THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY CUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2017-002196

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SC Court of Appeals

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

v.

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

AND

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

v.

South State Bank.....Respondent

VOLUME I

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South State Bank.....Respondent

RECORD ON APPEAL

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THE STATE OF SOUTH CAROLINA
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THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Reconsideration Form 4 Order, October 4, 2017

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.

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

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	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
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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.

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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

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

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, July 26, 2017

ELECTRONICALLY FILED - 2017 Jul 26 10:59 AM - HORRY - COMMON PLEAS - CASE#2015CP2603173

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 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.

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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

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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].

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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.

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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.

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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."

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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

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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

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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.

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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

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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

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(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

ELECTRONICALLY FILED - 2017 Jul 26 10:59 AM - HORRY - COMMON PLEAS - CASE#2015CP2603173

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.

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

ELECTRONICALLY FILED - 2017 Jul 26 10:59 AM - HORRY - COMMON PLEAS - CASE#2015CP2603173

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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

Electronically signed on 2017-07-26 10:54:36 page 16 of 16

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Plaintiffs Verified Complaint for Declaratory Judgment Relief Against Defendant Myrtle Beach Golf and Yacht Club Association, Inc. April 27, 2015

STATE OF SOUTH CAROLI)

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))

)

~~2015-CP-26~~

vs.)

15 3173

)

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
Telephone #: 843-448-2400
Fax #: 843-448-3022
Other:
E-mail: hbellamyiii@bellamylaw.com

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*

x☐ 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.

x☐ 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*)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice	☐ Assault/Slander/Libel	☐ Claim & Delivery (400)
☐ Debt Collection	☐ Legal Malpractice	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice	☐ Motor Vehicle Accident	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	Case # 20____-NI-____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal	☐ Personal Injury (350)	☐ Possession (450)
	~~☐ Other (299)~~	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus	☐ Relief (820)	☐ Magistrate's Judgment	☐ Magistrate-Criminal
☐ Other (599)	☐ Permanent Injunction	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture—Consent	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)

24

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)
- XX Other (799) **Declaratory Judgment**
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Submitting Party Signature: Haswell V. Bellamy III **Date:** 4-27-15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, 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 prohibiti

    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	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**CIVIL ACTION NO. 2015-CP-26-** 3173
	)	
Condo-World Development, LLC and Heron Point Golf Club Limited Partnership	)	
	)	
Plaintiffs,	)	
	)	**SUMMONS**
	)	
Myrtle Beach Golf & Yacht Club Association, Inc.	)	
	)	
	)	
Defendant.	)	
	)	

FILED
HORRY COUNTY
2015 APR 27 PM 4:39
MELANIE HUGGINS-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
dnep@bellamylaw.com
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	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2015-CP-26- 3193
	)	
Condo-World Development, LLC, and Heron Point Golf Club Limited Partnership,	)	
	)	
Plaintiffs,	)	
	)	**PLAINTIFFS VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT RELIEF AGAINST DEFENDANT MYRTLE BEACH GOLF AND YACHT CLUB ASSOCIATION, INC.**
v.	)	
	)	
Myrtle Beach Golf & Yacht Club Association, Inc.	)	
	)	
	)	
	)	
	)	
Defendant.	)	
	)	

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MELANIE HUGGINS-WARD
CLERK OF COURT

The Plaintiffs, Condo-World Development, LLC and Heron Point Golf Club Limited Partnership, by and through its undersiged 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 restrictions[1] ("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 restrictions[2] 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;

---

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

[2]The "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 posses no title and interest in the golf course property;

h. That even if the use restrictions[3] 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;

---

[3]James 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, 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

2015-CP 26 3173

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF HORRY)

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HORRY COUNTY
2015 APR 27 PM 4:39
MICHELLE HUGGINS WARD
CLERK OF COURT

PERSONALLY appeared before me the Plaintiffs, in the foregoing action who, being duly sworn says:

(a) That the Deponents have read the allegations contained in the attached pleadings consisting of Eight (8) pages.

(b) That the attached pleading was prepared by the Deponents' attorney based upon information the Deponents have personally furnished to said attorney.

(c) That the allegations contained in the attached pleading are true and correct, and are based upon the personal knowledge of the Deponents, except for those allegations which are based upon the Deponents' information and belief and, as to those, the Deponents verily believe the same to be true.

(d) That the Deponents have authorized said attorney to file the attached pleading, to present the same to the Court and secure any necessary Orders based thereon, and to secure service upon the adverse party of the attached pleading and necessary process based thereon.

CONDO-WORLD DEVELOPMENT, LLC.

By: _____

Its: President

HERON POINT GOLF CLUB
DEVELOPMENT PARTNERSHIP

By: _____

Its: Managing Partner

SWORN to before me this 27th

day of April, 2015

_____ (LS)
Notary Public for South Carolina

My Commission Expires: 10-15-2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2015-CP-26-3173
	)	
Condo-World Development, LLC, and Heron Point Golf Club Limited Partnership,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CERTIFICATE OF MAILING
Myrtle Beach Golf & Yacht Club Association, Inc.	)	
	)	
	)	
	)	
Defendants.	)	

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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, Gravely & 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

Deed Bk. 1540 Pg. 482 59166

STATE OF SOUTH CAROLINA)
) [redacted]
COUNTY OF HORRY)

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R.M.C.

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4510 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:

Personal Covenant

(a) [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]

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

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and filed for record in the Office of the R.M.C. for Horry County in Real Estate Plat Book 119 at pages 162 ____.

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 License 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, 1986, recorded in said Register's office on February 13, 1986 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, 1988, recorded in said Register's office on September 8, 1988 in Deed Book 1218 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,

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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 nine 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: _____

ITS: _____

BY: _____

ITS: Vice President

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

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

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

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/13/97.

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 920.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

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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 [illegible], 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 9.864 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.

023, 024, 025 (Parcel I) 4-14-92

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX 900.00

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX 900.00

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX 910.00

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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 4.626 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 ... Blk _ Parcel

4-16-92

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184-00-01-037 [illegible] 1992, 043 (Parcel 2)
Map . Blk Parcel

EXHIBIT B

59166

STATE OF SOUTH CAROLINA)
) FIRST MORTGAGE AND SECURITY AGREEMENT
COUNTY OF HORRY)

FILED
HORRY COUNTY
92 APR 15 PM 3:38
R.M.C.

1669 PG 301

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,

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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

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. Mortgagor 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

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 Mortgageee 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

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) waivers 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:

_____(SEAL)
~~Secretary~~ Vice

Peoples Federal Savings and Loan 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: _____

Its: _____

ATTEST:

_____(SEAL)
~~Secretary~~ Vice President

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

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.

Notary Public for South Carolina (L.S.)

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

32

Document#: 2012000037369, MTG BK: 5391 PG: 1268 DOCTYP 008 04/03/2012 at 12:30:53 PM, 1 OF 5 BALLERY V. SKIPPER, HORRY COUNTY, S REGISTRAR OF DEEDS

EXHIBIT C

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

950101 0000

(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:

By:
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.

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;
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Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
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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:

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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

32

Instrument#: 2012000056572, MTG BK: 5402 PG: 2786 DOCTYPE: 008 05/18/2012 at 02:16:35 PM, 1 OF 6 BALLE V. SKIPPER, HORRY COUNTY, SC GISTRAR OF DEEDS

EXHIBIT
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

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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.

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:

Printed Name: Shirley Coleman

Printed Name: Deann Anderson

By: Deborah D. Butler

Name: Deborah D. Butler

Title: Vice President

ASSIGNEE: **CONDO WORLD DEVELOPMENT, LLC**

WITNESS:

Printed Name: Deborah Meekins

Printed Name: Katharine M. Heaton

By:

Name: Ralph Cudlipp, 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.

SIGNATURE OF WITNESS

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

NOTARY PUBLIC FOR STATE OF TEXAS

ANGELA GOETTE
Notary Public
STATE OF TEXAS
My Comm. Exp. 04/21/2015

THE STATE OF SC
COUNTY OF Horry

Condo-World Development, LLC

PERSONALLY appeared before me the undersigned witness who made oath that (s)he saw the within named ~~Coastal Capital Partners, 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 OF WITNESS

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

NOTARY PUBLIC FOR ~~STATE OF~~ SC

Notary [illegible] South Carolina
[illegible]
My Commission Expires: 8-25-13

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:
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;
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Parcel T, containing 34.843 acres, more or less;
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Parcel AB, containing 11.924 acres, more or less;
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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 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.

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Parcel X, containing 0.091 acres, more or less;
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ALSO,

Parcel Three

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Derivation: Deed Book 1540 at Page 482

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Answer, Defenses and Counterclaims of Defendant Myrtle Beach Golf & Yacht Club Association, Inc., June 11, 2015

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.

ANSWER, DEFENSES AND COUNTERCLAIMS OF DEFENDANT MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION, INC.

FILED
HORRY COUNTY
2015 JUN 11 PM 4:27
PLANE HIGGINS-WEBB
CLERK OF COURT
RB

The Defendant, Myrtle Beach Golf & Yacht Club Association, Inc. ("MBG&YC"), by and through its undersigned counsel, hereby Answers Plaintiffs' Complaint, makes a Counterclaim thereto, 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 argue that they have the

legal right to develop the subject property for both single-family and mulit-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

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

10. This answering Defendant asserts that pursuant to Rule 12(b)(6), SCRCP, the Plaintiffs have filed to state facts sufficient to state a cause of action against this answering Defendant for Declaratory Judgment.

FOR A THIRD DEFENSE

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

12. 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

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

14. Plaintiffs' claims may be barred by doctrine of acquiescence, waiver, estoppel, and/or laches.

FOR A FIFTH DEFENSE

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

16. 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.

17. Such inequitable conduct constitutes a complete bar and/or defense to any claim for equitable relief sought hereunder by the Plaintiffs

FOR A SIXTH DEFENSE

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

19. 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 A SEVENTH DEFENSE AND FURTHER DEFENSE AND BY WAY OF COUNTERCLAIM OF MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION, INC. AGAINST PLAINTIFFS

20. 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.

21. 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:

22. 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.

23. 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.

24. 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.

25. 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".

26. 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.

27. 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

28. 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").

29. 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.

30. 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".

31. 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..."

32. 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.

33. 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.

34. 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".

35. 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 "4".

36. 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 "5".

37. 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 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.

38. 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.

39. 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 "6", "7" and "8."

40. 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 "9."

41. Upon best information and belief, Peoples continued to own and operate the subject Golf Course for a period of years thereafter in full cooperation with Myrtle Beach Golf and Yacht Club Association, Inc. and its members.

42. 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 "10".

43. 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, it Successors and Assigns agree to offer memberships to members

[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).

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."

44. 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.

45. 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 "11".

46. 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 "12".

COUNT 1:
COUNTERLCLAIM – DECLARATORY JUDGMENT

47. That the foregoing answer(s), allegations, and defenses are incorporated hereto as if

fully repeated verbatim here.

48. 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.

49. 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.

50. 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 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;

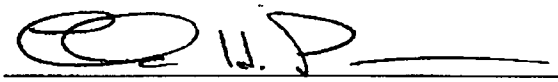
h. That as a matter of law, economic hardship on the part of the Plaintiff(s) is not a legal justification for Court ordered modification, waiver, relinquishment, or release of the alleged deed restrictions, Covenants and Restrictions; and/or other relevant agreements at issue in this litigation; and

i. Any and all other relief that deemed to be necessary and proper by the Court.

WHEREFORE, Defendant Myrtle Beach Golf and Yacht Club Association, Inc., prays that this Honorable Court inquire into the matters alleged, and for the following relief:

1. For an Order from the Court dismissing the Plaintiffs' Complaint and its request for declaratory judgment on the grounds stated therein;
2. For an Order from the Court granting the Defendant / Counter-Plaintiff's Counterclaim and its request for declaratory judgment on the grounds stated herein, including but not limited to, paragraph 50 above (including all subparts thereto);
3. For attorney's fees and costs, and recoverable expenses in this action; and
4. For such other relief as the Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

By: 

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

June 11, 2015

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.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2015 a copy of the above and foregoing documents have been hand delivered, properly addressed as follows:

Documents Served:

- ***DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT***

Counsel Served:

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

2015 JUN 11 PM 4:27
CLERK OF COURT
HORRY COUNTY

Eleanor Cooper
Eleanor Cooper

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Plaintiffs' Answer to the Affirmative Defenses and Counterclaims of the Defendant Myrtle Beach Golf & Yacht Club Association, Inc., July 14, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2015-CP-26-03173
	)	
Condo-World Development, LLC, and Heron Point Golf Club Limited Partnership,	)	
	)	
Plaintiffs,	)	
	)	**PLAINTIFFS' ANSWER TO THE AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF THE DEFENDANT MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION, INC.**
v.	)	
	)	
Myrtle Beach Golf & Yacht Club Association, Inc.	)	
	)	
Defendant.	)	

HORRY COUNTY
CLERK OF COURT
2015 DEC 14 AM 8:14

TO: CHRISTOPHER H. PEARCE, ESQUIRE, ATTORNEY FOR DEFENDANT 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 Affirmative Defenses and Counterclaims of the Defendant Myrtle Beach Golf & Yacht Club Association, Inc.(hereinafter, "MBG&YCA") herein, 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 contained in the Defendant MBG&YCA 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 Answer, Affirmative Defenses and Counterclaims ("Answer"), 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 Golf Club deny the allegations contained in Paragraphs 1-11 of the Defendant MBG&YCA's Answer 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 9-19[1] of the Defendant MBG&YCA's Answer, regarding Affirmative Defenses Two through Seven, and demand strict proof thereof.

5. The allegations contained in Paragraphs 20 and 21 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 20 and 21 are denied and strict proof is demanded thereof.

6. The allegations contained in Paragraphs 22, 23 and 24 of the Defendant MBG&YCA's Answer are admitted.

7. Responding to the allegations of Paragraph 25 of the Defendant MBG&YCA's

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1The Defendant's numbering is off. So the Plaintiffs responded by answering the same paragraphs twice when called for under the circumstances.

Answer, 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 26 of the Defendant MBG&YCA's Answer are denied and strict proof is demanded thereof.

9. The allegations contained in Paragraphs 27 of the Defendant MBG&YCA's Answer do 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 27 and strict proof is demanded thereof.

10. Responding to the allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Defendant MBG&YCA's Answer, 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 Condo-World and Heron Point Golf Club deny all allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, and 36 of the Defendant's Answer that are inconsistent with the information contained in the public records on file with the Horry County Clerk's Office. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 28, 29, 30, 31, 32, 33, 34, 35, and 36 and strict proof is demanded thereof.

11. The allegations contained in Paragraphs 37 and 38 of the Defendant MBG&YCA's Answer are denied and strict proof is demanded thereof.

12. Responding to the allegations contained in Paragraphs 39, 40, 41, 42, 43, 44, 45, and 46 of the Defendant MBG&YCA's Answer, 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 39, 40, 41, 42, 43, 44, 45,and 46 that are inconsistent with the information contained in the public records on file with the Horry County Clerk's Office. To the extent a response is required, the Plaintiffs deny the allegations contained in Paragraphs 39, 40, 41, 42, 43, 44, 45, and 46 and strict proof is demanded thereof.

13. The allegations contained in Paragraphs 47, 48, and 49 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 Plaintiffs deny the allegations contained in Paragraphs 47, 48, and 49, and strict proof is demanded thereof.

14. The allegations in Paragraph 50 of the Defendant MBG&YCA's Answer, including all sub-parts thereto, are denied by these answering Plaintiffs Condo-World and Heron Point Golf Club and strict proof is demanded thereof.

FOR A SECOND DEFENSE

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

16. 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

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

18. Defendant MBG&YCA's claims may be barred by doctrine of acquiescence, waiver,

estoppel, and/or laches.

FOR A FOURTH DEFENSE

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

20. 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.

21. 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

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

23. 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

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

25. That the Myrtle Beach Golf & Yacht Club Subdivision ("MBG&YCS")'s amended and restated declaration of covenants and restrictions[2] (" declaration of covenants") do not run with

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

the golf course property, formally known as the Myrtle Beach Golf & Yacht Club Golf Course.

FOR A SEVENTH DEFENSE

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

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

FOR AN EIGHTH DEFENSE

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

29. 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

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

31. 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

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

33. 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

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

35. 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.

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

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843-448-3022 Facsimile

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2015-CP-26-03173
	)	
Condo-World Development, LLC, and Heron Point Golf Club Limited Partnership,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	**CERTIFICATE OF MAILING**
Myrtle Beach Golf & Yacht Club Association, Inc.	)	
	)	
	)	
Defendant.	)	

HORRY COUNTY
2015 JUL 14 AM 8:14
CLERK OF COURT

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 hand delivered a copy of Plaintiffs' Answer to the Affirmative Defenses, and Counterclaims of the Defendant Myrtle Beach Golf & Yacht Club Association, Inc. to the address listed below.

Christopher H. Pearce, Esquire
The Pearce law Group, P.C.
1309 Professional Drive, Suite 202
Myrtle Beach, SC 29577

Lynn R. Hearl

Myrtle Beach, South Carolina
July 13, 2015

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Amended Answer, Defenses and Counterclaims of Defendant Myrtle Beach Golf & Yacht Club Association, Inc., November 5, 2015 (without exhibits)

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.

AMENDED ANSWER, DEFENSES AND COUNTERCLAIMS OF DEFENDANT MYRTLE BEACH GOLF & YACHT CLUB ASSOCIATION, INC.

The Defendant, Myrtle Beach Golf & Yacht Club Association, Inc. ("MBG&YC"), by and through its undersigned counsel, hereby Answers Plaintiffs' Complaint, makes a Counterclaim thereto, 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 argue that they have the

legal right to develop the subject property for both single-family and mulit-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 defenses are 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 filed 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 herein by 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 FIFTH DEFENSE

20. That the foregoing defenses are incorporated herein by 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 SIXTH DEFENSE

23. That the foregoing defenses are incorporated herein by 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 A SEVENTH 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."

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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 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 as 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."

[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).

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 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, it 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 as 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."

COUNT 1:
COUNTERLCLAIM – DECLARATORY JUDGMENT

57. That the foregoing answer(s), allegations, and defenses are incorporated herein as if fully repeated verbatim herein.

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 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;

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.

WHEREFORE, Defendant Myrtle Beach Golf and Yacht Club Association, Inc., prays that this Honorable Court inquire into the matters alleged, and for the following relief:

1. For an Order from the Court dismissing the Plaintiffs' Complaint and its request for declaratory judgment on the grounds stated therein;
2. For an Order from the Court granting the Defendant / Counter-Plaintiff's Counterclaim and its request for declaratory judgment on the grounds stated herein, including but not limited to, paragraph 50 above (including all subparts thereto);
3. For attorney's fees and costs, and recoverable expenses in this action; and
4. For such other relief as the Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

By: _____

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

November 5, 2015

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Second Amended Answer, Counterclaims and Third Party Complaint of Myrtle Beach Golf & Yacht Club Association, Inc., February 14, 2017 (with exhibits)

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.

SUMMONS

2017 FEB 14 PM 2:02

TO: THE THIRD-PARTY DEFENDANT, SOUTH STATE BANK

YOU ARE HEREBY SUMMONED and required to reply to the 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 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]

COPY

THE PEARCE LAW GROUP, P.C.

By: _____

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E-mail: cpearce@pearcelawgroup.com
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E-mail: rwells@pearcelawgroup.com
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Myrtle Beach, South Carolina 29577
Telephone: (843) 839-3210
Facsimile: (843) 839-3214

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

February 14, 2017

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.

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

2017 FEB 14 PM 2:02

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

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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 mulit-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.

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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

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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.

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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, it 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 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;

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, LLC, 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, 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.

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 usé 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 above provision of the Agreement by...

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 related transactions thereafter, including waiver of certain deed restrictions on the various tracts of land comprising the Heron Point Golf Course Property at issue in this case.

91. That South State Bank be enjoined from any future waiver of deed restrictions relating to the Heron Point Golf Course property.

92. There is an extreme likelihood that any future waiver of deed restrictions relating to the Heron Point Golf Course property will cause irreparable harm to the Defendant.

93. South State Bank will not be unduly burdened by the issuance an injunction.

94. That remedies available at law are inadequate to compensate for the above harm to

Defendant.

95. That, considering the balance of hardships between South State Bank and the Defendant, a remedy in equity is warranted.

96. That the public interest would not be disserved by a permanent injunction.

WHEREFORE, Defendant/Third Party Plaintiff Myrtle Beach Golf and Yacht Club Association, Inc., prays that this Honorable Court inquire into the matters alleged, and for the following relief:

A. For an Order from the Court dismissing the Plaintiffs' Complaint and its request for declaratory judgment on the grounds stated herein;

B. For an Order from the Court granting the Defendant / Counter-Plaintiff's Counterclaim and its request for declaratory judgment on the grounds stated herein, including but not limited to, paragraph 60 above (including all subparts thereto);

C. For a permanent injunction against the Third Party Defendant South State Bank in accordance with the paragraphs above;

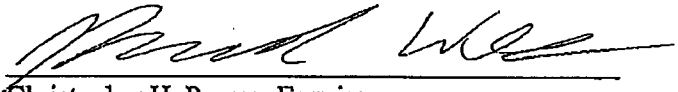
D. For judgment against Third Party Defendant South State Bank for actual damages, punitive damages, and consequential damages;

E. For contractual indemnity from Third Party Defendant South State Bank to include payment of any and all fees and costs incurred by Defendant/Third Party Plaintiff Myrtle Beach Golf and Yacht Club in enforcing the deed restrictions at issue in this matter;

F. For attorney's fees and costs, and recoverable expenses in this action; and

G. For such other relief as the Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

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

February 14, 2017

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.

CERTIFICATE OF SERVICE

2017 FEB 14 PM 2:02

I hereby certify that on this 14 day of February, 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:

- ***Second Amended Answer, Counterclaims, and Third Party Complaint of Myrtle Beach Golf & Yacht Club Association, Inc.***

COUNSEL SERVED:

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

L. Raymond Wells

Exhibit 1

Exhibit of
Myrtle Beach Golf
and Yacht Club
Socastee Township; Horry County, SC
LEGEND
MB Golf & Yacht Club
TMS# 184-00-01-022, 184-17-02-164,
184-17-02-152, 184-17-01-042,
184-18-05-012, and 184-18-03-004
Heron Point Golf Club
TMS#184-00-01-021, 184-00-01-025,
184-00-01-023, and 184-00-01-024
Common Road Network
Heron Point Blvd.
Notes:
1. Boundary lines shown hereon are an approximation and were taken from Horry County GIS Application.
BRG
COMPANY

Exhibit 2

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP

GENERAL PARTNERSHIP AGREEMENT

February 29, 1984

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN., SECTIONS 15-48-10, ET. SEC (1985 SUPPLEMENT).



MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP
GENERAL PARTNERSHIP AGREEMENT

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MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP

GENERAL PARTNERSHIP AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into as of the 28th day of February, 1984, between Myrtle Beach Golf & Yacht Club, Inc. ("MBGYC"), a South Carolina corporation, and Peoples Joint Venture Group, Inc. a South Carolina corporation, ("Peoples"), as general partners (separately sometimes referred to as "General Partner" or "Partner" and together referred to as the "General Partners" or "Partners").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

ARTICLE I

FORMATION AND PURPOSE OF PARTNERSHIP

The General Partners hereby form a general partnership (hereinafter called the "Partnership") pursuant to the South Carolina Uniform Partnership Act, Code of Laws of South Carolina (§33-41-10 to 1090), as amended (the "Act"). The purposes of the Partnership shall be as follows:

(a) to acquire those certain tracts of land containing approximately 71.2 usable acres ("Tract I") and 156.5 usable acres ("Tract II") located in Horry County, South Carolina (all of which is defined as the "Property"), the legal description of which including all encumbrances thereon, is set forth on Appendix 1 for Tract I and on Appendix 2 for Tract II;

(b) to develop not less than two hundred and ninety five (295) single-family lots and forty eight (48) multi-family lots on Tract I;

(c) to develop recreational facilities comprised of a club house facility, entry guardhouse, nine hole golf course, swim and tennis club and lakes on Tract II;

(d) to construct not less than two hundred and ninety five (295) single-family homes and forty eight (48) multi-family homes;

(e) to acquire and develop those certain tracts of land designated as Tract III through Tract X in accordance with the land plan attached as Appendix 3 hereto provided that an affiliate of Peoples agrees to act as the acquisition and development lender with respect to said tracts of land; and

(f) for all other purposes ancillary to such activities (all of the above development activities hereinafter referred to as "the Project").

The Partnership shall not engage in any other business without the prior written consent of all Partners. This provision shall not be construed, however, in any manner so as to prevent any of the parties hereto, in their respective individual or corporate capacities, from engaging in any other operations of any kind, including the purchase, sale, development, and management of other real estate.

The Managing General Partner (as hereinafter defined) shall, without delay, take all steps necessary to form this general partnership as may be required by law and shall file and record any documents that may be required for any reason in such office or offices as are required under the laws of the State of South Carolina, or elsewhere. The Managing General Partner shall also promptly register the Partnership under any assumed or fictitious name statute, or similar law, if any, in force and effect in the State of South Carolina, if required by such law, and in such other jurisdictions as may be required by law. The Managing General Partner shall do all other acts and things (including publication or periodic filings of any nature) that may now or hereafter be required for the perfection and continuing maintenance of the Partnership as a general partnership under the laws of the State of South Carolina.

ARTICLE II

NAME AND OFFICE OF PARTNERSHIP

The name of the Partnership shall be Myrtle Beach Golf & Yacht Club, A General Partnership. The principal office of the Partnership shall be 6301 North Kings Highway, Myrtle Beach, South Carolina 29577, (telephone 803-449-1562), or such other place as the General Partners may designate.

ARTICLE III

TERM OF PARTNERSHIP

The Partnership shall remain in full force and effect until June 30, 2002, unless sooner terminated in accordance with the terms and provisions of this Agreement; provided, however, that the Partnership shall continue after the termination date for the sole purpose of winding up its business and affairs as provided in Article XIV of this Agreement.

ARTICLE IV

DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below unless the context clearly requires otherwise:

4.1 "Affiliate" of a Partner shall mean (a) any person, or entity directly or indirectly controlling, controlled by or under common control with such Partner, or (b) any person or entity owning or controlling ten percent (10%) or more of the outstanding voting securities of any Partner.

4.2 "Cash Available For Distribution" shall mean the sum of (i) cash flow and (ii) all cash contributions to the capital of the Partnership, less all amounts which the Partners agree to set aside to create or restore reasonable reserves.

4.3 "Cash Flow" shall mean all gross cash receipts from the operation of the Project, including rentals, fees, amounts received from the sale or other disposition of all or any part of the Project, financings and refinancing of the Project, all insurance and condemnation awards, and interest received, without deduction for depreciation and amortization, but after deducting all expenses incurred in Partnership operations relative to the Project including, but not limited to, debt amortization, insurance premiums, utility charges, repairs, construction and development costs, attorney's and accountant's fees, all management fees, developer's fees, and all fees and charges paid with respect to indebtedness of the partnership.

4.4 "Managing General Partner" shall be [illegible].

4.5 "Partner's Capital Account" with respect to each Partner at any time shall mean an amount equal to the total amount of contributions made by such Partner to the capital of the Partnership, loss distributions from the Partnership to such Partner increased by income of the Partnership allocated to such Partner and decreased by losses of the Partnership allocated to such Partner.

4.6 "Profit Percentage" shall be twenty-five percent (25%) with respect to Peoples and seventy-five percent (75%) with respect to MBGYC. Capital contributions, withdrawals, loans to or from the Partnership, distributions from the Partnership of Cash Available for Distribution, and adjustments pursuant to Sections 734 and 743 of the Internal Revenue Code of 1954, as amended, shall not affect the Profit Percentage of any Partner.

ARTICLE V

ACQUISITION OF PROPERTY, CONTRIBUTIONS TO CAPITAL AND THIRD PARTY FINANCING

5.1 Initial Capital Contribution of Peoples. Peoples has contributed one hundred ($100.00) dollars as its initial capital contribution.

5.2 Capital Contributions of MBGYC. MBGYC has contributed one hundred ($100.00) dollars as its initial capital contribution.

5.3 Assignment of Contracts, Agreements and Development Material. MBGYC shall, at the earliest time possible, cause to be assigned or sold to the Partnership:

(a) Tract I and Tract II as the same is more particularly described on Appendix 1 and 2 respectively for a purchase price of $498,400.00 for Tract I and $1,095,500 for Tract II.

(b) All studies, architectural plans and drawings, soil tests, appraisals, contracts or other data on Tracts I and II and other information relating to development of the Property. In consideration of such assignment at the time the Property is transferred to the Partnership, the Partnership shall reimburse MBGYC all expenses made by MBGYC to obtain the studies, plans and drawings, tests and appraisals. The Partners agree that additional funds required for the acquisition and development of the Property in the approximate amount of $1,500,000.00 for lot acquisition and

development costs and $3,000,000.00 for amenities acquisition and development costs shall be borrowed by the Partnership from an affiliate of Peoples.

5.4 Third Party Financing; Additional Capital Contributions.

(a) It is contemplated that funds for acquisition, development and improvement of the project shall be obtained through financing and that no additional capital contributions shall be required.

(b) In the event there are cost overruns and additional capital is required to complete the project, the partners shall determine by mutual agreement to what extent each partner shall contribute such additional capital to the partnership.

(c) To the extent permitted by the terms of other loans obtained by the Partnership, the additional capital required pursuant to paragraph 5.4 (b) may be in the form of a loan or loans and may include one or more construction loans and may be secured by junior mortgages of, and/or junior security interest in, any or all of the Project and/or rentals, revenues and proceeds thereof.

ARTICLE VI

PROFITS, LOSSES, CASH AVAILABLE FOR DISTRIBUTION, CAPITAL AND OTHER ACCOUNTS, DISTRIBUTIONS

6.1 Determination of Profits and Losses. Profits or losses as used in this Article VI shall mean the net profits or net losses of the Partnership as determined for federal income tax purposes.

6.2 Allocation of Profits, Losses, Income and Deductions. Except as otherwise expressly provided in this Agreement, all profits or losses of the Partnership (including each item of income, gain, loss, deduction or credit entering into the computation thereof) shall be allocated among the Partners for each year, as follows:

All profits and losses shall be allocated twenty-five percent (25%) to Peoples and seventy-five percent (75%) to LBCYC.

6.3 Capital Accounts. A Capital Account shall be established for each Partner. The Capital Account of each Partner shall consist of its contributions to the Partnership, including the initial capital contribution described in Article V hereof, plus the amount of Partnership income or profits allocated to the Partner pursuant to Section 6.2 hereof, less (i) all distributions, and (ii) the amount of Partnership deductions or losses allocated to the Partner pursuant to Section 6.2 hereof.

6.4 Distributions. Except as provided in Section 8.5(b) hereof, distributions of Cash Available for Distribution shall be made to the Partners as follows:

(a) First to the Partners in proportion to the credit balances immediately prior to the distribution in their respective Capital Accounts.

(b) Second to the Partners in proportion to their respective Profit Percentages.

6.5 Timing of Distributions of Available Cash. Except for the termination of the Partnership in accordance with Article XIV hereof, distributions from the Partnership to the respective Partners shall be made quarterly pursuant to Section 6.4 hereof (unless otherwise agreed upon in writing by the Partners) and in such amounts as may be reasonably determined by the Partners.

6.6 No Right to Return of Capital Contribution. No Partner shall be entitled to demand or receive the return of its Capital Contribution and no Partner shall be entitled to receive property other than cash in return for its contributions, loans or advances or upon distribution or dissolution as provided herein.

ARTICLE VII

OWNERSHIP OF PARTNERSHIP PROPERTY

7.1 Title to Property. The Property and all other properties, both real and personal, acquired by the Partnership, shall be owned by the Partnership, not the Partners. Legal title to the Property shall be held and conveyed in the name of the Partnership.

7.2 Partition. Each of the Partners hereby irrevocably waives for the duration of this Agreement any and all rights it may have to maintain an

action for partition with respect to its interest in the Partnership or the Property or Project or any other property held by the Partnership or to compel any sale thereof pursuant to the civil statutes of the State of South Carolina or any amendment thereof. In connection with the foregoing, the Partners acknowledge and agree that each of them has been induced to enter into this Agreement in reliance upon the aforementioned waiver and warranty of the other, and without such warranty no Partner would have entered into this Agreement.

7.3 Representations and Warranties of MBGYC. In consideration of the execution of this Agreement by Peoples and capital contribution to the Partnership, MBGYC represents and warrants to Peoples that:

(a) The Property is unzoned, but pursuant to county and state law and Horry County regulations may be developed for the Project as contemplated herein.

(b) MBGYC Has no knowledge of any provision contained in any subdivision ordinance, regulation or statute which would preclude or materially restrict the contemplated development of the Property.

(c) All assessments, levies or charges which have been levied or imposed by any public utility, municipality, public authority or other public body as a result of the development of the Property have been paid and discharged. MBGYC has no knowledge or notice of any pending assessments, levies or charges to be levied against all or any part of the Property or of any pending ordinances or statutes authorizing or requiring the installation of improvements for which the Property may be assessed, except for 1984 real property taxes.

(d) MBGYC has no knowledge of any restrictions on ingress to or egress from the Property from or to any of the streets and highways contiguous thereto.

(e) A portion of the Property is located in a flood zone or flood plain, but no structural improvements will be constructed within same except marina slips.

(f) MBGYC has not entered into any agreement with any prospective purchaser or tenant of any portion of the Property and there is no management agreement, service contract or other agreement which in any way affects the Property.

(g) All permits and approvals under applicable ordinances, statutes and regulations which may be required for the contemplated development of the Property are, in the opinion of MBGYC, reasonably obtainable.

7.4 Development of Tract III and through Tract X.

(a) The Partners agree and acknowledge that Tract I and Tract II are part of a certain land plan ("Land Plan") which is attached hereto as Appendix 3 to develop approximately 1032 acres of land. The land to develop Tract III through Tract X is under an option contract which is attached hereto as Appendix 4. It is the intent of the Partners to jointly develop Tract III through Tract X under the terms and conditons contained herein provided (i) Peoples agrees that the development of such tracts is desirable and (ii) an affiliate of Peoples agrees to provide financing for acquisition and development. MBGYC shall give written notice to Peoples of its intent to acquire the land to develop Tract III at least ninety (90) days prior to the closing date of the land acquisition. Within sixty (60) days of the date of the written notice, Peoples shall indicate in writing whether or not it agrees (i) to jointly develop Tract III and (ii) whether or not an affiliate agrees to provide acquisition and development financing. If Peoples does (i) not wish to participate, (ii) not cause to be provided acquisition and development financing; or (iii) if the sixty day period lapses before the written notice required hereby is received by MBGYC, MBGYC may proceed to develop Tract III and Peoples shall have no further rights or obligations with respect to Tracts III through Tract X.

(b) Provided that Tract III is jointly developed by MBGYC and Peoples, the procedure set forth in paragraph 7.4(a) shall be applicable to Tract IV. Further, the procedure set forth in paragraph 7.4(a) shall be applicable to each subsequent Tract provided the previous Tract has been jointly developed.

ARTICLE VIII

MANAGEMENT OF THE PARTNERSHIP

8.1 Partners and Managing General Partner.

(a) The management and control of the Partnership and its business affairs shall rest exclusively with the Partners. The Partners shall have all the rights and powers, and be subject to all the restrictions and liabilities, of a partner in a general partnership.

(b) Subject to the rights of Peoples and other limitations set forth in this Agreement, MBGYC, as the Managing General Partner, shall have the full and complete right and duty to manage the affairs and business of the Partnership. The Managing General Partner shall devote such time, efforts, personnel and resources to the management of the affairs and business of the Partnership as it may from time to time consider necessary or desirable for the successful and profitable conduct thereof.

In exercising its rights and performing its duties hereunder, the Managing General Partner shall:

(a) coordinate the efforts of the Partners undertaken herein and the efforts of others contracted for as contemplated hereby for the successful accomplishment of the Partnership purposes;

(b) keep Peoples fully advised of its activities on behalf of the Partnership;

(c) invest the idle funds of the Partnership in interest bearing accounts, bills or certificates and receive such interest and all income from the Property or Project;

(d) inspect the Property and Project at regular intervals and be kept informed as to the condition of the same;

(e) obtain and continue in force all policies of insurance required by any mortgage or other agreement relating to the Property or Project;

(f) pay or cause to be paid any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of the assets of the Partnership, unless the same are contested by the Partnership;

(g) pay or cause to be paid on or before the due date thereof all amounts due and payable by the Partnership to any person or entity;

(h) consult with Peoples prior to retaining any real estate broker, management agent, mortgage broker or finder, insurance agent or outside legal counsel on behalf of the Partnership;

(i) cause the Partnership to perform properly and discharge the obligations undertaken by the Partnership pursuant to third party contracts and agreements;

(j) cause the development and construction of the Project to be completed in compliance with applicable laws and regulations and manage and supervise the maintenance and operation of the Project in a manner which satisfies in all respects the obligations imposed on the Partnership by this Agreement, any mortgages encumbering the Property from time to time, and by other agreement pertaining to the Property or the Project;

(k) make capital improvements and repairs and purchase supplies and replace machinery, furniture, fixtures and equipment necessary for the proper operation, maintenance and repair of the Project consistent with good construction practices;

(l) promptly notify Peoples of cost overruns in excess of $25,000 either singly or in the aggregate; and

(m) have the authority to convey lots to third party lot purchasers in the ordinary course of business and such authority shall be documented in the Public Records of Horry County, South Carolina.

8.2 Major Management Decisions. In addition to the provisions in this Agreement which require the unanimous consent of the Partners, no action shall be taken or sum expended or obligation incurred by the Partnership or either Partner with respect to a matter within the scope of any Major Management Decision (as hereinafter defined in this Section 8.2) affecting the Partnership unless such Major Management Decision shall have been approved by unanimous consent of the Partners.

The following are Major Management Decisions:

(a) acquiring a fee, leasehold, easement or any other interest in any real property or disposing of the Property or any part thereof except in accordance with the development plan; and

(b) executing, approving or amending any architectural agreement, construction contract, brokerage agreement and/or management

agreement relating to the Project which, when combined with any other or others of the aforesaid contracts or agreements, alters the Project Budget by more than $250,000 in the aggregate;

(c) approving any financing relating to the Project whether construction, interim or otherwise, including any fees or commissions incurred in connection therewith;

(d) determining and redetermining working capital requirements of the Partnership and making calls for additional capital contributions;

(e) mortgaging or otherwise placing any encumbrance upon, the Project or any portion thereof, including any fees or commissions incurred therefor;

(f) changing the Partnership's designated firm of certified public accountants or changing the Partnership's accounting methods or election of depreciation methods and making decisions regarding the treatment of other various transactions for federal income tax purposes;

(g) determining the insurance program for the Partnership and any changes thereto;

(h) determining whether or not any distribution to any Partner not specifically provided for in this Agreement should be made;

(i) seeking, effecting or permitting zoning changes affecting the Property;

(j) settling, compromising or paying any claim in excess of $10,000 made against the Partnership unless such excess is covered by liability insurance protecting the Partnership;

(k) determining the necessity for meetings of the Partnership and the date and time thereof;

(l) determining where and in what manner idle funds of the Partnership should be invested;

(m) abandoning construction or development of any aspect or phase of the Project; and

(n) determining the fiscal year of the Partnership.

If, within ten (10) days after any request by either Partner to the other for consent to any Major Management Decision, the Partner to which such request was made shall not communicate either approval or disapproval

of such Major Management Decision to the Partner which made such request (unless the Partner to whom the request was made shall have requested a reasonable extension of time, not to exceed twenty (20) days, in which to consider its decision, in which event such Partner shall have the right to communicate its approval or disapproval until the end of the extension period), then the Partner to which such request was made shall be conclusively deemed to have consented to such Major Management Decision.

8.3 Affiliates of Managing General Partner. Peoples hereby agrees that Montgomery Construction Company, Inc., Justice Construction Company, Inc., and Justice Builders, Inc. may be employed by the Partnership as sub-contractors provided that any such work so contracted for shall be on the terms and conditions applicable to third parties.

8.4 Limitations on Authority of the Managing General Partner. Notwithstanding anything to the contrary provided in this Agreement, Managing General Partner does not have the authority, without the consent of all of the Partners, to:

(a) do any act in contravention of the then current Agreement;

(b) do any act which would make it impossible to carry on the ordinary business of the Partnership prior to the dissolution of the Partnership; or

(c) borrow money on behalf of the Partnership, make, execute or deliver on behalf of the Partnership any assignment for the benefit of creditors, any confession of judgment, any guaranty, indemnity bond or surety bond, obligate the Partnership as a surety, guarantor or accommodation party, borrow from the Partnership or lend Partnership funds to any third party.

8.5 Meetings of the General Partners. The Partners shall meet at the principal office of the Partnership or at such other place as the Partners may from time to time determine, at such time or times as the Partners may determine. George Magrath, Sr. or George Magrath, Jr. are authorized to speak for and represent Peoples at meetings of the General Partners, and R. L. Propps, or his designee, is authorized to speak for and represent MBGYC, but each Partner shall have one, and only one, vote on any matter, notwithstanding that such Partner may be represented by more than one individual. Each Partner may change its designated representatives from

time to time by written notice to the other Partner. Meetings may be held by telephone or other means of communication.

8.6 Reimbursable Expenses. The Managing General Partner shall be reimbursed pro rata by the Partnership for out-of-pocket costs and expenses reasonably incurred by the Managing General Partner in connection with its obligations under this Agreement to the extent that such expenses are not reimbursable to Managing General Partner pursuant to the terms of any loan with the Partnership. All of the foregoing reimbursable costs shall be paid prior to the distribution of profits to the Partners. Reimbursable costs and expenses shall include reasonable travel expenses of employees of the Managing General Partner in performing the Managing General Partner's obligations under this Agreement; reasonable compensation, living expenses, and related expenses of a project supervisor and other personnel of Managing General Partner when stationed at the site of the Project (which expenses shall be submitted to the Partnership for its approval); and, if paid by the Managing General Partner with the approval of the Partnership rather than by the Partnership directly, professional fees paid to engineers, architects, lawyers and accountants for services for the Partnership, and premiumns for insurance of the Partnership and the Managing General Partner against loss in connection with the Partnership. Based upon allocation of relative responsibility to the Project, the Managing General Partner shall be reimbursed for compensation of its employees and for its regular office and administrative expenses, including rent, overhead, telephone service and charges, copying expense, and supplies, such reimbursements not to exceed the amount allocated to "Operation Expenses" in the Project Budget as defined in Paragraph 11.1.

8.7 Developer's Fee. The Partners agree that MBGYC shall receive a developer's fee not to exceed the amount so designated in the project budget.

8.8 Independent Activities. Subject to Section 8.6 hereof, each Partner, its officers or partners and employees, shall devote only such time and energy to the business of the Partnership as necessary for the efficient conduct thereof. Each Partner and their respective shareholders, affiliates, associates, and employees may, notwithstanding the existence of this Agreement, engage in whatever activities they choose (including the

management of other partnerships or joint ventures) without having or incurring any obligation to offer any interest in such activities to the Partnership or any Partner.

Nothing within the terms of this Agreement shall prohibit MBGYC or any affiliate from entering into management contracts for the management of the amenity facilities to be developed hereunder, the common areas, recreational facilities or the marina or entering into management, rental or sales agreements with third party lot purchasers at any time during the term of this Partnership or subsequent to the term of this Partnership. This Partnership and Peoples shall have no rights to income or fees payable to or received by any entity that enters into such management, lease or sales contracts.

Neither this Agreement nor any activity undertaken pursuant hereto shall, except as hereinabove provided, require any party hereto to permit any other parties hereto to participate in any activities of such party, and as a material part of the consideration for each party's execution hereof, each party hereto hereby waives, relinquishes, and renounces any such right to claim of participation.

8.9 Managing General Partner's Standard of Conduct. The Managing General Partner shall perform its duties under this Agreement with ordinary prudence and in a manner characteristic of a prudent businessman in similar circumstances and shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession or control, and the Managing General Partner shall not expend or use, or permit another to expend or use, funds or assets in any manner except for the exclusive benefit of the Partnership. The Partnership funds shall not be co-mingled with the funds of any other person or entity. Except in the case of gross negligence, willful misconduct, or breach of this Agreement, the Managing General Partner shall not have any liability to the Partnership or any Partner.

8.10 Scope of Partner's Authority. Except as otherwise expressly and specifically provided in this Agreement, neither Partner shall have any authority to bind or act for, or assume any obligation or responsibility on behalf of, the other Partner or the Partnership. Neither the Property, the Partnership or either Partner shall be responsible or liable for any indebtedness or obligation of the other Partner incurred or arising either

before or after the execution of this agreement, except those joint responsibilities, liabilities, debts or obligations incurred after the date hereof pursuant to and as limited by the terms of this agreement. This agreement shall not be deemed to create a general partnership between the Venturers with respect to any activities whatsoever other than activities within the scope and business purposes of this Agreement.

8.11 Indemnification.

(a) The Managing General Partner shall not be liable for, and the Partnership shall indemnify and hold it, and its officers, directors and shareholders harmless from and against, any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages, and losses of any kind whatsoever in connection with the Managing General Partner's performance of its duties as set forth in this Agreement or as a result of any claim or legal proceeding against the Partnership, or for the return of any contribution to capital or loan made by a Partner to the Partnership, except if the Managing General Partner and/or its agents or employees are guilty of gross negligence, or willful misconduct, or an "event of default" occurs under this Agreement.

(b) In the event of willful misconduct or gross negligence by Managing General Partner or an "event of default" is committed by Managing General Partner under this Agreement, Managing General Partner agrees to indemnify the other Partners and the Partnership and hold them harmless from and against any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages and losses of any kind whatsoever resulting in a liability to the Partnership or any of the Partners.

(c) Each General Partner hereby agrees to indemnify the other Partner from, and hold it harmless from and against, any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages, and losses of any kind whatsoever incurred by the Partnership or the other Partner as a result of any of the following acts taken or omitted to be taken by such Partner: gross negligence, willful misconduct, a material misrepresentation to a third party or such Partner commits an "event of default" under this Agreement.

(d) In the event of an indemnifiable loss, the right to indemnification shall be secured by a lien on the interest of the Partner

which is liable for such loss, including its right to distributions from the Partnership.

(e) An "event of default" shall mean the failure of a Partner to perform material and substantial obligations under this Agreement, which failure is not cured within fifteen (15) days after written notice thereof or such longer period as may be reasonably necessary to cure a failure not capable of being cured within fifteen (15) days, so long as the breaching Partner diligently commences to cure such failure within such fifteen (15) day period and any extension of time will not unreasonably cause harm to the assets of the Partnership. In no event shall the opportunity to cure be applicable in the case of the willful misconduct or gross negligence of a Partner.

ARTICLE IX

SALE OR TRANSFER

9.1 Permitted Transfers. Only Peoples may assign its interest herein.

9.2 Prohibited Transfers.

(a) Required Consent. MBGYC shall not sell, assign, transfer, mortgage, encumber or permit any third party to sell, assign, transfer, mortgage or encumber, whether voluntarily or by operation of law, any part or all of its Partnership interest without the written consent of Peoples and any attempt to do so shall be void. The giving of such consent in any one or more instances shall not limit or waive the requirement for consent in any other or subsequent instances.

(b) Indirect Transfers. Each Partner agrees that to the extent its interest is held by a partnership, corporation, trust or other entity, such Partner will seek to transfer its interests in the Partnership only through a direct transfer of such interest therein, and that no transfer

or other disposition of any stock in a corporation, interest in a partnership, or beneficial interest in any other entity which holds an interest in the Partnership will be effective, directly or indirectly, unless approved in advance by the other Partner.

9.3 Restraining Order. In the event that either Partner shall at any time transfer or attempt to transfer its Partnership interest in violation of the provisions of this agreemetn and any rights hereby granted, then the other Partner shall, in addition to all rights and remedies provided at law and equity, be entitled to a decree or order restraining and enjoining such transfer and the offending Partner shall not plead in defense thereto that there would be an adequate remedy at law; it being expressly hereby acknowledged and agreed that damages at law will be an inadequate remedy for a breach or threatened breach of the provisions concerning transfer set forth in Section 9.2 above in this agreement.

ARTICLE X

ADMINISTRATIVE MATTERS

10.1 Books and Records. The Managing General Partner shall keep true and correct books of account for the Partnership at the principal office of the Partnership, and each Partner or its duly authorized representative shall at all reasonable times have access to such books. Such books and records shall be kept on the basis of a calendar year and for book purposes in accordance with generally accepted accounting principles and for tax purposes on the accrual basis, except as the Partners shall otherwise agree.

The Partners agree that construction period charges, including interest, real estate taxes and loan fees, shall be capitalized for book purposes despite the fact that they may be expensed for federal income tax purposes and that depreciation and other items affecting the computation of profits and losses for federal income tax purposes may be treated differently for book or financial reporting purposes, all as the Partners shall agree.

10.2 Reports. The Managing General Partner shall cause quarterly reports to be prepared at the expense of the Partnership. Such quarterly reports shall be provided to all Partners within forty-five (45) days after the close of each calender quarter and upon termination of the Partnership.

Each quarterly report shall contain an account of all items of receipts, income, profits, costs, expenses and losses arising out of or resulting from the ownership of the Project, as well as the Cash Flow and the appropriate disposition thereof under the Agreement. The Managing General Partner shall cause monthly reports of receipts and disbursements showing the results of operation of the Project for the prior month, to be compiled and mailed to Peoples within thirty (30) days after the close of each month.

10.3 Audits - Returns.

(a) Within ninety (90) days after the end of each fiscal year of the Partnership, the Managing General Partner shall furnish to each Partner financial statements for such fiscal year, including, but not limited to, a balance sheet and income and expense statement which shall set forth either therein or in notes thereto in reasonable detail, the computation and distribution of Cash Flow to Partners and the computation and payment of all other amounts payable to each Partner and to any Affiliates of Partners. The statements referred to herein shall be audited by an accounting firm acceptable to the Partners, the cost of which shall be an expense of the Partnership.

(b) All federal, state, and local income tax returns of the Partnership proposed to be filed for any calendar year shall be prepared by the Managing General Partner (unless the Partners otherwise agree that the independent accounting firm of the Partnership shall prepare such returns) as a Partnership expense and shall be furnished to each Partner for its review and approval at least thirty (30) days prior to the date for filing such return (including any extensions applicable to such return). All such returns shall be filed by the Managing General Partner on or before the due date thereof.

(c) To the extent permissible under applicable laws, the following charges and expenses shall be treated for income tax purposes as current expenses and shall not be charged to capital asset accounts:

(i) interest expenses;

(ii) taxes, including, without limitation, property, payroll and sales and use taxes;

(iii) general management expenses, including reimbursable expenses of the Managing General Partner;

(iv) accounting and legal expenses;

(v) travel and entertainment expenses;

(vi) insurance premiums, including, without limitation, fire and extended coverage, builder's risk, loss of rents, liability and surety bonds;

(vii) advertising expenses;

(viii) developmental expenses not attributable to the land and improvements;

(ix) any other expenses permitted by law.

(d) The Partnership shall elect such method of depreciation as the Partners shall unanimously agree in writing.

(e) The decision whether to exercise or to revoke any or all of the elections available to the Partnership under the Internal Revenue Code shall be determined or made by mutual agreement of the General Partners; provided that the Partnership shall be required, as provided in Section 15.11 hereof, to make an election under Section 754 of the Internal Revenue Code to adjust basis upon request of any Partner, provided such Partner pays the additional bookkeeping and accounting costs which result from such election. Each of the Partners shall supply to the Partnership the information necessary to properly give effect to any such election.

10.4 Bank Account. The Partners will open an account (hereinafter called the "Depository") in the name of the Partnership at a mutually acceptable bank and all funds of every kind and nature received by the Partnership, including capital contributions, all funds requisitioned from construction lenders, any advances or additional capital contributions made by the Partners, and the proceeds from the sale of all or any of the Project shall be deposited in said account. Funds deposited in the Depository may be withdrawn upon the signature of R. L. Propps, Lindsay C. Roach, Daniel J. Kelly, or such other person or persons as shall be designated in writing by the Partnership with the consent of each Partner.

The Managing General Partner may cause disbursal from the Depository of amounts payable under contracts contemplated by and other amounts provided under this Agreement and the Project Budget that are then properly due and payable in conformance with the terms of such agreements or the Project Budget.

The Managing General Partner will supply all information requested by Peoples to clarify and support invoices paid or to be paid and checks drawn by the Managing General Partner.

All checks or drafts on the Depository which the Managing General Partner shall not have the authority hereunder to unilaterally cause to be issued, shall require prior written or verbal authorization by George Magrath, Jr., on behalf of Peoples, or such other person or persons as shall be designated in writing by Peoples from time to time.

ARTICLE XI

PROJECT DEVELOPMENT

11.1 Project Development Plan. A project development plan (the "PDP") has been prepared by MBGYC. The PDP includes the budget for the project (such budget referred to in this Agreement as the "Project Budget") a detailed description of the Project, including, but not limited to, the following: pro forma and cash flow statements including all acquisition, development, construction, design, marketing, promotion, sales and disposition expenses associated with the closing and delivery of Lots to third party purchasers; expected lot and amenity facilities pricing, presently projected construction costs, site improvement expenses and all other anticipated income and expenses related to the development, construction and sale of the Project.

11.2 Project Budget; Project Contracts.

(a) The Project Budget attached hereto as Appendix 5 includes the following: detailed income and expense projections, including the presently projected contract prices of construction contracts anticipated to be entered into between the Partnership and Justice Builders, Inc., Justice Construction Company, Inc., and Montgomery Construction Company, Inc., and all costs associated with the acquisition, development and sale of lots. The Project Budget includes the net income projected to be earned by the Partnership after the payment of all costs and expenses. Such costs and expenses shall include all interest charges expected to be paid on construction financing (inclusive of fees and discounts). In addition thereto, there is attached hereto as Appendix 6 the budget for Tract I and Tract II

("Tract I and II Budget"). The Tract I and II Budget includes the net income for Tract I and Tract II projected to be earned by the Partnership after the payment of all costs and expenses. The Tract I and II Budget also sets forth projected sales which must be met in order for the acquisition and development lender to continue to fund acquisition and development costs. Peoples shall receive monthly reports which compare actual operating results to the Tract I and II Budget.

(b) MBGYC shall prepare and negotiate construction contracts with its Affiliate contractors or third party contractors for the Project which contracts shall be for a fixed price sum not to exceed the amounts allocated for the applicable work in the Tract I and II Budget. Any contract entered into between the Partnership and an Affiliate of a Partner shall contain a provision that such contract shall be terminable if Peoples is the purchaser pursuant to the Provisions of Section 12.2.

ARTICLE XII

TRANSFER AND LIQUIDATION OF INTERESTS

12.1 General. Except as otherwise specifically permitted or required in this Article XII, no Partner shall mortgage, pledge, sell, assign, subject to a security interest, transfer or permit to be transferred in any manner or in any means whatsoever, whether voluntarily or by operation of law, all of any part of its interest in the Partnership or its rights to Cash Available for Distribution. Notwithstanding the foregoing any Partner may at any time, without obtaining the consent of any Partner, transfer its interest in the Partnership to an Affiliate (provided that the parent retains directly or indirectly not less than majority voting rights in such Affiliate), and/or pledge, assign or grant a security interest in its interest in the Partnership and/or its rights to Cash Available for Distribution to third party lenders as collateral security for loans to that Partner, the proceeds of which will be contributed to the capital of the Partnership.

12.2 Sale in the Event of Inability to Agree. In the event the Partners are unable in good faith to reach an agreement on any material matter affecting the Partnership and in the event that any Partner (the "Offeror") is at that time willing to make an offer to the other Partner (the

"Offeree") to purchase the entire interest of the Offeree in the Partnership, the Offeror shall notify the Offeree in writing of its desire to do so, designating in such notice the price, stated in terms of the price for one hundred percent (100%) of the interest in the Partnership at which the Offeror, after applying the distribution provisions of Section 14.4, will either sell its interest in the Partnership or buy the interest of the Offeree in the Partnership and the terms and conditions upon which the purchase or sale will be made. The Offeror may revoke such offer at any time prior to receipt of Offeree's written election as hereafter provided. Within thirty (30) days of receipt of Offeror's notice (unless the revocation referred to above is received) Offeree shall elect, which election shall be final and binding upon Offeree and Offeror, to either (i) purchase the interest of the Offeror at a price equal to the value of such interest in the Partnership determined by applying the distribution provisions of Section 14.4 hereof to the price stated in the notice; or (ii) sell to the Offeror the Offeree's interest in the Partnership at a price equal to the value of such interst determined in the same manner as (i) above.

In the event that Offeree shall fail to notify the Offeror of its election within the period above specified, the Offeree shall be conclusively deemed to have elected (on the last day of said thirty (30) day period) to sell its interest in the Partnership upon the terms and conditions set forth in the Offeror's notice.

12.3 Closing; Final Accounting. Any purchase and sale of an interest in the Partnership in accordance with the provisions of this Agreement shall be closed at the time and place and on the date specified by the purchasing Partner, which date shall be on or before the thirtieth (30th) day after such right or option to buy or sell has been exercised or deemed to have been exercised (or if such date is not a business day, then on the next succeeding business day). At the closing there shall be a final accounting between the Partners with respect to the Partnership. The net profit or loss of the Partnership which has accrued to the date on which the offer hereunder was made shall be accounted for and the purchaser shall be entitled to receive the Cash Available for Distribution under Section 6.4 hereof (if any), which was distributable during the interval between the date of which the offer hereunder was made and the date of closing; and the purchaser shall bear all expenses and costs attributable to the purchased

interest which accrue during such interval. At the closing all requisite documents, instruments, and papers shall be executed. With respect only to indebtedness and obligations of the Partnership for which the seller is personally liable, the purchaser shall assume and agree to discharge when due all such indebtedness (if any) and to discharge all contractual obligations (if any) with respect to the business of the Partnership, and to indemnify and hold harmless the seller for purchaser's failure to discharge such indebtedness or obligations.

12.4 Management During Buy-Sell Procedure. In the event an offer is made pursuant to Section 12.2 hereof by either Partner while MBGYC is Managing General Partner of the Partnership, Peoples shall have the right, at its own expense, to send its designated representative to the office of the Partnership to approve and participate with the Managing General Partner in any decisions which the Managing General Partner has authority to make under this Agreement and in the management, conduct and opration of the Partnership's business. Peoples shall not refuse to approve any action which would result in a default under any pre-existing contractual obligations of the Partnership. Such right of participation shall be exercised by Peoples in a manner which does not interfere with the Managing General Partner's prompt and diligent performance of its obligations under this Agreement. Such right of Peoples to participate in management of the Partnership's business shall terminate if the offer made pursuant to Section 12.2 hereof is revoked by the Offeror as provided therein or if MBGYC as Offeree elects or is deemed to have elected to purchase the interest of Peoples.

ARTICLE XIII

APPRAISAL PROCEDURE

13.1 Selection of Appraisers. Within twenty (20) days after an appraisal is required under Section 13.2 hereof or appropriate under any provisions hereof, each Partner shall select an appraiser who is a Member of the American Institute of Real Estate Appraisers. The appraisers so chosen shall meet within ten (10) days after the second appraiser is appointed and shall themselves appoint a third appraiser who shall be a competent and

impartial person having like qualifications as aforesaid. If any appraiser appointed shall thereafter die or become unwilling or unable to act as such appraiser, his successor shall be appointed within fifteen (15) days by the party who originally had the right to appoint such appraiser. In the case of a death of the third appraiser or his unwillingness or inability to act, a successor shall be appointed by the other two appraisers. In case of the failure of any Partner to appoint an appraiser as required in this section, a successor shall be appointed by the other two appraisers after ten (10) days written notice is given to the Partner failing to appoint the appraiser. In the event of a Partner failing to appoint an initial appraiser, the sole appraiser shall give ten (10) days written notice to the Partner failing to designate an appraiser, and upon the failure of that Partner to designate, shall appoint a second appraiser and these two appraisers shall then designate the third appraiser.

13.2 Appraisal. Each appraiser so selected shall, within thirty (30) days from the selection of the third appraiser, give a written opinion of the fair market value of the Project based on its intended use as contemplated herein ("fair market value"), taking into consideration any outstanding indebtedness, liabilities, liens, and obligations; also considering cash flow, receivables, executed contracts, choses in action, contingent proceeds and any and all the valuation factors used by appraisers in determining property value relating to the Project, and the average of the three opinions shall constitute the fair market value of the Project. The determination of such fair market value by the appraisers, selected as hereinabove provided, shall be final and binding upon all parties. The fees of the appraisers shall be borne by the Partnership.

ARTICLE XIV

TERMINATION

14.1 Termination and Dissolution. The Partnership shall be terminated upon the earlier of: (a) the unanimous vote of the Partners; (b) the sale of all of the assets and all of the Property, receipt by the Partnership of the purchase price in full and in cash, and the distribution of all proceeds; or (c) June 1, 2002. Upon such termination, the Partnership shall be dissolved and wound up in accordance with this Article

and the provisions of the Act, except insofar as such provisions are at variance with terms of this Agreement.

14.2 Dissolution or Insolvency of a Partner. In the event of the involuntary dissolution of a Partner, or if a Partner should make a general assignment for the benefit of creditors, file a voluntary petition under any applicable bankruptcy or insolvency law or statute of the United States or any state thereof, be adjudicated as a bankrupt or insolvent in proceedings filed against the Partner under applicable bankruptcy or insolvency laws of the United States or any state thereof, or have a receiver appointed for all or substantially all of its assets and not have such receiver discharged within thirty (30) days after appointment, the Partnership or the other Partner shall have the option to acquire the interest of such Partner in the Partnership and continue the business of the Partnership, exercisable by written notice to such Partner, for an amount which such Partner would receive if the Project were sold at its fair market value after applying the distribution provisions of Section 14.4 hereof to such fair market value. If the Partners cannot agree on such fair market value of the project, it shall be determined by appraisal in the manner set forth in Article XIII hereof.

Immediately upon the filing of a voluntary petition under any applicable bankruptcy or insolvency law or statute of the United States or any state thereof as to any Partner, such Partner shall immediately be deemed to have no voting authority and no management rights under this Agreement.

14.3 Liquidation. Upon termination of the Partnership as set forth in Section 14.1 hereof, the Partnership shall engage in no further business other than such business as may be necessary to wind up its affairs and liquidate and distribute its assets. Such liquidation shall be handled by a Liquidating Trustee, elected by unanimous vote of the Partners. The Liquidating Trustee may be the Managing General Partner, a Partner, or a qualified third party.

14.4 Disposition of Assets. Upon termination and liquidation of the Partnership and sale of the Property, the assets of the Partnership shall be distributed in the following order:

(a) To the payment of or creation of a reserve for creditors other than Partners in such order as may be provided by law;

(b) To repay the loans and any advances to the Partnership made by the Partners;

(c) To the Partners as provided in Section 6.6(a) hereof;

(d) To the Partners as provided in Section 6.6(b) hereof;

(e) To the Partners in proportion to their respective Capital Accounts until the amounts so distributed equal the balances in the capital accounts immediately prior to distribution; and

(f) Any balance to the Partners in accordance with their Profit Percentages.

14.5 No Recourse. Except as provided in Section 8.9 hereof, upon dissolution of the Partnership each Partner shall look solely to the assets of the Partnership for the return of its investment, and if the Partnership assets remaining after payment and discharge of debts and liabilities of the Partnership, including any debts and liabilities owed to any one or more of the Partners, are not sufficient to satisfy the rights of each Partner, such Partner shall have no recourse or further right or claim against any other Partner, provided the assets have been disposed of in accordance with this Agreement except as provided hereinbelow. In winding up the affairs of the Partnership and distributing its assets, the Liquidating Trustee shall deposit in an interest bearing account any reserves set up to meet any contingent or unforeseen liabilities or obligations. Funds held by the Partnership for distribution to creditors or the Partners which remain unclaimed after a reasonable period of time may be deposited with an escrow agent in an interest bearing account for the purpose of disbursing such reserves and unforeseen liabilities or obligations. Funds held by the Partnership for distribution to creditors or the Partners which remain unclaimed after a reasonable period of time may be deposited with an escrow agent in an interest bearing account for the purpose of disbursing such reserves and funds, and at the expiration of such period as the Liquidating Trustee shall deem advisable, the escrow agent shall be authorized and directed to distribute the remaining balance thereof to the Partners in accordance with Section 14.4 The Liquidating Trustee shall not be liable for any funds so paid and the claimants thereto shall look solely to the recipients of any such funds.

ARTICLE XV

MISCELLANEOUS

15.1 Notices. Any and all notices, elections, offers, acceptances, and demands permitted or required to be made under this Agreement shall be in writing, signed by the Partner giving such notice, election, offer, acceptance or demand, and shall be delivered personally, or sent by registered or certified mail, postage prepaid, return receipt requested, to the other Partner, at the addresses set forth below, or at such other address as may be supplied by written notice to the other Partner. The date of personal delivery or the date shown on the return receipt as the date of delivery or attempted delivery, as the case may be, shall be the date of such notice, election, offer, acceptace or demand.

Notices to MBGYC shall be addressed to R. L. Propps, Chairman, 6301 N. Kings Highway, Myrtle Beach, South Carolina 29577, (telephone (803) 449-1562), with a copy to Otis Allen Jeffcoat, Esquire, 1201 Chester Street, P. O. Box 2937, Myrtle Beach, SC 29577 (telephone (803) 629-9595).

Notices to Peoples shall be addressed to, Attention: George Magrath, Jr., at Peoples Savings and Loan Association, P. O. Box 220, Conway, South Carolina 29526.

15.2 Entire Agreement; Amendments. This Agreement and the Appendixes attached hereto embody the full and complete agreement of the parties with respect to the Partnership. No modifications, amendments or changes herein shall be effective or binding upon the parties unless the same have been agreed to in writing by all Partners.

15.3 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

15.4 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement.

15.5 South Carolina Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. All obligations of the parties created hereunder are performable in the State of South Carolina. Venue in any suit shall be Horry County.

15.6 Other Instruments. The parties hereto convenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the Partnership created by this Agreement.

15.7 Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

15.8 Parties Bound. This Agreement shall be binding upon and to the extent permitted herein shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assign.

15.9 Construction. This Agreement shall not be strictly construed against any party hereto.

15.10 Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

15.11 Income Tax Election. In the event of a transfer of a Partner's interest in accordance with the terms of this Agreement or in the event of a distribution of any of the Property to any party hereto, upon the request of a Partner the Partnership will file an election in accordance with Section 754 of the Internal Revenue Code of 1954, as amended. No election shall be made by the Partnership or any Partner to be excluded from the application of the provisions of Subchapter K of the Internal Revenue Code of 1954, as amended, or from any similar provisions of state or local tax laws.

15.12 Attorneys' Fees. Reasonable attorneys' fees shall be recoverable by the prevailing party in any legal proceeding arising from or in connection with this Agreement.

15.13 Arbitration. In the event of a deadlock between the Partners or in the event the Partners are unable to resolve a dispute which may not be resolved by other relevant provisions of this Agreement, the same shall be settled and determined in accordance with the rules of the Commercial Arbitration Section of the American Arbitration Association or its successor. If for any reason the American Arbitration Association, or its successor, is not in existence or fails or refuses to act within a reasonable period of time, in no event exceeding 60 days from the date a request is

filed, the arbitration shall proceed in accordance with the laws of the State of South Carolina then relating to arbitration. Partners agree to be bound by arbitration as full fair and exclusive remedy, hereby waiing any right to resort to Courts of competent jursidiction.

15.14 Partnership Memorandum. For the purpose of documenting in the Public Records the authority of MBGYC to solely execute deeds and other instruments associated with the title of the Property, the Managing General Partner may file for recording a Memorandum of Partnership in form similar to Appendix 7 and any other documents necessary or required by law to be filed and recorded hereafter for any reason, in such office or offices as may be required under the laws of the State of South Carolina or elsewhere. In the event of any conflict between the Partnership Memorandum as recorded in Horry County, South Carolina, and the terms of this Agreement, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first above written.

WITNESSES:

GENERAL PARTNERS:

MYRTLE BEACH GOLF & YACHT CLUB, INC., a South Carolina Corporation.

By: _____
R. L. Propps, President

ATTEST:
Lindsay C. Roach, Secretary

PEOPLES JOINT VENTURE GROUP, INC., a South Carolina Corporation
By: _____
George N. Magrath, President

ATTEST:

George N. Magrath, Jr., Secretary

APPENDIX I

Legal Description - Tract I

(To be inserted)

APPENDIX 2

Legal Description - Tract II

(To be inserted)
APPENDIX 5

PROJECT BUDGET

February 8, 1984

Separate document; incorporated herein by reference.

Exhibit 3

08848

88 Deed Bk 855 p 769

3-13-84

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

DEED TO REAL ESTATE
(Tract II)

KNOW ALL MEN BY THESE PRESENTS, that JAMES H. DUSENBURY, as Nominee under that Acknowledgement and Appointment of Nominee dated December 30, 1974, recorded in the office of the Horry County Clerk of Court for Horry County on January 3, 1975, in Deed Book 526 at page 113, hereinafter called grantor, in consideration of ONE MILLION NINETY FIVE THOUSAND FIVE HUNDRED AND No/100 ($1,095,500.00) Dollars, to the grantor in hand paid at and before the sealing of these presents by the grantee hereinafter named, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the following named grantee to wit:

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP, a South Carolina general partnership, c/o Justice [illegible] Highway, Myrtle Beach, South Carolina 29577, its successors and assigns forever:

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 171.9[illegible] acres, more or less, being in the aggregate shown as Tract II on a plat of [illegible] Myrtle Beach Golf and Yacht Club [illegible] dated February 28, 1984, recorded in the office of the Clerk of Court in Plat Book [illegible] page 206, which is incorporated herein and made a part hereof by reference. Tract II is composed of Tract II-A (51.044 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less), Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

TOGETHER WITH a non-exclusive easement for access to, egress from, and the construction, operation and maintenance of all utilities serving 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 Clerk's office in Plat Book 79 at page 166.

This is a portion of the same property conveyed to the grantor by Deed from Parker Corporation to James H. Dusenbury, as Nominee dated December 30, 1974, recorded in said Clerk's office on January 3, 1975, in Deed Book [illegible] page 130.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have to hold all and singular the premises before

769

mentioned unto the grantee, and the grantee's successors and assigns, forever.

And, the grantor does hereby bind the grantor and the grantor's successors to warrant and forever defend all and singular said premises unto the grantee and the grantee's successors and assigns against the grantor and the grantor's successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance is made expressly subject to the following matters:

(a) Any easements (whether or not of record) including any shown on a recorded plat, provided that they do not prohibit or unreasonably interfere with the development of the property by the Grantee in accordance with the Grantee's development plan as approved by the Grantor.

(b) Any state of facts [illegible] shown, provided that they do not prohibit or unreasonably interfere with the development of the property by the Grantee in accordance with the Grantee's development plan as approved by [illegible].

(c) Horry County real property taxes for 1984 and subsequent years.

(d) The Grantor hereby grants any roads or streets to be constructed on the property conveyed, a non-exclusive easement for access by the Seller, over the property owned by the Seller, provided that [illegible] with the development of the property by the Grantee in accordance with the Grantee's development plan as approved by the Grantor.

(e) Rights reserved as to utilities as is more fully set forth in paragraph 10 of that certain Option Agreement between Seller and Justice, Inc. dated February 29, 1984, recorded in said Clerk's office on March 6, 1984, in Deed Book 854 at page 321.

(f) Grantee will not, solely by its actions or the actions of its successors or assigns, materially reduce the flow of riparian water from Tract I to the Island Green Golf Course.

This conveyance is made expressly subject to the following restrictions:

(a) No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during construction of improvements on the property, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or [illegible] after completion of construction. No [illegible] lot may be erected, out-buildings or structures shall be either temporarily or permanently. Nothing contained herein shall be construed to prohibit the use of modular, panelized or other modern

Book 854 Page 770

construction techniques, in the construction of improvements on the property.

(b) 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.

(c) The maximum density of dwelling units on the property shall be in accordance with the Grantee's development plan as approved by the Grantor.

WITNESS the grantor's hand and seal this 29th day of February, 1984.

SIGNED SEALED AND DELIVERED

IN THE PRESENCE OF:

(SEAL)

H. DUSENBURY, as Nominee

that Acknowledgement and

of Nominee dated

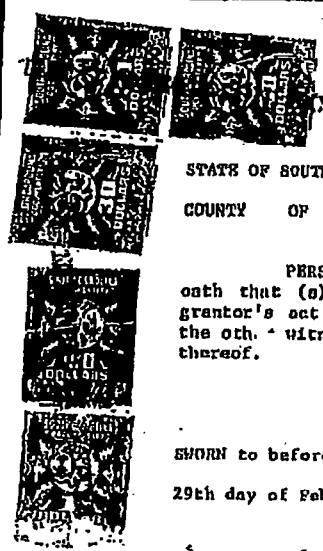
, recorded in

of the Horry County

of Court for Horry County

3, 1975, in Deed Book

112.



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 grantor sign, seal and as the grantor's act and deed deliver the within deed and that deponent, with the other witness whose name is subscribed above witnessed the execution thereof.

(Witness)

SWORN to before me this

29th day of February, 1984.

Notary Public for South Carolina

My Commission Expires: 10/26/86

Book 855 Page

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CONSENT TO DEED

The undersigned Ponderosa, Inc. and W. F. Sludge and do hereby acknowledge that each of them consent to the execution of the foregoing Deed by James H. Dusenbury, as Nominee under that Acknowledgement and Appointment of Nominee dated December 30, 1974.

WITNESS the due execution hereof this 29th day of February, 1984.

Signed, Sealed and Delivered in the Presence of:

PONDEROSA, INC.

(LS)

(as to Ponderosa, Inc.)

(LS)

(LS)

(as to W. F. Sludge)

I Certify $1205.07 Horry County Documentary Tax has been paid on this instrument.

Billie B. Richardson

Clerk of Court

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY) (as to Ponderosa, Inc.)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Ponderosa, Inc., by its duly authorized officers, sign, seal and as its act and deed deliver the within Deed and that deponent, with the other witness whose name is subscribed above witnessed the execution thereof.

(witness)

SWORN to before me this
29th day of February, 1984.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/24/94

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named W. F. Sledge, sign, seal and as his act and deed deliver the within Deed and that deponent, with the other witness whose name is subscribed above witnessed the execution thereof.

(witness)

SWORN to before me this
29th day of February, 1984.

(L.S.)
Notary Public for South Carolina
My Commission Expires: 10/24/94

Book 853 Page 713

Exhibit 4

aforesaid lot and is conveyed subject to [illegible]

HUNDRED SIXTY-TWO AND 50/100 ($166,662.50) [illegible]

POINT GOLF CLUB, INC. (Receipt whereof is hereby acknowledged) has

granted, bargained, sold and released, and by these presents does

bargain, sell and release unto the said [illegible]

Successors and Assigns forever, the following property:

ALL AND SINGULAR, those certain parcels of land, [illegible]
being in Socastee Township, Horry County, South Carolina, containing a
total of 5.349 acres, as shown on that survey of Myrtle Point Golf
Club, formerly Myrtle Beach Golf and Yacht Club Golf Courses, prepared
by Engineering and Technical Services, Inc. by Theodore R. Harris, P.
L. S., dated January 23, 1989, and recorded in Map Records in Plat
Book 104 at Pages 92 - 92-E, and being more particularly
shown and designated as:

Parcel S, containing 0.039 acres;
Parcel OA, containing 0.029 acres;
Parcel P, containing 0.134 acres;
Parcel X, containing 0.081 acres;
Parcel A R, containing 0.140 acres;
Parcel A P, containing 0.040 acres;
Parcel A O, containing 4.636 acres; and
Parcel A D, containing 0.220 acres.

This is a portion of the property conveyed to James H. [illegible]
Nominee under that Acknowledgment and Agreement dated the [illegible]
December 30, 1974, and recorded January 3, 1975, [illegible]
Page 113 by Deed of Partner Corporation, dated December 30, 1974 and
recorded January 3, 1975, in Deed Book 525 at Page 51, Horry County
Records.

Said conveyance is subject in every respect to [illegible]
rights-of-way for highway and utility purposes [illegible]
same appear of record.

Any Rollback taxes assessed on said property [illegible]
paid by the Grantee.

No structure [illegible]
any time, provided however, that this [illegible]
shall not apply to [illegible]
the Property. [illegible]
shall certainly not [illegible]
county [illegible]
[illegible]
[illegible]
[

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises above mentioned unto the said HERON POINT GOLF CLUB, INC., its Successors and Assigns forever.

AND JAMES H. DUSENBURY, AS NOMINEE UNDER THAT ACKNOWLEDGMENT AND APPOINTMENT DATED DECEMBER 30, 1974, AND [illegible] AS AMENDED ON MARCH 17, 1987, does hereby bind himself and his Successors and Assigns to warrant and forever defend all and singular the said premises unto the said HERON POINT GOLF CLUB, INC., its Successors and Assigns, against himself, his 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 [illegible] day of April, in the year of our Lord one thousand nine hundred and [illegible] and in the two hundred thirteenth year of the [illegible] of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

[illegible]

[illegible]

SWORN to before me this
26th day of April, 1990.

Notary Public for South Carolina

My Commission expires: 3-3-91.

Signed, Sealed
Delive[illegible] in the
Presence of:

Martha A. Wagner

Marco H. Reinhardt
(As to Ponderosa, Inc.)

Carol L. Reinhardt

Bernard A. Mars
(As to Mark Blade)

Phyllis Flagg

Dan Gilbert
(As to Cahill Land Title Co.)

Exhibit 5

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125010

FILED
HORRY COUNTY, S.C.
1989 NOV 13 PM 12:21
R.M.C.

Deed BK1351 PG-858

910-250

FILED
HORRY COUNTY, S.C.
1989 NOV 13 AM 8:10
R.M.C.

FILED
HORRY COUNTY
1989 NOV 16 PM 4:10
CLERK OF COURT

DECLARATION OF COVENANTS AND RESTRICTIONS FOR MYRTLE BEACH GOLF & YACHT CLUB SUBDIVISION

Developer:
MYRTLE BEACH GOLF & YACHT CLUB,
A GENERAL PARTNERSHIP
Post Office Box 8309
Myrtle Beach, South Carolina 29578-8309

Prepared by:
LUMPKIN & SHERRILL
Attorneys at Law
Post Office Box 2837
Myrtle Beach, South Carolina 29578-2837

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Billie B. Kilgore
CLERK OF COURT, HORRY COUNTY, S.C.

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STATE OF SOUTH CAROLINA) DECLARATION OF COVENANTS AND
) RESTRICTIONS FOR MYRTLE BEACH
COUNTY OF HORRY) GOLF & YACHT CLUB SUBDIVISION

THIS DECLARATION made by MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP, hereinafter called "Developer";

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Socastee Township, Horry County, South Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, the Developer proposes to create on such property a subdivision (hereafter referred to as "the Subdivision") containing detached homesite lots and multi-family developments or condominium regimes, together with Common Areas as more fully described herein; and

WHEREAS, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational or commercial portions of the Subdivision;

(b) To preserve the quality of the natural amenities of the Subdivision;

(c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;

(d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;

(e) To prevent any property Owner or any other persons [illegible] carrying on any other activity in the Subdivision to the [illegible] property in the Subdivision; and

[illegible] stable

[illegible]

WHEREAS, the Developer in desirous of maintaining design criteria, location, construction specifications, and other controls to assure the integrity of the Subdivision; and

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- 8 -

WHEREAS, as hereinafter provided in this Declaration, the Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the Subdivision, all or any portion of the real property described in Exhibit "B" attached hereto and incorporated herein by reference;

NOW, THEREFORE, the Developer hereby declares that all of the property described in Exhibit "A" and any additional Property described in Exhibit "B" or so much of it as Developer may, in its sole discretion, see fit to develop or dedicate, as, by subsequent amendment hereto, may be subjected to this Declaration, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

ARTICLE I
Definitions

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular plural forms of any such term(s):

Section 1.1. Additional Property shall mean and refer to the real property described in Exhibit "B" and all improvements thereon.

Section 1.2. Architectural Review Board means the duly constituted members of the Association appointed by the Board of Directors to review and approve the external design, appearance and location of improvements or alterations to or of the Property constituting the Subdivision or any portion(s) thereof.

Section 1.3. [illegible] shall mean and refer to an Owner's [illegible] of the Common [illegible] appurtenant to [illegible] provided.

Section 1.4. Association means the Myrtle Beach Golf & Yacht Club Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

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Section 1.5. Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.6. By-Laws of the Association shall mean and refer to those By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time.

Section 1.7. Club Charges shall mean and refer to all fees, dues, food and beverage costs and other charges which are charged by or to an Owner with respect to his use or the use by his family, tenants or guests of the Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

Section 1.8. Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Developer as Common Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public and the general public shall thereby have no easement of use or enjoyment therein. Specifically included as part of the Common Areas are all maintenance areas, streets, roads, alleys, parking lots and parking areas, medians, green areas, walkways, sidewalks, jogging trails, bike paths, street lighting, signage, lagoons, streams, ponds, easement areas designated as Common Areas, access easements across other real property, parks, golf courses and other Recreational Amenities as hereinafter defined, and such other lands and/or improvements as, by subsequent amendment of or supplement to this Declaration, may be subjected to this Declaration and designated as Common Areas by the Developer. However, no general plan or plat of the Properties showing areas which may later be developed as additional phases of the Development shall be deemed to include such property as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest in such property unless and until such property shall have been formally included as a part of the Subdivision by the Developer pursuant to the terms hereinafter contained.

Section 1.9. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with [illegible] provisions and intent of this Declaration.

[illegible] Common Areas [illegible] Section 2.2 [illegible] of the Rules of Horry County, S. C. [illegible].

Section 1.11. Developer means Myrtle Beach Golf & Yacht Club, a General Partnership, its successors and assigns.

Section 1.12. Dwelling, with an initial capital letter, shall mean and refer to any improved real property located within an

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Development intended for the use as: (i) a single family detached Dwelling, including any Lot as defined herein; or (ii) townhouse, condominium unit or patio or cluster home, whether detached or attached; or (iii) apartment, cooperative living unit, or condominium unit in a midrise or highrise building located within the Subdivision.

Section 1.13. Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of real property by a deed in lieu of a judicial foreclosure.

Section 1.14. Institutional Mortgage shall mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as, but not limited to, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

Section 1.15. Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, and for a term of hours, days, months or years.

Section 1.16. Living Space shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, unenclosed porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.17. Lot shall mean and refer to those portions of the Subdivision identified as "Lots" on Exhibit "A" attached hereto, together with any portions of the Additional Property that may be so designated from time to time by the Developer, but shall not include any Common Areas or Multi-Family Areas as defined herein.

Section 1.18. Mortgage, with an initial capital letter, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Dwelling, Multi-Family Area or Common Area.

Section 1.19. Mortgagee, with an initial capital letter, shall mean and refer to the holder of a Mortgage.

Section 1.20. Multi-Family Area shall mean and refer to any [illegible] the Subdivision designated as such by the Developer in which common elements are owned by the Owners of the dwellings in such Multi-Family [illegible] Areas shall consist of multi-family dwellings which may be attached or detached townhouses, condominium units, cooperative units, clustered homes, patio homes or similar multi-family structures.

Section 1.21. Multi-Family Association or Subordinate Regime shall mean and refer to a corporation or an unincorporated association the shareholders or members of which are all Owners of Dwellings within

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a Multi-Family Area or within any subordinate property development, residential, commercial, or mixed, within the Subdivision, whether submitted to a horizontal property regime or made subject to further or additional restrictions/covenants of ownership and control.

Section 1.22. Multi-Family Declaration shall mean and refer to any instrument or document and any amendments thereto, which is recorded in the Office of the Clerk of Court for Horry County, South Carolina with respect to any Multi-Family Area and which creates a townhouse, patio home, cluster home, cooperative regime, or condominium or horizontal property regime for such Multi-Family Area or imposes covenants, conditions, easements and restrictions with respect to such Multi-Family Area.

Section 1.23. Occupant shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling within the Subdivision.

Section 1.24. Owner, with an initial capital letter, shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

Section 1.25. Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.26. Recreational Amenities shall include such recreational facilities or club and improvements owned by and so designated by Developer and are, from time to time, located within the Subdivision or located within or dedicated to the Common Areas, including, without limitation, golf courses and related facilities, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis pro shops, locker room facilities, clubhouses, food and beverage facilities, lagoons, jogging trails and bike paths.

Section 1.27. [illegible] shall mean and refer to the real property described in Exhibit "A" and the real property described in Exhibit "B" or any portion thereof so submitted, together with all improvements thereon or thereafter constructed thereon.

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Section 1.28. Subdivision Plat shall mean and refer to that certain plat and prepared by Sur-Tech, Incorporated, dated October 23, 1984, recorded in the office of the Clerk of Court for Horry County, South Carolina, in Plat Book 83 at page 9 together with: (i) any future revisions thereof; or (ii) any subdivision plat for any portion of the Additional Property as may be submitted to the terms of this Declaration, and recorded from time to time in the office of the Clerk of Court for Horry County, South Carolina.

ARTICLE II
Plan of Development

Section 2.1. Plan of Development of the Subdivision. The Subdivision initially shall consist of the Property described on Exhibit "A" attached hereto. The Property shall also include certain improvements to the Common Areas, including roads, utility systems, drainage systems and other improvements serving the Dwellings, and various Recreational Amenities to the extent the same are, from time to time, installed and existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, for so long as Developer: (i) owns any portion of the Common Areas; or (ii) owns any Multi-Family Area; or (iii) owns any Dwelling primarily for the purpose of sale of the Dwelling; or (iv) has the option to add the Additional Property or any portion thereof to the Development, to make improvements and changes to all Common Areas and to any or all Dwellings or any other property owned by Developer: (i) installation and maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; (ii) changes in the location of the boundaries of the Common Areas, any Recreational Amenities, and any Dwellings owned by Developer or of the dedicated or undedicated Common Areas; (iii) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, T.V. cable and its various attendant services and telephone service to include teletype or computer, telex, news service, or computer, or any such like instrument used in the transmittal, reception, or retrieval of messages, facts, or information; and (iv) installation of security and/or defense facilities. The Developer and the Association, as the case may be, shall have the right to assess and collect reasonable fees and charges for the use of Recreational Amenities.

Section 2.2. Plan of Development of Additional Property. Developer [illegible] the Additional Property or a portion of the Additional Property to cause the Additional Property or a portion thereof to become part of the Property. Developer reserves the right to plan, design, develop, construct, maintain and manage the Common Areas, the Additional Property, the Recreational Amenities, the Multi-Family Areas and any unsold Dwelling as Developer deems necessary or convenient for its purposes, except as otherwise expressly stated in this Declaration, including without limitation the right

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expand the number, size and density of the unsold Dwellings, the Common Areas, the Multi-Family Areas, the Recreational Amenities and the Additional Property. This option may be exercised by Developer in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

This option to add additional property/phase(s) may be exercised from time to time during a period of fifteen (15) years from the date of recordation of this Declaration; provided, however, that Developer reserves the right to terminate such option at any time prior to the expiration of such fifteen year period by executing and filing an agreement evidencing such termination in the Office of the Clerk of Court for Horry County, South Carolina, and, except for such termination by Developer, no other circumstances will terminate such option prior to the expiration of such fifteen year period.

The legal description of the Additional Property is set forth on Exhibit "B"; portions of the Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

If the Additional Property or any portion thereof is added to the Development, any improvements developed therein and any Dwellings constructed thereon will be subject to the standards and restrictions set forth herein.

If the Additional Property or any portion thereof is added to the Development, Developer reserves the right to designate and restrict the boundaries of the Dwellings, Recreational Amenities, Multi-Family Areas, any Commercial Properties as well as the Common Areas, if any, to be added to the Development in connection therewith.

Should the option to add the Additional Property or any portion of it not be exercised within the term specified herein or be terminated by Developer, such option shall in all respects expire [illegible] be of no [illegible] force and effect. DEVELOPER SHALL NOT BE OBLIGATED [illegible] FORCE [illegible] PORTION [illegible] SUBMITTED [illegible] SUBMITTED WILL BE SUBJECT TO ANY COVENANT OR CONDITIONS WHATSOEVER UNLESS OTHERWISE AFFIRMATIVELY IMPOSED.

The option reserved by Developer to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Developer any obligation

add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever or to restrict or limit its use in any manner.

The option reserved under this Section 2.2 may be exercised by Developer only by the execution of an amendment to this Declaration which shall be filed in the Office of the Clerk of Court for Horry County, South Carolina, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development, by such amendment, as well as the Dwellings, Recreational Amenities, Common Areas, Multi-Family Areas, or other types of Property located within the Subdivision.

SUBSEQUENT TO INCLUSION AND/OR RESTRICTION AND IN ITS SOLE DISCRETION, DEVELOPER MAY CONVEY TO THE ASSOCIATION THE COMMON AREAS DESIGNATED BY DEVELOPER OR ANY OTHER PROPERTY OWNED BY THE DEVELOPER, BE IT RECREATION AMENITY OR OTHERWISE, CONTAINED WITHIN THE PROPERTY AS DESCRIBED IN EXHIBIT "A" OR EXHIBIT "B" OR SUCH PORTION OR PORTIONS OF ANY, EITHER, OR ALL OF THEM, ANY SUCH CONVEYANCE TO BE SUBJECT TO THE LIEN OF TAXES NOT YET DUE AND PAYABLE, ALL EASEMENTS AND RESTRICTIONS OF RECORD, UTILITY EASEMENTS SERVING OR OTHERWISE ENCUMBERING THE PROPERTY AND/OR THE ADDITIONAL PROPERTY, AND ANY EXCEPTIONS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR PHYSICAL INSPECTION OF SUCH PARCEL(S).

Any such amendment shall expressly submit the Additional Property or such portion of it to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements thereon. If the Additional Property or any portion or portions of it is added to the Development, then from and after the addition to the Development of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be modified to include the Dwellings to be located on the Additional Property or such portion or portions of it as are added, so that there shall continue to be one vote in the Association per Dwelling in the Subdivision, and the total number of votes in the Association shall be increased by the number of Dwellings added as [illegible] by the exercise of options provided in this document for the voting rights [illegible] Additional [illegible] portion [illegible]

Section 2.3. Multi-Family Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the [illegible] of this Declaration, there will be established by Developer, its successors or assigns, other than Recreational Amenities and/or Developer-owned properties, commercial or otherwise, only Multi-Family Associations structured as horizontal property regimes or similar multi-family projects, the membership of which shall be [illegible]

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the Owners of Dwellings within the Multi-Family Areas located within such portion or portions of the Additional Property so submitted in order to promote the health, safety and social welfare of the Owners of Dwellings therein, as well as to provide for the maintenance of Dwellings, other improvements and/or other common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such Dwellings and other improvements shall continue to be subject to the terms of this Declaration. Such Multi-Family Areas may be subject to Multi-Family declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Multi-Family Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

Section 2.4. Commercial Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Developer, its successors or assigns Commercial Associations limited to the Owners of commercial property located within such portion or portions of the Additional Property so submitted in order to promote their health, safety, and well-being, as well as to provide for the maintenance and appearance of the commercial property, other improvements and/or other Common Elements owned by such Owners and/or such Commercial Associations, provided that such Owners shall also be members of the Association and such commercial property and other improvements shall continue to be subject to the terms of the Declaration. Such Commercial Areas may be subject to property owner declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby and such Commercial Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Commercial Center Areas, and among themselves as may be agreed upon/imposed from time to time.

Section 2.5. Utilities and Related Facilities. Developer, its affiliates, successors and assigns shall retain ownership of the water and sewer treatment facilities, and telephone, master television antennas and/or cable system facilities serving the Subdivision, including all lines, plugs, conduits, outlets, pipes, pumps, water towers or tanks, cables and wires, and other systems related thereto which are located within the Subdivision. Water and sewer treatment service, telephone, master television antennas and/or cable system services shall be provided pursuant to the terms of agreements between the Association [illegible] or assigns [illegible] shall have the right but not the obligation, to convey at any time all or any part of such facilities to either the Association as a portion of the Common Areas or to a municipality, public authority, governmental agency, public service district or a public or private utility.

Section 2.6. Interest Subject to Plan of Development. Every purchaser of a Dwelling or any portion of the Subdivision shall purchase such Dwelling or other Property and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Developer's plan of development as set forth herein, and Developer shall have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Subdivision as hereinabove provided, and, with respect to each Dwelling or other Property located within the Additional Property, to convey to the purchaser thereof the title to the Dwelling or other Property and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

ARTICLE III
The Association; Membership and Voting Rights

Section 3.1. The Association. The Developer has established or will establish the Association for the purpose of exercising powers of maintaining and administering common facilities and providing common services, administering and enforcing covenants, conditions and restrictions contained herein, and levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the rights to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein.

Section 3.2. Rules and Regulations. The Association may adopt from time-to-time additional reasonable rules and regulations governing the use of Common Areas, Recreational Amenities and Dwellings.

Section 3.3. Membership. Every person or entity who is an Owner of any Dwelling which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling which is subject to assessments.

Section 3.4. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all the owners excepting the [illegible] Dwellings [illegible] Dwelling in which the interest required for membership is held. When more than one person holds such interest or interests in any Dwelling, the vote attributable to such Dwelling shall be exercised as such persons mutually determine, but in no event shall more than one vote be cast with respect to any such Dwelling.

Class B. The sole Class B member shall be the Developer. The Class B member shall be entitled to four votes

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for each Dwelling in which it holds the interest required for membership under Section 3.3 above. The Class B membership shall cease and become converted to Class A membership upon the occurrence of the first of either of the following two events:

1. When the total votes held by in the Class A member equal or exceed the total votes held by the Class B member (Dwellings shall include those Dwellings contained in or situate on any Additional Property which Developer shall hereafter bring under the terms of this Declaration) or

2. Fifteen (15) years from the date of this Declaration.

When a purchaser of an individual Dwelling or Dwellings takes title thereto from the Developer, such purchaser becomes a Class A Member.

Section 3.5. Transfer Fee. Excluding the first sale of each Dwelling from the Developer to an Owner, but including all subsequent sales of all Dwellings, there shall be assessed by the Association and collected from the new purchaser of each Dwelling a transfer fee equal to one-fourth per cent (1/4%) of the sales price of such Dwelling, which transfer fee shall be paid to the Association and used by the Association for its regular operations and/or reserves. In the event of non-payment of such transfer fee the amount due shall bear interest and shall be collectible as an assessment as set forth in Article VI hereof. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

Section 3.6. Association May Require Single Property Management Firm. The Association may require any and all Multi-Family or Commercial Associations established with respect to any portion of the Subdivision to exclusively utilize the same property management firm as utilized by the Association.

ARTICLE IV
Property Rights in the Common Areas

Section 4.1. Owners' Easements of Enjoyment. Subject to the [illegible] of Section 4.3 below, every Owner shall have a non-exclusive [illegible] and to the dedicated Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Dwelling.

Section 4.2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that on or before fifteen (15) years from the date of recording of this Declaration, it will convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds fee simple title to the Common Areas, subject, however, to all liens and encumbrances of record and to the following covenant, which shall be deemed to run with

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the land and shall be binding upon the Association, its successors and assigns:

"In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, recreational equipment, if any, fences, storm drains, signs, and sewer and water and other utility lines, connections and appurtenances."

This Section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas. The Developer may also impose additional covenants on such Common Areas at the time of such conveyance(s).

Section 4.3. Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely affect the use of the Common Areas by the Owners;

(b) The right of the Developer, and of the Association, to grant, reserve and accept easements and right-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities and services, including cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;

(c) The right of visitors, invitees, etc., to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Areas in the case of landlocked [illegible] Owners) to the nearest public highway;

(d) The [illegible] of private roadways, parking lots and/or driveways for a period not to exceed thirty days for any infraction of its published rules and regulations; provided, however, that the right of an Owner to ingress and egress over the roads and/or parking areas shall not be suspended;

(e) The rights of the Developer and the Association, as the case may be, to establish rules and regulations for the Subdivision [illegible]

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to prescribe fees and charges from time to time for use of the Recreational Amenities.

Section 4.5. Delegation of Parking Rights. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas and facilities to his employees, tenants, invitees or licensees.

Section 4.6. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer and the Architectural Review Board, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Areas.

Section 4.7. Access. All Owners, by accepting title to Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Dwelling and acknowledge and agree that such access, ingress and egress shall be limited to roads, sidewalks, walkways, and trails located within the Subdivision from time to time, provided that pedestrian and vehicular access to and from all Dwellings shall be provided at all times. There is reserved unto Developer, the Association and their respective successors and assigns the right and privilege, but not the obligation: (i) to maintain guarded or electronically monitored gates controlling vehicular access to and from the Subdivision; and (ii) to require payment of toll charges for use of roads within the Subdivision by permitted commercial traffic or by members of the general public, provided that in no event shall any such tolls be applicable to any Owner or his family, tenants or guests or to those individuals designated by Developer and their families and guests.

Section 4.8. Easements for Developer. During the period that Developer owns any Common Area, or owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Dwellings, any improvements to the Common Areas, the Multi-Family Areas and the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including without limitation any improvements or changes permitted and [illegible] in this Declaration, and for the purpose of doing all [illegible]
to do so [illegible]

Section 4.9. Changes in Boundaries; Additions to Common Areas. Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas and any Dwellings, Recreational Amenities or Multi-Family Areas owned by Developer, including the realignment of boundaries between adjacent Dwellings, Common Areas, and/or Multi-Family Areas [illegible]

Developer. In addition, Developer reserves the right, but shall not have the obligation, to convey to the Association at any time, and from time to time, any portion of the Additional Property, such real property to be conveyed to the Association as an addition to Common Areas and subject to the other provisions set forth in this Declaration.

Section 4.10. Easements for Utilities. There is hereby for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; (ii) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected; (iii) an area across every Lot five (5') feet in width along the front and side boundary lines thereof, and ten (10') feet in width along the rear boundary lines thereof; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Developer, its successors and assigns or by the Board of Directors; provided, however, that for so long as Developer owns any portion of the Common Areas, owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Subdivision and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

Section 4.11. Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement upon, over and across (i) all portions of Multi-Family Areas in which Dwellings are not constructed or erected, but which lands which may be improved for the installation [illegible]

Section 4.12. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter upon any Dwelling or Multi-Family Area or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and [illegible]

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upon advance notice to and with permission of the Owner, occupant or Multi-Family Association, or the Owner(s) or Multi-Family Area affected.

Section 4.13. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Common Areas for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model Dwellings, together with such other facilities as in the sole opinion of Developer reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Dwellings, Multi-Family Areas, Common Areas or the Additional Property.

Section 4.14. Easements for Additional Property. There is hereby reserved in the Developer, its successors, assigns and successors in title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Subdivision, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all roads, sidewalks, trails, parking facilities and lagoons from time to time located on or within the Common Areas or within easements serving the Common Areas; (ii) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and master television antenna and/or cable system lines; and (iii) drainage and discharge of surface water onto and across the Subdivision, provided that such drainage and discharge shall not materially damage or affect the Subdivision or any improvements from time to time located thereon.

Section 4.15. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any improved portions of any Dwelling or Multi-Family Area for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such [illegible] shall not impose any duty or obligation upon the Developer or the Association to perform any such actions, and neither the Developer nor the Association shall be liable for any failure to do so. Each contract of sale is, by [illegible] hereby granted a perpetual, alienable and transferable right and easement, but not the obligation, to enter upon any unimproved portions of Dwellings or Multi-Family Areas which are located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Subdivision for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable [illegible] standards.

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Section 4.16. Environmental Easement. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas, Dwellings and Multi-Family Areas for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 4.17. Wells and Effluent. There is hereby reserved for the benefit of Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Subdivision for the purpose of irrigating any portions of the Subdivision and for other purposes; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities; or (iii) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities or upon any unimproved portions of any Dwelling, or Multi-Family Area with the permission of the appropriate Owner or Multi-Family Association or Commercial Center Association.

Section 4.18. Conservation Easements. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right, easement and restriction across those portions of Lots, Multi-Family Areas and Common Areas shown as Conservation Easements on the Subdivision Plat, as follows:

(a) No construction of any kind shall be allowed in such conservation easement areas;

(b) Such conservation easement areas shall be maintained in their natural state, but this restriction shall not prohibit or prevent the removal of trash, weeds, or dead or decaying or diseased vegetation, nor shall this restriction prohibit the Developer or the Association from utilizing such conservation easement areas for drainage or other utility purposes and

[illegible] as a part of the maintenance, improvement of streams, lagoons, lakes and other bodies of water in the Subdivision or nearby.

Provided, however, that the requirements of this Section 4.18 may be modified or released in whole or in part by the Developer, its successors and assigns, when in the sole judgment of the Developer there exists a hardship imposed upon the Developer or a Lot Owner [illegible] enforcement of such easement.

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Section 4.10. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

ARTICLE V
Right of Association to Alter, Improve, Maintain and Repair Common Areas and Portions of Dwellings

Section 5.1. The Association shall have the right to make or cause to be made such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Areas and the portions of Dwellings set forth herein, and the cost thereof shall be assessed as common expenses and collected from the Owners on an equal basis.

Section 5.2. Responsibilities of Owners and Multi-Family Associations. Unless specifically identified herein or in a Multi-Family Declaration as being the responsibility of any Owner or a Multi-Family Association, all maintenance and repair of Dwellings, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Dwelling shall be the responsibility of the Association. Unless otherwise provided in the appropriate Multi-Family Declaration, the maintenance and repair of all Common Areas or common elements located within Multi-Family areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Area) shall be the sole responsibility of the Association. Developer shall be responsible for Developer-owned properties. Each Owner or Multi-Family Association shall be responsible for maintaining his or its Dwelling or Multi-Family Area, as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings and other structures. All attendant lawns, trees, shrubs, hedges, grass, natural areas, and other landscaping shall be maintained by the Association. As provided in Section 5.3(b) hereof, each Owner or Multi-Family Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner or Multi-Family Association, but which responsibility such Owner or Multi-Family Association fails or refuses to discharge. No Owner or Multi-Family Association shall: (a) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or within a Multi-Family Area unless such decoration, change or alteration is first approved [illegible] Architectural [illegible] provided [illegible] Section [illegible] and [illegible] thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board and the Owners and Mortgagees of the Dwellings directly affected thereby or benefiting from such easement or hereditament.

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Section 5.3. Association's Responsibility.

(a). Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all roads, walks, trails, lagoons, ponds, parking lots, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering the Common Areas or Multi-Family Areas; (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by the Developer or a public authority, public service district, public or private utility or other person; and (iii) all lawns, trees, shrubs hedges, grass, and other landscaping situated within the Subdivision as it may be constituted from time to time. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility of the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments and Club Dues being a separate and independent covenant on the part of each Owner.

(b) In the event that the Developer or the Board of Directors determines that: (i) any Owners, Multi-Family Association or Commercial Center Association has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and [illegible] Developer, as the case may be, to perform such maintenance, cleaning, repair or replacement, except in the event of emergency situations, the Developer or the Association shall give such Owner, Multi-Family Association or Commercial Center Association written notice of the Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, Multi-Family Association or Commercial Center

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Association, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner, Multi-Family Association or Commercial Center Association, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner, Multi-Family Association or Commercial Center Association to comply with the provisions hereof after such notice, the Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, Multi-Family Association or Commercial Center Association, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and his Dwelling or Commercial Center Association are subject and shall become a lien against such Dwelling or Commercial Center Association, or, in the case of a Multi-Family Association or Commercial Center Association, shall be added to and become a part of the assessments for all Owners within such Multi-Family Association or Commercial Center Association and shall become a lien against such Owners' Dwellings or Commercial Units. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

ARTICLE VI
Covenant for Maintenance Assessments

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Dwelling owned within the Properties, hereby covenants, and each Owner of any Dwelling by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for the maintenance of the Common Areas, including such reasonable reserves as the Association may deem necessary, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall be a charge on the Dwelling and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The [illegible] shall not [illegible]

Section 6.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their respective families, guests, tenants and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Areas and for the provision of various forms of insurance for the Association, its property (including the dedicated Common Areas

Recreational Amenities), members, directors, officers, employees and agents, and for the provision of necessary and reasonable services for and other expenses of the Association.

Section 6.3. Maximum Annual Assessment. Until May 1, 1986, the maximum monthly assessment shall be Thirty-three ($33.00) Dollars per Dwelling.

(a) From and after May 1, 1985, the maximum monthly assessment may be increased by the Board of Directors each calendar year not more than 10% above the maximum monthly assessment for the previous calendar year without a vote of the membership.

(b) From and after May 1, 1986, the maximum monthly assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, or by written consent in lieu of such meeting.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.5. Notice and Quorum for Any Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 or 6.4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

[illegible] all Dwellings and may be collected on a monthly, quarterly or annual basis.

Section 6.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Dwelling on the first day of the month following the conveyance of that Dwelling by the Developer to an Owner. The first

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annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling have been paid. A properly executed certificate of the Association as to the status of assessments on a Dwelling is binding upon the Association as of the date of its issuance.

Section 6.2. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18%) percent per annum or (b) the maximum rate provided by applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Dwelling (as in the foreclosure of a mortgage), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Dwelling.

Section 6.3. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Dwelling shall not affect the assessment lien. However, the sale or transfer of any Dwelling pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII
Use Restrictions

Section 7.1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, drive or other improvement shall be placed or altered on any Dwelling except in accordance with the provisions of this Declaration.

Section 7.2. Buildings, Fences, Walls, etc. No building, fence, wall or other structure, and no change in topography, [illegible] shall be commenced, erected or maintained, upon any [illegible] subdivision, nor shall any [illegible] or change be made thereto after the original construction thereof by the Developer, except with the written approval of the Board of Directors as to the harmony of the external design and location in relation to the surrounding structures and topography by the Developer. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval; Provided, however, that upon the Developer's selling of all the Dwellings in the [illegible]

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this right of approval shall be transferred to an Architectural Review Board of the Association. Such Architectural Review Board shall be comprised of not less than three (3) representatives to be appointed by the Board of Directors of the Association; provided, further, that the Developer may transfer its rights of approval under this Declaration prior to its selling all of the Lots in the Development if it so chooses. In the event the Developer or the Architectural Review Board fails to approve or disapprove any request within thirty (30) days after complete plans and specifications have been submitted to it, the same shall be deemed approved, and this article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed and approval of any matters specifically prohibited by any other provisions of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer or the Architectural Review Board may deem sufficient. The transfer of control shall not be mandatory on the part of the Developer if the Developer has brought any portion of the Additional Property under the terms of this Declaration.

No fences whatsoever shall be erected or allowed to remain in the Subdivision except approved privacy patio fences in rear yards only, not exceeding 8' in height or except those erected by the Developer in Common Areas. Said fences and patios shall be allowed only after obtaining prior written approval of the Developer. Said fences shall be treated wood or stained or painted to match the colors of the siding on the principal house structure. No fences shall be permitted which obstruct the view of any golf course or lake when viewed from inside any adjacent dwelling.

Section 7.3. Residential Use of Lots. All Lots shall be used for single-family residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family Dwelling; provided, however, that nothing contained herein shall be construed to prevent the Developer from maintaining one or more model homes and/or sales offices in the Subdivision for the purpose of selling, leasing or managing Dwellings or other property in or near the Subdivision. No accessory structures or outbuildings, whether or not attached to the principal residence (including but not necessarily limited to carports, storage sheds, dog houses, awnings, breezeways, covered swimming pools and like) shall be constructed or allowed to remain on any Lot. [illegible] the Developer may construct attached storage compartments, screened-in rear porches and rear sun rooms as an integral part of an principal residence, if and only if such construction and improvement is consistent with the design of the principal residence and with the standards of construction prevailing in the Subdivision.

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Section 7.4. Prohibition Against Business Activity and "Time Sharing" Use. No business activity, including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Dwelling. Provided, however, that nothing contained herein shall be construed so as to prohibit home occupations (i.e., any occupation within a Dwelling and clearly incidental thereto, carried on by a member of the family residing in the premises in which no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic, or household purposes, and there is no exterior indication that the building is being used for any purpose other than a Dwelling), or the construction of houses to be sold on said Lots or the showing of said Dwelling for the purpose of selling or leasing Dwellings in the Subdivision. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales or lease or management of Dwellings in the Subdivision. Provided, however, that nothing herein contained shall prevent the Developer from erecting and maintaining sales and marketing signs in Common Areas or on other property owned by the Developer.

No Dwelling or structure shall be "time shared", nor shall any Dwelling or structure be owned, used or operated in violation of the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. §27-32-10 et seq. (1983 Supp.), as the same may be amended from time to time, nor shall any Dwelling or structure be owned, used or operated so as to constitute such Dwelling or structure as a "time sharing unit" within the meaning of such statutory provisions.

Section 7.5. Association Office. Nothing in this Declaration shall be construed to prohibit the Association from constructing, operating and maintaining a facility for use as its office and headquarters, for the benefit of the Association and its members, provided that such facility shall first be approved in all respects in writing by the Developer.

Section 7.6. Temporary Structures. No structure of a temporary character shall be placed upon any Lot or Dwelling at any time, provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by the contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or [illegible] on any Lot or Dwelling after completion of construction thereon. No boat, camper, motor home, trailer, tent, shack, garage, barn or other outbuilding shall be placed on any Lot or on any portion of the Common Areas at any time either temporarily or permanently.

Section 7.7. Mining and Drilling Prohibition. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure

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designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Subdivision.

Section 7.8. Use and Height Restrictions. No structure shall be erected, placed or permitted to remain on any Lot other that one detached single-family residence Dwelling, not to exceed one and one-half stories in height, and in no instance shall any residence exceed twenty-five (25') feet in height.

Section 7.9. Building Setbacks. No Dwelling or structure of any kind (except for air handlers, heat pumps, and related HVAC equipment) shall be erected on any Lot nearer than:

(a) Twenty (20') feet to the front line of the Lot (the line abutting on a street), nor

(b) Five (5') feet to the side lines of the Lot, nor

(c) Ten (10') feet to the rear line of the Lot;

provided, however, that the requirements of this paragraph may be released in whole or in part by the Developer, its successors and assigns, when in its sole discretion there would otherwise be a hardship upon a Lot Owner or would result in substantial damage to one or more natural features of the Lot.

Section 7.10. Timely Construction Progress. Once construction of improvements is started on any Lot, the improvements must be substantially completed within six (6) months from commencement.

Section 7.11. Material Restriction. All structures constructed or placed on any Lot shall be built of substantially new material and no used structures shall be relocated or placed on any such Lot.

Section 7.12. Re-Building Requirement. Any Dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a natural condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

Section 7.13. Elevation and Drainage Changes. No changes in [illegible] or drainage characteristics of the Subdivision shall be made [illegible]

Section 7.14. Vegetation Cutting Restrictions. No tree or shrub taller than three (3') feet in height shall be cut, removed or intentionally damaged on any Lot or Common Area, unless such vegetation interferes with the construction or safe maintenance of improvements on such Lot or Common Area or unless such tree is diseased or dead. The Owner(s) of any Lot upon which a violat[illegible]

this restriction occurs agrees to promptly (within 30 days after notice) replace such vegetation with vegetation of comparable size.

Section 7.15. Clotheslines. No clothesline or drying yards shall be located upon the premises so as to be visible from any Common Area or other Dwellings.

Section 7.16. Water Systems. No individual water supply system shall be permitted upon any Lot with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing all respects, including the pump and the covering or screen thereof and method of operation by the Developer, its successors or assigns, prior to installation.

Section 7.17. Sewer System. No surface toilets or septic tanks are permitted in the Subdivision (other than those utilized for a designated model home complex by the Developer). A purchaser of a Dwelling assumes responsibility for attaching to public sewer system including all fees associated therewith.

All plumbing fixtures, dishwashers, toilets or sewage disposal system shall be connected to the central sewer system of the Subdivision.

Section 7.18. Garbage Disposal. Each Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Developer, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other or other disposal or garbage or trash on any Lot or within the Subdivision or Development shall be permitted. Provided, however, that Owner shall be permitted to modify the requirements of this Section where necessary to comply with orders of governing bodies or their franchisees.

Section 7.19. Sign Controls. Signs are prohibited on or in any Dwelling with the following exceptions:

(a) temporary "For Sale" signs or signs indicating the name of a contractor only (not subcontractors) during the period of sale or construction only, provided the sign does not exceed four (4) square feet in size. "For Sale" or "For Lease" signs are allowed to be displayed only in a window of a Dwelling.

(b) [illegible] letters not [illegible] four (4) inches in height.

(c) [illegible] the Developer from erecting and maintaining sales, rental, management or marketing signs in Common Areas or on any other property owned by the Developer.

Section 7.20. Exclusion of Above Ground Utilities. All electrical service, wires, pipes, lines, telephone, cable television

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(CATV) lines and utility services of any type shall be placed in appropriate conduit underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Subdivision except those master facilities approved by the Developer. Provided, however, that the normal service pedestals, etc. used in conjunction with such underground utilities shall be permitted in the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 7.21. Communication System. There shall not be permitted or maintained any type of radio or communications system antenna (other than normal receive-only radio antennae) or satellite dish on any exterior portion of a Dwelling, nor shall any such antenna or satellite dish be maintained inside a Dwelling.

Section 7.22. Off-Street Parking. Two off-street parking spaces shall be provided by the Lot Owner for the parking of automobiles or other vehicles owned by said Owner, his guests, invitees or tenants, and said Owner agrees not to park his automobile or other vehicles (including golf carts) or those of his guests on the streets or Common Areas in the Subdivision (except in designated guest parking areas). Parking shall only be allowed on designated paved parking areas, which shall not be changed in size or location without prior written approval of the Developer. No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, motorcycles, trucks, or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, specifically including streets and guest parking areas, or any Lot, except within the approved Common Storage Area.

Section 7.23. Junk or Disabled Vehicles. No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part thereof, shall be permitted to be parked or kept in the Subdivision.

Section 7.24. Motorcycles. Motorcycles (except motorscooters, motorbikes with less than 5 h.p.) are prohibited from all Lots, streets and Common Areas, except from any Common Storage Area so designated by the Developer.

[illegible] Pets. No animals, livestock, birds, or fowl shall be kept [illegible] without [illegible] which may be kept [illegible] and which are [illegible] property [illegible] not for any commercial use or purpose. All animals must be kept on a leash when they are outside the Owner's Dwelling and must not become a nuisance to other residents by barking or other acts. Non-owners (e.g. renters or lessees) may not keep any pets on any part of the Property, without prior written approval of the Owner, said approval to be filed with the Association.

Section 7.26. Perimeter Access. There shall be no access to any Lot on the perimeter of the Subdivision except from designated roads within the Subdivision, provided, however, that Developer reserves the right to construct and operate temporary construction roads during the construction and development period.

Section 7.27. Rental Period. No Owner shall lease or rent [illegible] more than three (3) times in any given twelve month period nor shall any Owner lease or rent any Multi-Family Dwelling for a period of less than one (1) week.

Section 7.28. Prohibition of Open Outdoor Storage. No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure, which shall be attached to the principal Dwelling or in a manner that is visible from any other Lot, Common Area, street, easement or amenity area. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Common Area, easement, street or amenity area.

Section 7.29. Prohibition of Accessory Structures. No dog houses, garages, carports, or any other necessary structure shall be constructed upon any Lot, except an attached storage compartment, porch, swimming pool, swing set and similar play structure which has been approved in writing by the Architectural Review Board prior to installation or construction.

Section 7.30. Nuisances. No noxious or offensive activity shall be carried on upon or in any Dwelling, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood, including Common Areas, other homesites, easement areas or residences. No trash, leaves or rubbish may be burned on any Lot or within the Development nor shall there be maintained any plants, poultry, animals (other than household pets) or devices or thing of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owner thereof.

Section 7.31. Landscaping. The Developer reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views from and of adjoining Common Areas or amenity areas.

Section 7.32. Special Hazards. Each Owner accepts and [illegible] or [illegible] Developer does hereby disclaim any and all [illegible] liability for any property damage or personal injury resulting from erosion along the bank of the Intracoastal Waterway, and all ditches, streams, lakes, lagoons or other bodies of water or watercourses located in the Subdivision.

Section 7.33. Traffic Regulations. Traffic regulations or all [illegible] under the roads and streets within the Subdivision

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provisions of the South Carolina Uniform Act for regulating traffic to private roads. A speed limit of 25 MPH is established on all roads and streets and all traffic control signs, including but not limited to speed limit, stop, directional and no parking signs will be enforced.

Section 7.34. Prohibited Activities for Golf Course Area. Owners of Dwellings abutting golf fairways or greens shall be obligated to refrain from any actions which would distract from the playing thereof or of any golf course on or abutting the Property. Such prohibitive action shall include, but not be limited to, such activities as the maintenance of unfenced dogs or other pets under conditions interfering with play due to loud barking, running on the fairways, or other like interference.

Section 7.35. Encroachments. No Owner or individual shall alter in any way any Common Area except with the written permission of the Association provided that such activity is required for the benefit of the Association or the Subdivision as a whole.

Section 7.36. Subdivision of Dwellings; Easements and Encroachments. No Dwelling shall be subdivided except as hereinafter provided and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established. Provided, however, if any portion of any Common Areas unintentionally encroaches upon a Dwelling or any part thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of improvements to a Dwelling or Dwellings or any portion thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any improvement or part thereof is partially or totally destroyed and then rebuilt, any encroachment of any Common Area upon a Dwelling or Dwellings or encroachment of a Dwelling or Dwellings upon any Common Area or upon an adjoining Dwelling or Dwellings resulting because of such rebuilding, shall be permitted, and a valid easement shall exist for the maintenance of such encroachments so long as the same stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on any Common Area or any Dwelling or Dwellings, and no Owner shall be entitled to damages or injunctive relief because of the construction, re-construction or maintenance thereof.

Re-subdivision, Increase Size of Lots. Lot or Lots may be [illegible] of the adjoining Lot or Lots [illegible] of Lots which have been combined for a single building site subsequently [illegible] to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, that may be done only if the written consent of the Developer is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the Subdivision shall not have the right to pass on or interfere with such Lot rearrangement. Such rights shall be exclusively that of the Developer [illegible] or assigns to

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whom the Developer may expressly have transferred such rights, but the purchaser of any other Lot in the Subdivision does not, by virtue of his status as a purchaser, become any such successor or assign.

Section 7.38. Alteration of Building Lines in the Best Interest of Development. Where because of size, natural terrain, or any other reason in the sole opinion of the Developer, it should be to the best interest of the Development of this Subdivision that the building lines of any Lot should be altered or changed, then Developer reserves unto itself, its successors and assigns, and no other, the right to change said lines to meet such conditions. The Developer specifically reserves the right to transfer and assign this right of change of building lines to the Architectural Review Board herein established.

Section 7.39. Replatting of Lots. No Lot shall be subdivided by an Owner, or its boundary lines changed, except as herein provided. However, the Developer hereby expressly reserves to itself, its successors and assigns, the right to replat any two or more Lots owned by the Developer shown on the plat of said Subdivision prior to delivery of the deed therefor in order to create a modified building Lot or Lots. The restrictions and covenants herein apply to each such building Lot so created or recreated.

ARTICLE VIII
General Provisions

Section 8.1. Enforcement. The Developer, the Association, or any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of right to do so thereafter. The Developer and the Association, as the case may be, shall have the right to establish, assess and collect reasonable fines and penalties to violations of this Declaration, which shall be liens against Dwellings as provided herein. Such fines shall not exceed $50.00 per violation per day.

Section 8.2. Severability. Invalidation of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 8.3 Duration. The provisions hereof shall run with and bind the property constituting the Subdivision, and shall inure to the benefit of and be enforceable by the Developer, the Association, or any Owner for a period of twenty (20) years from the date hereof and thereafter shall continue automatically in effect for additional periods of twenty (20) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Dwellings.

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Section 8.4. Assignment. The Developer shall have the right to assign to any one or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration.

Section 8.5. Amendment.

(a) Amendments by Developer. For a period of fifteen (15) years from the date of recording of this Declaration, Developer may amend this Declaration in any particular by an instrument in writing filed and recorded in the Records of the Office of the Clerk of Court for Horry County, South Carolina, all without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration: (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Dwelling or Multi-Family Area, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; or (ii) in the event that such amendment would materially and adversely affect the security, title, and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 8.5(a) shall be certified by Developer as having been duly approved by Developer and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Dwelling or Commercial Unit, agrees to be bound by such amendments as are permitted by this Section 8.5(a) and further agrees that, if requested to do so by Developer, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision, (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Dwellings or Multi-Family Areas subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Dwelling, Commercial Unit or other portions thereof subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any Dwellings or other [illegible]

(b) Amendments by Association. Amendments to this Declaration, other than those authorized by Section 8.5(a) above, shall be proposed and adopted in the following manner:

(1) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the A[illegible]

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(2) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least three-quarters (3/4) of the total votes in the Association; provided, however: (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; and (ii) during any period in which Developer owns a Dwelling or Commercial Unit primarily for the purpose of sale or has the option under this Declaration to add the Additional Property or any portion thereof to the Subdivision, such amendment must be approved by Developer.

(3) The agreement of the required percentage of the Owners and, where required, Developer and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

Section 8.6. Multiple Associations. So long as Developer, its successors or assigns, owns an unsold Dwelling in the Subdivision, it shall have the right to merge the Association with other associations governing the use and control of other property in the Subdivision.

Section 8.7. Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, and every park, stream, body of water, Common Area, recreational facility, and other amenity within the Subdivision is a private park, facility or amenity and neither the Developer's recording or any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any said streets, parks, Common Areas, recreational facilities and amenities other than as reflected thereon. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to the Developer, its successors and assigns; to the persons who are, from time to time, members of the Association; to the members and Owners of any recreational facility; and to the residents, tenants and occupants of any multi-family residential buildings, and all other kinds of residential structures that may be erected within the boundaries of the Property [illegible] of all the [illegible] persons; the use of which shall be [illegible] rules and regulations [illegible] be prescribed by the Association [illegible] Property [illegible] streets [illegible] ordinarily [illegible] use.

Section 8.8. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

Section 8.9. In the event of a violation or breach of any of these restrictions by any Owner, or agent of such Owner, the Owners of Dwellings in the Subdivision, or any of them severally, shall

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have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, whenever there shall have been built on any Dwelling in the Subdivision any structure which is in violation of these restrictions, to enter upon the Property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The Association is hereby granted a perpetual easement across each Dwelling for the purposes of carrying out its responsibilities under this Section, and any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Developer employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Developer's counsel shall be paid by the Owner of such Dwelling or Dwellings in breach thereof.

Section 8.10. The Developer herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

Section 8.11. In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

WITNESS the execution hereof as of the 23rd day of October, 1984.

WITNESS:

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP
(Seal)

By: MYRTLE BEACH GOLF & YACHT CLUB, INC., a South Carolina corporation, Managing General Partner

By: Samuel D. Burns, President

By: Lindsay C. Beach, Vice President

(as to Myrtle Beach Golf & Yacht Club, Inc.)

And By: PEOPLES JOINT VENTURE GROUP, INC., a South Carolina corporation, General Partner

By: George N. Magrath, President

By: George N. Magrath, Jr., Secretary

(as to Peoples Joint Venture Group, Inc.)

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY) (As to Myrtle Beach Golf & Yacht Club, Inc.)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Myrtle Beach Golf & Yacht Club, a General Partnership, by Myrtle Beach Golf & Yacht Club, Inc., its Managing General Partner, by its duly authorized officers, sign, seal, and as its act and deed deliver the within Declaration of Covenants and Restrictions and that deponent, with the other witness subscribed above, witnessed the execution thereof.

Peggy J. Thomas
(Witness)

SWORN TO before me this

23rd day of October, 1984.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 9-1-91

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY) (As to Peoples Joint Venture Group, Inc.)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Myrtle Beach Golf & Yacht Club, a General Partnership, by Peoples Joint Venture Group, Inc., its General Partner, by its duly authorized officers, sign, seal, and as its act and deed deliver the within Declaration of Covenants and Restrictions and that deponent, with the other witness subscribed above, witnessed the execution thereof.

(Witness)

SWORN TO before me

this [illegible] day of [illegible], 1984.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 2-27-89

EXHIBIT "A"

Description of Property Submitted to the Declaration, Constituting the Subdivision at the Time of Filing the Declaration:

LOTS

All those certain pieces, parcels or lots of land, together with the improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of nine (9) numbered lots and being shown on the Subdivision Plat as Lots G-1 through G-9 inclusive, and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

STREETS AND ROADS

All those certain pieces, parcels or tracts of land, together with improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of the following named streets and roads as shown on the Subdivision Plat, and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference:

Blue Heron Boulevard from Enterprise Road to the rear Lot line of Lot G-9; and

Spice Bush Crescent.

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EXHIBIT "B"

Additional Property

All that certain piece, parcel or tract of land together with the improvements thereon or to be constructed thereon, more particularly shown and designated as "Enterprise Tract" containing 1015.705 acres, more or less, on "Boundary Survey of Enterprise Tract" prepared by [illegible] Incorporated dated November, 1983, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 166, which survey or plat is incorporated herein and made a part hereof by reference.

LESS AND EXCEPTING THEREFROM, HOWEVER, the Property described on Exhibit "A".

ALSO:

All that certain piece, parcel or tract of land lying, being and situate in the County of Horry, State of South Carolina, and being shown on a map prepared by Sur-Tech, Incorporated, dated April 24, 1984 and to be recorded herewith. Being more particularly described as follows:

Commencing at the southern corner of the Enterprise tract, property of James H. Duscabury, Nominee, North 43 degrees 09 minutes 03 seconds East 335.20 feet to an iron pin; thence turning and running South 56 degrees 07 minutes 01 seconds East 150.79 feet to an iron pin; thence turning and running South 23 degrees 05 minutes 18 seconds 74.03 feet to an iron pin; thence turning and running South 28 degrees 59 minutes 55 seconds West 118.72 feet to an iron pin; thence turning and running North 87 degrees 47 minutes 35 seconds West 336.45 feet to the point of beginning.

This is the same property conveyed to Myrtle Beach Golf & Yacht Club, a South Carolina partnership, by deed of Green Springs Enterprises, Inc. dated July 11, 1984, recorded in the office of the Horry County Clerk of Court on September 6, 1984, in Deed Book 890 at page 87.

ALSO:

Any other real property located within one (1) mile of the property described above which from time to time may be acquired by the Developer for purposes of subdivision to this Declaration and/or [illegible] of subdivision.

ALSO:

All [illegible] licenses, rights, [illegible] or other rights appurtenant to or associated with the property described above.

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Changes in Covenants - 10/30/89

P. 7.1, page 24 — add word awning before fence. To read "No structure, awning, fence..."

P. 7.2, page 25 — delete the word any in last sentance.

P. 7.29, page 30 — add word detached before garages and carports. To read, "No dog houses, detached garages, detached carports, or any other accessory structure..."

P. 7.19, page 28 — add or Common Area after Dwelling. To read "Signs are prohibited on or in any Dwelling or Common Area with the following..."

add (d) Designated bulletin board; as approved by the Association and Architectural Review Board; for display of club activities.

P. 7.3, page 25 — add word metal before awning. To read "sheds, dog houses, metal awnings, breezeways..."

Add Section 7.3.1

A property owner, after application to and written approval by the Architectural Review Board, may construct an attached garage to an existing single family dwelling. Such structure must enhance the appearance of the dwelling by:

(a) Placement along the side wall of the existing structure.

(b) Have gabled roof design so as to appear an integral part of the original building. No flat roof structure to be considered.

(c) Single garage door entry not to exceed 8 feet.
(d) Building materials and paint to match existing structure.
(e) Driveway installed with macadam or concrete at time of construction. Owner responsible for providing drainage culvert and protection of drainage ditch under and alongh side of driveway entry.

Strict adherence to Section 7.5 Building Setbacks.

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Exhibit 6

31897

Recd Bk 931 Pg 563

AMENDED AND RESTATED
DECLARATION OF COVENANTS
AND RESTRICTIONS
FOR
MYRTLE BEACH GOLF & YACHT CLUB
SUBDIVISION

1.09.25

FILED
HORRY COUNTY
'93 JAN 28 PM 2:25
REGISTER OF DEEDS

Developer:
MYRTLE BEACH GOLF & YACHT CLUB,
A GENERAL PARTNERSHIP
Post Office Box 8309
Myrtle Beach, South Carolina 29578-8309

Prepared by:
LUMPKIN & SHERRILL
Attorneys at Law
Post Office Box 2937
Myrtle Beach, South Carolina 29578-2937

HORRY COUNTY ASSESSOR
184-17-ALC
Map Blk Parcel
1/20/55A

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FILED
LIBERTY COUNTY, TEXAS
'83 JAN 28 PM 2:25
COUNTY CLERK

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STATE OF SOUTH CAROLINA)
) AMENDED AND RESTATED
) DECLARATION OF COVENANTS AND
COUNTY OF HORRY) RESTRICTIONS FOR MYRTLE BEACH
GOLF & YACHT CLUB SUBDIVISION

THIS DECLARATION made by MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP, hereinafter called "Developer";

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Socastee Township, Horry County, South Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, the Developer proposes to create on such property a subdivision (hereafter referred to as "the Subdivision") containing detached homesite lots and multi-family developments or condominium regimes, together with Common Areas as more fully described herein; and

WHEREAS, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational or commercial portions of the Subdivision,

(b) To preserve the quality of the natural amenities of the Subdivision,

(c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision,

(d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision,

(e) To prevent any property Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any Owners of Property in the Subdivision, and

(f) To keep property values in the Subdivision high, stable and in a state of reasonable appreciation; and

WHEREAS, the Developer is desirous of maintaining design criteria, location, construction specifications, and other controls to assure the integrity of the Subdivision; and

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WHEREAS, as hereinafter provided in this Declaration, the Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the Subdivision, all or any portion of the real property described in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, by Declaration dated as of October 28, 1984, recorded in the office of the Horry County Clerk of Court on October 28, 1984, in Deed Book 918 at page 260 ("the Original Declaration"), the Developer imposed certain covenants, liens, restrictions and reserved certain easements in and to the property described therein and in this Declaration; and

WHEREAS, the Developer, pursuant to the authority reserved to it in the Original Declaration, the Developer wishes to amend the Original Declaration to read in full as set forth in this Amended and Restated Declaration;

NOW, THEREFORE, the Developer hereby declares that all of the Property described in Exhibit "A" and any additional Property described in Exhibit "B" or so much of it as Developer may, in its sole discretion, see fit to develop or dedicate, as, by subsequent amendment hereto, may be subjected to this Declaration, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration. In the event of any conflict between the terms of this Amended and Restated Declaration and the terms of the Original Declaration, the terms of this Amended and Restated Declaration shall control.

ARTICLE I
Definitions

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular plural forms of any such term(s):

Section 1.1. Additional Property shall mean and refer to the real property described in Exhibit "B" and all improvements thereon.

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Section 1.2. Architectural Review Board means the duly constituted members of the Association appointed by the Board of Directors to review and approve the external design, appearance and location of improvements or alterations to or of the Property constituting the Subdivision or any portion(s) thereof.

Section 1.3. Assessment shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

Section 1.4. Association means the Myrtle Beach Golf & Yacht Club Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

Section 1.5. Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.6. By-Laws of the Association shall mean and refer to those By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time.

Section 1.7. Club Charges shall mean and refer to all fees, rentals, food and beverage costs and other charges which are charged by or to an Owner with respect to his use or the use by his family, tenants or guests of the Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

Section 1.8. Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Developer as Common Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public and the general public shall thereby have no easement of use or enjoyment therein. Specifically included as part of the Common Areas are all maintenance areas, streets, roads, alleys, parking lots and parking areas, medians, green areas, walkways, sidewalks, jogging trails, bike paths, street lighting, signage, lagoons, streams, ponds, easement areas designated as Common Areas, access easements across other real property, parks, golf courses and other Recreational Amenities as hereinafter defined, and such other lands and/or improvements as, by subsequent amendment of or supplement to this Declaration, may be subjected to this Declaration and designated as Common Areas by the Developer. However, no general plan or plat of the Properties showing areas which may later be developed as additional phases of the Development shall be deemed to include such property as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest in such property unless and until such property shall have been formally included as a part of the Subdivision by the Developer pursuant to the terms hereinafter contained.

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Section 1.9. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

Section 1.10. Declaration shall mean this Amended and Restated Declaration and all predecessors, supplements and amendments to this Declaration as filed in the office of the Horry County Clerk of Court.

Section 1.11. Developer means Myrtle Beach Golf & Yacht Club, a General Partnership, its successors and assigns.

Section 1.12. Dwelling, with an initial capital letter, shall mean and refer to any improved real property located within the Development intended for the use as: (i) a single family detached Dwelling, including any Lot as defined herein; or (ii) townhouse, condominium unit or patio or cluster home, whether detached or attached; or (iii) apartment, cooperative living unit, or condominium unit in a midrise or highrise building located within the Subdivision.

Section 1.13. Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

Section 1.14. Institutional Mortgage shall mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as, but not limited to, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

Section 1.15. Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, and for a term of hours, days, months or years.

Section 1.16. Living Space shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, unenclosed porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.17. Lot shall mean and refer to those portions of the Subdivision identified as "Lots" on Exhibit "A" attached hereto, together with any portions of the Additional Property that may be so designated from time to time by the Developer, but shall not include any Common Areas or Multi-Family Areas as defined herein.

Section 1.18. Mortgage, with an initial capital letter, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Dwelling, Multi-Family Area or Common Area.

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Section 1.19. Mortgagee, with an initial capital letter, shall mean and refer to the holder of a Mortgage.

Section 1.20. Multi-Family Area shall mean and refer to any portion of the Subdivision designated as such by the Developer in which common elements are owned by either the Owners of Dwellings in such Multi-Family Area as tenants-in-common or by the Multi-Family Association composed of such Owners, pursuant to a Horizontal Property Regime within the Subdivision upon which there will constructed either attached or detached townhouses, condominium units, cooperative units, cluster homes, patio homes or similar multi-family structures.

Section 1.21. Multi-Family Association or Subordinate Regime shall mean and refer to a corporation or an unincorporated association the shareholders or members of which are all Owners of Dwellings within a Multi-Family Area or within any subordinate property development, residential, commercial, or mixed, within the Subdivision, whether submitted to a horizontal property regime or made subject to further or additional restrictions/covenants of ownership and control.

Section 1.22. Multi-Family Declaration shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the Office of the Clerk of Court for Horry County, South Carolina with respect to any Multi-Family Area and which creates a townhouse, patio home, cluster home, cooperative regime, or condominium or horizontal property regime for such Multi-Family Area or imposes covenants, conditions, easements and restrictions with respect to such Multi-Family Area.

Section 1.23. Occupant shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling within the Subdivision.

Section 1.24. Owner, with an initial capital letter, shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

Section 1.25. Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.26. Recreational Amenities shall include such recreational facilities or club and improvements owned by and so designated by Developer and are, from time to time, located within the

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Subdivision or located within or dedicated to the Common Areas, including, without limitation, golf courses and related facilities, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis pro shops, locker room facilities, clubhouses, food and beverage facilities, lagoons, jogging trails and bike paths.

Section 1.27. Subdivision, with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit "A," together with all improvements presently thereon and subsequently constructed thereon, and, upon the submission to the provisions of this Declaration of the tracts or parcels of land described in Exhibit "B," or any portion thereof, shall mean and refer to the real property described in Exhibit "A" and the real property described in Exhibit "B" or such portion thereof so submitted, together with all improvements thereon or thereafter constructed thereon.

Section 1.28. Subdivision Plat shall mean and refer to that certain plat prepared by Sur-Tech, Incorporated, dated October 23, 1984, recorded in the office of the Clerk of Court for Horry County, South Carolina, in Plat Book 83 at page 9 as amended by that certain plat prepared by Sur-Tech, Incorporated, dated October 23, 1984, revised January 6, 1986, recorded in said Clerk's office in Plat Book 88 at page 210, together with: (i) any future revisions thereof; or (ii) any subdivision plat for any portion of the Additional Property as may be submitted to the terms of this Declaration, and recorded from time to time said Clerk's office.

ARTICLE II
Plan of Development

Section 2.1. Plan of Development of the Subdivision. The Subdivision initially shall consist of the Property described on Exhibit "A" attached hereto. The Property shall also include certain improvements to the Common Areas, including roads, utility systems, drainage systems and other improvements serving the Dwellings, and various Recreational Amenities to the extent the same are, from time to time, installed and existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, for so long as Developer: (i) owns any portion of the Common Areas; or (ii) owns any Multi-Family Area; or (iii) owns any Dwelling primarily for the purpose of sale of the Dwelling; or (iv) has the option to add the Additional Property or any portion thereof to the Development; to make improvements and changes to all Common Areas and to any or all Dwellings or any other property owned by Developer: (i) installation and maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; (ii) changes in the location of the boundaries of the Common Areas, any Recreational Amenities, and any Dwellings owned by Developer or of the dedicated or undedicated Common Areas; (iii) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, T.V.

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cable and its various attendant services and telephone service to include teletype or computer, telex, news service, or computer, or any such like instrument used in the transmittal, reception, or retrieval of messages, facts, or information; and (iv) installation of security and/or refuse facilities. The Developer and the Association, as the case may be, shall have the right to assess and collect reasonable fees and charges for the use of Recreational Amenities.

Section 2.2. Plan of Development of Additional Property. Developer hereby reserves the option, to be exercised in its sole discretion, to submit at any time, or from time to time, the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. Developer reserves the right to plan, design, develop, construct, maintain and manage the Common Areas, the Additional Property, the Recreational Amenities, the Multi-Family Areas and any unsold Dwelling as Developer deems necessary or convenient for its purposes, except as otherwise expressly stated in this Declaration, including without limitation the right to expand the number, size and density of the unsold Dwellings, the Common Areas, the Multi-Family Areas, the Recreational Amenities and the Additional Property. This option may be exercised by Developer in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

This option to add additional property/phase(s) may be exercised from time to time during a period of fifteen (15) years from the date of recordation of this Declaration; provided, however, that Developer reserves the right to terminate such option at any time prior to the expiration of such fifteen year period by executing and filing an agreement evidencing such termination in the Office of the Clerk of Court for Horry County, South Carolina, and, except for such termination by Developer, no other circumstances will terminate such option prior to the expiration of such fifteen year period.

The legal description of the Additional Property is set forth on Exhibit "B"; portions of the Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

If the Additional Property or any portion thereof is added to the Development, any improvements developed therein and any Dwellings constructed thereon will be subject to the standards and restrictions set forth herein.

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If the Additional Property or any portion thereof is added to the Development, Developer reserves the right to designate and restrict the boundaries of the Dwellings, Recreational Amenities, Multi-Family Areas, any Commercial Properties as well as the Common Areas, if any, to be added to the Development in connection therewith.

Should the option to add the Additional Property or any portion of it not be exercised within the term specified herein or be terminated by Developer, such option shall in all respects expire and be of no further force and effect. DEVELOPER SHALL NOT BE OBLIGATED TO IMPOSE ON THE ADDITIONAL PROPERTY OR ANY PORTION OF IT ANY COVENANTS, CONDITIONS, OR RESTRICTIONS THE SAME OR SIMILAR TO THOSE CONTAINED HEREIN, AND THAT PROPERTY NOT SUBMITTED WILL BE FREE OF ANY COVENANT OR CONDITIONS WHATSOEVER UNLESS OTHERWISE AFFIRMATIVELY IMPOSED.

The option reserved by Developer to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Developer any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever or to restrict or limit its use in any manner.

The option reserved under this Section 2.2 may be exercised by Developer only by the execution of an amendment to this Declaration which shall be filed in the Office of the Clerk of Court for Horry County, South Carolina, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development by such amendment, as well as the Dwellings, Recreational Amenities, Common Areas, Multi-Family Areas, or other types of Property located within the Subdivision.

SUBSEQUENT TO INCLUSION AND/OR RESTRICTION AND IN ITS SOLE DISCRETION, DEVELOPER MAY CONVEY TO THE ASSOCIATION THE COMMON AREAS DESIGNATED BY DEVELOPER OR ANY OTHER PROPERTY OWNED BY THE DEVELOPER, BE IT RECREATION AMENITY OR OTHERWISE, CONTAINED WITHIN THE PROPERTY AS DESCRIBED IN EXHIBIT "A" OR EXHIBIT "B" OR SUCH PORTION OR PORTIONS OF ANY, EITHER, OR ALL OF THEM, ANY SUCH CONVEYANCE TO BE SUBJECT TO THE LIEN OF TAXES NOT YET DUE AND PAYABLE, ALL EASEMENTS AND RESTRICTIONS OF RECORD, UTILITY EASEMENTS SERVING OR OTHERWISE ENCUMBERING THE PROPERTY AND/OR THE ADDITIONAL PROPERTY, AND ANY EXCEPTIONS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR PHYSICAL INSPECTION OF SUCH PARCEL(S).

Any such amendment shall expressly subject the Additional Property or such portion of it to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real

property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements thereon. If the Additional Property or any portion or portions of it is added to the Development, then from and after the addition to the Development of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be modified to include the Dwellings to be located on the Additional Property or such portion or portions of it as are added, so that there shall continue to be one vote in the Association per Dwelling in the Subdivision, and the total number of votes in the Association shall be increased by the number of Dwellings added as determined by the formulae provided in this document for the voting rights for any Dwelling or Developer-owned facility located on the Additional Property or such portion or portions thereof as are added.

Section 2.3. Multi-Family Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there will be established by Developer, its successors or assigns, other than Recreational Amenities and/or Developer-owned properties, commercial or otherwise, only Multi-Family Associations structured as horizontal property regimes and similar multi-family projects, the membership of which shall be limited to the Owners of Dwellings within the Multi-Family Areas located within such portion or portions of the Additional Property so submitted in order to promote the health, safety and social welfare of the Owners of Dwellings therein, as well as to provide for the maintenance of Dwellings, other improvements and/or other common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such Dwellings and other improvements shall continue to be subject to the terms of this Declaration. Such Multi-Family Areas may be subject to Multi-Family declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Multi-Family Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

Section 2.4. Commercial Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Developer, its successors or assigns Commercial Associations limited to the Owners of commercial property located within such portion or portions of the Additional Property so submitted in order to promote their health, safety, and well-being, as well as to provide for the maintenance and appearance of the commercial property, other improvements and/or other Common Elements owned by such Owners and/or such Commercial Associations, provided that such Owners shall also be members of the Association and such commercial property and other improvements shall continue to be subject to the terms of the Declaration. Such Commercial Areas may be subject to property owner declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby and such Commercial Associations may levy additional assessments

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and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Commercial Center Areas, and among themselves as may be agreed upon/imposed from time to time.

Section 2.5. Utilities and Related Facilities. Developer, its affiliates, successors and assigns shall retain ownership of the water and sewer treatment facilities, and telephone, master television antennas and/or cable system facilities serving the Subdivision, including all lines, plugs, conduits, outlets, pipes, pumps, water towers or tanks, cables and wires, and other systems related thereto which are located within the Subdivision. Water and sewer treatment service, telephone, master television antennas and/or cable system services shall be provided to the Subdivision pursuant to the terms of agreements between the Association and Developer, its affiliates, successors or assigns. Notwithstanding the foregoing, Developer, its affiliates, successors or assigns owning such water and sewer treatment facilities, telephone, master television antennas and/or cable system facilities, or any of them, shall have the right, but not the obligation, to convey at any time all or any part of such facilities to either the Association as a portion of the Common Areas or to a municipality, public authority, governmental agency, public service district or a public or private utility.

Section 2.6. Interest Subject to Plan of Development. Every purchaser of a Dwelling or any portion of the Subdivision shall purchase such Dwelling or other Property and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Developer's plan of development as set forth herein, and Developer shall have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Subdivision as hereinabove provided, and, with respect to each Dwelling or other Property located within the Additional Property, to convey to the purchaser thereof the title to the Dwelling or other Property and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

ARTICLE III
The Association; Membership and Voting Rights

Section 3.1. The Association. The Developer has established or will establish the Association for the purpose of exercising powers of maintaining and administering common facilities and providing common services, administering and enforcing covenants, conditions and restrictions contained herein, and levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the rights to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein.

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Section 3.2. Rules and Regulations. The Association may adopt from time-to-time additional reasonable rules and regulations governing the use of Common Areas, Recreational Amenities and Dwellings.

Section 3.3. Membership. Every person or entity who is an Owner of any Dwelling which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling which is subject to assessments.

Section 3.4. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners excepting the Developer. Class A Members shall be entitled to one vote for each Dwelling in which they hold the interest required for membership by Section 3.3 above. When more than one person holds such interest or interests in any Dwelling, the vote attributable to such Dwelling shall be exercised as such persons mutually determine, but in no event shall more than one vote be cast with respect to any such Dwelling.

Class B. The sole Class B member shall be the Developer. The Class B member shall be entitled to four votes for each Dwelling in which it holds the interest required for membership under Section 3.3 above. The Class B membership shall cease and become converted to Class A membership upon the occurrence of the first of either of the following two events:

1. When the total votes held by in the Class A member equal or exceed the total votes held by the Class B member (Dwellings shall include those Dwellings contained in or situate on any Additional Property which Developer shall hereafter bring under the terms of this Declaration) or

2. October 20, 1988.

When a purchaser of an individual Dwelling or Dwellings takes title thereto from the Developer, such purchaser becomes a Class A Member.

Section 3.5. Initial Assessment. At the time of the first sale of each Dwelling from the Developer to an Owner, there shall be assessed by the Association and collected from each Owner/purchaser an initial assessment equal to at least two months' assessments for such Dwelling, to establish and maintain a working capital fund for the use and benefit of the Association. The purpose of such working capital fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire equipment or service deemed necessary by the Association. Such initial assessments shall not be considered as advance payment of regular assessments.

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Section 3.6. Transfer Fee. Excluding the first sale of each Dwelling from the Developer to an Owner, but including all subsequent sales of all Dwellings, there shall be assessed by the Association and collected from the new purchaser of each Dwelling a transfer fee equal to one-fourth per cent (1/4%) of the sales price of such Dwelling, which transfer fee shall be paid to the Association and used by the Association for its regular operations and/or reserves. In the event of non-payment of such transfer fee the amount due shall bear interest and shall be collectible as an assessment as set forth in Article VI hereof. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

Section 3.7. Association May Require Single Property Management Firm. The Association may require any and all Multi-Family or Commercial Associations established with respect to any portion of the Subdivision to exclusively utilize the same property management firm as utilized by the Association.

ARTICLE IV
Property Rights in the Common Areas

Section 4.1. Owners' Easements of Enjoyment. Subject to the provisions of Section 4.3 below, every Owner shall have a non-exclusive right and easement of enjoyment in and to the dedicated Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Dwelling.

Section 4.2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that on or before October 20, 1989, it will convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds fee simple title to the Common Areas, subject, however, to all liens and encumbrances of record and to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

"In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, recreational equipment, if any, fences, storm drains, signs, and sewer and water and other utility lines, connections and appurtenances."

This Section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas. The Developer may also impose additional covenants on such Common Areas at the time of such conveyance(s).

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Section 4.6. Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely affect the use of the Common Areas by the Owners;

(b) The right of the Developer, and of the Association, to grant, reserve and accept easements and right-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities, and services, including a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;

(c) The right of visitors, invitees, etc., to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Areas in the case of landlocked adjacent Owners) to the nearest public highway;

(d) The right of the Association, as provided in its By-Laws, to suspend the enjoyment rights of any Owner for any period during which any assessment remains unpaid, for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; provided, however, that the right of an Owner to ingress and egress over the roads and/or parking areas shall not be suspended;

(e) The rights of the Developer and the Association, as the case may be, to establish rules and regulations for the Subdivision and to prescribe fees and charges from time to time for use of the Recreational Amenities.

Section 4.5. Delegation of Parking Rights. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas and facilities to his employees, tenants, invitees or licensees.

Section 4.6. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer and the Architectural Review Board, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Areas.

Section 4.7. Access. All Owners, by accepting title to Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such

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Dwelling and acknowledge and agree that such access, ingress and egress shall be limited to roads, sidewalks, walkways, and trails located within the Subdivision from time to time, provided that pedestrian and vehicular access to and from all Dwellings shall be provided at all times. There is reserved unto Developer, the Association and their respective successors and assigns the right and privilege, but not the obligation: (i) to maintain guarded or electronically monitored gates controlling vehicular access to and from the Subdivision; and (ii) to require payment of toll charges for use of roads within the Subdivision by permitted commercial traffic or by members of the general public, provided that in no event, shall any such tolls be applicable to any Owner or his family, tenants or guests or to those individuals designated by Developer and their families and guests.

Section 4.8. Easements for Developer. During the period that Developer owns any Common Area, or owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Dwellings; any improvements to the Common Areas, the Multi-Family Areas and the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

Section 4.9. Changes in Boundaries; Additions to Common Areas. Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas and any Dwellings, Recreational Amenities or Multi-Family Areas owned by Developer, including the realignment of boundaries between adjacent Dwellings, Common Areas, and/or Multi-Family Areas owned by Developer. In addition, Developer reserves the right, but shall not have the obligation, to convey to the Association at any time, and from time to time, any portion of the Additional Property, such real property to be conveyed to the Association as an addition to Common Areas and subject to the other provisions set forth in this Declaration.

Section 4.10. Easements for Utilities. There is hereby for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; (ii) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected; (iii) an area across every Lot five (5') feet in width along the front and side boundary lines thereof, and ten (10') feet in width along the rear boundary lines

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thereof; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Developer, its successors and assigns or by the Board of Directors; provided, however, that for so long as Developer owns any portion of the Common Areas, owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Subdivision and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

Section 4.11. Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement upon, over and across: (i) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected; and (ii) all other lands which may remain unimproved for the installation, maintenance and use of sidewalks, jogging trails, bike paths, traffic directional signs and related improvements.

Section 4.12. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter upon any Dwelling, or Multi-Family Area or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner, occupant or Multi-Family Association, or the Owner(s) or Multi-Family Area affected.

Section 4.13. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model Dwellings, together with such other facilities as in the sole opinion of Developer reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Dwellings, Multi-Family Areas, Common Areas or the Additional Property.

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Section 4.14. Easements for Additional Property. There is hereby reserved in the Developer, its successors, assigns and successors in title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Subdivision, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all roads, sidewalks, trails, parking facilities and lagoons from time to time located on or within the Common Areas or within easements serving the Common Areas; (ii) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and master television antenna and/or cable system lines; and (iii) drainage and discharge of surface water onto and across the Subdivision, provided that such drainage and discharge shall not materially damage or affect the Subdivision or any improvements from time to time located thereon.

Section 4.15. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any improved portions of any Dwelling or Multi-Family Area for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of Dwellings or Multi-Family Areas which are located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Subdivision for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

Section 4.16. Environmental Easement. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas, Dwellings and Multi-Family Areas for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

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Section 4.17. Wells and Effluent. There is hereby reserved for the benefit of Developer, the Association and their respective agents, employees, successors and assigns as alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Subdivision for the purpose of irrigating any portions of the Subdivision and for other purposes; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities; or (iii) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities or upon any unimproved portions of any Dwelling, or Multi-Family Area.

Section 4.18. Conservation Easements. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right, easement and restriction across those portions of Lots, Multi-Family Areas and Common Areas shown as Conservation Easements on the Subdivision Plat, as follows:

(a) No construction of any kind shall be allowed in such conservation easement areas;

(b) Such conservation easement areas shall be maintained in their natural state, but this restriction shall not prohibit or prevent the removal of trash, weeds, or dead or decaying or diseased vegetation, nor shall this restriction prohibit the Developer or the Association from utilizing such conservation easement areas for drainage or other utility purposes; and

(c) Such conservation easement shall also include the right to flood such conservation easement areas with water as a part of the maintenance, preservation or expansion of streams, lagoons, lakes and other bodies of water in the Subdivision or nearby.

Provided, however, that the requirements of this Section 4.18 may be modified or released in whole or in part by the Developer, its successors and assigns.

Section 4.19. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

ARTICLE V

Right of Association to Alter, Improve, Maintain and Repair Common Areas and Portions of Dwellings

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Section 5.1. The Association shall have the right to make or cause to be made such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Areas and the portions of Dwellings set forth herein, and the cost thereof shall be assessed as common expenses and collected from the Owners on an equal basis.

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Section 6.2. Responsibilities of Owners and Multi-Family Associations. Unless specifically identified herein or in a Multi-Family Declaration as being the responsibility of any Owner or a Multi-Family Association, all maintenance and repair of Dwellings, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Dwelling shall be the responsibility of the Association. Unless otherwise provided in the appropriate Multi-Family Declaration, the maintenance and repair of all Common Areas or common elements located within Multi-Family areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Area) shall be the sole responsibility of the Association. Developer shall be responsible for Developer-owned properties. Each Owner or Multi-Family Association shall be responsible for maintaining his or its Dwelling or Multi-Family Area, as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings and other structures. All attendant lawns, trees, shrubs, hedges, grass, natural areas, and other landscaping shall be maintained by the Association. As provided in Section 6.3(b) hereof, each Owner or Multi-Family Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner or Multi-Family Association, but which responsibility such Owner or Multi-Family Association fails or refuses to discharge. No Owner or Multi-Family Association shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or within a Multi-Family Area unless such decoration, change or alteration is first approved, in writing, by the Architectural Review Board as otherwise provided herein; or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Subdivision, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board and the Owners and Mortgagees of the Dwellings directly affected thereby or benefitting from such easement or hereditament.

Section 6.3. Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all roads, walks, trails, lagoons, ponds, parking lots, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Dwellings, or Multi-Family Areas; (ii) such security systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Common Areas and which are not maintained by the Developer or a public authority, public service district, public or private utility or other person; and (iii) all lawns, trees, shrubs hedges, grass, and other landscaping situated within the Subdivision as it may be constituted from time to time. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any

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against such Owners' Dwellings or Commercial Units. In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses.

ARTICLE VI
Covenant for Maintenance Assessments

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Dwelling owned within the Properties, hereby covenants, and each Owner of any Dwelling by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for the maintenance of the Common Areas, including such reasonable reserves as the Association may deem necessary, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall be a charge on the Dwelling and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 6.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners in the Subdivision (and their respective families, guests, tenants and invitees) and for the improvement, protection, replacement, operation, and maintenance of the Common Areas and for the provision of various forms of insurance for the Association, its property (including the dedicated Common Areas and Recreational Amenities), members, directors, officers, employees and agents, and for the provision of necessary and reasonable services for and other expenses of the Association.

Section 6.3. Maximum Annual Assessment. Until May 1, 1986, the maximum monthly assessment shall be Thirty-three ($33.00) Dollars per Dwelling.

(a) From and after May 1, 1986, the maximum monthly assessment may be increased by the Board of Directors each calendar year not more than 20% above the maximum monthly assessment for the previous calendar year without a vote of the membership.

(b) From and after May 1, 1986, the maximum monthly assessment may be increased above 20% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, or by written consent in lieu of such meeting.

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(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6.5. Notice and Quorum for Any Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 or 6.4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Dwellings and may be collected on a monthly, quarterly or annual basis.

Section 6.7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Dwelling on the first day of the month following the conveyance of that Dwelling by the Developer to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling have been paid. A properly executed certificate of the Association as to the status of assessments on a Dwelling is binding upon the Association as of the date of its issuance.

Section 6.8. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18%) percent per annum or (b) the maximum rate provided by applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same, or

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foreclose the lien against the Dwelling (as in the foreclosure of a mortgage), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Dwelling.

Section 6.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Dwelling shall not affect the assessment lien. However, the sale or transfer of any Dwelling pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII
Use Restrictions

Section 7.1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, drive or other improvement shall be placed or altered on any Dwelling except in accordance with the provisions of this Declaration.

Section 7.2. Buildings, Fences, Walls, etc. No building, fence, wall or other structure, and no change in topography, landscaping or any other item shall be commenced, erected or maintained upon any portion of the Subdivision, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, size, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the Developer. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. Provided, however, that upon the Developer's selling of all the Dwellings in the Subdivision, this right of approval shall be transferred to an Architectural Review Board of the Association. Such Architectural Review Board shall be comprised of not less than three (3) representatives to be appointed by the Board of Directors of the Association; provided, further, that the Developer may transfer its rights of approval under this Declaration prior to its selling all of the Lots in the Development if its so chooses. In the event the Developer or the Architectural Review Board fails to approve or disapprove any request within thirty (30) days after complete written plans and specifications have been submitted to it, the same shall be deemed approved, and this article shall be deemed to have been fully complied with, provided, however, that no such failure to act shall be deemed and approval of any matters specifically prohibited by any other provisions of this Declaration. Refusal or approval of plans, specifications and plot plans or any of them may be bases on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer or the Architectural Review Board may deem sufficient. The transfer of control shall not be mandatory on the part of the Developer if the Developer has brought any portion of the Additional Property under the terms of this Declaration.

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No fences whatsoever shall be erected or allowed to remain in the Subdivision except approved privacy patio fences in rear yards only, not exceeding 6' in height or except those erected by the Developer in Common Areas. Said fences and patios shall be allowed only after obtaining prior written approval of the Developer. Said fences shall be treated wood or stained or painted to match the colors of the siding on the principal house structure. No fences shall be permitted which obstruct the view of any golf course or lake when viewed from inside any adjacent dwelling.

Section 7.3. Residential Use of Lots. All Lots shall be used for single-family residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family Dwelling, provided, however, that nothing contained herein shall be construed to prevent the Developer from maintaining one or more model homes and/or sales offices in the Subdivision for the purpose of selling, leasing or managing Dwellings or other property in or near the Subdivision. No accessory structures or outbuildings, whether or not attached to the principal residence (including but not necessarily limited to carports, storage sheds, dog houses, awnings, breezeways, covered swimming pools and the like) shall be constructed or allowed to remain on any Lot, provided, however, that the Developer may construct attached storage compartments, screened-in rear porches and rear sun rooms as an integral part of the principal residence. Provided further, however, that an Owner, after application to and written approval by the Architectural Review Board, may construct attached storage compartments, screened-in rear porches and rear sun rooms as an integral part of the principal residence, if and only if such construction and improvement is consistent with the design of the principal residence and with the standards of construction prevailing in the Subdivision.

Section 7.4. Prohibition Against Business Activity and "Time Sharing" Use. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Dwelling. Provided, however, that nothing contained herein shall be construed so as to prohibit home occupations (i.e., any occupation within a Dwelling and clearly incidental thereto, carried on by a member of the family resident of the premises is employed, so long as no stock in trade is kept or commodities sold, no mechanical equipment is used except such that is normally used for family, domestic, or household purposes, and there is no exterior indication that the building is being used for any purpose other than a Dwelling), or the construction of houses to be sold on said Lots or the showing of said Dwelling for the purpose of selling or leasing Dwellings in the Subdivision. Nothing herein shall be construed to prevent the Developer from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales or lease or management of Dwellings in the Subdivision. Provided, however, that nothing herein contained shall prevent the Developer from erecting and maintaining sales and marketing signs in Common Areas or on other property owned by the Developer.

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No Dwelling or structure shall be "time shared", nor shall any Dwelling or structure be owned, used or operated in violation of the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. §27-32-10 et seq. (1988 Supp.), as the same may be amended from time to time, nor shall any Dwelling or structure be owned, used or operated so as to constitute such Dwelling or structure as a "time sharing unit" within the meaning of such statutory provisions.

Section 7.5. Association Office. Nothing in this Declaration shall be construed to prohibit the Association from constructing, operating and maintaining a facility for use as its office and headquarters, for the benefit of the Association and its members, provided that such facility shall first be approved in all respects in writing by the Developer.

Section 7.6. Temporary Structures. No structure of a temporary character shall be placed upon any Lot or Dwelling at any time; provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by the contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be use for residence or permitted to remain on the Lot or Dwelling after completion of construction. No trailer, mobile home, double-wide, park model trailer, motor home, tent, barn, camper, bus, tree house or other similar vehicle, out-building or structure shall be placed on any Lot or on any portion of the Common Areas at any time either temporarily or permanently.

Section 7.7. Mining and Drilling Prohibition. No oil or natural gas drilling refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Subdivision.

Section 7.8. Use and Height Restrictions. No structure shall be erected, placed or permitted to remain on any Lot other that one detached single-family residence Dwelling, not to exceed one and one-half stories in height, and in no instance shall any residence exceed twenty-five (25') feet in height.

Section 7.9. Building Setbacks. No Dwelling or structure of any kind (except for air handlers, heat pumps, and related HVAC equipment) shall be erected on any Lot nearer than:

(a) Twenty (20') feet to the front line of the Lot (the line abutting on a street), nor

(b) Five (5') feet to the side lines of the Lot, nor

(c) Ten (10') feet to the rear line of the Lot;

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provided, however, that the requirements of this paragraph may be released in whole or in part by the Developer, its successors and assigns, when in its sole discretion there would otherwise be a hardship upon a Lot Owner or would result in substantial damage to one or more natural features of the Lot.

Section 7.10. Timely Construction Progress. Once construction of improvements is started on any Lot, the improvements must be substantially completed within six (6) months from commencement.

Section 7.11. Material Restriction. All structures constructed or placed on any Lot shall be built of substantially new material and no used structures shall be relocated or placed on any such Lot.

Section 7.12. Re-Building Requirement. Any Dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a natural condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

Section 7.13. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of the Subdivision shall be made on the premises without the prior written approval of the Developer nor shall any fill be used to extend any property beyond any boundary line of any waterfront property.

Section 7.14. Vegetation Cutting Restrictions. No tree or shrub taller than three (3') feet in height shall be cut, removed or intentionally damaged on any Lot or Common Area, unless such vegetation interferes with the construction or safe maintenance of improvements on such Lot or Common Area or unless such tree is diseased or dead. The Owner(s) of any Lot upon which a violation of this restriction occurs agrees to promptly (within 30 days after notice) replace such vegetation with vegetation of comparable size.

Section 7.15. Clotheslines. No clothesline or drying yards shall be located upon the premises so as to be visible from any Common Area or other Dwellings.

Section 7.16. Water Systems. No individual water supply system shall be permitted upon any Lot with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing all respects, including the pump and the covering or screen thereof and method of operation by the Developer, its successors or assigns, prior to installation.

Section 7.17. Sewer System. No surface toilets or septic tanks are permitted in the Subdivision (other than those utilized for a designated model home complex by the Developer). A purchaser of a Dwelling assumes responsibility for attaching to public sewer system including all fees associated therewith.

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All plumbing fixtures, dishwashers, toilets or sewage disposal system shall be connected to the central sewer system of the Subdivision.

Section 7.18. Garbage Disposal. Each Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Developer, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other or other disposal or garbage or trash on any Lot or within the Subdivision or Development shall be permitted. Provided, however, that Owner shall be permitted to modify the requirements of this Section where necessary to comply with orders of governing bodies or their franchisees.

Section 7.19. Sign Controls. Signs are prohibited on or in any Dwelling with the following exceptions:

(a) temporary "For Sale" signs or signs indicating the name of a contractor only (not subcontractors) during the period of sale or construction only, provided the sign does not exceed four (4) square feet in size. "For Sale" or "For Lease" signs are allowed to be displayed only in a window of a Dwelling.

(b) address numerals or letters not to exceed four (4) inches in height.

(c) provided, however, that nothing herein contained shall prevent or restrict the Developer from erecting and maintaining sales, rental, management or marketing signs in Common Areas or on any other property owned by the Developer.

Section 7.20. Exclusion of Above Ground Utilities. All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Subdivision except those master facilities approved by the Developer. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

Section 7.21. Communication System. There shall not be permitted or maintained any type of radio or communications system antenna (other than normal receive-only radio antennae) or satellite disc on any exterior portion of a Dwelling, nor shall any such antenna or satellite disc be maintained inside a Dwelling.

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Section 7.22. Off-Street Parking. Two off-street parking spaces shall be provided by the Lot Owner for the parking of automobiles or other vehicles owned by said Owner, his guests, invitees or tenants, and said Owner agrees not to park his automobile or other vehicles (including golf carts) or those of his guests on the streets or Common Areas in the Subdivision (except in designated guest parking areas). Parking shall only be allowed on designated paved parking areas, which shall not be changed in size or location without prior written approval of the Developer. No travel trailers or mobile homes, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, motorcycles, trucks, or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, specifically including streets and guest parking areas, or any Lot, except within the approved Common Storage Area.

Section 7.23. Junk or Disabled Vehicles. No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle, or part thereof, shall be permitted to be parked or kept in the Subdivision.

Section 7.24. Motorcycles. Motorcycles (except motorscooters, motorbikes with less than 5 h.p.) are prohibited from all Lots, streets and Common Areas, except from any Common Storage Area so designated by the Developer.

Section 7.25. Pets. No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Subdivision except dogs, cats, pet fish and birds which may be kept thereon in reasonable numbers (not to exceed three) as pets for the pleasure and use of the property Owner but not for any commercial use or purpose. All animals must be kept on a leash when they are outside the Owner's Dwelling and must not become a nuisance to other residents by barking or other acts. Non-owners (e.g. renters or lessees) may not keep any pets on any part of the Property, without prior written approval of the Owner, said approval to be filed with the Association.

Section 7.26. Perimeter Access. There shall be no access to any Lot on the perimeter of the Subdivision except from designated roads within the Subdivision, provided, however, that Developer reserves the right to construct and operate temporary construction roads during the construction and development period.

Section 7.27. Rental Period. No Owner shall lease or rent any Lot more than three (3) times in any given twelve month period nor shall any Owner lease or rent any Multi-Family Dwelling more than fifty-two (52) times in any one year period

Section 7.28. Prohibition of Open Outdoor Storage. No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure, which shall be attached to the principal Dwelling or in a manner that is visible from any other Lot, Common Area, street, easement or amenity area. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Common Area, easement, street or amenity area. 931 PAGE 591 54

Section 7.29. Prohibition of Accessory Structures. No dog houses, garages, carports, or any other accessory structure shall be constructed upon any Lot, except an attached storage compartment, porch, swimming pool, swing set and similar play structure which has been approved in writing by the Architectural Review Board prior to installation or construction.

Section 7.30. Nuisances. No noxious or offensive activity shall be carried on upon or in any Dwelling, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood, including Common Areas, other homesites, easement areas or residences. No trash, leaves or rubbish may be burned on any Lot or within the Development nor shall there be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort, the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owner thereof.

Section 7.31. Landscaping. The Developer reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views from and of adjoining Common Areas or amenity areas.

Section 7.32. Special Hazards. Each Owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Dwelling, including but not limited to its proximity to any recreational facility or Common Area or the Intracoastal Waterway. Specifically, the Developer does hereby disclaim any and all liability for any property damage or personal injury resulting from erosion along the bank of the Intracoastal Waterway, and all ditches, streams, inlets, lagoons or other bodies of water or watercourses located in the Subdivision.

Section 7.33. Traffic Regulations. Traffic regulations on all roads and streets within the Subdivision will be enforced under the provisions of the South Carolina Uniform Act for regulating traffic to private roads. A speed limit of 25 MPH is established on all roads and streets and all traffic control signs, including but not limited to speed limit, stop, directional and no parking signs will be enforced.

Section 7.34. Prohibited Activities for Golf Course Area. Owners of Dwellings abutting golf fairways or greens shall be obligated to refrain from any actions which would distract from the playing qualities of any golf course on or abutting the Property. Such prohibitive action shall include, but not be limited to, such activities as the maintenance of unfenced dogs or other pets under conditions interfering with play due to loud barking, running on the fairways, or other like interference.

Section 7.35. Encroachments. No Owner or individual shall alter in any way any Common Area except with the written permission of the Association provided that such activity is required for the benefit of the Association or the Subdivision as a whole.

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Section 7.36. Subdivision of Dwellings; Easements and Encroachments. No Dwelling shall be subdivided except as hereinafter provided and no building or residence, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established. Provided, however, if any portion of any Common Areas unintentionally encroaches upon a Dwelling or any part thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of improvements to a Dwelling or Dwellings or any portion thereof, whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any improvement or part thereof is partially or totally destroyed and then rebuilt, any encroachment of any Common Area upon a Dwelling or Dwellings or encroachment of a Dwelling or Dwellings upon any Common Area or upon an adjoining Dwelling or Dwellings resulting because of such rebuilding, shall be permitted, and a valid easement shall exist for the maintenance of such encroachments so long as the same stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on any Common Area or any Dwelling or Dwellings, and no Owner shall be entitled to damages or injunctive relief because of the construction, re-construction or maintenance thereof.

Section 7.37. Increased Size of Lots. Lot or Lots may be subdivided provided the effect is to increase the size of the adjoining Lot or Lots. In such cases, the Developer may alter the building or set-back lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, that may be done only if the written consent of the Developer is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the Subdivision shall not have the right to pass on or interfere with such Lot rearrangement. Such rights shall be exclusively that of the Developer or any successors or assigns to whom the Developer may expressly have transferred such rights, but the purchaser of any other Lot in the Subdivision does not, by virtue of his status as a purchaser, become any such successor or assign.

Section 7.38. Alteration of Building Lines in the Best Interest of Development. Where because of size, natural terrain, or any other reason in the sole opinion of the Developer, it should be to the best interest of the Development of this Subdivision that the building lines of any Lot should be altered or changed, then Developer reserves unto itself, its successors and assigns, and no other, the right to change said lines to meet such conditions. The Developer specifically reserves the right to transfer and assign this right of change of building lines to the Architectural Review Board herein established.

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Section 7.38. Replatting of Lots. No Lot shall be subdivided by an Owner, or its boundary lines changed, except as herein provided. However, the Developer hereby expressly reserves to itself, its successors and assigns, the right to replat any one or more Lots owned by the Developer shown on the plat of said Subdivision prior to delivery of the deed therefor in order to create a modified building Lot or Lots. The restrictions and covenants herein apply to each such building Lot so created or recreated.

ARTICLE VIII
General Provisions

Section 8.1. Enforcement. The Developer, the Association, or any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of right to do so thereafter. The Developer and the Association, as the case may be, shall have the right to establish, assess and collect reasonable fines and penalties to violations of this Declaration, which shall be liens against Dwellings as provided herein. Such fines shall not exceed $50.00 per violation per day.

Section 8.2. Severability. Invalidation of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way effect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 8.3. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the property constituting the Subdivision, and shall inure to the benefit of and be enforceable by the Developer, the Association, or any Owner for a period of twenty (20) years from the date hereof and thereafter shall continue automatically in effect for additional periods of twenty (20) years, unless otherwise agreed to in writing by the then Owners of at least seventy-five (75%) percent of the Dwellings.

Section 8.4. Assignment. The Developer shall have the right to assign to any one or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration.

Section 8.5. Amendment.

(a) Amendments by Developer. For a period of fifteen (15) years from the date of recording of this Declaration, Developer may amend this Declaration in any particular by an instrument in writing filed and recorded in the Records of the Office of the Clerk of Court for Horry County, South Carolina, all without the approval of any Owner or

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Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration: (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Dwelling or Multi-Family Area, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; or (ii) in the event that such amendment would materially and adversely affect the security, title, and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 8.5(a) shall be certified by Developer as having been duly approved by Developer and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Dwelling or Commercial Unit, agrees to be bound by such amendments as are permitted by this Section 8.5(a) and further agrees that, if requested to do so by Developer, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision, (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Dwellings or Multi-Family Areas subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Dwelling, Commercial Unit or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Dwellings or other improvements subject to this Declaration.

(b) Amendments by Association. Amendments to this Declaration, other than those authorized by Section 8.5(a) above, shall be proposed and adopted in the following manner:

(1) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(2) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least three-quarters (3/4) of the total votes in the Association; provided, however: (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; and (ii) during any period in which Developer owns a Dwelling or Commercial Unit primarily for the purpose of sale or has the option under this Declaration to add the Additional Property or any portion thereof to the Subdivision, such amendment must be approved by Developer.

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(3) The agreement of the required percentage of the Owners and, where required, Developer and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

Section 8.6. Multiple Associations. So long as Developer, its successors or assigns, owns an unsold Dwelling in the Subdivision, it shall have the right to merge the Association with other associations governing the use and control of other property in the Subdivision.

Section 8.7. Each of the streets in the Subdivision now or hereafter designated on any plat is a private street, and every park, stream, body of water, Common Area, recreational facility, and other amenity within the Subdivision is a private park, facility or amenity and neither the Developer's recording or any such plat nor any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed, as a dedication to the public of any said streets, parks, Common Areas, recreational facilities and amenities other than as reflected therein. An easement for the use and enjoyment of each of said streets and areas designated as parks is reserved to the Developer, its successors and assigns; to the persons who are, from time to time, members of the Association; to the members and Owners of any recreational facility; and to the residents, tenants and occupants of any multi-family residential buildings, and all other kinds of residential structures that may be erected within the boundaries of the Property and to the invitees of all the aforementioned persons; the use of which shall be subject to such rules and regulations as may be prescribed by the Association, if the Association is the Owner of the facility or Property involved. The Developer may dedicate the streets to a public authority if it so desires.

Section 8.8. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

Section 8.9. In the event of a violation or breach of any of these restrictions by any Owner, or agent of such Owner, the Owners of Dwellings in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, whenever there shall have been built on any Dwelling in the Subdivision any structure which is in violation of these restrictions, to enter upon the Property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The Association is hereby granted a perpetual easement across each Dwelling for the purposes of carrying out

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its responsibilities under this Section, and any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Developer employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Developer's counsel shall be paid by the Owner of such Dwelling or Dwellings in breach thereof.

Section 8.10. The Developer herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

Section 8.11. In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

WITNESS the execution hereof as of the 21st day of January, 1986.

WITNESS:

Daniel B. Kelley, III

(as to Myrtle Beach Golf & Yacht Club, Inc.)

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP
(Seal)

By: MYRTLE BEACH GOLF & YACHT CLUB, INC., a South Carolina corporation, Managing General Partner

By: Samuel D. Burns, President

By: Lindsay C. Ronch, Vice President

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And By: PEOPLES JOINT VENTURE GROUP, INC., a South Carolina corporation, General Partner

By: George N. Magrath, Jr.
Secretary

By: George N. Magrath,
President

(As to Peoples Joint Venture Group, Inc.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE
(As to Myrtle Beach Golf & Yacht Club, Inc.)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Myrtle Beach Golf & Yacht Club, a General Partnership, by Myrtle Beach Golf & Yacht Club, Inc., its Managing General Partner, by its duly authorized officers, sign, seal and as its act and deed deliver the within Declaration of Covenants and Restrictions and that deponent, with the other witness subscribed above, witnessed the execution thereof.

Daniel B Blichy, III
(Witness)

SWORN TO before me this
21st day of January, 1985.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 6/19/91

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE
(As to Peoples Joint Venture Group, Inc.)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Myrtle Beach Golf & Yacht Club, a General Partnership, by Peoples Joint Venture Group, Inc., its General Partner, by its duly authorized officers, sign, seal, and as its act and deed deliver the within Declaration of Covenants and Restrictions and that deponent, with the other witness subscribed above, witnessed the execution thereof.

(Witness)

SWORN TO before me this

28th day of January, 1985.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 2/27/89

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EXHIBIT "A"

Description of Property Submitted to the Declaration Constituting the Subdivision at the Time of Filing the Declaration:

LOTS

All those certain pieces, parcels or lots of land, together with the improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of 249 numbered lots and being shown on the Subdivision Plat as Lots G-1 through G-9 inclusive, H-1 through H-9 inclusive, L-1 through L-23 inclusive, M-1 through M-8 inclusive, S-1 through S-13 inclusive, T-1 through T-14 inclusive, V-1 through V-18 inclusive, X-1 through X-8 inclusive, JA-1 through JA-14 inclusive, KA-1 through KA-9 inclusive, LA-1 through LA-8 inclusive, NA-1 through NA-6 inclusive, PA-1 through PA-5 inclusive, YA-1 through YA-7 inclusive, ZA-1 through ZA-11 inclusive, AB-1 through AB-12 inclusive, and BB-1 through BB-23 inclusive, and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

MULTI-FAMILY AREAS

All those certain pieces, parcels or tracts of land, together with the improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of numbered tracts and being shown on the Subdivision Plat as Tracts MA, QA, RA, PA, UA, VA and WA and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

STREETS AND ROADS

All those certain pieces, parcels or tracts of land, together with improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of the following named streets and roads as shown on the Subdivision Plat, and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference:

Blue Heron Boulevard from Enterprise Road to just north of Multi-Family Tract WA;

Spice Bush Crescent;

Sweet Gum Crescent;

Laguna Point;

White Heron Crescent;

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Snowy Egret Crescent;

Snowy Egret Trail;

Heron Point;

Royal Pine Drive;

Eagle Crescent;

Meadow Crescent;

Pebble Beach Crescent;

Cardinal Crescent;

Augusta Crescent;

Carolina Wren Crescent;

Wintergreen Point;

Wood Duck Cove;

Royal Fern Crescent;

Wisteria Drive;

Seaman's Crescent;

Night Heron Crescent;

Mallard View Point; and

Greenslake Point

ENTRY PARCELS

All those certain pieces, parcels or lots of land, together with the improvements thereon or to be constructed thereon, situate, lying and being on the southwestern side of Enterprise Road in Socastee Township, Horry County, South Carolina, consisting of Parcel A, and Parcel B as shown on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

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EXHIBIT "B"

Additional Property

All that certain piece, parcel or tract of land together with the improvements thereon or to be constructed thereon, more particularly shown and designated as "Enterprise Tract" containing 1015.705 acres, more or less, on "Boundary Survey of Enterprise Tract" prepared by Sur-Tech, Incorporated dated November, 1983, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 186, which survey or plat is incorporated herein and made a part hereof by reference.

LESS AND EXCEPTING THEREFROM, HOWEVER, the Property described on Exhibit "A".

ALSO:

All that certain piece, parcel or tract of land lying, being and situate in the County of Horry, State of South Carolina, and being shown on a map prepared by Sur-Tech, Incorporated, dated April 24, 1984 and to be recorded herewith. Being more particularly described as follows:

Commencing at the southern corner of the Enterprise tract, property of James H. Dusenbury, Nominee, North 43 degrees 29 minutes 03 seconds East 338.20 feet to an iron pin; thence turning and running South 56 degrees 07 minutes 01 seconds East 168.79 feet to an iron pin; thence turning and running South 23 degrees 05 minutes 18 seconds 74.93 feet to an iron pin; thence turning and running South 28 degrees 56 minutes 55 seconds West 116.72 feet to an iron pin; thence turning and running North 07 degrees 47 minutes 35 seconds West 336.46 feet to the point of beginning.

This is the same property conveyed to Myrtle Beach Golf & Yacht Club, a South Carolina partnership, by deed of Green Springs Enterprises, Inc. dated July 11, 1984, recorded in the office of the Horry County Clerk of Court on September 5, 1984, in Deed Book 898 at page 87.

ALSO:

See other real property located within one (1) mile of the property described above which from time to time may be acquired by the Developer for purposes of subdivision to this Declaration and/or development of subdivision.

ALSO:

All easements, rights, leasehold estates, licenses, riparian, littoral or other rights appurtenant to or associated with the property described above.

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Exhibit 7

STATE OF SOUTH CAROLINA)
) AGREEMENT
COUNTY OF RICHLAND)

WHEREAS, Property Consultants, Inc. ("Consultants"), is the owner of a real estate development in Horry County, South Carolina, popularly known as Myrtle Beach Golf and Yacht Club ("MBGYC"), which development is presently operating under Chapter 11 of the Bankruptcy Laws of the United States; and

WHEREAS, Peoples Federal Savings & Loan Association ("Peoples"), is the owner and holder of a first mortgage on Tract II of MBGYC, consisting of the golf course, club house, recreational amenities, and Tract I and Tract II roads; and

WHEREAS, Myrtle Beach Golf and Yacht Club Association, Inc., ("POA") is an eleemosynary corporation organized and existing under the laws of the State of South Carolina, and which Association has certain rights in Tract I of MBGYC, as a result or ownership by its members in Tract I of MBGYC; and

WHEREAS, Consultants, MBGYC, Peoples, and POA, in the furtherance of their respective financial interests in MBGYC wish to enter into an agreement with respect to their rights and liabilities, one to another, in accordance with a plan to release for foreclosure the MBGYC property under lien to Peoples and to facilitate the development of the property in furtherance of the interests of these parties. Said property is more particularly described in Exhibits A, B, C, and D attached hereto and incorporated by reference (hereinafter referred to as "Subject Property").

NOW THEREFORE, in consideration of the exchange of promises and obligations, by the parties, one to another, the sufficiency of which consideration is hereby expressly acknowledged, the parties do agree as follows:

1. Peoples agrees not to enforce its claim against the bankruptcy estate of MBGYC for any deficiency.

2. Consultants, MBGYC, and POA agree that Peoples, its successors and assigns, has permanent and unfettered rights of ingress and egress to Tract II, but agree to execute the necessary amendment of the Declaration of Restrictive Covenants and/or alienable easements for ingress and egress over the existing roadway network within MBGYC, provided, further, that these rights of ingress and egress are not subject to present or subsequent fee, tariff, or charge, provided, however, that Consultants, MBGYC, and POA reserve the rights to make a reasonable determination of the destination of parties entering the property through the security gate. POA, Consultants, and MBGYC, jointly and severally, agree 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.

3. Consultants and MBGYC agree to a lifting of the automatic stay provided by 11 U.S.C. Section 362(a) as to the subject property to allow a foreclosure proceeding by Peoples. Consultants, MBGYC, and POA further hereby consent to said

foreclosure proceeding and release and waiver of defenses or claims thereto.

4. Consultants and MBGYC agree to turn over to Peoples copies of all plans and specifications on the golf course, clubhouse, and any other golf course related structures.

5. Consultants and POA agree to make available for Peoples' review, all marketing materials and contracts to be utilized by Consultants, and Peoples reserves and is given the right to review and grant prior approval of said documentation so that all representations regarding the golf course operation and club house operation are reasonable and accurate.

6. Consultants agree to construct an alternate entrance to the property so that major construction vehicles necessary for the future development of the project will not have to pass through the guard gate and travel over the main entrance road leading to the developed housing in the project and the golf course.

7. Consultants, MBGYC, and POA agree to consent to the appointment of a receiver, to administer the golf course and amenities and to collect revenues, from whatever source revenues which may be generated on the golf course and amenities package, and consent to the release of the Subject Property from the present stay of the Bankruptcy Court, so as to allow Peoples to commence a foreclosure action and proceed, through sale, the Subject Property.

8. The POA agrees to assign the $2,000.00 deposit on kitchen accessories held by Coastal of Carolina to Peoples.

9. The POA agrees to assign all rights to kitchen equipment, etc., in club house.

Upon foreclosure and sale of the Subject Property, and if Peoples is the successful bidder at the foreclosure sale, Peoples agrees as follows:

1. Peoples will convey the guard gate, pool, roads, ~~shuffleboard~~ courts, and tennis courts to the POA. The precise legal description of said property will be determined by survey.

2. Peoples, it successors and assigns, will assume responsibility of the maintenance and landscaping of the entrance road from the existing guard gate to the golf course club house, provided that no further common area maintenance fees, either now or in the future, will be charged to Peoples or its successors.

3. Peoples will 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."

4. Peoples, its successors and assigns, agree to charge members of the POA greens fees at 75% of the greens fee schedule offered to the public at large until September 1, 1989.

5. Peoples, its successors and assigns, agree to offer memberships to members of the POA on the same basis that it offers memberships to public at large, provided, however, that there shall be no requirement to offer memberships. This provision will be reduced to a deed restriction.

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6. Peoples, its successors and assigns, agree to provide members of the POA desiring to play golf the same opportunities to reserve tee times as the public at large.

Upon the release of the Tract II golf course amenities package from the bankruptcy proceeding, Peoples agrees as follows:

1. Peoples agrees to assume the $675.00 per month lease obligation of the POA to Copelco for the greens mower, provided an inspection of the equipment and a review of the lease reveal that the lease terms are on fair market terms and conditions.

2. Peoples agrees to assume the $800.00 per month lease obligation of the POA to Textron for the motorized maintenance carts provided an inspection of the equipment and a review of the lease reveal that the lease terms are on fair market terms and conditions.

3. Peoples agrees to provide permanent loan financing to the purchasers of the following real property located in Tract II of MBGYC:

Lot 13, Block CB	Lot 47, Block CB	Lot 4, Block MB
Lot 6, Block MB	Lot 2, Block PB	Lot 3, Block PB
Lot 3, Block SB	Lot 38, Block CB	Lot 51, Block CB
Lot 5, Block NB	Lot 7, Block NB	Lot 4, Block SB
Unit AD-C-101	Unit AD-C-102	Unit AD-C-103
Unit AD-C-104	Unit AD-C-105	Unit AD-C-106
Unit AD-B-103		

This end loan financing will be subject to the usual underwriting standards of Peoples and Peoples' normal rates for such properties. Each loan will be secured by a first mortgage on the real property being financed.

The parties' agreements are further predicated upon the following:

1. MBGYC does agree to cause the appropriate filing and service of a passive notice of this settlement for relief from stay pursuant to Rule 4001 of the Bankruptcy Rules. Said filing and service shall occur on or before the end of business on Wednesday, July 27, 1988. MBGYC shall use its best efforts to arrange for a hearing on such notice, if any objection is filed, no less than five days after termination of notice period and no later than 10 days after termination of notice period, provided that failure to accomplish same will void this agreement. Further, the terms and provisions of this agreement shall be void if the court does not approve this agreement.

2. 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.

3. This document represents the entire agreement between the parties and may not be modified except by written instrument executed by the parties hereto, their successors and assigns.

4. Each party signatory to this agreement represents, warrants and guarantees that he/she/it/they have full authority to execute this agreement so as to make it valid, and binding upon the parties, their successors and assigns.

5. All of the terms and provisions herein are subject to approval of the agreement in its entirety by the United States Bankruptcy Court for the District of South Carolina.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 25th day of July, 1988.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENT OF:

WITNESSES:

Ted Mill
Lawrence W. Johnson, Jr.

PROPERTY CONSULTANTS, INC.

By: Richard E. Deane

Its: _____

PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION

Ted Mill
Lawrence W. Johnson, Jr.

By: J. R. Myers

Its: Senior Vice President

MYRTLE BEACH GOLF AND YACHT CLUB

Ted Mill
Lawrence W. Johnson, Jr.

By: Richard E. Deane

Its: _____

MYRTLE BEACH GOLF AND YACHT CLUB ASSOCIATION, INC.

Richard E. Deane
Dorothy L. Franklin

By: [illegible]

Its: Secretary & Director

Richard E. Deane
Dorothy L. Franklin

By: Raymond A. Kane

Its: PRESIDENT AND DIRECTOR

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath than (s)he was present and saw the within Robert E Sears as _____ of Property Consultants, Inc., sign, seal and as her/his act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Ted A. Nill

SWORN to BEFORE me this
25th day of July, 1988.

Lawrence G. Palmer Jr. (L.S.)
Notary Public for South Carolina
My Commission Expires: June 30, 1990

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath than (s)he was present and saw the within George M. McGrath, Jr. as Senior Vice President of Peoples Federal Savings and Loan Association sign, seal and as her/his act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Ted Hall

SWORN to BEFORE me this
25th day of July, 1988.

Lawrence W. Johnson, Jr. (L.S.)
Notary Public for South Carolina
My Commission Expires: June 30, 1990

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath than (s)he was present and saw the within Thomas M. Robinson as Secretary & Director and Raymond A. Kane as President & Director of Myrtle Beach Golf and Yacht Club Association, Inc., sign, seal and as their act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Ernest E. Deane

SWORN to BEFORE me this
26 day of July, 1988.

Dorothy L. Franklin (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/30/97

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF RICHLAND)

PERSONALLY appeared before me the undersigned witness and made oath than (s)he was present and saw the within Robert E. Sease as _____ of Myrtle Beach Golf and Yacht Club, as it own act and as Debtor-in-possession, sign, seal and as its act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Teak Rice

SWORN to BEFORE me this
25th day of July, 1988.

Lawrence Johnson, Jr. (L.S.)
Notary Public for South Carolina
My Commission Expires: June 30, 1990

EXHIBIT "A"

All those certain pieces, parcels or tracts of land described below, consisting of two groups of parcels, designated below as "Amenities Parcels" and "Tract II Parcels."

AMENITIES PARCELS:

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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (89.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 sown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

(end of Amenities Parcels description)

(continued)

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.39 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1,07 square feet) on map of same prepared by

(continued)

EXHIBIT "B"
(continued)

Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map; which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.008 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page

(continued)

EXHIBIT "C"
(continued)

139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres) and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT D

Lot 2, Block AB of Phase I of Myrtle Beach Golf and Yacht Club.

Unit WA-506, a Savannah Unit in Phase I of Myrtle Beach Golf and Yacht Club.

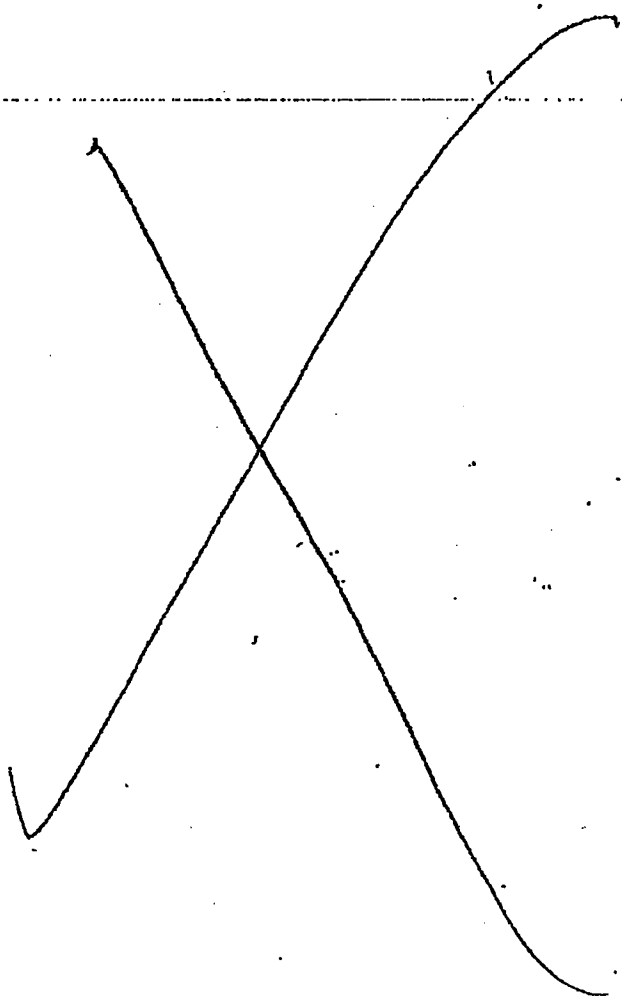


Exhibit 8

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COURT OF COMMON PLEAS
88-CP-26-_____

Peoples Federal Savings & Loan Association,

Plaintiff

vs.

Myrtle Beach Golf & Yacht Club a general Partnership, Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, MBG&YC II, Inc., formerly known as Peoples Joint Venture Group, Inc., Myrtle Beach Golf & Yacht Club Association, Inc., Teatros Y Cinemas, S.A., a Panamanian Company, American Community Development Group, Inc., f/k/a Justice Investment Corp., John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust, Sears Roebuck & Co., Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, Stan Parker, Ed Hudson, Austin Kelly Advertising, Inc., POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, Custom Glass, Inc., the Parnell-Martin Companies, Inc., Loyola Federal Savings & Loan Association, Equipment Leasing, Division of American Federal Bank, FSB, Chambers of South Carolina, Williams Trucking Co., Inc.,Palmetto Turf Farms, Inc., Danny Player, d/b/a Player's Landscaping, Whaley Corp.,d/b/a Socastee Hardware Store, Cornelius Toomey,

SUMMONS

NON-JURY MATTER

FORECLOSURE

AMOUNT: $5,100,000.00

HORRY COUNTY
88 SEP 12 PM 3:38
BILLIE S. RICHARDSON
CLERK OF COURT

1

Individually and for the Benefit and on Behalf of all other similarly situated, and Midway Nursery, Inc.	)
Defendants.	)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices at 1310 Second Avenue, Conway, South Carolina 29526, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

RICHARD M. LOVELACE, JR.
LOVELACE & BATTLE, P.A.
Attorneys for Plaintiff
Peoples Federal Savings
& Loan Association
Post Office Box 1704
Conway, South Carolina 29526
Area Code (803) 248-7321

Conway, South Carolina
9th day of September, 1988.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) 88-CP-26-_____

Peoples Federal Savings & Loan Association,

Plaintiff

vs.

Myrtle Beach Golf & Yacht Club a general Partnership, Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, MBG&YC II, Inc., formerly known as Peoples Joint Venture Group, Inc., Myrtle Beach Golf & Yacht Club Association, Inc., Teatros Y Cinemas, S.A., a Panamanian Company, American Community Development Group, Inc., f/k/a Justice Investment Corp., John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust, Sears Roebuck & Co., Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, Stan Parker, Ed Hudson, Austin Kelly Advertising, Inc., POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, Custom Glass, Inc., the Parnell-Martin Companies, Inc., Loyola Federal Savings & Loan Association, Equipment Leasing, Division of American Federal Bank, FSB, Chambers of South Carolina, Williams Trucking Co., Inc., Palmetto Turf Farms, Inc., Danny Player, d/b/a Player's Landscaping, Whaley Corp., d/b/a Socastee Hardware Store, Cornelius Toomey,

COMPLAINT

NON-JURY MATTER

FORECLOSURE

AMOUNT: $5,100,000.00

HORRY COUNTY
88 SEP 12 PM 3:38
BILLIE G. RUSH
CLERK OF COURT

1

Individually and for the Benefit and on Behalf of all other similarly situated, and Midway Nursery, Inc.	)
Defendants.	)

The Plaintiff, complaining of Defendants above named, would respectfully show unto this Honorable Court:

1. That this is an action for foreclosure of a mortgage upon real estate situated and located in Horry County, South Carolina.

2. That Plaintiff Peoples Federal Savings & Loan Association is a Savings and Loan Association duly organized and existing under and by virtue of the laws of the United States of America and is maintaining offices and agents in Horry County, South Carolina.

3. That upon information and belief, Defendant Myrtle Beach Golf & Yacht Club, is a general partnership duly organized and existing under and by virtue of the laws of South Carolina and is maintaining offices and agents in Horry County, South Carolina, and is the owner of the real property hereinafter referred to; that Defendant Myrtle Beach Golf & Yacht Club, Inc. is a South Carolina corporation and as such is the Managing General Partner of Myrtle Beach Golf & Yacht Club; that Defendant MBGYC II, Inc., formerly known as Peoples Joint Venture Group, Inc., is also a South Carolina corporation and is a General Partner in Myrtle Beach Golf &

Yacht Club; that the remaining Defendants are made parties to this cause by virtue of the fact that said remaining Defendants may have or claim to have some right, title and/or interest in or lien upon the real property which is the subject of this action, which rights and interests are inferior and subordinate to the rights and claims of Plaintiff, all as more fully hereinafter alleged.

4. That on or about October 9, 1985, for value received, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner Peoples Joint Venture Group, Inc., a South Carolina corporation, made, executed and delivered to Plaintiff Peoples Federal Savings & Loan Association, a certain Promissory Note wherein and whereby said Defendant Myrtle Beach Golf & Yacht Club, a general partnership, promised to pay to Plaintiff the sum of Five Million One Hundred Thousand and No/100 ($5,100,000.00) Dollars, together with interest at the rate equal to the current "prime rate", as that term is therein defined in the note, plus one (1%) percent per annum. A copy of said note is attached hereto and incorporated herein as Exhibit "A".

5. That in order to better secure the payment of said note and debt, in accordance with the terms and conditions therein, Defendant Myrtle Beach Golf & Yacht Club, a general

partnership, by its managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner Peoples Joint Venture Group, Inc., a South Carolina corporation, did execute and deliver on October 9, 1985, to Plaintiff Peoples Federal Savings & Loan Association, its successors and assigns, a certain Mortgage and Security Agreement covering the following described property:

AMENITIES PARCELS

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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same

prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if

any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Count in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts

of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

6. That thereafter said mortgage was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County, in Mortgage Book 1079 at page 430. A copy of the aforesaid mortgage of real estate is attached hereto as Exhibit "B" and made a part and parcel hereof by reference.

7. That according to the terms and conditions of said

note and mortgage, payment in full was due to be made on or before December 31, 1986, and if there was a default in the punctual payment of principal and accrued interest, then, at the option of the holder of the note and mortgage, the entire balance of the note, both principal and interest, would immediately become due and payable without notice, and if the note and mortgage were placed in the hands of an attorney-at-law for collection, the costs of collection, including attorney's fees, would be additional sums secured by the mortgage.

8. That on or about October 9, 1985, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by its managing general partner, Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner, Peoples Joint Venture Group, Inc., a South Carolina corporation, did execute and deliver to Plaintiff Peoples Federal Savings & Loan Association, its successors and assigns, a certain Assignment of Rents & Profits whereby Plaintiff Peoples Federal Savings & Loan Association was granted the right, title and interest of Defendant Myrtle Beach Golf & Yacht Club, a general partnership, in and to the rents from the following described property:

AMENITIES PARCELS

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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

(end of Amenities Parcels description)

ALSO,

EXHIBIT "B"

All those certain pieces, parcels or tracts of land

together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made

a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Count in Plat Book 87 at

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08

acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

9. That thereafter said Assignment of Rents & Profits was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County, in Deed Book 999 at Page 32. A copy of the aforesaid Assignment of Rents & Profits is attached hereto as Exhibit "C" and made a part and parcel hereof by reference.

10. That the security interest of Plaintiff Peoples Federal Savings & Loan Association was perfected by a UCC Financing Statement, a copy of which is attached hereto and incorporated herein as Exhibit "D", which was filed in the Office of the Clerk of Court for Horry County on October 22, 1985, identified as No. 94022, to secure a lien upon the following: all improvements, appurtenances, fixtures (whether detachable or not), equipment, heating and cooling systems, furnishings, building materials and supplies, owned by the

debtor located on the real property described on Exhibit "B" attached hereto, together with all the attachments thereto, and any additions, substitutions or accretions thereto.

11. That on December 31, 1986, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and also by general partner MBGYC II, Inc., did execute and deliver to Plaintiff Peoples Federal Savings & Loan Association a certain Note, Mortgage and Guaranty Modification Agreement, whereby in consideration of the premises described in Mortgage Book 1079 at page 430 and for other valuable consideration, the parties agreed to extend the maturity date of the note from December 31, 1986 to April 30, 1987.

12. That thereafter said Note, Mortgage and Guaranty Modification Agreement was recorded on February 12, 1987, in the Office of the Clerk of Court for Horry County in Mortgage Book 1230 at page 32. A copy of the aforesaid Modification is attached hereto as Exhibit "E" and made a part and parcel hereof by reference.

13. That on April 24, 1986, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and also by general partner MBGYC II, Inc., did execute and deliver to Plaintiff Peoples Federal

Savings & Loan Association a Second Note, Mortgage and Guaranty Modification Agreement, whereby in consideration of the premises described in Mortgage Book 1079 at page 430 and for other valuable consideration, the parties agreed to extend the maturity date of the note from April 30, 1987 to October 31, 1987.

14. That thereafter the said Second Note, Mortgage and Guaranty Modification Agreement was recorded on April 29, 1987, in the Office of the Clerk of Court for Horry County in Mortgage Book 1253 at page 366. A copy of the aforesaid Modification is attached hereto as Exhibit "F" and made a part and parcel hereof by reference.

15. That the note of October 9, 1985, is and has been in default since November 1, 1987, and the conditions of said note and mortgage has been broken and Plaintiff Peoples Federal Savings & Loan Association elects to, and does declare the full balance of said indebtedness due and payable; that there is due on said note and mortgage as of August 8, 1988, the sum of Six Million Two Hundred Sixty-Nine Thousand One Hundred Twenty-eight and 70/100 (6,269,128.70) Dollars, plus interest, to accrue at a rate of One Thousand Three Hundred Eighty-two and 87/100 ($1,382.87) Dollars per diem.

16. The mortgage also provides that in the event of a default, the mortgagee, to the extent provided by law, 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 premises; and, under the circumstances and as the instruments provide, Plaintiff is informed and believes that it is entitled to the immediate appointment of a receiver to collect all rent and income from the property and to do matters necessary for its protection and preservation.

17. That upon information and belief, said information having been obtained from the public records of Horry County, South Carolina, the Defendants below-named may have or claim some interest in, or lien upon the premises. However the lien of Plaintiff Peoples Federal Savings & Loan Association is prior and superior to those matters and things hereinbelow alleged:

(a) The Defendant, Teatros Y Cinemas, S.A., a Panamanian Company, is made a party to this action by virtue of that certain mortgage on the Amenities Parcels from Myrtle Beach Golf & Yacht Club, a general partnership, filed July 1, 1986, in Mortgage Book 1153 at page 15.

(b) The Defendants, American Community Development Group, Inc., f/k/a Justice Investment Corp. and John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust are made a party to this action by virtue of: (1) that certain mortgage on the Amenities Parcel, from Myrtle Beach Golf & Yacht Club, a general partnership, filed April 2, 1987, in Mortgage Book 1245 at page 196; (2) that certain confession of judgment filed on April 1, 1987, in

Judgment Roll #71161; the attorney of record for the Plaintiff being John M. Leiter, Esquire, Post Office Box 7516, Myrtle Beach, South Carolina; and (3) that certain UCC financing statement, filed January 20, 1986, in Roll No. 95191.

(c) The Defendant, Sears Roebuck & Co., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, the date of the order being September 28, 1987, filed in Judgment Roll #71057; the attorney of record for the Plaintiff being John P. Bacot, Jr., Esquire, Post Office Box 15439, Surfside Beach, South Carolina 29587.

(d) The Defendant, Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed October 23, 1987 in Judgment Roll #71367; the attorney of record for the Plaintiff being J.M. "Bud" Long, Jr., Esquire, 5001 North Kings Highway, Suite 201, Myrtle Beach, South Carolina 29577.

(e) The Defendant, Stan Parker, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, filed October 30, 1987 in Judgment Roll #71502. There is no attorney of record.

(f) The Defendant, Ed Hudson, is made a party to this action by virtue of that certain judgment against Myrtle Beach & Golf Yacht Club, filed October 30, 1987 in Judgment Roll #71503. There is no attorney of record.

(g) The Defendant, Austin Kelly Advertising, Inc., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, filed September 3, 1987 in Judgment Roll #71627; the attorney of record for the

Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.

(h) The Defendant, POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed December 7, 1987, in Judgment Roll No. 71869; the attorney of record for the Plaintiff being William R. Thrailkill, Esquire, Post Office Drawer 13520, Surfside Beach, South Carolina 29576.

(i) The Defendant, Custom Glass, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 1, 1988 in Judgment Roll No. 72147; the attorney of record for the Plaintiff being William Little of Dusenbury, Hendrix, & Little, 802 27th Avenue North, Myrtle Beach, South Carolina, 29577.

(j) The Defendant, Parnell-Martin Companies, Inc.,is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 26, 1988 in Judgment Roll No. 72320; the attorneys for the Plaintiff being Harris, Hanna & Smith, P. O. Box 14510, Surfside Beach, South Carolina, 29587.

(k) The Defendant, Loyola Federal Savings & Loan Association, is made a party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed May 17, 1988 in Judgment Roll No. 73525. The attorney of record for the Plaintiff being E. McLeod Singletary, Esquire, the McNair Law Firm, 18th Floor, NCNB Tower, Post Office Box 11390, Columbia, South Carolina, 29211.

(l) The Defendant, Equipment Leasing, Division of American Federal Bank, FSB,

is made party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed April 21, 1988 in Judgment Roll No. 73272; the attorney for the Plaintiff being Craig Allen of Williams & Henry, P. O. Box 10307, Greenville, S. C., 29603.

(m) The Defendant, Chambers of South Carolina, is made a party to this action by virtue of that certain Transcript of Judgment from the Magistrate's Court of Olin Blanton against Myrtle Beach Golf and Yacht Club, filed May 25, 1988 in Judgment Roll No. 73594. There is no attorney of record.

(n) The Defendant, Williams Trucking Co., Inc. is made a party to this action by virtue of that certain Mechanic's Lien against Myrtle Beach Golf & Yacht Club, a general partnership, et al, filed August 20, 1987, in Mechanic's Lien Book 63 at page 46; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.

(o) The Defendant, Palmetto Turf Farms, Inc., is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 19, 1987, in Mechanic's Lien Book 63 at page 43; filing individual of record for the Plaintiff being J. Craven Jones, Vice President, Palmetto Turf Farms, Inc., S.C. Highway 327, Effingham, South Carolina 29541.

(p) The Defendant, Danny Player, d/b/a Player's Landscaping, is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, filed August 18, 1987, in Mechanic's Lien Book 63 at page 42; the attorney of record for the Plaintiff being Gregory B. Askins, Askins, Chandler & Askins, Post Office

Box 218, Hemingway, South Carolina 29554.

(q) The Defendant, Whaley Corporation, d/b/a Socastee Hardware Store is made a party to this action by virtue of that certain Mechanic's Lien on Tract II and Tract III, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 12, 1987, in Mechanic's Lien Book 63 at page 1; the attorney of record for the Plaintiff being John E. Batten, IV, Esquire, Batten & Batten, Post Office Box 14400, Surfside Beach, South Carolina 29587.

(r) The Defendant, Cornelius Toomey, Individually and for the Benefit and on Behalf of all others similarly situated, by virtue of that certain suit filed January 12, 1988 in Roll No. 88-CP-26-104. The Attorney of record being Jay Bultz, 627-A Pine Drive, Surfside Beach, South Carolina.

(s) The Defendant, Midway Nursery, Inc., is made a party to this action by virtue of that certain suit filed January 25, 1988 at Roll No. 88-CP-26-236. The attorney of record being Robert H. O'Donnell of Schneider & O'Donnell, Post Office Box 662, Georgetown, South Carolina, 29440.

18. Plaintiff Peoples Federal Savings & Loan Association, by reason of the above alleged facts, is entitled to and demands an Order of Judgment from this Court which declares that Peoples Federal Savings & Loan Association has a first mortgage lien on the premises described herein.

WHEREFORE, having fully set forth its Complaint, the Plaintiff Peoples Federal Savings & Loan Association prays as follows:

(a) That a receiver of the mortgaged premises be appointed with authority to take possession thereof and collect the rents, issues and profits thereof during the pendency of this action and to hold the same as further security for Plaintiff's debt;

(b) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of the Plaintiff Peoples Federal Savings & Loan Association against the debtor Defendants for the amount owing to the Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with a reasonable attorney's fee for the services of Plaintiff's attorneys in handling this foreclosure and for the costs of this action;

(c) That Plaintiff's mortgage be foreclosed, the equity of redemption barred, the mortgaged premises be sold, the proceeds of the sale applied, first to the costs of this action, including a reasonable attorney's fee aforesaid, next to the amount found due to the Plaintiff and the balance, if any, to be disbursed in accordance with the Order of this Court;

(d) For such other and further relief as this Honorable Court may deem just and proper.

RICHARD M. LOVELACE, JR.
LOVELACE & BATTLE, P.A.
Post Office Box 1704
Conway, South Carolina 29526
Attorneys for Plaintiff

Conway, South Carolina
1 day of September, 1988.

Exhibit 9

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF HORRY) 88-CP-26-3297

Peoples Federal Savings & Loan Association,

Plaintiff

vs.

Myrtle Beach Golf & Yacht Club a general Partnership, Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, MBG&YC II, Inc., formerly known as Peoples Joint Venture Group, Inc., Myrtle Beach Golf & Yacht Club Association, Inc., Teatros Y Cinemas, S.A., a Panamanian Company, American Community Development Group, Inc., f/k/a Justice Investment Corp., John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust, Sears Roebuck & Co., Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, Stan Parker, Ed Hudson, Austin Kelly Advertising, Inc., POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, Custom Glass, Inc., the Parnell-Martin Companies, Inc., Loyola Federal Savings & Loan Association, Equipment Leasing, Division of American Federal Bank, FSB, Chambers of South Carolina, Williams Trucking Co., Inc.,Palmetto Turf Farms, Inc., Danny Player, d/b/a Player's Landscaping, Whaley Corp.,d/b/a Socastee Hardware Store, Cornelius Toomey,

MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE

FILED
HORRY COUNTY
'88 MAR -7 PM 2 26
BETTE G. ANDERSON
CLERK OF COURT

Individually and for the Benefit and on Behalf of all other similarly situated, and Midway Nursery, Inc.	)
Defendants.	)

Pursuant to an Order of Reference signed January 18, 1989, by the Honorable Dan F. Laney, Jr., the above encaptioned matter was referred to this Court with finality and with any right of appeal to be made directly to the Supreme Court of the State of South Carolina.

A hearing was held in the matter on October 4th and 5th, 1989. Peoples Federal Savings and Loan Association (hereinafter "Peoples Federal") was present and represented by its Attorney Michael W. Battle. Myrtle Beach Golf and Yacht Club, Inc. and MBG&YC II, Inc. were present and represented by their Attorney Michael G. Smith. Defendant American Community Development Group, Inc., f/k/a Justice Investment Corp., John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust (hereinafter "ACDG"), were present and represented by their Attorneys Dalton B. Floyd, Jr. and Katherine DeAngelo. Sears Roebuck and Company was present through its attorney, John B. Bacot. Whaley Corporation, d/b/a Socastee Hardware Store, was present and represented by its attorney, John E. Batten, IV.

STATEMENT OF THE CASE

This case is a foreclosure action in which Peoples Federal seeks to foreclose its first mortgage on a tract of land known as the Amenities Parcel owned by Myrtle Beach Golf and Yacht Club, a General Partnership. Myrtle Beach Golf and Yacht Club, through its partners Myrtle Beach Golf and Yacht Club, Inc. and MBG&YC II, Inc., have consented to the foreclosure. The remaining issues before the Court are the claims that ACDG has on the question of priority of the mortgage lien held by Peoples Federal over its mortgage lien.

During the course of the hearing, I had the opportunity to observe the demeanor the witnesses on the stand and take into account any bias or prejudice those witnesses had. I have determined the credibility of the witnesses and in light of the relevant, competent and admissible testimony and exhibits entered into evidence before the Court, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This is an action for foreclosure of a mortgage upon real estate situated and located in Horry County, South Carolina. Plaintiff Peoples Federal Savings and Loan Association is a savings and loan association duly organized and existing under and by virtue of the laws of the United States of America. Plaintiff maintains offices and does business in Horry County, South Carolina.

2. Defendant Myrtle Beach Golf and Yacht Club, a General Partnership, is duly organized and existing under and by virtue of the laws of the State of South Carolina, and is the owner of the real property being foreclosed which is hereinafter described in Schedule A. Defendant Myrtle Beach Golf and Yacht Club, Inc. is a South Carolina corporation, and is the managing general partner of Myrtle Beach Golf and Yacht Club. Defendant MBG&YC II, Inc., f/k/a Peoples Joint Venture Group, Inc., is also a South Carolina corporation and a partner of Myrtle Beach Golf and Yacht Club. The remaining Defendants are parties to this cause of action by virtue of the fact that they have or claim some right, title or interest or lien upon the real property which is the subject of the foreclosure action.

3. On or about October 9, 1985, for value received, Defendant Myrtle Beach Golf and Yacht Club, a General Partnership, made executed and delivered to Peoples Federal a promissory note, wherein and whereby the Defendant Myrtle Beach Golf and Yacht Club promised to pay to the Plaintiff the sum of Five Million One Hundred Thousand ($5,100,000) Dollars, together with interest at the rate equal to the current "prime rate" plus one (1%) percent per annum. Prime rate means the prime rate charged by Peoples Federal, as said rate shall change from time to time.

4. In order to better secure the payment of the note and debt, Defendant Myrtle Beach Golf and Yacht Club executed and delivered on October 9, 1985, to Peoples Federal a Mortgage and Security Agreement covering the property described in Schedule "A" and incorporated herein by reference.

5. The above described mortgage was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County in Mortgage Book 1079 at page 430. According to the terms and conditions of the note and mortgage, payment in full was due to be made on or before December 31, 1986. If there was a default in the punctual payment of principal and accrued interest, at the option of Peoples Federal, the entire balance of the note, both principal and interest, would become immediately due and payable without notice, and if the note and mortgage were placed in the hands of an attorney for collection, the cost of collection, including attorney's fees would be additional sums secured by the mortgage.

In order to foreclose the mortgage, Plaintiff had to hire the services of the law firm of Lovelace & Battle, P.A. The amount of attorney fees was not submitted at the hearing. However, the law firm of Lovelace & Battle, P.A. has submitted the amount of attorney fees to this Court in the form of an Affidavit. Based upon the complex nature of the

foreclosure, and upon the Affidavit submitted by Lovelace & Battle, P.A., I find and conclude that Sixty Thousand ($60,000.00) Dollars is a reasonable attorney's fee.

6. On or about October 9, 1985, Defendant Myrtle Beach Golf and Yacht Club executed and delivered to Peoples Federal an Assignment of Rents and Profits, whereby Peoples Federal was granted the right, title and interest of Defendant Myrtle Beach Golf and Yacht Club in and to the rents from the property described hereinbefore.

7. On or about October 16, 1985, the Assignment of Rents and Profits was recorded in the Office of the Clerk of Court for Horry County, in Deed Book 999 at page 32.

8. The mortgage given to Peoples Federal on the above-described property also contained a Security Agreement which gave it a security interest on all improvements, appurtenances, fixtures (whether detachable or not) equipment, heating and cooling systems, furnishings, building materials and supplies owned by the debtor located on the real property described hereinabove. The security interest of Peoples Federal was perfected by a UCC Financing Statement which was duly filed in the Office of the Clerk of Court for Horry County on October 22, 1985, and identified as Number 94022.

9. The note of October 9, 1985, is, and has been, in default since November 1, 1987, and the conditions of said

note and mortgage have been breached and Peoples Federal elected to and did declare the full balance of said indebtedness due and payable. There is due on said note and mortgage as of October 2, 1989, the sum of Eight Million One Hundred Ninety Thousand Nine Hundred Thirty-three and 43/100 ($8,190,933.43) Dollars, together with attorney's fees of Sixty Thousand ($60,000) Dollars, plus interest, to accrue at the rate of One Thousand Three Hundred Eighty-two and 87/100 ($1,382.87) Dollars per diem.

10. The mortgage also provides that in the event of a default Peoples Federal, to the extent provided by law, 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 premises as provided by the mortgage. Pursuant to the terms of the mortgage, a Receiver was duly appointed. The Receiver has made expenditures under the mortgage which were necessary to preserve the Plaintiff's interest in the security pursuant to the mortgage documents. The Receiver has indicated that the net expenditures over and above receipts was One Million Three Hundred Forty-one Thousand Nine Hundred Twenty-three and 97/100 ($1,341,923.97) Dollars. That amount has been properly included within the mortgage amount due Peoples Federal.

11. The Defendants below named have, or claim, some interest in or lien upon the premises being foreclosed. However, the lien of Peoples Federal is prior and superior to those interests or claims. The other parties' interests in the property is set forth hereinbelow:

(a) The Defendant, Teatros Y Cinemas, S.A., a Panamanian Company, is made a party to this action by virtue of that certain mortgage on the Amenities Parcels from Myrtle Beach Golf & Yacht Club, a general partnership, filed July 1, 1986, in Mortgage Book 1153 at page 15.

(b) The Defendants, American Community Development Group, Inc., f/k/a Justice Investment Corp. and John A. Hinson, Individually and as Trustee of West Coast

Pension and Profit Sharing Trust are made a party to this action by virtue of: (1) that certain mortgage on the Amenities Parcel, from Myrtle Beach Golf & Yacht Club, a general partnership, filed April 2, 1987, in Mortgage Book 1245 at page 196; (2) that certain confession of judgment filed on April 1, 1987, in Judgment Roll #71161; the attorney of record for the Plaintiff being John M. Leiter, Esquire, Post Office Box 7516, Myrtle Beach, South Carolina; and (3) that certain UCC financing statement, filed January 20, 1986, in Roll No. 95191.

(c) The Defendant, Sears Roebuck & Co., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, the date of the order being September 28, 1987, filed in Judgment Roll #71057; the attorney of record for the Plaintiff being John P. Bacot, Jr., Esquire, Post Office Box 15439, Surfside Beach, South Carolina 29587.

(d) The Defendant, Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed October 23, 1987 in Judgment Roll #71367; the attorney of record for the Plaintiff being J.M. "Bud" Long, Jr., Esquire, 5001 North Kings Highway, Suite 201, Myrtle Beach, South Carolina 29577.

(e) The Defendant, Stan Parker, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, filed October 30, 1987 in Judgment Roll #71502. There is no attorney of record.

(f) The Defendant, Ed Hudson, is made a party to this action by virtue of that certain

judgment against Myrtle Beach & Golf Yacht Club, filed October 30, 1987 in Judgment Roll #71503. There is no attorney of record.

(g) The Defendant, Austin Kelly Advertising, Inc., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, filed September 3, 1987 in Judgment Roll #71627; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.

(h) The Defendant, POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed December 7, 1987, in Judgment Roll No. 71869; the attorney of record for the Plaintiff being William R. Thrailkill, Esquire, Post Office Drawer 13520, Surfside Beach, South Carolina 29576.

(i) The Defendant, Custom Glass, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 1, 1988 in Judgment Roll No. 72147; the attorney of record for the Plaintiff being William Little of Busenbury, Hendrix, & Little, 802 27th Avenue North, Myrtle Beach, South Carolina, 29577.

(j) The Defendant, Parnell-Martin Companies, Inc.,is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 26, 1988 in Judgment Roll No. 72320; the attorneys for the Plaintiff being Harris, Hanna & Smith, P. O. Box 14510, Surfside Beach, South Carolina, 29587.

(k) The Defendant, Loyola Federal Savings & Loan Association, is made a party to this

action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed May 17, 1988 in Judgment Roll No. 73525. The attorney of record for the Plaintiff being E. McLeod Singletary, Esquire, the McNair Law Firm, 18th Floor, NCNB Tower, Post Office Box 11390, Columbia, South Carolina, 29211.

(l) The Defendant, Equipment Leasing, Division of American Federal Bank, FSB, is made party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed April 21, 1988 in Judgment Roll No. 73272; the attorney for the Plaintiff being Craig Allen of Williams & Henry, P. O. Box 10307, Greenville, S. C., 29603.

(m) The Defendant, Chambers of South Carolina, is made a party to this action by virtue of that certain Transcript of Judgment from the Magistrate's Court of Olin Blanton against Myrtle Beach Golf and Yacht Club, filed May 25, 1988 in Judgment Roll No. 73594. There is no attorney of record.

(n) The Defendant, Williams Trucking Co., Inc. is made a party to this action by virtue of that certain Mechanic's Lien against Myrtle Beach Golf & Yacht Club, a general partnership, et al, filed August 20, 1987, in Mechanic's Lien Book 63 at page 46; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.

(o) The Defendant, Palmetto Turf Farms, Inc., is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 19, 1987, in Mechanic's Lien Book 63 at page 43; filing individual of record for the Plaintiff being J. Craven Jones,

Vice President, Palmetto Turf Farms, Inc., S.C. Highway 327, Effingham, South Carolina 29541.

(p) The Defendant, Danny Player, d/b/a Player's Landscaping, is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, filed August 18, 1987, in Mechanic's Lien Book 63 at page 42; the attorney of record for the Plaintiff being Gregory B. Askins, Askins, Chandler & Askins, Post Office Box 218, Hemingway, South Carolina 29554.

(q) The Defendant, Whaley Corporation, d/b/a Socastee Hardware Store is made a party to this action by virtue of that certain Mechanic's Lien on Tract II and Tract III, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 12, 1987, in Mechanic's Lien Book 63 at page 1; the attorney of record for the Plaintiff being John E. Batten, IV, Esquire, Batten & Batten, Post Office Box 14400, Surfside Beach, South Carolina 29587.

(r) The Defendant, Cornelius Toomey, Individually and for the Benefit and on Behalf of all others similarly situated, by virtue of that certain suit filed January 12, 1988 in Roll No. 88-CP-26-104. The Attorney of record being Jay Bultz, 627-A Pine Drive, Surfside Beach, South Carolina.

(s) The Defendant, Midway Nursery, Inc., is made a party to this action by virtue of that certain suit filed January 25, 1988 at Roll No. 88-CP-26-236. The attorney of record being Robert H. O'Donnell of Schneider & O'Donnell, Post Office Box 662, Georgetown, South Carolina, 29440.

12. Prior to February 24, 1984, Justice, Inc. approached Peoples Federal about the development of certain land known as The Enterprise Tract. The initial concept was

that Peoples Federal was to be paid interest for loans to the project, plus receive and equity participation through a wholly-owned subsidiary service corporation if any profits were made on the development of the property.

13. On or about February 24, 1984, George N. Magrath, Jr. incorporated Peoples Joint Venture Group, Inc. Peoples Joint Venture Group, Inc. was a wholly-owned service corporation subsidiary of Peoples Federal Savings and Loan. Peoples Joint Venture Group, Inc. was a twenty-five (25%) percent owner of the partnership of Myrtle Beach Golf and Yacht Club.

14. Peoples Joint Venture Group, Inc. was authorized to issue one thousand (1000) shares of Class A Stock, with One ($1.00) Dollar par value. Five hundred (500) shares were actually issued at the organizational meeting of the Shareholders and Board of Directors. The First Report of Corporation indicates that one thousand (1000) shares of stock were issued. However, the stock certificates and the minutes of the meetings indicate that only five hundred (500) shares were actually issued.

15. The remaining seventy-five (75%) percent of the partnership of Myrtle Beach Golf and Yacht Club was owned by a corporation known as Myrtle Beach Golf and Yacht Club, Inc., which served as the managing partner. Peoples Joint Venture Group, Inc. had the right to participate in major

management decisions.

16. On February 29, 1984, Myrtle Beach Golf and Yacht Club, Inc. and Peoples Joint Venture Group, Inc., through the partnership of Myrtle Beach Golf and Yacht Club, obtained an option to purchase 1,035 acres of land known as Enterprise Landing. The purchase price was Six Thousand ($6,000) Dollars per acre. The partnership had the right to take down the property over a period of time in ten separate tracts. At the time that the option was closed and the first tract actually purchased, the seller of the land offered the partnership One Million ($1,000,000) Dollars in cash not to close the land and to release the seller from the option. The land was worth more than the actual purchase price. The partnership refused the offer, closed, and began development of the property.

17. Tract 1 represented the first phase of construction of the development. Tract 2 represented that land which was to become an eighteen-hole golf course, tennis courts and swimming pool. Tract 2 is commonly known as the Amenities Parcel and the parcel upon which the Plaintiff seeks foreclosure in this hearing.

18. During the course of the development of Tract 1, Plaintiff made several loans to the partnership for construction and development of Tract 1. Interest was paid

on the loans either through closings of houses or through refinancing. Most of those loans were made on or about February 29, 1984. With the exception of a Three Million ($3,000,000) Dollar loan on the Amenities Parcel, virtually all of those loans have either been paid or extinguished through foreclosure.

19. Prior to June 30, 1985, Myrtle Beach Golf and Yacht Club paid a dividend or profit to Peoples Joint Venture Group in the amount of Sixty-one Thousand Two Hundred Fifty ($61,250) Dollars.

20. Some time in June, 1985, ACDG decided it would buy the majority of Rod Propps' developments. Arthur Andersen was retained to come up with a plan whereby the purchase of those developments could be effected. ACDG was a publicly held corporation and Merrill-Lynch Capital Corporation was to finance the purchase of Propps' developments.

21. ACDG had an appraisal done of the property as of August 1, 1985. The appraisal indicated that the net present value of the remaining property and tracts of Myrtle Beach Golf and Yacht Club was Fourteen Million One Hundred Thousand ($14,100,000) Dollars.

22. On August 9, 1985, Peoples Federal sold all of its stock in Peoples Joint Venture Group to Rod Propps. The sale of the stock was a bona fide, arms-length transaction in which the Plaintiff exchanged its stock for a note and

mortgage in the amount of Four Hundred Three Thousand ($403,000) Dollars. The value of Four Hundred Three Thousand ($403,000) Dollars represented the appreciated value in the land as a result of the development and the equity of Peoples Joint Venture Group, Inc. in the property which existed when purchased. Peoples Joint Venture Group, Inc., as a twenty-five percent owner of the contractual right to purchase Tract III of the land at a fixed price of Six Thousand ($6,000) Dollars an acre, had a value of approximately Four Hundred Three Thousand ($403,000) Dollars, at least to the extent it had the right to participate in the purchase of Tract III. The testimony of both the seller and the purchaser of the stock was that that price represented the fair market value of the stock and was a fair price and a bona fide transaction. This Court agrees that the sale of the stock was a bona fide transaction in which Peoples Federal duly sold its stock and interest in Peoples Joint Venture Group, Inc. and thereby divested itself of any interest through its subsidiary in the partnership of Myrtle Beach Golf and Yacht Club. In November of 1985, the name of the corporation was changed from Peoples Joint Venture Group, Inc. to MGB&YC II, Inc.

23. After August 9, 1985, Peoples Federal had no interest in the partnership of Myrtle Beach Golf and Yacht Club except as a lender.

24. On August 13, 1985, Loyola Federal Savings and Loan Association became a major lender for the development by committing to lend Thirteen Million ($13,000,000) Dollars for the construction of the housing for the development of Myrtle Beach Golf and Yacht Club. Peoples Federal remained a lender on the project, with its main focus on the development of the golf course and Amenities Parcel.

25. Peoples Federal's initial loan on the Amenities Parcel was the above mentioned Three Million ($3,000,000) Dollars loan. That loan was made on February 29, 1984. Thereafter, on October 16, 1985, Peoples Federal paid out the remaining principal on the Three Million ($3,000,000) Dollar loan by a new loan to Myrtle Beach Golf and Yacht Club for Five Million One Hundred Thousand ($5,100,000) Dollars. At the time the 5.1 Million Dollar loan was made and secured, Peoples Federal had no rights over the partnership and, in fact, did not exercise any control of the partnership. In addition, it had no rights to profit from the partnership.

26. On September 30, 1985, ACDG wired Two Hundred Fifty-seven Thousand ($257,000) Dollars to Myrtle Beach Golf and Yacht Club, Inc. The purpose of the wire was a deposit for the purchase (by ACDG) of the stock in Myrtle Beach Golf and Yacht Club. On October 2, 1985, an additional Four Hundred Ninety-three Thousand ($493,000) Dollars was wired to Justice, Inc. for the purchase of stock in Myrtle Beach Golf

and Yacht Club, Inc. During the same time, a contract was entered and ratified by the Board of Directors for ACDG approving of the purchase of Myrtle Beach Golf and Yacht Club, Inc. stock.

27. On October 30, 1985, One Hundred Fifty Thousand ($150,000) Dollars was wired to Justice, Inc. ostensibly for Myrtle Beach Golf and Yacht Club, the General Partnership.

28. On January 9, 1986, Rod Propps, Dale Murray and ACDG decided to cancel the agreement to purchase the stock of Myrtle Beach Golf and Yacht Club, Inc. Justice, Inc. promised to pay back the Seven Hundred Fifty ($750,000) Dollars used as a down payment, and Justice, Inc. signed a note for Seven Hundred Fifty Thousand ($750,000) Dollars. Myrtle Beach Golf and Yacht Club, Inc. also promised to pay back the One Hundred Fifty Thousand ($150,000) Dollars, and a note was signed for that amount by Myrtle Beach Golf and Yacht Club, Inc. The notes were open and unsecured. Part of the agreement for obtaining the notes was that ACDG would be let out of its obligation to purchase the shares of Myrtle Beach Golf and Yacht Club, Inc. In addition, Rod Propps and all of his employees were released from any claims which ACDG may have had against them.

29. On March 12, 1987, ACDG filed a Lis Pendens on the entire development and brought suit against Rod Propps, Justice, Inc. and the General Partnership of Myrtle Beach

Golf and Yacht Club. On April 2, 1987, ACDG entered into a Settlement Agreement with Rod Propps, Justice, Inc. and the General Partnership of Myrtle Beach Golf and Yacht Club. The result of the settlement is contained in a Settlement Agreement filed with the Court under Civil Action No. 87-CP-26-691. The result of the settlement is that the partnership Myrtle Beach Golf and Yacht Club signed new notes and gave ACDG a lien on all property owned by Myrtle Beach Golf and Yacht Club. The partnership and Propps confessed a judgment to ACDG for Nine Hundred Thousand ($900,000) Dollars.

30. The Settlement Agreement was made an Order of the Court in which the Court found and ordered as follows:

> "It appearing to this Court that the parties hereto have settled their differences, and having been duly aware of the facts and circumstances involved in this matter, and upon the joint motion of the parties, by and through their undersigned attorneys, it is hereby
>
> ORDERED, ADJUDGED AND DECREED that the stipulation for preliminary and permanent injunction and settlement agreement, a copy of which is attached hereto, is hereby incorporated by reference as if set forth herein by fully text; and the same be, and is hereby adopted, and made the order of this Court in this matter and shall hereafter be a mandatory injunction upon the parties in each and every detail.

31. The Order was signed by Attorneys for ACDG and by Attorneys for Defendants Myrtle Beach Golf and Yacht Club, a General Partnership, and others.

32. Part of the Order stated that the Defendant shall execute a mortgage on the property owned by the Defendants described in the Plaintiff's Lis Pendens filed March 12, 1987. This Mortgage shall be in favor of ACDG and shall be junior only to the liens described in said mortgage.

33. The mortgage to ACDG and the one which it seeks to foreclose in this hearing contains the following language:

> "As to the property described in the Amenities Parcel above, the lien of this mortgage is junior and subordinate to the lien of the following mortgages, together with any extensions and/or renewals thereof:
>
> A. Mortgage of Myrtle Beach Golf and Yacht Club, a General Partnership, to Peoples Federal Savings and Loan Association in the original principal amount of Five Million One Hundred ($5,100,000) Dollars dated October 9, 1985, and in said Clerk's Office on October 16, 1985 in Real Estate Mortgage Book 1079 at page 430, including any security interest evidenced by any UCC Financing Statements of record of any assignments of rents and profits executed in connection with the foregoing mortgage.

34. In June, 1986, Myrtle Beach Holding Corporation bought out all of Rod Propps' and Justice, Inc.'s interest in Myrtle Beach Golf and Yacht Club, a General Partnership. Part of the transaction entailed the infusion of cash in the amount of One Million Eight Hundred Thousand ($1,800,000) Dollars secured by a mortgage from Teatros Y. Cinemas, a Defendant in this action. The result of the infusion of One

Million Eight Hundred ($1,800,000) Dollars was that the loans were brought current for the lienholders owed money by Myrtle Beach Golf and Yacht Club, a General Partnership. The loan from Teatros Y. Cinemas preceded the Mortgage and Security Agreement given to ACDG and that mortgage was expressly made subordinate to the loan of Teatros Y. Cinemas.

35. On June 3, 1988, ACDG put Myrtle Beach Golf and Yacht Club, the General Partnership, into involuntary bankruptcy.

36. On May 4, 1989, the United States District Court, through the United States Bankruptcy Judge, William Thurmond Bishop, entered an Order authorizing the sale of property, which is the subject of this action, free and clear of liens, claims, and encumbrances which removed the stay of the Bankruptcy Court from the foreclosure proceeding and permitted the Plaintiff to pursue its rights to foreclose the Amenities Parcel herein.

37. During the entire time that Plaintiff has had the 5.1 Million Dollar loan and other loans to Myrtle Beach Golf and Yacht Club, it has classified the debts on its books as loans and not as equity investments. The independent auditors of Peoples Federal, Arthur Young, examined the loans and permitted, without exception, the classifications of the debts as loans, instead of equity investments.

CONCLUSIONS OF LAW

1. The within foreclosure, the claims of the remaining Defendants, and all issues before this Court are governed by the laws of the State of South Carolina.

2. Plaintiff's note and mortgage in the amount of Five Million One Hundred Thousand ($5,100,000) Dollars are valid on their face and constitute valid binding agreements on the property known as the Amenities Parcel of Myrtle Beach Golf and Yacht Club.

3. The Mortgage, Assignment of Rents and Profits, and the Uniform Commercial Code Statement were duly filed on October 16, 1985, and were public notice to all other parties. Plaintiff's lien is a first lien and is superior to all the liens of the Defendants named hereinabove.

4. Peoples Joint Venture Group, Inc. was organized and maintained as a separate entity from the Plaintiff. At all times herein it was a wholly-owned subsidiary service corporation of the Plaintiff, but its identity was kept separate.

5. Peoples Joint Venture Group, Inc. was a partner in Myrtle Beach Golf and Yacht Club with Myrtle Beach Golf and Yacht Club, Inc. However, Peoples Federal never became a partner with Myrtle Beach Golf and Yacht Club, Inc. or any other affiliate in connection with the development of Myrtle Beach Golf and Yacht Club. At all times herein Peoples

Federal kept its identity as a lender in all transactions.

6. Even if Peoples Federal had become a joint venturer in the development of Myrtle Beach Golf and Yacht Club, that status was effectively dissolved on August 9, 1985, when the Plaintiff sold all of its stock in Peoples Joint Venture Group, Inc. to R. L. Propps. The sale of stock was a bona fide, arms-length transaction in which Peoples Federal divested itself of any interest in profits or control of the development of Myrtle Beach Golf and Yacht Club, except as a lender.

7. Peoples Federal correctly classified its transactions with Myrtle Beach Golf and Yacht Club as loans instead of equity investments in its accounting procedures.

8. Credible evidence was not introduced at trial that Rod L. Propps converted, misappropriated or any way mishandled the funds belonging to ACDG or any predecessor of that corporation. At all times herein, R. L. Propps was an agent of ACDG, not an agent or employee of Peoples Federal. ACDG is not entitled to any damages or judgment for damages from Peoples Federal.

9. Even if Rod L. Propps had converted, misappropriated, or in some way mishandled the funds belonging to ACDG, any debts owed by Rod L. Propps were released in exchange for payment of the notes given by

Justice Inc. and Myrtle Beach Golf and Yacht Club, Inc. to ACDG.

10. At the times Rod L. Propps wired, or caused to be wired, money to Justice, Inc. or Myrtle Beach Golf and Yacht Club, Inc., he was acting as an agent and employee of American Community Development Group. The payment of money by American Community Development Group to Justice, Inc. and Myrtle Beach Golf and Yacht Club, Inc. has more of the appearance of an equity investment than the loans of the Plaintiff.

11. The remaining interests of the other Defendants, including ACDG, are correct as set out in the complaint.

12. In its Settlement Agreement of April 2, 1987, American Community Development Group expressly represented to this Court that its lien position was subordinate to Peoples Federal's lien position. That representation was relied upon by the Court, the parties, and Peoples Federal, which continued to make construction advances after the settlement was entered. ACDG is judicially estopped from claiming that its lien is now superior to Peoples Federal's lien.

13. The failure of ACDG to change the mortgage which expressly contained a provision that its lien was subordinate to the lien of Peoples Federal constituted a waiver of any rights it may have to claim a superior lien to Peoples Federal.

14. The Order of the Honorable David McInnis dated April 2, 1987, constitutes a valid and binding order and collaterally estops ACDG from claiming priority for its lien position over the lien position of the Plaintiff in the within action.

15. The purchase of the development known as Myrtle Beach Golf and Yacht Club by Myrtle Beach Holding Corporation and the infusion of One Million Eight Hundred Thousand ($1,800,000) Dollars in cash removed any questions of whether Peoples Federal's loan should be considered as a loan or an equity investment.

16. Peoples Federal has properly established the amount of its debt and it is entitled to foreclose the mortgage and cause it to be sold at public auction. In addition, it is entitled to the first lien position through its mortgage and security interest.

DISCUSSION

The main issue before this Court is whether Peoples Federal was a partner with Myrtle Beach Golf and Yacht Club, Inc. or some other affiliate at the time it loaned Five Million One Hundred Thousand ($5,100,000) Dollars to Myrtle Beach Golf and Yacht Club, the partnership. Peoples Federal contends it was acting solely as a lender in the transaction, while Defendant ACDG claims that Peoples Federal was a

partner with Myrtle Beach Golf and Yacht Club, Inc., or some affiliate.

ACDG asserted four counterclaims in which it claimed that Rod L. Propps stole or misappropriated Nine Hundred Thousand ($900,000) Dollars from ACDG and used it in the development of Myrtle Beach Golf and Yacht. ACDG claimed that those funds were for the benefit of Peoples Federal. However, ACDG offered no proof of those claims. The only evidence on those claims came from Rod L. Propps who testified that he was acting as the agent and employee of ACDG when he caused the funds to be wired to Justice, Inc. and Myrtle Beach Golf and Yacht Club, Inc. He stated that the funds were to be a downpayment for the purchase of Myrtle Beach Golf and Yacht Club by ACDG.

Peoples Federal asserted the affirmative defenses of payment, res judicata, estoppel, and collateral estoppel. Those defenses will be discussed further in this Order.

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. Section 33-41-210, Code of Laws of South Carolina, 1976. Buffkin v. Strickland, 280 S.C. 343, 312 S.E.2d 579 (1984, App). A partnership may be oral or it may be implied. Wyman v. Davis, 223 S.C. 172, 74 S.E.2d 694 (1953). The following tests are properly applied in determining the existence of a partnership: (1) sharing of profits and loses; (2) community

of interest in capital of property; and (3) community of interest in control and management. Wyman v. Davis, 223 S.C. 172, 74 S.E.2d 694 (1953).

In the development of Myrtle Beach Golf and Yacht Club Peoples Federal went through two phases in its relationship with the developers of that project. Prior to August 9, 1985, it owned Peoples Joint Venture Group, Inc., a subsidiary service corporation created to participate as a general partner in Myrtle Beach Golf and Yacht Club. Peoples Joint Venture Group, Inc.'s rights to control were limited by the actual partnership agreement. In addition, its profit interests were limited to twenty-five (25%) percent of the profits. The other partner, Myrtle Beach Golf and Yacht Club, Inc. was the managing partner and it was entitled to seventy-five (75%) percent of the profits. After August 9, 1985, Peoples Federal dissolved its relationship with Peoples Joint Venture Group, Inc. by selling the corporation to Rod L. Propps. All of Peoples Federal's employees immediately resigned from any positions they held with Peoples Joint Venture Group, Inc.

ACDG claims that prior to August 9, 1985, Peoples Federal and Peoples Joint Venture Group, Inc. were actually one and the same. ACDG claimed that Peoples Joint Venture Group, Inc. was the alter-ego of Peoples Federal. Peoples Federal contends that it maintained Peoples Joint Venture

Group, Inc. at all times as a separate entity. ACDG's expert witness Tom Myers admitted that in form the identity between Peoples Federal and Peoples Joint Venture Group, Inc. was always kept separate, but he claims that in substance the distinction was blurred.

The examples cited by ACDG's expert were that Five Hundred ($500.00) Dollars was used to capitalize the corporation. The same directors for Peoples Federal were directors for Peoples Joint Venture Group, Inc. The same address was used for both corporations. The officers of Peoples Joint Venture Group, Inc. were employees of Peoples Federal and those employees were only paid a token salary by Peoples Joint Venture Group, Inc. In essence, ACDG's expert claims that Peoples Federal is not entitled to maintain the corporate veil created with Peoples Joint Venture Group, Inc.

A leading case in South Carolina on piercing the corporate veil is Sturkie v. Sifly, 280 S. C. 453, 313 S.E.2d 316 (1984). That case refers to a two-pronged test which is used to determine whether corporate entities should be disregarded. The first deals with the formalities of the corporation. The second part requires that there be an element of injustice or fundamental unfairness if the corporate entity is to be disregarded. Both tests must be passed before a corporate entity may be disregarded.

On the first prong of the test there are several factors that should be considered. Those factors listed in Sturkie dealt with whether the corporation: (1) was undercapitalized; (2) failed to observe corporate formalities; (3) paid no dividends; (4) were insolvent; (5) lacked corporate records; (6) had its corporate funds siphoned off by the dominant stockholder; and (7) was a mere facade for the operations of its dominate stockholders.

On the surface it may appear that some of the factors favoring disregarding the corporate entity were present in the relationship between Peoples Federal and Peoples Joint Venture Group, Inc. However, if the sole function of Peoples Joint Venture Group, Inc. is considered, then a deeper analysis will reveal the propriety of the corporate entity. The sole function of Peoples Joint Venture Group, Inc. was to participate in profits or losses generated by the development of Myrtle Beach Golf and Yacht. The partnership agreement shows that Myrtle Beach Golf and Yacht Club, Inc. was the managing partner. Peoples Joint Venture Group Inc.'s rights and actual activities were limited throughout its existence as a subsidiary of Peoples Federal.

Looking at the factors set out in Sturkie from the point of view of the sole function of Peoples Joint Venture Group, Inc., the contention by Peoples Federal that the subsidiary was a separate entity is stronger than ACDG's claim that

Peoples Joint Venture Group, Inc. was Peoples Federal's alter-ego. At the time Peoples Federal sold the stock to Rod L. Propps, the corporation was solvent, therefore, the issues of capitalization and funds do not apply. Further, Peoples Federal did observe corporate formalities; it maintained corporate records and it was not used as a facade for the actions of Peoples Federal. Peoples Joint Venture Group, Inc. was merely a service corporation created to warehouse profits or losses for Peoples Federal. It was not created to enter contracts or provide services to third parties.

Corporations such as Peoples Joint Venture Group, Inc. are permitted for savings and loan associations even though the industry is closely regulated. Pursuant to 12 U.S.C. 1464 (C)(4)(b), Peoples Federal was permitted to invest in Peoples Joint Venture Group, Inc. That service corporation was permitted to function as a separate entity. As a separate entity, that service corporation may enter joint ventures without entangling Peoples Federal in the Joint Venture. Opinion of the General Counsel dated August 7, 1984.

The second part of the test for piercing the corporate veil requires an element of injustice or fundamental unfairness if the acts of the corporation be disregarded. It is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial

reflection. Baker v. Equitable Leasing Corp., 275 S.C. 359, 271 S.E.2d 596 (1980). If any general rule can be laid down, it is that any corporation will be looked upon as a legal entity until sufficient reason to the contrary appears. Sturkie v. Sifley, 313 S.E.2d at 318. However, when the notion of legal entity is used to protect fraud, justify wrong or defeat public policy, the law will regard the corporation as an association of persons. Sturkie v. Sifley, 373 S.E.2d at 318.

ACDG simply did not offer credible evidence that Peoples Federal used Peoples Joint Venture Group, Inc. to protect fraud, justify wrong or defeat public policy. ACDG claimed that Peoples Federal used its position as a lender to save its investment as an owner. However, that claim fails in view of the fact that the alleged investment was a note and mortgage for Four Hundred Three Thousand ($403,000) Dollars. That note and mortgage was foreclosed in an earlier foreclosure and it is not even the subject of this action. In this action, Peoples Federal is foreclosing its loan for 5.1 Million Dollars, which occurred after the $403,000 note and mortgage were obtained.

An even more important reason for maintaining the corporate veil turns on the question of whether the evidence shows that if the separate identity of Peoples Joint Venture Group, Inc. is upheld, will ACDG suffer injustice or

funadamental unfairness? The corporate form may be disregrded only where equity requires the action to assist a third party. Sturkie v. Sifley, 313 S.E. 2d at 319; Crabtree Investments, Inc. vs. Aztec Enterprizes, Inc., 479 F.Supp. 448 (MD LA. 1979).

A general rule has been laid down for determining whether ACDG has suffered injustice or a fundamental unfairness. The burden of proving fundamental unfairness requires that ACDG establish: (1) Peoples Federal was aware of ACDG's claim against Peoples Joint Venture Group, Inc., and (2) thereafter, Peoples Federal acted in a self-serving manner with regard to the property of the corporation and in disregard of ACDG's claim to the property. Sturkie v. Sifley, 313 S.E.2d at 319; 18 C.J.S. Corporations, Section 6 (Cum. Supp. 1982).

The facts in the present case show that the rule does not apply to Peoples Joint Venture Group, Inc. On August 9, 1985, Peoples Federal gave up its rights to Peoples Joint Venture Group, Inc., and therefore gave up its claim to profits or control. Further, the security given to ACDG did not exist until a year and a half after Peoples Federal obtained the 5.1 Million Dollar mortgage from Myrtle Beach Golf and Yacht. Finally, ACDG was aware of Peoples Federal's superior lien position at the time it acquired its mortgage and it expressly consented to its subordinate position.

Even if ACDG showed a fundamental unfairness, it cannot overcome the fact that on August 9, 1985, Peoples Federal divested itself from any interest in Peoples Joint Venture Group, Inc. After August 9, 1985, Peoples Federal did not have a right to participate in major management decisions. It did not have a right to participate in future profits.

ACDG's expert seeks to overcome the sale of stock by claiming it was a sham transaction. He claims the stock had no value and the consideration for the stock had no value. However, the evidence at the hearing does not support his claim. In determining the bona fide nature of the transaction, the Court should look at the situation as it existed on August 9, 1985, and not a later date after bankruptcy.

As of August 1, 1985, an appraiser for ACDG appraised the development and found that it had a net present value of Fourteen Million One Hundred Thousand ($14,100,000) Dollars. Loyola Federal Savings and Loan Association had committed to loan to Myrtle Beach Golf and Yacht Club over Thirteen Million ($13,000,000) Dollars. That loan actually closed five days after the sale occurred. Sales contracts were in place for over 12 Million Dollars. Deposits were held in escrow for more than 1 Million Dollars. Both Rod Propps and George N. Magrath, Jr. testified that the price given for the stock was fair and that the transaction was bona fide. Based

on the evidence, this Court finds that the sale was bona fide.

ACDG claims that even if the sale itself was bona fide, the relationship between Peoples Federal and Myrtle Beach Golf and Yacht Club was too entangled to be separated after August 9, 1985. ACDG argues that a de facto partnership existed between Peoples Federal and Justice, Inc. from the onset of the project. However, ACDG did not offer any credible evidence that a de facto partnership existed.

As indicated above, such a relationship did not exist because of Peoples Federal's ownership of Peoples Joint Venture Group, Inc. ACDG did not offer any persuasive proof that Peoples Federal directly controlled or shared in the profits of Myrtle Beach Golf and Yacht Club before or after August 9, 1985.

ACDG did introduce two documents which were created in 1984 by Justice, Inc., which stated that Peoples Federal and Justice, Inc. were developing Myrtle Beach Golf and Yacht as joint venturers. Apparently, Peoples Federal did nothing to correct those statements even though the statements were incorrect. If ACDG had relied on those statements and made a loan to Myrtle Beach Golf and Yacht, it may claim that a partnership by estoppel existed. Section 33-41-380, Code of Laws of S. C. (1976). However, ACDG did not learn of the statements until well after it obtained the notes and

mortgages. Further, Rod Propps was the head of ACDG during the times money was transferred from ACDG to Myrtle Beach Golf and Yacht and was fully aware of the relationship between Peoples Federal and Myrtle Beach Golf and Yacht. Finally, the notes were not signed by the partnership or MBG&YC II, Inc. The notes were signed by individual corporations. ACDG cannot prove reliance on the documents or claim estoppel.

ACDG's expert witness testified about the correct accounting procedures for classifying assets. His theory was that if the asset should be classified by accounting standards as an equity investment, then the priority given a loan status should be denied Peoples Federal. Although ACDG's expert did not cite any authority for his findings, he did refer to a speech he had given to Federal Home Loan Bank Board Regulators, a proposed regulation, and a Statement of Position dated 1986 for the American Institute of Certified Public Accountants as authority for his claim that Peoples Federal was an equity investor and not a lender in connection with Myrtle Beach Golf and Yacht Club.

ACDG's expert did admit that the ultimate determination of the status of Peoples Federal was a legal question for the Court and not an accounting question. Using the legal analysis set forth above, Peoples Federal's intent and actions were those of a lender. The forms used by Peoples

Federal prove that fact and conclusion. Further, the testimony of George N. Magrath, Jr. and Rod L. Propps prove that fact.

The Court questioned ACDG's expert on his conclusion in some detail. The expert stated that his opinion was based on his belief that the sale of stock was a sham transaction and on the nature of the loans and repayments between Peoples Federal and Myrtle Beach Golf and Yacht. The bona fide character of the sale of stock has already been addressed and this Court believes the sale of stock was not a sham, but was a bona fide transaction.

The second belief about the nature of the loans ordinarily would require an indepth analysis of proper accounting procedures and how loans are made. However, this Court finds that such analysis is unnecessary for two reasons. First, at all times Peoples Federal has carried the transaction as loans on their books. Each year they have been audited by Arthur Young, who conducted an independent examination of the loans. This Court finds it significant that Arthur Young's auditors never took exception to Peoples Federal's classification of the asset as a loan.

The second reason comes from the testimony of ACDG's own expert. ACDG's expert was asked if anything, in his opinion, could have occurred which would have changed his opinion that the transaction was equity investments as opposed to loans.

ACDG's expert testified that if outside capital were infused into the project which brought the loans current and if a third party acquired the project then his opinion would probably change.

Apparently ACDG's expert was not aware of the testimony that in June of 1986 Myrtle Beach Holding Corporation, a third party, bought all the stock in Myrtle Beach Golf and Yacht, Inc. and MBG&YC II, Inc., or that 1.8 Million Dollars in cash was infused into the project, bringing the loans current and paying off mechanics liens and materialmen. However, that fact occurred, and it occurred prior to the time ACDG acquired any security interest in Myrtle Beach Golf and Yacht Club. That fact was shown by the express agreement that ACDG's mortgage is subordinate to the 1.8 Million Dollar loan of Teatros Y. Cinemas, which provided the additional cash.

In addition to the above-mentioned reasons, the claim of ACDG to a superior lien position is defeated by its own acts and omissions. Without addressing the question of whether ACDG was entitled to claim under its mortgage, the facts show that ACDG obtained its mortgage and a confession of judgment by expressly representing to the Court that its lien rights were subordinate to the lien rights of Peoples FEderal.

The settlement was entered by the parties whom ACDG claims were partners with Peoples Federal with the express

understanding that the security interest given ACDG was given as a subordinate lien to the lien of Peoples Federal. Further, Peoples Federal continued making disbursements on the 5.1 Million Dollar loan after the mortgage was given ACDG.

The Order of Judge McInnis settling the case incorporates the statements or agreement that ACDG's mortgage is subordinate to Peoples Federal's mortgage. ACDG consented to the Order and has never sought to amend it.

For the foregoing reasons, ACDG is estopped from asserting lien priority over Peoples Federal's mortgage. The general rule is that where a party joins in the application for an order rendered in a proceeding instituted by that party, then that party is estopped to deny the order's validity. Way v. Way, 132 S.C. 288, 128 S.E. 705 (1925); Carrigan v. Drake, 36 S.C. 354, 15 S.E. 339 (1891). Under the settlement agreement, ACDG was a moving party and expressly agreed to its subordinate position. Judge McInnis incorporated that agreement in his order in every detail. ACDG cannot now invalidate that Order which gave it the rights which it seeks to assert herein. State v. Spartanburg & U. R. Co., 8 S.C. 129, (1875).

CONCLUSION

The relief sought by Peoples Federal should be granted. The property described in its mortgage should be foreclosed and the property sold at the next appropriate sales date. The priority of liens are hereby found to be set in the Order contained in Peoples Federal's Complaint.

IT IS ORDERED, ADJUDGED AND DECREED:

1. That pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment.

2. That there is due to Peoples Federal on the obligation and mortgage set forth in the Complaint the sum of Eight Million Two Hundred Fifty Thousand Nine Hundred Thirty-three and 43/100 ($8,250,933.43) Dollars representing the "Total Debt" due Plaintiff as set out in paragraph (9) supra., together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.

3. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph 9, and later accrued interest on the principal) shall bear interest hereafter.

4. That the Defendant liable for the aforesaid debt does, on or before the date of sale of the property hereinafter described, pay to the Plaintiffs, or Plaintiff's

attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. That on default of payment, at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master-in-Equity at public auction, at 11:00 a.m., on April 2, 1990, at the County Courthouse, in the City of Horry, County and State aforesaid, on the following terms, that is to say:

a. FOR CASH: the undersigned will require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance same to be forfeited and applied to the costs and Peoples Federal's debt.

b. Purchaser to pay for deed stamps and cost of recording the deed.

6. If Peoples Federal be the successful bidder at said sale, for a sum, not exceeding the amount of costs, disbursements, expenses and the indebtedness of said Peoples Federal in full, said Peoples Federal may pay to the undersigned only the amount of the costs, disbursements and expenses crediting the balance of the bid on Peoples Federal's indebtedness.

7. Deficiency judgment being waived, the bidding will not remain open after the date of the sale.

8. That the undersigned will by advertisement according to law, give notice of the time, and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. Peoples Federal, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within ten (10) days after date of sale, then the undersigned may advertise the said premises for sale on the next or some subsequent Salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the undersigned do apply the proceeds at the sale as follows:

First: To payment of the amount of the costs, disbursements, and expenses of this action.

Next: To the payment of all taxes and assessments due on the date of sale.

Next: To the payment to the Plaintiff or said Plaintiff's attorneys, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on same.

Next: Any surplus funds be held pending the further Order of this Court.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And, IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendants and all persons whosoever claiming under them be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises be sold, or any part thereof.

12. IT IS FURTHER ORDERED, that the deed of conveyance made pursuant to said sale shall contain the names of only the Plaintiff, the Defendant and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. A description of the premises herein ordered to be sold is attached hereto as Schedule "A".

AND IT IS SO ORDERED.

JOHN L. BREEDEN, JR
MASTER-IN-EQUITY

Conway, South Carolina
6 day of March, 1990.

SCHEDULE "A"

AMENITIES PARCELS

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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855

at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same

prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County,

South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Count in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

AMENITIES PARCELS

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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property

described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such

boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11,

1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23

acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Exhibit 10

FILED
HORRY COUNTY, S.C.
1990 MAY 25 PM 3:16
R.M.C.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

MASTER'S DEED

WHEREAS, Peoples Federal Savings and a Association, on or about the 12th day of September in the year of our Lord one thousand, nine hundred eighty-eight commenced an action in the Court of Common Pleas for the County of Horry State of South Carolina, against Myrtle Beach Golf and Yacht Club, a general partnership, et al.

AND WHEREAS, the action being at issue, was heard by the Honorable the said Court on the 6th day of March in the year of our Lord one thousand, nine hundred ninety whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did ORDER, ADJUDGE, AND DECREE that the premises particularly set forth and described hereinafter, should be sold by John L. Breeden, Jr. as Master, hereinafter called party of the first part, on the terms and for the purposes mentioned in said Decretal Final Order, all of which will more fully appear by reference to the registry of the said Court, Judgment Roll No. 88-3276; and the party of the first part after having duly advertised the said premises for sale at public outcry on the 2nd day of April the year of our Lord one thousand, nine hundred ninety, did openly and publicly, and after the manner of auction, offer the said premises for sale, and John L. Breeden, Jr., as Master, as provided by law, did then sell the same unto Peoples Federal Savings and Loan Association P.O. Box 220, Conway, S.C. 29526 of the County of Horry, State aforesaid, hereinafter called parties of the second part, whether one or more, for the sum of Five Million Seven Hundred Thousand ($ 5,700,000) Dollars, being at that price the highest bidder for the same,

NOW KNOW ALL MEN BY THESE PRESENTS That the said party of the first part, in consideration of the premises and the sum of Five ($5.00) Dollars paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release, unto the said parties of the second part

SEE ATTACHMENT FOR PROPERTY DESCRIPTION

FILED
1990 MAY 25 PM 3:16
R.M.C.

378

Together with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also the estate, right, title, interest, dower, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances, unto the said parties of the second part, ~~its~~ successors heirs and assigns, forever.

IN WITNESS WHEREOF, I, the said John L. Breeden, Jr. as Master, under and by virtue of the said Decretal Final Order, have hereunto set my Hand and Seal, this the 24th day of May in the year of our Lord one thousand nine hundred ninety, and in the two hundred and thirteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Naomi Black

Mary Alice Cox

John L. Breeden, Jr. (L. S.)
Master for Horry County.

THE STATE OF SOUTH CAROLINA

by John L. Breeden, Jr. Master,

TO

Peoples Federal Savings and Loan Association

TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA,
County of

I hereby certify that the within Deed was filed for record in the office of Clerk of Court and Ex-Officio Register of Mesne Conveyance for Horry County, South Carolina, at o'clock on the 30 day of May, 1990, and immediately noted the same on the indexes and duly recorded said Deed in Deed Book 1435 at Page 370

Clerk of Court and Ex-Officio Register of Mesne Conveyance

Recorded this ... day of ... 19..
in Book ... at ...
Fee $ ...

Auditor ... County.

RECEIVED
MAY 30 1990
Auditor, Horry County, S. C.

THE STATE OF SOUTH CAROLINA,
County of HORRY

PROBATE

PERSONALLY appeared Naomi Black and made oath that the deponent saw John L. Breeden, Jr. as Master, sign, seal and as his act deliver the within deed; and that deponent, together with Mary Alice Cox witnessed the due execution thereof and signed their names as witnesses thereto.

SWORN to before me, this 24th day of May, 1990.

Mary Alice Cox (L. S.)
Notary Public for South Carolina.
My commission expires 11-09-99

Naomi Black

ATTACHMENT

HORRY COUNTY ASSESSOR

Map Blk Parcel

AMENITIES PARCELS

All those 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 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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 Dunlop Builders by Sur-Tech Incorporated, dated November, 1983, [illegible] Clerk's office in Plat Book 79 at page 165

[illegible]

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by Deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

BOOK 1395 PAGE 380

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EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel B (0.001 acres) and Parcel C (0.001 acres) on map prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County clerk of court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel O (0.[illegible] acres), Parcel [illegible] (0.[illegible] acres), Parcel [illegible] (0.[illegible] acres), and Parcel S (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres), Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel [illegible] acres), Parcel [illegible] acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 17 (0.006 acres), Parcel 15 (0.003 acres), and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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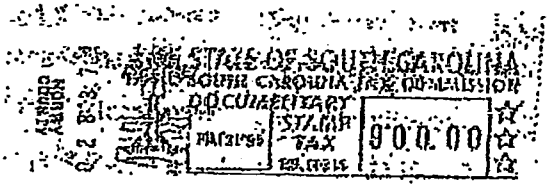
ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

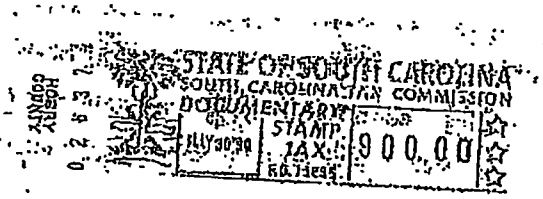
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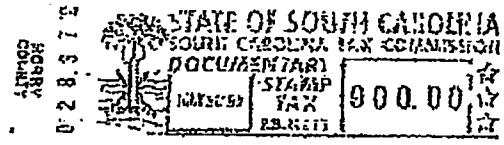
BOOK 1395 PAGE 383

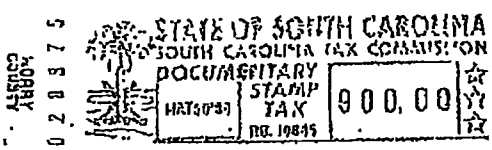
343

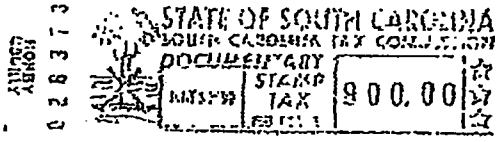
Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Tract III-D-1 (6.17 acres) on map of same prepared by [illegible] dated September 9, 1985, recorded in the Horry County Clerk of Court's Office in Plat Book 97 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

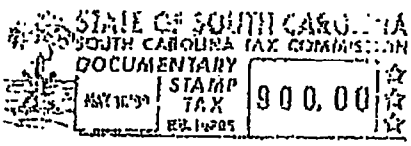












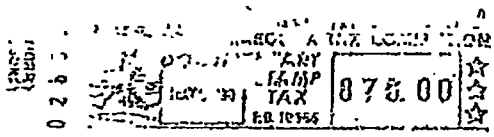


Exhibit 11

19677

Deed BK1433 PG361

THE CONTENTS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION.

FILED
HORRY COUNTY
90 NOV -7 PM 2:14
R.M.C.

STATE OF SOUTH CAROLINA)
) EASEMENT MAINTENANCE AGREEMENT
COUNTY OF HORRY)

THIS EASEMENT MAINTENANCE AGREEMENT is made and executed this 12th day of September, 1990, by and between PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, a federally chartered savings and loan whose address is Post Office Box 1740, Conway, South Carolina 29526, and MYRTLE BEACH GOLF AND YACHT CLUB ASSOCIATION, INC., a South Carolina eleemosynary corporation whose address is 97 Bay Road, Myrtle Beach, South Carolina 29577.

WHEREAS, Peoples Federal Savings and Loan Association, Property Consultants, Inc., and Myrtle Beach Golf and Yacht Club Association, Inc., entered an Agreement dated July 25, 1985, which was incorporated into an Order of the United States District Court for South Carolina, Bankruptcy Division; and

WHEREAS, Peoples Federal Savings and Loan Association agreed to assume responsibility of the maintenance and landscaping of the entrance road from the existing (as of [illegible], 1985) gate to the golf course clubhouse, provided that [illegible] common area maintenance fees, either now or in the future, will be charged to Peoples Federal Savings and Loan Association, or its successors and assigns; and

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WHEREAS, Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc. wish to memorialize their agreement in writing;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained therein, and the granting and acceptance of the responsibilities set forth herein, Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc. agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.1 Maintenance and Landscaping. As of the date of this Agreement, Peoples Federal Savings and Loan Association agrees to be bound by and subject to the terms of this Agreement so as to assume responsibility for the maintenance of the entrance road from the existing guard gate to the golf course clubhouse and the landscaping of said road.

1.2 Administrator. Peoples Federal Savings and Loan Association shall be the Administrator of this Agreement and shall act with the advice and consent of Myrtle Beach Golf and Yacht Club Association, Inc. (hereinafter "Association").

ARTICLE II

MAINTENANCE AND LANDSCAPING

2.1 [illegible] specific provisions set forth herein, the duties and duties of the Administrator shall include the following:

1. To provide for and to fund the maintenance, repair, replacement and landscaping of the

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entrance road from the existing guard house to the golf course clubhouse;

2. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the entrance road;

2.2 Maintenance. The Administrator shall cause to be maintained: (i) the wearing surface, subsurface and base of the paved portion of the entrance road; and (ii) the grass and landscaped areas of the entrance road.

2.3 Repair, Replacement and Capital Improvement. Major repair and replacement, and capital improvements, that can be anticipated, will be approved, scheduled, and funded on a timely basis. Emergency problems caused by storm damage, disaster, or other cause, that threaten traffic flow or safety will be corrected as soon as possible.

2.4 Landscape. The grade elevation changes, landscaping and planning for the entrance road has been approved as it currently exists. The Administrator, shall cause such landscaping and planning to be maintained consistent with maintenance provided for similar areas located in Horry County, South Carolina.

2.5 Security. The Association shall provide security [illegible] entrance [illegible] Security operations include the standard patrol and [illegible] hereafter be deemed necessary by the Association. Traffic controls and signs will be maintained in conformity with the Uniform Act Regulating Traffic, South Carolina Code

BOOK 1462 PAGE 363

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Section 56-5-6310 (1976). The Association makes no representation or warranty, express or implied, as to the effectiveness of such security procedures provided hereunder to prevent or deter vehicular or pedestrian accidents, or misdemeanors.

2. Supplemental Maintenance, Landscape or Security Service. The Association may submit a request to the Administrator for supplemental maintenance or landscaping for the entrance road. If the request goes beyond the standards established herein, the Administrator shall require the Association to pay for the proposed extra service.

ARTICLE III

ACCESS AND EGRESS

3.1 Access and Egress. The Myrtle Beach Golf and Yacht Club Association, Inc., agrees that the agents, employees, guests and invitees of Peoples Federal Savings and Loan Association, its successors and assigns, have permanent and unfettered rights of ingress and egress over the roadway network within Myrtle Beach Golf and Yacht Club, and these rights of ingress and egress are not subject to a fee, tariff, or charge.

ARTICLE IV

4.1 Assumption. Upon execution of this Agreement, the Association covenants and agrees that the duties and responsibilities assumed by the Administrator shall exempt

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the Administrator from any homeowners dues, maintenance fees, or special assessments which may be due and owing from the Administrator because of its position as a property owner in Myrtle Beach Golf and Yacht Club.

ARTICLE V

LIABILITY FOR PAYMENT; LIENS

5.1 Liability of Administrator. The Administrator is bound to fulfill its duties and obligations as set forth in this Agreement. The liability of the Administrator for failure to fulfill its duties and obligations shall be the same as its liability would be for failure to pay any special assessment, homeowners dues or maintenance fees.

ARTICLE VI

MISCELLANEOUS

6.1 Inspection of Records. The Association shall have the right to inspect the records of payments and expenditures made pursuant to this Agreement. Said inspection shall take place during normal business hours, after reasonable notice to the Administrator.

6.2 Severability. Invalidation of any provision, term or phrase of this Agreement by adjudication of any court or tribunal shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

6.3 Duration. This Agreement shall run with and bind

BOOK 1403 PAGE 365

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the property owned by the Administrator, its successors or assigns. This Agreement shall inure to the benefit and be enforceable by the Administrator, its successors and assigns in perpetuity, or by the Association, its successors and assigns in perpetuity.

6.4 Amendment. All amendments to this Agreement shall be recorded in the Office of the R.M.C. for Horry County, South Carolina, and shall be executed by the Association and the Administrator.

6.5 Binding Arbitration. In the event of disagreement concerning the provisions of this Agreement between the Administrator or the Association, the parties shall attempt to negotiate a settlement within thirty (30) days after one of the parties has notified the other of its intent to go to binding arbitration. If no settlement is reached within that thirty-day period, the disagreement must be submitted for binding arbitration in accordance with the rules of the American Arbitration Association and the South Carolina Uniform Arbitration Act. The cost of the arbitration, including reasonable costs and attorneys fees of the prevailing party shall be the responsibility of the parties not prevailing. All arbitration shall take place in Horry County, South Carolina.

6.6 Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches

BOOK 1 PAGE 366

which may have occurred.

6.7. Conflicts. This Agreement is executed to amend and restate the Order of the Bankruptcy Court and the Agreement entered into between Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc., dated July 25, 1985, and in the event that any of the provisions hereof conflict with the provisions of the Order and Agreement referred to therein, this Agreement shall control.

6.9 Notices. All notices or other written communications shall be personally delivered or placed in the U. S. Mail (first class or registered or certified mail) postage prepaid, to the parties at the addresses stated above, or at such other address as the Association shall provide to the Administrator in writing. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed.

WITNESSES:

MYRTLE BEACH GOLF AND YACHT CLUB ASSOCIATION

DONALD McGREW - PRESIDENT

BOOK 1433 PAGE 367

PEOPLES FEDERAL SAVINGS
AND LOAN ASSOCIATION

GEORGE N. MAGRATH, JR.
EXECUTIVE VICE PRESIDENT

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 named Myrtle Beach Golf and Yacht Club, by George McGrew, its President, sign, seal and as its act and deed, deliver the within Easement Maintenance Agreement; that deponent with other witness whose name is subscribed above witnessed the execution thereof.

SWORN to before me this
12th day of September, 1990.
(L.S.)
Notary Public for South Carolina
My Commission Expires: 7-11-99

BOOK 1433 PAGE 368

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Peoples Federal Savings and Loan Association, by George N. Hagrath, Jr. its Executive Vice President, sign, seal and as its act and deed, deliver the within Easement Maintenance Agreement; that deponent with other witness whose name is subscribed above witnessed the execution thereof.

Ellen Legal

SWORN to before me this
10th day of September, 1990.

James D. Jordan (L.S.)
Notary Public for South Carolina
My Commission Expires: 6-16-99.

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Exhibit 12

Book 1540 Pg. 482 5966

STATE OF SOUTH CAROLINA)
) INDENTURE DEED
COUNTY OF HORRY)

FILED
HORRY COUNTY
92 APR 15 PM 3:3[illegible]
R.M.C.

90 20 00
45 10 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 26088
Organville, S. C. 29516

The 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) 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, provided, however, that there shall be no requirement to offer memberships.

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

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and filed for record in the Office of the R.M.C. for Horry County in Real Estate Plat Book 119 at pages 242 ____."

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 License 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 732.

(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, 1988. Recorded in said Register's office on February 11, 1988 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, 1988, recorded in said Register's office on September 8, 1988 in Deed Book 1098 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 1066 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 nine 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: _____

ITS: _____

BY: _____

ITS: Vice President

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

DOCUMENTARY STAMP TAX 900.00

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

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 Paul Estate; that deponent with the other witness whose name is subscribed above witnessed the execution thereof

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

Notary Public for South Carolina (L.S.)

My Commission Expires: 3/13/97.

DOCUMENTARY STAMP TAX $ 900.00

DOCUMENTARY STAMP TAX $ 20.00

DOCUMENTARY STAMP TAX $ 900.00

DOCUMENTARY STAMP TAX $ 900.00

DOCUMENTARY STAMP TAX $ 900.00

DOCUMENTARY STAMP TAX $ 900.00

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 [illegible], 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 27.068 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 9.864 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 102 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.

4-16-92 (Parcel I)

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX
000.00

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX
000.00

STATE OF SOUTH CAROLINA
DOCUMENTARY STAMP TAX
010.00

BOOK 1540 PAGE 486

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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 0.639 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 AB, containing 0.140 acre, more or less;
Parcel AF, containing 0.049 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.

HORRY COUNTY ASSESSOR
184-17-03-055 & 184-17-01-042
Map ... Blk _ Parcel

4-16-92

BOOK 1540 PAGE 487

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF
COUNTY OF HORRY) TRUE CONSIDERATION

GRANTOR: Peoples Federal Savings & Loan Association

GRANTEE: Heron Point Golf Club Limited Partnership

TRUE CONSIDERATION: $4,100,000.00

DATE: April 15, 1992

PERSONALLY appeared before me the George M. McGrath, Jr. who, being duly sworn, says:

That (s)he is familiar with the above-captioned deed in which there is recited a nominal consideration and that the true consideration is as shown above.

Sworn to and subscribed before me
this 15th day of April, 1992.

Notary Public for South Carolina
My Commission Expires: 5/23/97

BOOK 1540 PAGE 488

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Exhibit 13

Deed Book 1554
Page 782

159 560

FILED

STATE OF SOUTH CAROLINA) QUIT-CLAIM DEED TO MYRTLE BEACH
) GOLF AND YACHT CLUB ASSOCIATION, INC.
COUNTY OF HORRY 92 JUN 10 PM 2:11 AS NOMINEE

R.M.C.

WHEREAS, Peoples Federal Savings and Loan Association has foreclosed mortgages on certain pieces, parcels or tracts of land in Socastee Township, in the County of Horry, State of South Carolina, described as Tracts I and II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated, dated February 28, 1984, recorded in Real Estate Plat Book 79 at page 208; and

WHEREAS, prior to foreclosure of such properties, Peoples Federal Savings and Loan Association had released from its mortgages and Myrtle Beach Golf and Yacht Club, a South Carolina general partnership, had conveyed certain lots and tracts described in other surveys to third party purchasers; and

WHEREAS, certain discrepancies in lot lines appear to have occurred as a result of the various surveys referred to in the descriptions to the properties conveyed to said third party purchasers; and

WHEREAS, Peoples Federal Savings and Loan Association has conveyed portions of the properties it has foreclosed upon by a deed dated April 15, 1992 and recorded in Deed Book 1540 at page 482 in the Office of the R.M.C. for Horry County, South Carolina, referred to in a survey dated April 6, 1992 by Engineering and Technical Services, Inc, and recorded in Real Estate Plat Book 119 at page 100; and

WHEREAS, none of the properties conveyed in the Deed filed in Deed Book 1540 at page 482 are described hereinbelow; and

WHEREAS, Peoples Federal Savings and Loan Association wishes to release any claims it may have to any gores or slivers of property as a result of its foreclosures and the discrepancies in property lines created with inconsistent surveys by quitclaiming any interest it may have in said gores or slivers of properties to the various third party purchasers from Myrtle Beach Golf and Yacht Club, a general partnership, by naming and constituting Myrtle Beach Golf and Yacht Club, Inc. as Nominee for said third party purchasers, thereby causing any legal title Peoples Federal Savings and Loan Association may have to said gores or slivers of property to be conveyed to said third party purchasers through Myrtle Beach Golf and Yacht Club Association, Inc.

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION SENDS GREETING:

BOOK 1554 PAGE 782

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NOW, KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, in consideration of the premises and also in consideration of the sum of Five and No/100 ($5.00) Dollars to Peoples Federal Savings and Loan Association in hand at and before the sealing and delivery of these presents by Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee, or its successors or assigns (the receipt whereof is hereby acknowledged) has remised, released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee and its successors, successors in title and assigns forever, all right, title, and interest in and to:

(SEE EXHIBIT "A" ATTACHED HERETO)

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee and its successors, successors in title, and assigns, forever--so that neither Peoples Federal Savings and Loan Association nor its successors or assigns nor any other person or persons, claiming under Peoples Federal Savings and Loan Association or its successors and assigns, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS Peoples Federal Savings and Loan Association hand and

seal this 15th day of May in the year of our Lord one thousand nine hundred and ninety-two and in the two hundred and 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

Christina A Miller

BY: George K. Magrath, Jr.
ITS: Executive Vice President

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 Peoples Federal Savings and Loan Association, by George K. Magrath, Jr., its Executive Vice President, sign, seal and as its act and deed, deliver the within Quit-Claim Deed; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Christina A Miller

SWORN to before me this
15th day of May, 1992.

(L.S.)
Notary Public for South Carolina

My Commission Expires: 12-5-91.

BOOK 1554 PAGE 784

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EXHIBIT "A"

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, being shown and designated as "Parcel F, containing .098 acre, more or less; Parcel G, containing .017 acre, more or less; Parcel H, containing .137 acre, more or less; Parcel I, containing .081 acre, more or less; Parcel J, containing .14 acre, more or less; Parcel K, containing .001 acre, more or less; Parcel A, containing .005 acre, more or less; Parcel B, containing .014 acre, more or less; Parcel R, containing .0834 acre, more or less; Parcel AH, containing .613 acre, more or less; Parcel J-I, containing .355 acre, more or less; Parcel AG, containing .011 acre, more or less; Parcel AE, containing .002 acre, more or less; and any gores or slivers of property created as a result of the discrepancies in surveys of said properties.

Said parcels are shown on a 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, which plat is incorporated herein and made a part hereof by reference.

This property is a portion of the property acquired by Grantor by Master's Deed filed June 19, 1990 and recorded in Deed Book 1395 at page 379, and by Master's Deed filed January 22, 1991 and recorded in Deed Book 1446 at page 467 in the Office of the R.M.C. for Horry County, South Carolina.

GRANTEE'S ADDRESS: Myrtle Beach Golf and Yacht Club Association, Inc.
6725 Bay Road, Unit 106
Myrtle Beach, South Carolina 29575

HORRY COUNTY ASSESSOR
184.00-01-023, 025, 024, 021 & 040
Map Blk Parcel
6-11-92

BOOK 1554 PAGE 785

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Exhibit 14

Deed Book 1554 15 9560
Page 786

FILED
HORRY COUNTY, S.C.

STATE OF SOUTH CAROLINA) QUIT-CLAIM DEED
COUNTY OF HORRY) 92 JUN 10 PM 2:14

R.M.C.

WHEREAS, Peoples Federal Savings and Loan Association believes it acquired legal title to the boulevards, roads, streets, courts or easement areas described in Exhibit "A" through its foreclosure of certain mortgages on property formerly known as "Enterprize Tract Landing" and developed as "Myrtle Beach Golf and Yacht Club;" and

WHEREAS, Peoples Federal Savings and Loan Association wishes to convey its rights to such property to Myrtle Beach Golf and Yacht Club Association, Inc. after reserving to itself its rights as a mortgagee in that certain mortgage from Heron Point Golf Course Limited Partnership to a non-exclusive easement for access to and egress from the property described herein; and

WHEREAS, this conveyance is subject to the Easement Maintenance Agreement given by Peoples Federal Savings and Loan Association to Myrtle Beach Golf and Yacht Club Association, Inc. dated September 9, 1990, recorded in the Office of the R.M.C. on November 7, 1990 in Deed Book 1433 at page 361;

WHEREAS, Peoples Federal Savings and Loan Association has conveyed portions of the properties it has foreclosed upon by a deed dated April 15, 1992 and recorded in Deed Book 1540 at Page 482 in the Office of the R.M.C. for Horry County, South Carolina, and

WHEREAS, none of the properties conveyed in the deed filed in Deed Book 1540 at Page 482 are described hereinabelow.

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION SENDS GREETING:

NOW, KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, in consideration of the premises and also in consideration of the sum of Five and No/100 ($5.00) Dollars to Myrtle Beach Golf and Yacht Club Association, Inc. in hand at and before the sealing and delivery of these presents by Myrtle Beach Golf and Yacht Club Association, Inc. or its successors or assigns (the receipt whereof is hereby acknowledged) has remised,

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BOOK 1554 PAGE 786

released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said Myrtle Beach Golf and Yacht Club Association, Inc., its heirs, successors, successors in title and assigns forever, after reserving its rights as a mortgagee across said property, the right, title, and interest in and to:

(SEE EXHIBIT "A" ATTACHED HERETO)

This conveyance shall be subject to all easements of record and all rights to use the roads, streets, courts or common areas existing at the time of this conveyance.

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Myrtle Beach Golf and Yacht Club Association, Inc., its heirs, successors, successors in title, and assigns, forever--so that neither Peoples Federal Savings and Loan Association nor its successors or assigns nor any other person or persons, claiming under Peoples Federal Savings and Loan Association or its successors and assigns, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances except its easement rights across said property.

WITNESS Peoples Federal Savings and Loan Association hand and seal this _____ day of June in the year of our Lord one thousand nine hundred and ninety-two and in the two hundred and 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:
ITS:

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Peoples Federal Savings and Loan Association, by _____, its _____, sign, seal and as its act and deed, deliver the within Quit-Claim Deed; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

SWORN to before me this
10th day of June, 1992.

_____ (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/18/97.

BOOK 1554 PAGE 788

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EXHIBIT "A"

All those certain boulevards, road, streets, courts, or common areas located in Socastee Township, Horry County, South Carolina, for the property formerly known as "Enterprize Tract Landing" and developed as "Myrtle Beach Golf and Yacht Club." Said boulevards, roads, streets, courts, or common areas are shown on a plat dated October 23, 1984, revised January 9, 1985, by Sur-Tech, Inc., and recorded in Real Estate Plat Book 83 at page 216 in the Office of the R.M.C. for Horry County, South Carolina, and on a plat dated February 12, 1986, recorded in the Office of the R.M.C. in Plat Book 89 at pages 137 through 144.

This property is a portion of the property acquired by Grantor by Master's Deed filed June 19, 1990 and recorded in Deed Book 1395 at page 379, and by Master's Deed filed January 22, 1991 and recorded in Deed Book 1446 at page 467 in the Office of the R.M.C. for Horry County, South Carolina.

GRANTEE'S ADDRESS: Myrtle Beach Golf and Yacht Club Association, Inc.
6725 Bay Road, Unit 106
Myrtle Beach, South Carolina 29575

HORRY COUNTY ASSESSOR
184-17, 184-18, 184-19, 184-20 (Streets)
Map BK Parcel

6-11-92

BOOK 1554 PAGE 789

789

Exhibit 15

875351

EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, S.C. 29578
(843) 448-2400

FILED
HORRY COUNTY, S.C.
2005 MAY -5 AM 11:33
BALLERY V. SKIPPER
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WAIVER OF RESTRICTIONS

WHEREAS, Peoples Federal Savings and Loan Association conveyed certain property to Heron Point Golf Club Limited Partnership ("Grantee") by Deed dated April 15, 1992, and recorded April 15, 1992, in Deed Book 1540, at Page 482, records of Horry County, South Carolina (the "Heron Point Deed"); and

WHEREAS, the Heron Point Deed contained certain restrictive covenants; and

WHEREAS, First Federal Savings and Loan Association of Charleston ("Grantor") is the successor to Peoples Federal Savings and Loan Association; and

WHEREAS, Grantee has agreed to sell to Enterprise Road Development, LLC ("Enterprise") the property described on Exhibit "A" attached hereto and made a part and parcel hereof (the "Enterprise Tracts") which is a portion of the property conveyed to it by the Heron Point Deed; and

WHEREAS, Grantor has agreed to release the Enterprise Tracts from the restrictive covenants contained in the Heron Point Deed, as an inducement to Enterprise to purchase the Enterprise Tracts;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent that this document be relied upon by Enterprise, its successors and assigns, Grantor does hereby waive, relinquish and release the following restrictive covenants as the same may apply, if at all, to the Enterprise Tracts so that said restrictive covenants originally contained in the Heron Point Deed shall no longer encumber or affect the Enterprise Tracts:

(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) Grantee, its Successors and Assigns agree to offer memberships to members of Myrtle Beach Golf and Yacht Club Association, Inc., its Successors or 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.

DEED 2905 0574

It is the intent hereof that said restrictive covenants no longer affect the Enterprise Tracts.

IN WITNESS WHEREOF, First Federal Savings and Loan Association of Charleston as successor to Peoples Federal Savings and Loan Association have caused these presents to be made and executed this 22 day of March, 2005.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHARLESTON

By: _____
Its: Sr. Vice President

_____
(witness sign here)

_____
(notary sign here)

Poor Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that the above subscribed First Federal Savings and Loan Association of Charleston by and through it duly authorized officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22 day of March, 2005.

Debbie F. Lovins
Notary Public for South Carolina

My Commission Expires: April

(Seal)

DEBBIE F. LOVINS NOTARY PUBLIC SOUTH CAROLINA

Poor Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

TOTAL P.02

EXHIBIT "A"

Parcel I:
ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 5.09 Acres, more or less, and being more particularly shown and described on that certain Plat prepared by DDC Engineers, Inc. dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 3, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting From the Aforesaid Parcel:
ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 192 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated April 21, 2004, revised May 24, 2004 and recorded June 2, 2004 in Plat Book 197 at Pages 206, 206A and 206B, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Parcel II:
ALL AND SINGULAR, that certain piece, parcel or tract of land containing 2.51 Acres, more or less, and being more particularly shown and designated on that certain Plat prepared by DDC Engineers, Inc., dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 2, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting Therefrom:
Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 335 of Cypress River Plantation, as shown on plat entitled "Cypress River Plantation Phase 2C" prepared by DDC Engineers, Inc. dated June 24, 2004, and revised July 23, 2004, recorded August 16, 2004, in Plat Book 199, at Page 79, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained within the foregoing property.

Also Less and Excepting Therefrom:
Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 336 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated September 20, 2004 and recorded October 25, 2004 in Plat Book 200 at Page 180, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained in the foregoing property.

Poor Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

576

Exhibit 16



Heron Point Golf Club

425B Calhoun Avenue
PO Box 3236
Greenwood, S.C. 29648
phone: (864) 942-0106, fax: (864) 227-9695
e-mail: jerrys@carolinagolfnet.com

To: Charlie Clark
From: Jerry Spearman
Date: November 8, 2005
Subject: Progress Report

The following is information concerning the changes and progress for both Heron Point and the Myrtle Beach area.

Myrtle Beach – The Grand Strand Area

The Economy: Beginning in late 2000 the Grand Strand Area began experiencing signs of recession that was amplified by the 9-11-2001 attack. These factors, coupled with an already over building of golf courses not only reduced the number of golfers coming to the Grand Strand, but reduced the number of rounds available to each course and the rate that could be charged. Expenses continued to increase at the inflation rate and property taxes increased at two or three times that rate. All of this meant that not only Heron Point but most of the golf courses on the Strand experience serious financial difficulties.

The general economy of the Grand Strand, and especially the housing market, now is booming. This is resulting in a shift from too few hotel and condo rooms and too many golf courses to near equilibrium in that sector of the market. Another major change is that at least fifteen golf courses have closed or have announced that they will close this fall. Most of those are being turned into real estate development. A list of these courses is attached. Both the improved economy and the closing of a number of golf courses will help those remaining courses increase the number of rounds played and the rate per round. Heron Point will certainly benefit.

The Outlook: The old saying "All Good Things Must Come To An End" seems to be out in the future for the Grand Strand housing market. From all indications, the demand is still quite strong. If a few more golf courses close and the housing boom continues, there will be more demand for tee times from the golf package marketing companies, similarly to the way it was in the mid 1980's. The results of these changes will be slow but obvious.

Heron Point

Operating Results: As has occurred with many other golf courses, Heron Point has gone through a very difficult financial period. The business could have failed except

for the improved economy, a fifty thousand dollar capital contributions from three of the Limited Partners and the admission of a new limited partner, the sale of surplus land and the assistance of First Federal by reducing the interest rate and deferring principal payments. Also, the Golf Course Owner's association was able to have legislation passed to lower property taxes by about forty percent.

To reach the revenue and profits results of 1997 and build a cash reserve will take a few more years, but from all economic indications, that will occur. Revenues are up this year compared to last year, (see attached financial summary). Golf course maintenance expenses are also up, but this is due to trying to catch up on deferred maintenance from the down years.

Improvements: The club house was in bad need of major repairs. With a portion of the cash from the land sale the roofing was replaced, the building was painted inside and out, two new heating and air conditioning units were replaced, and several fixtures were replaced.

Golf course improvements consisted of new sand in the sand traps, two new sand traps, drainage repairs and some natural area added. The course is now in very good condition.

Long Range Outlook: The long range outlook for both the Grand Strand Area and Heron Point is very good. The changes occurring in the market are encouraging and should bring the 1997 results again. The question must be answered; however, as to whether to attempt to change the use of the property from a golf course to real estate development. The prospects of this change would be encouraging except for the deed restriction on the property that requires that it remain a golf course.

There are over five hundred homes in the portion of the property affected by this restriction. To change the restriction and the zoning probably is not impossible, but would be very difficult and would require a creative approach to satisfy a majority of the home owners. The Partnership would be open to this change if a successful approach could be found and would work with First Federal to that end.

The long range plan for the Partners is to sell the property when it will yield a good return. If the market continues to improve as expected, this goal could be realized within the next few years. In the short range, ever effort will be made to improve the number of rounds played and the rate per round while holding expensed to a minimum.

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
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,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Corrected Second Amended Answer, Counterclaims, and Third Party Complaint of Myrtle Beach Golf & Yacht Club, Inc., March 13, 2017 (with exhibits)

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.

SUMMONS

2017 MAR 13 PM 4:59
CLERK OF COURT
HORRY COUNTY, SC

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.

Copy

[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

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.

FILED
HORRY COUNTY
2017 MAR 13 PM 4:59
CLERK OF COURT
HORRY COUNTY, SC

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, it 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 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;

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, LLC, 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, 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.

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

related transactions thereafter, including waiver of certain deed restrictions on the various tracts of land comprising the Heron Point Golf Course Property at issue in this case.

91. That South State Bank be enjoined from any future waiver of deed restrictions relating to the Heron Point Golf Course property.

92. There is an extreme likelihood that any future waiver of deed restrictions relating to the Heron Point Golf Course property will cause irreparable harm to the Defendant.

93. South State Bank will not be unduly burdened by the issuance an injunction.

94. That remedies available at law are inadequate to compensate for the above harm to Defendant.

95. That, considering the balance of hardships between South State Bank and the Defendant, a remedy in equity is warranted.

96. That the public interest would not be disserved by a permanent injunction.

WHEREFORE, Defendant/Third Party Plaintiff Myrtle Beach Golf and Yacht Club Association, Inc., prays that this Honorable Court inquire into the matters alleged, and for the following relief:

A. For an Order from the Court dismissing the Plaintiffs' Complaint and its request for declaratory judgment on the grounds stated herein;

B. For an Order from the Court granting the Defendant / Counter-Plaintiff's Counterclaim and its request for declaratory judgment on the grounds stated herein, including but not limited to, paragraph 60 above (including all subparts thereto);

C. For a permanent injunction against the Third Party Defendant South State Bank in accordance with the paragraphs above;

D. For judgment against Third Party Defendant South State Bank for actual damages, punitive

damages, and consequential damages;

E. For contractual indemnity from Third Party Defendant South State Bank to include payment of any and all fees and costs incurred by Defendant/Third Party Plaintiff Myrtle Beach Golf and Yacht Club in enforcing the deed restrictions at issue in this matter;

F. For attorney's fees and costs, and recoverable expenses in this action; and

G. For such other relief as the Court may deem just and proper.

THE PEARCE LAW GROUP, P.C.

By: _____

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

March 13, 2017

Exhibit1

Exhibit of
Myrtle Beach Golf and Yacht Club
Socastee Township, Horry County, SC
LEGEND
MB Golf & Yacht Club
TMS# 184-00-01-022; 184-17-02-164, 184-17-02-152, 184-17-01-042, 184-18-03-012, and 184-18-03-004
Heron Point Golf Club
TMS# 184-00-01-021; 184-00-01-025, 184-00-01-023, and 184-00-01-024
Common Road Network
Heron Point Blvd.
Notes:
1. Boundary lines shown hereon are an approximation and were taken from Horry County GIS Application.
BP&G COMPANY

Exhibit 2

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP

GENERAL PARTNERSHIP AGREEMENT

February 29, 1984

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, S.C. CODE ANN., SECTIONS 15-48-10, ET. SEC (1985 SUPPLEMENT).



MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP
GENERAL PARTNERSHIP AGREEMENT

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MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP

GENERAL PARTNERSHIP AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into as of the 28th day of February, 1984, between Myrtle Beach Golf & Yacht Club, Inc. ("MBGYC"), a South Carolina corporation, and Peoples Joint Venture Group, Inc. a South Carolina corporation, ("Peoples"), as general partners (separately sometimes referred to as "General Partner" or "Partner" and together referred to as the "General Partners" or "Partners").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

ARTICLE I

FORMATION AND PURPOSE OF PARTNERSHIP

The General Partners hereby form a general partnership (hereinafter called the "Partnership") pursuant to the South Carolina Uniform Partnership Act, Code of Laws of South Carolina (§33-41-10 to 1090), as amended (the "Act"). The purposes of the Partnership shall be as follows:

(a) to acquire those certain tracts of land containing approximately 71.2 usable acres ("Tract I") and 156.5 usable acres ("Tract II") located in Horry County, South Carolina (all of which is defined as the "Property"), the legal description of which including all encumbrances thereon, is set forth on Appendix 1 for Tract I and on Appendix 2 for Tract II;

(b) to develop not less than two hundred and ninety five (295) single-family lots and forty eight (48) multi-family lots on Tract I;

(c) to develop recreational facilities comprised of a club house facility, entry guardhouse, nine hole golf course, swim and tennis club and lakes on Tract II;

(d) to construct not less than two hundred and ninety five (295) single-family homes and forty eight (48) multi-family homes;

(e) to acquire and develop those certain tracts of land designated as Tract III through Tract X in accordance with the land plan attached as Appendix 3 hereto provided that an affiliate of Peoples agrees to act as the acquisition and development lender with respect to said tracts of land; and

(f) for all other purposes ancillary to such activities (all of the above development activities hereinafter referred to as "the Project").

The Partnership shall not engage in any other business without the prior written consent of all Partners. This provision shall not be construed, however, in any manner so as to prevent any of the parties hereto, in their respective individual or corporate capacities, from engaging in any other operations of any kind, including the purchase, sale, development, and management of other real estate.

The Managing General Partner (as hereinafter defined) shall, without delay, take all steps necessary to form this general partnership as may be required by law and shall file and record any documents that may be required for any reason in such office or offices as are required under the laws of the State of South Carolina, or elsewhere. The Managing General Partner shall also promptly register the Partnership under any assumed or fictitious name statute, or similar law, if any, in force and effect in the State of South Carolina, if required by such law, and in such other jurisdictions as may be required by law. The Managing General Partner shall do all other acts and things (including publication or periodic filings of any nature) that may now or hereafter be required for the perfection and continuing maintenance of the Partnership as a general partnership under the laws of the State of South Carolina.

ARTICLE II

NAME AND OFFICE OF PARTNERSHIP

The name of the Partnership shall be Myrtle Beach Golf & Yacht Club, A General Partnership. The principal office of the Partnership shall be 6301 North Kings Highway, Myrtle Beach, South Carolina 29577, (telephone 803-449-1562), or such other place as the General Partners may designate.

ARTICLE III

TERM OF PARTNERSHIP

The Partnership shall remain in full force and effect until June 30, 2002, unless sooner terminated in accordance with the terms and provisions of this Agreement; provided, however, that the Partnership shall continue after the termination date for the sole purpose of winding up its business and affairs as provided in Article XIV of this Agreement.

ARTICLE IV

DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below unless the context clearly requires otherwise:

4.1 "Affiliate" of a Partner shall mean (a) any person, or entity directly or indirectly controlling, controlled by or under common control with such Partner, or (b) any person or entity owning or controlling ten percent (10%) or more of the outstanding voting securities of any Partner.

4.2 "Cash Available For Distribution" shall mean the sum of (i) cash flow and (ii) all cash contributions to the capital of the Partnership, less all amounts which the Partners agree to set aside to create or restore reasonable reserves.

4.3 "Cash Flow" shall mean all gross cash receipts from the operation of the Project, including rentals, fees, amounts received from the sale or other disposition of all or any part of the Project, financings and refinancing of the Project, all insurance and condemnation awards, and interest received, without deduction for depreciation and amortization, but after deducting all expenses incurred in Partnership operations relative to the Project including, but not limited to, debt amortization, insurance premiums, utility charges, repairs, construction and development costs, attorney's and accountant's fees, all management fees, developer's fees, and all fees and charges paid with respect to indebtedness of the partnership.

4.4 "Managing General Partner" shall be [illegible].

4.5 "Partner's Capital Account" with respect to each Partner at any time shall mean an amount equal to the total amount of contributions made by such Partner to the capital of the Partnership, less distributions from the Partnership to such Partner increased by income of the Partnership allocated to such Partner and decreased by losses of the Partnership allocated to such Partner.

4.6 "Profit Percentage" shall be twenty-five percent (25%) with respect to Peoples and seventy-five percent (75%) with respect to MBGYC. Capital contributions, withdrawals, loans to or from the Partnership, distributions from the Partnership of Cash Available for Distribution, and adjustments pursuant to Sections 734 and 743 of the Internal Revenue Code of 1954, as amended, shall not affect the Profit Percentage of any Partner.

ARTICLE V

ACQUISITION OF PROPERTY, CONTRIBUTIONS TO CAPITAL AND THIRD PARTY FINANCING

5.1 Initial Capital Contribution of Peoples. Peoples has contributed one hundred ($100.00) dollars as its initial capital contribution.

5.2 Capital Contributions of MBGYC. MBGYC has contributed one hundred ($100.00) dollars as its initial capital contribution.

5.3 Assignment of Contracts, Agreements and Development Material. MBGYC shall, at the earliest time possible, cause to be assigned or sold to the Partnership:

(a) Tract I and Tract II as the same is more particularly described on Appendix 1 and 2 respectively for a purchase price of $498,400.00 for Tract I and $1,095,500 for Tract II.

(b) All studies, architectural plans and drawings, soil tests, appraisals, contracts or other data on Tracts I and II and other information relating to development of the Property. In consideration of such assignment at the time the Property is transferred to the Partnership, the Partnership shall reimburse MBGYC all expenses made by MBGYC to obtain the studies, plans and drawings, tests and appraisals. The Partners agree that additional funds required for the acquisition and development of the Property in the approximate amount of $1,500,000.00 for lot acquisition and

development costs and $3,000,000.00 for amenities acquisition and development costs shall be borrowed by the Partnership from an affiliate of Peoples.

5.4 Third Party Financing; Additional Capital Contributions.

(a) It is contemplated that funds for acquisition, development and improvement of the project shall be obtained through financing and that no additional capital contributions shall be required.

(b) In the event there are cost overruns and additional capital is required to complete the project, the partners shall determine by mutual agreement to what extent each partner shall contribute such additional capital to the partnership.

(c) To the extent permitted by the terms of other loans obtained by the Partnership, the additional capital required pursuant to paragraph 5.4 (b) may be in the form of a loan or loans and may include one or more construction loans and may be secured by junior mortgages of, and/or junior security interest in, any or all of the Project and/or rentals, revenues and proceeds thereof.

ARTICLE VI

PROFITS, LOSSES, CASH AVAILABLE FOR DISTRIBUTION, CAPITAL AND OTHER ACCOUNTS, DISTRIBUTIONS

6.1 Determination of Profits and Losses. Profits or losses as used in this Article VI shall mean the net profits or net losses of the Partnership as determined for federal income tax purposes.

6.2 Allocation of Profits, Losses, Income and Deductions. Except as otherwise expressly provided in this Agreement, all profits or losses of the Partnership (including each item of income, gain, loss, deduction or credit entering into the computation thereof) shall be allocated among the Partners for each year, as follows:

All profits and losses shall be allocated twenty-five percent (25%) to Peoples and seventy-five percent (75%) to LBCYC.

6.3 Capital Accounts. A Capital Account shall be established for each Partner. The Capital Account of each Partner shall consist of its contributions to the Partnership, including the initial capital contribution described in Article V hereof, plus the amount of Partnership income or profits allocated to the Partner pursuant to Section 6.2 hereof, less (i) all distributions, and (ii) the amount of Partnership deductions or losses allocated to the Partner pursuant to Section 6.2 hereof.

6.4 Distributions. Except as provided in Section 8.5(b) hereof, distributions of Cash Available for Distribution shall be made to the Partners as follows:

(a) First to the Partners in proportion to the credit balances immediately prior to the distribution in their respective Capital Accounts.

(b) Second to the Partners in proportion to their respective Profit Percentages.

6.5 Timing of Distributions of Available Cash. Except for the termination of the Partnership in accordance with Article XIV hereof, distributions from the Partnership to the respective Partners shall be made quarterly pursuant to Section 6.4 hereof (unless otherwise agreed upon in writing by the Partners) and in such amounts as may be reasonably determined by the Partners.

6.6 No Right to Return of Capital Contribution. No Partner shall be entitled to demand or receive the return of its Capital Contribution and no Partner shall be entitled to receive property other than cash in return for its contributions, loans or advances or upon distribution or dissolution as provided herein.

ARTICLE VII

OWNERSHIP OF PARTNERSHIP PROPERTY

7.1 Title to Property. The Property and all other properties, both real and personal, acquired by the Partnership, shall be owned by the Partnership, not the Partners. Legal title to the Property shall be held and conveyed in the name of the Partnership.

7.2 Partition. Each of the Partners hereby irrevocably waives for the duration of this Agreement any and all rights it may have to maintain an

action for partition with respect to its interest in the Partnership or the Property or Project or any other property held by the Partnership or to compel any sale thereof pursuant to the civil statutes of the State of South Carolina or any amendment thereof. In connection with the foregoing, the Partners acknowledge and agree that each of them has been induced to enter into this Agreement in reliance upon the aforementioned waiver and warranty of the other, and without such warranty no Partner would have entered into this Agreement.

7.3 Representations and Warranties of MBGYC. In consideration of the execution of this Agreement by Peoples and capital contribution to the Partnership, MBGYC represents and warrants to Peoples that:

(a) The Property is unzoned, but pursuant to county and state law and Horry County regulations may be developed for the Project as contemplated herein.

(b) MBGYC Has no knowledge of any provision contained in any subdivision ordinance, regulation or statute which would preclude or materially restrict the contemplated development of the Property.

(c) All assessments, levies or charges which have been levied or imposed by any public utility, municipality, public authority or other public body as a result of the development of the Property have been paid and discharged. MBGYC has no knowledge or notice of any pending assessments, levies or charges to be levied against all or any part of the Property or of any pending ordinances or statutes authorizing or requiring the installation of improvements for which the Property may be assessed, except for 1984 real property taxes.

(d) MBGYC has no knowledge of any restrictions on ingress to or egress from the Property from or to any of the streets and highways contiguous thereto.

(e) A portion of the Property is located in a flood zone or flood plain, but no structural improvements will be constructed within same except marina slips.

(f) MBGYC has not entered into any agreement with any prospective purchaser or tenant of any portion of the Property and there is no management agreement, service contract or other agreement which in any way affects the Property.

(g) All permits and approvals under applicable ordinances, statutes and regulations which may be required for the contemplated development of the Property are, in the opinion of MBGYC, reasonably obtainable.

7.4 Development of Tract III and through Tract X.

(a) The Partners agree and acknowledge that Tract I and Tract II are part of a certain land plan ("Land Plan") which is attached hereto as Appendix 3 to develop approximately 1032 acres of land. The land to develop Tract III through Tract X is under an option contract which is attached hereto as Appendix 4. It is the intent of the Partners to jointly develop Tract III through Tract X under the terms and conditons contained herein provided (i) Peoples agrees that the development of such tracts is desirable and (ii) an affiliate of Peoples agrees to provide financing for acquisition and development. MBGYC shall give written notice to Peoples of its intent to acquire the land to develop Tract III at least ninety (90) days prior to the closing date of the land acquisition. Within sixty (60) days of the date of the written notice, Peoples shall indicate in writing whether or not it agrees (i) to jointly develop Tract III and (ii) whether or not an affiliate agrees to provide acquisition and development financing. If Peoples does (i) not wish to participate, (ii) not cause to be provided acquisition and development financing; or (iii) if the sixty day period lapses before the written notice required hereby is received by MBGYC, MBGYC may proceed to develop Tract III and Peoples shall have no further rights or obligations with respect to Tracts III through Tract X.

(b) Provided that Tract III is jointly developed by MBGYC and Peoples, the procedure set forth in paragraph 7.4(a) shall be applicable to Tract IV. Further, the procedure set forth in paragraph 7.4(a) shall be applicable to each subsequent Tract provided the previous Tract has been jointly developed.

ARTICLE VIII

MANAGEMENT OF THE PARTNERSHIP

8.1 Partners and Managing General Partner.

(a) The management and control of the Partnership and its business affairs shall rest exclusively with the Partners. The Partners shall have all the rights and powers, and be subject to all the restrictions and liabilities, of a partner in a general partnership.

(b) Subject to the rights of Peoples and other limitations set forth in this Agreement, MBGYC, as the Managing General Partner, shall have the full and complete right and duty to manage the affairs asnd business of the Partnership. The Managing General Partner shall devote such time, efforts, personnel and resources to the management of the affairs and business of the Partnership as it may from time to time consider necessary or desirable for the successful and profitable conduct thereof.

In exercising its rights and performing its duties hereunder, the Managing General Partner shall:

(a) coordinate the efforts of the Partners undertaken herein and the efforts of others contracted for as contemplated hereby for the successful accomplishment of the Partnership purposes;

(b) keep Peoples fully advised of its activities on behalf of the Partnership;

(c) invest the idle funds of the Partnership in interest bearing accounts, bills or certificates and receive such interest and all income from the Property or Project;

(d) inspect the Property and Project at regular intervals and be kept informed as to the condition of the same;

(e) obtain and continue in force all policies of insurance required by any mortgage or other agreement relating to the Property or Project;

(f) pay or cause to be paid any and all taxes, charges and assessments that may be levied, assessed or imposed upon any of the assets of the Partnership, unless the same are contested by the Partnership;

(g) pay or cause to be paid on or before the due date thereof all amounts due and payable by the Partnership to any person or entity;

(h) consult with Peoples prior to retaining any real estate broker, management agent, mortgage broker or finder, insurance agent or outside legal counsel on behalf of the Partnership;

(i) cause the Partnership to perform properly and discharge the obligations undertaken by the Partnership pursuant to third party contracts and agreements;

(j) cause the development and construction of the Project to be completed in compliance with applicable laws and regulations and manage and supervise the maintenance and operation of the Project in a manner which satisfies in all respects the obligations imposed on the Partnership by this Agreement, any mortgages encumbering the Property from time to time, and by other agreement pertaining to the Property or the Project;

(k) make capital improvements and repairs and purchase supplies and replace machinery, furniture, fixtures and equipment necessary for the proper operation, maintenance and repair of the Project consistent with good construction practices;

(l) promptly notify Peoples of cost overruns in excess of $25,000 either singly or in the aggregate; and

(m) have the authority to convey lots to third party lot purchasers in the ordinary course of business and such authority shall be documented in the Public Records of Horry County, South Carolina.

8.2 Major Management Decisions. In addition to the provisions in this Agreement which require the unanimous consent of the Partners, no action shall be taken or sum expended or obligation incurred by the Partnership or either Partner with respect to a matter within the scope of any Major Management Decision (as hereinafter defined in this Section 8.2) affecting the Partnership unless such Major Management Decision shall have been approved by unanimous consent of the Partners.

The following are Major Management Decisions:

(a) acquiring a fee, leasehold, easement or any other interest in any real property or disposing of the Property or any part thereof except in accordance with the development plan; and

(b) executing, approving or amending any architectural agreement, construction contract, brokerage agreement and/or management

agreement relating to the Project which, when combined with any other or others of the aforesaid contracts or agreements, alters the Project Budget by more than $250,000 in the aggregate;

(c) approving any financing relating to the Project whether construction, interim or otherwise, including any fees or commissions incurred in connection therewith;

(d) determining and redetermining working capital requirements of the Partnership and making calls for additional capital contributions;

(e) mortgaging or otherwise placing any encumbrance upon, the Project or any portion thereof, including any fees or commissions incurred therefor;

(f) changing the Partnership's designated firm of certified public accountants or changing the Partnership's accounting methods or election of depreciation methods and making decisions regarding the treatment of other various transactions for federal income tax purposes;

(g) determining the insurance program for the Partnership and any changes thereto;

(h) determining whether or not any distribution to any Partner not specifically provided for in this Agreement should be made;

(i) seeking, effecting or permitting zoning changes affecting the Property;

(j) settling, compromising or paying any claim in excess of $10,000 made against the Partnership unless such excess is covered by liability insurance protecting the Partnership;

(k) determining the necessity for meetings of the Partnership and the date and time thereof;

(l) determining where and in what manner idle funds of the Partnership should be invested;

(m) abandoning construction or development of any aspect or phase of the Project; and

(n) determining the fiscal year of the Partnership.

If, within ten (10) days after any request by either Partner to the other for consent to any Major Management Decision, the Partner to which such request was made shall not communicate either approval or disapproval

of such Major Management Decision to the Partner which made such request (unless the Partner to whom the request was made shall have requested a reasonable extension of time, not to exceed twenty (20) days, in which to consider its decision, in which event such Partner shall have the right to communicate its approval or disapproval until the end of the extension period), then the Partner to which such request was made shall be conclusively deemed to have consented to such Major Management Decision.

8.3 Affiliates of Managing General Partner. Peoples hereby agrees that Montgomery Construction Company, Inc., Justice Construction Company, Inc., and Justice Builders, Inc. may be employed by the Partnership as sub-contractors provided that any such work so contracted for shall be on the terms and conditions applicable to third parties.

8.4 Limitations on Authority of the Managing General Partner. Notwithstanding anything to the contrary provided in this Agreement, Managing General Partner does not have the authority, without the consent of all of the Partners, to:

(a) do any act in contravention of the then current Agreement;

(b) do any act which would make it impossible to carry on the ordinary business of the Partnership prior to the dissolution of the Partnership; or

(c) borrow money on behalf of the Partnership, make, execute or deliver on behalf of the Partnership any assignment for the benefit of creditors, any confession of judgment, any guaranty, indemnity bond or surety bond, obligate the Partnership as a surety, guarantor or accommodation party, borrow from the Partnership or lend Partnership funds to any third party.

8.5 Meetings of the General Partners. The Partners shall meet at the principal office of the Partnership or at such other place as the Partners may from time to time determine, at such time or times as the Partners may determine. George Magrath, Sr. or George Magrath, Jr. are authorized to speak for and represent Peoples at meetings of the General Partners, and R. L. Propps, or his designee, is authorized to speak for and represent MRGYC, but each Partner shall have one, and only one, vote on any matter, notwithstanding that such Partner may be represented by more than one individual. Each Partner may change its designated representatives from

time to time by written notice to the other Partner. Meetings may be held by telephone or other means of communication.

8.6 Reimbursable Expenses. The Managing General Partner shall be reimbursed pro rata by the Partnership for out-of-pocket costs and expenses reasonably incurred by the Managing General Partner in connection with its obligations under this Agreement to the extent that such expenses are not reimbursable to Managing General Partner pursuant to the terms of any loan with the Partnership. All of the foregoing reimbursable costs shall be paid prior to the distribution of profits to the Partners. Reimbursable costs and expenses shall include reasonable travel expenses of employees of the Managing General Partner in performing the Managing General Partner's obligations under this Agreement; reasonable compensation, living expenses, and related expenses of a project supervisor and other personnel of Managing General Partner when stationed at the site of the Project (which expenses shall be submitted to the Partnership for its approval); and, if paid by the Managing General Partner with the approval of the Partnership rather than by the Partnership directly, professional fees paid to engineers, architects, lawyers and accountants for services for the Partnership, and premiums for insurance of the Partnership and the Managing General Partner against loss in connection with the Partnership. Based upon allocation of relative responsibility to the Project, the Managing General Partner shall be reimbursed for compensation of its employees and for its regular office and administrative expenses, including rent, overhead, telephone service and charges, copying expense, and supplies, such reimbursements not to exceed the amount allocated to "Operation Expenses" in the Project Budget as defined in Paragraph 11.1.

8.7 Developer's Fee. The Partners agree that MBGYC shall receive a developer's fee not to exceed the amount so designated in the project budget.

8.8 Independent Activities. Subject to Section 8.6 hereof, each Partner, its officers or partners and employees, shall devote only such time and energy to the business of the Partnership as necessary for the efficient conduct thereof. Each Partner and their respective shareholders, affiliates, associates, and employees may, notwithstanding the existence of this Agreement, engage in whatever activities they choose (including the

management of other partnerships or joint ventures) without having or incurring any obligation to offer any interest in such activities to the Partnership or any Partner.

Nothing within the terms of this Agreement shall prohibit MBGYC or any affiliate from entering into management contracts for the management of the amenity facilities to be developed hereunder, the common areas, recreational facilities or the marina or entering into management, rental or sales agreements with third party lot purchasers at any time during the term of this Partnership or subsequent to the term of this Partnership. This Partnership and Peoples shall have no rights to income or fees payable to or received by any entity that enters into such management, lease or sales contracts.

Neither this Agreement nor any activity undertaken pursuant hereto shall, except as hereinabove provided, require any party hereto to permit any other parties hereto to participate in any activities of such party, and as a material part of the consideration for each party's execution hereof, each party hereto hereby waives, relinquishes, and renounces any such right to claim of participation.

8.9 Managing General Partner's Standard of Conduct. The Managing General Partner shall perform its duties under this Agreement with ordinary prudence and in a manner characteristic of a prudent businessman in similar circumstances and shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in its immediate possession or control, and the Managing General Partner shall not expend or use, or permit another to expend or use, funds or assets in any manner except for the exclusive benefit of the Partnership. The Partnership funds shall not be co-mingled with the funds of any other person or entity. Except in the case of gross negligence, willful misconduct, or breach of this Agreement, the Managing General Partner shall not have any liability to the Partnership or any Partner.

8.10 Scope of Partner's Authority. Except as otherwise expressly and specifically provided in this Agreement, neither Partner shall have any authority to bind or act for, or assume any obligation or responsibility on behalf of, the other Partner or the Partnership. Neither the Property, the Partnership or either Partner shall be responsible or liable for any indebtedness or obligation of the other Partner incurred or arising either

before or after the execution of this agreement, except those joint responsibilities, liabilities, debts or obligations incurred after the date hereof pursuant to and as limited by the terms of this agreement. This agreement shall not be deemed to create a general partnership between the Venturers with respect to any activities whatsoever other than activities within the scope and business purposes of this Agreement.

8.11 Indemnification.

(a) The Managing General Partner shall not be liable for, and the Partnership shall indemnify and hold it, and its officers, directors and shareholders harmless from and against, any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages, and losses of any kind whatsoever in connection with the Managing General Partner's performance of its duties as set forth in this Agreement or as a result of any claim or legal proceeding against the Partnership, or for the return of any contribution to capital or loan made by a Partner to the Partnership, except if the Managing General Partner and/or its agents or employees are guilty of gross negligence, or willful misconduct, or an "event of default" occurs under this Agreement.

(b) In the event of willful misconduct or gross negligence by Managing General Partner or an "event of default" is committed by Managing General Partner under this Agreement, Managing General Partner agrees to indemnify the other Partners and the Partnership and hold them harmless from and against any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages and losses of any kind whatsoever resulting in a liability to the Partnership or any of the Partners.

(c) Each General Partner hereby agrees to indemnify the other Partner from, and hold it harmless from and against, any and all claims, actions, demands, costs, expenses (including attorneys' fees and court costs), damages, and losses of any kind whatsoever incurred by the Partnership or the other Partner as a result of any of the following acts taken or omitted to be taken by such Partner: gross negligence, willful misconduct, a material misrepresentation to a third party or such Partner commits an "event of default" under this Agreement.

(d) In the event of an indemnifiable loss, the right to indemnification shall be secured by a lien on the interest of the Partner

which is liable for such loss, including its right to distributions from the Partnership.

(e) An "event of default" shall mean the failure of a Partner to perform material and substantial obligations under this Agreement, which failure is not cured within fifteen (15) days after written notice thereof or such longer period as may be reasonably necessary to cure a failure not capable of being cured within fifteen (15) days, so long as the breaching Partner diligently commences to cure such failure within such fifteen (15) day period and any extension of time will not unreasonably cause harm to the assets of the Partnership. In no event shall the opportunity to cure be applicable in the case of the willful misconduct or gross negligence of a Partner.

ARTICLE IX

SALE OR TRANSFER

9.1 Permitted Transfers. Only Peoples may assign its interest herein.

9.2 Prohibited Transfers.

(a) Required Consent. MBGYC shall not sell, assign, transfer, mortgage, encumber or permit any third party to sell, assign, transfer, mortgage or encumber, whether voluntarily or by operation of law, any part or all of its Partnership interest without the written consent of Peoples and any attempt to do so shall be void. The giving of such consent in any one or more instances shall not limit or waive the requirement for consent in any other or subsequent instances.

(b) Indirect Transfers. Each Partner agrees that to the extent its interest is held by a partnership, corporation, trust or other entity, such Partner will seek to transfer its interests in the Partnership only through a direct transfer of such interest therein, and that no transfer

or other disposition of any stock in a corporation, interest in a partnership, or beneficial interest in any other entity which holds an interest in the Partnership will be effective, directly or indirectly, unless approved in advance by the other Partner.

9.3 Restraining Order. In the event that either Partner shall at any time transfer or attempt to transfer its Partnership interest in violation of the provisions of this agreemetn and any rights hereby granted, then the other Partner shall, in addition to all rights and remedies provided at law and equity, be entitled to a decree or order restraining and enjoining such transfer and the offending Partner shall not plead in defense thereto that there would be an adequate remedy at law; it being expressly hereby acknowledged and agreed that damages at law will be an inadequate remedy for a breach or threatened breach of the provisions concerning transfer set forth in Section 9.2 above in this agreement.

ARTICLE X

ADMINISTRATIVE MATTERS

10.1 Books and Records. The Managing General Partner shall keep true and correct books of account for the Partnership at the principal office of the Partnership, and each Partner or its duly authorized representative shall at all reasonable times have access to such books. Such books and records shall be kept on the basis of a calendar year and for book purposes in accordance with generally accepted accounting principles and for tax purposes on the accrual basis, except as the Partners shall otherwise agree.

The Partners agree that construction period charges, including interest, real estate taxes and loan fees, shall be capitalized for book purposes despite the fact that they may be expensed for federal income tax purposes and that depreciation and other items affecting the computation of profits and losses for federal income tax purposes may be treated differently for book or financial reporting purposes, all as the Partners shall agree.

10.2 Reports. The Managing General Partner shall cause quarterly reports to be prepared at the expense of the Partnership. Such quarterly reports shall be provided to all Partners within forty-five (45) days after the close of each calender quarter and upon termination of the Partnership.

Each quarterly report shall contain an account of all items of receipts, income, profits, costs, expenses and losses arising out of or resulting from the ownership of the Project, as well as the Cash Flow and the appropriate disposition thereof under the Agreement. The Managing General Partner shall cause monthly reports of receipts and disbursements showing the results of operation of the Project for the prior month, to be compiled and mailed to Peoples within thirty (30) days after the close of each month.

10.3 Audits - Returns.

(a) Within ninety (90) days after the end of each fiscal year of the Partnership, the Managing General Partner shall furnish to each Partner financial statements for such fiscal year, including, but not limited to, a balance sheet and income and expense statement which shall set forth, either therein or in notes thereto in reasonable detail, the computation and distribution of Cash Flow to Partners and the computation and payment of all other amounts payable to each Partner and to any Affiliates of Partners. The statements referred to herein shall be audited by an accounting firm acceptable to the Partners, the cost of which shall be an expense of the Partnership.

(b) All federal, state, and local income tax returns of the Partnership proposed to be filed for any calendar year shall be prepared by the Managing General Partner (unless the Partners otherwise agree that the independent accounting firm of the Partnership shall prepare such returns) as a Partnership expense and shall be furnished to each Partner for its review and approval at least thirty (30) days prior to the date for filing such return (including any extensions applicable to such return). All such returns shall be filed by the Managing General Partner on or before the due date thereof.

(c) To the extent permissible under applicable laws, the following charges and expenses shall be treated for income tax purposes as current expenses and shall not be charged to capital asset accounts:

(i) interest expenses;

(ii) taxes, including, without limitation, property, payroll and sales and use taxes;

(iii) general management expenses, including reimbursable expenses of the Managing General Partner;

(iv) accounting and legal expenses;

(v) travel and entertainment expenses;

(vi) insurance premiums, including, without limitation, fire and extended coverage, builder's risk, loss of rents, liability and surety bonds;

(vii) advertising expenses;

(viii) developmental expenses not attributable to the land and improvements;

(ix) any other expenses permitted by law.

(d) The Partnership shall elect such method of depreciation as the Partners shall unanimously agree in writing.

(e) The decision whether to exercise or to revoke any or all of the elections available to the Partnership under the Internal Revenue Code shall be determined or made by mutual agreement of the General Partners; provided that the Partnership shall be required, as provided in Section 15.11 hereof, to make an election under Section 754 of the Internal Revenue Code to adjust basis upon request of any Partner, provided such Partner pays the additional bookkeeping and accounting costs which result from such election. Each of the Partners shall supply to the Partnership the information necessary to properly give effect to any such election.

10.4 Bank Account. The Partners will open an account (hereinafter called the "Depository") in the name of the Partnership at a mutually acceptable bank and all funds of every kind and nature received by the Partnership, including capital contributions, all funds requisitioned from construction lenders, any advances or additional capital contributions made by the Partners, and the proceeds from the sale of all or any of the Project shall be deposited in said account. Funds deposited in the Depository may be withdrawn upon the signature of R. L. Propps, Lindsay C. Roach, Daniel J. Kelly, or such other person or persons as shall be designated in writing by the Partnership with the consent of each Partner.

The Managing General Partner may cause disbursal from the Depository of amounts payable under contracts contemplated by and other amounts provided under this Agreement and the Project Budget that are then properly due and payable in conformance with the terms of such agreements or the Project Budget.

The Managing General Partner will supply all information requested by Peoples to clarify and support invoices paid or to be paid and checks drawn by the Managing General Partner.

All checks or drafts on the Depository which the Managing General Partner shall not have the authority hereunder to unilaterally cause to be issued, shall require prior written or verbal authorization by George Magrath, Jr., on behalf of Peoples, or such other person or persons as shall be designated in writing by Peoples from time to time.

ARTICLE XI

PROJECT DEVELOPMENT

11.1 Project Development Plan. A project development plan (the "PDP") has been prepared by MBGYC. The PDP includes the budget for the project (such budget referred to in this Agreement as the "Project Budget") a detailed description of the Project, including, but not limited to, the following: pro forma and cash flow statements including all acquisition, development, construction, design; marketing, promotion, sales and disposition expenses associated with the closing and delivery of Lots to third party purchasers; expected lot and amenity facilities pricing, presently projected construction costs, site improvement expenses and all other anticipated income and expenses related to the development, construction and sale of the Project.

11.2 Project Budget; Project Contracts.

(a) The Project Budget attached hereto as Appendix 5 includes the following: detailed income and expense projections, including the presently projected contract prices of construction contracts anticipated to be entered into between the Partnership and Justice Builders, Inc., Justice Construction Company, Inc., and Montgomery Construction Company, Inc., and all costs associated with the acquisition, development and sale of lots. The Project Budget includes the net income projected to be earned by the Partnership after the payment of all costs and expenses. Such costs and expenses shall include all interest charges expected to be paid on construction financing (inclusive of fees and discounts). In addition thereto, there is attached hereto as Appendix 6 the budget for Tract I and Tract II

("Tract I and II Budget"). The Tract I and II Budget includes the net income for Tract I and Tract II projected to be earned by the Partnership after the payment of all costs and expenses. The Tract I and II Budget also sets forth projected sales which must be met in order for the acquisition and development lender to continue to fund acquisition and development costs. Peoples shall receive monthly reports which compare actual operating results to the Tract I and II Budget.

(b) MBGYC shall prepare and negotiate construction contracts with its Affiliate contractors or third party contractors for the Project which contracts shall be for a fixed price sum not to exceed the amounts allocated for the applicable work in the Tract I and II Budget. Any contract entered into between the Partnership and an Affiliate of a Partner shall contain a provision that such contract shall be terminable if Peoples is the purchaser pursuant to the Provisions of Section 12.2.

ARTICLE XII

TRANSFER AND LIQUIDATION OF INTERESTS

12.1 General. Except as otherwise specifically permitted or required in this Article XII, no Partner shall mortgage, pledge, sell, assign, subject to a security interest, transfer or permit to be transferred in any manner or in any means whatsoever, whether voluntarily or by operation of law, all of any part of its interest in the Partnership or its rights to Cash Available for Distribution. Notwithstanding the foregoing any Partner may at any time, without obtaining the consent of any Partner, transfer its interest in the Partnership to an Affiliate (provided that the parent retains directly or indirectly not less than majority voting rights in such Affiliate), and/or pledge, assign or grant a security interest in its interest in the Partnership and/or its rights to Cash Available for Distribution to third party lenders as collateral security for loans to that Partner, the proceeds of which will be contributed to the capital of the Partnership.

12.2 Sale in the Event of Inability to Agree. In the event the Partners are unable in good faith to reach an agreement on any material matter affecting the Partnership and in the event that any Partner (the "Offeror") is at that time willing to make an offer to the other Partner (the

"Offeree") to purchase the entire interest of the Offeree in the Partnership, the Offeror shall notify the Offeree in writing of its desire to do so, designating in such notice the price, stated in terms of the price for one hundred percent (100%) of the interest in the Partnership at which the Offeror, after applying the distribution provisions of Section 14.4, will either sell its interest in the Partnership or buy the interest of the Offeree in the Partnership and the terms and conditions upon which the purchase or sale will be made. The Offeror may revoke such offer at any time prior to receipt of Offeree's written election as hereafter provided. Within thirty (30) days of receipt of Offeror's notice (unless the revocation referred to above is received) Offeree shall elect, which election shall be final and binding upon Offeree and Offeror, to either (i) purchase the interest of the Offeror at a price equal to the value of such interest in the Partnership determined by applying the distribution provisions of Section 14.4 hereof to the price stated in the notice; or (ii) sell to the Offeror the Offeree's interest in the Partnership at a price equal to the value of such interst determined in the same manner as (i) above.

In the event that Offeree shall fail to notify the Offeror of its election within the period above specified, the Offeree shall be conclusively deemed to have elected (on the last day of said thirty (30) day period) to sell its interest in the Partnership upon the terms and conditions set forth in the Offeror's notice.

12.3 Closing; Final Accounting. Any purchase and sale of an interest in the Partnership in accordance with the provisions of this Agreement shall be closed at the time and place and on the date specified by the purchasing Partner, which date shall be on or before the thirtieth (30th) day after such right or option to buy or sell has been exercised or deemed to have been exercised (or if such date is not a business day, then on the next succeeding business day). At the closing there shall be a final accounting between the Partners with respect to the Partnership. The net profit or loss of the Partnership which has accrued to the date on which the offer hereunder was made shall be accounted for and the purchaser shall be entitled to receive the Cash Available for Distribution under Section 6.4 hereof (if any), which was distributable during the interval between the date of which the offer hereunder was made and the date of closing; and the purchaser shall bear all expenses and costs attributable to the purchased

interest which accrue during such interval. At the closing all requisite documents, instruments, and papers shall be executed. With respect only to indebtedness and obligations of the Partnership for which the seller is personally liable, the purchaser shall assume and agree to discharge when due all such indebtedness (if any) and to discharge all contractual obligations (if any) with respect to the business of the Partnership, and to indemnify and hold harmless the seller for purchaser's failure to discharge such indebtedness or obligations.

12.4 Management During Buy-Sell Procedure. In the event an offer is made pursuant to Section 12.2 hereof by either Partner while MBGYC is Managing General Partner of the Partnership, Peoples shall have the right, at its own expense, to send its designated representative to the office of the Partnership to approve and participate with the Managing General Partner in any decisions which the Managing General Partner has authority to make under this Agreement and in the management, conduct and opration of the Partnership's business. Peoples shall not refuse to approve any action which would result in a default under any pre-existing contractual obligations of the Partnership. Such right of participation shall be exercised by Peoples in a manner which does not interfere with the Managing General Partner's prompt and diligent performance of its obligations under this Agreement. Such right of Peoples to participate in management of the Partnership's business shall terminate if the offer made pursuant to Section 12.2 hereof is revoked by the Offeror as provided therein or if MBGYC as Offeree elects or is deemed to have elected to purchase the interest of Peoples.

ARTICLE XIII

APPRAISAL PROCEDURE

13.1 Selection of Appraisers. Within twenty (20) days after an appraisal is required under Section 13.2 hereof or appropriate under any provisions hereof, each Partner shall select an appraiser who is a Member of the American Institute of Real Estate Appraisers. The appraisers so chosen shall meet within ten (10) days after the second appraiser is appointed and shall themselves appoint a third appraiser who shall be a competent and

impartial person having like qualifications as aforesaid. If any appraiser appointed shall thereafter die or become unwilling or unable to act as such appraiser, his successor shall be appointed within fifteen (15) days by the party who originally had the right to appoint such appraiser. In the case of a death of the third appraiser or his unwillingness or inability to act, a successor shall be appointed by the other two appraisers. In case of the failure of any Partner to appoint an appraiser as required in this section, a successor shall be appointed by the other two appraisers after ten (10) days written notice is given to the Partner failing to appoint the appraiser. In the event of a Partner failing to appoint an initial appraiser, the sole appraiser shall give ten (10) days written notice to the Partner failing to designate an appraiser, and upon the failure of that Partner to designate, shall appoint a second appraiser and these two appraisers shall then designate the third appraiser.

13.2 Appraisal. Each appraiser so selected shall, within thirty (30) days from the selection of the third appraiser, give a written opinion of the fair market value of the Project based on its intended use as contemplated herein ("fair market value"), taking into consideration any outstanding indebtedness, liabilities, liens, and obligations; also considering cash flow, receivables, executed contracts, choses in action, contingent proceeds and any and all the valuation factors used by appraisers in determining property value relating to the Project, and the average of the three opinions shall constitute the fair market value of the Project. The determination of such fair market value by the appraisers, selected as hereinabove provided, shall be final and binding upon all parties. The fees of the appraisers shall be borne by the Partnership.

ARTICLE XIV

TERMINATION

14.1 Termination and Dissolution. The Partnership shall be terminated upon the earlier of: (a) the unanimous vote of the Partners; (b) the sale of all of the assets and all of the Property, receipt by the Partnership of the purchase price in full and in cash, and the distribution of all proceeds; or (c) June 1, 2002. Upon such termination, the Partnership shall be dissolved and wound up in accordance with this Article

and the provisions of the Act, except insofar as such provisions are at variance with terms of this Agreement.

14.2 Dissolution or Insolvency of a Partner. In the event of the involuntary dissolution of a Partner, or if a Partner should make a general assignment for the benefit of creditors, file a voluntary petition under any applicable bankruptcy or insolvency law or statute of the United States or any state thereof, be adjudicated as a bankrupt or insolvent in proceedings filed against the Partner under applicable bankruptcy or insolvency laws of the United States or any state thereof, or have a receiver appointed for all or substantially all of its assets and not have such receiver discharged within thirty (30) days after appointment, the Partnership or the other Partner shall have the option to acquire the interest of such Partner in the Partnership and continue the business of the Partnership, exercisable by written notice to such Partner, for an amount which such Partner would receive if the Project were sold at its fair market value after applying the distribution provisions of Section 14.4 hereof to such fair market value. If the Partners cannot agree on such fair market value of the project, it shall be determined by appraisal in the manner set forth in Article XIII hereof.

Immediately upon the filing of a voluntary petition under any applicable bankruptcy or insolvency law or statute of the United States or any state thereof as to any Partner, such Partner shall immediately be deemed to have no voting authority and no management rights under this Agreement.

14.3 Liquidation. Upon termination of the Partnership as set forth in Section 14.1 hereof, the Partnership shall engage in no further business other than such business as may be necessary to wind up its affairs and liquidate and distribute its assets. Such liquidation shall be handled by a Liquidating Trustee, elected by unanimous vote of the Partners. The Liquidating Trustee may be the Managing General Partner, a Partner, or a qualified third party.

14.4 Disposition of Assets. Upon termination and liquidation of the Partnership and sale of the Property, the assets of the Partnership shall be distributed in the following order:

(a) To the payment of or creation of a reserve for creditors other than Partners in such order as may be provided by law;

(b) To repay the loans and any advances to the Partnership made by the Partners;

(c) To the Partners as provided in Section 6.6(a) hereof;

(d) To the Partners as provided in Section 6.6(b) hereof;

(e) To the Partners in proportion to their respective Capital Accounts until the amounts so distributed equal the balances in the capital accounts immediately prior to distribution; and

(f) Any balance to the Partners in accordance with their Profit Percentages.

14.5 No Recourse. Except as provided in Section 8.9 hereof, upon dissolution of the Partnership each Partner shall look solely to the assets of the Partnership for the return of its investment, and if the Partnership assets remaining after payment and discharge of debts and liabilities of the Partnership, including any debts and liabilities owed to any one or more of the Partners, are not sufficient to satisfy the rights of each Partner, such Partner shall have no recourse or further right or claim against any other Partner, provided the assets have been disposed of in accordance with this Agreement except as provided hereinbelow. In winding up the affairs of the Partnership and distributing its assets, the Liquidating Trustee shall deposit in an interest bearing account any reserves set up to meet any contingent or unforeseen liabilities or obligations. Funds held by the Partnership for distribution to creditors or the Partners which remain unclaimed after a reasonable period of time may be deposited with an escrow agent in an interest bearing account for the purpose of disbursing such reserves and unforeseen liabilities or obligations. Funds held by the Partnership for distribution to creditors or the Partners which remain unclaimed after a reasonable period of time may be deposited with an escrow agent in an interest bearing account for the purpose of disbursing such reserves and funds, and at the expiration of such period as the Liquidating Trustee shall deem advisable, the escrow agent shall be authorized and directed to distribute the remaining balance thereof to the Partners in accordance with Section 14.4 The Liquidating Trustee shall not be liable for any funds so paid and the claimants thereto shall look solely to the recipients of any such funds.

ARTICLE XV

MISCELLANEOUS

15.1 Notices. Any and all notices, elections, offers, acceptances, and demands permitted or required to be made under this Agreement shall be in writing, signed by the Partner giving such notice, election, offer, acceptance or demand, and shall be delivered personally, or sent by registered or certified mail, postage prepaid, return receipt requested, to the other Partner, at the addresses set forth below, or at such other address as may be supplied by written notice to the other Partner. The date of personal delivery or the date shown on the return receipt as the date of delivery or attempted delivery, as the case may be, shall be the date of such notice, election, offer, acceptace or demand.

Notices to MBGYC shall be addressed to R. L. Propps, Chairman, 6301 N. Kings Highway, Myrtle Beach, South Carolina 29577, (telephone (803) 449-1562), with a copy to Otis Allen Jeffcoat, Esquire, 1201 Chester Street, P. O. Box 2937, Myrtle Beach, SC 29577 (telephone (803) 629-9595).

Notices to Peoples shall be addressed to, Attention: George Magrath, Jr., at Peoples Savings and Loan Association, P. O. Box 220, Conway, South Carolina 29526.

15.2 Entire Agreement; Amendments. This Agreement and the Appendixes attached hereto embody the full and complete agreement of the parties with respect to the Partnership. No modifications, amendments or changes herein shall be effective or binding upon the parties unless the same have been agreed to in writing by all Partners.

15.3 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

15.4 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement.

15.5 South Carolina Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of South Carolina. All obligations of the parties created hereunder are performable in the State of South Carolina. Venue in any suit shall be Horry County.

15.6 Other Instruments. The parties hereto convenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the Partnership created by this Agreement.

15.7 Headings. The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

15.8 Parties Bound. This Agreement shall be binding upon and to the extent permitted herein shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assign.

15.9 Construction. This Agreement shall not be strictly construed against any party hereto.

15.10 Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

15.11 Income Tax Election. In the event of a transfer of a Partner's interest in accordance with the terms of this Agreement or in the event of a distribution of any of the Property to any party hereto, upon the request of a Partner the Partnership will file an election in accordance with Section 754 of the Internal Revenue Code of 1954, as amended. No election shall be made by the Partnership or any Partner to be excluded from the application of the provisions of Subchapter K of the Internal Revenue Code of 1954, as amended, or from any similar provisions of state or local tax laws.

15.12 Attorneys' Fees. Reasonable attorneys' fees shall be recoverable by the prevailing party in any legal proceeding arising from or in connection with this Agreement.

15.13 Arbitration. In the event of a deadlock between the Partners or in the event the Partners are unable to resolve a dispute which may not be resolved by other relevant provisions of this Agreement, the same shall be settled and determined in accordance with the rules of the Commercial Arbitration Section of the American Arbitration Association or its successor. If for any reason the American Arbitration Association, or its successor, is not in existence or fails or refuses to act within a reasonable period of time, in no event exceeding 60 days from the date a request is

filed, the arbitration shall proceed in accordance with the laws of the State of South Carolina then relating to arbitration. Partners agree to be bound by arbitration as full fair and exclusive remedy, hereby waiving any right to resort to Courts of competent jurisdiction.

15.14 Partnership Memorandum. For the purpose of documenting in the Public Records the authority of MBGYC to solely execute deeds and other instruments associated with the title of the Property, the Managing General Partner may file for recording a Memorandum of Partnership in form similar to Appendix 7 and any other documents necessary or required by law to be filed and recorded hereafter for any reason, in such office or offices as may be required under the laws of the State of South Carolina or elsewhere. In the event of any conflict between the Partnership Memorandum as recorded in Horry County, South Carolina, and the terms of this Agreement, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first above written.

WITNESSES:

GENERAL PARTNERS:

MYRTLE BEACH GOLF & YACHT CLUB, INC., a South Carolina Corporation.

By: _____
R. L. Propps, President

ATTEST:

Lindsay C. Roach, Secretary

PEOPLES JOINT VENTURE GROUP, INC., a South Carolina Corporation

By: _____
George N. Magrath, President

ATTEST:

George N. Magrath, Jr., Secretary

APPENDIX I

Legal Description - Tract I

(To be inserted)

APPENDIX 2

Legal Description - Tract II

(To be inserted)
APPENDIX 5

PROJECT BUDGET

February 8, 1984

Separate document; incorporated herein by reference.

Exhibit 3

88 Deed Bk 855

08848

4 8769

3-12-84

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

DEED TO REAL ESTATE
(Tract II)

KNOW ALL MEN BY THESE PRESENTS, that JAMES H. DUSENBURY, as Nominee under that Acknowledgement and Appointment of Nominee dated December 30, 1974, recorded in the office of the Horry County Clerk of Court for Horry County on January 3, 1975, in Deed Book 526 at page 113, hereinafter called grantor, in consideration of ONE MILLION NINETY FIVE THOUSAND FIVE HUNDRED AND No/100 ($1,095,500.00) Dollars, to the grantor in hand paid at and before the sealing of these presents by the grantee hereinafter named, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the following named grantee to wit:

MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP, South Carolina general partnership, c/o Justice [illegible] Highway, Myrtle Beach, South Carolina 29577), ITS [illegible] hereinafter called GRANTEE:

All those certain pieces [illegible] parcels of land, together with the improvements [illegible] and being in Socastee Township in the County [illegible] of South Carolina, containing 171.9[illegible] acres, more or less, being in the aggregate shown as Tract II on [illegible], Myrtle Beach Golf and Yacht Club [illegible] and recorded February 28, 1984, [illegible] of Court in Plat Book [illegible] page 200, which is incorporated herein and made a part hereof by reference. Tract II is composed of Tract II-A (51.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less), Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

TOGETHER WITH a non-exclusive easement for access to, egress from, and the construction, operation and maintenance of all utilities serving 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 Clerk's office in Plat Book 79 at page 166.

This is a portion of the same property conveyed to the grantor by Deed from Parker Corporation to James H. Dusenbury, as Nominee dated December 30, 1974, recorded in said Clerk's office on January 3, 1975, in Deed Book 526 at page 130.

Together with all and singular the rights, [illegible] hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have to hold all and singular the premises before

769

mentioned unto the grantee, and the grantee's successors and assigns, forever.

And, the grantor does hereby bind the grantor and the grantor's successors to warrant and forever defend all and singular said premises unto the grantee and the grantee's successors and assigns against the grantor and the grantor's successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance is made expressly subject to the following matters:

(a) Any easements (whether or not of record) including any shown on a recorded plat, provided that they do not prohibit or unreasonably interfere with the development of the property by the Grantee in accordance with the Grantee's development plan as approved by the Grantor.

(b) Any state of facts [illegible] shown, provided that they do not prohibit or unreasonably interfere with the development of the property by the Grantee in accordance with the Grantee's development plan as approved by [illegible].

(c) Horry County real [illegible] 1984 and subsequent years.

(d) The Grantor has [illegible] any roads or streets to be constructed [illegible] reserved, a non-exclusive easement for access [illegible] property owned by the Seller, provided that [illegible] with the development of the [illegible] the Grantee's development plan [illegible] the Grantee.

(e) Rights reserved as to utilities as is more fully set forth in paragraph 10 of that certain Option Agreement between Seller and Justice, Inc. dated February 29, 1984, recorded in said Clerk's office on March 6, 1984, in Deed Book 854 at page 321.

(f) Grantee will not, solely by its actions or the actions of its successors or assigns, materially reduce the flow of riparian water from Tract I to the Island Green Golf Course.

This conveyance is made expressly subject to the following restrictions:

(a) No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during construction of improvements on the property, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or [illegible] to remain on any lot after completion of construction. No [illegible] water tower, [illegible] or other [illegible] lot may be erected, outbuildings or structures shall be either temporarily or permanently. Nothing contained herein shall be construed to prohibit the use of modular, panelized or other modern

Book 859 Page 770

construction techniques, in the construction of improvements on the property.

(b) 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.

(c) The maximum density of dwelling units on the property shall be in accordance with the Grantee's development plan as approved by the Grantor.

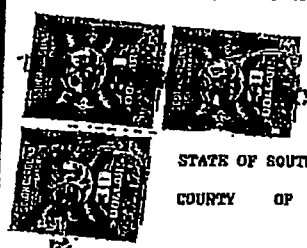
WITNESS the grantor's hand and seal this 29th day of February, 1984.

SIGNED SEALED AND DELIVERED

IN THE PRESENCE OF:

(SEAL)

[illegible] H. DUSKBURY, as Nominee under that Acknowledgement and Assignment of Nominee dated [illegible], recorded in the Office of the Horry County Clerk of Court for Horry County on [illegible] 3, 1975, in Deed Book [illegible].



STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within deed and that deponent, with the oth. witness whose name is subscribed above witnessed the execution thereof.

(Witness)

SWORN to before me this

29th day of February, 1984.

Notary Public for South Carolina

My Commission Expires: 10/24/85

Book 855 Page [illegible]

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CONSENT TO DEED

The undersigned Ponderosa, Inc, and W. F. Sledge and do hereby acknowledge that each of them consent to the execution of the foregoing Deed by James H. Dusenbury, as Nominee under that Acknowledgement and Appointment of Nominee dated December 30, 1974.

WITNESS the due execution hereof this 29th day of February, 1984.

Signed, Sealed and Delivered in the Presence of:

(as to Ponderosa, Inc.)

(as to W. F. Sledge)

PONDEROSA, INC.

(LS)
Pres.

(LS)
Secretary

(LS)

I Certify $1205.00 Horry County Documentary Tax has been paid on this instrument.

Billie B. Richardson
BILLIE B. RICHARDSON
Clerk of Court

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY) (as to Ponderosa, Inc.)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Ponderosa, Inc., by its duly authorized officers, sign, seal and as its act and deed deliver the within Deed and that deponent, with the other witness whose name is subscribed above witnessed the execution thereof.

(witness)

SWORN to before me this
29th day of February, 1984.

(L.S.)
Notary Public for South Carolina
My Commission Expires: [illegible]

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named W. P. Sledge, sign, seal and as his act and deed deliver the within Deed and that deponent, with the other witness whose name is subscribed above witnessed the execution thereof.

(witness)

SWORN to before me this
29th day of February, 1984.

(L.S.)
Notary Public for South Carolina
My Commission Expires: [illegible]

Exhibit 4

HUNDRED SIXTY-TWO AND 50/100 ($166,662.50)

POINT GOLF CLUB, INC. (Receipt whereof is

granted, bargained, sold and released, and by these presents does

bargain, sell and release unto the said

Successors and Assigns forever, the following

ALL AND SINGULAR, those certain parcels of

being in Socastee Township, Horry County, South Carolina, containing

total of 5.349 acres, as shown on that survey of Baron Point Golf

Club, formerly Myrtle Beach Golf and Yacht Club Golf Course prepared

by Engineering and Technical Services, Inc. by Frederick L. Harris,

L. S., dated January 23, 1989, and recorded in Real Estate Plat

Book 104 at Pages 92 - 92-E

shown and designated as:

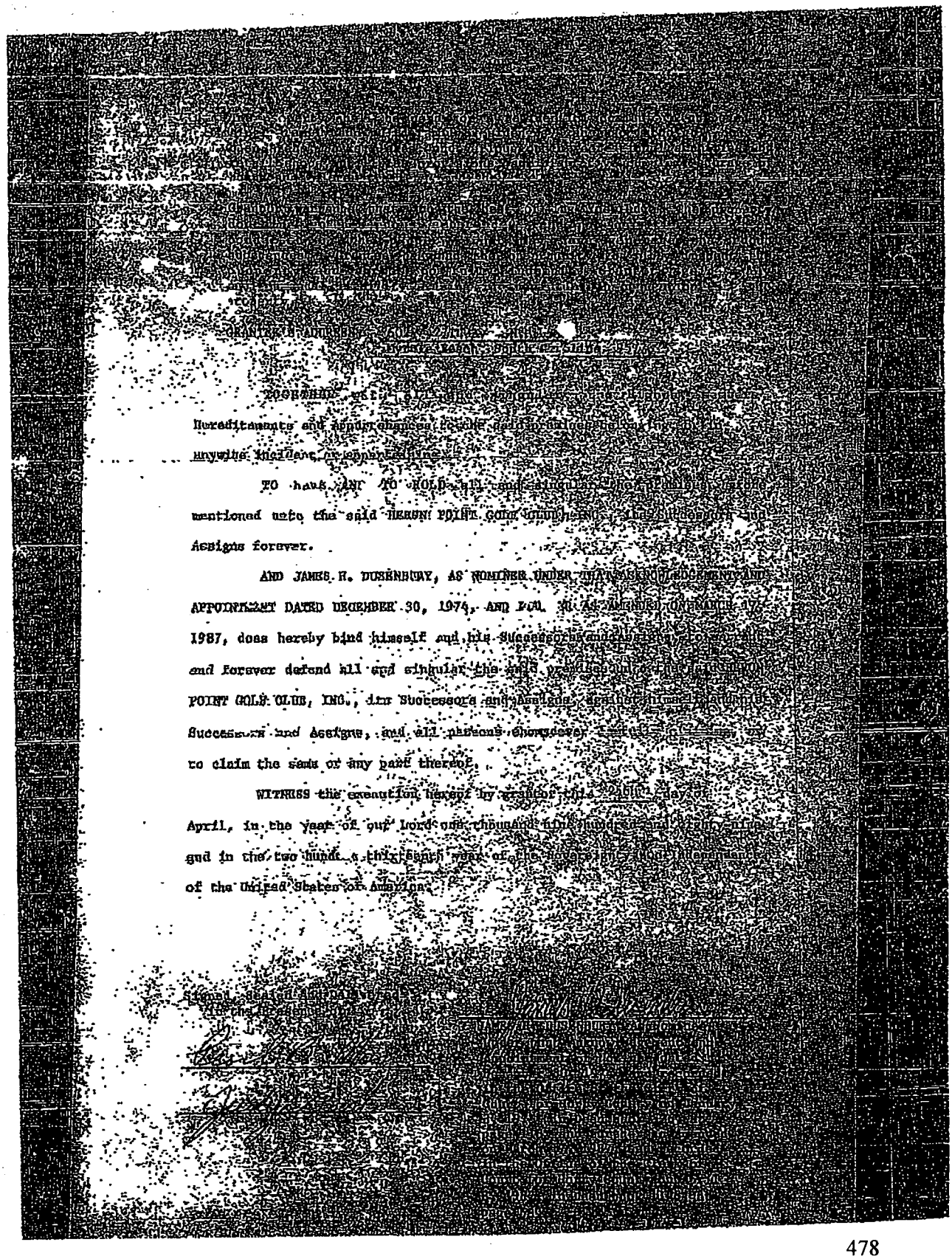
Parcel S, containing 0.039 acres;
Parcel SA, containing 0.029 acres;
Parcel P, containing 0.154 acres;
Parcel L, containing 0.091 acres;
Parcel A H, containing 0.140 acres;
Parcel A F, containing 0.040 acres;
Parcel A G, containing 4.635 acres; and
Parcel A D, containing 0.220 acres.

This is a portion of the property conveyed to Grantor herein by
Hennings under that Memorandum and Agreement dated
December 30, 1974, and recorded January 3, 1975
Page 113 by deed of Baron Corporation, dated
recorded January 3, 1975, in Deed Book
Records.

Said conveyance is subject to any restrictions,
rights-of-way for highway and utility purposes,
ones appearing of records.

Any roll-back taxes assessed on said property
paid by the Grantee.

No structure
any time,
shall be
the property
shall be
constructed
between
adjacent
conveyed
property.



hereditaments and appurtenances [illegible]

anywise [illegible]

TO HAVE AND TO HOLD [illegible]

mentioned unto the said HERON POINT GOLD CLUB, INC., its successors and

assigns forever.

AND JAMES H. DUSENBURY, AS NOMINEE UNDER [illegible] AND

APPOINTMENT DATED DECEMBER 30, 1974, AND [illegible]

1987, does hereby bind himself and his successors and assigns, to

and forever defend all and singular the said premises unto the said

POINT GOLD CLUB, INC., its successors and assigns, against him and his

successors and assigns, and all persons whomsoever

to claim the same or any part thereof.

WITNESS the execution hereof by [illegible] this 28th day of

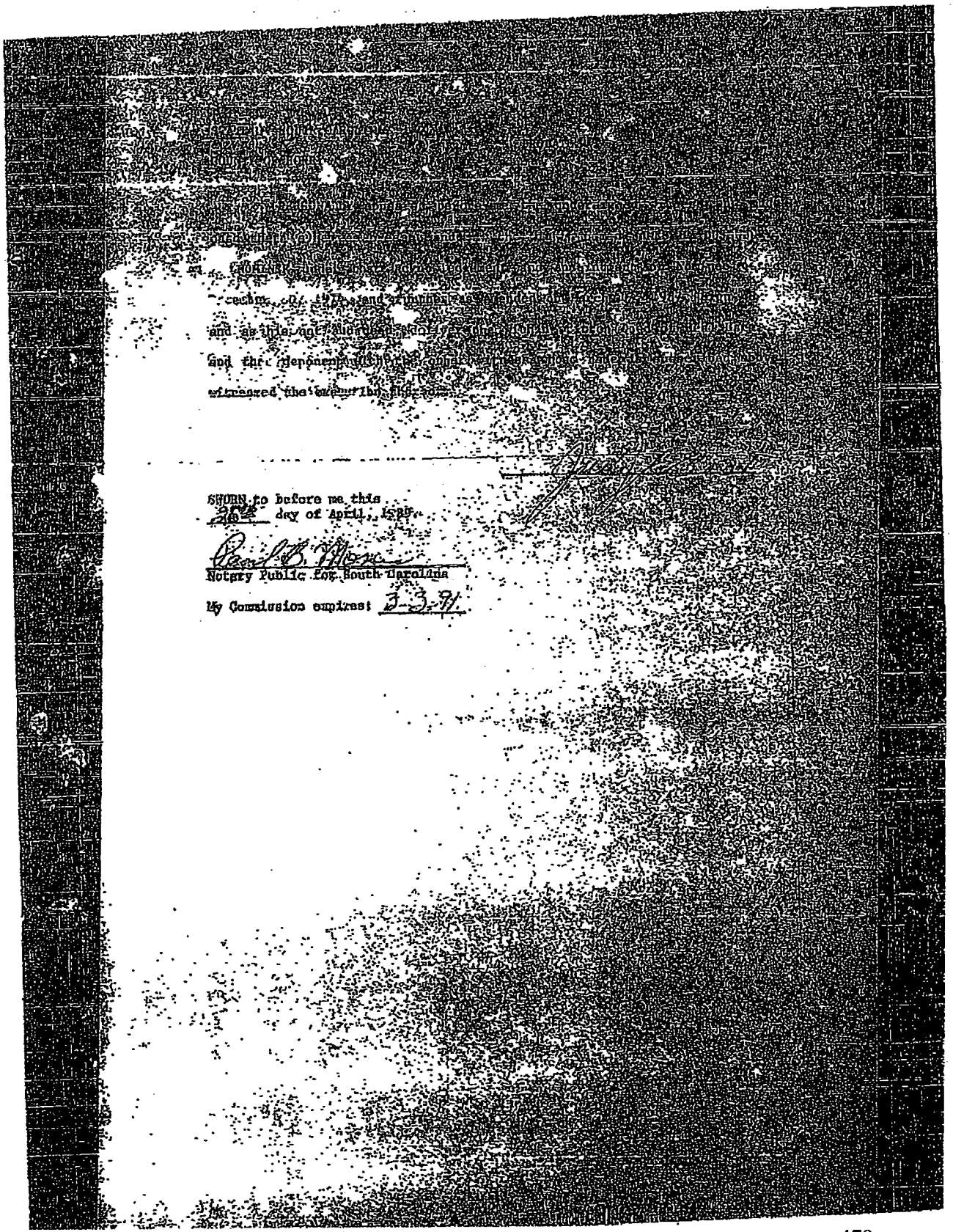
April, in the year of our Lord one thousand nine hundred and [illegible]

and in the two hundred [illegible] year of the Independence

of the United States of America.

Signed, Sealed and Delivered

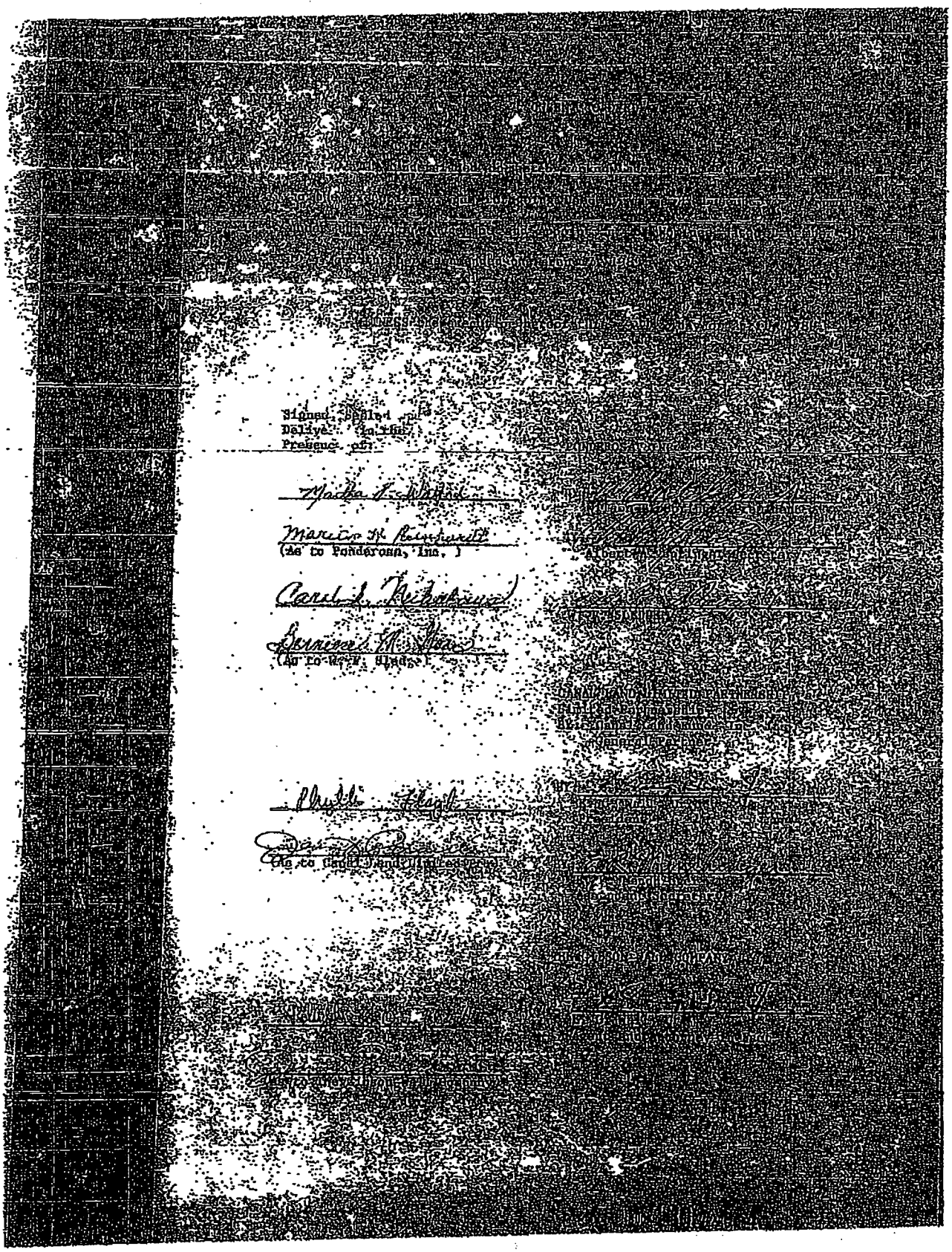
in the



SWORN to before me this
20th day of April, 1981.

Notary Public for South Carolina

My Commission expires: 3-3-91



Signed, Sealed
Delivered in the
Presence of:

Martha A. Wright

Marietta M. Pennewill
(As to Ponderosa, Inc.)

Carol L. Richardson

Bernice M. Hess
(As to H. V. Hudson)

Phyllis Haight

Jean Lee
(As to Hazel Sanders)

Exhibit 5

84

125010

FILED
HORRY COUNTY, S.C.
1989 NOV 13 AM 11:21
R.M.C.

Deed BK1351 PG-858

FILED
HORRY COUNTY, S.C.
1989 NOV 13 AM
R.M.C.

FILED
HORRY COUNTY
CLERK OF COURT

DECLARATION OF COVENANTS AND RESTRICTIONS FOR MYRTLE BEACH GOLF & YACHT CLUB SUBDIVISION

Developer:
MYRTLE BEACH GOLF & YACHT CLUB,
A GENERAL PARTNERSHIP
Post Office Box 8309
Myrtle Beach, South Carolina 29578-8309

Prepared by:
LUMPKIN & SHERRILL
Attorneys at Law
Post Office Box 2937
Myrtle Beach, South Carolina 29578-2937

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Billie B. Keziah
CLERK OF COURT, HORRY

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STATE OF SOUTH CAROLINA) DECLARATION OF COVENANTS AND
) RESTRICTIONS FOR MYRTLE BEACH
COUNTY OF HORRY) GOLF & YACHT CLUB SUBDIVISION

THIS DECLARATION made by MYRTLE BEACH GOLF & YACHT CLUB, A GENERAL PARTNERSHIP, hereinafter called "Developer";

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Socastee Township, Horry County, South Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, the Developer proposes to create on such property a subdivision (hereafter referred to as "the Subdivision") containing detached homesite lots and multi-family developments or condominium regimes, together with Common Areas as more fully described herein; and

WHEREAS, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of property in the Subdivision by the imposition of the covenants and restrictions set forth herein:

(a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational or commercial portions of the Subdivision,

(b) To preserve the quality of the natural amenities of the Subdivision,

(c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision,

(d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision,

(e) To prevent any property Owner or any other persons carrying on any other activity in the Subdivision to the detriment of [illegible] property in the Subdivision, and

[illegible] stable value of [illegible]

WHEREAS, the Developer is desirous of maintaining design criteria, location, construction specifications, and other controls to assure the integrity of the Subdivision; and

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- 2 -

WHEREAS, as hereinafter provided in this Declaration, the Developer has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the Subdivision, all or any portion of the real property described in Exhibit "B" attached hereto and incorporated herein by reference;

NOW, THEREFORE, the Developer hereby declares that all of the property described in Exhibit "A" and any additional Property described in Exhibit "B" or any part of it as Developer may, in its sole discretion, see fit to develop as dedicate, as, by subsequent amendment hereto, may be subjected to this Declaration, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in these described properties or any portion of them. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything who/which purchases or takes any interest in real property within the lands subject to this Declaration.

ARTICLE I
Definitions

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular plural forms of any such term(s):

Section 1.1. Additional Property shall mean and refer to the real property described in Exhibit "B" and all improvements thereon.

Section 1.2. Architectural Review Board means the duly constituted members of the Association appointed by the Board of Directors to review and approve the external design, appearance and location of improvements or alterations to or of the Property constituting the Subdivision or any portion(s) thereof.

Section 1.3. [illegible] shall mean and refer to an Owner's [illegible] provided.

Section 1.4. Association means the Myrtle Beach Golf & Yacht Club Association, Inc. (a South Carolina eleemosynary corporation), its successors and assigns.

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Section 1.5. Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.6. By-Laws of the Association shall mean and refer to those By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time.

Section 1.7. Club Charges shall mean and refer to all fees, [illegible], food and beverage costs and other charges which are charged by or to an Owner with respect to his use or the use by his family, tenants or guests of the Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

Section 1.8. Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Developer as Common Areas. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public and the general public shall thereby have no easement of use or enjoyment therein. Specifically included as part of the Common Areas are all maintenance areas, streets, roads, alleys, parking lots and parking areas, medians, green areas, walkways, sidewalks, jogging trails, bike paths, street lighting, signage, lagoons, streams, ponds, easement areas designated as Common Areas, access easements across other real property, parks, golf courses and other Recreational Amenities as hereinafter defined, and such other lands and/or improvements as, by subsequent amendment of or supplement to this Declaration, may be subjected to this Declaration and designated as Common Areas by the Developer. However, no general plan or plat of the Properties showing areas which may later be developed as additional phases of the Development shall be deemed to include such property as Common Areas nor shall the Association or any Owner be entitled to any right, title or interest in such property unless and until such property shall have been formally included as a part of the Subdivision by the Developer pursuant to the terms hereinafter contained.

Section 1.9. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

[illegible] shall mean and refer to [illegible] of the Horry [illegible].

Section 1.11. Developer means Myrtle Beach Golf & Yacht Club, a General Partnership, its successors and assigns.

Section 1.12. Dwelling, with an initial capital letter, shall mean and refer to any improved real property located within

BOOK 1351 PAGE 862

Development intended for the use as: (i) a single family detached Dwelling, including any Lot as defined herein; or (ii) townhouse, condominium unit or patio or cluster home, whether detached or attached; or (iii) apartment, cooperative living unit, or condominium unit in a midrise or highrise building located within the Subdivision.

Section 1.13. Foreclosure shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of real property by a deed in lieu of a judicial foreclosure.

Section 1.14. Institutional Mortgage shall mean a Mortgage held by a bank, trust company, insurance company or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as, but not limited to, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

Section 1.15. Lease shall mean and refer to any lease, sublease or rental contract, whether oral or written, and for a term of hours, days, months or years.

Section 1.16. Living Space shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, unenclosed porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.17. Lot shall mean and refer to those portions of the Subdivision identified as "Lots" on Exhibit "A" attached hereto, together with any portions of the Additional Property that may be so designated from time to time by the Developer, but shall not include any Common Areas or Multi-Family Areas as defined herein.

Section 1.18. Mortgage, with an initial capital letter, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract and security agreement or other similar security instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Dwelling, Multi-Family Area or Common Area.

Section 1.19. Mortgagee, with an initial capital letter, shall mean and refer to the holder of a Mortgage.

Section 1.20. Multi-Family Area shall mean and refer to any [illegible] the Subdivision designated as such by the Developer in which [illegible] Multi-Family [illegible] Buildings in such Multi-Family [illegible] have been constructed either situated or attached townhouses, condominium units, cooperative units, cluster homes, multi homes or similar multi-family structures.

Section 1.21. Multi-Family Association or Subordinate Regime shall mean and refer to a corporation or an unincorporated association the shareholders or members of which are all Owners of Dwellings within

BOOK 1351 PAGE 863

a Multi-Family Area or within any subordinate property development, residential, commercial, or mixed, within the Subdivision, whether submitted to a horizontal property regime or made subject to further or additional restrictions/covenants of ownership and control.

Section 1.22. Multi-Family Declaration shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the Office of the Clerk of Court for Horry County, South Carolina with respect to any Multi-Family Area and which creates a [illegible], patio home, cluster home, cooperative regime, or condominium or horizontal property regime for such Multi-Family Area, or imposes covenants, conditions, easements and restrictions with respect to such Multi-Family Area.

Section 1.23. Occupant shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Dwelling within the Subdivision.

Section 1.24. Owner, with an initial capital letter, shall mean and refer to one or more persons or entities, including Developer, who or which own(s) fee simple title to any Dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Dwelling, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

Section 1.25. Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.26. Recreational Amenities shall include such recreational facilities or club and improvements owned by and so designated by Developer and are, from time to time, located within the Subdivision or located within or dedicated to the Common Areas, including, without limitation, golf courses and related facilities, tennis courts, sporting or exercise areas, meeting areas, swimming pools, tennis pro shops, locker room facilities, clubhouses, food and beverage facilities, lagoons, jogging trails and bike paths.

[illegible] mean said [illegible] and subsequently [illegible] pursuant to the provisions of this Declaration [illegible] any portion thereof. shall mean and refer to the real property described in Exhibit "A" and the real property described in Exhibit "B" or such portion thereof so submitted, together with all improvements thereon or thereafter constructed thereon.

Section 1.28. Subdivision Plat shall mean and refer to that certain plat and prepared by Sur-Tech, Incorporated, dated October 23, 1984, recorded in the office of the Clerk of Court for Horry County, South Carolina, in Plat Book 83 at page 4 together with: (i) any future revisions thereof; or (ii) any subdivision plat for any portion of the Additional Property as may be submitted to the terms of this Declaration, and recorded from time to time in the office of the Clerk of Court for Horry County, South Carolina.

ARTICLE II
Plan of Development

Section 2.1. Plan of Development of the Subdivision. The Subdivision initially shall consist of the Property described on Exhibit "A" attached hereto. The Property shall also include certain improvements to the Common Areas, including roads, utility systems, drainage systems and other improvements serving the Dwellings, and various Recreational Amenities to the extent the same are, from time to time, installed and existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, for so long as Developer: (i) owns any portion of the Common Areas; or (ii) owns any Multi-Family Area; or (iii) owns any Dwelling primarily for the purpose of sale of the Dwelling; or (iv) has the option to add the Additional Property or any portion thereof to the Development, to make improvements and changes to all Common Areas and to any or all Dwellings or any other property owned by Developer: (i) installation and maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; (ii) changes in the location of the boundaries of the Common Areas, any Recreational Amenities, and any Dwellings owned by Developer or of the dedicated or undedicated Common Areas; (iii) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, T.V. cable and its various attendant services and telephone service to include telotype or computer, telex, news service, or computer, or any such like instrument used in the transmittal, reception, or retrieval of messages, facts, or information; and (iv) installation of security and/or refuse facilities. The Developer and the Association, as the case may be, shall have the right to assess and collect reasonable fees and charges for the use of Recreational Amenities.

Section 2.2. Plan of Development of Additional Property. Developer has not yet determined whether or not it will submit any portion of the Additional Property to the terms of this Declaration. Developer hereby reserves the right to cause the Additional Property or a portion of it to become part of the Property. Developer reserves the right to plan, design, develop, construct, maintain and manage the Common Areas, the Additional Property, the Recreational Amenities, the Multi-Family Areas and any unsold Dwelling as Developer deems necessary or convenient for its purposes, except as otherwise expressly stated in this Declaration, including without limitation the right

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expand the number, size and density of the unsold Dwellings, the Common Areas, the Multi-Family Areas, the Recreational Amenities and the Additional Property. This option may be exercised by Developer in accordance with the following rights, conditions and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

This option to add additional property/phase(s) may be exercised from time to time during a period of fifteen (15) years from the date of recordation of this Declaration; provided, however, that Developer reserves the right to terminate such option at any time prior to the expiration of such fifteen year period by executing and filing an agreement evidencing such termination in the Office of the Clerk of Court for Horry County, South Carolina, and, except for such termination by Developer, no other circumstances will terminate such option prior to the expiration of such fifteen year period.

The legal description of the Additional Property is set forth on Exhibit "B"; portions of the Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

If the Additional Property or any portion thereof is added to the Development, any improvements developed therein and any Dwellings constructed thereon will be subject to the standards and restrictions set forth herein.

If the Additional Property or any portion thereof is added to the Development, Developer reserves the right to designate and restrict the boundaries of the Dwellings, Recreational Amenities, Multi-Family Areas, any Commercial Properties as well as the Common Areas, if any, to be added to the Development in connection therewith.

Should the option to add the Additional Property, or any portion of it not be exercised within the term specified herein or be terminated by Developer, such option shall in all respects expire and be of no further force and effect. DEVELOPER SHALL NOT BE OBLIGATED TO, OR IN ANY MANNER BOUND TO, ADD ANY PORTION OF THE ADDITIONAL PROPERTY TO THE DEVELOPMENT, AND THE PORTION OF THE ADDITIONAL PROPERTY NOT SUBJECTED TO THIS DECLARATION BY SUPPLEMENTAL DECLARATION SHALL BE FREE OF ANY COVENANT OR CONDITIONS WHATSOEVER, UNLESS OTHERWISE SPECIFICALLY IMPOSED.

The option reserved by Developer to cause all or any portion of the Additional Property to become part of the Development shall in no way be construed to impose upon Developer any obligation

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add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever or to restrict or limit its use in any manner.

The option reserved under this Section 2.2 may be exercised by Developer only by the execution of an amendment to this Declaration which shall be filed in the Office of the Clerk of Court for Horry County, South Carolina, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development, by such amendment, as well as the Dwellings, Recreational Amenities, Common Areas, Multi-Family Areas, or other types of Property located within the Subdivision.

SUBSEQUENT TO INCLUSION AND/OR RESTRICTION AND IN ITS SOLE DISCRETION, DEVELOPER MAY CONVEY TO THE ASSOCIATION THE COMMON AREAS DESIGNATED BY DEVELOPER OR ANY OTHER PROPERTY OWNED BY THE DEVELOPER, BE IT RECREATION AMENITY OR OTHERWISE, CONTAINED WITHIN THE PROPERTY AS DESCRIBED IN EXHIBIT "A" OR EXHIBIT "B" OR SUCH PORTION OR PORTIONS OF ANY, EITHER, OR ALL OF THEM, ANY SUCH CONVEYANCE TO BE SUBJECT TO THE LIEN OF TAXES NOT YET DUE AND PAYABLE, ALL EASEMENTS AND RESTRICTIONS OF RECORD, UTILITY EASEMENTS SERVING OR OTHERWISE ENCUMBERING THE PROPERTY AND/OR THE ADDITIONAL PROPERTY, AND ANY EXCEPTIONS WHICH WOULD BE DISCLOSED BY AN ACCURATE SURVEY OR PHYSICAL INSPECTION OF SUCH PARCEL(S).

Any such amendment shall expressly submit the Additional Property or such portion of it to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements thereon. If the Additional Property or any portion or portions of it is added to the Development, then from and after the addition to the Development of the Additional Property or such portion or portions by such amendment to this Declaration, the number of votes in the Association shall be modified to include the Dwellings to be located on the Additional Property or such portion or portions of it as are added, so that there shall continue to be one vote in the Association per Dwelling in the Subdivision, and the total number of votes in the Association shall be increased by the number of Dwellings added as [illegible] by [illegible] otherwise provided in this document for the voting rights [illegible] Additional [illegible] portion [illegible]

Multi-Family Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the [illegible] of this Declaration, there will be established by Developer, its successors or assigns, other than Recreational Amenities and/or Developer-owned properties, commercial or otherwise, only Multi-Family Associations structured as horizontal property regimes and similar multi-family projects, the membership of which shall be [illegible]

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the Owners of Dwellings within the Multi-Family Areas located within such portion or portions of the Additional Property so submitted in order to promote the health, safety and social welfare of the Owners of Dwellings therein, as well as to provide for the maintenance of Dwellings, other improvements and/or other common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such Dwellings and other improvements shall continue to be subject to the terms of this Declaration. Such Multi-Family Areas may be subject to Multi-Family Declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Multi-Family Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

Section 2.4. Commercial Associations. In the event that Developer submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Developer, its successors or assigns Commercial Associations limited to the Owners of commercial property located within such portion or portions of the Additional Property so submitted in order to promote their health, safety, and well-being, as well as to provide for the maintenance and appearance of the commercial property, other improvements and/or other Common Elements owned by such Owners and/or such Commercial Associations, provided that such Owners shall also be members of the Association and such commercial property and other improvements shall continue to be subject to the terms of the Declaration. Such Commercial Areas may be subject to property owner declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby and such Commercial Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Commercial Center Areas, and among themselves as may be agreed upon/imposed from time to time.

Section 2.5. Utilities and Related Facilities. Developer, its affiliates, successors and assigns shall retain ownership of the water and sewer treatment facilities, and telephone, master television antennae and/or cable system facilities serving the Subdivision, including all lines, pipes, conduits, outlets, pipes, pumps, water towers or tanks, cables and wires, and other systems related thereto which are located within the Subdivision. Water and sewer treatment service, telephone, master television antennae and/or cable system services shall be provided to the Subdivision pursuant to [illegible] or assigns [illegible] Association [illegible] Declaration [illegible] water [illegible] sewer treatment facilities and/or cable system facilities, or any of them, shall have the right but not the obligation, to convey at any time all or any part of such facilities to either the Association as a portion of the Common Areas or to a municipality, public authority, governmental agency, public service district or a public or private utility.

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Section 2.6. Interest Subject to Plan of Development. Every purchaser of a Dwelling or any portion of the Subdivision shall purchase such Dwelling or other Property and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Developer's plan of development as set forth herein, and Developer shall have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Subdivision as hereinabove provided, and, with respect to each Dwelling or other Property located within the Additional Property, to convey to the purchaser thereof the title to the Dwelling or other Property and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Developer.

ARTICLE III
The Association; Membership and Voting Rights

Section 3.1. The Association. The Developer has established or will establish the Association for the purpose of exercising powers of maintaining and administering common facilities and providing common services, administering and enforcing covenants, conditions and restrictions contained herein, and levying, collecting and disbursing assessments and charges herein created. Further, the Developer reserves the rights to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein.

Section 3.2. Rules and Regulations. The Association may adopt from time-to-time additional reasonable rules and regulations governing the use of Common Areas, Recreational Amenities and Dwellings.

Section 3.3. Membership. Every person or entity who is an Owner of any Dwelling which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling which is subject to assessments.

Section 3.4. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the [illegible] and shall be entitled to one vote for each Dwelling in which they hold the interest required for membership by Section 3.3. When more than one person holds such interest or interests in any Dwelling, the vote attributable to such Dwelling shall be exercised as such persons mutually determine, but in no event shall more than one vote be cast with respect to any such Dwelling.

Class B. The sole Class B member shall be the Developer. The Class B member shall be entitled to four votes

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for each Dwelling in which it holds the interest required for membership under Section 3.3 above. The Class B membership shall cease and become converted to Class A membership upon the occurrence of the first of either of the following two events:

1. When the total votes held by in the Class A member equal or exceed the total votes held by the Class B member (Dwellings shall include those Dwellings contained in or situate on any Additional Property which Developer shall hereafter bring under the terms of this Declaration) or

2. Fifteen (15) years from the date of this Declaration.

When a purchaser of an individual Dwelling or Dwellings takes title thereto from the Developer, such purchaser becomes a Class A Member.

Section 3.5. Transfer Fee. Excluding the first sale of each Dwelling from the Developer to an Owner, but including all subsequent sales of all Dwellings, there shall be assessed by the Association and collected from the new purchaser of each Dwelling a transfer fee equal to one-fourth per cent (1/4%) of the sales price of such Dwelling, which transfer fee shall be paid to the Association and used by the Association for its regular operations and/or reserves. In the event of non-payment of such transfer fee the amount due shall bear interest and shall be collectible as an assessment as set forth in Article VI hereof. The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deed, or other such evidence.

Section 3.6. Association May Require Single Property Management Firm. The Association may require any and all MULTI-Family or Commercial Associations established with respect to any portion of the Subdivision to exclusively utilize the same property management firm as utilized by the Association.

ARTICLE IV
Property Rights in the Common Areas

Section 4.1. Owners' Easements of Enjoyment. Subject to the [illegible] of Section 4.3 below, every Owner shall have a non-exclusive right [illegible] enjoyment [illegible] and to the dedicated Common Areas, and such easement [illegible] appurtenant to [illegible] with the title to every Lot.

Section 4.2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that on or before fifteen (15) years from the date of recording of this Declaration, it will convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds fee simple title to the Common Areas, subject, however, to all liens and encumbrances of record and to the following covenant, which shall be deemed to run with

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the land and shall be binding upon the Association, its successors and assigns:

"In order to preserve and enhance the property values and amenities of the community, the Common Areas and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas shall include, but not be limited to, the repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, recreational equipment, if any, fences, storm drains, signs, and sewer and water and other utility lines, connections and appurtenances."

This Section shall not be amended so as to eliminate or substantially impair the obligation for the maintenance and repair of the Common Areas. The Developer may also impose additional covenants on such Common Areas at the time of such conveyance(s).

Section 4.3. Extent of Owners' Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of the Developer, and of the Association, to dedicate, transfer or convey all or any part of the Common Areas, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely affect the use of the Common Areas by the Owners;

(b) The right of the Developer, and of the Association, to grant, reserve and accept easements and right-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, fuel oil and other utilities and services, including cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Developer to grant and reserve easements and rights-of-way through, over and upon and across the Common Areas for the completion of the Development, and for the operation and maintenance of the Common Areas;

(c) The right of visitors, invitees, etc., to ingress and egress in and over those portions of the Common Areas that lie within the private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Areas in the case of landlocked Owners) to the nearest public highway;

(d) The right of the Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; provided, however, that the right of an Owner to ingress and egress over the roads and/or parking areas shall not be suspended;

(e) The rights of the Developer and the Association, as the case may be, to establish rules and regulations for the Subdivision

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to prescribe fees and charges from time to time for use of the Recreational Amenities.

Section 4.5. Delegation of Parking Rights. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas and facilities to his employees, tenants, invitees or licensees.

Section 4.6. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer and the Architectural Review Board, erect, construct or otherwise locate, or permit the existence of, any structure or other improvement in the Common Areas.

Section 4.7. Access. All Owners, by accepting title to Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Dwelling and acknowledge and agree that such access, ingress and egress shall be limited to roads, sidewalks, walkways, and trails located within the Subdivision from time to time, provided that pedestrian and vehicular access to and from all Dwellings shall be provided at all times. There is reserved unto Developer, the Association and their respective successors and assigns the right and privilege, but not the obligation: (i) to maintain guarded or electronically monitored gates controlling vehicular access to and from the Subdivision; and (ii) to require payment of toll charges for use of roads within the Subdivision by permitted commercial traffic or by members of the general public, provided that in no event shall any such tolls be applicable to any Owner or his family, tenants or guests or to those individuals designated by Developer and their families and guests.

Section 4.8. Easements for Developer. During the period that Developer owns any Common Area, or owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, Developer shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Dwellings, any improvements to the Common Areas, the Multi-Family Areas and the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including the Recreational Amenities and other portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including without limitation any improvements or changes permitted or required by this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith or in order to carry out any duty or right of Developer described in this Declaration.

Section 4.9. Changes in Boundaries; Additions to Common Areas. Developer expressly reserves for itself and its successors and assigns the right to change and realign the boundaries of the Common Areas and any Dwellings, Recreational Amenities or Multi-Family Areas owned by Developer, including the realignment of boundaries between adjacent Dwellings, Common Areas, and/or Multi-Family Areas or

Developer. In addition, Developer reserves the right, but shall not have the obligation, to convey to the Association at any time, and from time to time, any portion of the Additional Property, such real property to be conveyed to the Association as an addition to Common Areas and subject to the other provisions set forth in this Declaration.

Section 4.10. Easements for Utilities. There is hereby for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across: (i) all of the Common Areas; (ii) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected; (iii) an area across every Lot five (5') feet in width along the front and side boundary lines thereof, and ten (10') feet in width along the rear boundary lines thereof; for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by Developer, its successors and assigns or by the Board of Directors; provided, however, that for so long as Developer owns any portion of the Common Areas, owns any Dwelling primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, the Board of Directors must obtain the written consent of Developer prior to granting or accepting any such easements. To the extent possible, all utility lines and facilities serving the Subdivision and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly impermissible for the providing utility company or other supplier or servicer, with respect to the portions of the Subdivision so encumbered: (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems.

Section 4.11. Easements for Walks, Trails and Signs. There is hereby reserved for the benefit of Developer, the Association and their respective successors and assigns the alienable, transferable and perpetual right and easement upon, over and across (i) all portions of Multi-Family Areas in which Dwellings are not constructed or [illegible] lands which are unimproved for the [illegible] installation [illegible] paths [illegible] and [illegible].

Section 4.12. Easements for Association. There is hereby reserved a private right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to any property manager employed by the Association and any employees of such manager, to enter upon any Dwelling, Multi-Family Area or any portion thereof in the performance of their respective duties. Except in the event of emergencies, [illegible] practicable, only during normal business hours and [illegible]

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upon advance notice to and with permission of the Owner, occupant or Multi-Family Association, or the Owner(s) or Multi-Family Area affected.

Section 4.13. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the sole discretion for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model Dwellings, together with such other facilities as in the sole opinion of Developer reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Dwellings, Multi-Family Areas, Common Areas or the Additional Property.

Section 4.14. Easements for Additional Property. There is hereby reserved in the Developer, its successors, assigns and successors in title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Subdivision, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular access, ingress, egress and parking over, across, within and on all roads, sidewalks, trails, parking facilities and lagoons from time to time located on or within the Common Areas or within easements serving the Common Areas; (ii) the installation, maintenance, repair, replacement and use of security systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and master television antenna and/or cable system lines; and (iii) drainage and discharge of surface water onto and across the Subdivision, provided that such drainage and discharge shall not materially damage or affect the Subdivision or any improvements from time to time located thereon.

Section 4.15. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any improved portions of any Dwelling or Multi-Family Area for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such [illegible] shall not impose any duty or obligation upon the Developer or the Association to perform any of such functions, and neither the Developer nor the Association shall be liable for any failure to do so. Developer and the Association, but not the obligation, to enter upon any unimproved portions of Dwellings or Multi-Family Areas which are located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Subdivision for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable [illegible] standards.

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Section 4.16. Environmental Easement. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Areas, Dwellings and Multi-Family Areas for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

Section 4.17. Wells and Effluent. There is hereby reserved for the benefit of Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement: (i) to pump water from lagoons, ponds and other bodies of water located within the Subdivision for the purpose of irrigating any portions of the Subdivision and for other purposes; (ii) to drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities; or (iii) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities or upon any unimproved portions of any Dwelling, or Multi-Family Area with the permission of the appropriate Owner or Multi-Family Association or Commercial Center Association.

Section 4.18. Conservation Easements. There is hereby reserved for the benefit of the Developer, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right, easement and restriction across those portions of Lots, Multi-Family Areas and Common Areas shown as Conservation Easements on the Subdivision Plat, as follows:

(a) No construction of any kind shall be allowed in such conservation easement areas;

(b) Such conservation easement areas shall be maintained in their natural state, but this restriction shall not prohibit or prevent the removal of trash, weeds, or dead or decaying or diseased vegetation, nor shall this restriction prohibit the Developer or the Association from utilizing such conservation easement areas for drainage or other utility [illegible] and

[illegible] as a part of the maintenance, improvement of streams, lagoons, lakes and other bodies of water in the Subdivision or nearby.

Provided, however, that the requirements of this Section 4.18 may be modified or released in whole or in part by the Developer, its successors and assigns, when in the sole judgment of the Developer there exists a hardship imposed upon the Developer or a Lot Owner [illegible] enforcement of such easement.

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Section 4.19. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

ARTICLE V
Right of Association to Alter, Improve, Maintain and Repair Common Areas and Portions of Dwellings

Section 5.1. The Association shall have the right to make or cause to be made such alterations, modifications, improvements, repairs, maintenances and replacements to the Common Areas and the portions of Dwellings set forth herein, and the cost thereof shall be assessed as common expenses and collected from the Owners on an equal basis.

Section 5.2. Responsibilities of Owners and Multi-Family Associations. Unless specifically identified herein or in a Multi-Family Declaration as being the responsibility of any Owner or a Multi-Family Association, all maintenance and repair of Dwellings, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Dwelling shall be the responsibility of the Association. Unless otherwise provided in the appropriate Multi-Family Declaration, the maintenance and repair of all Common Areas or common elements located within Multi-Family areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Area) shall be the sole responsibility of the Association. Developer shall be responsible for Developer-owned properties. Each Owner or Multi-Family Association shall be responsible for maintaining his or its Dwelling or Multi-Family Area, as the case may be, in a neat, clean and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings and other structures. All attendant lawns, trees, shrubs, hedges, grass, natural areas, and other landscaping shall be maintained by the Association. As provided in Section 5.3(b) hereof, each Owner or Multi-Family Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner or Multi-Family Association, but which responsibility such Owner or Multi-Family Association fails or refuses to discharge. No Owner or Multi-Family Association shall: (i) decorate, change or otherwise alter the appearance of any portion of the exterior of a Dwelling or within a Multi-Family Area unless such decoration, change or alteration is first approved by the Architectural Review Board as provided in Section 6.1 hereof; (ii) make any structural addition, alteration or improvement in or to the Dwelling or Multi-Family Area, including any alteration to the drainage or utility systems or to the Subdivision Wall thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written consent of the Architectural Review Board and the Owners and Mortgagees of the Dwellings directly affected thereby or benefitting from such easement or hereditament.

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