

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge
Fifteenth Judicial Circuit

Case No. 2015-CP-26-3173
Appellate Case No. 2017-002196

RECEIVED
MAR 19 2018
SC Court of Appeals

Condo-World Development, LLC
and Heron Point Golf Club Limited Partnership Respondents

vs.

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

AND

Myrtle Beach Golf & Yacht Club Association, Inc. Appellant

vs.

South State Bank Respondent

**RESPONDENTS CONDO-WORLD DEVELOPMENT, LLC AND
HERON POINT GOLF CLUB LIMITED PARTNERSHIP'S
MOTION TO DETERMINE SCOPE OF CLAIMED STAY**

Pursuant to the Appellate Court Rules, Respondents Condo-World Development, LLC and Heron Point Golf Club Limited Partnership ("Respondents") hereby move for an order determining the scope of any stay that may exist because of the appeal filed by Appellant Myrtle Beach Golf & Yacht Club Association, Inc. ("the Association"). More specifically, Respondents seek an order finding the Association's appeal of third-party damage and indemnity claims against

a bank does not preclude the lower court from proceeding with the claims that remain before the lower court, all of which relate to title to the subject property.

INTRODUCTION

Respondent Heron Point owns the Heron Point Golf Course on which Respondent Condo-World holds a mortgage lien. In 2015, Respondents filed this declaratory judgment action against the Association seeking a determination that the golf course is not encumbered by claimed use restrictions.

The Association asserted counterclaims for declaratory relief, seeking a determination that the golf course is restricted. In 2017, the Association chose to amend its answer to assert third-party damage and indemnity claims against a bank, which claims were dismissed and are the subject of this appeal.

The Association argued before the lower court that this appeal stays the underlying case from proceeding. The lower court correctly rejected this argument and chose to bifurcate the claims to allow dispositive motions to be heard on the claims that remain before the lower court. The Association chose to file a separate appeal of that order. Respondents moved to dismiss that appeal because the lower court's order in that regard is not immediately appealable. That motion is pending.

Because the third-party damage and indemnity claims that are the subject of this appeal have no effect on the claims remaining before the lower court—all concerning the use of the golf course—this Court should issue an order finding the claims remaining before the lower court are not stayed.

BACKGROUND

I. Respondents' Complaint

Respondents filed a Complaint against the Association on April 27, 2015, attached as **Exhibit A**. Respondents seek an order declaring the golf course owned by Heron Point, on which Condo-World holds a mortgage lien, is not restricted by various matters such that Respondents can develop the property at issue in this case.

More specifically, the Respondents seek an order declaring:

- That the Declaration of Covenants and Restrictions of the Myrtle Beach Golf & Yacht Club ("MBGYC") recorded in 1984 and amended in 1985 do not run with the golf course property;
- The golf course property was not submitted and/or dedicated as part of the MBGYC subdivision's common areas; and, consequently, it is not subject to the declaration of covenants;
- That the alleged use restrictions referenced in the deed recorded in Deed Book 1540, at Page 482 ("Heron Point Deed"), were personal to First Federal Savings and Loan Association of Charleston ("First Federal"), the successor by merger to Peoples Federal Savings and Loan Association ("Peoples") as the grantor/covenantor, and do not run with the golf course property;
- That First Federal as the Grantor/Covenantor had previously waived, relinquished and released the following restrictions as the same may have applied, if at all, to the Enterprise Tracts, including the golf course property, by Deed known as "Waiver of Restrictions [Deed]" recorded May 5, 2005, in Deed Book 2905, at Page 574;
- That the Association lacks standing to enforce the alleged restrictions referenced in the Heron Point Deed because they are personal to Peoples, its successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World, as the managing partner of Heron Point, has the sole authority to enforce the use restrictions in the Heron Point Deed against the golf course property assuming the restrictions have not been previously waived, relinquished and released for the reasons described above;
- That the First Mortgage and Security Agreement ("Security Agreement") by and between Peoples Federal Savings and Loan Association ("Mortgagee") and Heron Point Golf Club Limited Partnership ("Mortgagor") contains a certain covenant stating that *"the mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course ... without the prior consent of Mortgagee."* This language evidences that the use restrictions in the Security Agreement are only personal to the

Mortgagee, its heirs, successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World as the current mortgagee by assignment, has the sole authority to enforce the personal use restrictions against the golf course property;

- The Association lacks standing to enforce the subdivision's declaration of covenants against the golf course property. The golf course property has not ever been subjected by amendment to the declaration of covenants of the MBGYC Subdivision. For these reasons, the golf course property has not ever been inured to the benefit of the Association's members because they possess no title and interest in the golf course property;
- That even if the use restrictions described above do apply to the golf course property, which is expressly denied, they do not unreasonably limit the golf course property's use only to a golf course; and
- The golf course property is not subject to the declaration of covenants due to the changed economic circumstances, which have rendered the golf course property unsuitable for a golf course use.

II. The Association's Counterclaims

On June 11, 2015, the Association filed an Answer, Defenses, and Counterclaims seeking an order declaring certain claimed restrictions do apply to the golf course, which would prevent residential development of the property. On November 5, 2015, the Association filed an Amended Answer, Defenses and Counterclaims. On February 14, 2017, the Association filed a Second Amended Answer, which included a Third-Party Complaint against South State Bank. The Association filed a revised and corrected Second Amended Answer and Third-Party Complaint on March 13, 2017, attached as **Exhibit B**.¹

Like Respondents, the Association's counterclaims against Respondents all relate to matters of title, more particularly whether the golf course is restricted.

More specifically, the Association seeks an order declaring:

- The two 1984 Dusenbury Deeds for Tracts I and II are valid and run with the title of those properties to include, but not be limited to, the golf course;

¹ The Exhibits to the revised and corrected Second Amended Answer and Third-Party Complaint are not attached hereto as they consist of 270 pages and are not relevant to the Court's consideration of this Motion.

- The Covenants and Restrictions recorded in 1984 and amended in 1985 are valid and run with the title to the golf course and otherwise inure to the benefit of the Association and its homeowners/members;
- The golf course is a defined Common Element in the 1984 and 1985 Covenants and Restrictions and any land use change is subject to and governed by the controls set forth in the referenced Covenants and Restrictions;
- The deed restrictions contained in the “1992 Indenture” for Tracts I and II are valid and run with the title of those properties to include the golf course and are otherwise not personal to the original Grantor and/or its successors in interest;
- That any prior waiver, relinquishment, or release of the above described restrictions by the original Grantor and/or its successors in interest in relation to the 1992 Indenture Deed were invalid and/or are of no legal effect as to the rights of the Association as to the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation;
- The Association has standing to enforce the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation;
- That the Plaintiffs continue to be bound by any and all restrictive language in the First Mortgage and Security Agreement as it relates to the 1992 Indenture Deed; and
- That as a matter of law, economic hardship on the part of the Plaintiffs is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation.

III. The Association’s Third-Party Complaint

In its Third-Party Complaint, the Association asserted causes of action for breach of contract, contractual indemnification, equitable indemnification, and permanent injunction against South State Bank.

In response to the Association’s Third-Party Complaint, South State Bank filed a motion to dismiss, which was granted and denied in part by Order of the Honorable Larry B. Hyman, Jr., entered July 26, 2017, a copy of which is attached as **Exhibit C**. The Association filed a Motion

to Reconsider, which motion was denied per order entered October 4, 2017, a copy of which is attached as **Exhibit D**. On October 18, 2017, the Association filed this appeal.

IV. Scheduling Order, Pleadings, and other Orders

On October 9, 2017, Judge Hyman, with the consent of counsel for the parties, entered an Amended Scheduling Order, attached as **Exhibit E**, where the court agreed to bifurcate some of the issues in the case. He agreed to hear the primary issue in the underlying case, but not the third-party claims filed by the Association.

On November 7, 2017, Judge Hyman issued a Form 4 Order/Judgment, attached as **Exhibit F**, which ruled that various pending motions could not “appropriately be heard at this time due to a pending appeal on this issue.”

On November 15, 2017, the Association filed a Motion to Stay the Case, attached as **Exhibit G**, in which the Association argued the matters decided in the orders on appeal “are broad enough to encompass virtually the entire proceedings in the first-party action and third-party action. Therefore, [the Association] Beach requests a stay of proceedings, consistent with Rule 241, SCACR, pending determination of the Appeal.”

On November 15, 2017, Respondents filed a Motion to Reconsider, attached as **Exhibit H**, asking the court to reconsider its November 7, 2017, Form 4 Order/Judgment because the appeal of the dismissal of the Association’s Complaint did not stay the underlying case.

On November 30, 2017, Judge Hyman issued an order, attached as **Exhibit I**, finding its November 7, 2017, Form 4 Order/Judgment “was inadvertently entered, stating that [the Association’s] motions for Summary Judgement and to Reconsider, Alter or Amend and Plaintiffs’ Motion to Reconsider, Alter or Amend could not appropriately be heard at this time due to a pending appeal.”

Judge Hyman further ordered as follows:

After due consideration, I hereby bifurcate those claims against the Defendant South State Bank, which were previously dismissed pursuant to my order dated October 4, 2017. That ruling is presently under appeal to the South Carolina Supreme Court. The remaining issues in the case, including the remaining cause of action against South State Bank and the issue of standing, can, in all fairness, be litigated without the necessity of hearing the matters which have been dismissed and are subject to appeal. I therefore order that those matters be bifurcated from the case. All other motions, including dispositive motions, affecting all other matters not under appeal may appropriately be heard. Thus, the November 7, 2017 Form 4 Order is hereby amended so that Defendant's Motion for Summary Judgment may be heard. Any and all dispositive motions in this action shall be appropriately noticed to this Court and shall be filed within two week[s] of the issuance of this Order.

Respondents filed their Motion for Summary Judgment on December 13, 2017. At 12:12 p.m. on December 19, 2017, the Court provided notice that Respondents' Motion for Summary Judgment would be heard on January 4, 2018, along with other previously scheduled motions, including the Association's Motion for Summary Judgment. The notice is attached as **Exhibit J**.

At 1:30 p.m. on December 19, 2017, the Association sent via e-mail to Judge Hyman its Notice of Appeal. This e-mail is attached as **Exhibit K**.

The Association's appeal was designated as Appellate Case No. 2017-002642. Respondents moved to dismiss the appeal arguing Judge Hyman's order is not immediately appealable. The Court has not ruled on the motion to dismiss.

The January 4, 2018 motion hearing was continued to January 16, 2018, at which time Judge Hyman was set to hear dispositive motions. Judge Hyman considered arguments regarding whether a stay was in place. Due to the appeal of Judge Hyman's Order allowing the case proceed, which is the subject of the other appeal, and with the Association arguing this Court was the proper forum to determine the scope of the stay, Respondents indicated after the hearing that they thought

it was best for this Court to address the scope of any stay that may exist. Judge Hyman issued an order after the hearing attached as **Exhibit L**.²

ARGUMENTS AND AUTHORITIES

I. THE APPEAL OF THE ASSOCIATION'S THIRD-PARTY CLAIMS FOR DAMAGES AND INDEMNITY AGAINST SOUTH STATE BANK DO NOT AFFECT THE ISSUES AND CLAIMS REMAINING BEFORE THE LOWER COURT.

Rule 205, SCACR, provides:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. *Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.* (emphasis added).

Rule 241(a), SCACR, provides:

As a general rule, *the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision.* This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. *The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.* (emphasis added).

Our courts have interpreted these rules to provide that “the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).” *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012); *see also Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (Notice of appeal from order of contempt issued against newspaper in defamation suit for newspaper’s refusal to comply with discovery order did not deprive the lower court of jurisdiction

² To the extent this Court believes Respondents should have first filed a similar motion regarding the scope of the stay before the lower court, Respondents believe they were precluded from so doing due to the Association’s appeal of Judge Hyman’s order dated November 30, 2017 (Appellate Case No. 2017-002642).

to rule on newspaper's motion for summary judgment, where the issue on summary judgment as to whether newspaper acted with actual malice was unaffected by appeal from contempt order); *Arnal v. Fraser*, 371 S.C. 512, 641 S.E.2d 419 (2007) (While appeal from amended final divorce judgment was pending, lower court retained jurisdiction to enforce provisions in decree that were not stayed by appeal regarding father's obligation to pay child support and medical expenses.).

The matters pending before the lower court are competing declaratory relief claims between the Association and Respondents. They all concern whether the golf course is restricted. Neither the Association nor the Respondents seek damages.

The Association's dismissed third-party claims for breach of contract, contractual indemnification, and equitable indemnification against South State Bank do not affect the underlying claims between the Association and Plaintiffs.

The third-party claims asserted by the Association against South State Bank concern an unrecorded 1988 Settlement Agreement formed in Richland County. Respondents are not parties to the unrecorded 1988 Settlement Agreement. Only South State Bank, through its predecessor, and the Association are parties to the unrecorded 1988 Settlement Agreement. Three of the third-party claims asserted by the Association against South State Bank seek damages and indemnity from South State Bank based on the unrecorded 1988 Settlement Agreement.

More specifically, the third-party claims asserted by the Association against South State Bank, and which are the subject of this appeal, are as follows:

<u>Claim</u>	<u>Factual Basis</u>	<u>Relief Sought</u>
Breach of Contract	The Association and South State Bank's predecessor agreed in the unrecorded 1988 Settlement Agreement to cause a restriction to be placed on the property. The Association claims South State Bank breached the unrecorded 1988	Actual damages, consequential damages, punitive damages, attorney's fees, and costs.

	Settlement Agreement because it executed the 2005 Waiver of Restrictions.	
Contractual Indemnity	Same as above, but the Association references the indemnity provisions of the unrecorded 1988 Settlement Agreement.	Contractual indemnity for incurring expenses in defending the first-party claims.
Equitable Indemnity	Same as above.	Equitable indemnity for incurring expenses in defending the first-party claims.

The issues being litigated between the Association and Respondents all relate to whether the deed restriction runs with the land; whether the Association can enforce the deed restriction; whether other alleged restrictions or covenants that pre-date the unrecorded 1988 Settlement Agreement encumber the property; and whether the 2005 Waiver of Restrictions effectively released the restrictions on the golf course.

Neither party seeks monetary damages or indemnity in the first-party claims. The Association's counterclaims seek the exact opposite of what Respondents seek. All the relief sought relates to the status of title to the property.

The issues on appeal related to the dismissal of third-party damage and indemnity claims against South State Bank do not affect the primary title issues that remain to be litigated in the lower court—whether the deed restriction runs with the land and whether the Association can enforce the deed restriction.

The Association's dismissed claims for damages and indemnity against South State Bank all arise out of a third-party complaint, but derivative liability is the essence of third-party claims. As the Association admits and pleads in two of its dismissed claims, they apply only "to the extent the allegations contained in [Respondents'] Complaint are proven true." As a result, those claims

would not be reached until after the underlying dispute between the Association and Respondents is resolved.

This Court's determination of the Association's appeal of its damage and indemnity claims, has no bearing on the claims remaining before the lower court, which are summarized as follows:

Subject	Respondents' Request for Declaratory Relief	Association's Request for Declaratory Relief
1984 Dusenbury Deeds conveying Tract I and II.	None, but Respondents in their answer to counterclaims asserted lack of standing. ³	The restrictions in these deeds are valid and run with the title to Tract I and II, including the golf course.
1984 Covenants and Restrictions as amended in 1985 ("1985 Covenants").	The 1985 Covenants do not run with the golf course property.	The 1985 Covenants are valid, run with the title to the golf course, and inure to the benefit of the Association and its members
Standing to enforce the 1985 Covenants.	The Association lacks standing to enforce the 1985 covenants against the golf course because the golf course has never been subjected to the 1985 Covenants.	The Association has standing to enforce the 1985 Covenants.
Whether the golf course was submitted as common area or common element under the 1985 Covenants.	The golf course was not submitted as a common area and it is not subject to the 1985 Covenants.	The golf course is a defined Common Element in the 1985 Covenants and any land use change is subject to and governed by the controls set forth in the 1985 Covenants.
1992 Deed conveying the golf course from Peoples Federal to Respondent Heron Point.	The alleged use restrictions in the 1992 Deed were personal to Peoples Federal, they do not run with the golf course property, the Association lacks standing to enforce the alleged restrictions, and Respondents have the sole authority to enforce these restrictions.	The deed restrictions in the 1992 Deed are valid and run with the title of those properties to include the golf course and are otherwise not personal to the original Grantor and/or its successors in interest.

³ Respondents' Amended Answer to Corrected Second Amended Answer, Counterclaims, And Third-Party Complaint of the Defendant Myrtle Beach Golf & Yacht Club is attached as **Exhibit M**. Respondents asserted lack of standing as a defense to all claims asserted by the Association.

Language in the mortgage that encumbers the golf course: “the mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course ... without the prior consent of Mortgagee.”	Personal to the Mortgagee, its heirs, successors, and assigns, and does not run with the golf course. Condo-World, the current mortgagee by assignment, has the sole authority to enforce the personal use restrictions against the golf course.	Respondents continue to be bound by any and all restrictive language in the Mortgage as it relates to the 1992 Deed.
2005 Waiver of Restrictions executed by First Federal, successor to Peoples Federal	Operated to waive, relinquish, and release the restrictions as the same may have applied, if at all, to the golf course.	Any prior waiver, relinquishment, or release of the above described restrictions by the original Grantor and/or its successors in interest in relation to the 1992 Deed were invalid and/or are of no legal effect as to the rights of the Association as to the alleged deed restrictions, the 1985 Covenants, and/or other relevant agreements at issue in this litigation.
Change of Economic Circumstances	The golf course is not subject to the 1985 Covenants due to the changed economic circumstances, which have rendered the golf course property unsuitable for a golf course use.	Economic hardship is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions; and/or other relevant agreements at issue in this litigation.

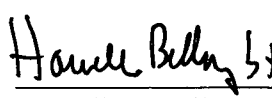
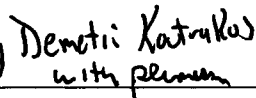
The remaining third-party claim against South State Bank also affects title to the property. In that claim, the only claim asserted by the Association against South State Bank that does not seek damages or indemnity, the Association seeks an order enjoining South State Bank “from any future waiver of deed restrictions relating to the Heron Point Golf Course property.” The appeal of the damage and indemnity claims does not affect that remaining third-party claim.

Accordingly, the instant appeal does not stay the claims remaining before the lower court.

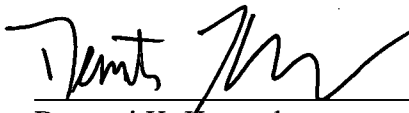
CONCLUSION

For the above-mentioned reasons, this Court should issue an order finding the claims that remain before the lower court are not stayed by the Association's appeal and the lower court must proceed with hearing those claims.

Respectfully submitted,

 by  with power

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March 19, 2018

EXHIBIT A

FILED
HORRY COUNTY

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

2015 APR 27 PM 4:39

MELANIE HUGGINS-WARD
CLERK OF COURT

Condo-World Development, LLC, and
Heron Point Golf Club Limited Partnership

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Myrtle Beach Golf & Yacht Club Association, Inc.

Defendant(s)

Submitted By: Howell v. Bellamy, III
Address: 1000 29th Ave. N.
Myrtle Beach, SC 29577

SC Bar #: 66575
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Other:

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|---|
| <p>Contracts</p> <p>☐ Constructions (100)
☐ Debt Collection
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)</p> | <p>Torts - Professional Malpractice</p> <p>☐ Dental Malpractice
☐ Legal Malpractice
☐ Medical Malpractice
☐ Previous Notice of Intent
Case # 20 - NI -
☐ Notice/ File Med Mal
☐ Other (299)</p> | <p>Torts - Personal Injury</p> <p>☐ Assault/Slander/Libel
☐ Conversion (310)
☐ Motor Vehicle Accident
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)</p> | <p>Real Property</p> <p>☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)</p> |
| <p>Inmate Petitions</p> <p>☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus
☐ Other (599)</p> | <p>Administrative Law/Relief</p> <p>☐ Reinstate Drv. License
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent
☐ Other (899)</p> | <p>Judgments/Settlements</p> <p>☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)</p> | <p>Appeals</p> <p>☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)</p> |

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

☐ Confession of Judgment (770)

- ☐ Petition for Workers Compensation Settlement

☒ Approval (780) **Declaratory Judgment**
☐ Other (799)

- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Submitting Party Signature:

Harrell V. Bellamy III

Date: 4-27-15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership)

Plaintiffs,)

Myrtle Beach Golf & Yacht Club)
Association, Inc.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-3173

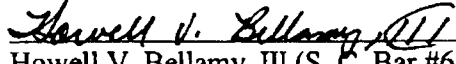
SUMMONS

FILED
HORRY COUNTY
2015 APR 27 PM 4:39
CLANIE HIGGINS-WARD
CLERK OF COURT

**TO: CHRISTOPHER H. PEARCE, ATTORNEY FOR THE DEFENDANT, THE
PEARCE LAW GROUP, P. C.**

YOU ARE HEREBY SUMMONED and required to answer the Plaintiffs Verified Complaint for Declaratory Judgment Relief Against Defendant Myrtle Beach Golf and Yacht Club Association, Inc. in the above entitled action and to serve a copy of your answer upon the undersigned at their office, 1000 29th Ave. N., Myrtle Beach, S. C. 29577, within thirty (30) days after service hereof upon you, exclusive of the date of such service, and if you fail to answer the Plaintiffs Verified Complaint for Declaratory Judgment Relief Against Defendant Myrtle Beach Golf and Yacht Club Association, Inc. within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Answer, and a judgment will be rendered against you.

Bellamy, Rutenberg, Copeland
Epps, Gravely & Bowers, P. A.


Howell V. Bellamy, III (S. C. Bar #66575)
hbellamyiii@bellamylaw.com

Howell V. Bellamy, Jr. (S.C. Bar #68543)
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1000 29th Ave. N.
Myrtle Beach, S. C. 29577
843-448-2400 Phone
843-448-3022 Facsimile

ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, South Carolina
April 27, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Condo-World Development, LLC, and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

v.

Myrtle Beach Golf & Yacht Club
Association, Inc.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2015CP-26- 3173

) **PLAINTIFFS VERIFIED COMPLAINT FOR**
) **DECLARATORY JUDGMENT RELIEF**
) **AGAINST DEFENDANT MYRTLE BEACH**
) **GOLF AND YACHT CLUB**
) **ASSOCIATION, INC.**

FILED
HORRY COUNTY
2015 APR 27 PM 4:39
MELANIE HUGGINS-WARR
CLERK OF COURT

The Plaintiffs, Condo-World Development, LLC and Heron Point Golf Club Limited Partnership, by and through its undersigned attorneys Howell V. Bellamy, Jr. and Howell V. Bellamy, III, complaining of the Defendant, Myrtle Beach Golf & Yacht Club Association, Inc., herein, would show and allege unto this Honorable Court as follows:

1. The Plaintiff, Condo-World Development, LLC, ("Condo-World") is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and does business in Horry County, South Carolina. Condo-World is the current holder of the note and mortgage regarding the subject property as described in Paragraph Three (3) set forth below.

2. The Plaintiff, Heron Point Golf Club Limited Partnership ("Heron Point"), is a limited liability partnership organized and existing pursuant to the laws of the State of South Carolina and does business in Horry County, South Carolina. Heron Point is the owner of the subject property, including the Heron Point Golf Course, as described in Paragraph Three (3) below.

3. That the Defendant, Myrtle Beach Golf and Yacht Club Association, Inc. ("Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina, and is charged with the administration, operation, and maintenance of the subdivision's common areas located in Horry County, South Carolina. The Association may have standing to enforce any alleged violations of the restrictions on behalf of the members of the Association to the extent that they run with the subject property, which is specifically denied.

4. The real property ("golf course property") which is the subject of this lawsuit is located in Horry County, South Carolina, and more particularly described as follows:

PARCEL ONE

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate *164.221 acres*, more or less, being shown and designated as:

Parcel C, containing 0.077 acre; more or less;
Parcel L, containing 13.345 acres, more or less;
Parcel M, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.987 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.884 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
Osprey Lake, containing 19.637 acres, more or less;

on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Serves, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100.

ALSO,

PARCEL TWO

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of **5.349 acres**, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R. L.S., dated April 6, 1992, and recorded in Plat Book 119 at pages 100, and being more particularly shown and designated as:

Parcel S, containing 0.039 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AE, containing 0.140 acre, more or less;
Parcel AF, containing 0.040 acre, more or less;
Parcel AC, containing 4.636 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

5. Venue is proper in Horry County.
6. Based upon the foregoing, this Court has subject matter and personal jurisdiction over the above-named parties hereto.

FACTUAL STATEMENT

7. On **April 15, 1992**, Peoples Federal Savings and Loan Association ("Grantor/Covenantor") conveyed to Heron Point Golf Club Limited Partnership ("Grantee/Covenantee"), Parcel One, consisting of 164.221 total acres, more or less, Parcel Two, consisting of 5.349 acres, more or less, and Parcel Three, consisting of 0.907 total acres, more or less, by Deed, recorded April 15, 1992, in Deed Book 1540, at Page 482, in the office of the Register of Deeds for Horry County, South Carolina. A copy of the Deed is attached hereto as (**Exhibit A**), and incorporated by reference as part of this pleading.

8. On **April 15, 1992**, Heron Point Golf Course Limited Partnership executed and delivered unto Peoples Federal Savings and Loan Association that certain Promissory Note in the original principal sum of Three Million Six Hundred Ninety Thousand and No/100 (\$3,690,000.00) Dollars (the "Note"). The Note is secured by that certain First Mortgage and Security Agreement, dated April 15, 1992, and recorded April 15, 1992, in Mortgage Book 1669, at Page 301 (the "Mortgage"). A copy of the First Mortgage is attached hereto as (**Exhibit B**), and incorporated by reference as part of this pleading.

9. On **November 12, 2011**, the Note and Mortgage were assigned by First Federal Savings and Loan Association of Charleston, the successor by merger to Peoples Federal Savings and Loan Association ("Peoples"), to VFC Partners 15, LLC, by Assignment of Mortgage and Collateral Documents, and recorded April 3, 2012, in Mortgage Book 5391, at Page 1268. A copy of the Assignment of Mortgage and Collateral Documents are attached hereto as (**Exhibit C**), and incorporated by reference as part of this pleading.

10. On **April 30, 2012**, the Note and Mortgage were assigned by VFC Partners 15, LLC, to Condo World Development, LLC by Assignment and Assumption of Mortgage and Loan Documents, and recorded May 18, 2012, in Mortgage Book 5402, at Page 2786. A copy of the Note and Mortgage assigned to Condo World Development, LLC is attached hereto as (**Exhibit D**), and incorporated by reference as part of this pleading.

11. On **December 14, 2014**, the Plaintiffs closed the Heron Point Golf Course because they had been unable to profitably operate the golf course property for the last several years even after making significant upgrades. The golf course only had thirty (30) members at the time it decided to close its doors.

12. The Defendant Association contends that the only permitted use of the subject property is as a golf course, country club, or other ancillary use relating to the golf course. However, the Plaintiffs argue they have the legal right to develop the subject property for both single-family and multi-family purposes. For these reasons, the Plaintiffs have brought this declaratory judgment action against the Defendant Association.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

13. The Plaintiffs reiterate each and every allegation set forth above as if fully incorporated herein.

14. This is an action for declaratory judgment relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in § 15-53-10 et seq., of the South Carolina Code of Laws, 1976, as amended, for the purpose of determining the parties' rights, status, and legal relations concerning use and development of the subject property.

15. Section 15-53-30 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

16. A justiciable controversy exists between the parties regarding their rights, status, and legal relations concerning whether the subject property can only be utilized as a golf course and not for residential development as contended by the Defendant Association.

17. Plaintiffs do not have an adequate remedy at law.

18. Plaintiffs are informed and believe that they are entitled to a determination from the Court declaring one or more of the following decrees as relief:

- a. That the Myrtle Beach Golf & Yacht Club Subdivision ("MBGYCS")'s amended and restated declaration of covenants and restrictions¹ ("declaration of covenants") do not run with the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course;
- b. That the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course, was not submitted and/or dedicated as part of the MBGYC Subdivision's common areas; and, consequentially, it is not subject to the declaration of covenants;
- c. That the alleged use restrictions referenced in the "Heron Point Deed" recorded in Deed Book 1540, at Page 482, were personal to First Federal Savings and Loan Association of Charleston, the successor by merger to Peoples Federal Savings and Loan Association as the grantor/covenantor, and do not run with the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course;
- d. That First Federal Savings and Loan Association of Charleston as the Grantor/Covenantor had previously waived, relinquished and released the following restrictions² as the same may have applied, if at all, to the Enterprise Tracts, including the golf course property, by Deed known as "Waiver of Restrictions [Deed]" recorded May 5, 2005, in Deed Book 2905, at Page 574;
- e. That the Defendant Association lacks standing to enforce the alleged restrictions referenced in the "Heron Point Deed" recorded on April 15, 1992, in Deed Book 1540, at Page 482, because they are personal to Peoples ("Grantor"), its heirs, successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World, as the managing partner of Heron Point, has the sole authority to enforce the use restrictions in the "Heron Point Deed" against the golf course property assuming the restrictions have not been previously waived, relinquished and released for the reasons described above;

¹The Amended and Restated Declaration of Covenants and Restrictions for Myrtle Beach Golf & Yacht Club Subdivision, recorded in Deed Book 931 at Page 563.

²The "Heron Point Deed" in Deed Book 1540, at Page 482, in the office of the Register of Deeds for Horry County, South Carolina.

- f. That the First Mortgage and Security Agreement ("Security Agreement") by and between Peoples Federal Savings and Loan Association ("Mortgagee/Covenantor") and Heron Point Golf Club Limited Partnership ("Mortgagor/Covenantee") contains a certain covenant stating that "*the mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course ... without the prior consent of Mortgagee.*" This language evidences that the use restrictions in the Security Agreement are only personal to the Mortgagee, its heirs, successors, and assigns, and do not run with the golf course property. Accordingly, Condo-World as the current mortgagee by assignment, has the sole authority to enforce the personal use restrictions against the golf course property;
- g. That the Defendant Association lacks standing to enforce the subdivision's declaration of covenants against the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course. The golf course property has not ever been subjected by amendment to the declaration of covenants of the MBGYC Subdivision. For these reasons, the golf course property has not ever been inured to the benefit of the Defendant Association's members because they possess no title and interest in the golf course property;
- h. That even if the use restrictions³ described above do apply to the golf course property, which is expressly denied, they do not unreasonably limit the golf course property's use only to a golf course; and
- i. That the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course, is not subject to the declaration of covenants due to the changed economic circumstances, which have rendered the golf course property unsuitable for a golf course use.

WHEREFORE, having fully set forth the allegation in their Complaint, the Plaintiffs pray for the following relief:

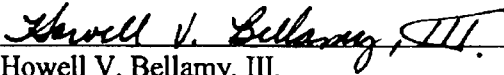
- a. For an Order from the Court declaring, in whole or in part, the following relief requested in subparagraphs (a) through (i) of Paragraph 18 of Plaintiffs' Complaint;

³James H. Dusenbury ("Dusenbury") deeded separate tracts of the land: (1) to Heron Point Golf Club, Inc., recorded in Deed Book 855 at Page 765, and (2) Myrtle Beach Golf & Yacht Club General Partnership, recorded in Deed Book 855 at Page 771. Each deed stated that the property "*shall be used for a residential community (composed of single-family and multi-family residences), an associated golf course, open areas, parks, lakes, and various other recreational amenities and retail shops.*" Accordingly, the expressed language of the restrictive covenant described above does not limit the properties' use and operation solely to a golf course property use.

- b. For attorneys fees, costs and expenses incurred in this action; and
- c. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



Howell V. Bellamy, III.

Howell V. Bellamy, Jr.

1000 29th Ave. N.

Myrtle Beach, S. C. 29577

843-282-5393 Phone

843-448-3022 Fax

Attorneys for the Plaintiffs

Myrtle Beach, South Carolina

April 27, 2015

HERON POINT GOLF CLUB
DEVELOPMENT PARTNERSHIP

By: [Signature]
Its: Managing Partner

SWORN to before me this 27th

day of April, 2015

[Signature] (LS)
Notary Public for South Carolina

My Commission Expires: 10-12-2021

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Condo-World Development, LLC, and)
Heron Point Golf Club Limited Partnership,)

Plaintiff,)

v.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.)
Defendants.)

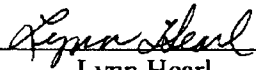
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-3173

CERTIFICATE OF MAILING

FILED
HORRY COUNTY
2015 APR 27 PM 4:39
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Lynn Hearl, an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravelly & Bowers, P.A., Counsel for the Plaintiff, in the above-captioned action, certify that I have this day sent a copy of the **Civil Action Cover Sheet, Summons and Complaint with Exhibits A, B, C, & D, and Verification**, with sufficient postage attached thereto as follows:

Christopher H. Pearce, Esquire
The Pearce Law Group, P.C.
1294 Professional Drive, Ste. B
Myrtle Beach, SC 29577


Lynn Hearl

Myrtle Beach, South Carolina

April 27, 2015

EXHIBIT

A

92
STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FILED
HORRY COUNTY

APR 15 PM 3:35

R.M.C.

9020⁰⁰/₀₀
4510⁰⁰/₀₀
KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, hereinafter referred to as Grantor, in the State aforesaid for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars and other valuable consideration to it paid by Heron Point Golf Club Limited Partnership, hereinafter referred to as Grantee (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released; and by these presents. Does grant, bargain, sell and release unto the said Grantee, its Successors and Assigns the following described property:

SEE ATTACHED SCHEDULE "A" FOR DESCRIPTION

GRANTEE'S ADDRESS: Heron Point Golf Club Limited Partnership
Post Office Box 26988
Greenville, S. C. 29616

The property conveyed herein shall be subject to the following covenants:

- (a) [REDACTED] of [REDACTED] to [REDACTED]
- (b) Grantee, its Successors and Assigns agree to offer memberships to members of Myrtle Beach Golf and Yacht Club Association, Inc., its Successor or Assigns on the same basis that it offers memberships to the public at large, [REDACTED] requirements to offer [REDACTED]

Personal
Covenant

IT IS FURTHER PROVIDED that these covenants shall not apply to Parcel A-C comprised of 4.636 acres as shown on a plat of Heron Point Golf Club, formerly Myrtle Beach Golf & Yacht Club Golf Course, prepared by Frederick L. Harris, R.L.S. dated April 6, 1992

BOOK 1540 PAGE 482

482

and filed for record in the Office of the R.M.C. for Horry County
in Real Estate Plat Book 119 at pages 122

The property conveyed herein shall be subject to the following
restrictions:

- (a) Right-of-way easement given by Myrtle Beach Golf & Yacht Club, a General Partnership to Horry Telephone Cooperative, Inc. dated April 14, 1985, recorded in said Register's office on June 21, 1985 in Deed book 967 at page 259.
- (b) Memorandum of Exclusive Right and Lic. was given by Myrtle Beach Golf & Yacht Club, a General Partnership to Satellite Industries, Inc., a North Carolina corporation doing business in the State of South Carolina in the name of Cablevision Industries, dated December 31, 1984, recorded in said Register's office on July 3, 1985 in Deed book 979 at page 232.
- (c) Declaration for water distribution and sewage collection systems given by Myrtle Beach Golf & Yacht Club, a General Partnership to Grand Strand Water and Sewer Authority, dated January 6, 1984, recorded in said Register's office on February 13, 1985 in Deed book 1026 at page 471.
- (d) Deed and Easement given by Myrtle Beach Golf & Yacht Club, a General Partnership to Grand Strand Water and Sewer Authority, dated August 10, 1985, recorded in said Register's office on September 8, 1985 in Deed Book 1278 at page 388.
- (e) Easement Maintenance Agreement given by Peoples Federal Savings and Loan Association given to Myrtle Beach Golf & Yacht Club Association, Inc., dated September 9, 1990, recorded in said Register's office on November 7, 1990 in Deed Book 1433 at page 361.
- (f) Restrictions, covenants and conditions contained in Deed from James H. Dusenbury, as Nominee, to Myrtle Beach Golf & Yacht Club, a General Partnership, dated February 29, 1984, recorded in said Register's office on March 13, 1984, in Deed Book 855 at page 769.
- (g) Restrictions, covenants and conditions contained in Deed from James H. Dusenbury, as Nominee, to Heron Point Golf Club, Inc., dated April 25, 1989 recorded in said Register's office on May 2, 1989, in Deed Book 1306 at page 642.

TOGETHER with all and singular, the Rights, Members,

BOOK 1540 PAGE 483

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Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its Successors and Assigns forever.

AND the Grantor herein hereby binds itself and its Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee, and its Successors and Assigns against itself and its Successors and Assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by Grantor this 15th day of April, in the year of our Lord one thousand two hundred and ninety-two and in the two hundred sixteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION

BY: [Signature]

ITS: _____

BY: William A. [Signature]

ITS: Vice President

[Signature]
[Signature]

DOCUMENTARY	STAMP TAX	900.00
DOCUMENTARY	STAMP TAX	900.00
DOCUMENTARY	STAMP TAX	900.00

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DOCUMENTARY	STAMP TAX	900.00

484

484

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PROBATE

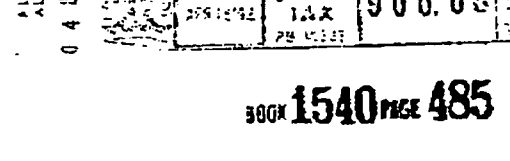
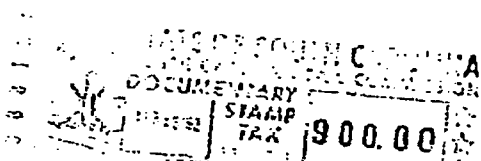
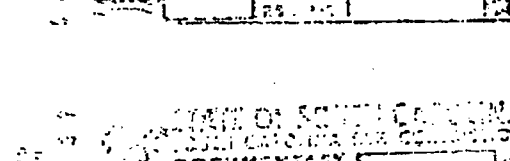
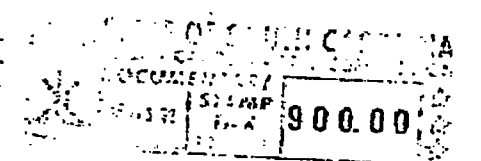
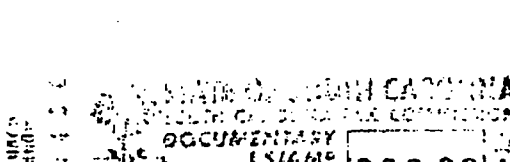
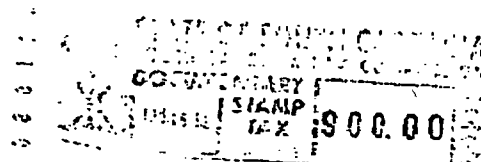
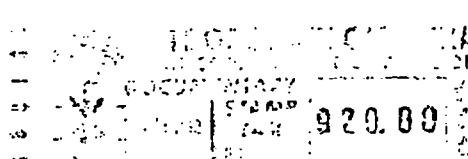
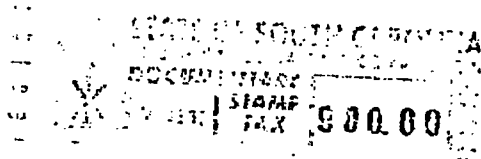
PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantor sign, seal and as its corporate act and deed, deliver the within Deed of Real Estate; that deponent with the other witness whose name is subscribed above witnessed the execution thereof

[Signature]

SHOWN to before me this
15th day of April, 1992.

W. D. H. Butler (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/13/97



BOOK 1540 PAGE 485

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EXHIBIT "A"

Parcel One

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate 164 acres, more or less, being shown and described as follows:

Parcel C, containing 0.077 acres, more or less;
Parcel L, containing 13.345 acres, more or less;
Parcel M, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.387 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.804 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
Osprey Lake, containing 19.637 acres, more or less;

on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100;

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Register's office in Plat Book 79 at page 166.

640000
Horry County
STATE OF SOUTH CAROLINA
DOCUMENTARY
STAMP TAX
900.00

STATE OF SOUTH CAROLINA
DOCUMENTARY
STAMP TAX
900.00

114000
Horry County
STATE OF SOUTH CAROLINA
DOCUMENTARY
STAMP TAX
910.00

BOOK 1540 PAGE 486

164.023, 024, 025 (Parcel 1)
4-16-92

486

ALSO,

Parcel Two

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of 5.349 acres, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1997, and recorded in Plat Book 119 at pages 110, and being more particularly shown and designated as:

Parcel S, containing 0.039 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AE, containing 0.140 acre, more or less;
Parcel AF, containing 0.040 acre, more or less;
Parcel AC, containing 4.676 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

ALSO,

Parcel Three

* All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100, which plat is incorporated herein and made a part hereof by reference.

HORRY COUNTY ASSESSOR

184-17-03-055 & 184-17-01-042

Map ... Bk - Parcel

4-16-92

BOOK 1540 PAGE 487

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184-00-01-036, 037, 038, 039, 040, 041, 042, 043 (Parcel 2)

STATE OF SOUTH CAROLINA

FIRST MORTGAGE

FILED
HORRY COUNTY

COUNTY OF HORRY

AND
SECURITY AGREEMENT

92 APR 15 PM 3:38

THIS MORTGAGE AND SECURITY AGREEMENT made this 15th day of April, 1992, between Heron Point Golf Club Limited Partnership ("Mortgagor"), whose address is P.O. Box 26988, Greenville, SC 29616 and Peoples Federal Savings and Loan Association ("Mortgagee"), whose address is Post Office Box 1740, Conway, South Carolina 29526.

W I T N E S S E T H :

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of Three Million Six Hundred Ninety Thousand and No/100 (\$3,690,000.00) Dollars together with interest thereon, as evidenced by that certain promissory note of even date herewith, executed by Mortgagor and delivered to Mortgagee, the final payment of which is due on or before the 2nd day of February, 1999, (the "Note") which by reference is made a part hereof to the same extent as though set out in full herein;

NOW, THEREFORE, (a) to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, in any renewal, extension or modification thereof, in this First Mortgage and Security Agreement and in all other instruments securing the Note; and (b) also to secure in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina 1976: (i) all future advances and re-advances that may subsequently be made to Mortgagor by Mortgagee, evidenced by the aforesaid Note, or any other promissory notes, and all renewals and extensions thereof; provided, however, that nothing contained herein shall create an obligation on the part of Mortgagee to make future advances or re-advances to Mortgagor and (ii) all other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorney's fees; and (c) also in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and no/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to:

THE MORTGAGED PROPERTY

(A) THE LAND: All the land located in the County of Horry,

State of South Carolina (the "Land"), described in Exhibit "A" attached hereto and made a part hereof;

(B) THE IMPROVEMENTS: TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances and building equipment, now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements").

(C) EASEMENTS OR OTHER INTERESTS: TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements, hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) ASSIGNMENT OF RENTS: TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof

whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES: TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The forgoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to duly perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that at all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income, and other benefits from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such

subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY: TOGETHER WITH a security interest in (i) all fixtures, machinery, appliances and building equipment now or hereafter acquired and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) and all contract rights, general intangibles, actions and rights in action now or hereafter acquired pertaining to the Mortgaged Property, including all rights to insurance proceeds, and (iii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (Debtor) hereby grants to Mortgagee (Secured Party) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagor agrees to pay Mortgagee's charge, to the maximum amount permitted by law, for any statement by Mortgagee regarding the obligations secured by this Mortgage and Security Agreement requested by Mortgagor or on behalf of Mortgagor. On demand, Mortgagor will promptly pay all costs and expenses of filing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code (South Carolina) with respect to such property, and it is expressly agreed in accordance with the provisions of the Uniform Commercial Code (South Carolina), ten (10) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code (South Carolina) requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage and Security Agreement, in lieu of proceeding under the Uniform Commercial Code (South Carolina).

Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Mortgagee, as Secured Party, or the Mortgagor, as Debtor, at the address first shown above.

Everything referred to in paragraphs (A), (B), (C), (D), (E) and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD this Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein.

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE ONE

COVENANTS OF MORTGAGOR

1.01 Performance of Note, Mortgage, etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part thereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, described in the title insurance policy. Mortgagor shall and will

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make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

1.03 Zoning and Environmental Laws. Mortgagee covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements and further covenants and warrants to comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property.

1.04 Taxes and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer more than fifteen (15) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Mortgaged Property.

(c) Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making any required payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts

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necessary to enable Mortgagee to pay such taxes, assessments and similar charges. In the event of a default under any of the terms, covenants and conditions of the Note, this Mortgage or any other instruments securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph 1.05(c) of Article One remaining to Mortgagor's credit.

(d) Mortgagor shall not claim, demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the rent, taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof as are applicable to the indebtedness secured hereby or to Mortgagee's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note, this Mortgage or any other instrument securing the Note.

1.05 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may require in no event less than the full insurable value or the loan amount, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood damage, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies and the companies issuing them, and the coverages provided shall be acceptable to Mortgagee. All such policies and renewals thereof shall be held by Mortgagee and shall contain a noncontributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall be limited to the improvements now or hereafter located on the Mortgaged Property. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of all unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. Mortgagee may at any time at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in like

amount, as it may determine without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said promises so insured.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its reasonable discretion, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee alone, and not to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection or handling of such funds, Mortgagee may apply the net proceeds, at its option either toward restoring the Improvements or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future, or at the option of Mortgagee such sums either wholly or in part may be paid over to Mortgagor to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. If Mortgagee elects to restore the improvements, any balance of such monies after restoration shall either be applied toward the reduction of indebtedness and other sums secured hereby or shall be paid to Mortgagor. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(i) Mortgagee grants Mortgagor the right to rebuild any improvements provided demolition/reconstruction is begun within sixty (60) days of receipt of proceeds from insurance; provided the Mortgagor is not in default; and provided Mortgagee has approved the plans for reconstruction of said improvement.

(c) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Mortgaged Property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

(d) Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest

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shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any return premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

1.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which terms when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the state where the Land is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.07 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course or any building, structure or other improvement presently or hereafter on the Land without the prior written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, and will not take any action which will increase the risk of fire, erosion, or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee. Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by weather events, fire or any other cause, Mortgagor will give immediate written notice thereto to Mortgagee and shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee.

(f) If any work required to be performed under this paragraph involves an estimated expenditure of more than one (1%) percent of the face amount of the Note, no such work shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee.

1.08 Transfer of Property. Mortgagor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee. If all or any part of the property or an interest therein is sold or transferred (or if a beneficial interest in Mortgagor is sold or transferred) without Mortgagee's prior written consent, Mortgagee may at Mortgagee's option declare all the sums secured by this Mortgage to be immediately due and payable. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

1.9 Further Assurances. At any time and from time to time, upon Mortgagee's request Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, enlarge in accordance with the Loan Agreement or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.10 After Acquired Property. The lien of this First Mortgage and Security Agreement will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part thereof.

1.11 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor, if required by Mortgagee, shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall be in form and substance subject to the approval of Mortgagee. Mortgagor shall not, without the express written consent of Mortgagee, modify, surrender, terminate or extend any such lease nonexisting or hereafter created, or permit or suffer an assignment or sublease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

1.12 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or dispute in which Mortgagee is or might be made a part or appears as a party plaintiff or party defendant and which affects or might affect the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses except where Mortgagor and Mortgagee are adverse parties unless awarded by the Court so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts so

incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.13 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder of in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.14 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall furnish to Mortgagee a balance sheet and a statement of income and expenses and shall permit Mortgagee to inspect said books and records.

1.15 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums.

ARTICLE TWO

DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) A breach by Mortgagor of any of the covenants, agreements and conditions of Article One hereof.

(b) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this

Mortgage and Security Agreement, or any other instrument securing the Note or any other instrument collateral to the Note or executed in connection with the sums secured hereby.

(c) If either (A) Mortgagor, or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(d) Default by Mortgagor under any agreement or obligation of Mortgagor affecting any portion of the Mortgaged Property, or any other documents or instruments securing any other indebtedness of Mortgagor to Mortgagee, if such default is not cured within any grace period permitted therein and if such default permits the holder to cause such obligation to become due prior to its stated maturity. Mortgagor shall notify Mortgagee in writing of the occurrence of such default, specifying the nature of such default.

(e) Material breach of any warranty or material untruth of any representation of Mortgagor contained in the Note, this Mortgage or any other instrument securing the Note.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereof, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may take possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine.

2.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name;

(iv) enter into agreements with others to exercise the powers herein granted Mortgagee;

all as Mortgagee in its reasonable judgment from time to time may determine and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other property charges upon the Mortgaged Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.05 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.06 Purchase by Mortgagee. Upon any such foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

2.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereof.

2.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in

order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Mortgagee against Mortgagor and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

2.09 Receiver. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or paragraph 2.04. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee.

2.10 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise, invalid, if the enforcement of or compliance with such enactment, rule or order may impair the security hereunder or be prejudicial to Mortgagee's interest.

2.11 Proofs of Claim. In the case of any receivership,

insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

2.12 Mortgagor to Pay the Note on Any Default in
Payment: Application of Monies by Mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon Mortgagee's demand, Mortgagor will pay to Mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagor shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment as set forth in the note and hereinbelow in subsection 2.12(b) for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal in connection therewith.

(b) Without hereby limiting or otherwise affecting Mortgagor's obligations and agreements to pay the within indebtedness to Mortgagee, including all interest and advances and subject to the terms and conditions of the proviso at the end of this paragraph, Mortgagee, by acceptance of this Note, agrees that the Mortgagee's course of satisfaction of said indebtedness shall be limited to the following property owned by Mortgagor: (1) any and all of Mortgagee's present and future receivables derived from properties described in the Mortgage, (2) the property described in the Mortgage securing repayment of this Note, (3) the collateral in which a security interest has been conveyed to Mortgagor by Mortgagee by security agreement, and (4) Mortgagee's receipt of rents, issues and profits from the property described in the aforesaid Mortgage; and Mortgagee agrees that the Mortgagee will not and may not seek to procure payment out of any assets of the Mortgagor or partners of the Mortgagor other than the assets described and identified above, and further agrees not to undertake to procure any judgment against the Partnership for any sum of money which is or may be payable under this Note or under the Mortgage or for any deficiency remaining after foreclosure of the Mortgage; provided, however, that nothing herein contained shall be deemed to be a release or impairment of said indebtedness or the security therefor evidenced by the Mortgage, or be deemed to preclude the Mortgagee from foreclosing the Mortgage securing repayment of this Note, or from enforcing any of the Mortgagee's

rights thereunder, or to affect Mortgagee's rights and privileges under the Assignment of Leases or other Loan Documents; and provided, further, that nothing herein contained shall be deemed or construed to relieve the Mortgagor or the general partners from personal liability hereunder or from suits for damage and injunctive relief, if the general partners shall purposely engage or participate in any action, or course of action, or negligently fail to pay real estate taxes or hazard and liability insurance premiums as required under the Mortgage, the effect of which is to damage, or otherwise diminish, the value of the Mortgagee's security for the within indebtedness or to deprive Mortgagee of its rightful access to such security, or to any portion thereof, or of its right to obtain the proceeds therefrom.

(c) Any monies collected or received by Mortgagee under this paragraph 2.12 shall be applied as follows:

(i) First to the payment of reasonable compensation expenses and disbursements of the agents and attorneys; and

(ii) Second, to payment of amounts due and unpaid under the Note, this Mortgage and all other instruments securing the Note.

2.13 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signed, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case

of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, firm or corporation, as hereby authorized and empowered to deal with any such vendee indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.15 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

2.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, inequity or by statute.

ARTICLE THREE

MISCELLANEOUS PROVISIONS

3.01 Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

3.02 Addresses for Notices, etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished after deposited in registered, certified, or first-class United States mail, postage prepaid, and addressed to the parties at the addresses indicated below or at such other addresses as may from time to time be designated by written notice given as herein required:

As to Borrower: Heron Point Golf Club Limited Partnership

P. O. Box 26988, Greenville, SC 29616

As to Lender: Peoples Federal Savings and Loan Association

P.O. Box 1740, Conway, SC 29526

3.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.06 Governing Law. This Mortgage is made by Mortgagor and accepted by Mortgagee in the State of South Carolina, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

3.07 Default Rate. In the event of a default, the Default Rate shall be twelve (12%) percent as defined in the Promissory Note.

ARTICLE FOUR

LENDING PROVISIONS

4.01 Interest Rate and Monthly Payment Changes. Reference is made to the Promissory Note of even date between Mortgagor and Mortgagee for the provisions concerning the changes in the interest rate and the changes in the monthly payment amounts, which Promissory Note is incorporated herein as if fully set out.

4.02 Partial Foreclosure. In the event the Mortgaged

Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year above first written.

Signed, Sealed and Delivered
in the Presence of:

MORTGAGOR

HERON POINT GOLF CLUB LIMITED
PARTNERSHIP

BY: CAROLINA GOLF MANAGEMENT, INC.
(GENERAL PARTNER)

BY:

George M. Plyler
PRESIDENT

BY:

Jerry C. Spearman, Sr.
(GENERAL PARTNER)

BY:

George M. Plyler
GEORGE M. PLYLER
(GENERAL PARTNER)

ATTEST:

Secretary *Vice* (SEAL)

Peoples Federal Savings and Loan Assn. hereby joins in the execution of this Mortgage and Security Agreement with the intention that it shall serve as a financing statement pursuant to Section 36-9-402 of the Code of Laws of South Carolina 1976.

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION

By: J. H. [Signature]

Its: _____

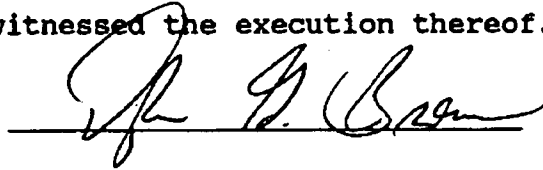
ATTEST:

William A. Graham, Jr. (SEAL)
Secretary *Vice President*

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
)
)
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Heron Point Golf Club Limited Partnership and Peoples Federal Savings and Loan Association, by and through its proper corporate officer or officers, sign, seal and as its act and deed deliver the within written Mortgage and Security Agreement; and that (s)he with the other witness subscribed above witnessed the execution thereof.



SWORN to before me this
15 day of April, 1992.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/13/97

EXHIBIT "A"

Parcel One

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate 164.221 acres, more or less, being shown and designated as:

Parcel C, containing 0.077 acre; more or less;
Parcel L, containing 13.345 acres, more or less;
Parcel M, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.987 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.884 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
Osprey Lake, containing 19.637 acres, more or less;

on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Serves, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100;

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Register's office in Plat Book 79 at page 166.

ALSO,

Parcel Two

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of 5.349 acres, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at pages 100, and being more particularly shown and designated as:

Parcel S, containing 0.039 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AE, containing 0.140 acre, more or less;
Parcel AF, containing 0.040 acre, more or less;
Parcel AC, containing 4.636 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

ALSO,

Parcel Three

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100, which plat is incorporated herein and made a part hereof by reference.

DERIVATION: DEED BOOK

1540 PAGE 482

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This document prepared by:

Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

After recording return to:

FirstCity Servicing Corporation
Attn: Debbie Scott
P.O. Box 8216
Waco, TX 76714-8216

9501010000

(Space above this line for Recorder's use)

**ASSIGNMENT OF MORTGAGE
AND COLLATERAL DOCUMENTS**

First Federal Savings and Loan Association of Charleston ("Assignor"), having an address of 2440 Mall Drive, Charleston, South Carolina 29406, the holder of that certain mortgage referenced on the attached Exhibit A (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and certain other collateral documents referenced on the attached Exhibit A, if any (together with any amendments, renewals, extensions, or modifications thereto, collectively, the "Collateral Documents") hereby assigns the Mortgage and the Collateral Documents, together with all other documents and instruments securing, governing and guaranteeing any and all promissory notes and other indebtedness and obligations therein described or referred to, all sums of money due or to become due thereon with interest as provided for therein, and all rights accrued or to accrue under such Mortgage and such Collateral Documents, as such Mortgage, Collateral Documents, promissory notes, other indebtedness and obligations, and rights have been, or may have been, previously amended, to:

VFC Partners 15 LLC
("Assignee")

with an address of:

6400 Imperial Drive

Waco, TX 76712

This assignment is made without recourse, representations or warranties of any kind except as set forth in that certain Asset Purchase and Interim Servicing Agreement dated as of October 25, 2011 by and between Assignor and Low Country Ventures SC, LLC, on behalf of itself and Assignee.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of November 12, 2011.

First Federal Savings and Loan Association of Charleston

Witnesses:

(Kymberly) Gemo
Susan H. H.

By: [Signature]
Name: Michael K. Connolly

Title: Senior Vice President - Director of Special Assets

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

On this 12th day of November, 2011, before me, a Notary Public in and for the State of South Carolina appeared Michael K. Connolly, to me personally known, who, being by me first duly sworn did depose that he is Senior Vice President - Director of Special Assets of First Federal Savings and Loan Association of Charleston (the "Bank"), in whose name the foregoing Assignment of Mortgage and Collateral Documents was executed and subscribed, and the said Assignment of Mortgage and Collateral Documents was executed and subscribed on behalf of the said Bank, and the said Michael K. Connolly acknowledged said Assignment of Mortgage and Collateral Documents to be the free act and deed of said Bank.

Sworn to before me this 12th day of November, 2011.

[Signature]
Notary Public for South Carolina

My Commission Expires: MY COMMISSION EXPIRES: 11/10/2014

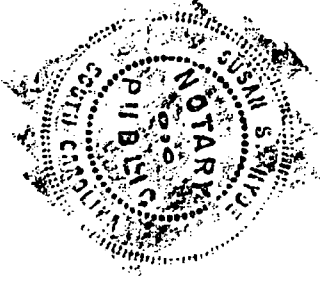


Exhibit A

Asset Name: Heron Point Golf Club Limited Partnership
Purchaser's Asset No.: 9501010000
Property Location: Myrtle Beach, Horry SC

First Mortgage and Security Agreement dated April 15, 1992 executed by Heron Point Golf Club Limited Partnership in favor of First Federal Savings and Loan Association of Charleston successor by merger with Peoples Federal Savings and Loan Association of South Carolina in the amount of \$3,690,000.00 recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records, Horry County, State of South Carolina.

Loan Modification Agreement originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated March 12, 1999 by Heron Point Golf Club Limited Partnership and between People's Federal Savings and Loan Association, recorded on March 25, 1999 in Book 2391 at Page 817 in the Official Records of the County of Horry, South Carolina.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated December 24, 2002 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on February 06, 2003 in Book 3186 at Page 211 in the Official Records of the County of Horry, South Carolina.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated November 22, 2005 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on April 20, 2006 in Book 4499 at Page 284 in the Official Records of the County of Horry, South Carolina.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated March 08, 2006 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on April 20, 2006 in Book 4499 at Page 287 in the Official Records of the County of Horry, South Carolina.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated June 05, 2006 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on June 26, 2006 in Book 4590 at Page 979 in the Official Records of the County of Horry, South Carolina.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated August 18, 2006 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan.

Amendment to Note and/or Mortgage originally recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records of the County of Horry, SC, dated October 18, 2006 by Heron Point Golf Club Limited Partnership and between First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on January 25, 2007 in Book 4836 at Page 2804 in the Official Records of the County of Horry, South Carolina.

EXHIBIT "A"

Parcel One

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate 164.221 acres, more or less, being shown and designated as:

Parcel C, containing 0.077 acre; more or less;
Parcel L, containing 13.345 acres, more or less;
Parcel M, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.987 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.884 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
Osprey Lake, containing 19.637 acres, more or less;

on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Serves, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100;

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Register's office in Plat Book 79 at page 166.

ALSO,

Parcel Two

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of 5.349 acres, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at pages 100, and being more particularly shown and designated as:

Parcel S, containing 0.039 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AE, containing 0.140 acre, more or less;
Parcel AF, containing 0.040 acre, more or less;
Parcel AC, containing 4.636 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

ALSO,

Parcel Three

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100, which plat is incorporated herein and made a part hereof by reference.

DERIVATION: DEED BOOK

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EXHIBIT

D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Murray Law Offices, PA
3775 Sea Mountain Hwy
Little River, SC 29566

FCSC# 9501010000

Space Above Line For Recorder's Use Only

**ABSOLUTE ASSIGNMENT AND ASSUMPTION
OF MORTGAGE AND LOAN DOCUMENTS**

This ASSIGNMENT AND ASSUMPTION OF MORTGAGE AND LOAN DOCUMENTS (this "Assignment") is made as of May 2, 2012, by VFC Partners 15 LLC, a Delaware limited liability company ("Assignor"), in favor of Condo World Development, LLC, a South Carolina limited liability company ("Assignee").

1. FOR VALUE RECEIVED, Assignor hereby sells, assigns, conveys, and transfers to Assignee all of Assignor's right, title, and interest in and to the "Loans" (such term is defined in a Loan Sale Agreement dated as of April 26, 2012, between Assignor and Assignee), including, without limitation, all of Assignor's right, title, and interest in and to the following:

First Mortgage and Security Agreement dated April 15, 1992 executed by Heron Point Golf Club Limited Partnership in favor of Peoples Federal Savings and Loan Association in the amount of \$3,690,000.00, recorded on April 15, 1992 in Book 1669 at Page 301 in the Official Records, Horry County, South Carolina

Loan Modification Agreement dated March 12, 1999 by and between Heron Point Golf Club Limited Partnership and People's Federal Savings and Loan Association, recorded on March 25, 1999 in Book 2391 at Page 817 in the Official Records, Horry County, South Carolina

Amendment to Note and/or Mortgage dated December 24, 2002 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on February 6, 2003 in Book 3186 at Page 211 in the Official Records, Horry County, South Carolina

Amendment to Note and/or Mortgage dated November 22, 2005 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on April 20, 2006 in Book 4499 at Page 284 in the Official Records, Horry County, South Carolina

Amendment to Note and/or Mortgage dated March 8, 2006 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on April 20, 2006 in Book 4499 at Page 287 in the Official Records, Horry County, South Carolina

Amendment to Note and/or Mortgage dated June 5, 2006 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on June 26, 2006 in Book 4590 at Page 979 in the Official Records, Horry County, South Carolina

Amendment to Note and/or Mortgage dated August 18, 2006 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan

Amendment to Note and/or Mortgage dated October 18, 2006 by and between Heron Point Golf Club Limited Partnership and First Federal Savings and Loan Association of Charleston, successor by merger to People's Federal Savings and Loan, recorded on January 25, 2007 in Book 4836 at Page 2804 as Instrument No. 2007000013913 in the Official Records, Horry County, South Carolina

Assignment of Mortgage and Collateral Documents dated November 12, 2011 executed by First Federal Savings and Loan Association of Charleston in favor of VFC Partners 15 LLC, recorded on April 3, 2012 in Book 5391 at Page 1268 in the Official Records, Horry County, South Carolina

2. THIS ASSIGNMENT IS WITHOUT RECOURSE, REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED IN THAT CERTAIN LOAN SALE AGREEMENT, DATED AS OF APRIL 26, 2012, BETWEEN ASSIGNOR AND ASSIGNEE (the "Loan Sale Agreement").

3. Assignee hereby agrees to and accepts the assignment described in Paragraph 1 above. In addition, Assignee hereby expressly assumes and agrees to keep, perform, and fulfill all of the terms, covenants, obligations, and conditions required to be kept, performed, and fulfilled by Assignor under, and/or with respect to, the Loans from and after the date of this Assignment. Assignor hereby agrees to deliver to each person or entity currently obligated to pay and perform the obligations of the borrower under the Loans (the "Borrower") any notice required by law to inform such Borrower that Assignor has transferred its interest in the Loans to Assignee as of the date hereof. Assignee hereby indemnifies Assignor against, and shall defend and hold Assignor harmless from (using counsel reasonably satisfactory to Assignor), any and all damages, liabilities, costs, expenses, and losses (including, without limitation, attorneys' fees and costs) that Assignor may sustain or incur directly or indirectly arising out of or related to any breach or default in Assignee's obligations under the Loans or in Assignee's obligations hereunder, from and after the Closing Date.

4. Without limiting the generality of Paragraph 3 above, Assignee also hereby acknowledges and agrees that it shall be solely responsible for compliance with any laws, rules, or regulations governing the ownership, servicing, and/or administration of the Loans from and after the Closing Date.

5. The provisions of this Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors and assigns.

Heron Point Golf Club Limited Partnership 9501010000

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Mortgage and Loan Documents as of the date first set forth above.

ASSIGNOR: VFC PARTNERS 15 LLC

WITNESS:

Shirley Coleman
Printed Name: Shirley Coleman

Deann Anderson
Printed Name: Deann Anderson

By: Deborah D. Butler
Name: Deborah D. Butler
Title: Vice President

ASSIGNEE: CONDO WORLD DEVELOPMENT, LLC

WITNESS:

Deborah Meekins
Printed Name: Deborah Meekins

Katharine M. Hector
Printed Name: Katharine M. Hector

By: Ray L. Cawthra, Jr.
Name: Ray L. Cawthra, Jr.
Title: Sole Member

THE STATE OF TEXAS
COUNTY OF MCLENNAN

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named VFC Partners 15 LLC by Deborah D. Butler as its Vice President sign, seal and as its act and deed deliver the within written Absolute Assignment and Assumption of Mortgage and Loan Documents, and that (s)he with the other witness witnessed the execution thereof.

Shirley Coleman
SIGNATURE OF WITNESS

SWORN to before me this 2nd day of May, 2012.

Angela Goette
NOTARY PUBLIC FOR STATE OF TEXAS



THE STATE OF SC
COUNTY OF Horry

Condo-World Development, LLC

Roy L. Clyburn PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within
named Condo-World Development, LLC by Roy L. Clyburn as its SOLE MEMBER
sign, seal and as its act and deed deliver the within written Loan Absolute Assignment and Assumption of
Mortgage and Loan Documents, and that (s)he with the other witness witnessed the execution thereof.

[Signature]
SIGNATURE OF WITNESS

SWORN to before me this 14th day of May, 2012.

[Signature]
NOTARY PUBLIC FOR STATE OF SC

Notary Public for South Carolina
Katharine M. [Signature]
My Commission Expires 9-25-13

I hereby certify the address of the within named Assignee to be:

Condo World Development, LLC
Attention: Roy L. Clyburn
300 17th Avenue South
North Myrtle Beach, South Carolina 29582
Phone No. 843-272-7011
Facsimile No. 843-272-8800

By: [Signature]
Name: Roy L. Clyburn, Jr.
Title: Sole Member

Exhibit A

Parcel One

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate 164.221 acres, more or less, being shown and designated as:

Parcel C, containing 0.077 acres, more or less;
Parcel L, containing 13.345 acres, more or less;
Parcel M, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.987 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.884 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less;
Osprey Lake, containing 79.637 acres, more or less;

On survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at Page 100;

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Register's Office in Plat Book 79 at Page 166.

Parcel Two

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of 5.349 acres, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at Page 100, and being more particularly shown and designated as:

Parcel S, containing 0.039 acres, more or less;
Parcel OA, containing 0.029 acres, more or less;
Parcel P, containing 0.154 acres, more or less;
Parcel X, containing 0.091 acres, more or less;
Parcel AE, containing 0.140 acres, more or less;
Parcel AF, containing 0.040 acres, more or less;
Parcel AC, containing 4.636 acres, more or less;
Parcel AD, containing 0.220 acres, more or less.

ALSO,

Parcel Three

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at Page 100, which plat is incorporated herein and made a part hereof by reference.

Derivation: Deed Book 1540 at Page 482

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank,

Third Party Defendant.

SUMMONS

2017 MAR 13 PM 4:58

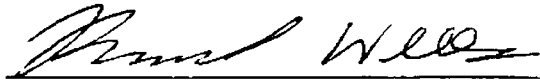
TO: THE THIRD-PARTY DEFENDANT, SOUTH STATE BANK

YOU ARE HEREBY SUMMONED and required to reply to the Corrected Third- Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your reply to the said Third-Party Complaint upon his or their subscribers at The Pearce Law Group, P.C., 1309 Professional Drive, Suite 202, Myrtle Beach, South Carolina, 29577, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to reply to the Corrected Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

[SIGNATURE PAGE TO FOLLOW]

THE PEARCE LAW GROUP, P.C.

By:



Christopher H. Pearce, Esquire

S.C. Bar No. 71083

E-mail: cpearce@pearcelawgroup.com

L. Raymond Wells, Esquire

S.C. Bar No. 102622

E-mail: rwells@pearcelawgroup.com

1309 Professional Drive, Suite 202

Myrtle Beach, South Carolina 29577

Telephone: (843) 839-3210

Facsimile: (843) 839-3214

ATTORNEYS FOR MYRTLE BEACH GOLF &
YACHT CLUB ASSOCIATION, INC.

March 13, 2017

EXHIBIT B

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank,

Third Party Defendant.

**CORRECTED SECOND AMENDED
ANSWER, COUNTERCLAIMS, AND
THIRD PARTY COMPLAINT OF MYRTLE
BEACH GOLF & YACHT CLUB
ASSOCIATION, INC.**

2017 MAR 13 PM 4:58

Defendant/Third Party Plaintiff Myrtle Beach Golf & Yacht Club Association, Inc. ("MBG&YC"), by and through its undersigned counsel, hereby presents its Second Amended Answer, Counterclaims to Plaintiffs' Complaint, and Third Party Complaint, and would otherwise show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, the allegations of Paragraphs 1 – 2 of the Plaintiffs' Complaint are admitted by this answering Defendant.
2. Responding to the allegations of Paragraph 3 of the Plaintiffs' Complaint, this answering Defendant admits that it is a non-profit corporation organized and existing under the laws of the State of South Carolina and that it is generally charged with the administration, operation, and maintenance of the subdivisions' common areas located in Horry County, South Carolina pursuant to the applicable Declaration of Covenants and Restrictions for

the subject subdivision and other related documents and that this answering Defendant has standing to enforce any alleged violations of the deed restrictions involving the real property at issue in this litigation as outlined in the Plaintiffs' Complaint on behalf of the members of the subject association. Otherwise, the allegations of Paragraph 3 are denied.

3. Upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Complaint are admitted by this answering Defendant. However, this answering Defendant would crave reference to the public record of Horry County for the accuracy of the Plaintiffs' allegations and further alleges that additional deeds, easements, agreements, and other related documents of record further define and affect the legal title and description of the real property as contained in the copy of the Deed attached as Exhibit A to the Plaintiffs' Complaint.
4. The allegations in Paragraphs 5 – 6 of Plaintiffs' Complaint are admitted by this answering Defendant.
5. Upon information and belief, the allegations of Paragraphs 7 – 10 of the Plaintiffs' Complaint are generally admitted by this answering Defendant. However, this answering Defendant would crave reference to the public record of Horry County for the accuracy of the Plaintiff's allegations and further alleges that additional deeds, easements, agreements, and other related documents of record further define and affect the legal title and description of the real property as contained in the copy of the documents attached as Exhibits A, B, C, and D to the Plaintiffs' Complaint.
6. Responding to the allegations of Paragraph 11 of the Plaintiffs' Complaint, this answering Defendant is without sufficient knowledge and/or information so as to allow it to form a belief as to Plaintiffs' allegations therein, therefore, denied.
7. Responding to the allegations of Paragraph 12 of the Plaintiffs' Complaint, this answering

Defendant admits that it contends that the Deed attached as Exhibit A to the Plaintiffs' Complaint contains valid, express limitations. Likewise, this answering Defendant admits that it understands the Plaintiffs argument that they have the legal right to develop the subject property for both single-family and multi-family purposes and that the Plaintiffs have filed a Summons and Complaint against this answering Defendant based thereon. Otherwise, denied.

8. Responding to the allegations of Paragraph 13 of the Plaintiffs' Complaint, this answering Defendant re-alleges, as if fully restated verbatim herein, each and every answer or defense contained in the preceding paragraphs.
9. Responding to the allegations of Paragraphs 14 - 15 of the Plaintiffs' Complaint, to the extent any response is required to these legal statements by this answering Defendant, admitted.
10. The allegations in Paragraphs 16 - 17 of Plaintiffs' Complaint are admitted by this answering Defendant.
11. The allegations in Paragraph 18 of Plaintiffs' Complaint, including all sub-parts thereto, are denied by this answering Defendant.

FOR A SECOND DEFENSE

12. That the foregoing defense is incorporated herein by reference as if fully repeated verbatim herein.
13. This answering Defendant asserts that pursuant to Rule 12(b)(6), SCRCP, the Plaintiffs have failed to state facts sufficient to state a cause of action against this answering Defendant for Declaratory Judgment.

FOR A THIRD DEFENSE

14. That the foregoing defenses are incorporated herein by reference as if fully repeated

verbatim herein.

15. Pursuant to Rule 19, SCRCP, to the extent any such rights, duties, and obligations are at issue in this lawsuit, said certain persons, parties, and entities involved in the original formation and development of the Myrtle Beach Golf and Yacht Club and/or others persons, parties, and entities affected by the Court's review of the matters in controversy are indispensable and necessary for the adjudication of this matter and must be joined to this action or otherwise this lawsuit should be dismissed by this honorable court for failure to do so.

FOR A FOURTH DEFENSE

16. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.
17. Plaintiffs' claims may be barred by doctrine of acquiescence, waiver, estoppel, and/or laches.

FOR A FIFTH DEFENSE

18. That the foregoing defenses are incorporated herein by reference as if fully repeated verbatim herein.
19. Plaintiffs' claims may be barred by applicable statutes of limitations and/or repose.

FOR A SIXTH DEFENSE

20. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.
21. This answering Defendant alleges the Plaintiffs have unclean hands as to its own inequitable conduct and bad faith under the facts and circumstances which give rise to its alleged injuries and/or damages.
22. Such inequitable conduct constitutes a complete bar and/or defense to any claim for

equitable relief sought hereunder by the Plaintiffs.

FOR A SEVENTH DEFENSE

23. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.
24. The Defendant reserves and does not waive any additional or further defenses as may be revealed through discovery in this matter or through investigation.

**FOR AN EIGHTH DEFENSE AND FURTHER DEFENSE AND BY WAY OF
COUNTERCLAIM OF MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION,
INC. AGAINST PLAINTIFFS**

25. That the allegations of the Plaintiffs' Complaint and all exhibits attached thereto, and the foregoing defenses asserted by this answering Defendant are incorporated by reference as if fully repeated verbatim herein.
26. Pursuant to Rule 13, SCRCP, Defendant Myrtle Beach Golf & Yacht Club Association, Inc. hereby pleads these Counterclaims in the alternative to the above answers and defenses, one or more of which may be dispositive of the Plaintiffs' Complaint.

Parties

27. Upon information and belief, Condo-World Development, LLC ("Plaintiff / Counter-Defendant Condo World") is organized and existing under the laws of South Carolina and conducts business in Horry County.
28. Upon information and belief, Heron Point Golf Limited Partnership ("Plaintiff / Counter-Defendant Heron Point") is a corporation organized and existing under the laws of South Carolina and conducts business in Horry County.
29. Myrtle Beach Golf and Yacht Club Association, Inc. ("Defendant / Counter-Plaintiff") is a non-profit corporation organized and existing under the laws of South Carolina and conducts business in Horry County.

30. Myrtle Beach Golf and Yacht Club Association, Inc.'s membership includes over one-thousand (1,000) homeowners whose community is inextricably intertwined with the Heron Point Golf Course property ("Golf Course Property") at issue in this litigation. See attached Defendant / Counter-Plaintiff's Exhibit "1".
31. Said members of the Myrtle Beach Golf and Yacht Club Association, Inc. will suffer an immediate and individualized harm should the Plaintiffs be allowed to avoid the express deed restriction and/or other covenants and limitations which are applicable to the use of the subject Golf Course Property at issue in this litigation by this Honorable Court.
32. The Counterclaims contained herein are compulsory in nature and are hereby asserted to the jurisdiction of this Court with Horry County being the proper venue for this action.

Factual Allegations

33. In or around February 1984, Justice, Inc. ("Justice") and Peoples Federal Savings and Loan ("Peoples") agreed to enter into a real estate development project (the "Project") to develop a large tract of land located in Horry County, South Carolina otherwise known as the Myrtle Beach Golf & Yacht Club ("MBG&YC").
34. Peoples funded the Project through various loans and were to receive profits from the development of the Project at which time it incorporated a wholly owned subsidiary known as Peoples Joint Venture Group, Inc. ("Peoples Joint Venture"). At that same time, Justice incorporated Myrtle Beach Golf and Yacht Club, Inc.
35. On February 29, 1984, Myrtle Beach Golf & Yacht Club, Inc. entered into a General Partnership Agreement ("Agreement") with Peoples Joint Venture for the purpose of developing the Project. This entity was then identified as the "Myrtle Beach Golf & Yacht Club, a General Partnership." Said Agreement was subsequently filed with the Horry County Register of Deeds Office on March 13, 1984 in Deed Book 855 at Page 758. See

attached Defendant / Counter-Plaintiff's Exhibit "2".

36. Article 1 (c) of said Agreement provided that the Partners would "...develop recreational facilities comprised of a club house facility, entry guardhouse, nine hole golf course"
37. This Project was to be developed on a +/- 1.035 acre tract of land otherwise known as the Enterprise Landing Tract as further described by a recorded Plat filed with the Horry County Register of Deeds Office in November 1983 in Plat Book 79 at Page 166. Tract I represented the initial first phase of the construction of the development. Tract II represented additional lands which were to be developed as an eighteen-hole golf course, tennis courts, and a swimming pool. Upon best information and belief, portions of Tracts I and II became known as the Amenities Tract (i.e. - the Golf Course Property) as further described by a recorded Plat filed with the Horry County Register of Deeds Office in February 1984 in Plat Book 79 at Page 208.
38. On February 29, 1984, James H. Dusenbury sold a certain parcel of land known as Tract I to Myrtle Beach Golf & Yacht Club, a General Partnership. Said Deed was subsequently filed with the Horry County Register of Deeds Office in Deed Book 855 at Page 764.
39. On February 29, 1984, James H. Dusenbury sold certain parcels of land known as Tract II, a/k/a the "Amenities Tract", to Myrtle Beach Golf & Yacht Club, a General Partnership which, at that time, included a Lake and a Tennis and Swimming club. Said Deed was subsequently filed with the Horry County Register of Deeds Office in Deed Book 855 at Page 769. Said Deed includes express restrictions:

(b): "...Property shall be used for a residential community (composed single-family and multi-family residences), an associated golf course, open areas, parks, lakes, and various other recreational amenities and retail shops."

See attached Defendant / Counter-Plaintiff's Exhibit "3".

40. On April 25, 1989, James H. Dusenbury sold certain parcels of land to Heron Point Golf

Club, Inc. Said Deed was subsequently filed with the Horry County Register of Deeds Office in Deed Book 1306 at Page 642. Said Deed includes express restrictions:

"The property shall be used for a residential community (composed of single-family and multi-family residences), an associated golf course, open areas, parks, lakes, and various other recreational amenities and retail shops..."

See attached Defendant / Counter-Plaintiff's Exhibit "4".

41. On October 26, 1984, the Declaration of Covenants and Restrictions for the Project, Myrtle Beach Golf & Yacht Club, a General Partnership, were filed with the Horry County Register of Deeds Office in Deed Book 1351 at Page 858. See attached Defendant / Counter-Plaintiff's Exhibit "5".
42. On January 21, 1985, the Amended and Restated Declaration of Covenants and Restrictions for Myrtle Beach Golf & Yacht Club, a General Partnership, were filed with the Horry County Register of Deeds Office in Deed Book 981 at Page 563. See attached Defendant / Counter-Plaintiff's Exhibit "6".
43. Upon best information and belief, the Amenities Tract (i.e. - the Golf Course Property) was subject to the original express deed restrictions contained in the above described deeds for the sale of Tracts I and II from Dusenbury to Myrtle Beach Golf & Yacht Club, a General Partnership and said restrictions run with the title of said lands and to the benefit of the Myrtle Beach Golf and Yacht Club Association, Inc. and its homeowners / members as more fully described therein.
44. Upon best information and belief, the Amenities Tract, (i.e. - the Golf Course Property) was subject to the above described Covenants and Restrictions as filed by Myrtle Beach Golf & Yacht Club, a General Partnership, and said restrictions run with the title of said lands and inure to the benefit of the Myrtle Beach Golf and Yacht Club Association, Inc.

and its homeowners / members as more fully described therein.

45. On June 3, 1988, American Community Development Corporation put Myrtle Beach Golf & Yacht Club into involuntary bankruptcy.
46. That as part of the resolution of the involuntary bankruptcy, Myrtle Beach Golf & Yacht Club, Peoples Federal Savings and Loan Association, Property Consultants, Inc., and Myrtle Beach Golf and Yacht Club Association, Inc. entered into an agreement whereby Peoples Federal Savings and Loan Association agreed to cause the following deed restriction on the property: "The only permitted use of this property is a golf course, country club, or other ancillary use relating to golf course or country club use." See attached Defendant / Counter-Plaintiff's Exhibit "7".
47. On September 12, 1988, Peoples filed for foreclosure on the Amenities Tract, (i.e. - the Golf Course Property) against Myrtle Beach Golf & Yacht Club, a General Partnership. Peoples was the successful bidder for the property at the subsequent judicial sale and a Master's Deed was issued by the Court as a result thereof. That being said, portions of the Court's foreclosure rulings were subject to certain appellate processes between the parties.¹ See attached Defendant / Counter-Plaintiff's Exhibits "8", "9" and "10."
48. On September 12, 1990, an Easement Maintenance Agreement ("Easement Agreement") was entered into between Peoples and Myrtle Beach Golf and Yacht Club Association, Inc. to memorialize the terms of a negotiated agreement made between them and a third party, Property Consultants, Inc., on or about July 25, 1985. See attached Defendant / Counter-Plaintiff's Exhibit "11".
49. Upon best information and belief, Peoples continued to own and operate the subject Golf

¹ For additional information on these proceedings, see generally Peoples Federal Sav. & Loan Ass'n v. Myrtle Beach Golf and Yacht Club, 310 SC 132 (Dec. 1992).

Course for a period of years thereafter in full cooperation with Myrtle Beach Golf and Yacht Club Association, Inc. and its members.

50. Thereafter, Peoples sold the Amenities Tract, (i.e. - the Golf Course Property) to Heron Point Golf Club Limited Partnership as evidenced by the Indenture Deed recorded April 15, 1992 in the Horry County Register of Deeds in Deed Book 1540 at Page 483. See attached Defendant / Counter-Plaintiff's Exhibit "12".

51. Said Indenture Deed between Peoples and Heron Point Golf Club Limited Partnership contains specific, express limitations on the future use of the expressly state that "[t]he property conveyed herein shall be subject to the following covenants:

[t]he property conveyed herein shall be subject to the following covenants:
(a) The only permitted use of this property is as a golf course, country, club, or other ancillary use relating to golf course or country club use; (b) [g]rantee, its Successors and Assigns agree to offer memberships to members of Myrtle Beach Gold and Yacht Club Association, Inc., its successors and assigns on the same basis that it offers memberships to the public at large, provided, however, that there shall be no requirement to offer memberships."

52. In relation to the above Indenture Deed, Heron Point Golf Club Limited Partnership entered a First Mortgage and Security Agreement with Peoples wherein the monies loaned for the purchase of the Amenities Tract, (i.e. - the Golf Course Property) were further secured and a copy is attached as Exhibit B to Plaintiffs' Complaint. Therein, the Mortgagor (i.e. - Heron Point Golf Club Limited Partnership) shall not remove, demolish, or materially change the use of the golf course without the prior consent of the mortgagee (i.e. - Peoples). Said First Mortgage and Security Agreement has subsequently been amended, assigned and/or transferred multiple times thereafter.

53. Thereafter, on June 10, 1992, Peoples Federal Savings and Loan Association Quit-Claimed their interest to Myrtle Beach Golf & Yacht Club Association, Inc. in "all gores or slivers of property" surrounding and/or adjacent to the Amenities Tract, (i.e. - the Golf Course

Property). Said Quit-Claim Deed was recorded in the Horry County Register of Deeds' Office in Deed Book 1554 at Page 782. See attached Defendant / Counter-Plaintiff's Exhibit "13".

54. On June 10, 1992, Peoples Federal Savings and Loan Association Quit-Claimed their interest to Myrtle Beach Golf & Yacht Club in all boulevards, road, streets, courts and common areas. Said Quit-Claim Deed was recorded in the Horry County Register of Deeds' Office in Deed Book 1554 at Page 786. See attached Defendant / Counter-Plaintiff's Exhibit "14".
55. On March 22, 2005, Heron Point Golf Club Limited Partnership obtained a Waiver of Restrictions from First Federal Savings and Loan Association of Charleston regarding the Enterprise Tracts specifically waiving the following restriction:
- a. "The only permitted use of this property is a golf course, country club or other ancillary use relating to golf course or country club use;"
- See attached Defendant / Counter-Plaintiff's Exhibit "15".
56. That Heron Point Golf Club Limited Partnership knew of the existence of the deed restrictions on the subject property dating back to 2005. See attached Defendant / Counter-Plaintiff's Exhibit "16".

Declaratory Judgment

57. That the foregoing answer(s), allegations, and defenses are incorporated hereto as if fully repeated verbatim here.
58. An active and now existing dispute and/or controversy exists between Plaintiffs' Counter-Defendants Condo World and Heron Point and Defendant / Counter-Plaintiff Myrtle Beach Golf and Yacht Club, Inc.
59. This action is brought under the provisions of Rule 57, SCRCP, and S.C. Code Ann. § 15-

53-10, the Declaratory Judgment Act, and there is a real and justiciable controversy between the parties by these proceedings, the Defendant / Counter-Plaintiff ask that this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth above and below.

60. The Defendant / Counter-Plaintiff Myrtle Beach Golf and Yacht Club Association, Inc. is informed and believes that it is entitled to a determination from this Honorable Court declaring one or more of the following decrees as relief:

- a. That the above referenced express deed restrictions contained in the "Dusenbury Deeds" for Tracts I and II are valid and run with the title of those properties to include, but not be limited to, the Amenities Tract (i.e. -- the Golf Course Property);
- b. That the above referenced Covenants and Restrictions as filed by Myrtle Beach Golf & Yacht Club, a General Partnership, and are valid and run with the title of said lands known as the Amenities Tract (i.e. -- the Golf Course Property) and otherwise inure to the benefit of the Myrtle Beach Golf and Yacht Club Association, Inc. and its homeowners / members as more fully described therein;
- c. That the Amenities Tract (i.e. -- the Golf Course Property) is a defined Common Element with the above referenced Covenants and Restrictions as filed by Myrtle Beach Golf & Yacht Club, a General Partnership, and any land use change is subject to and governed by the controls set forth in the referenced Covenants and Restrictions;
- d. That the above referenced express deed restrictions contained in the "1992 Indenture" for Tracts I and II are valid and run with the title of those properties to include but not be limited to the Amenities Tract (i.e. -- the Golf Course Property) and are otherwise not personal to the original Grantor and/or its successors in

interest:

- e. That any prior waiver, relinquishment, or release of the above described restrictions by the original Grantor and/or its successors in interest in relation to the 1992 Indenture Deed were invalid and/or are of no legal effect as to the rights of this answering Defendant / Counter-Plaintiff as to the alleged deed restrictions, Covenants and Restrictions, and/or other relevant agreements at issue in this litigation;
- f. That this answering Defendant / Counter-Plaintiff has standing to enforce the alleged deed restrictions, Covenants and Restrictions; and/or other relevant agreements at issue in this litigation;
- g. That the Plaintiff's continue to be bound by any and all restrictive language in the First Mortgage and Security Agreement as it relates to the 1992 Indenture Deed;
- h. That as a matter of law, economic hardship on the part of the Plaintiff(s) is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions; and/or other relevant agreements at issue in this litigation; and
- i. Any and all other relief that deemed to be necessary and proper by the Court.

**FOR A NINTH AND FURTHER DEFENSE AND BY WAY OF THIRD PARTY CLAIMS
AGAINST SOUTH STATE BANK AS SUCCESSOR IN INTEREST TO PEOPLES
FEDERAL SAVINGS AND LOAN**

Parties, Venue, and Jurisdiction

- 61. MBG&YC incorporates herein all prior factual allegations, defenses, and counterclaims as if fully restated verbatim herein.
- 62. Third Party Defendant South State Bank is a corporation organized to do business in the State of South Carolina with central offices in Columbia, South Carolina and is the current

successor-in-interest to Peoples Federal Savings and Loan Association.

63. That the acts that give rise to this action occurred in Myrtle Beach, Horry County, South Carolina.
64. That venue and jurisdiction are properly before this Honorable Court.

Factual Allegations

65. On April 15, 1992, Heron Point Golf Course Limited Partnership executed and delivered unto People Federal Savings and Loan Association that certain Promissory Note in the original principal sum of Three Million Six Hundred Ninety Thousand and No/100 (\$3,690,000.00) Dollars (the "Note"). The Note is secured by that certain First Mortgage and Security Agreement, dated April 15, 1992, and recorded April 15, 1992, in Mortgage Book 1669, at Page 301 (the "Mortgage").
66. On November 12, 2011, the Note and Mortgage were assigned by First Federal Savings and Loan Association of Charleston, the successor by merger to Peoples Federal Savings and Loan Association ("Peoples"), to VFC Partners 15, L.L.C. by Assignment of Mortgage and Collateral Documents, and recorded April 3, 2012, in Mortgage Book 5391, at Page 1268.
67. On April 30, 2012, the Note and Mortgage were assigned by VFC Partners 15, L.L.C. to Condo World Development, LLC by Assignment and Assumption of Mortgage and Loan Documents, and recorded May 18, 2012, in Mortgage Book 5402, at Page 2786.
68. On June 3, 1988, American Community Development Corporation put Myrtle Beach Golf & Yacht Club in involuntary bankruptcy.
69. That as part of the resolution of the involuntary bankruptcy, Myrtle Beach Golf & Yacht Club, Peoples Federal Savings and Loan Association, Property Consultants, Inc., and Myrtle Beach Golf and Yacht Club Association, Inc. entered into an agreement whereby

Peoples Federal Savings and Loan Association agreed to cause the following deed restriction on the property: "The only permitted use of this property is a golf course, country club, or other ancillary use relating to golf course or county club use."

70. On March 22, 2005, Heron Point Golf Club Limited Partnership obtained a Waiver of Restrictions from First Federal Savings and Loan Association of Charleston regarding the Enterprise Tracts specifically waiving the following restriction:

- a. "The only permitted use of this property is a golf course, country club or other ancillary use relating to golf course or county club use;"

See attached Defendant / Counter-Plaintiff's Exhibit "15".

71. That Heron Point Golf Club Limited Partnership knew of the existence of the deed restrictions on the subject property dating back to 2005. See attached Defendant / Counter-Plaintiff's Exhibit "16".

72. That South State Bank, as successor-in-interest to Peoples Federal Savings and Loan Association ("Peoples"), became aware of the deed restrictions on the subject property dating back to 2005.

THIRD PARTY CLAIM - BREACH OF CONTRACT
(As to Third Party Defendant South State Bank)

73. MBG&YC incorporates herein all prior factual allegations, defenses, and counterclaims as if fully restated verbatim herein.

74. On July 25, 1988, representatives from MBG&YC and Peoples Federal Savings and Loan Association ("Peoples"), the predecessor-in-interest to South State Bank, executed an agreement whereby Peoples agreed to "cause the following deed restriction to be placed on the property: "The only permitted use of this property is as a golf course, country club, or other ancillary use relating to golf course or country club use"" ("Agreement").

75. That South State Bank entered into the Agreement as the successor-in-interest to Peoples

and, therefore, agreed to the above-referenced deed restrictions.

76. That South State Bank has breached the original Agreement, has breached the terms and conditions of the subsequent 1992 Indenture Deed related thereto, and otherwise has failed to act in good faith by not providing the Association with any notice or information regarding the 2005 Waiver of Restrictions issued for the benefit of South State Bank and Heron Point Golf Club Limited Partnership.

77. As a result of South State Bank's breach of contract, the Defendant is entitled to actual damages, consequential damages, punitive damages, as well as attorney fees and costs.

THIRD PARTY CLAIM - CONTRACTUAL INDEMNITY
(As to Third Party Defendant South State Bank)

78. MBG&YC incorporates herein all prior factual allegations, defenses, and counterclaims as if fully restated verbatim herein.

79. That on July 25, 1988, representatives from MBG&YC and Peoples Federal Savings and Loan Association (Peoples), the predecessor-in-interest to South State Bank, executed an agreement whereby Peoples agreed to "cause the following deed restriction to be placed on the property: 'The only permitted use of this property is as a golf course, country club, or other ancillary use relating to golf course or country club use.'"

80. That in the same agreement, the parties agreed to "execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them"

81. That as the successor-in-interest to Peoples, South State Bank has agreed to indemnify

MBG&YC from said claims, including the instant claim brought by the Plaintiffs.

82. That to the extent the allegations contained in Plaintiffs' Complaint are proven true, MBG&YC has incurred expenses that were necessary to protect its interest in defending against the Plaintiffs' claims.
83. That MBG&YC is entitled to contractual indemnity from South State Bank.

THIRD PARTY CLAIM - EQUITABLE INDEMNITY
(As to Third Party Defendant South State Bank)

84. MBG&YC incorporates herein all prior factual allegations, defenses, and counterclaims as if fully restated verbatim herein.
85. That on July 25, 1988, representatives from MBG&YC and Peoples Federal Savings and Loan Association (Peoples), the predecessor-in-interest to South State Bank, executed an agreement, are signatories thereto and, therefore, MBG&YC and Peoples have a special relationship.
86. That MBG&YC is not at fault for Plaintiffs' alleged legal injury(ies).
87. That to the extent the allegations contained in Plaintiffs' Complaint are proven true, MBG&YC has incurred expenses that were necessary to protect its interest in defending against the Plaintiffs' claims.
88. That MBG&YC is entitled to equitable indemnity from South State Bank.

THIRD PARTY CLAIM
PERMANENT INJUNCTION
(As to Third Party Defendant South State Bank)

89. MBG&YC incorporates herein all prior factual allegations, defenses, and counterclaims as if fully restated verbatim herein.
90. Upon information and belief, Third Party Defendant South State Bank has legal interests in the 1998 Bankruptcy Agreement, 1992 sale of subject property to Heron Point, and

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership.

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank.

Third Party Defendant.

CERTIFICATE OF SERVICE

2017 MAR 13 PM 4:59

I hereby certify that on this 13th day of March, 2017 a copy of the above and foregoing documents have been hand delivered or mailed, first class mail, postage prepaid, properly addressed as follows:

DOCUMENTS SERVED:

- ***CORRECTED SECOND AMENDED ANSWER, COUNTERCLAIMS, AND THIRD PARTY COMPLAINT OF MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION, INC.***

COUNSEL SERVED:

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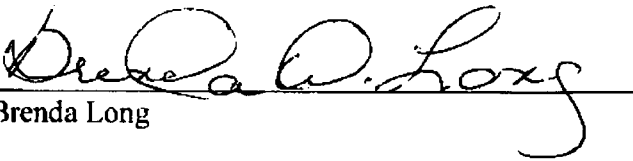

Brenda Long

EXHIBIT C

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership,)

Plaintiffs,)

vs.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)

Defendant.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)

Defendant/Third Party)
Plaintiff,)

vs.)

South State Bank,)

Third Party Defendants.)

**ORDER GRANTING IN PART AND
DENYING IN PART THE MOTION TO
DISMISS THIRD PARTY COMPLAINT OF
MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC. FILED ON BEHALF
OF THIRD PARTY DEFENDANT SOUTH
STATE BANK**

THIS MATTER COMES BEFORE THE COURT upon the Motion of South State Bank ("South State") to Dismiss the Third Party Complaint filed by Myrtle Beach Golf & Yacht Club Association, Inc. ("the Association") pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing was held before the Court on June 5, 2017, at the Horry County Judicial Center in Conway, South Carolina. Present at the hearing for South State was Attorney Audra M. Byrd. The Association was represented at the hearing by Attorney Christopher H.

Pearce. Also present were Howell V. Bellamy, Jr. and Howell V. Bellamy, III, counsel for Plaintiffs. After carefully considering the pleadings, the Motion and Memorandum submitted by South State and the arguments of counsel, the Court finds as follows:

PROCEDURAL HISTORY

Plaintiffs filed a Complaint against the Association on April 27, 2015. In their Complaint, Plaintiffs seek a judgment from the Court declaring that certain restrictions on the "golf course property" do not apply or have been waived or terminated, which would allow Plaintiffs to develop the property at issue in this case. On June 11, 2015, the Association filed an Answer, Defenses, and Counterclaims seeking declaratory judgment relief that certain restrictions do apply to the "golf course property," which would prevent residential development of the property. Subsequently, the Association filed an Amended Answer, Defenses and Counterclaims on November 5, 2015. On February 14, 2017, the Association filed a Second Amended Answer, which included a Third Party Complaint against South State, alleging causes of action for breach of contract, contractual indemnification, equitable indemnification and permanent injunction. The Association filed a revised and corrected Second Amended Answer and Third Party Complaint on March 13, 2017. In response, South State filed the present Motion to Dismiss.

FACTUAL BACKGROUND

According to the Third Party Complaint filed in this matter, in or around February 1984, Justice, Inc. ("Justice") and Peoples Federal Savings and Loan ("Peoples") entered into a real estate development project to develop a large tract of land located in Horry County, South Carolina otherwise known as the Myrtle Beach Golf & Yacht Club. [Third Party Compl. at ¶ 33]. Approximately four years later, in June of 1988, American Community Development

Corporation placed Myrtle Beach Golf & Yacht Club into involuntary bankruptcy. [Id. at ¶ 45]. During the bankruptcy proceedings, Myrtle Beach Golf & Yacht Club, Peoples, Property Consultants, Inc., and the Association entered into an agreement in order to release the property so that a foreclosure of the property could be pursued by Peoples. [Id. at ¶ 47 and Ex. 7]. This agreement was executed by the parties on July 25, 1988 (“the Bankruptcy Agreement”).

In the Bankruptcy Agreement, the parties made numerous assurances regarding the development of the property and the terms of the foreclosure. Three provisions of the Bankruptcy Agreement are of particular relevance with regard to the Third Party Complaint. First, in paragraph two on page two of the Bankruptcy Agreement, only the Association, Property Consultants, Inc. and Myrtle Beach Golf & Yacht Club, jointly and severally, agreed “to enforce the Restrictive Covenants, as they may be amended, from time to time, giving particular scrutiny to Covenant Compliance on those lots and parcels of land which are adjacent and contiguous to the golf course.” [Third Party Compl. at Ex. 7]. Peoples was specifically excepted from this provision and made no agreement to enforce the Restrictive Covenants related to the property. Second, in paragraph three on page four of the Bankruptcy Agreement, it was agreed that in the event Peoples was the successful bidder at the foreclosure sale of the property, it would cause the following deed restriction to be placed on the property: “The only permitted use of this property is a golf course, country club, or other ancillary use relating to golf course or county club use.” [Id. at Ex. 7]. Finally, paragraph two on page six of the Bankruptcy Agreement provides: “The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument.” [Id. at Ex. 7].

On September 12, 1988, Peoples filed for foreclosure and was the successful bidder for the property at the subsequent judicial sale. [Id. at ¶ 47]. Peoples continued to own the property for some time thereafter but eventually sold the property to Heron Point Golf Club Limited Partnership as evidenced by the Indenture Deed recorded on April 15, 1992 with the Horry County Register of Deeds in Deed Book 1540 at Page 483. As required under the terms of the Bankruptcy Agreement, the deed to Heron Point included the specified deed restriction language. [Id. at ¶¶ 50-51]. Peoples subsequently quitclaimed all of its remaining interest in the property to the Association. [Id. at ¶ 53-54]. On March 22, 2005, Heron Point Golf Club Limited Partnership obtained a Waiver of Restrictions from First Federal Savings and Loan Association of Charleston (successor in interest to Peoples) ("First Federal") regarding a portion of the property in which it waived the following restriction: "The only permitted use of this property is a golf course, country club or other ancillary use relating to golf course or country club use." [Id. at ¶ 55].

LEGAL STANDARD

A trial court may properly grant a motion to dismiss for failure to state facts sufficient to constitute a cause of action when the facts alleged in the complaint, along with all reasonable inferences deducible therefrom, do not entitle the plaintiff to recovery on any theory of the case. McCormick v. England, 328 S.C. 627, 632-33, 494 S.E.2d 431, 433 (Ct. App. 1997). When deciding a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the Court may only consider the allegations set forth on the face of the complaint. Dye v. Gainey, 320 S.C. 65, 67, 463 S.E.2d 97, 98 (Ct. App. 1995). "The question is whether in the light most favorable to the plaintiff, and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief." McCormick, 328 S.C. at 633, 494 S.E.2d at 433-34.

CONCLUSIONS OF LAW

A. Breach of Contract.

In support of its cause of action for breach of contract, the Association alleges that South State breached the Bankruptcy Agreement, the 1992 Indenture Deed and failed to act in good faith “by not providing the Association with any notice or information regarding the 2005 Waiver of Restrictions issued for the benefit of South State Bank and Heron Point Golf Club Limited Partnership.” [Third Party Compl. at ¶ 76]. South State argues that the Association’s claim for breach of contract must be dismissed based upon the applicable statute of limitations.

Under South Carolina law, the statute of limitations for filing an action based upon “a contract, obligation, or liability” is three (3) years. S.C. Code Ann. §15-3-530 (1) (1976). In determining when the statute of limitations begins to run, South Carolina courts have consistently adopted the “discovery rule.” See Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991); Santee Portland Cement Co. v. Daniel International Corp., 299 S.C. 269, 384 S.E.2d 693 (1989); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). Under the discovery rule, the statute of limitations commences when “the injured party knows or should have known by the exercise of due diligence that a cause of action arises from the wrongful conduct.” Walsh v. Woods, 358 S.C. 259, 264, 594 S.E.2d 548, 551 (Ct. App. 2004). A cause of action arises when it ought to have been discovered through reasonable diligence when “the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist.” Id. at 265, S.E.2d at 551 (quoting Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998)). In addition, the fact that the injured party may not realize the entire extent of the damage is irrelevant in determining when the statute of limitations begins to run.

Dean, at 364, S.E.2d at 647; *see also*, Dillon County Sch. Dist. No. Two v. Lewis Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). In Carolina Marine Handling, Inc. v. Lasch, the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs.” The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, “statutes of limitations provide potential defendants with certainty that after a period of time, they will not be hailed [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights.” Statutes of limitations are, indeed, fundamental to our judicial system.

363 S.C. 169, 175-176, 609 S.E.2d 548, 552 (Ct. App. 2005) (internal citations omitted).

In reviewing the Third Party Complaint, the Association’s breach of contract claim rests solely upon the Waiver of Restrictions executed in 2005 and recorded with the Horry County Register of Deeds on May 5, 2005. In its Motion to Dismiss, South State asserts that based upon the allegations set forth in the Third Party Complaint, the Association’s claim for breach of contract should be dismissed because the Association failed to file its claim until February of 2017, nearly twelve years after the Waiver of Restrictions was made public through the recording of the document with the Register of Deeds. South State asserts that the Association knew or should have known of the alleged breach in May of 2005, and the applicable statute of limitations began to run, at the latest, when the Waiver of Restrictions was recorded with the Register of Deeds. The Court agrees and finds that at a minimum, the Association had constructive or inquiry notice of the alleged breach of contract in May of 2005.

“[C]onstructive notice or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world.”

Spence v. Spence, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006). A party is charged with constructive notice of the contents of documents filed in conformity with applicable statutory law, which an inquiry would have revealed. See Fuller-Ahrens v. SC Dept. of Highways and Pub. Transp., 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993). “The statute of limitations begins to run at the time the individual has inquiry or constructive notice.” Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 799-800 (Ct. App. 1997) (holding that the statute of limitations began to run, at the latest, when the contested documents were publicly filed with the clerk of court).

The Court finds that the Association had notice of any alleged breach of contract on May 5, 2005, the date on which the Wavier of Restrictions was recorded with the Register of Deeds, and the time permitted by law to file suit expired, at the latest, in May of 2008. The present claim against South State was not commenced until February 14, 2017, almost nine years after the statute of limitations expired.

During the hearing before the Court, counsel for the Association argued that the three-year statute of limitations may not be applicable if the Court determines the Bankruptcy Agreement at issue is a sealed instrument, subject to the twenty-year statute of limitations found in S.C. Code Ann. § 15-3-520(b) (providing that sealed instruments are subject to a twenty-year statute of limitations). Initially, the Court notes that “whether or not an instrument is under seal, or whether or not a certain device constitutes a seal, is a question of law for the court.” 78A C.J.S. Seals § 8 (2017). Here, in the Bankruptcy Agreement attached to the Third Party Complaint as Exhibit 7, there is no physical seal or notation included with the signatures of the parties to the Bankruptcy Agreement. It is well established under South Carolina law that a contract that does not include a physical seal may only be deemed a sealed instrument where “the

contract clearly evidences an intent to create a sealed instrument.” Carolina Marine Handling, 363 S.C. at 175, 609 S.E.2d at 552.

In Carolina Marine Handling, the Court of Appeals held that the inclusion of standard attestation language, such as “IN WITNESS WHEREOF, the parties have hereunto set their hands and seals,” is insufficient to clearly evidence intent to create a sealed instrument. Carolina Marine Handling, 363 S.C. at 169, 609 S.E.2d at 551-52 (holding that generic and boiler plate language referring to seal in the standard attestation clause in a lease was not enough to demonstrate an intent to create a sealed instrument and, to hold otherwise, “would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state”). Similarly, in Orlando Residence, LTD v. Hilton Head Hotel Investors, the United States District Court for the District of South Carolina found as follows:

The settlement agreement in this case includes the following standard attestation language immediately preceding the parties’ signatures: “IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 1st day of November, 1994. South Carolina judicial precedent dictates that the settlement agreement and confession of judgment cannot be considered sealed instruments, and therefore are not subject to the twenty-year statute of limitations for sealed instruments.

Orlando Residence, 2013 U.S. Dist. LEXIS at *30-31; *see also*, South Carolina Dep’t of Social Servs. v. Winyah Nursing Homes, Inc., 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984) (holding that a contract which contained the language “the parties hereto have set their hands and seals” **and** the notation “L.S.,” an abbreviation meaning in the place of a seal, followed each of the parties’ signatures was a sealed instrument and subject to the twenty-year statute of limitations). In this case, there is no physical seal or notation following the parties’ signature, and the Bankruptcy Agreement contains only the standard attestation language which our courts have

consistently held is insufficient to create a sealed instrument. As such, the Court finds that the Bankruptcy Agreement, on its face, cannot be considered a sealed instrument.

Based on the foregoing, the Court finds that the three-year statute of limitations generally applicable to contracts applies to the Association's cause of action for breach of contract, and because this action was filed nearly nine years after the statute of limitations expired, the Association's claim for breach of contract must be dismissed.

B. Contractual Indemnification.

Contractual indemnity involves a transfer of risk for consideration, and the contract itself establishes the relationship between the parties. Rock Hill Telephone Co., Inc. v. Globe Communications, Inc., 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005). General rules that govern construction and interpretation of contracts also apply to construction and interpretation of a contract of indemnity. Laurens Emergency Medical Specialists v. M.S. Bailey & Sons Bankers, 348 S.C. 191, 558 S.E.2d 531 (Ct. App. 2002), *rev'd*, 355 S.C. 104, 584 S.E.2d 375 (2003). As with other contracts, the principal question focuses on the intent of the parties. Id. Their intention is determined from the language used in the contract. Id.

The Association relies on the following provision contained in the Bankruptcy Agreement in support of its contractual indemnification claim: "The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument." [Third Party Compl. at Ex. 7]. There is no general release attached to the Third Party Complaint or alleged in the pleading. During oral argument, counsel for the Association conceded that no such document has been produced or discovered in this action.

As such, the Court must determine whether the cited provision constitutes an indemnity agreement between the parties. Accepting the allegations of the Third Party Complaint as true, as required under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court considers the cited provision sufficient to create an agreement between the parties. “Of course, for a contract to be binding material terms cannot be left for future settlement. However, absolute certainty is not required, but only reasonable certainty. A contract will not be held unenforceable for indefiniteness because its performance is, as to particular details, left open to subsequent agreement of the parties. This is especially true where the contract provides the guidelines for the subsequent agreement.” Aperm of S.C. v. Roof, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App.1986) (internal citations omitted).

South State argues that based upon a plain reading of the cited provision, the indemnity agreement as alleged in the Third Party Complaint encompasses only claims or causes of action between or among the parties to the Bankruptcy Agreement and occurring prior to July 25, 1988, the date of the execution of the Bankruptcy Agreement. The Court agrees. The indemnification provision reads as follows: “The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument.” [Third Party Compl. at Ex. 7 (emphasis added)]. The indemnification unambiguously limits the parties’ indemnification obligations to claims and causes of action “between and/or among” the parties to the Bankruptcy Agreement prior to the date of the execution of the Bankruptcy Agreement, July 25, 1988. There is no dispute that Condo-World Development, LLC and Heron Point Golf Club Limited Partnership, Plaintiffs herein, are not

parties to the Bankruptcy Agreement, and the present action was commenced in April of 2015, nearly twenty-seven years after the Bankruptcy Agreement was executed.

Thus, the Court finds that the indemnification agreement does not apply to Plaintiffs' claims against the Association, and therefore, the Association's claim for contractual indemnification must be dismissed.

C. Equitable Indemnification.

1. Adequate Remedy at Law.

South State argues that if the Court determines a valid indemnification contract exists between the parties, the Association's claim for equitable indemnification must be dismissed. Essentially, South State argues that if the Court finds a contract exists, the Association cannot maintain an equitable indemnification claim since the Association would have an adequate remedy at law based upon the contract. During oral argument, counsel for the Association conceded that its claim for equitable indemnification was an alternative cause of action in the event the Court determined that no contract of indemnification existed between the parties.

It is well established under South Carolina law that "equity is only available when a party is without an adequate remedy at law." *EllisDon Constr., Inc. v. Clemson Univ.*, 391 S.C. 552, 707 S.E.2d 399, 401 (2011). Our courts have consistently held that "[t]he basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law." *Nutt Corp. v. Howell Road, LLC*, 396 S.C. 323, 721 S.E.2d 447, 449 (Ct. App. 2011) (citing *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250, 251 (1939)). Because the Court has determined that a valid contract of indemnification existed between the parties, the Association's claim for equitable indemnification must be dismissed. *See Nutt Corp.*, 396 S.C. at 328, 721 S.E.2d at 450

(holding that a remedy at law was available because there was a contractual agreement between the parties).

2. Failure to Plead Sufficient Facts to State a Cause of Action.

As an additional basis for dismissal, South State argues that the Association's claim for equitable indemnification fails as a matter of law because the Association has failed to plead facts sufficient to state a claim for equitable indemnification. In summary, South State argues that the Association has failed to plead damages to a third party and failed to plead any act, omission or fault on the part of South State causing any such damages to a third party, which South State argues are necessary elements to state a cause of action for equitable indemnification. The Court agrees.

South Carolina law recognizes the principle of equitable indemnification. Generally, a party may maintain an equitable indemnification action if he was compelled to pay damages because of negligence imputed to him as a result of the tortious act of another. *See e.g., Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999). However, equitable indemnification is only allowed where a "special relationship" exists between the parties. *Id.* "According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." *Id.* (citing *Stuck v. Pioneer Logging Machinery, Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552 (1983)).

Once a sufficient relationship is established, an indemnity plaintiff must prove the following elements to recover damages on an equitable indemnity claim: (1) the indemnity defendant is at fault in causing the damages of the third party; (2) the plaintiff has no fault for

those damages; and (3) the plaintiff incurred expenses that were necessary to protect his interest in defending the third party's claim, which were the fault of the defendant. Inglese v. Beal, 403 S.C 290, 299, 742 S.E.2d 687, 692 (Ct. App. 2013).

South State argues that no special relationship exists between the Association and South State. However, in its Third Party Complaint, the Association alleges a special relationship exists based upon the Bankruptcy Agreement signed by Peoples in 1988. The Association alleges that because South State is a successor in interest to Peoples, the special relationship extends to South State. Accepting as true the existence of a special relationship between the parties, the Court finds the Association has failed to plead liability or damages caused to a third party for which the Association is responsible or fault on the part of South State in causing any such damages, both of which are fatal to the Association's claim for equitable indemnification.

In this case, the main action involves a request for a declaratory judgment as to the enforceability and/or applicability of certain alleged restrictive covenants regarding "golf course property." In Plaintiffs' Complaint in the main action, there is no request for monetary damages, and there is no allegation of liability on the part of the Association. To the contrary, Plaintiffs seek a declaratory judgment from the Court, not damages from the Association. Moreover, in its Third Party Complaint, the Association has failed to plead any act, omission or fault on the part of South State allegedly causing damage to Plaintiffs. These are necessary and required elements in order to state a cause of action for equitable indemnification. Therefore, the Court finds that the Association has failed to plead facts sufficient to state a cause of action for equitable indemnification.

For the reasons set forth above, the Court finds that the Association's claim for equitable indemnification must be dismissed.

D. Permanent Injunction

In its Third Party Complaint and request for a permanent injunction, the Association requests the Court order that “South State Bank be enjoined from any future waiver of deed restrictions relating to the Heron Point Golf Course property.” [Third Party Compl. at ¶ 91]. South State argues that because any deed restrictions contained in the 1992 Indenture Deed have already been waived, there is no justiciable controversy before this Court. South State contends that there exist no further deed restrictions relating to the Heron Point Golf Course property that South State could possibly waive at a future date. The Court disagrees. The Waiver of Restrictions recorded in 2005 references only a portion of the property conveyed to Heron Point Limited Partnership in the 1992 Indenture Deed. As such, the Court finds that a future waiver as to property not referenced in the 2005 Waiver of Restrictions is possible, and therefore, the Court denies South State’s Motion to Dismiss the Association’s cause of action for a permanent injunction.

CONCLUSION

After careful review of the pleadings and hearing arguments of counsel, this Court concludes it has properly considered the Third Party Complaint of Myrtle Beach Golf & Yacht Club Association, Inc., as well as the Motion to Dismiss filed by South State Bank.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that South State Bank’s Motion to Dismiss the cause of action for breach of contract contained in the Third Party Complaint is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that South State Bank's Motion to Dismiss the cause of action for contractual indemnification contained in the Third Party Complaint is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that South State Bank's Motion to Dismiss the cause of action for equitable indemnification contained in the Third Party Complaint is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that South State Bank's Motion to Dismiss the cause of action for permanent injunction contained in the Third Party Complaint is **DENIED**;

AND IT IS SO ORDERED.

THE HONORABLE LARRY B. HYMAN, JR.
Presiding Circuit Court Judge for the Fifteenth Judicial Circuit

Dated this ____ day of _____, 2017.

_____, South Carolina



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Dismissal

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT D

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2603173**

Condo World Development LLC	Heron Point Golf Club Limited Partnership	Myrtle Beach Golf & Yacht Club Association Inc	South State Bank
-----------------------------	---	--	------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	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

**Condo World Development's Motion to Reconsider, Alter, or Amend is Denied.
Myrtle Beach Golf and Yacht Club Association, Inc.'s Motion to reconsider is Denied.**

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)
N/A	N/A	N/A

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.

	2152	9/29/2017
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC 29578

Christopher H. Pearce 1314 Professional Drive Myrtle Beach, SC 29577

Laurence Raymond Wells IV 1314 Professional Drive Myrtle Beach, SC 29577

Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578

Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - 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.



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**AMENDED CONSENT SCHEDULING
ORDER**

Pursuant to Rules 16, 26, and 39 SCRCP, the parties have stipulated that this is a non-jury matter and that the matter should be transferred to non-jury roster. Based on the above and with consent of counsel for the parties, the following schedule is hereby Ordered in this matter:

1. This matter shall be subject to a second court ordered mediation which shall be completed no later than December 31, 2017;
2. Discovery in this matter shall be completed on or before December 15, 2016; and
3. The non-jury trial of this matter shall be heard by Judge Hyman on or before January 26, 2018, or as soon as Court Administration can schedule a date certain non-jury trial date. In accordance with the above, Judge Hyman shall first determine the ultimate issue in the case of whether the deed restrictions in the alleged Indenture deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and

Heron Point Golf Club Limited Partnership ("Heron Point") recorded on April 15, 1992 are personal or rather run with title to the golf course property. Judge Hyman decided in chambers to bifurcate the personal verses real covenant issue from the remainder of the case with the consent of the parties' counsel.

4. Judge Hyman shall hear Myrtle Beach Golf & Yacht Club's outstanding Motions previously scheduled for hearing on September 11, 2017 and September 25, 2017, to include a Motion for Summary Judgment and Motion to Strike/Motion in Limine, on or before the October 30, 2017 non-jury term of court, or as soon as said Motions can be scheduled.
5. Judge Hyman shall conclude his in-camera review of the outstanding Hines document production Motions as soon as can be scheduled prior to any non-jury trial of this matter.
6. All other outstanding Motions shall be decided by Judge Hyman on or before the scheduled non-jury trial date which the Court determines are necessary to help resolve the personal verses real covenant issue with respect to the golf course property.

IT IS SO ORDERED.

Conway, South Carolina

_____, 2017

Judge Larry B. Hyman, Jr.
Fifteenth Judicial Circuit

I CONSENT:

s/ Howell V. Bellamy, Jr.
Howell V. Bellamy, Jr., Esquire
Howell V. Bellamy, III, Esquire
The Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578

Attorneys for Plaintiffs / Counter-Defendants

I CONSENT:

s/ Christopher H. Pearce
Christopher H. Pearce
The Pearce Law Group, P.C
1314 Professional Drive
Myrtle Beach, SC 29577

Attorneys for Defendant / Counter-Plaintiff / Third Party Plaintiff

I CONSENT:

s/ Audra M. Byrd
Audra M. Byrd
Turner Padgett Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578

Attorneys for Third Party Defendant
South State Bank



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Amend

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT F

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2603173**

Condo World Development LLC	Heron Point Golf Club Limited Partnership	Myrtle Beach Golf & Yacht Club Association Inc	South State Bank
------------------------------------	--	---	-------------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **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

**Defendants Myrtle Beach Golf & Yacht Club Association Inc.'s Motion for Summary Judgment and Motion to Reconsider cannot appropriately be heard
 Plaintiff Condo World Development LLC's Motion to Reconsider Alter or Amend cannot appropriately be heard at this time due to a pending appeal on this issue.
 Defendant's Motion to Strike Affidavit is continued to allow supplement of the motion.**

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)
N/A	N/A	N/A

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.

2152

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC
29578

Christopher H. Pearce 1314 Professional Drive Myrtle
Beach, SC 29577

Laurence Raymond Wells IV 1314 Professional Drive
Myrtle Beach, SC 29577

Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578

Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach,
SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Sallie Beth Todd

Renee N. Elvis - 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.



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank,

Third Party Defendant.

MOTION TO STAY

**TO: THE PLAINTIFFS AND THEIR ATTORNEY, HOWELL V. BELLAMY, III AND
THE DEFENDANTS/THIRD-PARTY DEFENDANT AND ITS ATTORNEY,
AUDRA M. BYRD:**

YOU WILL PLEASE TAKE NOTICE THAT Defendant/Third-Party Plaintiff, Myrtle Beach Golf & Yacht Club Association, Inc. (hereinafter referred to as "Myrtle Beach"), by and through its undersigned counsel, will appear before the Presiding Judge of the Court of Common Pleas for the County of Horry, South Carolina, on the tenth (10th) day after service hereof, or at such other place and time as may be determined by the Court, and there and then move for an Order of the Court to Stay pursuant to Rule 241 of the South Carolina Appellate Court Rules.

The basis for this motion is that Myrtle Beach has filed a Notice of Appeal of the Orders of the Honorable Larry B. Hyman, dated (i) September 29, 2017 and (ii) July 26, 2017. The Appeal has been assigned Civil Action No. 2017-002196 (the "Appeal"). Pursuant to Rule 241,

SCACR, the Notice of Appeal stays all matters decided in those Orders. Upon information and belief, the matters decided in those Orders are broad enough to encompass virtually the entire proceedings in the first-party action and third-party action. Therefore, Myrtle Beach requests a stay of proceedings, consistent with Rule 241, SCACR, pending determination of the Appeal.

THE PEARCE LAW GROUP, P.C.

By: /s/ Christopher H. Pearce
Christopher H. Pearce, Esquire
S.C. Bar No.: 71083
E-mail: cpearce@pearcelawgroup.com
L. Raymond Wells, Esquire
S.C. Bar No.: 102622
E-mail: rwells@pearcelawgroup.com
1314 Professional Drive
Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

ATTORNEYS FOR DEFENDANT
MYRTLE BEACH GOLF & YACHT
CLUB ASSOCIATION, INC.

November 14, 2017

EXHIBIT H

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Condo-World Developers, LLC,
And Heron Point Golf Club
Limited Partnership,)

Plaintiffs,)

vs.)

Myrtle Beach Golf & Yacht
Club Association, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTHTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-03173

AFFIDAVIT OF NICOLE M. RICHARDSON
AUTHORIZED E-FILER CERTIFYING
TECHNICAL FAILURE

FILED
Horry County
2017 NOV 15 AM 9:21
CLERK OF COURT
HORRY COUNTY, SC

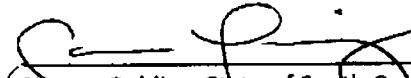
The undersigned **NICOLE M. RICHARDSON** ("Affiant") being a resident of Horry County, South Carolina, after being duly sworn under oath, hereby certifies as follows:

1. I am an authorized e-filer for The Bellamy Law Firm, which represents the Plaintiffs in the above-referenced matter.
2. As an authorized e-filer, I attempted to e-file Plaintiff's Notice of Motion and Motion to Reconsider, Alter or Amend, which requires a filing fee, on November 14th, 2017.
3. Upon logging into the e-filing portal, a notice was posted as follows:
"Based on the continued inability of the vendor that processes credit card payments to properly administer the payment process, the South Carolina Judicial Department has announced a limited Technical Failure of the E-Filing System for November 14, 2017, in accordance with Section 9(b) of the South Carolina Electronic Filing Policies and Guidelines. This limited Technical Failure only affects filings that require payment of filing fees. E-Filers should utilize the provision of Section 9(b) of the South Carolina Electronic Filing Policies and Guidelines to submit filings through available alternative procedures with respect to any document that requires a fee and must be filed on November 14, 2017..."
4. I also attempted to e-file the Motion the morning of November 15th; however, the payment processing vendor was still down.
5. Therefore, Plaintiff's Notice of Motion and Motion to Reconsider, Alter or Amend is being submitted to the Clerk of Court for traditional filing.

FURTHER, Affiant sayeth naught.


NICOLE M. RICHARDSON

Sworn to and subscribed before me
This 15 day of November, 2017


Notary Public – State of South Carolina
My Commission Expires: 7/21/2025

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant,

Myrtle Beach Golf & Yacht Club
Association, Inc.

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third-Party Defendant.

PLAINTIFFS, CONDO-WORLD
DEVELOPMENT, LLC AND HERON
POINT GOLF CLUB LIMITED
PARTNERSHIPS' NOTICE OF MOTION,
AND MOTION TO RECONSIDER, ALTER
OR AMEND FORM 4
ORDER/JUDGEMENT NOVEMBER 7, 2017
PURSUANT TO RULES 52 AND 59, SCRPC

FILED
IN CIVIL DIVISION
2017 NOV 15 AM 5:21
CLERK OF COURT
HORRY COUNTY

TO: CHRIS PEARCE, ATTORNEY FOR MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC., THE DEFENDANT AND THIRD-PARTY PLAINTIFF
AUDRA BYRD, ATTORNEY FOR SOUTH STATE BANK, THIRD-PARTY
DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, Condo-World Development,
LLC and Heron Point Golf Club Limited Partnership, hereby move the Court to
reconsider, alter or amend its ruling in its FORM 4 ORDER providing that Defendant's "*Notice
of Summary Judgment cannot be appropriately heard*" at this time due to a pending appeal,
which Order was filed on November 7, 2017; and was received by counsel for the Plaintiffs
Condo-World Development, LLC and Heron Point Golf Club Limited Partnership on November

7, 2017. See Attached Exhibit "A". This Motion is made pursuant to Rules 52 and 59, SCRCP, and upon the grounds set forth below. Plaintiffs seek this Court's Order amending its ruling on the FORM 4 ORDER as follows:

1. Defendant Myrtle Beach Golf & Yacht Club Association's Motion for Summary Judgment is not stayed under the provisions of Rule 241, SCACR.
2. Pursuant to the terms of the Amended Consent Scheduling Order, the Court will hear arguments and rule on the ultimate issue in the case of whether the deed restrictions in the alleged Indenture Deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and Heron Point Golf Club Limited Partnership ("Heron Point") recorded on April 15, 1992, are personal or real covenants. A copy of the Amended Consent Scheduling Order marked Exhibit "B" is attached hereto and incorporated as part of this Motion.

CONCLUSION

Based on the foregoing cited evidence before the Court, and upon such other arguments and submissions of counsel as may be reviewed by the Court, and viewing the evidence and all reasonable inferences to be drawn therefrom, Plaintiffs respectfully request this Court:

1. Alter and amend its FORM 4 Order to specifically consider the questions, issues, arguments and grounds presented above by Plaintiffs and make a ruling thereon;
and
2. For such other and further relief as this Court deems reasonable and proper.

Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.

s/Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

Howell V. Bellamy, Jr. (SC Bar # 68543)

nrichardson@bellamylaw.com

1000 29th Ave. N.

Myrtle Beach, SC 29577

843-448-2400 Phone

843-448-3022 Facsimile

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2603173

Condo World Development
LLC

Heron Point Golf Club
Limited Partnership

Myrtle Beach Golf & Yacht
Club Association Inc

South State Bank

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ 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

Defendants Myrtle Beach Golf & Yacht Club Association Inc.'s Motion for Summary Judgment and Motion to Reconsider cannot appropriately be heard
Plaintiff Condo World Development LLC's Motion to Reconsider Alter or Amend cannot appropriately be heard at this time due to a pending appeal on this issue.
Defendant's Motion to Strike Affidavit is continued to allow supplement of the motion.

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)
N/A	N/A	N/A

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.

Circuit Court Judge

2152

Judge Code

Date

For Clerk of Court Office Use Only

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

Howell Vaught Bellamy III PO Box 357 Myrtle Beach, SC
29578

Christopher H. Pearce 1314 Professional Drive Myrtle
Beach, SC 29577

Laurence Raymond Wells IV 1314 Professional Drive
Myrtle Beach, SC 29577

Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578

Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach,
SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Sallie Beth Todd

Renee N. Elvis - 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), SCRPC.

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.



Horry Common Pleas

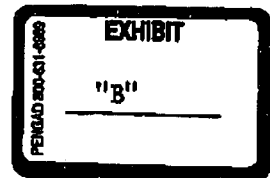
Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc

Case Number: 2015CP2603173

Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**AMENDED CONSENT SCHEDULING
ORDER**

Pursuant to Rules 16, 26, and 39 SCRCP, the parties have stipulated that this is a non-jury matter and that the matter should be transferred to non-jury roster. Based on the above and with consent of counsel for the parties, the following schedule is hereby Ordered in this matter:

1. This matter shall be subject to a second court ordered mediation which shall be completed no later than December 31, 2017;
2. Discovery in this matter shall be completed on or before December 15, 2016; and
3. The non-jury trial of this matter shall be heard by Judge Hyman on or before January 26, 2018, or as soon as Court Administration can schedule a date certain non-jury trial date. In accordance with the above, Judge Hyman shall first determine the ultimate issue in the case of whether the deed restrictions in the alleged Indenture deed between Peoples Federal Savings and Loan Association ("Peoples Federal") and

ELECTRONICALLY FILED - 2017 Oct 09 3:43 PM - Horry - COMMON PLEAS - CASE#2015CP2603173

Heron Point Golf Club Limited Partnership ("Heron Point") recorded on April 15, 1992 are personal or rather run with title to the golf course property. Judge Hyman decided in chambers to bifurcate the personal verses real covenant issue from the remainder of the case with the consent of the parties' counsel.

4. Judge Hyman shall hear Myrtle Beach Golf & Yacht Club's outstanding Motions previously scheduled for hearing on September 11, 2017 and September 25, 2017, to include a Motion for Summary Judgment and Motion to Strike/Motion in Limine, on or before the October 30, 2017 non-jury term of court, or as soon as said Motions can be scheduled.
5. Judge Hyman shall conclude his in-camera review of the outstanding Hines document production Motions as soon as can be scheduled prior to any non-jury trial of this matter.
6. All other outstanding Motions shall be decided by Judge Hyman on or before the scheduled non-jury trial date which the Court determines are necessary to help resolve the personal verses real covenant issue with respect to the golf course property.

IT IS SO ORDERED.

Conway, South Carolina

_____, 2017

Judge Larry B. Hyman, Jr.
Fifteenth Judicial Circuit

I CONSENT:

s/ Howell V. Bellamy, Jr.
Howell V. Bellamy, Jr., Esquire
Howell V. Bellamy, III, Esquire
The Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578

Attorneys for Plaintiffs / Counter-Defendants

I CONSENT:

s/ Christopher H. Pearce
Christopher H. Pearce
The Pearce Law Group, P.C
1314 Professional Drive
Myrtle Beach, SC 29577

~~Attorneys for Defendant / Counter-Plaintiff / Third Party Plaintiff~~

I CONSENT:

s/ Audra M. Byrd
Audra M. Byrd
Turner Padgett Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578

Attorneys for Third Party Defendant
South State Bank



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc
Case Number: 2015CP2603173
Type: Order/Amend

So Ordered

s/ Larry B. Hyman 2152

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Condo-World Development, LLC and
Heron Point Golf Club Limited Partnership

Plaintiffs,

v.

Myrtle Beach Golf & Yacht Club
Association

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2015-CP-26-03173

CERTIFICATE OF SERVICE

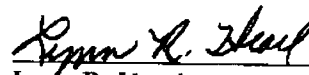
FILED
IN Horry County
2017 NOV 15 AM 5:21
CLERK OF COURT
HORRY COUNTY, SC

I, Lynn Hearl, employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P. A., Counsel for the Plaintiffs in the above-captioned action, certify that I have this day served the following via hand deliver to the counsel listed below a copy of the following:

1. Plaintiffs, Condo-World Development, LLC and Heron Point Golf Club Limited Partnerships' Notice of Motion, and Motion to Reconsider, Alter or Amend Form 4 Order/Judgment November 7, 2017 Pursuant to Rules 52 and 59, SCRCF

Christopher H. Pearce, Esquire

Audra Byrd, Esq.


Lynn R. Hearl

Myrtle Beach, South Carolina
November 15, 2017

EXHIBIT I

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) Civil Action No. 2015-CP-26-03173

Condo-World Development, LLC and)
Heron Point Golf Club Limited Partnership,)
Plaintiffs,)

vs.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)
Defendant.)

Myrtle Beach Golf & Yacht Club)
Association, Inc.,)
Defendant/Third Party)
Plaintiff,)

vs.)

South State Bank,)
Third Party Defendants.)

**ORDER GRANTING PLAINTIFFS
MOTION TO RECONSIDER, ALTER, OR
AMEND FORM 4 ORDER/JUDGMENT
NOVEMBER 7, 2017.**

A hearing was held on November 15, 2017. The hearing was scheduled for the purpose of an *in camera* review of the documents involved in the Hinds subpoena / document production and to address other outstanding matters as needed.

At the November 15, 2017 hearing, the Court reconsidered its November 7, 2017 Form 4 Order on four motions, to wit: Defendant Myrtle Beach Golf & Yacht Club Association Inc.'s Motion to Reconsider, Alter or Amend the Courts' ruling Granting South State Bank's Motion to

Dismiss, Plaintiffs' Condo World Development LLC and Heron Point Golf Club Limited Partnership's Motion to Reconsider, Alter or Amend the Courts ruling Granting South State Bank's Motion to Dismiss, Defendant's Motion for Summary Judgment, and Defendant's Motion to Strike Affidavit. A Form 4 Order was inadvertently entered, stating that Defendant's motions for Summary Judgement and to Reconsider, Alter or Amend and Plaintiffs Motion to Reconsider, Alter or Amend could not appropriately be heard at this time due to a pending appeal.

After due consideration, I hereby bifurcate those claims against the Defendant South State Bank, which were previously dismissed pursuant to my order dated October 4, 2017. That ruling is presently under appeal to the South Carolina Supreme Court. The remaining issues in the case, including the remaining cause of action against South State Bank and the issue of standing, can, in all fairness, be litigated without the necessity of hearing the matters which have been dismissed and are subject to appeal. I therefore order that those matters be bifurcated from the case. All other motions, including dispositive motions, affecting all other matters not under appeal may appropriately be heard. Thus, the November 7, 2017 Form 4 Order is hereby amended so that Defendant's Motion for Summary Judgment may be heard. Any and all dispositive motions in this action shall be appropriately noticed to this Court and shall be filed within two week of the issuance of this Order.

IT IS SO ORDERED!

November 27, 2017
Conway, South Carolina


The Honorable Judge Larry B. Hyman
Chief Administrative Judge for Common Pleas

EXHIBIT J

From: Courtmail26_DoNotReply@sccourts.org
Sent: Tuesday, December 19, 2017 12:12 PM
To: Jim Koutrakos
Subject: Motion "MSUMJM-Motion/Summary Judgment" for Case "2015CP2603173- Condo World Development LLC , plaintiff, et al VS Myrtle Beach Golf & Yacht Club Association Inc" was added to a Motions Roster for 1/4/2018 at 9:30 AM

The Non-Jury Motions Roster for January 3, 2018 thru January 4, 2018 with the Honorable Larry B Hyman Jr. presiding to be heard in Courtroom 3-D has been posted on the Horry County Clerk of Court website. If your motion(s) have been resolved/withdrawn or if you have any questions concerning this roster, please contact the Non-Jury Coordinator - Cecilia Cessna - at cessnac@horrycounty.org or at (843) 915-6803.

CONTINUANCES: Must be filed as a Motion/Order with a \$25.00 filing fee no later than Friday, December 22, 2017 at noon. All memos and briefs are to be mailed to the Judge of the week 10 days prior to the date of the hearing.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# **EXHIBIT K**

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**From:** Kerry Jardine <kjardine@pearcelawgroup.com>  
**Sent:** Tuesday, December 19, 2017 1:30 PM  
**To:** Hyman, Larry B. Law Clerk (Liz Smith)  
**Cc:** Jim Koutrakos; Audra M. Byrd (abyrd@turnerpadget.com); Bellamy III, Howell V.; Richardson, Nicole M.; Hearl, Lynn; Christopher Pearce; Raymond Wells  
**Subject:** Condo-World Development LLC, et uno v. Myrtle Beach Golf & Yacht Club  
**Attachments:** Ltr to Clerk filing Second NOA.PDF

Liz,

We are writing to you early in an abundance of caution and based on expected delays in communications due to the holidays to notify you of several potential issues with the upcoming January 4, 2018 docket with respect to Condo-World Development, LLC and Heron Point Golf Club Limited Partnership v. Myrtle Beach Golf & Yacht Association.

First, we have filed a notice of appeal of Judge Hyman's November 27, 2017 Order which permits the Motion for Summary Judgment to be heard, permits any other dispositive motions to be filed and heard, and bifurcates the causes of action against South State Bank that Judge Hyman dismissed. This will be our second interlocutory appeal in this matter and the appeal goes directly to the heart of whether the dispositive motions can be heard. For your review, I have attached the Notice of Appeal hereto.

Second, we are filing a motion with the Court of Appeals to stay this case in accordance with the automatic stay provisions of Rule 241(a), SCAPR, and consolidate the appeals. We are mindful of the fact that we also have a motion for a stay scheduled to be heard by Judge Hyman. However, we feel compelled at this point to seek the Court of Appeals intervention to enforce the stay.

Third, we are in receipt of Plaintiffs' motion for summary judgment. We note that the motion was added to the court roster for January 4, 2018, along with Plaintiffs motion to amend pleadings, this afternoon.. Although the motion was filed on December 13, 2017, we were only able to access it on December 14, 2017. Plaintiff's memorandum of law is 45 pages – many pages of which are single spaced, in whole or in part, - and attaches 492 pages of exhibits. Under the circumstances, even if we believed this motion could be appropriately heard on January 4, 2018 – which we do not, due to the two pending appeals and automatic stay – we would request an extension of time to respond to the motion based on its sheer length. Thus, we are seeking clarification from the Court that Plaintiffs' motion for summary judgment will not be heard on January 4, 2018 and respectfully request that it be continued to another term of court.

Please confirm whether the Court will continue Plaintiffs' motion for summary judgment from January 4, 2018. We appreciate it.

Kerry K. Jardine, Esq.

Associate

**THE PEARCE**  
LAW GROUP, P.C.

***Effective June 1, 2017 our new mailing address is:***

1314 Professional Drive  
Myrtle Beach, SC 29577  
(843) 839-3210 Ext. 117 / Fax (843) 839-3214

**Confidentiality Notice:** This communication (including attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, that may

attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication. If you have received this communication in error, please notify sender immediately by email and delete this communication and all copies.

**Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than to the taxpayer to whom it has been sent) without our express written consent.

# **EXHIBIT L**

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) |                                   |
| COUNTY OF HORRY         | ) | Civil Action No. 2015-CP-26-03173 |

|                                            |   |
|--------------------------------------------|---|
| Condo-World Development, LLC and           | ) |
| Heron Point Golf Club Limited Partnership, | ) |

|             |   |
|-------------|---|
| Plaintiffs, | ) |
|-------------|---|

|     |   |
|-----|---|
| vs. | ) |
|-----|---|

|                                |   |
|--------------------------------|---|
| Myrtle Beach Golf & Yacht Club | ) |
| Association, Inc.,             | ) |

|            |   |
|------------|---|
| Defendant. | ) |
|------------|---|

|                                |   |
|--------------------------------|---|
| Myrtle Beach Golf & Yacht Club | ) |
| Association, Inc.,             | ) |

|                       |   |
|-----------------------|---|
| Defendant/Third Party | ) |
| Plaintiff,            | ) |

|     |   |
|-----|---|
| vs. | ) |
|-----|---|

|                   |   |
|-------------------|---|
| South State Bank, | ) |
|-------------------|---|

|                         |   |
|-------------------------|---|
| Third Party Defendants. | ) |
|-------------------------|---|

**ORDER TO APPEAL STAY**

The question presented by the parties arises from Rules 205 and 241 of the Appellate Court Rules as to the extent of the stay, if any, created by the Defendant's, Heron Point, appeal of my previous order. On November 7, 2017 a Form 4 was submitted bifurcating the current case as to the Defendant and South State Bank. Defendant's appealed the bifurcation and raised the argument that the bifurcation would not affect the stay created by the appeal regarding South

State Bank and the entire action was stayed during the pendency of the appeal under Rule 241. Rule 241 of the Appellate Court Rules states in relevant part, "the notice of appeal in a civil matter acts to automatically stay matters decided in the order... on appeal. ... This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court. ... The lower court... retains jurisdiction over matters not affected by the appeal, including the authority to enforce any matters not stayed by the appeal." *South Carolina Appellate Court Rules*, Rule 241. Rule 205 states, "nothing in these rules shall prohibit the lower court... from proceeding with matters not affected by the appeal" *South Carolina Appellate Court Rules*, Rule 205.

A hearing was held Tuesday, January 16, 2018 in which the parties were asked to discuss the jurisdiction of this Court to proceed with the bifurcated case, which is not affected by the first appeal filed by the Defendants. Prior to the hearing, the Court was notified the Defendant, Heroin Point, had filed a second appeal, appealing my Order Granting Plaintiffs Motion to Reconsider, Alter, or Amend Form 4 Order/Judgement filed November 7, 2017, in which both parties asked the court to alter or amend the November 7, 2017 Form 4. The parties were emailed a copy of the order prior to it being filed and both submitted changes, which were taken into account of the new order. After the order was filed, Defendant filed an appeal and asked that the whole action be stayed and for a continuance from the motions for Summary Judgment to determine standing.

At the hearing the Defendant argued that the appeals included the entire suit. The parties subsequently agreed Plaintiff would file with the Court of Appeals to lift any stay created by the pending appeals.

**IT IS SO ORDERED!**

November 28, 2017  
Conway, South Carolina

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The Honorable Judge Larry B. Hyman  
Chief Administrative Judge for Common Pleas



Horry Common Pleas

**Case Caption:** Condo World Development LLC , plaintiff, et al VS Myrtle Beach  
Golf & Yacht Club Association Inc  
**Case Number:** 2015CP2603173  
**Type:** Order/Other

So Ordered

s/ Larry B. Hyman 2152

# **EXHIBIT M**

|                                             |   |                                           |
|---------------------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS              |
| COUNTY OF HORRY                             | ) | CIVIL ACTION NO. 2015-CP-26-03173         |
| Condo-World Development, LLC and)           | ) |                                           |
| Heron Point Golf Club Limited Partnership ) | ) |                                           |
| Plaintiffs,                                 | ) |                                           |
| vs.                                         | ) | <b>PLAINTIFFS CONDO-WORLD</b>             |
|                                             | ) | <b>DEVELOPMENT, LLC AND HERON POINT</b>   |
| Myrtle Beach Golf & Yacht Club)             | ) | <b>GOLF CLUB LIMITED PARTNERSHIP'S</b>    |
| Association, Inc.,                          | ) | <b>AMENDED ANSWER TO CORRECTED</b>        |
|                                             | ) | <b>SECOND AMENDED ANSWER,</b>             |
| Defendant/Third-Party )                     | ) | <b>COUNTERCLAIMS, AND THIRD-PARTY</b>     |
| Plaintiff,                                  | ) | <b>COMPLAINT OF THE DEFENDANT</b>         |
|                                             | ) | <b>MYRTLE BEACH GOLF &amp; YACHT CLUB</b> |
| vs.                                         | ) | <b>ASSOCIATION, INC.</b>                  |
|                                             | ) |                                           |
| South State Bank,                           | ) |                                           |
|                                             | ) |                                           |
| Third-Party Defendant.                      | ) |                                           |

---

**TO: CHRISTOPHER H. PEARCE, ESQUIRE, ATTORNEY FOR THE  
DEFENDANT AND THIRD PARTY PLAINTIFF MYRTLE BEACH GOLF  
& YACHT CLUB ASSOCIATION, INC.**

**NOW COMES** the Plaintiffs Condo-World Development, LLC and Heron Point Golf Club Limited Partnership (hereinafter, "Condo-World" and "Heron Point Golf Club") answering the Corrected Second Amended Answer, Counterclaims, and Third Party Complaint of the Defendant Myrtle Beach Golf & Yacht Club Association, Inc. (hereinafter, "MBG&YCA") herein, and would respectfully allege and show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE**  
**(General Objections Applicable to All Allegations)**

1. Each and every allegation that is not hereafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.
2. These answering Plaintiffs Condo-World and Heron Point Golf Club hereby

object to any allegations which in any way attempt to characterize, interpret, describe, or explain the legal effect of any written document, or provision thereof, which is referred to, referenced, or incorporated with Defendant MBG&YCA's Corrected Second Amended Answer, Counterclaims, and Third-Party Complaint ("Second Amended Answer, Counterclaims, and Third-Party Complaint"), and to which document or provision these answering Plaintiffs specifically crave reference, and specifically demand strict proof thereof via reference to a proper legal definition, interpretation, and/or reference obtained from the entire document or other document of record.

3. These answering Plaintiffs Condo-World and Heron Point Gold Club deny the allegations contained in Paragraphs 1-11 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint that are inconsistent and contrary to the allegations contained in its Plaintiffs' Complaint and strict proof is demanded thereof.

4. These answering Plaintiffs Condo-World and Heron Point Golf Club deny the allegations contained in Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, regarding Affirmative Defenses Two through Seven, and demand strict proof thereof.

5. The allegations contained in Paragraphs 25 and 26 of the Defendant MBG&YCA's Answer require no response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the allegations contained in Paragraphs 25 and 26 are denied and strict proof is demanded thereof.

6. The allegations contained in Paragraphs 27, 28 and 29 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint are admitted.

7. Responding to the allegations of Paragraph 30 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, these answering Plaintiffs are without sufficient knowledge and/or information so as to allow it to form a belief as to the Defendant's allegations therein, therefore, denied and strict proof is demanded thereof.

8. The allegations contained in Paragraph 31 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint is denied and strict proof is demanded thereof.

9. The allegations contained in Paragraph 32 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint does not require a response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraph 32 and strict proof is demanded thereof.

10. Responding to the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, these answering Plaintiffs Condo-World and Heron Point Golf Club would crave reference to the public records of Horry County for the accuracy of the Defendant's allegations. The Plaintiffs deny all allegations contained in these Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 that are inconsistent with the information contained in the public records on file with the Office of the Horry County Clerk and/or the Office Registered Deeds. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 and strict proof is demanded thereof.

11. The allegations contained in Paragraphs 57, 58, and 59 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint require no response by these answering Plaintiffs Condo-World and Heron Point Golf Club. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 57, 58, and 59, and strict proof is demanded thereof.

12. The allegations in Paragraph 60 of the Defendant MBG&YCA's Second Amended Answer, Counterclaims, and Third-Party Complaint, including all sub-parts thereto, are denied by these answering Plaintiffs Condo-World and Heron Point Golf Club and strict proof is demanded thereof.

13. The allegations of Paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 including prayer for relief and its sub-parts A, B, C, D, E, F, and G are not directed at the Plaintiffs and do not require a response from them. To the extent a response is required, Plaintiffs deny the allegations of these paragraphs and demand strict proof thereof.

#### **FOR A SECOND DEFENSE**

14. That the foregoing defense is incorporated herein by reference as if fully repeated verbatim herein.

15. These answering Plaintiffs Condo-World and Heron Point Golf Club assert that pursuant to Rule 12(b)(6), SCRCP, the Defendant MBG&YCA has failed to state facts sufficient to state a Counterclaim against these answering Plaintiffs for Declaratory Judgment.

#### **FOR A THIRD DEFENSE**

16. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

17. Defendant MBG&YCA's claims may be barred by doctrine of acquiescence, waiver, estoppel, and/or laches.

**FOR A FOURTH DEFENSE**

18. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

19. These answering Plaintiffs Condo-World and Heron Point Golf Club allege the Defendant MBG&YCA has unclean hands as to its own inequitable conduct and bad faith under the facts and circumstances which give rise to its alleged injuries and/or damages.

20. Such inequitable conduct constitutes a complete bar and/or defense to any counterclaim for equitable relief sought hereunder by the Defendant.

**FOR A FIFTH DEFENSE**

21. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

22. The Heron Point golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course, was not submitted and/or dedicated as part of the MBG&YCGC Subdivision's common areas; and, consequentially, it is not subject to the declaration of covenants.

**FOR A SIXTH DEFENSE**

23. That the foregoing defenses are incorporated hereby reference<sup>4</sup> as if fully repeated verbatim herein.

24. That the Myrtle Beach Golf & Yacht Club Subdivision ("MBG&YCS")'s amended and restated declaration of covenants and restrictions<sup>1</sup> ("declaration of covenants") do not run with the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course.

---

<sup>1</sup> The Amended and Restated Declaration of Covenants and Restrictions for Myrtle Beach Golf & Yacht Club Subdivision, recorded in Deed Book 931 at Page 563.

**FOR A SEVENTH DEFENSE**

25. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

26. The use restrictions referenced in the "Heron Point Deed" recorded in Deed Book 1540, at Page 482, were personal to the grantor/covenanter, and never ran with the golf course property formally known as the Myrtle Beach Golf & Yacht Club Golf Course.

**FOR AN EIGHTH DEFENSE**

27. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

28. Even if the Heron Point Golf Course Property is subject to the declaration of covenants, which is expressly denied, due to changed economic circumstances the golf course property is no longer unsuitable for use as a golf course. The doctrine of changed economic circumstances is a complete bar to the Defendant MBG&YCA's counterclaims.

**FOR A NINTH DEFENSE**

29. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

30. These answering Plaintiffs Condo-World and Heron Point Golf Club assert the Defendant MBG&YCA lacks standing as a complete bar to its counterclaims.

**FOR A TENTH DEFENSE**

31. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

32. Upon information and belief, some or all of the Defendant MBG&YCA's Answer is barred by the applicable statute of limitation.

**FOR AN ELEVENTH DEFENSE**

33. That the foregoing defenses are incorporated hereby reference as if fully repeated verbatim herein.

34. The Plaintiffs Condo-World and Heron Point Golf Club reserve and do not waive any additional or further defenses as may be revealed through discovery in this matter or through investigation.

**WHEREFORE**, having fully responded to the corrected Second Amended Answer, Counterclaims, and Third-Party Complaint of the Defendant, Myrtle Beach Golf & Yacht Club Association, Inc., Plaintiffs Condo-World and Heron Point Golf Club pray for the following relief:

1. Corrected Second Amended Answer, Counterclaims, and Third Party Complaint of the Defendant, Myrtle Beach Golf & Yacht Club Association, Inc., be dismissed with prejudice and the relief requested therein be denied;
2. That they be awarded costs and attorney fees in this matter in accordance with State law; and
3. That this Honorable Court award such other and further relief as it may deem just and proper.

Bellamy, Rutenberg, Copeland,  
Epps, Gravely & Bowers, P.A.

s/Howell V. Bellamy, III  
Howell V. Bellamy, III (SC Bar # 66575)  
[hbellamyiii@bellamylaw.com](mailto:hbellamyiii@bellamylaw.com)  
Howell V. Bellamy, Jr. (SC Bar # 68543)  
[nrichardson@bellamylaw.com](mailto:nrichardson@bellamylaw.com)  
1000 29<sup>th</sup> Ave. N.  
Myrtle Beach, SC 29577  
843-448-2400 Phone  
843-448-3022 Facsimile  
ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, SC  
August 18, 2017