

required to reflect the statements under oath at depositions of the past and current presidents of the IHOA of the ARB's independence. If this is so then the IHOA has no standing to sue out alleged violations of the covenants and ARB Guidelines which are being administratively adjudicated by the ARB independent of the IHOA. While Plaintiff disbelieves this theory, the Complaint and Answer must be amended to reflect the statements made by these IHOA officers who had access to legal counsel.

6. The additional Count includes

a. Refusal of the Architectural Review Board (ARB) and / or Defendant IHOA to do it's asserted "duty" and to act on Plaintiff's putative ¹ application to plant three palm trees consistent with and minimally enlarging two existing Palm Tree areas (on Plaintiff's property) asserting no basis in the covenants for their refusal to act. This is a breach of contract.

b. Exaction or attempt at Extortion by the ARB which demanded that -- before the ARB would consider reviewing the application -- that Plaintiff must abandon his petition to the Court to adjudicate the issue of the 2010 action of the ARB / IHOA regarding a non-existent wall and related "fines" and pay at least One Thousand Seven Hundred and Thirty Five Dollars (\$ 1,735.00 or more) to Defendant IHOA.

c. Privacy violation by Defendant IHOA in that it illegally disclosed private financial information relating to Plaintiff's IHOA account to ARB members who had no right nor functional need for that information. Note that the IHOA has never provided it's members with a statement of privacy rights and expectations to which they are asked to agree, so common law concepts apply.

d. Acting contrary to the contractually implied doctrine of "Good Faith and Fair Dealing".

e. Acting with conflict of interest in that Charles Roche, the husband of co-Defendant Rosemary Toth, participated as one of the two ARB members on March 6, 2012. The other ARB Member refused to identify himself at the ARB "closed" ARB meeting held Tuesday March 6, 2012.

¹ Plaintiff stated on the application that the application was filed in due diligence, asserting that there is no requirement to seek an ARB approval for anything and that the IHOA is not the HOA for the Planned Unit Development.

f. **Causing Plaintiff damages which will have to be computed based on Plaintiff being unable to take advantage of the "early March" sale price on Pindo Palms and consequently having to acquire them at some future time at non-sale prices.**

7. **Deposition Testimony. In a deposition on March 13, 2012 Ordered by the Court specifically to allow, among other things, the exploration of Plaintiff of the Counter – Claim by the Defendant, the current President of Defendant IHOA, William Freiboth, stated repeatedly under oath that the ARB is NOT a committee of the IHOA, but sets it's own rules and acts under it's own authority. In another deposition on March 17, 2012 likewise Ordered by the Court the former President of the IHOA – and co-defendant – Rosemary Toth made the same assertions under oath regarding the independence of the ARB. Both individuals asserted under oath that the IHOA Board of Directors initially appoints the members of the ARB Board, per the Covenants, but thereafter it acts independently. Both Presidents concede that the IHOA provides the entire financial support available to the ARB, such as it is and that the IHOA allows the ARB to use contractor support paid one-hundred percent for by the IHOA using a contract between Defendant IHOA and it's contractor Diehl. They both state that the ARB can set the ARB Rules and Guidelines independent of the IHOA Board.**

8. **Independence of ARB is a Question of Fact. At this stage in the proceedings the question of the independence of the ARB is a question of fact for trial. Plaintiff is of the belief that the ARB is a committee of Defendant IHOA. The ARB has not registered with the South Carolina Secretary of State as an unincorporated entity doing business in South Carolina nor has it filed incorporation papers.**

9. **Supporting Evidence.**

a. **September 27, 2010 "Violation Notice" Exhibit A. The letter is from the International Club HOA and signed by a KA Diehl employee as "Managing Agent for International Club HOA. This letter is typical of "violation notices".**

b. **October 8, 2010 "Notice of Disapproved Request" Exhibit B. The letter is likewise from the IHOA and signed the same way, but is "For The Architectural Review Board". This letter is typical of ARB approval or disapproval letters.**

c. **February 12, 2012 Plaintiff's "ARB" Application to extend two palm tree beds, Exhibit C. The application was complete and reflected an extension of the beds**

consistent with the existing beds and consistent with palm tree beds across the street. As stated by an ARB member at the March 6, 2012 meeting, "a typical tree application routinely granted." The Application explicitly reserved objections to authority of the HOA and the ARB and had further reservations relating to the on-going litigation.

d. March 5, 2012 email from Vanessa Fattoross, a Diehl employee acting in her capacity as managing agent for the IHOA to Plaintiff containing and responding to a March 4, 2012 email from Plaintiff to Fattoross. Exhibit D. Diehl and Miss Fattoross was retained to support the IHOA and has no contractual relationship with any "independent" ARB. Plaintiff's email reminded Diehl that Plaintiff was concerned about his privacy.

e. March 16, 2012 letter from the "International Club HOA, Inc" signed by Vanessa Fattoross, KA Diehl "Managing Agent for International Club HOA, Inc". but "FOR THE ARCHITECTURAL REVIEW BOARD", Exhibit E. This letter stated the ARB's refusal to either approve or disapprove Plaintiff's ARB application.

(1) The ARB letter indicates that either the IHOA or the IHOA's contractor breached Plaintiff's rights and expectation of privacy by relating to the ARB members, who are not officers of the IHOA, alleged details of Plaintiff's financial account with the defendant IHOA. The financial situation is before this Court in the original complaint.

(2) The ARB letter stated that the ARB would not fulfill it's contractual obligation to act one way or the other on Plaintiff's ARB application until Plaintiff paid some other entity, the IHOA, almost two thousand dollars (\$ 1,735). Making an official act dependent on the payment of money unrelated to the official act constitutes the tort of Exaction.

(3) The ARB refusal to act using the criteria set forth in the Covenants – and only those criteria – constitutes a breach of contract by the IHOA and the ARB, the later since the existence and operation of the ARB is dependent on the covenants.

(4) The ARB's act constitutes a breach of the implied covenant which is part of any contract of "good faith and fair dealing".

(5) The ARB demanded the removal of "brickwork". The ARB insisted by implication that Plaintiff abandon his cause of action for the court to rule on the prior issue of an alleged prior ARB violation – "brickwork" – which the IHOA alleged in it's Counter – Complaint is not brickwork but "a wall". Through pictures Plaintiff has shown that

there is no "wall" and that there is a landscape edging consistent with other landscape edging approved by the IHOA in Plaintiff's lot and in other lots throughout the development. The use of the phrase "brickwork" is an attempt by the IHOA and ARB to subvert the judicial system by attempting to obtain results in the first matter which the defendants are not entitled to by exaction and refusing to act as required by the covenants in the latter matter. It is an "obstruction of justice" and illegal interference with the exercise of Plaintiff's right to judicial recourse.

10. The legal details of how the covenants set out the ARB's duties and procedures is explicitly stated in the proposed Amendment, Exhibit I.

11. The relevant pages of the February 13, 2012 deposition of William Freiboth, current President of the IHOA, is at Exhibit G.

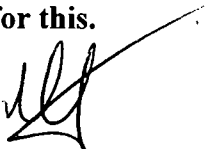
12. The relevant pages of the February 17, 2012 deposition of Rosemary Toth, former President of the IHOA is at Exhibit H.

13. The proposed Amendment to the Complaint is at Exhibit I.

14. The proposed Amendment to the Plaintiff's Answer to the Counter – Claim is at Exhibit J.

15. In consideration of SCRPC Rule 11's requirement to consult Plaintiff states the following: On October 16, 2012 Plaintiff sent Vanessa Fattoross an email which asked her / Diehl / the ARB to consult with Defense Counsel McNair to resolve Plaintiff's problems with the ARB's conduct. No response has been received. In Defendant's prior pleadings, Defense counsel has certified "that consultation with the Plaintiff would serve no useful purpose". Plaintiff adopts Defense counsel's assertion on this matter – although the aforementioned attempt to resolve this matter is an effort under SCRPC Rule 11.

16. I ask for this.



Ronald Jarmuth, Plaintiff Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
March 20, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Ronald Jarmuth,)
Plaintiff)

vs)

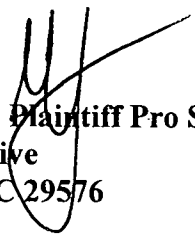
The International Club Homeowners)
Association, Inc.)
Defendant)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-26-11320

AFFIDAVIT OF
SERVICE OF
MOTION

CERTIFICATE OF SERVICE OF MOTION TO AMEND COMPLAINT AND ANSWER

I certify that on March 20, 2012, I served a copy of the attached Plaintiff's "Motion to Amend" upon Defendant by mailing same to Defendant's attorney, Henrietta U. Golding McNair Law Firm, P.A., 2411 Oak Street; Suite 206, Myrtle Beach, SC 29577-3164 by depositing same in the United States Mail with first class postage prepaid.


Ronald Jarmuth, Plaintiff Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
March 20, 2012

International Club HOA, Inc.

11740 Highway 17 By-pass South
Murrells Inlet, SC 29576
(843) 357-9888

9/27/2010

Lot 12

Ronald E. Jarmuth

249 Pickering Drive

Murrells Inlet SC 29576

Re: 249 Pickering Drive

Dear Ronald E. Jarmuth:

VIOLATION NOTICE #1

Please be advised the following covenant violation has been noted at your residence for which a \$50 fine has been added to your association account in accordance with the ARB Guidelines:

Article VI, Use Restrictions, Section 7.2, Prior Review of All Plans is required before any modification to the property can be completed.

This violation requires: **Please submit an application for the exterior modification of the landscape bed with curbing as well as the brick/stone addition to your side yard. Keep in mind that your property does have a utility easement, but it is still your property. The ARB will require a copy of the encroachment permit for our files.**

Failure to take corrective action will result in enforcement as defined in the Association By- Laws:

Section 11 (p) (CCR Owner Resolution Action Page 35): "To assess daily fines and to terminate cable television service to Owners for non-compliance with the Declaration or By- Laws."

Section 13.2 (page 44): "Authority and Enforcement - Subject to the provision hereof, upon the violation of the Declaration, the By- Laws or any rules and regulations duly adopted hereunder, including without limitation the failure to timely pay any Assessments, the Board shall have the power: (i) to impose reasonable monetary fines which shall constitute equitable charge and a continuing lien upon the Unit, the Owners, occupants or guests of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend any Owners's right (and the right of such Owner's families, guests and tenants) to use any of the Recreational Amenities, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, or such Owner's family, guests or tenants. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days."

Please provide a complete application to this office within 10 days of the date of this letter, and thank you for your prompt attention to this matter.

Very truly yours,

Julie Case

Assistant Association Manager

K. A. Diehl & Associates, Inc.

Managing Agent for International Club HOA

Julie.case@KADiehl.com

843-652-2164 - Direct Line

A

International Club HOA, Inc.

11740 Hwy 17 Bypass
Murrells Inlet, SC 29576
(843) 357-9888

10/8/2010

104-12
Ronald E. Jarmuth
249 Pickering Drive
Murrells Inlet SC 29576

RE: 249 Pickering Drive

NOTICE OF DISAPPROVED REQUEST

Dear Owner:

Unfortunately, your request for Architectural Change has been disapproved. Specifically, your request for the following change:

Install 6ft vinyl fence with a brick foundation to side yard.

This request has been denied due to its direct conflict with the covenants. Any materials that exist on your property pertaining to this addition, specifically the brick foundation, must be removed within 15 days from the date of this letter.

The Community is charged with the responsibility of preserving the aesthetic appearance of the Community to help protect the value of the homes. Occasionally, this means rejecting a Request for Approval.

Failure to comply will result in fines of \$100.00 each month.

We appreciate your cooperation in submitting this Request for Approval. Please do not get discouraged from making Requests in the future. Most are approved. Again, an attractive Community helps all of us get the full value from our homes when we decide to sell.

FOR THE ARCHITECTURAL REVIEW BOARD

Very truly yours,

Julie Case

Julie Case, Assistant Manager
KA Diehl & Associates, Inc
Managing Agent for International Club HOA, Inc.
Email: julie.case@kadiehl.com

B

**INTERNATIONAL CLUB ARCHITECTURAL REVIEW BOARD
"Putative" MODIFICATION REQUEST APPLICATION ¹**

This document set is provided the International Club Architectural Review Board ("ARB") without waiving any objections as to the authority of said ARB or said HOA in this matter. This qualification is made so as not to implicate potential HOA defense assertions such as "waiver" or "estoppel".

Owner's Name: Ronald Jarmuth
Home Phone 843-314-4355
Lot # Pebble Creek # 12
Address: 249 Pickering Drive; Murrells Inlet, SC 29576

This is a Landscaping Modification.

Per the attached Plat, to the left of the front of the house at the corner of Pickering and the cul de sac (standing on Pickering Drive) is an existing Palm Tree bed with Pindo palms and under plantings. The existing bed is edged with edging bricks.

#1 It is proposed to add one Pindo Palm to the RIGHT end of this bed and to extend the bed with the same edging bricks to surround the new palm and to keep the mulch in the bed – as is the situation with the existing bed. This does not block anyone's view of any golf course or other landscaping feature. This would be an extension of approximately 6 feet, more or less. This would be consistent with the "crescent" shape of the existing Palm bed. The extension would be within the property line and Horry County set-back requirements. That being said, owner has an encroachment permit from Horry County good for planting palm trees and plant beds between the curb and the property line.

#2 It is proposed to add one Pindo Palm to the LEFT end of an existing Palm Tree bed at the corner of the cul de sac and Pickering to the right of the house, looking at it the front of the house from Pickering Drive. There is an existing Palm Tree bed there with brick edgers. This would extend the arc of the bed approximately 6 feet, more or less, in a the existing curve shape. It would be edged exactly as the existing bed is edged. It would not block the view of the golf course of other landscaping feature. At the right end of this Palm Tree bed it is proposed to add another Pindo Palm tree, extending the bed approximately 6 feet, more or less. This would NOT impact the hedges surrounding the power transformer there, and would not block the front of power box area. This second Palm Tree would not block the view of the golf course nor of any landscaping feature – but would block in a small way the view of the undecorated rather bland side of the house. This extension would utilize the same edgers as the rest of the existing bed. The left and right bed

¹ At the February 13, 2012 deposition of William Freiboth, President of the International Club HOA, Inc, Mr. Freiboth testified under oath that the Architectural Review Board is not a committee of the IHOA and is independent of the HOA, not subject to the HOA's Bylaws and not accountable to the HOA Board.. Based on this assertion by Mr. Freiboth, the ARB is expected to keep this submission "private" from the HOA Board, in respect to the asserted ARB's "independent" status.

C

extensions would use the same type of under-plantings as are currently used.

It is noted that directly across the street from the "new" Palm Tree (left end of bed) on the other side of Pickering Drive (See attached Horry County GIS picture) homeowner Fletcher (254 Pickering) has two Palm Trees directly opposite where the added Palm Tree would go, with the difference that Fletcher's does not conform to the Horry County set-back requirements (it is ON THE CURB), and Fletcher's is located within the county - owned right of way.² Upon inquiry with Horry County, Fletcher does not have an encroachment permit. The property just to the left of Fletcher, Corbett (258 Pickering) likewise has a pair of Palm Trees situated on the curb and approximately 20 feet from his property line, per Horry County.

Date of Submission: February 27, 2012

Ronald Jarmuth

- For ARB Use Only -

APPROVED DISAPPROVED CONDITIONAL APPROVAL WITHDRAWN

Conditions _____

We, the undersigned ARB members, have rendered this decision:

_____ Date _____

Site Visit, if necessary: _____ Date _____

Post - Review Approval: _____ Date _____

² At the February 13, 2012 deposition of William Freiboth and at the February 17, 2012 deposition of Rosemary Toth, both testified under oath that the roads within the Planned Unit Development (with the exception of Madrid Drive and certain cul de sacs, none of which are in Pebble Creek) are all owned and controlled by the County.

INTERNATIONAL CLUB ARCHITECTURAL REVIEW BOARD CHECKLIST

Before submitting the Modification Request Application, please take a moment to review this checklist to be sure that all requested information and documentation is provided to the Architectural Review Board (ARB). This will help prevent delays and will expedite the decision-making process. The more information the better. If you are not sure that you have provided all the necessary information or have any questions, please contact K. A. Diehl at 843-357-9998 prior to mailing or hand-delivering your Application.

 X

Copy of the plat/survey *of your lot which reflects the footprint of your house, existing easements, setbacks, etc.

Fences - include a picture of the style of fence, the type of material, the color, and the height. Please note the exact location and to-scale dimensions on your plat/survey.

Trash Can Enclosures - include a picture of the style of screening, the type of material, the color, the height and the width. Please note the exact location and to-scale dimensions on your plat/survey.

 X

Landscape Improvements - include a list of the type of vegetation (pictures would be helpful). Please note the exact location of the proposed plantings on your plat/survey. A landscape plan may also be submitted.

 X

Permanent Edging - include a picture of the style and a color sample. Please note the exact location on your plat/survey.

Lawn Lighting - include a picture and description of the type of lighting (low voltage, spot, motion, solar, etc.) Please note the exact location on your plat./survey.

Driveway Coating - include a picture of the color and pattern, if any. A survey/plat is not necessary. See III. B.

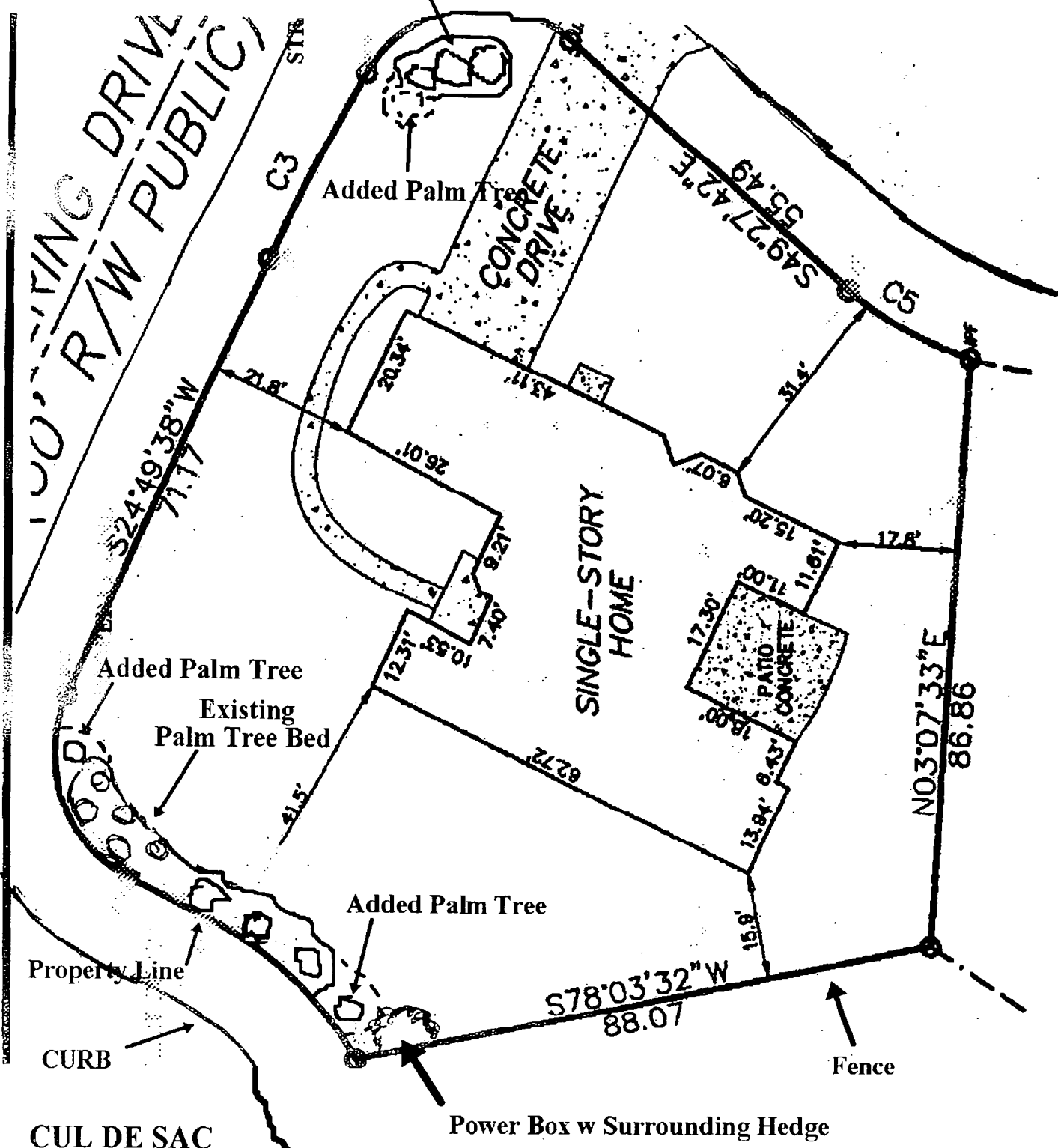
Room/Carolina Room/Screened Porch Addition - include a copy of the contractor's plans. Please note the exact location to-scale on your plat/survey. Be sure the roof line conforms to the existing architecture and that shingles match. Include materials types and colors. Pictures depicting the end result would be helpful. See IV. I.

Patio Extension/Pavers/Stepping Stones - include a sample or picture of the type of stone/paver you intend to use, noting color and shape. Please note the exact location to-scale on your plat/survey.

If the above checklist does not address your modification, please call as indicated above, for a list of specific information needed in your Application.

* Homeowners should have received an original of their as-built plat/survey at closing. If you have misplaced or did not receive this document, a copy may be obtained at the Horry County Planning and Zoning Commission office in Conway.

Existing Palm Trees & Bed



100' WIDENING DRIVE
R/W PUBLIC

Added Palm Tree

Added Palm Tree
Existing
Palm Tree Bed

Added Palm Tree

Property Line

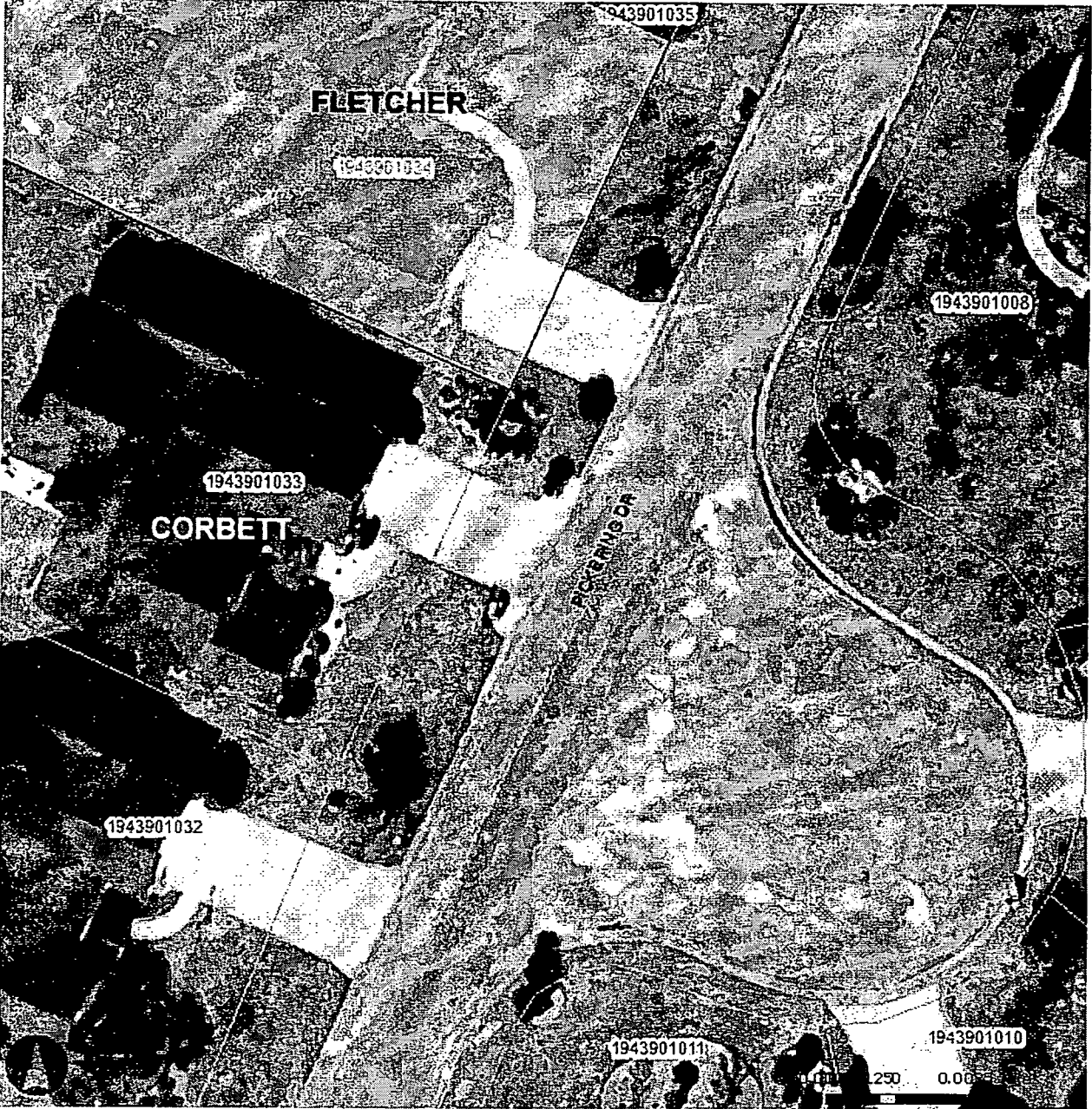
CURB

Fence

Power Box w Surrounding Hedge

CUL DE SAC

JARMUTH - LOT 12 PEBBLE CREEK



FLETCHER

1943361824

1943901035

1943901008

1943901033

CORBETT

PICKERING DR

1943901032

1943901011

1943901010

0 125 250 0.00

RE: Jarmuth ARB Submission (Feb 27, 2012) & Other issues

From: **Vanessa Fattoross** (Vanessa.Fattoross@kadiehl.com)

Sent: Mon 3/05/12 12:59 PM

To: 'Ronald Jarmuth' (ronaldjarmuth@hotmail.com)

Cc: Shannon Rogers (Shannon.Rogers@kadiehl.com)

Good morning Mr. Jarmuth,

Thank you for the welcome!

The ARB is meeting tomorrow morning. If you can attend in person, I can put you on the agenda for 11:00 AM.

Please note two members will not be in attendance so we will not know if we have a quorum to conduct official business

until the start of the meeting.

To receive emails from the Association, including "Friday Facts" you must be registered on the Association's website which is

www.internationalclubhoa.com. Once you have completed the initial registration, you can go to "My Profile" and request that

your contacts be sent via e-mail. This way you will receive email notifications. Only your name and address will be available to view to other homeowner unless YOU

CHOOSE to add other contact info such as your email address, phone numbers, etc.

Thank you and please let me know if you can attend tomorrow at 11:00 AM.

Vanessa Dawn Fattoross

Assistant Community Manager

KA Diehl, AAMC

An accredited Association Management Company

D

(Direct Dial: (843) 652-2206

(Direct Fax: (843) 652-2196

*Email: Vanessa.Fattoross@KADiehl.com

ÿ www.KADiehl.com

P Please consider the environment before printing this email.

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www.kadiehl.com

From: Ronald Jarmuth [mailto:ronaldjarmuth@hotmail.com]
Sent: Sunday, March 04, 2012 4:53 PM
To: Shannon Rogers; Vanessa Fattoross
Subject: Jarmuth ARB Submission (Feb 27, 2012) & Other issues

1. Welcome as the Diehl contract management employee for the International Club PUD. For reference, I am Ronald Jarmuth, 249 Pickering Drive, Murrells Inlet SC -- Lot #12 in Pebble Creek.
2. On February 27, 2012 I submitted an Architectural Review Board (ARB) package relating to palm trees on my property at the International Club. I am requesting that you notify me when the ARB will meet relative to that package because I intend to attend the meeting on that package.
3. On February 13, 2012, "Bill" Freiboth, the President of the International Club HOA (HOA), told me that he was unaware that I am not receiving "Friday Facts" and other emails sent by Diehl on behalf of the IHOA, and that the Board of the IHOA never directed that I not receive material sent to other homeowners. Please assure that I receive all such e-mailings in the future.
4. My phone number and email address are **NOT TO BE PLACED IN ANY HOMEOWNER DIRECTORY**. My name and address may be placed in such a directory.

Thank you.

Ronald Jarmuth

249 Pickering Drive (Lot #12 Pebble Creek)

Murrells Inlet SC 29576

843-314-4355

ronaldjarmuth@hotmail.com

International Club HOA, Inc.

11822 Hwy 17 Bypass
Murrells Inlet, SC 29576
(843) 357-9888

March 16, 2012

104-12
Ronald E. Jarmuth
249 Pickering Drive
Murrells Inlet SC 29576

RE: 249 Pickering Drive

Dear Owner:

Your ARB request has been deferred for consideration by the ARB. Specifically, your request for the following change:

Add two Pindo Palms and extend bends with same edging bricks per the specifications of the application.

The Community is charged with the responsibility of preserving the aesthetic appearance of the Community to help protect the value of the homes.

The ARB has deferred consideration until your present ARB violation is remedied by removing the brickwork along the property line and restoring the sod. Your HOA account also needs to be brought current. As of today, your account balance is \$1,735.00

We appreciate your cooperation in submitting this Request for Approval. Please do not get discouraged from making Requests in the future. Most are approved. Again, an attractive Community helps all of us get the full value from our homes when we decide to sell.

FOR THE ARCHITECTURAL REVIEW BOARD

Very truly yours,

Vanessa Fattoross

Vanessa Fattoross Assistant Manager
KA Diehl & Associates, Inc
Managing Agent for International Club HOA, Inc.
Email: vanessa.fattoross@kadiehl.com

E

EXHIBIT F NOT USED

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF Horry

Ronald Jarmuth,

Plaintiff(s),

vs.

CIVIL ACTION NOS.
2009-CP-26-3596 &
2010-CP-26-11320

International Club HOA, Inc., et al.,

Defendant(s).

DEPOSITION OF: WILLIAM FREIBOTH

DATE: Monday, February 13, 2012

TIME: 1:05 p.m. through 5:30 p.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for the Plaintiff(s)

COURT REPORTER: MADONNA M. PERKINS
Registered Professional Reporter
Certified Livenote Reporter

5

1 specific land that is responsible for performance
2 of duties on that land?

3 A. I'd have to look at the specific language in
4 the covenants.

5 Q. Can you cite any provision of the covenants
6 which require you to maintain the land beyond your
7 property line and going up the street?

8 A. That's the same question you just asked me,
9 and I answered that I'm not sure where it says that
10 in the covenants. All I know is that that land is
11 subject to the covenants.

12 Q. When you bought your house, did you obtain
13 title to any land beyond your survey line?

14 A. I don't think so. That's...

15 Q. Are you aware of any instance where the HOA
16 has approved a swing set on the side of a house?

17 A. I believe my views on that matter would be
18 all secondary. I've never sat in on the ARB
19 meetings, nor been a member of the ARB. I would
20 have only have heard that secondarily as part of
21 discussions.

22 Q. Isn't -- is the ARB a committee of the
23 board?

24 A. The ARB is a not a committee; it's a
25 separate board vested in the covenants.

1 Q. Who chooses the members of the ARB?

2 A. The board of directors does.

3 Q. Does it exercise any powers or authority
4 which the covenants give to the board?

5 A. It exercises power and authority that the
6 covenants give to the ARB. It's right there.

7 Q. I'm a little confused here. You said it
8 doesn't derive its authority from the board, yet
9 the board appoints its members. And you've also
10 said that the board handles ultimate decisions
11 regarding ARB decisions, and the board ultimately
12 gets to choose and decide whether fines are proper.

13 A. Well --

14 Q. Is the ARB subject to the board or not?

15 A. As I said, the members are appointed to the
16 board. The ARB has its own separate powers, I
17 believe in Section 7.2 of the covenants separate
18 from those of the board of directors. When you
19 talk about boards, there are two boards. And
20 when -- and you can appeal to the -- a decision to
21 the Architectural Review Board. The reason you can
22 also appeal it to the board of directors, it's my
23 understanding, is that we are doing due diligence,
24 overlooking the entire association. And before a
25 substantial dispute arises, we will try to

1 understand and mitigate and make sure we've done
2 right.

3 Q. Are you saying that Section 8 of the bylaws,
4 procedures, does not govern or control the
5 operation of the ARB, the person applies to the
6 board?

7 A. I'm saying that what's in Section 7.2
8 applies to the ARB and that it can make its own
9 rules and enforcement and it's in there.

10 Q. Is it the board or the ARB which made the
11 modifications to the ARB guidelines in 2008, 2011?

12 A. It's my understanding it's the ARB. We did
13 due diligence to review it.

14 Q. Who proposed the modifications in 2008? Was
15 it the ARB or the board?

16 A. That I don't know.

17 Q. Who did it in 2011?

18 A. It was the ARB.

19 Q. Who approved it?

20 A. The ARB approved it, and we did due
21 diligence and checked it ourselves to see if it
22 made sense.

23 Q. Who published it to the homeowners?

24 A. We felt, the board, that we should
25 distribute it in paper form.

1 that group is functional, well functioning, and if
2 there's anything going on that might lead us to
3 have due diligence. They make decisions. But if
4 we were to spot a problem, we would discuss it and
5 decide if it was significant. So we are not -- if
6 there's a board member there, normally it's not
7 going to be because they're a voting member of the
8 ARB.

9 Q. Is the ARB subject to the same open meeting,
10 open records requirements which the South Carolina
11 Nonprofit Corporation imposed on board of directors
12 meetings?

13 MS. THOMPSON: Object to the form.

14 THE DEPONENT: The board of directors
15 meetings that are open -- that are required
16 to be open is the annual meeting. The --
17 ARB is, by nature, discussing applications
18 and concerns of individual homeowners. And
19 I don't believe that they make all of
20 that -- well, I don't think they -- I think
21 those are private meetings involving the ARB
22 and the homeowner.

23 BY MR. JARMUTH:

24 Q. Is it your statement then that homeowners,
25 in general, can't attend the consideration of the

1 ARB of particular applications?

2 A. They -- I think they can attend if it's
3 their application.

4 Q. Not their application, just to sit in and
5 see what's going on.

6 A. I'm not sure, but I -- I'm not sure, but I
7 don't think so.

8 Q. Is there any contractual arrangement or
9 relationship you're aware of between the ARB and
10 K.A. Diehl?

11 A. Not directly.

12 Q. Is Diehl entitled, under its contract, to
13 administer a charge wherein it writes up, in the
14 ARB, violation issues, a fine letter?

15 A. Not for an ARB application process, no.

16 Q. When -- let me restate that. When the Diehl
17 person drives around the neighborhood, spots
18 something they consider a violation and issues a
19 violation letter, do they get a separate
20 reimbursement over the per-door charge from the HOA
21 for writing that letter?

22 MS. THOMPSON: Did you say "per-door
23 charge"?

24 BY MR. JARMUTH:

25 Q. Per-door.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF Horry

RONALD JARMUTH,

Plaintiff,

vs.

CIVIL ACTION NO.

2009-CP-26-3596

THE INTERNATIONAL CLUB
HOMEOWNERS ASSOCIATION, INC.,
ROSEMARY TOTH and K.A. DIEHL
& ASSOCIATES,

Defendants.

DEPOSITION OF: ROSEMARY H. TOTH

DATE: Friday, February 17, 2012

TIME: 9:59 a.m. through 2:31 p.m.

LOCATION: McNair Law Firm
2411 Oak Street, Suite 2006
Myrtle Beach, South Carolina

TAKEN BY: The Plaintiff

COURT REPORTER: TERESA J. F. BAUTZ
Registered Professional Reporter

#

1 STIPULATION: It is stipulated by and
2 between Counsel that this deposition is
3 being taken in accordance with the South
4 Carolina Rules of Civil Procedure; and that
5 the deponent does not waive reading and
6 signing of this deposition.

7 * * * * *

8 ROSEMARY H. TOTH, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. JARMUTH:

12 Q. State your name, for the record.

13 A. Rosemary Toth.

14 Q. What's your legal address?

15 A. 238 Seville Drive, Murrells Inlet, South
16 Carolina, 29576.

17 Q. Is that the property which entitles you to
18 be a member of HOA?

19 A. It is.

20 Q. Who are the co-owners of that property?

21 A. My husband Charles F. Roche, R-O-C-H-E, and
22 myself.

23 Q. And how long have you been married to
24 Mr. Roche?

25 A. It will be nine years this year.

1 out, again, when you know better, you do better, we
2 started paying them the \$150 a month.

3 Q. Was there an alternative available to the
4 HOA as to where they could get water from to
5 irrigate that area?

6 A. Possibly. Putting in our own wells.

7 Q. How about the water in the pond near the
8 Villas?

9 A. That's not our pond.

10 Q. Who owns the water in those ponds per the
11 covenants?

12 A. Which ponds?

13 Q. Any of the ponds in the PUD.

14 A. Depends upon whose pond it is. The HOA owns
15 three ponds, and we maintained four when I was
16 president.

17 Q. Don't the covenants of the HOA say
18 explicitly that all of the water in all of the
19 ponds belongs to the HOA, and including the
20 effluent, and that the HOA has the right to use
21 that water for irrigation?

22 A. I don't know what you're talking about, sir.
23 I've never read anything like that.

24 Q. As president of the HOA, what control did
25 you exercise over the ARB?

1 A. Control?

2 Q. Yes.

3 A. None. They are a separate -- they were a
4 separate entity. I didn't control them as the
5 president.

6 Q. Who appointed the members of the ARB?

7 A. The board.

8 Q. Did the ALB have any source of money other
9 than the board?

10 A. Money for what? No.

11 Q. For paying, among other things, members of
12 Diehl to attend the meetings.

13 A. That was part of the contract.

14 Q. Was it the HOA board or the ARB which
15 determined and ultimately approved the ARB
16 guidelines?

17 A. The board approved the guidelines that were
18 suggested by the ARB.

19 Q. Could the ARB itself write the guidelines by
20 themselves?

21 A. Yes. But they still had to have board
22 approval before they could be implemented.

23 Q. From your perspective on the board, what is
24 the difference between a guideline and a rule?

25 A. And this is with regards to the ARB

1 little differently or just repeat it, I will do my
2 best.

3 Q. Did the board ever give the ARB any guidance
4 as to who was allowed to be present at ARB
5 decision-making sessions?

6 A. We've never had anybody except for yourself
7 and one other person, I believe, and I'm not even
8 going to remember that because I wasn't the liaison
9 at that time, ever request to be there.

10 They would mail in, you know, I want a full
11 screen storm -- or a full storm door, full view
12 storm door, and no one would show up to be there
13 while that was presented. And for decision making,
14 that was done as a group with no outsiders present.
15 I mean, that's kind of a given. That's a private
16 thing.

17 Q. Is the ARB subject to the South Carolina
18 Nonprofit Corporation Act?

19 MS. THOMPSON: Objection to the form.

20 THE WITNESS: Are they subject to it?

21 I don't know, I can't answer that.

22 BY MR. JARMUTH:

23 Q. Can you explain why the ARB excludes any
24 individual from a session who is not the actual
25 applicant?

1 A. No, I can't.

2 Q. Can you see any executive privilege which
3 exists in excluding homeowners from decisions which
4 affect other homeowners?

5 A. I think there's a nice comfort level when
6 you can sit down, discuss issues -- not issues but
7 discuss any changes that someone wants to make.
8 Everybody feels comfortable in saying what they
9 need to say, and the outcome is had. It's all
10 followed -- they follow a set of rules and
11 regulations that are given to them.

12 Q. Can the board of directors in executive
13 session make any decisions which are binding which
14 would be in the minutes?

15 A. No, not to my knowledge.

16 Q. How is the ARB exempt from the requirement
17 of open decision making?

18 A. I don't know that they are.

19 Q. How familiar are you with the houses in the
20 Seville Drive area and those on Tavistock and
21 Adare?

22 A. Where's Tavistock? I mean, I don't know
23 where Tavistock is.

24 Q. Tavistock opens into Seville, Adare opens
25 into Seville?

financial details of Plaintiff's account with Defendant IHOA, thus such information is only available to Roche through the co-Defendant IHOA or it's employees.

b. At some time in the past Charles Roche was appointed by the Defendant International Club HOA to the Defendant International Club's Architectural Review Board (ARB). On March 6, 2012 Roche served on the ARB and took the tortious conduct alleged to him in this Count of the Complaint.

c. The co-Defendant IHOA through it's current President at a deposition has stated that the members of the ARB act independent of the IHOA on their own. Roche is an officer of the ARB. Roche thus acted independently and as an officer of the ARB.

d. The ARB is not a separately incorporated proprietorship but it independently acts as a proprietorship. The ARB is not a South Carolina registered unincorporated association.

e. All "violation" letters regarding alleged violations of covenants or ARB guidelines have been authored under the Return address "International Club HOA, Inc" by a IHOA contract employee signing the violation letter as a "K.A. Diehl" "managing agent for International Club HOA".

f. All ARB plan review approval or disapproval letters have been likewise titled "International Club HOA, Inc" but have been signed by the same Diehl individual in the same capacity "Managing Agent for International Club HOA, Inc" with the nuance that it is "FOR THE ARCHITECTURAL REVIEW BOARD".

27. The ARB does not maintain any minutes of it's meetings available to homeowners. Upon information and belief, the ARB does not maintain any minutes of it's meetings at all. Upon information and belief, as confirmed by Plaintiff's inspection of documents on October 3, 2011, at the offices of Defendant's legal counsel, the only documentation which the IHOA maintains is a log of the decisions of it's ARB.

28. The ARB does not permit homeowners to attend or observe it's deliberations. All decision making by the ARB is done in secret.

29. The ARB's decisions are considered by the IHOA Board of Directors to be final when made by the ARB.

30. Per the statements under oath of the IHOA's former President Rosemary Toth and likewise by it's current President, William Freiboth, the ARB can create it's own

Architectural Review Guidelines" ("Guidelines"). These Guidelines are constituted and modified from time to time without ever inviting homeowner input or prior comment.

31. The Guidelines are operationally considered as rules, not suggestions, because if a homeowner uses his property in a manner at variance to the "Guidelines" the IHOA's contractor, K.A. Diehl (a management company) ("Diehl") imposes a fine.

32. Diehl, acting on it's own, determines whether a violation of the covenants or the "guidelines" has occurred and imposes a fine without any prior action of the ARB or of the IHOA Board of Directors.

33. In doing so, Diehl earns a non-refundable "administrative charge" (which is operationally no different from a fine) in the amount of ten dollars (\$10) per putative violation which it gets to keep even if no "violation" is ultimately found.

34. Defendant IHOA has a contract with Diehl which pays Diehl from IHOA funds whenever a Diehl employee attends any event on behalf of the IHOA.

35. The ARB has no direct contractual relationship with Diehl. Any use of Diehl facilities or employees is by virtue of the IHOA's contract with Diehl and any consequent expenses incident to the ARB's use of Diehl's employees or facilities are paid for by the IHOA. Any ARB expense is paid for by the IHOA, and the ARB has no source of revenue.

36. Any ARB imposed "fines" are paid to the accounts of the IHOA and none of it is retained by the ARB.

37. The existence of the ARB is through several provisions in the Covenants.

a. The covenants provide that the ARB is established and operated by and as an extension of the Planned Unit Development's (PUD's) homeowner association, by whatever name.

"ARTICLE III - THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

Section 3.1. The Association. ... The Association shall be authorized but not required to provide the following services:

(d) *To set up and operate the Architectural Review Board as provided for herein.* "

b. The covenants clearly provide that the ARB is an extension of the HOA's Board of Directors. Article VII – Use Restrictions, Section 7.2. Prior Review of All Plans, provides that

"Such Architectural Review Board shall be comprised of not less than three (3) representatives to be appointed by the Board of Directors of the Association"

c. The powers and authority of the ARB is likewise stated in the same Section 7.2 of the covenants:

"The Architectural Review Board shall have the right and authority to establish, amend and enforce architectural guidelines, rules and regulations, to aid the Architectural Review Board and Owners in establishing an orderly and efficient procedure for accomplishing its duties and powers here-under.

The covenants do not vest either the HOA Board or the ARB with the authority to restrict the free use of property beyond those limitations explicitly set forth in the Covenants. Rather, the language explicitly states that any rules or guidelines shall be procedural as to how the ARB shall operate to accomplish "its duties and powers" granted by the covenants "hereunder". The covenants do not extend to any contractor any decision as to whether a covenant has been violated, nor do the covenants extend to the ARB any authority to levy any fines.

d. The covenants reserve to the HOA Board the authority to make any rules: **"Section 3.2. Rules and Regulations. The Board of Directors of the Association may adopt from time to time reasonable rules and regulations governing the use of ... Units."**

e. The criteria which the ARB shall use in making it's determinations are likewise set out in the covenants:

"Section 7.3., Objectives of the Architectural Review Board. Architectural and design review shall be directed towards attaining the following objectives for the Subdivision:

(1) Preventing excessive or unsightly grading, grading not in conformity with the drainage plan for the Subdivision, indiscriminate earth moving or clearing of property, or removal of trees and vegetation which could cause disruption of natural water courses, hinder proper drainage or scar natural land forms.

(2) Ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential Unit and with surrounding residential lots and structures, and do not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.

(3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Subdivision's overall

appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans, officially approved by the owner, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located.

(4) Ensuring that plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots and blend harmoniously with the natural landscape.

(5) Ensuring that any development structure, building or landscaping complies with the provisions of these covenants.

(6) Promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

(7) Ensuring that privacy needs of residents are protected to the maximum extent possible.

Clearly any negative decision of the ARB must "sound" in one support of or arise through these guidelines – and from no other consideration. That is, the world of decision making by the ARB is limited to the design or modification itself, and to no other matter.

38. Applicable Law. The IHOA and its committees are regulated by the South Carolina Non-Profit Corporation Act, 33-31 et seq. All committees must have at least two members of the Board of Directors on them:

SECTION 33-31-825. Committees.

(a) Each committee shall have two or more directors who serve at the pleasure of the board.

The ARB has no members of the IHOA Board on it. From time to time none, one or rarely two Board members attend as "liaison observers". This per the deposition testimony of former President Rosemary Toth and current President William Freiboth.

39. ARB "Application" Procedures. Sometime in November, 2011 the IHOA published new "ARB Guidelines" per the testimony of current IHOA President William Freiboth at his deposition. This can not be verified by inspection of the minutes of the Board of Directors because the Board will not release its minutes for meetings after May 5, 2010, although this violates the South Carolina Non Profit Corporation Act as well as the rules of civil discovery. The last minutes that the Defendant IHOA provided Plaintiff, despite the Court's Order to provide everything, was the minutes of the Board dated September 17, 2008. Thus Plaintiff has to "take the defendant's word" that the ARB Guidelines were approved by the IHOA Board.

40. The guidelines were accompanied by a checklist and application form to use in submitting ARB modification applications.

41. On March 6, 2012 the ARB members included Jackson Freeland (169 Seville Drive); Robert Pierce (622 Locke Court); and Charles Roche – the husband of defendant Rosemary Toth (238 Seville Drive).

42. On February 27, 2012 Plaintiff hand carried a putative ARB Application to the IHOA's registered agent / contract management company, Diehl. Said "application" explicitly reiterated Plaintiff's reservations about the authority of the IHOA and of the ARB and stated that the document was submitted as an exercise in discretion and did not waive any claims or constitute a basis for waiver or estoppel. The application was to extend two existing palm tree beds using the same edgers, palm trees, under plantings, and dimensions (particularly distances from curbs and houses) currently in use by the existing beds. The extensions were one palm tree at either end of one bed and one palm tree at one end of another bed. Horry County set-back requirements were met. Plaintiff had previously, none-the-less, obtained an encroachment permit from Horry County as a precaution, for the palm tree bed. As pointed out in the application (including a satellite picture), the home directly across the street from Plaintiff's had several palm trees directly opposite where the extension would go – but the neighbor's violated the Horry County set-back requirements and no encroachment permit had been applied for nor granted (per inquiry with Horry County). A critical consideration was that in early March of each year the palms desired (large Pindo) are in stock at reasonable prices (one hundred fifty nine dollars, \$159.00). At other times of the year they cost a multiple of that amount – if a desirable specimen is to be found.

43. The Diehl employee confirmed that the "application" contained all required elements, including a survey plat marked up with the changes.

44. On March 6, 2012 Plaintiff attended an ARB meeting held within the offices of Diehl. At least one Diehl employee attended – thus no claim of "executive session" could be made. Two IHOA Board Directors were present: Upon information and belief they were Camille Noonan and Mark Shaffer. Two ARB members were present. One was Charles Roche, the husband of defendant Rosemary Toth, and thus he had a clear conflict of interest. The other refused to identify himself. It is unknown what participation the

Board members did, because Plaintiff was not permitted to listen / observe their decision making. The DECISION was clearly made in secret. Based on the testimony of Freiboth and Toth, the board members were not permitted to vote or participate – thus they should not have been allowed to either offer information in secret from Plaintiff which he thus could not dispute nor should they have been permitted to observe when Plaintiff could not.

45. Roche insisted that Plaintiff turn off his voice recorder, which Plaintiff did under protest. The other ARB member remarked that this was nothing other than a straight forward, ordinary tree request and should not be a problem.

46. The duties of the ARB do not include enforcing any assessment or other deficiency allegedly owed to the IHOA by a homeowner. There is no plausible theory under which an ARB member should be told of financial arrangements between a homeowner and the IHOA without violating the homeowner's reasonable privacy expectations and rights.

47. The IHOA has not disputed that Plaintiff has diligently paid all assessments for maintenance of the common property. The question of alleged fines is separately before this court in this case.

48. The aforesaid criteria set out by the Covenants for use by the ARB is strictly confined to the bounds of the application itself and it's physical setting. The charter of the ARB set out in the covenants goes no further. The application conformed to other palm tree beds in nearby houses in the development.

49. On March 16, 2012, Vanessa Fattoross, the Diehl employee assigned to support of the IHOA, wrote Plaintiff a letter which was signed "For the Architectural Review Board" but also as "Managing Agent for International Club HOA, Inc". To reiterate, the only relationship which Ms. Fattoross and her employer Diehl have with the ARB is through the contract they hold with the IHOA. The ARB, of course, is a creation of the IHOA Board of Directors and should be considered a Committee of the Board.

50. In South Carolina proprietorships and unincorporated associations are required to register with the Secretary of State, as must non-profit corporations. There is no registration by the ARB in any form with the Secretary of State nor with the County. IF the ARB is not an extension or committee of the Board it is a rogue organization operating without the protections of the South Carolina Non-Profit Corporation Act and it's acts are the personal acts of the ARB's members.

51. The March 16, 2012 letter read:

"... Your ARB request has been deferred for consideration by the ARB. ..."

The guidelines of the Covenants and of the putative Bylaws do not permit refusal to act on future ARB applications because of the status of prior ones. The ARB is permitted two choices: Approve or Disapprove. The letter also made a demand that the ARB be allowed to substitute its view of things for that of the Court. According to the letter, homeowners have no remedy with a Court and the ARB is free to stomp on the operation of the judicial system. The ARB letter wrote:

"The ARB has deferred consideration until your present ARB violation is remedied by removing the brickwork along the property line and restoring the sod."

The existing litigation asks the Court to note that the IHOA has alleged that Plaintiff has "built a wall" and demanded its removal. See earlier portion of Counts in this Complaint. Equally important is the fact that the IHOA has refused to disclose even the (pre-Amendment) Complaint and the IHOA's Answer to any homeowner. In their depositions both Toth and Freiboth have stated that the records of a homeowner are private. Since the March ARB submission said nothing about the prior matters there was no way that the ARB members should have any knowledge about the status of the prior matter – unless either the IHOA board members present or their contractor employee improperly breached Plaintiff's privacy rights. It is noted that the two ARB members are unelected ordinary other homeowners who have no need nor right to that information.

52. Exaction can be defined as refusing to do a duty which one is charged with until someone agrees to pay a price or do something to benefit the other to which the other is not entitled as part of the performance of the duty. The ARB refused to do its duty until Plaintiff "paid off" the IHOA in the amount of at least One Thousand Seven Hundred and Thirty Five Dollars (\$ 1,735). The letter wrote:

"Your HOA account also needs to be brought current. As of today, your account balance is \$1,735.00"

Not only was this an exaction; it also was a breach of Plaintiff's expectation of privacy. Defendant Toth is not now and has not for at least a year been an officer of the IHOA and her husband Charles Roche and the anonymous other ARB member have no need for that information (about an alleged arrears status) in the consideration of an ARB application.

The only way said ARB members could have learned this and refused to make a decision would have been if one or more of the IHOA Board members or their Diehl contract employee – under the IHOA Board members' direct control at the time – disclosed this. Further, this is not a number which a board member or contractor would have handy, as there are over seven hundred homes in the development, each with it's own account. Clearly there was an intent "going in" to breach Plaintiff's privacy rights and to use this as an opportunity to subvert the operation of the judicial system and to commit the tort of "exaction".

B – SPECIFICATION OF TORTS

For the reasons set forth in the foregoing paragraphs, which are incorporated in and made part of and applicable to the below specification of torts, the Defendants have committed the following actionable torts:

53. The conduct of Defendants constituted a Breach of Contract. Per the Covenants, if an ARB does exist and has not been stripped of it's duties and privileges by amendment to the Covenants, then the IHOA has a contractual obligation to approve a modification which conformed to the existing and surrounding landscaping and which was in consonance with prior approvals granted to this Homeowner and to others.
54. The conduct of Defendants constitutes a Breach of the Implied Duty of "Good Faith and Fair Dealing" inherent in any contract..
55. The conduct of Defendants or of their contractors or those under their control constituted a Breach of Privacy of Plaintiff's financial information and account.
56. The conduct of Defendants constituted an actionable attempt at Exaction.
57. The conduct of Defendants constituted setting a cloud upon the title of Plaintiff's property for which the Plaintiff is entitled to judicial redress at law and in equity.
58. The conduct of Defendants results in increasing the future cost to Plaintiff of installing the sought additional palm trees, in an amount to be determined at trial.

C. RELIEF SOUGHT

59. Plaintiff seeks remedial and injunctive relief to cause the defendants to cease and desist from the conduct complained of and for the Court to judicially grant Plaintiff's Architectural Modification.
60. Plaintiff seeks punitive damages in an amount to be determined by the court.

FURTHER REQUEST

61. Plaintiff further requests that the Court award the costs of this action as provided by statute and for such other and further relief as this Court may deem just.

I state under the penalty of perjury that the above is correct and truthful, except those based upon my information and belief.



**Ronald Jarmuth, Plaintiff Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
March 20, 2012**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No. 2010-CP-26-11320
)	
Ronald Jarmuth)	
)	
Plaintiff	)	PLAINTIFF'S AMENDED ANSWER
	)	TO COUNTER-CLAIM
vs.	)	OF DEFENDANT'S AMENDED
	)	COMPLAINT
The International Club)	
Homeowners Association, Inc.,	)	AND ASSERTION OF
	)	COUNTER – CLAIM BY
Defendant	)	PLAINTIFF
)	

Plaintiff / Counter-Defendant Ronald Jarmuth (hereafter referred to as "C-Def") answers the Counter – Complaint stated in Defendant / Counter – Plaintiff's (hereafter referred to as "C-Pl") Amended Answer with Counter-Complaint filed with the Court on or about October 24, 2011, which Counter – Complaint was addressed at a hearing held December 7, 2011 on C-Def's SCRCivP Rule 12(b)(6) Motion – and for which, as of the date of the filing of this pleading, no Order of Court has yet issued. ¹

The Counter – Complaint is set out in paragraphs 22 through 47 of the Amended Answer, thus no response is required to the allegations of the earlier paragraphs which are not part of the Counter – Complaint as stated. To the extent that any earlier paragraphs can be read as being part of the Counter – Complaint, the allegations of the earlier numbered paragraphs are denied.

FIRST DEFENSE

1. Each and every allegation not hereinafter admitted, modified, or qualified is denied and strict proof demanded thereof.
2. Plaintiff admits that "the Defendant HOA is a non-profit corporation organized under and existing by virtue of the laws of the State of South Carolina" as stated in paragraph 22 of the Counter – Complaint. Plaintiff admits the allegation of paragraph 23

¹ The Court, from the bench, stated it's intention to deny C-Def's Rule 12(b)(6) motion – and directed that counsel for C-Pl prepare and submit to the Court an Order following the December 7, 2011 hearing. No such order has been served on C-Def to-date (December 20, 2011).

that "the Plaintiff, Ronald Jarmuth, is a citizen and resident of the State of South Carolina". Plaintiff admits the allegation of paragraph 24 that "the Plaintiff, Ronald Jarmuth, owns Lot 12 of the Pebble Creek at the International Club ("Property")" but clarifies that said lot is within the "International Club Planned Unit Development, formerly known as Lantana Planned Unit Development, and formerly known and initially approved as the Murrells Inlet Golf Plantation. Plaintiff admits the jurisdictional allegations of paragraph 25.

3. Plaintiff admits the allegations of paragraph 26 that "as the owner of the Property, the Plaintiff is subject to the Governing Documents" but clarifies that the use of the property, not the person, is subject to the Covenants running with the land, as amended, specifically including those amendments to the Covenants which were properly enacted. C-Def explicitly rejects any allegation that the putative Bylaws of the International Club Homeowners Association have any legal effect, asserting that no Bylaws of C-PI HOA exist with any legal effect, and further asserting that any acts of C-PI HOA purporting to rely on any such Bylaws or rules are ultra-vires. C-Def asserts that Amendments two (2) through five (5) were enacted in violation of the South Carolina Non-Profit Corporation Act and of the Covenants, and are thus ultra-vires and ineffective.

4. C-Def denies and rejects the allegation of paragraph 27 that "the provisions of the Governing Documents provide that the Defendant HOA governs the International Club subdivision" asserting instead that the Murrells Inlet Golf Plantation Association, Inc (MIGPA) is the HOA which properly governs the PUD per the legally effective covenants. C-Def demands strict proof.

5. C-Def denies the allegation of paragraph 28 that "Section 7.2 of the Declaration provides" for anything, since said Section was "waived" by the First Amendment to the Covenants (the only legally effective Amendment to the Covenants). Plaintiff states further that, per Black's Legal Dictionary, first and any later editions, "waived" equates to "deleted" and alternatively means that any rights or obligations anyone might suffer per Section 7.2 became ineffective and legally incapable of being raised as of the date of the First Amendment. C-Def demands strict proof.

6. C-Def denies and rejects the allegations of paragraph 29, since those allegations depend on the legally non-existent Section 7.2 of the Covenants.

7. C-Def denies and reject the allegations of Paragraph 30 that Defendant HOA legally enacted any "Architectural Guidelines" prior to the dates of the events complained of in the Counter – Complaint: September through October, 2010 and demands strict proof.

8. C-Def admits the allegations of paragraph 31 to the extent that C-Def filed "Courtesy" applications to the C-Pl putative Architectural Review Board (ARB), said courtesy applications explicitly clarifying that there was no provision under the Covenants requiring such application. C-Def further states that the application in question began with the statement that

"This document set is provided the ARB of the International Club HOA without waiving any objections as to the authority of said ARB or said HOA in this matter. This qualification is made so as not to implicate potential HOA assertions of "waiver" or "estoppel". ... I note that Amendment #1 of the Covenants removed all "Architectural Controls" as well as the requirement to seek prior approval from and ARB for any modifications. I also note that the same Amendment explicitly deleted all controls over fences".

9. C-Def denies the allegation of paragraph 32 that C-Def

"constructed a brick wall on the Property without obtaining the approval of the Defendant HOA or the Architectural Review Board".

C-Def asserts that there is no "brick wall" upon the property and that the lawn edging was explicitly applied for and approved as "red brick edger's for both (the area upon which a fence would ultimately be erected, which did not happen, and in the flower bed, which was built. C-Def asserts that the landscape drawing overlaying a survey of the property, which was submitted as required, depicted a line of "Brick Edging" running from the curb to C-Def's rear property line. Said Brick-Edging was approved by C-Pl's ARB thus C-Pl is complaining about the erection of a line of Brick Edging which C-Pl approved and calling it a "Fence" because the "Fence" was not approved – disregarding that neither a wall nor a fence was ever built.

10. C-Def asserts that the allegations of paragraph 33 violate the requirements of SCRCivP Rule 9(f) in that no specific date of the alleged correspondence is stated in the counter – complaint. Answering further, C-Def denies that he received any letter relating to any "wall or fence" prior to the courtesy meetings of the ARB. C-Def asserts that the situation on the ground remains the same as before that courtesy application and act of the ARB which on October 8, 2010 approved what is actually on the ground. C-Def denies

that the ARB

"sent notice to the Plaintiff that he violated the Governing Documents and the Architectural Guidelines by constructing improvements on the Property without approval from the Architectural Review Board and that the violation subjected him to fines."

11. C-Def denies the allegations of paragraph 34 that he applied to the ARB for approval of anything, stating further that, as explained supra, a "courtesy" set of documents was submitted.

12. C-Def denies the allegations of paragraph 35, since that paragraph asserts the legal viability of Section 7.4 of the Covenants, which section was "waived" in paragraph #11 of Amendment #1 to the Covenants, dated May 10, 2000, at Deed Book 2258 Page 1454. C-Def demands strict proof.

13. C-Def admits the allegations of paragraph 36 to the extent that it states that "The Architectural Review Board approved the Plaintiffs request for the flower bed and edging". Again, paragraph 36 is defective in that it fails to allege the date of the alleged event as required by SCRCivP Rule 12(f). C-Def denies that the ARB denied any request to construct a "wall" as no such request was ever lodged. C-Def denies that he received, at any time, any correspondence which asserted that any disapproval was founded on the basis that any C-Def request of action "did not comply with the general scheme of development for the International Club." C-Def demands strict proof.

14. C-Def denies the allegation of paragraph 37 that C-Pl "demanded that the brick wall be removed from the Property". C-Def demands strict proof.

15. C-Def admits the allegations of paragraph 38 to the extent that he paid, "under protest", a fine so as to give C-Def "liquidated direct damages" under which he could sue C-Pl. C-Def further states that said "fine" was never demanded for constructing any "brick wall" or "fence". C-Def denies that he "attempted to sue the Defendant HOA", stating that he "did" sue the C-Pl.

16. C-Def denies the allegations of paragraph 39, in as much as they are directed at the existence of a disapproved "brick wall". C-Def further states that he never "refused" to do anything; he merely ignored C-Pl and sued to enforce his rights and to enjoin C-Pl from asserting non-existent rights. Likewise C-Def denies the allegations of paragraph 40 because it too construes the approved "brick edging" as a "brick wall" which was never

applied for nor disapproved.

17. C-Def admits the allegations of paragraph 41 that he has "failed and refused to acknowledge the validity of the Governing Documents, the Architectural Guidelines, and the authority of the Defendant HOA and the Architectural Review Board to enforce the same" which is not an actionable position but rather protected speech under the First Amendment to the United States Constitution and protects C-Def from allegations of "waiver and estoppel".

18. C-Def denies the allegations of paragraph 42 and demands strict proof.

19. C-Def denies any allegation of paragraph 43 that the Covenants provide for "attorneys fees" and "costs of collection" for anything other than the enforcement of an explicit provision of the covenants, and further explains that the rules which the Covenants provide for are limited to "regulations governing bodies of water, water courses and other Common Areas".

20. As to the allegations of paragraph 44, C-Def denies the capacity of C-Pl HOA to exercise any right granted by the Covenants to the Murrells Inlet Golf Plantation Association, the HOA for the PUD. Answering further, C-Def admits that the legitimate HOA has the authority under the Covenants to determine and collect assessments for the operation of the common property. As to any other matter, C-Def denies it and demands strict proof. C-Def denies any allegation that he owes C-Pl anything. C-Def likewise denies the allegations of paragraph 45. As to the allegations of paragraph 46, the prior and current Board of the C-Pl HOA is the direct cause of any expense to the HOA because it is frivolously attempting to enforce non-existent ("waived") covenants putatively prohibiting an action ("brick wall") which never took place and relating to "brick edging" which said C-Pl's ARB approved. C-Def asserts further that said former and current Board Members of the HOA should be held personally liable for said expenses.

21. C-Def denies the allegations of paragraph 47 that he "breached the terms of the Governing Documents" which are the legally effective covenants. C-Def further asserts that at the time of the alleged events there were no legally effective ARB Guidelines. C-Def demands strict proof to the contrary. That being the case, C-Def denies that "the Defendant HOA is entitled to" anything.

SECOND DEFENSE

22. **Res Judicata.** C-Def demands that the Court dismiss the Counter – Complaint in its entirety because the events complained of are part and parcel of Plaintiff's underlying Complaint and the Rules provide that any damage which Defendant might have suffered from the same events must be plead as a Counter – Complaint at the time the original answer is filed, or shall be lost forever through res-judicata.

THIRD DEFENSE

23. The allegations of the First and Second Defenses are incorporated herein and made a part and parcel hereof.

a. The C-Pl lacks standing to bring the claims asserted in the Counter-Complaint, in that the Defendant is not the HOA for the PUD per the covenants.

b. The C-Pl lacks standing to bring the claims asserted in the Counter-Complaint in that the Defendant has asserted through the sworn deposition statements of its current President William Freiboth and its former President Rosemary Toth that the Architectural Review Board (ARB)

(1) is an entity independent of the Defendant IHOA thus the IHOA is not a delegate nor actor for the ARB and has no standing to complain on behalf of the ARB; and

(2) the ARB is the actor empowered and responsible to determine whether violations of the covenants and ARB guidelines have occurred and the decisions of the ARB are not the decisions of the IHOA; and likewise that

(3) the ARB and not the IHOA establishes the ARB's rules and procedures and thus these are not rules or procedures of the Defendant IHOA; and

(4) the ARB is not a committee of the IHOA.

FOURTH DEFENSE

24. The allegations of the First through Third Defenses are incorporated herein and made a part and parcel hereof. The C-Pl's claims should be dismissed because they are barred by the doctrines of Collateral Estoppel and further that the C-Pl has failed to follow its own putative rules.

FIFTH DEFENSE

25. The allegations of the First through Fourth Defenses are incorporated herein and made a part and parcel hereof. The answering C-Def asserts the Doctrines of Estoppel,

Waiver, Consent, and Laches as complete affirmative defenses to the allegations contained in the Counter - Complaint.

SIXTH DEFENSE

26. The allegations of the First through Fifth Defenses are incorporated herein and made a part and parcel hereof. There is no underlying contractual basis which grants the C-Pl any rights under the Covenants since what would have been the applicable covenants were "waived" through the First Amendment to the Covenants filed with the Recorder of Deeds on May 10, 2000 at Deed Book 2258 Pages 1453 et seq. Further, there is no relief which the Court can grant to the C-Pl because the alleged "brick wall" does not exist and thus the Court can nor require it's removal. The C-Pl has not plead for a restraining order either.

SEVENTH DEFENSE

27. The allegations of the First through Sixth Defenses are incorporated herein and made a part and parcel hereof. All actions of the C-Def were undertaken in good faith and in accordance with the Covenants. C-Def strictly complied with the existing and legally effective covenants and rules.

EIGHTH DEFENSE

28. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are incorporated herein and made a part and parcel hereof. The C-Pl's claims are barred by the doctrine of equitable estoppel.

NINTH DEFENSE

29. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are incorporated herein and made a part and parcel hereof. The counter – claim is barred by the doctrine of Novation through the action of the First Amendment to the Covenants.

TENTH DEFENSE

30. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are incorporated herein and made a part and parcel hereof. The C-Pl's claims are barred by the doctrine of unclean hands.

ELEVENTH DEFENSE

31. The allegation of the First through Tenth Defenses are incorporated herein and

made a part and parcel hereof. The Counter – Complaint is barred by the doctrine of laches.

TWELFTH DEFENSE

32. The allegation of the First through Eleventh Defenses are incorporated herein and made a part and parcel hereof. The Counter – Complaint was filed to harass the Plaintiff and for other improper purpose, in further violation of the South Carolina Rules of Ethical Practice applicable to Defense Counsel.

COUNTER – CLAIM BY PLAINTIFF

33. Plaintiff asserts a compulsorily counter – claim as required by SCRCivP Rule 13(a) and as allowed by Rule 15(a). Plaintiff was effectively served an Answer / Counter – Claim ("pleading") following the denial of Plaintiff's Rule 12(b)(6) Motion. Rule 15(a) provides that

"A party may amend his pleading ... within 30 days after a responsive pleading is served"

34. Through the service on April 13, 2009 of Plaintiff's Complaint styled Jarmuth v HOA et al in this Court, 2009-CP-26-3596, Defendants have been on actual notice of the deletion of those provisions of the Covenants upon which Defendants depend for the filing of their Counter – Complaint. Since at least 2006 the Defendants have posted that First Amendment to the Covenants on it's web-site and have referred to it on numerous occasions. The knowing assertion of rights through a Counter - Complaint which rights were obviously deleted years prior to the assertion of those rights constitutes a Frivolous Proceeding as defined by the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36 et seq of the Code.

35. The Counter – Complaint was filed to harass the Plaintiff and for other improper purpose, in further violation of the South Carolina Rules of Ethical Practice applicable to Defense Counsel.

36. In accordance with SC Code 15-36-10(G) Plaintiff requests the following sanctions:

(1) an order for the Defendant to pay the reasonable costs and attorney's fees of the Plaintiff

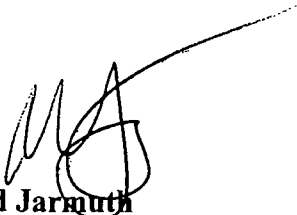
(2) an order for the attorney to pay a reasonable fine to the court; and

(3) a directive of a no monetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

**WHEREFORE, having answered the Counter - Claims of the Counter - Plaintiff,
the Counter - Defendant hereby prays as follows:**

- a. that the Counter - Complaint be dismissed;**
- b. sanctions as requested per paragraph 36 above.**
- c. for such other and further relief as this Court deems just and proper.**

Respectfully submitted,



**Ronald Jarmuth
Plaintiff / Counter – Defendant Pro Se
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843-314-4355
March 20, 2012**