,465.49)	($908.25)	($1,557.24)	$434,243.54
82	($2,465.49)	($911.52)	($1,553.97)	$433,351.53
83	($2,465.49)	($914.80)	($1,550.69)	$432,456.99
84	($2,465.49)	($918.10)	($1,547.39)	$431,559.93
85	($2,465.49)	($921.40)	($1,544.09)	$430,660.32
86	($2,465.49)	($924.73)	($1,540.76)	$429,758.16
87	($2,465.49)	($928.06)	($1,537.43)	$428,853.43
88	($2,465.49)	($931.41)	($1,534.08)	$427,946.12
89	($2,465.49)	($934.77)	($1,530.72)	$427,036.22
90	($2,465.49)	($938.14)	($1,527.35)	$426,123.72
91	($2,465.49)	($941.53)	($1,523.96)	$425,208.61
92	($2,465.49)	($944.93)	($1,520.56)	$424,290.87
93	($2,465.49)	($948.35)	($1,517.14)	$423,370.52
94	($2,465.49)	($951.78)	($1,513.71)	$422,447.54
95	($2,465.49)	($955.23)	($1,510.26)	$421,521.91
96	($2,465.49)	($958.69)	($1,506.80)	$420,593.62
97	($2,465.49)	($962.16)	($1,503.33)	$419,662.66
98	($2,465.49)	($965.65)	($1,499.84)	$418,729.01
99	($2,465.49)	($969.16)	($1,496.33)	$417,792.65
100	($2,465.49)	($972.68)	($1,492.81)	$416,853.57
101	($2,465.49)	($976.22)	($1,489.27)	$415,911.75
102	($2,465.49)	($979.77)	($1,485.72)	$414,967.18
103	($2,465.49)	($983.34)	($1,482.15)	$414,019.84
104	($2,465.49)	($986.92)	($1,478.57)	$413,069.72
105	($2,465.49)	($990.52)	($1,474.97)	$412,116.80
106	($2,465.49)	($994.13)	($1,471.36)	$411,161.07
107	($2,465.49)	($997.76)	($1,467.73)	$410,202.51
108	($2,465.49)	($1,001.40)	($1,464.09)	$409,241.11
109	($2,465.49)	($1,005.06)	($1,460.43)	$408,276.85
110	($2,465.49)	($1,008.73)	($1,456.76)	$407,309.72
111	($2,465.49)	($1,012.42)	($1,453.07)	$406,339.70
112	($2,465.49)	($1,016.13)	($1,449.36)	$405,366.78
113	($2,465.49)	($1,019.85)	($1,445.64)	$404,390.93
114	($2,465.49)	($1,023.59)	($1,441.90)	$403,412.15
115	($2,465.49)	($1,027.34)	($1,438.15)	$402,430.41
116	($2,465.49)	($1,031.11)	($1,434.38)	$401,445.70
117	($2,465.49)	($1,034.90)	($1,430.59)	$400,458.00
118	($2,465.49)	($1,038.70)	($1,426.79)	$399,467.30
119	($2,465.49)	($1,042.52)	($1,422.97)	$398,473.58
120	($2,465.49)	($1,046.35)	($1,419.14)	$397,476.83
121	($2,465.49)	($1,050.20)	($1,415.29)	$396,477.03
122	($2,465.49)	($1,054.06)	($1,411.43)	$395,474.17
123	($2,465.49)	($1,057.94)	($1,407.55)	$394,468.23
124	($2,465.49)	($1,061.84)	($1,403.65)	$393,459.19
125	($2,465.49)	($1,065.75)	($1,399.74)	$392,447.04
126	($2,465.49)	($1,069.68)	($1,395.81)	$391,431.76
127	($2,465.49)	($1,073.63)	($1,391.86)	$390,413.33
128	($2,465.49)	($1,077.59)	($1,387.90)	$389,391.74
129	($2,465.49)	($1,081.57)	($1,383.92)	$388,366.98
130	($2,465.49)	($1,085.57)	($1,379.92)	$387,339.03
131	($2,465.49)	($1,089.59)	($1,375.90)	$386,307.87
132	($2,465.49)	($1,093.63)	($1,371.86)	$385,273.50
133	($2,465.49)	($1,097.68)	($1,367.81)	$384,235.89
134	($2,465.49)	($1,101.76)	($1,363.73)	$383,195.03
135	($2,465.49)	($1,105.85)	($1,359.64)	$382,150.90
136	($2,465.49)	($1,109.97)	($1,355.52)	$381,103.49
137	($2,465.49)	($1,114.10)	($1,351.39)	$380,052.78
138	($2,465.49)	($1,118.25)	($1,347.24)	$378,998.77
139	($2,465.49)	($1,122.42)	($1,343.07)	$377,941.44
140	($2,465.49)	($1,126.61)	($1,338.88)	$376,880.78
141	($2,465.49)	($1,130.82)	($1,334.67)	$375,816.77
142	($2,465.49)	($1,135.05)	($1,330.44)	$374,749.40
143	($2,465.49)	($1,139.30)	($1,326.19)	$373,678.65
144	($2,465.49)	($1,143.57)	($1,321.92)	$372,604.51
145	($2,465.49)	($1,147.86)	($1,317.63)	$371,526.96
146	($2,465.49)	($1,152.17)	($1,313.32)	$370,445.99
147	($2,465.49)	($1,156.50)	($1,308.99)	$369,361.59
148	($2,465.49)	($1,160.85)	($1,304.64)	$368,273.74
149	($2,465.49)	($1,165.22)	($1,300.27)	$367,182.42
150	($2,465.49)	($1,169.61)	($1,295.88)	$366,087.62
151	($2,465.49)	($1,174.02)	($1,291.47)	$364,989.32
152	($2,465.49)	($1,178.45)	($1,287.04)	$363,887.52
153	($2,465.49)	($1,182.90)	($1,282.59)	$362,782.20
154	($2,465.49)	($1,187.37)	($1,278.12)	$361,673.34
155	($2,465.49)	($1,191.86)	($1,273.63)	$360,560.94
156	($2,465.49)	($1,196.38)	($1,269.11)	$359,445.00
157	($2,465.49)	($1,200.91)	($1,264.58)	$358,325.49
158	($2,465.49)	($1,205.47)	($1,260.02)	$357,202.40
159	($2,465.49)	($1,210.05)	($1,255.44)	$356,075.71
160	($2,465.49)	($1,214.65)	($1,250.84)	$354,945.42
161	($2,465.49)	($1,219.27)	($1,246.22)	$353,811.50
162	($2,465.49)	($1,223.92)	($1,241.57)	$352,673.94
163	($2,465.49)	($1,228.58)	($1,236.91)	$351,532.73
164	($2,465.49)	($1,233.27)	($1,232.22)	$350,387.84
165	($2,465.49)	($1,237.98)	($1,227.51)	$349,239.26
166	($2,465.49)	($1,242.71)	($1,222.78)	$348,086.97
167	($2,465.49)	($1,247.46)	($1,218.03)	$346,931.00
168	($2,465.49)	($1,252.24)	($1,213.25)	$345,771.32
169	($2,465.49)	($1,257.04)	($1,208.45)	$344,607.92
170	($2,465.49)	($1,261.86)	($1,203.63)	$343,440.78
171	($2,465.49)	($1,266.71)	($1,198.78)	$342,269.89
172	($2,465.49)	($1,271.58)	($1,193.91)	$341,095.24
173	($2,465.49)	($1,276.48)	($1,189.01)	$339,916.82
174	($2,465.49)	($1,281.40)	($1,184.09)	$338,734.60
175	($2,465.49)	($1,286.35)	($1,179.14)	$337,548.58
176	($2,465.49)	($1,291.32)	($1,174.17)	$336,358.74
177	($2,465.49)	($1,296.32)	($1,169.17)	$335,165.08
178	($2,465.49)	($1,301.34)	($1,164.15)	$333,967.58
179	($2,465.49)	($1,306.39)	($1,159.10)	$332,766.23
180	($2,465.49)	($1,311.46)	($1,154.03)	$331,561.01
181	($2,465.49)	($1,316.56)	($1,148.93)	$330,351.91
182	($2,465.49)	($1,321.68)	($1,143.81)	$329,138.91
183	($2,465.49)	($1,326.83)	($1,138.66)	$327,922.01
184	($2,465.49)	($1,332.00)	($1,133.49)	$326,701.19
185	($2,465.49)	($1,337.20)	($1,128.29)	$325,476.44
186	($2,465.49)	($1,342.43)	($1,123.06)	$324,247.75
187	($2,465.49)	($1,347.68)	($1,117.81)	$323,015.09
188	($2,465.49)	($1,352.96)	($1,112.53)	$321,778.43
189	($2,465.49)	($1,358.27)	($1,107.22)	$320,537.76
190	($2,465.49)	($1,363.61)	($1,101.88)	$319,293.06
191	($2,465.49)	($1,368.97)	($1,096.52)	$318,044.32
192	($2,465.49)	($1,374.37)	($1,091.12)	$316,791.52
193	($2,465.49)	($1,379.79)	($1,085.70)	$315,534.65
194	($2,465.49)	($1,385.24)	($1,080.25)	$314,273.69
195	($2,465.49)	($1,390.72)	($1,074.77)	$313,008.63
196	($2,465.49)	($1,396.23)	($1,069.26)	$311,739.46
197	($2,465.49)	($1,401.76)	($1,063.73)	$310,466.16
198	($2,465.49)	($1,407.32)	($1,058.17)	$309,188.72
199	($2,465.49)	($1,412.91)	($1,052.58)	$307,907.13
200	($2,465.49)	($1,418.53)	($1,046.96)	$306,621.37
201	($2,465.49)	($1,424.18)	($1,041.31)	$305,331.44
202	($2,465.49)	($1,429.86)	($1,035.63)	$304,037.32
203	($2,465.49)	($1,435.57)	($1,029.92)	$302,738.99
204	($2,465.49)	($1,441.31)	($1,024.18)	$301,436.44
205	($2,465.49)	($1,447.08)	($1,018.41)	$300,129.64
206	($2,465.49)	($1,452.88)	($1,012.61)	$298,818.58
207	($2,465.49)	($1,458.71)	($1,006.78)	$297,503.24
208	($2,465.49)	($1,464.57)	($1,000.92)	$296,183.61
209	($2,465.49)	($1,470.46)	($995.03)	$294,859.67
210	($2,465.49)	($1,476.38)	($989.11)	$293,531.41
211	($2,465.49)	($1,482.33)	($983.16)	$292,198.80
212	($2,465.49)	($1,488.31)	($977.18)	$290,861.83
213	($2,465.49)	($1,494.32)	($971.17)	$289,520.48
214	($2,465.49)	($1,500.36)	($965.13)	$288,174.75
215	($2,465.49)	($1,506.43)	($959.06)	$286,824.59
216	($2,465.49)	($1,512.53)	($952.96)	$285,469.99
217	($2,465.49)	($1,518.66)	($946.83)	$284,111.00
218	($2,465.49)	($1,524.82)	($940.67)	$282,747.54
219	($2,465.49)	($1,531.01)	($934.48)	$281,379.62
220	($2,465.49)	($1,537.23)	($928.26)	$280,007.23
221	($2,465.49)	($1,543.48)	($922.01)	$278,630.35
222	($2,465.49)	($1,549.76)	($915.73)	$277,248.99
223	($2,465.49)	($1,556.07)	($909.42)	$275,863.12
224	($2,465.49)	($1,562.41)	($903.08)	$274,472.71
225	($2,465.49)	($1,568.78)	($896.71)	$273,077.93
226	($2,465.49)	($1,575.18)	($890.31)	$271,678.75
227	($2,465.49)	($1,581.61)	($883.88)	$270,275.14
228	($2,465.49)	($1,588.07)	($877.42)	$268,867.07
229	($2,465.49)	($1,594.56)	($870.93)	$267,454.51
230	($2,465.49)	($1,601.08)	($864.41)	$266,037.43
231	($2,465.49)	($1,607.63)	($857.86)	$264,615.80
232	($2,465.49)	($1,614.21)	($851.28)	$263,189.59
233	($2,465.49)	($1,620.82)	($844.67)	$261,758.77
234	($2,465.49)	($1,627.47)	($838.02)	$260,323.30
235	($2,465.49)	($1,634.14)	($831.35)	$258,883.16
236	($2,465.49)	($1,640.85)	($824.64)	$257,438.31
237	($2,465.49)	($1,647.59)	($817.90)	$255,988.72
238	($2,465.49)	($1,654.36)	($811.13)	$254,534.36
239	($2,465.49)	($1,661.16)	($804.33)	$253,075.20
240	($2,465.49)	($1,667.99)	($797.50)	$251,611.21
241	($2,465.49)	($1,674.85)	($790.64)	$250,142.36
242	($2,465.49)	($1,681.74)	($783.75)	$248,668.62
243	($2,465.49)	($1,688.66)	($776.83)	$247,189.96
244	($2,465.49)	($1,695.61)	($769.88)	$245,706.35
245	($2,465.49)	($1,702.59)	($762.90)	$244,217.76
246	($2,465.49)	($1,709.60)	($755.89)	$242,724.16
247	($2,465.49)	($1,716.64)	($748.85)	$241,225.52
248	($2,465.49)	($1,723.71)	($741.78)	$239,721.81
249	($2,465.49)	($1,730.81)	($734.68)	$238,213.00
250	($2,465.49)	($1,737.94)	($727.55)	$236,699.06
251	($2,465.49)	($1,745.11)	($720.38)	$235,179.95
252	($2,465.49)	($1,752.30)	($713.19)	$233,655.65
253	($2,465.49)	($1,759.53)	($705.96)	$232,126.12
254	($2,465.49)	($1,766.79)	($698.70)	$230,591.33
255	($2,465.49)	($1,774.08)	($691.41)	$229,051.25
256	($2,465.49)	($1,781.40)	($684.09)	$227,505.85
257	($2,465.49)	($1,788.76)	($676.73)	$225,955.09
258	($2,465.49)	($1,796.14)	($669.35)	$224,398.95
259	($2,465.49)	($1,803.56)	($661.93)	$222,837.39
260	($2,465.49)	($1,811.01)	($654.48)	$221,270.38
261	($2,465.49)	($1,818.49)	($646.99)	$219,697.89
262	($2,465.49)	($1,826.00)	($639.48)	$218,119.89
263	($2,465.49)	($1,833.55)	($631.93)	$216,536.34
264	($2,465.49)	($1,841.13)	($624.36)	$214,947.21
265	($2,465.49)	($1,848.74)	($616.75)	$213,352.47
266	($2,465.49)	($1,856.39)	($609.10)	$211,752.08
267	($2,465.49)	($1,864.07)	($601.42)	$210,146.01
268	($2,465.49)	($1,871.78)	($593.71)	$208,534.23
269	($2,465.49)	($1,879.53)	($585.96)	$206,916.70
270	($2,465.49)	($1,887.31)	($578.18)	$205,293.39
271	($2,465.49)	($1,895.13)	($570.36)	$203,664.26
272	($2,465.49)	($1,902.98)	($562.51)	$202,029.28
273	($2,465.49)	($1,910.87)	($554.62)	$200,388.41
274	($2,465.49)	($1,918.79)	($546.70)	$198,741.62
275	($2,465.49)	($1,926.75)	($538.74)	$197,088.87
276	($2,465.49)	($1,934.74)	($530.75)	$195,430.13
277	($2,465.49)	($1,942.77)	($522.72)	$193,765.36
278	($2,465.49)	($1,950.84)	($514.65)	$192,094.52
279	($2,465.49)	($1,958.94)	($506.55)	$190,417.58
280	($2,465.49)	($1,967.08)	($498.41)	$188,734.50
281	($2,465.49)	($1,975.26)	($490.23)	$187,045.24
282	($2,465.49)	($1,983.47)	($482.02)	$185,349.77
283	($2,465.49)	($1,991.72)	($473.77)	$183,648.05
284	($2,465.49)	($2,000.00)	($465.49)	$181,940.05
285	($2,465.49)	($2,008.32)	($457.17)	$180,225.73
286	($2,465.49)	($2,016.68)	($448.81)	$178,505.05
287	($2,465.49)	($2,025.07)	($440.42)	$176,777.98
288	($2,465.49)	($2,033.50)	($431.99)	$175,044.48
289	($2,465.49)	($2,041.97)	($423.52)	$173,304.51
290	($2,465.49)	($2,050.47)	($415.02)	$171,558.04
291	($2,465.49)	($2,059.01)	($406.48)	$169,805.03
292	($2,465.49)	($2,067.59)	($397.90)	$168,045.44
293	($2,465.49)	($2,076.21)	($389.28)	$166,279.23
294	($2,465.49)	($2,084.86)	($380.63)	$164,506.37
295	($2,465.49)	($2,093.56)	($371.93)	$162,726.81
296	($2,465.49)	($2,102.30)	($363.19)	$160,940.51
297	($2,465.49)	($2,111.07)	($354.42)	$159,147.44
298	($2,465.49)	($2,119.89)	($345.60)	$157,347.55
299	($2,465.49)	($2,128.74)	($336.75)	$155,540.81
300	($2,465.49)	($2,137.64)	($327.85)	$153,727.17
301	($2,465.49)	($2,146.57)	($318.92)	$151,906.60
302	($2,465.49)	($2,155.55)	($309.94)	$150,079.05
303	($2,465.49)	($2,164.57)	($300.92)	$148,244.48
304	($2,465.49)	($2,173.63)	($291.86)	$146,402.85
305	($2,465.49)	($2,182.73)	($282.76)	$144,554.12
306	($2,465.49)	($2,191.88)	($273.61)	$142,698.24
307	($2,465.49)	($2,201.07)	($264.42)	$140,835.17
308	($2,465.49)	($2,210.30)	($255.19)	$138,964.87
309	($2,465.49)	($2,219.58)	($245.91)	$137,087.29
310	($2,465.49)	($2,228.90)	($236.59)	$135,202.39
311	($2,465.49)	($2,238.26)	($227.23)	$133,310.13
312	($2,465.49)	($2,247.67)	($217.82)	$131,410.46
313	($2,465.49)	($2,257.13)	($208.36)	$129,503.33
314	($2,465.49)	($2,266.62)	($198.86)	$127,588.71
315	($2,465.49)	($2,276.17)	($189.32)	$125,666.54
316	($2,465.49)	($2,285.76)	($179.73)	$123,736.78
317	($2,465.49)	($2,295.40)	($170.09)	$121,799.38
318	($2,465.49)	($2,305.08)	($160.41)	$119,854.30
319	($2,465.49)	($2,314.81)	($150.68)	$117,901.49
320	($2,465.49)	($2,324.59)	($140.90)	$115,940.90
321	($2,465.49)	($2,334.41)	($131.08)	$113,972.49
322	($2,465.49)	($2,344.28)	($121.21)	$111,996.21
323	($2,465.49)	($2,354.20)	($111.29)	$110,012.01
324	($2,465.49)	($2,364.16)	($101.33)	$108,019.85
325	($2,465.49)	($2,374.17)	($91.32)	$106,019.68
326	($2,465.49)	($2,384.23)	($81.26)	$104,011.45
327	($2,465.49)	($2,394.33)	($71.16)	$101,995.12
328	($2,465.49)	($2,404.48)	($61.01)	$99,970.64
329	($2,465.49)	($2,414.68)	($50.81)	$97,937.96
330	($2,465.49)	($2,424.93)	($40.56)	$95,897.03
331	($2,465.49)	($2,435.23)	($30.26)	$93,847.80
332	($2,465.49)	($2,445.58)	($19.91)	$91,790.22
333	($2,465.49)	($2,455.98)	($9.51)	$89,724.24
334	($2,465.49)	($2,466.43)	$0.94	$87,649.81
335	($2,465.49)	($2,476.93)	$11.44	$85,566.88
336	($2,465.49)	($2,487.48)	$21.99	$83,475.40
337	($2,465.49)	($2,498.08)	$32.59	$81,375.32
338	($2,465.49)	($2,508.73)	$43.24	$79,266.59
339	($2,465.49)	($2,519.43)	$53.94	$77,149.16
340	($2,465.49)	($2,530.18)	$64.69	$75,022.98
341	($2,465.49)	($2,540.98)	$75.49	$72,888.00
342	($2,465.49)	($2,551.83)	$86.34	$70,744.17
343	($2,465.49)	($2,562.73)	$97.24	$68,591.44
344	($2,465.49)	($2,573.68)	$108.19	$66,429.76
345	($2,465.49)	($2,584.68)	$119.19	$64,259.08
346	($2,465.49)	($2,595.73)	$130.24	$62,079.35
347	($2,465.49)	($2,606.83)	$141.34	$59,890.52
348	($2,465.49)	($2,617.98)	$152.49	$57,692.54
349	($2,465.49)	($2,629.18)	$163.69	$55,485.36
350	($2,465.49)	($2,640.43)	$174.94	$53,268.93
351	($2,465.49)	($2,651.73)	$186.24	$51,043.20
352	($2,465.49)	($2,663.09)	$197.60	$48,808.11
353	($2,465.49)	($2,674.49)	$209.00	$46,563.62
354	($2,465.49)	($2,685.95)	$220.46	$44,309.67
355	($2,465.49)	($2,697.46)	$231.97	$42,046.21
356	($2,465.49)	($2,709.02)	$243.53	$39,773.19
357	($2,465.49)	($2,720.63)	$255.14	$37,490.56
358	($2,465.49)	($2,732.30)	$266.80	$35,198.26
359	($2,465.49)	($2,744.02)	$278.52	$32,896.24
360	($2,465.49)	($2,755.79)	$290.29	$30,584.45

	Yearly Amounts	
	Payment	Interest
Year 1	-$29,585.89	-$21,235.60
Year 2	-$29,585.89	-$20,870.25
Year 3	-$29,585.89	-$20,488.91
Year 4	-$29,585.89	-$20,090.88
Year 5	-$29,585.89	-$19,675.44
Year 6	-$29,585.89	-$19,241.82
Year 7	-$29,585.89	-$18,789.23
Year 8	-$29,585.89	-$18,316.83
Year 9	-$29,585.89	-$17,823.77
Year 10	-$29,585.89	-$17,309.14

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Exhibit 11
HTSS 0018

52	($2,465.49)	($818.47)	($1,647.02)	$459,885.64	172	($2,465.49)	($1,255.99)	($1,209.50)	$337,067.07	292	($2,465.49)	($1,927.37)	($538.12)	$148,596.25
53	($2,465.49)	($821.40)	($1,644.09)	$459,064.24	173	($2,465.49)	($1,260.48)	($1,205.01)	$335,806.59	293	($2,465.49)	($1,934.26)	($531.23)	$146,661.99
54	($2,465.49)	($824.34)	($1,641.15)	$458,239.90	174	($2,465.49)	($1,264.98)	($1,200.51)	$334,541.61	294	($2,465.49)	($1,941.17)	($524.32)	$144,720.82
55	($2,465.49)	($827.28)	($1,638.21)	$457,412.62	175	($2,465.49)	($1,269.50)	($1,195.99)	$333,272.11	295	($2,465.49)	($1,948.11)	($517.38)	$142,772.70
56	($2,465.49)	($830.24)	($1,635.25)	$456,582.38	176	($2,465.49)	($1,274.04)	($1,191.45)	$331,998.06	296	($2,465.49)	($1,955.08)	($510.41)	$140,817.63
57	($2,465.49)	($833.21)	($1,632.28)	$455,749.17	177	($2,465.49)	($1,278.60)	($1,186.89)	$330,719.47	297	($2,465.49)	($1,962.07)	($503.42)	$138,855.56
58	($2,465.49)	($836.19)	($1,629.30)	$454,912.98	178	($2,465.49)	($1,283.17)	($1,182.32)	$329,436.30	298	($2,465.49)	($1,969.08)	($496.41)	$136,886.48
59	($2,465.49)	($839.18)	($1,626.31)	$454,073.80	179	($2,465.49)	($1,287.76)	($1,177.73)	$328,148.54	299	($2,465.49)	($1,976.12)	($489.37)	$134,910.35
60	($2,465.49)	($842.18)	($1,623.31)	$453,231.63	180	($2,465.49)	($1,292.36)	($1,173.13)	$326,856.18	300	($2,465.49)	($1,983.19)	($482.30)	$132,927.17
61	($2,465.49)	($845.19)	($1,620.30)	$452,386.44	181	($2,465.49)	($1,296.98)	($1,168.51)	$325,559.20	301	($2,465.49)	($1,990.28)	($475.21)	$130,936.89
62	($2,465.49)	($848.21)	($1,617.28)	$451,538.23	182	($2,465.49)	($1,301.62)	($1,163.87)	$324,257.59	302	($2,465.49)	($1,997.39)	($468.10)	$128,939.50
63	($2,465.49)	($851.24)	($1,614.25)	$450,686.99	183	($2,465.49)	($1,306.27)	($1,159.22)	$322,951.32	303	($2,465.49)	($2,004.53)	($460.96)	$126,934.97
64	($2,465.49)	($854.28)	($1,611.21)	$449,832.70	184	($2,465.49)	($1,310.94)	($1,154.55)	$321,640.38	304	($2,465.49)	($2,011.70)	($453.79)	$124,923.27
65	($2,465.49)	($857.34)	($1,608.15)	$448,975.36	185	($2,465.49)	($1,315.63)	($1,149.86)	$320,324.75	305	($2,465.49)	($2,018.89)	($446.60)	$122,904.38
66	($2,465.49)	($860.40)	($1,605.09)	$448,114.96	186	($2,465.49)	($1,320.33)	($1,145.16)	$319,004.42	306	($2,465.49)	($2,026.11)	($439.38)	$120,878.27
67	($2,465.49)	($863.48)	($1,602.01)	$447,251.48	187	($2,465.49)	($1,325.05)	($1,140.44)	$317,679.37	307	($2,465.49)	($2,033.35)	($432.14)	$118,844.92
68	($2,465.49)	($866.57)	($1,598.92)	$446,384.91	188	($2,465.49)	($1,329.79)	($1,135.70)	$316,349.58	308	($2,465.49)	($2,040.62)	($424.87)	$116,804.30
69	($2,465.49)	($869.66)	($1,595.83)	$445,515.25	189	($2,465.49)	($1,334.54)	($1,130.95)	$315,015.04	309	($2,465.49)	($2,047.92)	($417.58)	$114,756.39
70	($2,465.49)	($872.77)	($1,592.72)	$444,642.48	190	($2,465.49)	($1,339.31)	($1,126.18)	$313,675.73	310	($2,465.49)	($2,055.24)	($410.25)	$112,701.15
71	($2,465.49)	($875.89)	($1,589.60)	$443,766.58	191	($2,465.49)	($1,344.10)	($1,121.39)	$312,331.63	311	($2,465.49)	($2,062.58)	($402.91)	$110,638.57
72	($2,465.49)	($879.03)	($1,586.47)	$442,887.56	192	($2,465.49)	($1,348.91)	($1,116.59)	$310,982.72	312	($2,465.49)	($2,069.96)	($395.53)	$108,568.61
73	($2,465.49)	($882.17)	($1,583.32)	$442,005.39	193	($2,465.49)	($1,353.73)	($1,111.76)	$309,629.00	313	($2,465.49)	($2,077.36)	($388.13)	$106,491.25
74	($2,465.49)	($885.32)	($1,580.17)	$441,120.07	194	($2,465.49)	($1,358.57)	($1,106.92)	$308,270.43	314	($2,465.49)	($2,084.78)	($380.71)	$104,406.47
75	($2,465.49)	($888.49)	($1,577.00)	$440,231.58	195	($2,465.49)	($1,363.42)	($1,102.07)	$306,907.01	315	($2,465.49)	($2,092.24)	($373.25)	$102,314.23
76	($2,465.49)	($891.66)	($1,573.83)	$439,339.92	196	($2,465.49)	($1,368.30)	($1,097.19)	$305,538.71	316	($2,465.49)	($2,099.72)	($365.77)	$100,214.51
77	($2,465.49)	($894.85)	($1,570.64)	$438,445.07	197	($2,465.49)	($1,373.19)	($1,092.30)	$304,165.52	317	($2,465.49)	($2,107.22)	($358.27)	$98,107.29
78	($2,465.49)	($898.05)	($1,567.44)	$437,547.02	198	($2,465.49)	($1,378.10)	($1,087.39)	$302,787.42	318	($2,465.49)	($2,114.76)	($350.73)	$95,992.53
79	($2,465.49)	($901.26)	($1,564.23)	$436,645.76	199	($2,465.49)	($1,383.03)	($1,082.47)	$301,404.39	319	($2,465.49)	($2,122.32)	($343.17)	$93,870.21
80	($2,465.49)	($904.48)	($1,561.01)	$435,741.28	200	($2,465.49)	($1,387.97)	($1,077.52)	$300,016.42	320	($2,465.49)	($2,129.90)	($335.59)	$91,740.31
81	($2,465.49)	($907.72)	($1,557.78)	$434,833.56	201	($2,465.49)	($1,392.93)	($1,072.56)	$298,623.49	321	($2,465.49)	($2,137.52)	($327.97)	$89,602.79
82	($2,465.49)	($910.96)	($1,554.53)	$433,922.60	202	($2,465.49)	($1,397.91)	($1,067.58)	$297,225.58	322	($2,465.49)	($2,145.16)	($320.33)	$87,457.63
83	($2,465.49)	($914.22)	($1,551.27)	$433,008.38	203	($2,465.49)	($1,402.91)	($1,062.58)	$295,822.67	323	($2,465.49)	($2,152.83)	($312.66)	$85,304.80
84	($2,465.49)	($917.49)	($1,548.00)	$432,090.90	204	($2,465.49)	($1,407.92)	($1,057.57)	$294,414.75	324	($2,465.49)	($2,160.53)	($304.96)	$83,144.27
85	($2,465.49)	($920.77)	($1,544.72)	$431,170.13	205	($2,465.49)	($1,412.96)	($1,052.53)	$293,001.79	325	($2,465.49)	($2,168.25)	($297.24)	$80,976.02
86	($2,465.49)	($924.06)	($1,541.43)	$430,246.07	206	($2,465.49)	($1,418.01)	($1,047.48)	$291,583.78	326	($2,465.49)	($2,176.00)	($289.49)	$78,800.02
87	($2,465.49)	($927.36)	($1,538.13)	$429,318.71	207	($2,465.49)	($1,423.08)	($1,042.41)	$290,160.70	327	($2,465.49)	($2,183.78)	($281.71)	$76,616.24
88	($2,465.49)	($930.68)	($1,534.81)	$428,388.04	208	($2,465.49)	($1,428.17)	($1,037.32)	$288,732.53	328	($2,465.49)	($2,191.59)	($273.90)	$74,424.65
89	($2,465.49)	($934.00)	($1,531.49)	$427,454.03	209	($2,465.49)	($1,433.27)	($1,032.22)	$287,299.26	329	($2,465.49)	($2,199.42)	($266.07)	$72,225.23
90	($2,465.49)	($937.34)	($1,528.15)	$426,516.69	210	($2,465.49)	($1,438.40)	($1,027.09)	$285,860.87	330	($2,465.49)	($2,207.29)	($258.21)	$70,017.94
91	($2,465.49)	($940.69)	($1,524.80)	$425,576.00	211	($2,465.49)	($1,443.54)	($1,021.95)	$284,417.33	331	($2,465.49)	($2,215.18)	($250.31)	$67,802.77
92	($2,465.49)	($944.06)	($1,521.43)	$424,631.94	212	($2,465.49)	($1,448.70)	($1,016.79)	$282,968.63	332	($2,465.49)	($2,223.10)	($242.39)	$65,579.67
93	($2,465.49)	($947.43)	($1,518.06)	$423,684.51	213	($2,465.49)	($1,453.88)	($1,011.61)	$281,514.75	333	($2,465.49)	($2,231.04)	($234.45)	$63,348.63
94	($2,465.49)	($950.82)	($1,514.67)	$422,733.69	214	($2,465.49)	($1,459.08)	($1,006.42)	$280,055.68	334	($2,465.49)	($2,239.02)	($226.47)	$61,109.61
95	($2,465.49)	($954.22)	($1,511.27)	$421,779.47	215	($2,465.49)	($1,464.29)	($1,001.20)	$278,591.38	335	($2,465.49)	($2,247.02)	($218.47)	$58,862.58
96	($2,465.49)	($957.63)	($1,507.86)	$420,821.84	216	($2,465.49)	($1,469.53)	($995.96)	$277,121.86	336	($2,465.49)	($2,255.06)	($210.43)	$56,607.53
97	($2,465.49)	($961.05)	($1,504.44)	$419,860.79	217	($2,465.49)	($1,474.78)	($990.71)	$275,647.08	337	($2,465.49)	($2,263.12)	($202.37)	$54,344.41
98	($2,465.49)	($964.49)	($1,501.00)	$418,896.30	218	($2,465.49)	($1,480.05)	($985.44)	$274,167.02	338	($2,465.49)	($2,271.21)	($194.28)	$52,073.20
99	($2,465.49)	($967.94)	($1,497.55)	$417,928.37	219	($2,465.49)	($1,485.34)	($980.15)	$272,681.68	339	($2,465.49)	($2,279.33)	($186.16)	$49,793.87
100	($2,465.49)	($971.40)	($1,494.09)	$416,956.97	220	($2,465.49)	($1,490.65)	($974.84)	$271,191.03	340	($2,465.49)	($2,287.48)	($178.01)	$47,506.39
101	($2,465.49)	($974.87)	($1,490.62)	$415,982.10	221	($2,465.49)	($1,495.98)	($969.51)	$269,695.04	341	($2,465.49)	($2,295.66)	($169.84)	$45,210.74
102	($2,465.49)	($978.35)	($1,487.14)	$415,003.74	222	($2,465.49)	($1,501.33)	($964.16)	$268,193.71	342	($2,465.49)	($2,303.86)	($161.63)	$42,906.88
103	($2,465.49)	($981.85)	($1,483.64)	$414,021.89	223	($2,465.49)	($1,506.70)	($958.79)	$266,687.02	343	($2,465.49)	($2,312.10)	($153.39)	$40,594.78
104	($2,465.49)	($985.36)	($1,480.13)	$413,036.53	224	($2,465.49)	($1,512.08)	($953.41)	$265,174.93	344	($2,465.49)	($2,320.36)	($145.13)	$38,274.41
105	($2,465.49)	($988.89)	($1,476.61)	$412,047.64	225	($2,465.49)	($1,517.49)	($948.00)	$263,657.44	345	($2,465.49)	($2,328.66)	($136.83)	$35,945.75
106	($2,465.49)	($992.42)	($1,473.07)	$411,055.22	226	($2,465.49)	($1,522.92)	($942.58)	$262,134.53	346	($2,465.49)	($2,336.98)	($128.51)	$33,608.77
107	($2,465.49)	($995.97)	($1,469.52)	$410,059.26	227	($2,465.49)	($1,528.36)	($937.13)	$260,606.17	347	($2,465.49)	($2,345.34)	($120.15)	$31,263.43
108	($2,465.49)	($999.53)	($1,465.96)	$409,059.73	228	($2,465.49)	($1,533.82)	($931.67)	$259,072.34	348	($2,465.49)	($2,353.72)	($111.77)	$28,909.70
109	($2,465.49)	($1,003.10)	($1,462.39)	$408,056.62	229	($2,465.49)	($1,539.31)	($926.18)	$257,533.03	349	($2,465.49)	($2,362.14)	($103.35)	$26,547.57
110	($2,465.49)	($1,006.69)	($1,458.80)	$407,049.94	230	($2,465.49)	($1,544.81)	($920.68)	$255,988.22	350	($2,465.49)	($2,370.58)	($94.91)	$24,176.98
111	($2,465.49)	($1,010.29)	($1,455.20)	$406,039.65	231	($2,465.49)	($1,550.33)	($915.16)	$254,437.89	351	($2,465.49)	($2,379.06)	($86.43)	$21,797.92

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC and HARBOUR TOWN SURF SHOP, LLC Plaintiffs, vs. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2017-CP-07-01057 **AFFIDAVIT OF AMIR BITTON [IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT]**

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Amir Bitton, who after first being duly sworn, states:

1. My name is Amir Bitton. I am over 18 years of age, and competent to testify about the matters stated herein based on my own personal knowledge, except those stated to be upon information and belief which I have reason to believe are true.

2. I have been a resident of Hilton Head Island, South Carolina since 1990 and during that time I have owned and/or managed several businesses in the Hilton Head Island and Bluffton area.

3. One of these businesses is the Harbour Town Surf Shop ("Surf Shop"), a retail store located in the Harbour Town section of Sea Pines Plantation. My business partner, Alon Mintz, and I opened the Surf Shop in 2010 and formed the Harbour Town Surf Shop, LLC ("HTSS") to own and operate Surf Shop. We are the sole members of HTSS and we have co-managed the Surf Shop for the past nine years.

4. From 2010 to early-2015, the Surf Shop occupied a commercial property known as Shop 6 of the Mariner's Way Horizontal Property Regime in Harbour Town that HTSS leased from its then owner, Lorraine Giannone. In February 2015 we expanded the Surf Shop into the adjacent commercial unit, Shop 8 of the Mariner's Way Horizontal Property Regime, knocked

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

down the wall between the two units and entered into a new lease with Ms. Giannone covering both Shop 6 and Shop 8 (collectively referred to as the "Surf Shop Property").

5. In 2014, Alon Mintz and I formed Bittmint, LLC ("Bittmint") for the primary purpose of acquiring and managing commercial real estate. We are the only members of Bittmint.

6. In 2016 Bittmint acquired the Harbour Town General Store ("General Store") and the commercial property, Shop 5 of the Mariner's Way Horizontal Property Regime (the "General Store Property"), from which it operates. The General Store is located next to the Surf Shop. Bittmint has leased the General Store Property to HTSS, which took over ownership and operations of the General Store business, since the 2016 acquisition.

7. I had wanted to acquire the Surf Shop Property for many years, as I believed that owning the property would enhance the value of the Surf Shop business and would make for a sound strategic investment. I first asked Ms. Giannone about acquiring the Surf Shop Property several years ago and, over the years, I often discussed my interest in acquiring the property with both Ms. Giannone and her daughter, Lynda Johnson.

8. Ms. Giannone passed away in the summer of 2016. I was told that her children, Lynda Johnson and Charles Giannone (collectively the "Sellers"), would inherit the Surf Shop Property. During the second half of 2016, Alon Mintz and I continued to talk with Lynda Johnson about the possibility of purchasing the Surf Shop Property.

9. In January 2017, in anticipation of acquiring the Surf Shop Property and with the Sellers' authorization, we removed the wall between the General Store Property and the Surf Shop Property to form a combined commercial space for the two business. We also started construction renovations and purchased equipment needed to enhance our food sales operations in the combined space.

10. On January 31, 2017, Bittmint submitted a written letter of intent to the Sellers offering to purchase the Surf Shop Property for $580,000. A true and correct copy of the letter of intent is attached hereto as Exhibit A. I am informed and believe that Lynda Johnson communicated this offer to employees or agents of Sea Pines Resort, LLC ("SPR") on January 31, 2017.

11. On March 17, 2017, Bittmint entered into a written contract of sale to purchase the Surf Shop Property from the Sellers for $580,000 (the "Contract"). A true and correct copy of the Contract is attached hereto as Exhibit B.

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

12. As part of our overall business objectives for owning and managing retail properties in Sea Pines, Mr. Mintz and I had decided and agreed that should Bittmint acquire the Surf Shop Property it would lease it to HTTS and HTTS would pay rent to Bittmint in an amount sufficient to cover Bittmint's carrying costs (mortgage, assessments and taxes) plus an additional $500 per month. We further agreed to evaluate the lease terms for the Surf Shop Property every five years. This agreement is documented in a business plan for Bittmint prepared back in 2016, a true and correct copy of which is attached hereto as Exhibit C.

13. On or about May 2, 2017, Simon Fraser, Esq., an attorney representing SPR, informed the Sellers and our attorney, Mike Mogil, Esq., that SPR was exercising its "right of first refusal" to purchase the Surf Shop Property from the Sellers at the same $580,000 price that the Sellers contracted to sell it to Bittmint.

14. Bittmint, through Mr. Mogil, immediately challenged the validity of SPR's right of first refusal and SPR's exercise of the right on the Surf Shop Property and demanded that the Sellers honor the Contract. These demands included a letter from Mr. Mogil dated May 9, 2017, a true and correct copy of which is attached hereto as Exhibit D. Our demands were ignored by SPR and its attorneys, as shown by the documents attached hereto as Exhibit E. Mr. Mogil recorded a Lis Pendens on the property on behalf of Bittmint on May 10, 2017.

15. Due to the uncertainty caused by SPR's interference with our Contract with the Sellers, Alon Mintz and I decided to make a written offer to the Sellers on May 10, 2017 seeking to extend HTSS' lease for Surf Shop Property for two additional five-year option periods. If accepted, HTSS would have controlled an option to occupy the Surf Shop Property through 2035. This offer was rejected by the Sellers and, I am informed and believe, the rejection was caused by SPR's refusal to allow the Sellers to extend the lease. A true and correct copy of our offer and related e-mails are attached hereto as Exhibit F.

16. On May 11, 2017, we offered, through HTSS, to increase our purchase price for the Surf Shop Property to $590,000. This offer was also rejected by the Sellers. A true and correct copy of this offer, communicated by e-mail from Mr. Mogil to the Sellers' closing attorney, is attached hereto as Exhibit G.

17. On or about May 11, 2017 or May 12, 2017, SPR purchased the Surf Shop Property from the Sellers for $580,000.

18. HTSS continues to occupy the Surf Shop Property and pays rent to SPR.

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

19. Bittmint has suffered economic damages caused by the Sellers' failure to sell and the Surf Shop Property to Bittmint and by SPR's interference with the Contract. These damages include the following:

a. Lost income to Bittmint from the expected lease on the Surf Shop Property to HTSS of $500 per month for the past 30 months, amounting to $15,000.

b. $65,000 to remove the wall between the Grocery Store Property and the Surf Shop Property and for renovations and kitchen equipment for food service operations based on contemplated ownership of the Surf Shop Property and the adjoining Grocery Store Property. This cost includes labor and equipment. I do not have receipts for each expense and some of the labor was either paid by cash or the work was done by me and Mr. Mintz. A true and correct copy of invoices and receipts for these expenses are attached hereto as Exhibit H.

c. The Contract contains a term allowing the prevailing party to recover their attorneys' fees and costs in a litigation resulting from a default of the Contract. Bittmint will seek to enforce this provision if it prevails on its breach of contract claim in this action.

20. HTSS has suffered economic damages caused by the Sellers failure to sell the Surf Shop Property to Bittmint and by SPR's interference with HTSS' prospective lease agreement with Bittmint for the Surf Shop Property. These damages include the following:

a. $47,768 in excess rent paid to SPR by HTSS above the amount HTTS would have paid Bittmint. This sum is net of tax considerations and assumes a $498,800 loan to Bittmint with a 10-year balloon, 20-year amortization period and a fixed interest rate of 4.85%. This amount increases by approximately $3,000 per month.

FURTHER AFFIANT SAYEHT NAUGHT.

Amir Bitton

Sworn to and subscribed before me

this 8 day of November 2019

Notary Public, State of South Carolina
My Commission Expires: 9-8-2025

ELECTRONICALLY FILED - 2019 Nov 08 1:24 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057
ELECTRONICALLY FILED - 2022 Feb 28 10:02 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE**

The Defendants, Sea Pines Resort, LLC ("Sea Pines") and Lynda Johnson and Charles Giannone (the "Individual Defendants") (collectively, "Defendants") respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion in Limine No. 1 Re: Evidence of Right of First Refusal. For the reasons explained herein, Plaintiff's Motion in Limine No. 1, which addresses assignability, should be denied.

I. FACTUAL BACKGROUND

This is a breach of contract case. Plaintiff Bittmint, LLC and the Individual Defendants entered a contract of purchase and sale in April 2017 for two adjoining commercial condominium units that were owned by the Individual Defendants and being rented from them by Harbour Town Surf Shop, LLC to run a surf shop. Bittment, LLC and Harbour Town Surf Shop, LLC are both owned by Alon Mintz and Amir Bitton.

The purchase contract was conditioned on obtaining the relevant waivers from Sea Pines Resort, LLC, the master developer of Sea Pines since 2006. Bittmint, LLC's lawyer sent written forms to Sea Pines requesting that Sea Pines waive its repurchase option under the various Sea

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Pines covenants. Sea Pines instead decided to exercise it right to repurchase on the same terms as the purchase contact. Sea Pines closed on the purchase of the two units in May 2017. After Sea Pines exercised its right to repurchase, i.e., the Right of First Refusal, Bittmint changed its position and began contending the right to repurchase was "improperly" exercised and, later, that no repurchase right existed.

Sea Pines is the current holder of the Right of First Refusal by virtue of a series of assignments, including assignments approved by the United States District Court and the Bankruptcy Court in the 1987-1988 reorganization of Sea Pines Plantation Company. In its Motion, Plaintiffs assert that a 1977 assignment of the right of first refusal under the commercial covenants was personal to Sea Pines Plantation Company, and that the orders of the federal court approving the later assignment of that right to Sea Pines Plantation Company, Inc. were a nullity.

Plaintiffs' Motion should be denied for multiple reasons that include, but are not limited to, (i) that the assignment of the right of first refusal in the 1977 assignment was not personal to Sea Pines Plantation Company and could be assigned by the Trustee appointed by the Bankruptcy Court to Sea Pines Plantation Company, Inc. which, in turn, later assigned it to Sea Pines, and (ii) that Plaintiffs' arguments constitute an impermissible collateral attack on the final, binding judgments of the federal court.

II. THE CREATION OF THE COMMERCIAL RIGHT OF FIRST REFUSAL AND ITS ASSIGNMENT OVER TIME

The right of first refusal (hereinafter, the "Right of First Refusal") was a material term and condition of the Commercial Use Covenants dated January 25, 1973, and recorded at Deed Book 206, Page 1143 in the Beaufort County Register of Deeds (the "1973 Covenants").[1] The 1973

[1] It is worth noting that Sea Pines' holds rights of first refusal pursuant to other covenants in which Lighthouse Beach Company is not the declarant.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Covenants grant multiple rights, including the Right of First Refusal, to the "Company," which is a term expressly defined in the covenants to mean "LIGHTHOUSE BEACH COMPANY, its successors and assigns." Thus, the source document, i.e., the 1973 Covenants, makes clear and unequivocal that the Right of First Refusal is an assignable, or transferable, right of first refusal.

Four years later, Lighthouse Beach Company, through a liquidating partner, assigned its transferrable Right of First Refusal to the Sea Pines Plantation Company, by an Assignment of Option to Repurchase (the "1977 Assignment"). In its recitals, the 1977 Assignment expressly acknowledges that Lighthouse held "various options to repurchase property within Sea Pines Plantation . . . [that] ran with the land[.]" The instrument then "transfers, sets-over, assigns and conveys unto Sea Pines Plantation Company . . . **all rights**, obligations, benefits, **including the right to waive, all repurchase options in real property within Sea Pines Plantation** . . . which was **owned, possessed and seized unto Lighthouse Beach Company** . . . ." Id. at 1-2. Accordingly, via the 1977 Assignment, Sea Pines Plantation Company received all of Lighthouse Beach Company's rights, including the transferable Right of First Refusal.

Roughly a decade later, as part of the Chapter 11 bankruptcy of Sea Pines Plantation Company and related entities, its court-appointed trustee agreed to sell the assets of Sea Pines Plantation Company " . . . pursuant to and in accordance with Orders of United States District Judge Soloman Blatt, Jr. dated October 22, and Octeber 26, 1987." See Assignment of Rights, dated Nov. 17, 1987, at 1. The asset purchase agreement, which was approved by the federal district court, assigned to Sea Pines Plantation Company, Inc. multiple assets, including specifically the "'right of repurchase,' in regard to all properties within Sea Pines Plantation as more particularly described in any Restrictions and/or Declarations of record in Beaufort County, South Carolina . . . ." (Id. at 4).

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Additionally, on December 7, 1988, the bankruptcy trustee in the Sea Pines Bankruptcy entered into an "Agreement For Final Settlement of Issues Outstanding Between Sea Pines Plantation Company, Inc. and the Trustee," which provided, in pertinent part, that Sea Pines Plantation Company, Inc. would be assigned all rights that had been held, owned, possessed, controlled or exercisable by Sea Pines Plantation Company, including all rights as grantor, company or declarant under various recorded and unrecorded deeds and land use covenants and declarations thereof including all rights of repurchase. That Agreement For Final Settlement of Issues Outstanding Between Sea Pines Plantation Company, Inc. and the Trustee, which included the assignment of all rights of first refusal under real property covenants in Sea Pines, was approved by the order of bankruptcy court, United States Bankruptcy Court Judge Wm. Thurmond Bishop, on December 13, 1988. The United States Bankruptcy Court for the District of South Carolina entered a judgment on December 14, 1988 stating that "Settlement Agreement for Final Settlement of Issues Outstanding Between Sea Pines Plantation Company, Inc. and the Trustee is hereby approved, and the Trustee is directed to consummate said Agreement according to the terms thereof."

Pursuant to the bankruptcy court's order and judgment, all of Sea Pines Plantation Company's, Lighthouse Beach Company's and other related entities' rights of first refusal were assigned to Sea Pines Plantation Company, Inc. ("the 1988 Assignment"). The 1988 Assignment was executed on January 12, 1989 and recorded in the Beaufort County records office at Deed Book 520 at Page 1907.

Next, on March 14, 2007, Sea Pines Plantation Company, Inc. and other related entities executed a Deed, Bill of Sale and Assignment of Rights recorded at Deed Book 2539 at Page 1193. In this recorded instrument Defendant Sea Pines, Resort, LLC was assigned all real and personal,

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

tangible and intangible, and all rights of any nature and kind Sea Pines Plantation Company, Inc., or its related entities ever possessed or had any rights to exercise. The 2007 assignment specifically included all rights that Sea Pines Plantation Company, Inc held by virtue of the 1987 and 1988 assignment including the Company's repurchase option also called the Company's Right of First Refusal.

Here, Plaintiffs' Motion in Limine No. 1 does not dispute that the 1973 Covenants created a transferable Right of First Refusal, which it granted to Lighthouse Beach Company, its heirs, and assigns; that all the rights of Lighthouse Beach Company were transferred to Sea Pines Plantation Company via the 1977 Assignment; and that a bankruptcy trustee assigned the Right of First Refusal created by the 1973 Covenants to Sea Pines Plantation Company, Inc. pursuant to orders approved by the federal courts; nor that the Right of First Refusal has since been assigned to the Defendant Sea Pines Resort, LLC. Rather, Plaintiffs contend that every assignment – even that which was approved by court order – after 1977 is invalid because the Right of First Refusal converted to a non-assignable, personal right of Sea Pines Plantation Company upon assignment by Lighthouse Beach Company. As explained below, Plaintiffs' theory asking this court to overrule federal court orders entered in the 1980s is incorrect as a matter of law.

III. LAW AND ANALYSIS

Assignment is defined as "a transfer of property or some other right from one person to another, which confers a complete and present right in the subject matter to the assignee." 6 Am. Jur. 2d *Assignment* § 1 (2012). ". . . [C]ontract rights are freely assignable today, unlike in medieval times." Osprey, Inc. v. Cabana Ltd. P'ship, 340 S.C. 367, 381, 532 S.E.2d 269, 277 (2000); see also Auto-Owners Ins. Co. v. Potter, 242 F. App'x 94, 104 (4th Cir. 2007) ("Contracts are freely assignable in general; however, *contracts that expressly state that they are not*

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

assignable are an exception to that general principle.") (emphasis added) (highlighting that what is in the instrument controls). The Restatement of Contracts reflects this pro-assignment doctrine, stating:

> A contractual right can be assigned unless:
>
> (a) the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him, or
>
> (b) the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or
>
> (c) ***assignment is validly precluded by contract***.

Restatement (Second) of Contracts § 317 (1981) (emphasis added); see also Assessing Assignability: Transferring Contractual Rights or Obligations, Practical Law Legal Update 5-546-6326 ("As a general rule, stemming from the law's preference for the free alienation of property, contractual rights are freely assignable and contractual obligations are freely delegable.").

In support of Motion in Limine No. 1, Plaintiffs cite to only non-binding decisions of courts outside of South Carolina, with no substantive analysis or explanation. It appears Plaintiffs rely primarily on *unpublished* opinion from Iowa to support their argument that there is presumption against assignability for rights of first refusal. In that case, Malone v. Flattery, the Iowa court of appeals held that a right of first refusal was not transferrable when it was found in a contract of sale that referenced the heirs and assigns of the buyer when granting an access easement but not when granting a right of first refusal to the buyer. See id. at *5. The Malone court explained that "[t]he language of the contract is, of course, critical." Id. at 5. The court was swayed by the fact that the parties to the contract of sale creating the right of first refusal at issue included words of heirship with some rights and not others. See id. at *5. It explained that, if anything, this contrast

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

revealed that the parties to the contract intended the right of first refusal to be personal to the buyer. Id. Therefore, the court concluded that the right of first refusal was not assignable.

The right of first refusal at issue in Malone v. Flattery was completely different from the right of first refusal in this case that is embedded in recorded restrictive covenants for the benefit of the declarant of those covenants and its assignees. Unlike the source instrument in that case, which included words of heirship with respect to some rights but not the right of first refusal, the 1973 Covenants expressly include the successors and assigns of Lighthouse Beach Company in the grant of the Right of First Refusal. The Right of First Refusal was not granted to a specific third person but was a repurchase right the developer *reserved* to itself that could be assigned. This language clearly and unequivocally created a right of first refusal that is transferrable. It was then assigned to Sea Pines Plantation Company via the 1977 Assignment. Even the language of the 1977 Assignment makes clear that the parties intended to transfer "all rights" of Lighthouse Beach Company, including the Right of First Refusal that "ran with the land." It did not assign anything less.

The United States District Court and Bankruptcy Court for the District of South Carolina similarly concluded that the Right of First Refusal held by Sea Pines Plantation Company was transferrable. The orders and judgments of those Courts approved its assignment to Sea Pines Plantation Company, Inc. by the Trustee of the entities in the reorganization proceeding including Sea Pines Plantation Company.

Not only was the Right of First Refusal assignable by Sea Pines Plantation Company but Plaintiffs' Motion in Limine No. 1 is also nothing more than an impermissible, collateral attack on the orders of the federal courts approving the transfer. See Venture Engineering, Inc. v. Tishman Constr. Corp. of South Carolina, 360 S.C. 156, 163, 600 S.E.2d 547, 550 (Ct. App. 2004) ("When

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

a bankruptcy court's order is erroneous, it is correctable only through the federal court and, under the circumstances, the trial court and this court are required to accept the bankruptcy court's order as it was rendered and entered."). Ultimately, the courts have correctly decided this issue in the past. Respectfully, their orders cannot be appealed to, or set aside by, this Court.

III. CONCLUSION

The Court should deny Plaintiffs' Motion in Limine No. 1 on two independent grounds, as explained in detail above. The Right of First Refusal established by the 1973 Covenants was assignable. Additionally, it is improper to collaterally attack the orders of the federal courts who approved its assignment in the late 1980s. Ultimately, the Defendant Sea Pines Resort, LLC holds the Right of First Refusal under the 1973 Covenants, and other covenants. Plaintiffs' Motion in Limine No. 1, which is presented on Rule 403 grounds, should be denied.

WALKER GRESSETE FREEMAN & LINTON, LLC

s/ John P. Linton, Jr.

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ATTORNEYS FOR DEFENDANTS

February 28, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BITTMINT, LLC, and HARBOUR TOWN SURF SHOP, LLC, Plaintiffs, v. LYNDA H. JOHNSON, CHARLES S. GIANNONE and SEA PINES RESORT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2017-CP-07-01057 **DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2**

The above-captioned Defendants, Sea Pines Resort, LLC ("Sea Pines") and Lynda Johnson and Charles Giannone (the "Individual Defendants") (collectively, "Defendants") respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion in Limine No. 2 Re: Evidence of Right of First Refusal, which addresses the Rule Against Perpetuities. Plaintiffs assert a private right of action for damages for violation of the common law rule against perpetuities, even though South Carolina has adopted the uniform statutory rule against perpetuities that ***supersedes*** the common law. Further, there is no South Carolina case holding that a right of first refusal, such as the right at issue here—a right of first refusal provided for in real property covenants running with the land that provides the master developer the right of first refusal at the contract price and terms of a proposed transaction within the development—violates any rule against perpetuities.

As explained in detail below, Plaintiff's Motion in Limine No. 2 should be denied.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

I. FACTUAL BACKGROUND

This case involves Sea Pines exercising its right of first refusal to buy two commercial properties.

Specifically, in Sea Pines, the separate residential and commercial covenants each reserve to the developer this right of first refusal. Section 19 of the real property covenants, dated January 25, 1973, and recorded in Deed Book 206, Page 1143 (the "Commercial Use Covenants") provides a right of first refusal, as recorded at Deed Book 124, Page 35, and other sets of covenants.

Among other things, Plaintiffs contend that the right of first refusal, which is established and provided for in these real property covenants violates the common law rule against perpetuities.

II. LAW AND ANALYSIS

South Carolina has enacted a version of the Uniform Statutory Rule Against Perpetuities, S.C. Code § 27-6-10 et seq., which supersedes the common law rule against perpetuities and provides "that a nonvested interest violates the statutory rule against perpetuities if it fails to satisfy either the common law rule against perpetuities time period or the statutory 90-year wait-and-see time period. Abrams v. Templeton, 320 S.C. 325, 328, 465 S.E.2d 117, 120 n. 5 (Ct. App. 1995); Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 628 S.E.2d 902, 917, 368 S.C. 342, 369 (Ct. App. 2006) (citing to the statutory rule) As stated above, South Carolina's statutory rule against perpetuities expressly supersedes the common law rule against perpetuities:

This chapter supersedes the common law rule against perpetuities.

S.C. Code § 27-6-80 (bold added). Thus, the common law rule no longer applies under South Carolina law.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

In their Motion in Limine No. 2, Plaintiffs contend that, despite being superseded, the common law rule against perpetuities still applies to this case. According to Plaintiffs, the common law was not superseded as to "nondonative transfers"[1]. The statute explicitly provides that certain "nondonative transfers" are excepted from the rule against perpetuities. S.C. Code § 27-6-50. The statute does not state or suggest in any way that the common law rule, which the statute supersedes, comes back to life when a right falls into the exception. Quite the opposite.

The report of National Conference of Commissioners on Uniform State Laws, the drafters of the model statute that was adopted, makes clear that the statutory rule against perpetuities is intended to replace the common law rule:

- "In line with long-standing scholarly commentary, Section 4(1) [the exclusison for nondonative transfers] excludes nondonative transfers from the Statutory Rule. ***The Rule Against Perpetuities is an inappropriate instrument of social policy to use as a control on such arrangements***. . . . ." Exhibit 1 at 11 (double emphasis added).

- "Since the Common-law Rule Against Perpetuities is superseded by this Act . . . ***a nonvested property interest, power of appointment, or other arrangement excluded from the Statutory Rule by this section is not subject to any rule against perpetuities, statutory or otherwise***." Exhibit 1 at 57 (double emphasis added).

- "Paragraph (1) [the exclusion for nondonative transfers"] is therefore inconsistent with decisions holding the Common-law Rule to be applicable to the following types of property interests or arrangements when created in a nondonative, commercial-type transaction. . . preemptive rights in the nature of a right of first refusal. . . " Exhibit 1 at 57

Plaintiffs argue against the language of the statute. They hang their hat on one case, which addressed a right of first refusal that originated in a lease. See New Bar P'ship v. Martin, 221 N.C. App. 302, 729 S.E.2d 675 (2012). That case did not involve a right of first refusal in real property covenants. There are cases that follow the statute and are consistent with the reporter's comments.

[1] This term is not defined and there are no South Carolina cases defining what is, or is not, a nondonative transfer. Further, Plaintiffs have not cited any case holding that real property covenant is a nondonative transfer.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

See, e.g., Atlantic Richfield Company v. Whiting Oil and Gas Corporation, 320 P.3d 1179, 1187 (Colo., 2014) (explaining that Colorado's Statutory Rule Against Perpetuities Act, which is modelled on the USRAP, replaces the common law rule for nonvested interests created after May 31, 1991). Shaver v. Clanton, 31 Cal.Rptr.2d 595, 598, 26 Cal.App.4th 568, 574 (Cal.App. 4 Dist.,1994) (explaining that since the adoption of the Uniform Act, the common law rule against perpetuities, which California had applied to commercial transactions, including such interests such as rights of first refusal, "is now irrelevant to such transactions."). Thus, the North Carolina case cited by Plaintiffs is no justification for this Court to act contrary to the statute and revive the common law rule against perpetuities.

Even if Plaintiffs argument were correct, and the legislature did not supersede the common law rule against perpetuities by enacting a statute that stated it was superseded, Plaintiffs have not cited a case holding that real property covenants are "nondonative transfers." See, e.g., Buck v. Banks, 668 N.E.2d 1259 (Ind. Ct. App. 1996) (addressing an installment sales contract) and New Bar P'ship v. Martin, 221 N.C. App. 302, 729 S.E.2d 675 (2012) (addressing a commercial lease). Here, the Right of First Refusal at issue originates from real property covenants that run with the land, not a commercial lease.

In any event, even assuming arguendo that the common law rule against perpetuities somehow does apply and has been violated, Section 27-6-60(b) would require that the Court insert a savings clause that would prevent it from being invalid. "[I]f a nonvested property interest or a power of appointment was created before July 1, 1987, and is determined in a judicial proceeding, commenced on or after July 1, 1987, to violate this State's rule against perpetuities as that rule existed before July 1, 1987," Section 27-6-60(b) provides, "a court upon the petition of an interested person shall reform the disposition by inserting a savings clause that preserves most

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

closely the transferor's plan of distribution and that brings that plan within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created." Accordingly, at a minimum, this Court would be required to reform the Right of First Refusal in this case, such that it would survive challenge by the Plaintiffs.

Finally, even assuming the, now superseded, common law rule against perpetuities applied here, there is no controlling law that would justify a finding the right of first refusal violates said rule. Plaintiffs rely on one case – Webb v. Reames, 326 S.C. 444, 485 S.E.2d 384 (Ct. App. 1997). Webb involved a deed transferring property for $64 that purported to give the grantor's heirs a right into perpetuity to repurchase the same property for $64, regardless of the value of the property. The right of first refusal was not contained within real property covenants and did not provide, as is the case here, that the property had to be purchased at the price of the proposed sale. While our court never addressed this issue (and shouldn't because the common law rule has been superseded), a 2006 Court of Appeals opinion, after mentioning Webb, noted the following:

> Greenwood Development cites to ***numerous cases from other jurisdictions upholding repurchase provisions similar to that in the 1981 Covenants, and rejecting application of the rule against perpetuities, where the right to repurchase the property is for the same price the owner is willing to sell to a third party***. Weber v. Texas Co., 83 F.2d 807, 808 (5th Cir.1936), Cambridge Co. v. East Slope Inv. Corp., 700 P.2d 537, 542 (Colo.1985); Shiver v. Benton, 251 Ga. 284, 304 S.E.2d 903, 906–07 (1983); cf. **S.C. Code Ann. § 27–6–60(B)** (holding that under *370 the Uniform Statutory Rule Against Perpetuities, courts must reform a disposition that was created before July 1, 1987 by inserting a savings clause that preserves the transferor's plan of distribution "within the limits of the rule against perpetuities"). We decline to resolve this issue because there is no justiciable controversy surrounding the right of first refusal provision.

Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 628 S.E.2d 902, 917, 368 S.C. 342, 369–70 (Ct. App. 2006) (emphasis and double emphasis added).

Simply put, there is no basis under any rule against perpetuities analysis to invalidate the right of first refusal at issue in this case.

III. CONCLUSION

The Court should deny Plaintiffs' Motion in Limine No. 2 for all the reasons explained above.

WALKER GRESSETTE FREEMAN & LINTON, LLC

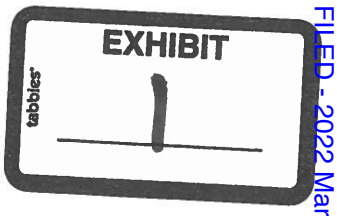
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February 28, 2022
Charleston, South Carolina

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UNIFORM STATUTORY RULE AGAINST PERPETUITIES (1986/1990)



Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

Approved and Recommended for Enactment
in All the States

At its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-NINTH YEAR
IN MILWAUKEE, WISCONSIN
JULY 13 - 20, 1990

With Prefatory Note and Comments

Original Act Approved by the American Bar Association
New Orleans, Louisiana, February 16, 1987

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UNIFORM STATUTORY RULE AGAINST PERPETUITIES (1986/1990)

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lives of the transferor's descendants in being at the creation of the trust or other property arrangement (plus 21 years).

No New Learning Required. The Uniform Act does not require the practicing bar to learn a new and unfamiliar set of perpetuity principles. The effect of the Uniform Act on the planning and drafting of documents for clients should be distinguished from the effect on the resolution of actual or potential perpetuity-violation cases. The former affects many more practicing lawyers than the latter.

With respect to the planning and drafting end of the practice, the Uniform Act requires no modification of current practice and no new learning. *Lawyers can and should continue to use the same traditional perpetuity-saving/termination clause, using specified lives in being plus 21 years, they used before enactment*. Lawyers should not shift to a "later-of" type clause that purports to operate upon the *later of* (A) 21 years after the death of the survivor of specified lives in being or (B) 90 years. As explained in more detail in Comment G to Section 1, such a clause is not effective. If such a "later-of" clause is used in a trust that contains a violation of the Common-law Rule, Section 1(a), by itself, would render the clause ineffective, limit the maximum permissible vesting period to 90 years, and render the trust vulnerable to a reformation suit under Section 3. Section 1(e), however, saves documents using this type of clause from this fate. By limiting the effect of such clauses to the 21-year period following the death of the survivor of the specified lives, Section 1(e) in effect transforms this type of clause into a traditional perpetuity-saving/termination clause, bringing the trust into compliance with the Common-law Rule and rendering it invulnerable to a reformation suit under Section 3.

Far fewer in number are those lawyers (and judges) who have an actual or potential perpetuity-violation case. An actual or potential perpetuity-violation case will arise very infrequently under the Uniform Act. When such a case does arise, however, lawyers (or judges) involved in the case will find considerable guidance for its resolution in the detailed analysis contained in the Comments, infra. In short, the detailed analysis in the Comments need not be part of the general learning required of lawyers in the drafting and planning of dispositive documents for their clients. The detailed analysis is supplied for the assistance in the resolution of an actual violation. Only then need that detailed analysis be consulted and, in such a case, it will prove extremely helpful.

A section-by-section summary of the Uniform Act follows:

Summary of the Uniform Statutory Rule Against Perpetuities

Section 1 sets forth the Statutory Rule Against Perpetuities (Statutory Rule). The Statutory Rule and the other provisions of the Act supersede the Common-law Rule Against Perpetuities (Common-law Rule) and replace any statutory version or variation thereof. See Section 9.

Section 1(a) deals with nonvested property interests. Subsections (b) and (c) deal with powers of appointment.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

Paragraph (1) of subsections (a), (b), and (c) codifies the validating side of the Common-law Rule. In effect, paragraph (1) of each of these subsections provides that a nonvested property interest or a power of appointment that is valid under the Common-law Rule Against Perpetuities is valid under the Statutory Rule and can be declared so at its inception; in such a case, nothing would be gained and much would be lost by invoking a permissible vesting period during which the validity of the interest or power is in abeyance.

Paragraph (2) of subsections (a), (b), and (c) establishes the wait-and-see rule by providing that an interest or a power of appointment that is not validated by Section 1(a)(1), 1(b)(1), or 1(c)(1), and hence would have been invalid under the Common-law Rule, is nevertheless valid if it does not actually remain nonvested when the 90-year permissible vesting period expires (or, in the case of a power of appointment, if the power ceases to be subject to a condition precedent or is no longer exercisable when the 90-year permissible vesting period expires).

Section 2 defines the time when, for purposes of the Act, a nonvested property interest or a power of appointment is created. The period of time allowed by Section 1 (Statutory Rule Against Perpetuities) is marked off from the time of creation of the nonvested property interest or power of appointment in question. Section 5, with certain exceptions, provides that the Uniform Act applies only to nonvested property interests and powers of appointment created on or after the effective date of the Act.

Section 2(b) provides that, if one person can exercise a power to become the unqualified beneficial owner of a nonvested property interest (or a property interest subject to a power of appointment described in Section 1(b) or 1(c)), the time of creation of the nonvested property interest or the power of appointment is postponed until the power to become unqualified beneficial owner ceases to exist. This is in accord with existing common law.

Section 2(c) provides that nonvested property interests and powers of appointment arising out of transfers to a previously funded trust or other existing property arrangement are created when the nonvested property interest or power of appointment arising out of the original contribution was created. This avoids an administrative difficulty that can arise at common law when subsequent transfers are made to an existing irrevocable trust. Arguably, at common law, each transfer starts the period of the Rule running anew as to that transfer. This difficulty is avoided by subsection (c).

Section 3 directs a court, upon the petition of an interested person, to reform a disposition within the limits of the 90-year permissible vesting period, in the manner deemed by the court most closely to approximate the transferor's manifested plan of distribution, in three circumstances: First, when a nonvested property interest or a power of appointment becomes invalid under the Statutory Rule; second, when a class gift has not but still might become invalid under the Statutory Rule and the time has arrived when the share of a class member is to take effect in possession or enjoyment; and third, when a nonvested property interest can vest, but cannot do so within the 90-year permissible vesting period. It is anticipated that the circumstances requisite to reformation under this section will rarely arise, and consequently that this section will seldom need to be applied.

Section 4 identifies the interests and powers that are excluded from the Statutory Rule Against Perpetuities. This section is in part declaratory of existing common law. All the exclusions from the Common-law Rule recognized at common law and by statute in the state are preserved.

In line with long-standing scholarly commentary, Section 4(1) excludes nondonative transfers from the Statutory Rule. The Rule Against Perpetuities is an inappropriate instrument of social policy to use as a control on such arrangements. The period of the Rule -- a life in being plus 21 years -- is suitable for donative transfers only.

Section 5 provides that the Statutory Rule Against Perpetuities applies only to nonvested property interests or powers of appointment created on or after the Act's effective date. Although the Statutory Rule does not apply retroactively, Section 5(b) authorizes a court to exercise its equitable power to reform instruments that contain a violation of the state's former Rule Against Perpetuities and to which the Statutory Rule does not apply because the offending property interest or power of appointment was created before the effective date of the Act. Courts are urged in the Comment to consider reforming such dispositions by judicially inserting a saving clause, since a saving clause would probably have been used at the drafting stage of the disposition had it been drafted competently.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

primary set of beneficiaries, would have a chance to take the property is to reform the disposition within the limits of the 90-year period on the ground that their interest cannot vest within the allowable period and subsection (3) so provides.

Example (6) -- Case of an Interest after its Creation Becoming Impossible to Vest Within the 90-Year Period. G devised property in trust, with the income to be paid to A. The corpus of the trust was to be divided among A's children who reach 30, each child's share to be paid on the child's 30th birthday; if none reaches 30, to the XYZ Charity. G was survived by A and by A's two children (X and Y). Neither X nor Y had reached 30 at G's death.

The class gift in favor of A's children who reach 30 would violate the Common-law Rule Against Perpetuities and, thus, is not validated by Section 1(a)(1). Its validity is therefore governed by Section 1(a)(2).

Suppose that after G's death, and during A's lifetime, X and Y die and a third child (Z) is born to or adopted by A. At A's death, Z is living but her age is such that she cannot reach 30 within the remaining part of the 90-year period following G's death. As of A's death, it has become the situation that Z's interest cannot vest within the allowable period. The circumstances requisite to reformation under subsection (3) have arisen. An appropriate result would be for the court to lower the age contingency to the age Z can reach 90 years after G's death.

Additional References. For additional discussion and illustrations of the application of some of the principles of this section, see the Comments to Restatement (Second) of Property (Donative Transfers)
§ 1.5 (1983).

SECTION 4. EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES. Section 1 (statutory rule against perpetuities) does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of

(A) a premarital or postmarital agreement,

(B) a separation or divorce settlement,

(C) a spouse's election,

(D) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties,

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

(E) a contract to make or not to revoke a will or trust,

(F) a contract to exercise or not to exercise a power of appointment,

(G) a transfer in satisfaction of a duty of support, or

(H) a reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057

COMMENT

Section 4 lists seven exclusions from the Statutory Rule Against Perpetuities (Statutory Rule). Some are declaratory of existing law; others are contrary to existing law. Since the Common-law Rule Against Perpetuities is superseded by this Act (or a statutory version or variation thereof is repealed by this Act), a nonvested property interest, power of appointment, or other arrangement excluded from the Statutory Rule by this section is not subject to any rule against perpetuities, statutory or otherwise.

A. PARAGRAPH (1): NONDONATIVE TRANSFERS EXCLUDED

Rationale. In line with long-standing scholarly commentary, paragraph (1) excludes (with certain enumerated exceptions) nonvested property interests and powers of appointment arising out of a nondonative transfer. The rationale for this exclusion is that the Rule Against Perpetuities is a wholly inappropriate instrument of social policy to use as a control over such arrangements. The period of the rule -- a life in being plus 21 years -- is not suitable for nondonative transfers, and this point applies with equal force to the 90-year allowable waiting period under the wait-and-see element of Section 1 because that period represents an approximation of the period of time that would be produced, on average, by using a statutory list identifying actual measuring lives and adding a 21-year period following the death of the survivor.

No general exclusion from the Common-law Rule Against Perpetuities is recognized for nondonative transfers, and so paragraph (1) is contrary to existing common law. (But see Metropolitan Transportation Authority v. Bruken Realty Corp., 67 N.Y.2d 156, 492 N.E.2d 379, 384 (1986), pointing out the inappropriateness of the period of a life in being plus 21 years to cases of commercial and governmental transactions and noting that the Rule Against Perpetuities can invalidate legitimate transactions in such cases.)

Paragraph (1) is therefore inconsistent with decisions holding the Common-law Rule to be applicable to the following types of property interests or arrangements when created in a nondonative, commercial-type transaction, as they almost always are: options (e.g., Milner v. Bivens, 335 S.E.2d 288 (Ga. 1985)); preemptive rights in the nature of a right of first refusal (e.g., Atchison v. City of Englewood, 170 Colo. 295, 463 P.2d 297 (1969); Robroy Land Co., Inc. v. Prather, 24 Wash. App. 511, 601 P.2d 297 (1969)); leases to commence in the future, at a time certain or on the happening of a future event such as the completion of a building (e.g., Southern Airways Co. v. DeKalb County, 101 Ga. App. 689, 115 S.E.2d 207 (1960)); nonvested easements; top leases and top deeds with respect to interests in minerals (e.g., Peveto v. Starkey, 645 S.W.2d 770 (Tex. 1982)); and so on.

Consideration Does Not Necessarily Make the Transfer Nondonative. A transfer can be supported by consideration and still be donative in character and hence not excluded from the Statutory Rule. A transaction that is essentially gratuitous in nature, accompanied by donative intent on the part of at least one party to the transaction, is not to be regarded as nondonative simply because it is for consideration. Thus, for example, the exclusion would not apply if a

parent purchases a parcel of land for full and adequate consideration, and directs the seller to make out the deed in favor of the purchaser's daughter for life, remainder to such of the daughter's children as reach 25. The nonvested property interest of the daughter's children is subject to the Statutory Rule.

Some Transactions Not Excluded Even if Considered Nondonative. Some types of transactions -- although in some sense supported by consideration and hence arguably nondonative -- arise out of a domestic situation, and should not be excluded from the Statutory Rule. To avoid uncertainty with respect to such transactions, paragraph (1) specifies that nonvested property interests or powers of appointment arising out of any of the following transactions are not excluded by paragraph (1)'s nondonative-transfers exclusion: a premarital or postmarital agreement; a separation or divorce settlement; a spouse's election, such as the "widow's election" in community property states; an arrangement similar to any of the foregoing arising out of a prospective, existing, or previous marital relationship between the parties; a contract to make or not to revoke a will or trust; a contract to exercise or not to exercise a power of appointment; a transfer in full or partial satisfaction of a duty of support; or a reciprocal transfer. The term "reciprocal transfer" is to be interpreted in accordance with the reciprocal transfer doctrine in the tax law (see United States v. Estate of Grace, 395 U.S. 316 (1969)).

Other Means of Controlling Some Nondonative Transfers Desirable. Some commercial transactions respecting land or mineral interests, such as options in gross (including rights of first refusal), leases to commence in the future, nonvested easements, and top leases and top deeds in commercial use in the oil and gas industry, directly or indirectly restrain the alienability of property or provide a disincentive to improve the property. Although controlling the duration of such interests is desirable, they are excluded by paragraph (1) from the Statutory Rule because, as noted above, the period of a life in being plus 21 years -- actual or by the 90-year proxy -- is inappropriate for them; that period is appropriate for family-oriented, donative transfers.

The Committee was aware that a few states have adopted statutes on perpetuities that include special limits on certain commercial transactions (e.g., Fla. Stat. § 689.22(3)(a); Ill. Rev. Stat. ch. 30, § 194(a)), and in fact the Committee itself drafted a comprehensive version of Section 4 that would have imposed a 40-year period-in-gross limitation in specified cases. In the end, however, the Committee did not present that version to the National Conference for approval because it was of the opinion that the control of these interests is better left to other types of statutes, such as marketable title acts (e.g., the Uniform Simplification of Land Transfers Act) and the Uniform Dormant Mineral Interests Act, backed up by the potential application of the common-law rules regarding unreasonable restraints on alienation.

B. PARAGRAPHS (2)-(7): OTHER EXCLUSIONS

Subsection (2) -- Administrative Fiduciary Powers. Fiduciary powers are subject to the Statutory Rule Against Perpetuities, unless specifically excluded. Purely administrative fiduciary powers are excluded by paragraphs (2) and (3), but distributive fiduciary powers are generally speaking not excluded. The only distributive fiduciary power excluded is the one described in paragraph (4).

ELECTRONICALLY FILED - 2022 Mar 02 4:07 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0701057