THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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SC Court of Appeals

Case No. 2017-002395

Alexander Burns, Appellant,

v.

Brays Island Plantation Colony, Inc. &
Brays Island Realty, LLC, Respondents.

INDEX OF RECORD ON APPEAL

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Filing	**Page**
Order Denying Plaintiff's Motion to Reconsider, signed October 16, 2017, filed October 24th, 2017	0002
Order Granting Defendant's Motion For Summary Judgment & Denying Plaintiff's Motion for Partial Summary Judgment dated September 24th, 2017	0004
Notice Of Appeal	0011
Plaintiff's Notice and Motion for Reconsideration of Final Order and Stay Judgment, or in the Alternative Vacate Judgment	0012
Plaintiff's Memorandum in Opposition of Defendant's Motion for Summary Judgment	0037
Plaintiff's Memorandum in Support of its Motion for Partial Summary Judgment	0046
Defendant's Memorandum Concerning Motions for Summary Judgment	0058
Plaintiff's Motion for Partial Summary Judgment	0063
Defendant's Motion for Summary Judgment	0067
Plaintiff's Counterclaim Answer	0069
Defendant's Answer & Counterclaim	0072
Defendant Brays Island Realty Answer	0077
Plaintiff's Memorandum in Opposition to Defendant's Motion To Dismiss Pursuant to SCRCP 12(b)(6)	0080
Complaint (including exhibits)	0094
Transcript of Proceedings August 22nd, 2017	0200
Affidavit of Kevin Rhatigan (including exhibits)	0239
Affidavit of Paul Burton (including exhibit)	0333
Affidavit of F. Douglas P. Evans	0341
Verification (including exhibit)	0344
Appellant Certification of Record on Appeal	0347

ELECTRONICALLY FILED - 2017 Oct 24 3:31 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No. 2017-CP-07-00265
	)	
Alexander Burns,	)	
	)	
Plaintiff,	)	
	)	**ORDER DENYING PLAINTIFF'S**
vs.	)	**MOTION TO RECONSIDER**
	)	
Brays Island Plantation Colony, Inc., & Brays Island Realty, LLC,	)	
	)	
Defendants.	)	

This Court heard oral argument on Plaintiff's motion for partial summary judgment as well as Defendant's motion for summary judgment on August 22nd, 2017. On September 21st, 2017, this Court entered an order denying Plaintiff's motion and granting Defendant's motion. On September 27th, 2017, Plaintiff filed a Motion for Reconsideration of Order Pursuant to Rule 59, SCRCP.

STANDARD OF REVIEW

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (internal citations omitted).

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2017 Oct 24 1:47 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

CONCLUSION

Having considered the arguments, supporting and opposing documents, and based on the same, this Court DENIES Defendant's Motion for Reconsideration of the September 21, 2017 Order.

AND IT IS SO ORDERED.

October 17, 2017
Charleston, SC

Honorable Roger M. Young, Sr.
S.C. Circuit Court Judge #2134

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
ALEXANDER BURNS,	)	CASE NO.: 2017-CP-07-00265
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	ORDER GRANTING DEFENDANT BRAYS ISLAND'S
BRAYS ISLAND PLANTATION	)	MOTION FOR SUMMARY JUDGMENT AND
COLONY, INC. and BRAYS ISLAND	)	DENYING PLAINTIFF'S MOTION FOR PARTIAL
REALTY, LLC,	)	SUMMARY JUDGMENT
	)	
DEFENDANTS.	)	
	)	

This matter came for hearing before me August 22, 2017 at the Beaufort County Courthouse on cross motions for summary judgment. The Plaintiff appeared *pro* se. The Defendant Brays Island Plantation Colony, Inc. was represented by Carl Muller. The Defendant Brays Island Realty, LLC was represented by Kevin Dukes.

The Plaintiff is the owner of certain real property within Brays Island Plantation, which is a large Beaufort County plantation that is operated by the Defendant Brays Island Plantation Colony, Inc. The plantation is governed by a Declaration of Covenants, Conditions and Restrictions that, among other things, provides for the payment of fees and other amounts by property owners. The Covenants are filed in the Beaufort County real estate records. The Plaintiff's Complaint notes that he was notified of them and given a copy before he purchased his property.

The Complaint states that the Plaintiff fell behind in his payments to Brays Island, and when agreement was not reached on how to handle the delinquency he filed suit alleging that

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

the Covenants were invalid as a violating the Rule Against Perpetuities and alleging a civil conspiracy between the two defendants. He also alleged violation of the South Carolina Consumer Protection Act, but subsequently dropped that claim.

The Plaintiff then moved for partial summary judgment on his claim of breach of the Rule Against Perpetuities. The Defendant Brays Island Plantation Colony, Inc. moved for summary judgment on both of the Plaintiff's remaining claims and also moved for summary judgment on its Counterclaim for payment of amounts owed. The Plaintiff's motion is hereby denied. Brays Island's motion is hereby granted.

The Covenants do not violate the Rule Against Perpetuities. South Carolina's rule against perpetuities originated at common law. In 1987 it was codified as a uniform law at S.C. Code 27-6-10 et seq. The Covenants at issue were adopted a year later. The rule does not apply to the Covenants.

> Defendants incorrectly contend the deed restrictions are a restraint on the alienation of property or transferability of realty with no time limit and, therefore, are void as a violation of the rule against perpetuities. To the contrary, the rule against perpetuities does not pertain to covenants restricting the land to certain uses. Gibson v. Huffman, 246 Ga. App. 218, 540 S.E.2d 222 (2000) citing McKinnon v. Neugent, 225 Ga. 215, 167 S.E. 593 (1969) and Reeves v. Comfort, 172 Ga. 331, 157 S.E.2d 629 (1931).

Under the common law the rule did not apply to Covenants. That exclusion is preserved in Section 27-6-50 (7) of the South Carolina statute, which provides that it does not apply to "a property interest ... that was not subject to the common law rule against perpetuities."

Moreover, the rule applies only to interests that are not vested. S. C. Code 27-6-20(A). The interest of Brays Island under the Covenants - in getting paid by property owners - vested at the time of its creation. Therefore, it falls outside the rule.

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Further, the plaintiff does not have an interest under the Covenants. Instead, he has an obligation. The rule applies only to interests, otherwise known as estates. "[T]he rule against perpetuities deals with estates in land and the vesting of estates, and does not relate to covenants restricting the land to certain uses." McKinnon, supra.

Even if the Plaintiff could clear these hurdles, the statute would not apply because Section 27-6-50(1) specifically excludes non-vested property interests arising out of a "non-donative transfer." The Plaintiff himself alleges that he purchased his property interest. It was not a donation. The fees at issue under the Covenants are not donations, either. The Plaintiff alleges a "non-donative" matter that is outside the rule.

If the rule did apply, the Brays Island Covenants are in compliance. Under the South Carolina statute there are two ways that this can occur. The first is under the "life in being" sub-section. S.C. Code 27-6-20(A)(1) The second is under the "90 year" subsection. S.C. Code 27-6-20(2) Either is sufficient.

The "life in being" sub-section does not require that a specific person be named. It refers only to "an individual then alive."

> The measuring life need not be specified or even mentioned in the distribution. The donor need not intend any particular person to be the measuring life. The measuring life need not be a relative of any taker, or the holder of a previous estate or of any interest in the distribution. *Understanding the Measuring Life in the Rule Against Perpetuities*, 1974 Wash. U. L. Q. 265 (1974) (citations omitted)

It is a common practice to select a prominent family in order to comply with the rule's "life in being" requirement. That was done for the Covenants, which referenced President Kennedy's family.

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Also, vesting has occurred within 90 years after creation of the interest. That is also compliance. The Covenants were created in 1989; the Plaintiff bought his property and became subject to them in 2014.

Covenants such as those at issue are well recognized and accepted by the courts. "Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." Queen's Grant II v. Greenwood Development, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006), citing 17 S.C. Jur. Covenants §18 (2005). The Plaintiff is bound by them.

The Plaintiff's claim for civil conspiracy should also be dismissed. This is required for several reasons.

First, "the damages alleged must go beyond the damages alleged in other causes of action." Pye v. Fox, 369 S.C. 555,568, 633 S.E.2d 505 (2006) The damages alleged by the Plaintiff in his conspiracy cause of action arise solely from enforcement of the Covenants, which he attacks in his only other cause of action. Because the damages are the same, the conspiracy claim fails. It was upon this ground that the circuit court judge dismissed the conspiracy claim in Pye, supra, (aff'd on other grounds).

Second, the "'essential consideration" in civil conspiracy" is "whether the primary purpose or object of the combination is to injure the plaintiff." Pye, supra, 369 S.C. 567. The Complaint itself is clear that the lawsuit is based on general covenants applicable to all property owners at Brays Island Plantation. It is upon the "primary purpose" ground that the South Carolina Supreme Court affirmed the circuit judge's grant of summary judgment in Pye. "There

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

was absolutely no evidence submitted at the summary judgment stage supporting an agreement between Hill and Richard Fox to injure the Pyes." Pye, supra, 369 S.C. 568.

Third, the Plaintiff has offered no proof of the required elements of this cause of action. "The elements of civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. ... It is essential that the plaintiff prove all of these elements in order to recover." Pye, supra, 369 S.C. 567. The Plaintiff has offered no proof.

The Plaintiff wanted property at Brays Island, so he bought it from another owner. He did not buy it from Brays Island Plantation. The Plaintiff is a sophisticated business man. He knew about the Covenants before his purchase. He is not in a position to complain about them now.

Finally, the Defendants have submitted uncontroverted affidavits from F. Douglas P. Evans, Kevin Rhatigan and Paul Burton, and verification of the Counterclaim by William Fabian, establishing that there is no genuine issue of fact and that Brays Island is entitled to judgment as a matter of law. The Court finds the affidavits and verification credible, relevant, and helpful in every respect. They are dispositive. Mr. Evans is an experienced and knowledgeable real estate lawyer who is of the expert opinion that the Covenants are legal, valid and binding as written and in full compliance with South Carolina law, including, but not limited to, the Rule Against Perpetuities. He is correct. Mr. Rhatigan and Mr. Fabian have set forth the details of the amounts owed by the Plaintiff to Brays Island. Also, Mr. Rhatigan and Mr. Burton attest that there is no factual basis for the Plaintiff's civil conspiracy claim. The Plaintiff cannot rest on his pleadings or memoranda in the face of these affidavits and the verification. Rule 56(e) SCRCP. For this final,

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

and independent, reason, the Court denies the Plaintiff's motion for partial summary judgment and grants summary judgment in favor of Brays Island on the Complaint and the Counterclaim.

Brays Island is entitled to judgment against the Plaintiff in the amount of Thirty-two Thousand One Hundred Thirty-five and 50/100 Dollars ($32,135.50) through April 25,2017, for additional assessments, interest at the rate of eighteen per cent (18%) per annum, all costs and expenses of collection (including court costs, expenses, and a reasonable attorney's fee) and any other amounts provided or permitted under the Covenants and agreement described in the Counterclaim. Leave is hereby granted to Brays Island to submit such amounts from time to time to the Court for addition to the judgment now ordered in the amount of Thirty-two Thousand One hundred Thirty-five and 50/100 Dollars ($32,135.50).

AND IT IS SO ORDERED.

_____

Honorable Roger M. Young, Sr.
Circuit Judge

September ___, 2017

ELECTRONICALLY FILED - 2017 Sep 21 4:51 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Beaufort Common Pleas

Case Caption: Alexander Burns VS Brays Island Plantation Colony Inc , defendant, et al

Case Number: 2017CP0700265

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2017-CP-07-00265

Alexander Burns, Appellant,

v.

Brays Island Plantation Colony, Inc. &
Brays Island Realty, LLC, Respondents.

NOTICE OF APPEAL

Alexander Burns appeals the order of the Honorable Roger M. Young, Sr. dated September 21st, 2017. Appellant filed a timely Motion to Reconsider, pursuant to Rule 59, SCRCP, staying the time for appeal. Appellant received written notice of the entry of this order denying the Motion to Reconsider on October 25th, 2017.

November 28th, 2017

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	**PLAINTIFF'S NOTICE AND MOTION**
BRAYS ISLAND PLANTATION)	**FOR RECONSIDERATION OF FINAL**
COLONY, INC., &)	**ORDER AND STAY JUDGMENT OR**
BRAYS ISLAND REALTY, LLC)	**IN THE ALTERNATIVE VACATE**
(Defendants))	**JUDGMENT**

2017 SEP 28 CLERK OF COURT BEAUFORT COUNTY, SC

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Plaintiff, Alexander Burns ("Plaintiff") hereby submits this motion for reconsideration of the Court's Final Order dated and entered September 21st, 2017 (the "Order"). Pursuant to Rule 62(b), SCRCP, or in the alternative pursuant to Rule 60(b) Plaintiff also moves to stay judgment, or in the alternative vacate judgment.

This motion for reconsideration is divided into several sections as set forth below. Each section provides multiple grounds for the reconsideration of the Court's Order and stay or in the alternative vacate judgment. Collectively, pursuant to these grounds for reconsideration, Plaintiff seeks rulings on the matters the Court did not address in its Order; Plaintiff seeks the Court's reasons for deciding certain matters where no reasons are given; and Plaintiff seeks for the Court to reconsider its findings and correct its errors based on the record and the law.

PROCEDURAL HISTORY

This action was brought by Plaintiff on February 15th, 2017, following a series of correspondence between Plaintiff and the management of Brays Island Plantation Colony, Inc. ("Defendant") Defendants. Upon notice to Defendant that Plaintiff was seeking to sell his property located within the greater plantation the ("Subject Property") and was no longer

interested in maintaining the membership portion of the Plantation, Plaintiff engaged in a series of discussions with management of Defendant concerning opportunities to defer the fees pending sale. Defendant advised that while others had previously sought to cancel the membership, it was not cancelable under any circumstances prior to sale and the only offer that would be accepted would be a promissory note, secured by a confession of judgment, for which interest would be applied and principal payments must be made, further this note would not mitigate any continued membership related fees despite Plaintiff's assertion that it was uninterested in using any of the membership related services (having not been to the Plantation since approximately July of 2016). *Compl. Ex. 3.*

Despite Defendant's indication that it was "not interested in suing our owners", a cursory review of the Beaufort County Court Civil Docket found that Defendant has been a frequent and active litigant against its owners. *Compl. Ex. 3.* Such recent litigation has notably included suing the estate and heirs of Sumner Pingree, the founder of the Brays Island Plantation Colony for unpaid assessments. *Brays Island Plantation Colony, Inc. v. Rebecca Pingree et al.* 2016-CP-07-1678. Moreover, since the commencement of this action, Defendant has commenced another lawsuit against Heirloom Building Company, on the same basis. *Brays Island Plantation Colony, Inc. v. Heirloom Building Company* 2017-CP-07-00948. Given Defendant's clearly litigious inclinations, Plaintiff believed it prudent to file a declaratory judgment action proactively seeking judicial intervention on the basis of the issues with the application of the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 ("Covenants"). In this action, Plaintiff also included a second cause of action against Defendant and Brays Island Realty, LLC ("Realty") for civil conspiracy.

On March 15th, 2017 Defendant filed a Motion to Dismiss all causes of action for failure to state a claim. Plaintiff opposed this motion and a hearing was held on April 11th, 2017. On April 17th, 2017, the Court denied Defendant Brays' motion in its entirety. On April 25th, 2017, Defendant answered and counterclaimed for the value of the unpaid assessments under the Covenants. On August 22nd, 2017, the Court heard oral argument on Plaintiff's motion for partial summary judgment as well as Defendant's motion for summary judgment on all causes of action and their counterclaim. On September, 21st, 2017, the Court entered an order denying Plaintiff's motion and granting Defendant's motion. On September 25th, 2017, the Court entered an order of judgment against Plaintiff.

STANDARD OF REVIEW

A motion under Rule 59(e) has been long reviewed as a "motion for reconsideration" despite the absence of these words from the rule. Consequently, a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See e.g. Arnold v. State,* 309 S.C. 157, 420 S.E.2d 834 (1992). ("purpose of Rule 59(e) SCRCP, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits"). A party *may* wish to file such a motion when it believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. *Elam v. South Carolina Dept. of Transp.,* 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Both State and Federal Courts "may grant a Rule 59(e) motion to prevent manifest injustice. *See EEOC v. Lockheed Martin Corp.,* 116 F.3d 110,112 (1997).

Summary judgment "should be cautiously invoked so that no person will be improperly derived of a trial of the disputed factual issues". *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101; *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186 (1986) ("an extreme remedy to be cautiously invoked"). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *10A Wright & Miller*, Federal Practice & Procedure ss 2741, p. 543 (1983). On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *Koestner v. Carolina Rental Ctr., Inc.* 313 S.C. 490, 493 (1994).

The Court may relieve a party from a final judgment "when it is no longer equitable that the judgment should have prospective application." Rule 60(b)(5), SCRCP; *Perry v. Heirs at Law of Gasden*, 357 S.C. 42, 48-49, 590 S.E.2d 502, 505 (Ct.App.2003) (stating that Rule 60(b)(5) is based upon the historical power of the court of equity to modify its decree in light of subsequent conditions and that the test typically applied to determine whether an order has prospective application is whether it is executory or involves supervision of changing conduct or conditions by the court). *Id.* at 46, 590 S.E.2d at 504 (holding that a party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief).

ARGUMENT

Section I Grounds For Reconsideration Based Upon Unenforceable Nature of Certain Covenants

The Uniform Statutory Rule Against Perpetuities (USRAP) is not the end of the story. On Page 2, the Order states that "The [USRAP] rule does not apply to the Covenants." If the USRAP does not apply to the covenants, then the Court must still make the determination as to

whether the Covenants are viable as a contract pursuant to South Carolina law or whether they violate some other provision of the law (either statutory or at common law) before reaching an ultimate conclusion that the Covenants are valid and enforceable against Plaintiff and the Subject Property. This determination is required not only to rule upon Plaintiff's declaratory judgment, which seeks to declare the Covenants invalid and unenforceable, as well as in order to establish a prerequisite for Defendant's Counterclaim.

Without taking a position as to which applies, the Court applies multiple, alternative positions to the application of the USRAP in the Order. The determination of whether the USRAP is applicable or inapplicable ultimately does not change the necessity of the Court's determination as to whether the Covenants are valid on an alternative basis under South Carolina law, pursuant to the other legal issues raised by Plaintiff. As previously pled by Plaintiff, the distinction of whether the nature of the Covenants have violated any South Carolina law, irrespective of the USRAP, is an essential factual determination in this matter as contracts violating the law are unenforceable. *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained); see also 17A Am. Jur. 2d Contracts § 323 (2004) ("[I]f a question of illegality develops during the course of the trial, a court must consider that question, whether pleaded or not.").

A. The Individual Assessments, which are the basis of Defendant's Counterclaim, are not affirmative real covenants at common law, and are therefore invalid.

The Plaintiff has previously raised the issue of the Covenants common law violation (irrespective of the violation of the USRAP) in both its memorandum in opposition of Defendant's Motion to Dismiss

and its Memorandum in Support of Plaintiff's Motion for Summary Judgment. While this issue need not have been pled in the Complaint, it is an essential determination that the Court has remained silent on in its Order.

Specifically, the Plaintiff raised the issue of how the Covenants run with the land insofar as the Individual Assessments (pursuant to Section 9.03 of the Covenants) are calculated based upon the product of the current individual assessment rate and the multiplier of either 100% for one (1) or no Member designated for that year, 150% for two (2) Members designated and 200% for three (3) Members designated. The enforcement of the covenants cannot run with the land if the calculation of the assessments is wholly dependent on a determination of the number of Members associated with Membership in an association whose stated purpose, pursuant to Section 9.02 of the Covenants, includes maintaining and operating Recreational Amenities, which are not connected in any way to the property.

The Plaintiff previously cited *Raintree v. Rowe*, a North Carolina case where the court held that the obligation to pay country club dues was a personal covenant and not a real property covenant. *Raintree,* which was previously cited as authoritative by the South Carolina Court of Appeals in *Harbison Community Assn'n v. Mueller,* which was also cited by the Plaintiff.

In *Raintree v. Rowe,* the court set forth a three part test to analyze whether covenants create a real covenant: (1) the intent of the parties as can be determined from the instruments of record; (2) the covenant must be so closely connected with the real property that it touches and concerns the land; and (3) there must be privity of estate between the parties to the covenant. *See also 20 Am.Jur.2d Covenants, Conditions, Etc.* §30 (1965).

"To touch and concern the land, the object of the covenant must be annexed to, inherent in, or connected with, land or other real property or related to the land granted or demised." *Id. quoting 20 Am.Jur.2d Covenants, Conditions, Etc.* §29 (1965). The *Raintree* court goes on to review the standard for an affirmative covenant (requiring that a party do something as opposed

to refrain from doing something), "As a result of the common law rule on affirmative covenants, the requirements for a covenant to run are to be more strictly applied to affirmative covenants than negative covenants." *Id.*

With regard to the type of obligation sought by the Defendants pursuant to the Covenants, "This covenant creates an affirmative duty, a charge or obligation to pay money *i.e.* country club dues, for the services and use of the country club facilities which are not upon, connected with, or attached to the defendants' land in any way. The defendants are required to pay whether they use the facilities or not. The payment of a collateral sum of money does not concern the land." *Id.*

Despite the affirmative obligation to do so, at common law, and the extremely high threshold for affirmative real property covenants, the Defendant has made no effort to rebut the Plaintiff's factual allegation regarding the computation of the Individual Assessments under the Covenants. The Defendant has offered no evidentiary testimony regarding how the Recreational Amenities might be *so closely connected with the real property that it touches and concerns the land,* as is required in order for the Covenants to be valid under South Carolina law.

Reviewing the facts in a light most favorable to Plaintiff, the Court cannot find that the Covenants definitively run with the land given the factual arguments raised regarding the personal nature of the Individual Assessments. The high standard of Summary Judgment, which is *an extreme remedy to be cautiously invoked,* is compounded by with the high standard for affirmative real property covenants, creates a threshold insurmountable to Defendant on the basis of facts most favorable to Plaintiff. On this basis, the Court must, *at minimum,* defer the determination to trial and deny summary judgment for the Defendant.

Alternatively, the Court could find that the covenants do not meet the standard for affirmative real property covenants, and thus find in favor of the Plaintiff's Motion for Summary Judgment. This finding would be substantially easier for the Court on Summary Judgment insofar as the burden of proof is

entirely upon the Defendant to show how the covenants are valid affirmative real property covenants that meet all of the criteria under South Carolina law. Any failure by the Defendant to meet each of these criteria would deem the covenants illegal and therefore unenforceable. Moreover, the burden to establish exactly how the covenants comply rests solely on the Defendant. Insofar as the Defendant has failed to provide any evidence as to how the calculation of the Individual Assessments can be based upon the number of MEMBERS and still touch and concern the land, the Court would be within its authority to find this a fatal defect for the Defendants and find in favor of Plaintiff's motion for summary judgment on the declaratory judgment.

B. The Covenants do not adequately benefit and unduly burden the land in contravention of South Carolina law regarding the enforceability of real property covenants.

The Plaintiff has previously raised the long-standing tenet of South Carolina law, in its memorandum in support of its motion for summary judgment, that real property covenants must *benefit and burden* the land. Any affirmative restrictive covenants must have a beneficial effect on the value of the owners' properties in order to be recognized as a valid covenant. *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.* 368 S.C. at 357 (*citing Harbison Cmty. Assoc., Inc. v. Mueller*, 319 S.C. 99, 102 (Ct.App.1995). On page 4 of the Order, the Court makes reference to Queens Grant II case by adopting "Restrictive covenants differ from contracts in that they 'run with the land' meaning that they are enforceable by and against later grantees." *Id.* Despite the inclusion of the *run with the land* reference, the Court does not actually address whether the Covenants in the action at bar run with the land. Moreover, the Court fails to address how, if at all, the Covenants might "have a beneficial effect on the value of the owners' properties in order to be recognized as a valid covenant."

The Plaintiff has offered facts, with particularly, that allege that the Covenants do not have any beneficial effect on the property, and indeed reduce the value of the Subject Property at

a rate of approximately 16% per annum, prospectively reducing the value of the property to its owner to zero in just over six years. The Plaintiff has entered into evidence statements of Realty which indicate that the property, irrespective of the diminution of value based upon the individual assessments, has likely dropped at least 12% in less than three years, despite similarly situated property not subject to the Covenants significantly increasing. None of these facts are addressed or even rebutted by any factual testimony offered by Defendant or Realty.

It seems impossible that the Court could consider Plaintiff's facts regarding the lack of benefit and significant burden of the Individual Assessments, in a light most favorable to Plaintiff and determine that there is no factual issue for purposes of the Plaintiff's declaratory judgment or the counterclaim.

Section III Grounds For Reconsideration of the Civil Conspiracy Claim

On page 4 of the Order, the Court states that "The Plaintiff's claim for civil conspiracy should also be dismissed. This is required for several reasons." The reasons offered have to do with defects in the claim based upon an evidentiary showing despite the Plaintiff not being afforded the opportunity to conduct sufficient discovery.

At minimum, the Plaintiff should be entitled to further discovery on the claims insofar as the facts from the affidavits cited in the Order, when viewed in the light most favorable to the Plaintiff amount to little more than self-serving denials of the allegations.

Despite not providing any detail as to how or why the Defendant's might not have engaged in a civil conspiracy, the affidavits simply take the position that such an action could not have occurred. In the light most favorable to Plaintiff, the Court must take a skeptical view of the Defendants' own statements that *nothing happened here* and thus cannot conclusory state that "The court finds the affidavits and verification credible, relevant, and helpful in every respect.

They are dispositive." as was stated on Page 5 of the Order. On this basis, every Defendant before the Court could simply offer an affidavit denying any civil conspiracy claim, file a motion for summary judgment before allowing the Plaintiff any opportunity to conduct its own discovery, and prevail.

The Court adopts the civil conspiracy test of *Pye v Fox* in determining the Defendant's Motion for Summary Judgment on the Civil Conspiracy cause of action. On Page 5, The Court relies upon the statement that "It is essential that the plaintiff prove all of these elements in order to recover." The Court incorrectly adopts this standard for determining whether Summary Judgment DENYING Plaintiff's claim is appropriate. While it is clear that the Plaintiff must prove all of the elements in order to recover, Pye does not set forth any requirement that the Plaintiff prove the elements prior to opportunity to conduct meaningful discovery on the claim. The Plaintiff had not moved for Summary Judgment on the Civil Conspiracy claim insofar as it would be premature to do so given the nature of a Civil Conspiracy claim and the obvious necessity that discovery be conducted. This issue was raised by Plaintiff in oral argument and there is no discussion of the Court's rejection of Plaintiff's request that it be afforded the opportunity to conduct discovery on the claim prior to a Summary Judgment ruling.

The sole extent of discovery conducted on the basis of the Civil Conspiracy claim are affidavits of interested parties. The Plaintiff has not been afforded the opportunity to conduct any depositions, receive any requests or admission, gain access to any production of documents, conduct any electronic discovery, issue any subpoenas, or receive responses to any interrogatories.

The Plaintiff has offered a cohesive theory of Civil Conspiracy, for which it anticipates being able to establish further evidentiary proof following the opportunity to conduct formal

discovery. The totality of Defendant Brays' evidentiary support for their motion is the assertion by Kevin Rhatigan, who stated that "I am aware of no conversations between Defendants concerning Mr. Burns' proposed purchase of the property on the plantation. In my position, I would know of them if they had occurred. The other Defendant is a separate company, not owned or controlled by Brays Island. There was no reason for Brays Island to "lure" Mr. Burns into ownership as he alleges." *Aff. Kevin Rhatigan.*

As previously pled, Mr. Rhatigan's statement that there were no conversations between Defendant and Realty regarding the sale of the property appears facially impossible. Defendant would have to be aware of the transaction insofar as they received a 1.5% marketing fee, payable upon purchase and it is inconceivable that there would be no discussion of a new owner given how few transactions take place at the plantation per year. Moreover, the 1.5% marketing fee, which is payable upon every closing, by the purchaser does provide a financial incentive to Defendant to churn properties to new owners. This is a factual assertion made by Plaintiff that must be considered against the facts alleged by Defendant and Realty, in a light most favorable to Plaintiff, when considering summary judgment. In the Order, the Court makes no reference to affording any consideration to Plaintiff's factual assertions that Defendant and Realty have conspired for the purpose of churning properties, including the Plaintiff's to the injury of Plaintiff (as purchaser) and prospectively to the injury of Plaintiff through a disposition of the property at auction following enforcement of the lien sought by Defendant and the re-listing of the property with Realty.

The Plaintiff has also factually asserted that nowhere in the Covenants does it provide any reference to Realty nor is there any indication that Realty would be permitted to have

unique rights among other realtors – including receiving marketing compensation from Defendant and unparalleled access to the Plantation. While the Plaintiff raises certain issues from the covenants, such as that Defendant has precluded owners from placing "For Sale" signs on their property and has limited access to third-party real estate agents when the owner is not present, it is the issues that the Covenants are slient on, such as that Defendant has granted Realty free access to the Plantation to show properties listed with Realty, for which authorization does not appear anywhere in the covenants, that give rise to the civil conspiracy claim.

On page 4 of the Order, the Court finds that damages must go beyond the damages alleged in the cause of action. The damages, as pled by Plaintiff include damage to Plaintiff insofar as the conspiracy affords Realty the opportunity to avoid having to provide a more competitive brokerage fee offer for listing properties as no other broker can realistically show the property with the same degree of access as Realty.

As evidentiary testimony regarding special damages for the conspiracy, the Plaintiff has pled that as the effective gatekeeper for the property, Realty's failure to list the land on any third-party service and precludc other brokcrs has thc cffcct of forcing would-be scllcrs to continue to perpetually pay Defendant or be subjected to foreclosure of Defendant's purported lien on the property triggering a sale at Sheriff's auction. This reality is well known to Defendant as they referenced the outcome in their response to Plaintiff's proposal. *Compl. Ex. 3.* Despite this testimony, the Court determined that "The damages alleged by the Plaintiff in his conspiracy cause of action arise solely from the enforcement of the Covenants, which he attacks in his only other cause of action. Because the damages are the same the conspiracy claim fails."

To the contrary, none of the damages alleged by Plaintiff (which include being forced into higher than market expenses for the sale of the property, potentially having to accept a lower sale price than could be achieved if multiple brokers had access to the property, and Plaintiff's expenditure of additional holding costs IRRESPECTIVE of the covenants, such as Plaintiff's mortgage and real property taxes, for a longer period of time – post listing for sale – than would otherwise be payable if the property were listed and available to a larger pool of buyers, thus leading to a faster sale) have anything to do with the Covenants and the Court misinterprets the nature of Plaintiff's damages in its Order.

The second issue with the civil conspiracy claim, as raised by the Court is whether the primary purpose or object of the combination is to injure the Plaintiff. The Plaintiff has previously factually argued that by permitting special status to Brays, without disclosing that special status was afforded to Brays by the Covenants, the special status is for the pecuniary gain of Defendant and Realty, and given that the gain is borne at the expense of Plaintiff, it must be for the injury of Plaintiff.

With regard to the third issue with the civil conspiracy claim, the Court alternatively truncates the Plaintiff's ability to conduct discovery on any area of the claim by prematurely ruling in favor of Defendant's motion for summary judgment while basing this on the fact that the Plaintiff has been unable to offer any "proof". This is circular reasoning by the Court. Inherently, a conspiracy can only be proven by discovery as the parties to the conspiracy are never going to admit that they conspired. The Plaintiff has offered sound allegations, and provided the factual information that demonstrates to the Court that upon the opportunity for discovery, there is likely to be further corroborating evidence to support Plaintiff's claims.

While the Order appears to attack the merit of the claim, the Court cannot consider the factual merits without significant discovery – certainly not as a matter of law. Discovery on this cause of action is likely to yield information related to the course of dealings between Defendant and Realty, as well as the practices of Realty as effective sole real estate broker to the plantation and its effect on transactions, as compared to other similarly situated real estate.

Notably, the co-defendant in this matter, Realty has made no motion for summary judgment and counsel for Realty only appeared at the oral argument for the summary judgment motion insofar as they were also due before the Court on other matters.

Moreover, the Court affords no deference to the prior ruling by the Court that the sufficiency of the Plaintiff's claim, prior to the opportunity for discovery, was established. On March 15th, 2017, the Defendant filed a motion to dismiss all of the causes of action, specifically including the Civil Conspiracy claim, for which memorandums were subsequently filed in support and opposition thereof, the Court heard oral argument on this motion and on September 21st, 2017, Judge Carmen T. Mullen denied the Defendant's motion to dismiss. The arguments adopted by the Court in the Order were the same arguments previously rejected by Judge Mullen. Given that there has been absolutely no discovery afforded on the Plaintiff's behalf since the denial of the Motion to Dismiss by Judge Mullen, the Court improperly reverses itself, without justification.

Section III Grounds For Reconsideration of the Counterclaim

The Plaintiff has previously raised the issue of ripeness of the Counterclaim in the Answer as its First Affirmative Defense. Insofar as the Court may adopt any of the issues with the Order as set forth in Section I above, the final adjudication of these issues would serve as a prerequisite for any determination of whether the Counterclaim could be valid. Simply put, the

Counterclaim is based upon the validity of every aspect of the Covenants under South Carolina law (both statutory and common law). Any unresolved issue for the Court of the enforceability of the Covenants would serve as a defect to summary judgment for the Defendant's the Counterclaim insofar as the Counterclaim is based solely upon the enforcement of the Covenants.

The Court must also contend with whether any of these facts are properly considered by a jury. Plaintiff has properly raised, in its Answer to the Counterclaim, a demand for a jury trial on the Counterclaim. Plaintiff has previously briefed the issue that the Counterclaim is most appropriately severed pursuant to Rule 42 of the South Carolina Rules of Civil Procedure insofar as a separate trial on this claim would ensure the preservation of the "inviolate right of trial by jury as declared by the Constitution or as given by a statute of the State." SCRCP Rule 42(b). In its answer, Plaintiff asserted its right to a jury trial, and as such must be afforded a jury trial of any counterclaims. Defendant Brays waived any right to a trial by jury having made no such demand in their answer. In ensuring the Court has afforded the Plaintiff due process, the Court must make a determination as to whether its rulings on factual determinations in the context of Summary Judgment, with regard to the Counterclaim, deprived the Plaintiff of the right to have those facts heard by a jury.

To the extent that the Court places itself in the role of the jury by making factual determinations that would otherwise be properly heard by a jury at trial, such as considering the weight of factual testimony of the Plaintiff versus factual evidence of the Defendant or Realty, the Court has improperly foreclosed upon an inviolate right of the Plaintiff to have such evidence heard by a jury prior to judgment being rendered.

Section IV Grounds For Reconsideration Based Upon Improperly Considered Evidence

On Page 5 of the Order, the Court states that the Defendants have submitted uncontroverted affidavits from F. Douglas P. Evans, Kevin Rhattigan, and Paul Burton. The affidavits of Mr. Burton and Mr. Evans cannot be considered by the Court as a matter of Summary Judgment. The affidavits are clearly not uncontroverted. At the very least, Plaintiff, by appearing *pro se*, has offered direct refutation in each of the pleadings. By signing the pleadings pursuant to Rule 11(a), SCRCP, the Plaintiff has offered a refutation with at least the same evidentiary standard as the affidavits. Coupled with the factual arguments presented at oral argument by Plaintiff, both in the motion for reconsideration and the motion for summary judgment provide sufficient testimony to overcome the standard of "mere allegations or denials of his pleading" pursuant to Rule 56(e), SCRCP. Despite the fact that this testimony was offered by the Plaintiff, himself, in both sworn motion and oral argument, and Plaintiff raised the very issue of the evidentiary standard of its own pro se testimony in oral argument before the Court, the Court improperly affords no evidentiary weight in its Order.

All statements made by the Plaintiff both in furtherance of its own claims as well as in defense of the Counterclaim, unless provided in quotation are obviously made upon the Plaintiff's own personal knowledge and would therefore be admissible as evidence on the exact same basis were the Plaintiff to have been represented by counsel. Given the pleading requirements of Rule 11(a), SCRCP it does not serve equity and significantly prejudices Plaintiff for the Court to have retrospectively required that the Plaintiff submit a supplemental affidavit affirming the facts of the pleading on personal knowledge when the Plaintiff himself signed all of the pleadings, himself affirming that "*to the best of his knowledge, information and belief there is good ground to support it.*" Rule 11(a), SCRCP. In light of this, all pleadings signed by a

pro se litigant must have the same evidentiary weight as an accompanying affidavit made upon personal knowledge.

To the extent that the Court had applied any evidentiary weight to the Plaintiff's own testimony, the Court would have been forced to consider the matter as two divergent sets of facts and therefore could not have ruled in favor of Defendant, as a matter of law, pursuant to Rule 56, SCRCP.

Moreover, Plaintiff's affirmative defenses, as pled in Plaintiff's Answer to Defendant's Counterclaim, serve as further refutation of the circumstances of Defendant's counterclaim. The issue of Plaintiff's refutation was offered by Plaintiff in oral argument before the Court in response to Defendant's assertion at that time that Plaintiff had offered no affidavits.

Mr. Burton's affidavit was served upon Plaintiff while he was standing in Court immediately before the hearing. This motion should be stricken on the basis that it was not timely served. In the Order, the Court states that it "finds the affidavits and verification credible, relevant, and helpful in every respect. They are dispositive." *Id.*

On the contrary, Mr. Evans' affidavit is not made upon personal knowledge, as is an essential requirement of Rule 56(e), SCRCP, and therefore the Court's admitted reliance upon such an affidavit is improper. Mr. Evans states that the Court may infer the validity of the covenants based upon the purported involvement of Mr. Augustine T. Smythe, Mr. Evans wishes to convince the Court that without any actual personal knowledge of the circumstances regarding the *actual* drafting or execution of the Covenants (insofar as he states definitively that "I have had no prior involvement with the Defendants and offer this Affidavit as an independent expert.") that deductive reasoning is a sufficient substitute for personal knowledge "His signature

as a witness evidences that he was involved in the preparation of the original Covenants. One can be assured that the original Covenants are letter perfect and in full compliance with the Law."

Mr. Evans' contention that one can intuit the legal compliance of a document based upon a logical assumption that if an attorney witnessed the execution of a document, then he must have drafted it, and if he must have drafted it nearly 30 years ago, then it must be correct today, provides no admissible evidence of personal knowledge. Despite Mr. Evans' admitted significant history as an attorney, nowhere in his affidavit does he indicate that his testimony is made upon personal knowledge. All of Mr. Evans' testimony is opinion testimony – which may not be considered by the Court, despite the Court making clear that it not only considered it but found it *credible, relevant and helpful in every respect."*

"Rule 56(e), S.C.R.C.P., requires that on motion for summary judgment, supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively how the affiant is competent to testify to the matters stated therein." Thus, opinion testimony, including that of an expert, which would be inadmissible if testified to at trial may not be set forth in an affidavit. *Baughman v. American Tel. and Tel. Co.,* 306 S.C. 101; *Watson v. Southern Ry. Co.,* 420 F.Supp. 483, 486 (D.S.C. 1975); 6-Pt. 2 *Moore's Federal Practice* ¶ 56.221, pp. 56-743 to – 746 (2d ed. 1988).

Moreover, it would be impossible for the Court to rely upon Mr. Evans' opinion as an expert witness insofar as he provides no basis other than his opinion and experience by which the Covenants are "binding as written and in full compliance with South Carolina law, including but not limited to Rule Against Perpetuities." With such a blanket assertion and no substance provided, it would be impossible for the Court to rely upon whether Mr. Evans had even considered the common law issues. Moreover, by depriving the Plaintiff of the opportunity to

engage in substantive discovery, including the opportunity to depose Mr. Evans and gain additional testimony regarding the nature of his review and its limitations, the Court has deprived the Plaintiff of *the full and fair opportunity to complete discovery,* as required.

Insofar as the Court has definitively stated on Page 5 of the order that the affidavits are "credible, relevant, and helpful in every respect. They are dispositive." and such affidavits are improper to be considered by the Court given that Mr. Burton's affidavit was improperly served thus depriving the Plaintiff of the opportunity to review it prior to oral argument, Mr. Evans' affidavit is not made upon personal knowledge, provides no detail as to the scope of its review, provides deductive conclusions in place of actual knowledge, and the affidavits of Mr. Burton and Mr. Rhattigan are directly contradicted by the testimony of the Plaintiff in numerous sworn pleadings, the Court improperly relied upon these affidavits in making its ruling. The specific emphasis placed upon the affidavits in the Order, in light of their impropriety requires that the Court reconsider each of its rulings in this action.

Section V Stay and/or Vacate Judgment

Pursuant to Rule 62(b) SCRCP, the Plaintiff requests that the Court stay any proceedings to enforce judgment insofar as the Plaintiff has hereby filed a motion for reconsideration pursuant to Rule 59, SCRCP. Rule 62(b) provides for the Court to stay any proceedings to enforce a judgment pending the disposition for a motion made pursuant to SCRCP Rule 59. Given the significant number of issues outstanding, and the fact that a Judgment was entered prior to the expiration for the deadline for a motion for reconsideration, under Rule 59(e), which provides ten (10) days from receipt of written notice of the entry of the order. To date, the Plaintiff has not received written notice of the entry of the order, having only received a courtesy copy of the Defendant's proposed order via First Class Mail as of September 23rd, 2017.

Notwithstanding Defendant's lack of service, Plaintiff has timely filed this Motion within ten (10) days of the filing of the Order with the Court. Defendant's own Form 4 order fails to list the date of judgment entry and mailing to Plaintiff.

Alternatively, the Court may vacate the Judgment pursuant to Rule 60(b), SCRCP, insofar as it was not ripe given the Motion For Reconsideration. Rule 60(b)(5) provides that the Court may relieve a party from a final judgment if "it is no longer equitable that the judgment should have prospective application." The Court's basis for Judgment, rendered pursuant to Defendant's Counterclaim was afforded no discussion in the Order. The Court simply concludes that "Brays Island is entitled to judgment against the Plaintiff in the amount of "Thirty-two Thousand One Hundred Thirty-five and 50/100 ($32,135.50) through April 25th, 2017, for additional assessments, interest at the rate of eighteen percent (18%) per annum, all costs and expenses of collection (including court costs, expenses, and a reasonable attorney's fee) and any other amounts provided or permitted under the Covenants and agreement described in the Counterclaim." For the reasons set forth in Section III above, the Counterclaim has not been properly adjudicated by the Court and therefore it is not equitable for judgment to be prospectively applied.

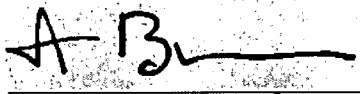
CONCLUSION

The Order does not adequately address the legal arguments and authorities advanced by Plaintiff prior to summary judgment. Plaintiff requests that the Court reconsider all legal arguments and authorities contained in the record in this matter.

THEREFORE, as set forth herein, Plaintiff respectfully submit that the Court reconsider its Order, reverse its rulings, deny Defendant's motion for summary judgment & counterclaim, stay or in the alternative vacate the Judgment against Plaintiff, and grant Plaintiff's motion for summary judgment.

Dated: September 27th, 2017

Respectfully submitted,



Alexander Burns
Plaintiff, *pro se*
934 Richter Way
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO. 2017-CP-07-00265**
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	**[PROPOSED] ORDER GRANTING**
BRAYS ISLAND PLANTATION)	**PLAINTIFF'S MOTION FOR STAY OF**
COLONY, INC., &)	**ENFORCEMENT OF JUDGMENT**
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

The motion ("Motion") of Plaintiff, Alexander Burns, ("Plaintiff") for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment came before the Court on September 27th, 2017. On September 21st, 2017, the Court entered an Order denying Plaintiff's motion for summary judgment and granting Defendant Brays Island Plantation Colony, Inc ("Defendant") motion for summary judgment and counterclaim. On September 25th, 2017, Defendant entered judgment in the amount of $32,135.50 against Plaintiff ("Judgment"). On September 27th, 2017, the Plaintiff filed a motion for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment.

Having reviewed and considered the Motion, and finding good cause therefor, the Court rules as follows:

IT IS HEREBY ORDERED:

1. The Motion is granted in PART;
2. The Court shall stay any proceedings by Defendant to enforce the Judgment against Plaintiff pending the Court's decision on the balance of Plaintiff's Motion;
3. The Court shall hear oral argument on the balance of Plaintiff's Motion at a time and date to be scheduled by the Clerk of Court.

September_____, 2017

_____
Honorable Roger M. Young, Sr.
S.C. Circuit Judge 2134

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO. 2017-CP-07-00265**
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	**[PROPOSED] ORDER GRANTING**
BRAYS ISLAND PLANTATION)	**PLAINTIFF'S MOTION TO VACATE**
COLONY, INC., &)	**JUDGMENT**
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

The motion ("Motion") of Plaintiff, Alexander Burns, ("Plaintiff") for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment came before the Court on September 27th, 2017. On September 21st, 2017, the Court entered an Order denying Plaintiff's motion for summary judgment and granting Defendant Brays Island Plantation Colony, Inc ("Defendant") motion for summary judgment and counterclaim. On September 25th, 2017, Defendant entered judgment in the amount of $32,135.50 against Plaintiff ("Judgment"). On September 27th, 2017, the Plaintiff filed a motion for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment.

Having reviewed and considered the Motion, and finding good cause therefor, the Court rules as follows:

IT IS HEREBY ORDERED:

1. The Motion is granted in PART;
2. The Court shall vacate Judgment against Plaintiff, without prejudice to be re-filed by Defendant pending the Court's decision on the balance of Plaintiff's Motion;
3. The Court shall hear oral argument on the balance of Plaintiff's Motion at a time and date to be scheduled by the Clerk of Court.

September_____, 2017

_____
Honorable Roger M. Young, Sr.
S.C. Circuit Judge 2134

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT	)	**CASE NO.** 2017-CP-07-00265
	)	
ALEXANDER BURNS	)	
(Plaintiff)	)	
	)	
-versus-	)	
	)	**[PROPOSED] ORDER GRANTING**
BRAYS ISLAND PLANTATION	)	**PLAINTIFF'S MOTION TO**
COLONY, INC., &	)	**RECONSIDER**
BRAYS ISLAND REALTY, LLC	)	
(Defendants)	)	

The motion ("Motion") of Plaintiff, Alexander Burns, ("Plaintiff") for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment came before the Court on September 27th, 2017. On September 21st, 2017, the Court entered an Order denying Plaintiff's motion for summary judgment and granting Defendant Brays Island Plantation Colony, Inc ("Defendant") motion for summary judgment and counterclaim. On September 25th, 2017, Defendant entered judgment in the amount of $32,135.50 against Plaintiff ("Judgment"). On September 27th, 2017, the Plaintiff filed a motion for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment.

Having reviewed and considered the Motion, and finding good cause therefor, the Court rules as follows:

IT IS HEREBY ORDERED:

1. The Motion is granted in PART;
2. The Court's Order is hereby REVERSED and the Defendant's motion for summary judgment on Plaintiff's first and second cause of action, and counterclaim is hereby DENIED;
3. The Defendant's Judgment is hereby VACATED.

September _____, 2017

_____
Honorable Roger M. Young, Sr.
S.C. Circuit Judge 2134

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT	)	**CASE NO. 2017-CP-07-00265**
	)	
ALEXANDER BURNS	)	
(Plaintiff)	)	
	)	
-versus-	)	
	)	**[PROPOSED] ORDER GRANTING**
BRAYS ISLAND PLANTATION	)	**PLAINTIFF'S MOTION TO**
COLONY, INC., &	)	**RECONSIDER AND GRANTING**
BRAYS ISLAND REALTY, LLC	)	**PLAINTIFF'S MOTION FOR PARTIAL**
(Defendants)	)	**SUMMARY JUDGMENT**

The motion ("Motion") of Plaintiff, Alexander Burns, ("Plaintiff") for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment came before the Court on September 27th, 2017. On September 21st, 2017, the Court entered an Order denying Plaintiff's motion for summary judgment and granting Defendant Brays Island Plantation Colony, Inc ("Defendant") motion for summary judgment and counterclaim. On September 25th, 2017, Defendant entered judgment in the amount of $32,135.50 against Plaintiff ("Judgment"). On September 27th, 2017, the Plaintiff filed a motion for reconsideration as well as to stay enforcement of judgment or in the alternative vacate judgment.

Having reviewed and considered the Motion, and finding good cause therefor, the Court rules as follows:

IT IS HEREBY ORDERED:

1. The Motion is GRANTED;
2. The Court's Order is hereby REVERSED and the Defendant's motion for summary judgment on Plaintiff's first and second cause of action, and counterclaim is hereby DENIED;
3. The Defendant's Judgment is hereby VACATED.
4. The Plaintiff's motion for summary judgment on the first cause of action seeking a declaratory judgment that the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 are unenforceable against Plaintiff is hereby GRANTED.

September_____, 2017

_____
Honorable Roger M. Young, Sr.
S.C. Circuit Judge 2134

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

PLAINTIFF'S MEMORANDUM IN OPPOSITION OF MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff, Alexander Burns, hereby submits this memorandum in opposition to Defendant Brays Island Plantation Colony, Inc. ("Defendant Brays") motion for an order granting summary judgment on all of the causes of action, and the counterclaim against Plaintiff. For the reasons set forth below, the Plaintiff requests that the Court deny Defendant Brays' Motion for Summary Judgment in its entirety in accordance with the South Carolina Rules of Civil Procedure Rule 56.

I. SUMMARY OF RELEVANT FACTS & PROCEDURAL HISTORY

This action was brought by Plaintiff on February 15th, 2017, following a series of correspondence between Plaintiff and the management of Defendant Brays. Upon notice to Defendant Brays that Plaintiff was seeking to sell the Subject Property and was no longer interested in maintaining the membership portion of the Plantation, Plaintiff engaged in a series of discussions with management of Defendant Brays concerning opportunities to defer the fees pending sale. Defendant Brays advised that while others had previously sought to cancel the membership, it was not cancelable under any circumstances prior to sale and the

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only offer that would be accepted would be a promissory note, secured by a confession of judgment, for which interest would be applied and principal payments must be made, further this note would not mitigate any continued membership related fees despite Plaintiff's assertion that it was uninterested in using any of the membership related services (having not been to the Plantation since approximately July of 2016). *Compl. Ex. 3.*

Despite Defendant Brays indication that it was "not interested in suing our owners", a cursory review of the Beaufort County Court Civil Docket found that Defendant Brays has been a frequent and active litigant against its owners. *Compl. Ex. 3.* Such recent litigation has notably included suing the estate and heirs of Sumner Pingree, the founder of the Brays Island Plantation Colony for unpaid assessments. *Brays Island Plantation Colony, Inc. v. Rebecca Pingree et al.* 2016-CP-07-1678. Moreover, since the commencement of this action, Defendant Brays has commenced another lawsuit against Heirloom Building Company, on the same basis. *Brays Island Plantation Colony, Inc. v. Heirloom Building Company* 2017-CP-07-00948. Given Defendant Brays' clearly litigious inclinations, Plaintiff believed it prudent to file a declaratory judgment action proactively seeking judicial intervention on the basis of the issues with the application of the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 ("CC&R") by Defendant Brays. In this action, Plaintiff also included a second cause of action against Defendant Brays and Brays Island Realty, LLC ("Defendant Brays Realty") for civil conspiracy.

On March 15th, 2017 Defendant Brays filed a Motion to Dismiss all causes of action for failure to state a claim. Plaintiff opposed this motion and a hearing was held on April 11th, 2017. On April 17th, 2017, the Court denied Defendant Brays' motion in its entirety. On April 25th,

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2017, Defendant Brays answered and counterclaimed for the value of the unpaid assessments under the CC&R.

II. STANDARD OF REVIEW

Summary judgment "should be cautiously invoked so that no person will be improperly derived of a trial of the disputed factual issues". *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101; *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186 (1986) ("an extreme remedy to be cautiously invoked"). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *10A Wright & Miller*, Federal Practice & Procedure ss 2741, p. 543 (1983). On summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *Koestner v. Carolina Rental Ctr., Inc.* 313 S.C. 490, 493 (1994).

III. ARGUMENT

A. DEFENDANT IS NOT ENTITLED TO SUMMARY JUDGMENT AS THE LAW DOES NOT SUPPORT THE VALIDITY OF THE COVENANTS

For the reasons set forth in Plaintiff's Memorandum in Support of Motion for Summary Judgment, Defendant Brays is not entitled to Summary Judgment as a matter of law insofar as the law directly opposes Defendant Brays claim that the covenants are valid and enforceable against Plaintiff and the Plaintiff's real property located within the plantation ("Subject Property").

The affidavit of Defendant Brays' expert witness, F. Douglas P. Evans, provides no substantive rebuttal of Plaintiff's allegations. The witness, while very likely a competent attorney, offers little more than naked conclusions that everything contained in a document drafted nearly three decades ago entirely complies with every facet of the law simply because

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

the attorney who witnessed its signature was, in the opinion of the expert, "one of the leading lawyers in South Carolina" and therefore any document witnessed by him is certified as "letter perfect and in full compliance with the law". If one could prevail in a Motion for Summary Judgment on any contractual matter simply by exhorting the credentials of the drafter of the document – without making any reference to how the law applies; there would be little need for a judiciary.

Moreover, the references in the affidavit regarding the provenance of the CC&R are not made upon personal knowledge, as required. "Rule 56(e), S.C.R.C.P., requires that on motion for summary judgment, supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively how the affiant is competent to testify to the matters stated therein." Thus, opinion testimony, including that of an expert, which would be inadmissible if testified to at trial may not be set forth in an affidavit. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101; *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C. 1975); 6-Pt. 2 *Moore's Federal Practice* ¶ 56.221, pp. 56-743 to – 746 (2d ed. 1988).

B. SUMMARY JUDGMENT ON THE SECOND CAUSE OF ACTION IS IMPROPER AS THERE HAS BEEN NO DISCOVERY AFFORDED OF PLAINTIFF'S CLAIM

Defendant Brays, and Defendant Brays Realty have not provided any substantive discovery on the matter of civil conspiracy. In the interest of judicial economy, Plaintiff has not commenced discovery requests on this matter insofar as it has made a pending motion for Summary Judgment on the first cause of action and wishes to proceed through the litigation in an orderly fashion. This appears to be supported by Defendant Brays Realty abstaining from bringing a motion for Summary Judgment or making any discovery requests. The

totality of Defendant Brays' evidentiary support for their motion is the assertion by Kevin Rhatigan, who stated that "I am aware of no conversations between Defendants concerning Mr. Burns' proposed purchase of the property on the plantation. In my position, I would know of them if they had occurred. The other Defendant is a separate company, not owned or controlled by Brays Island. There was no reason for Brays Island to "lure" Mr. Burns into ownership as he alleges." *Aff. Kevin Rhatigan.*

Mr. Rhatigan's statement that there were no conversations between Defendant Brays and Defendant Brays Realty regarding the sale of the property appears facially impossible. Defendant Brays would have to be aware of the transaction insofar as they received a 1.5% marketing fee, payable upon purchase and it is inconceivable that there would be no discussion of a new owner given how few transactions take place at the plantation per year. Moreover, the 1.5% marketing fee, which is payable upon every closing, by the purchaser does provide a financial incentive to Defendant Brays to churn properties to new owners.

The basis of the civil conspiracy, as alleged by Plaintiff, the sufficiency of the pleading for which has been established by the Court's denial of Defendant Brays' Motion to Dismiss, is that Defendant Brays has effectively enfranchised Defendant Brays Realty as the exclusive brokerage source for owners seeking to sell property at Brays Island. Nowhere in the CC&R does it provide any reference to Defendant Brays Realty nor is there any indication that Defendant Brays Realty would be permitted to have unique rights among other realtors – including receiving marketing compensation from Defendant Brays and unparalleled access to the Plantation. Defendant Brays has precluded owners from placing "For Sale" signs on their property and has limited access to third-party real estate agents when the owner is not

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

present, while allowing Defendant Brays Realty free access to the Plantation to show properties listed with Defendant Brays Realty.

This enables Defendant Brays Realty to avoid having to provide a more competitive brokerage fee offer for listing properties as no other broker can realistically show the property with the same degree of access as Defendant Brays Realty.

As the effective gatekeeper for the property, Defendant Brays Realty's failure to list the land on any third-party service and preclude other brokers has the effect of forcing would-be sellers to continue to perpetually pay Defendant Brays or be subjected to foreclosure of Defendant Brays' purported lien on the property triggering a sale at Sheriff's auction. This reality is well known to Defendant Brays as they referenced the outcome in their response to Plaintiff's proposal. *Compl. Ex. 3.*

The sufficiency of the civil conspiracy cause of action has been established through the Court denying Defendant Brays' Motion to Dismiss. On this basis, the allegations, albeit in light most favorable to the Plaintiff, if proven true, sustained the elements of civil conspiracy. While Defendant Brays appears to continue to attack the premise of the claim, the Court cannot consider the factual merits without significant discovery – certainly not as a matter of law. Discovery on this cause of action is likely to yield information related to the course of dealings between Defendant Brays and Defendant Brays Realty, as well as the practices of Defendant Brays Realty as effective sole real estate broker to the plantation and its effect on transactions, as compared to other similarly situated real estate.

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

C. DEFENDANT BRAYS IS NOT ENTITLED TO SUMMARY JUDGMENT ON ITS COUNTERCLAIM INSOFAR AS IT IS NOT RIPE IN LIGHT OF PLAINTIFF'S DECLARATORY JUDGMENT ACTION

Defendant Brays Motion for Summary Judgment on its counterclaim is not ripe at this time. For such a claim to be brought would require final adjudication by the Court on Plaintiff's first cause of action seeking declaratory judgment that the CC&R, which is the basis of Defendant Brays' counterclaim, is invalid and unenforceable against Plaintiff & Subject Property. This action is most appropriately severed pursuant to Rule 42 of the South Carolina Rules of Civil Procedure insofar as a separate trial on this claim would ensure the preservation of the "inviolate right of trial by jury as declared by the Constitution or as given by a statute of the State." SCRCP Rule 42(b). In its answer, Plaintiff asserted its right to a jury trial, and as such must be afforded a jury trial of any counterclaims. Defendant Brays waived any right to a trial by jury having made no such demand in their answer.

In the event Plaintiff does not prevail in its Motion for Summary Judgment, Plaintiff anticipates bringing a motion to sever the counterclaim.

IV. OTHER MATTERS

The Plaintiff respectfully requests that the Court hold Defendant Brays' counsel accountable to his obligations in the South Carolina Lawyer's Oath pursuant to Art. V. § 4 of the South Carolina Constitution, Rule 402(k), particularly where counsel has solemnly sworn or affirmed that he will "pledge fairness, integrity, and civility, not only in court, but also in written communications;" moreover, counsel has agreed to "advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which [he is] charged." *Id.*

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Defendant Brays' counsel appears to seek to delegitimize Plaintiff through derisive statements such as that the action "was filed and served by the Plaintiff *pro se* as a preemptive measure to unduly delay collection through bogus allegations." *Def. Mot. Summ. J.* Further, Defendant Brays has entered into evidence irrelevant articles containing lurid and baseless accusations regarding Plaintiff's unrelated former professional affairs. The information in the articles is of no relevant to the matter at bar and seek only to prejudice the honor or reputation of the Plaintiff. *Aff. Kevin Rhatigan Ex. 2.*

The derisive statements were reiterated after the Court has already ruled on the sufficiency of the pleadings insofar as Defendant Brays' Motion to Dismiss for failure to state a claim was denied. It should stand to reason that a veteran member of the South Carolina bar might better occupy their time addressing the substantive merits of the case. Moreover, Defendant Brays and its counsel have repeatedly insinuated in pleadings that the case is improperly brought *pro se*, as though it is of lesser merit having been filed by the Plaintiff. While the Plaintiff is certainly not a member of the South Carolina (nor any other state bar association) and expressly disclaims any authority to practice before the Court, except *pro se*, the Plaintiff does benefit from having taken Civil Procedure in law school (and was awarded the Cali Award for the highest grade in Civil Procedure I) and on the strength of the merits of this case, is prepared to advance this matter through trial; and to that end would hope opposing counsel might afford the level of courtesy that Plaintiff has always extended, and opposing counsel is required by their obligations under the state constitution.

CONCLUSION

For the reasons set forth above, as well as in the Motion for Summary Judgment, incorporated herein by reference, the Plaintiff respectfully requests that this Court grant the Motion for Summary Judgment declaring the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 invalid an unenforceable against Plaintiff and the Subject Property.

Dated: August 16th, 2017

A Burns

Alexander Burns
Plaintiff

ELECTRONICALLY FILED - 2017 Aug 18 10:47 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure, Plaintiff, Alexander Burns, hereby submits this memorandum in support of its motion for an order granting partial summary judgment in favor of the Plaintiff. For the reasons set forth below, the Plaintiff requests that the Court grant Plaintiff's Motion for Partial Summary Judgment in accordance with the South Carolina Rules of Civil Procedure Rule 56 and find in favor of the Plaintiff's claim for a declaratory judgment finding the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 (the "CC&R") invalid and unenforceable by Defendant Brays Island Plantation Colony, Inc. ("Defendant Brays") against Plaintiff and Plaintiff's 1 acre of real property located within the Brays Island Plantation ("Subject Property").

I. SUMMARY OF RELEVANT FACTS & PROCEDURAL HISTORY

This action was brought by Plaintiff on February 15th, 2017, following a series of correspondence between Plaintiff and the management of Defendant Brays. Upon notice to Defendant Brays that Plaintiff was seeking to sell the Subject Property and was no longer interested in maintaining the membership portion of the Plantation, Plaintiff engaged in a series

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

of discussions with management of Defendant Brays concerning opportunities to defer the fees pending sale. Defendant Brays advised that while others had previously sought to cancel the membership, it was not cancelable under any circumstances prior to sale and the only offer that would be accepted would be a promissory note, secured by a confession of judgment, for which interest would be applied and principal payments must be made, further this note would not mitigate any continued membership related fees despite Plaintiff's assertion that it was uninterested in using any of the membership related services (having not been to the Plantation since approximately July of 2016). *Compl. Ex. 3.*

Despite Defendant Brays indication that it was "not interested in suing our owners", a cursory review of the Beaufort County Court Civil Docket found that Defendant Brays has been a frequent and active litigant against its owners. *Compl. Ex. 3.* Such recent litigation has notably included suing the estate and heirs of Sumner Pingree, the founder of the Brays Island Plantation Colony for unpaid assessments. *Brays Island Plantation Colony, Inc. v. Rebecca Pingree et al.* 2016-CP-07-1678. Moreover, since the commencement of this action, Defendant Brays has commenced another lawsuit against Heirloom Building Company, on the same basis. *Brays Island Plantation Colony, Inc. v. Heirloom Building Company* 2017-CP-07-00948. Given Defendant Brays' clearly litigious inclinations, Plaintiff believed it prudent to file a declaratory judgment action proactively seeking judicial intervention on the basis of the issues with the application of the CC&R by Defendant Brays. In this action, Plaintiff also included a second cause of action against Defendant Brays and Brays Island Realty, LLC ("Defendant Brays Realty") for civil conspiracy.

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

On March 15th, 2017 Defendant Brays filed a Motion to Dismiss all causes of action for failure to state a claim. Plaintiff opposed this motion and a hearing was held on April 11th, 2017. On April 17th, 2017, the Court denied Defendant Brays' motion in its entirety.

II. STANDARD OF REVIEW

A party may obtain summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson* 267 S.C. 152,155 (1976). In that way, a motion for summary judgment is akin to a motion for a directed verdict because in each instance, one party must lose as a matter of law. *Main v. Corley* 281 S.C. 525, 526 (1984).

III. SUMMARY OF ARGUMENT

The invocation of a non-cancellable agreement that exists for an unlimited period of time for which the only way to exit the contract is to sell to someone willing to endure the same fate, when the market for such arrangements has been characterized by the property's own captive real estate broker as "*a marathon and not a sprint, and every seller should expect that it could take years to sell*" should cause the Court to look upon the perpetual nature of such an arrangement with skepticism. When the agreement permits one party to enforce lien rights as a means of collection pursuant to a covenant of real property, the skepticism becomes elevated given the limited application of affirmative covenants for real property under the law. When the payments under the agreement rise to a level by which they would deplete the value of the land

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

purchased in the transaction in just over six years (irrespective of real estate taxes, or the cost of financing the purchase), and the value of the property is considered to have decreased if a buyer can even be found, such an arrangement cannot be found to have any benefit upon the land (an essential component of real property covenants). Finally, when the nature of such perpetual individual assessments is for the purpose of defraying other members expenses relating to golf, quail hunting, other recreational activities (such as wine tasting and yoga), and dining, the Court must declare this agreement as being a personal agreement (as opposed to covenants concerning real property) akin to that of a country club membership, for which, if there is no set cancellation period, is to be terminated upon notice of either party.

IV. ARGUMENT

A. THE CC&R AS SET FORTH VIOLATE SOUTH CAROLINA COMMON LAW INSOFAR AS THEY ARE PERPETUAL.

The Plaintiff's claim under the first cause of action is for a declaratory judgment on the basis that the CC&R are invalid as a matter of South Carolina law and therefore unenforceable against Plaintiff and the Subject Property.

The duration of the CC&R is governed by Section 14.05 which states that:

> "The provisions of this Declaration shall run with, and bind title to the Plantation, shall be binding upon and inure to the benefit of all Owners and mortgages and their respective heirs, executors, legal representatives, successors and assigns, and shall remain in effect for a period of thirty (30) years from and after the date of is Declaration, provided that the rights and easements which are stated herein to have a longer duration shall have a longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall automatically be renewed for successive ten (10) year periods. The number of ten (10) year periods shall be unlimited with this Declaration, being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however that there shall be no renewal or extension of this Declaration, if, during the last year of the initial thirty (3) year period or the last year of any ten (10) year renewal period, ninety percent (90%) of the total votes of the Colony are cast in favor of terminating this Declaration at the end of the current term.

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

"Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only when the perpetual nature of the agreement is an express term of the contract." *See Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 102 (S.C. 1994); *See Also Childs v. City of Columbia*, 87 S.C. 566 (1911). The distinction of whether the perpetual nature of the CC&R has violated South Carolina law is an essential factual determination in this matter as contracts violating the law are unenforceable. *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained); *see also* 17A Am. Jur. 2d Contracts § 323 (2004) ("[I]f a question of illegality develops during the course of the trial, a court must consider that question, whether pleaded or not.").

In *Carolina Cable Network*, the court extensively discusses the nature of perpetual lease obligations, which the Court should find analogous to affirmative obligations to make payments for individual assessments (inherently funding recreational charges) under the CC&R. For the *Carolina Cable* court, the lease provided a one year term and an unqualified right to renew. The lease seemingly attempted to confer to the lessee a perpetual right of renewal, however the court held that the lack of a contract term providing specific duration of the lease was a fatal defect. Accordingly, the court refused to recognize a perpetual right of renewal without evidence that the parties intended that result. The court stated, "It would be unreasonable to impute to the parties an intention to make a contract binding themselves perpetually." 316 S.C. 98 (1994)

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

(*quoting Childs v. City of Columbia*, 87 S.C. 566, 572 (1911)). Therefore, the contract was held terminable at will by either party upon reasonable notice. *Id.*

When considering the ambiguities of the CC&R, ambiguities must be strictly construed against the party seeking to enforce them. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270 (1987); *Seabrook Island Prop. Owners Assoc. v. Marshland Trust, Inc.* 358 S.C. 655, 662 (Ct.App.2004).

Given the clear disfavor for perpetual agreements and the unilateral burden of resolving ambiguities in favor of the Plaintiff, the CC&R is to be considered perpetual insofar as it is non-cancelable by either Plaintiff nor Defendant Brays, but only by a vote which may occur at most once in a decade, by a group of 324 other parties (themselves not inherently in common interest with Plaintiff), for which a 90% threshold is required for termination, must be seen as effectively perpetually binding the parties as it is inescapable by the parties themselves and runs for an unlimited number of ten year periods beyond the thirty year initial period. As a practical matter, 33 (10.1%) owners can force the other 292 (89.9%) owners to be subjected to the CC&R for the rest of time, even if it is clear that the other 292 owners have no interest in remaining.

Clearly the drafters of the CC&R were concerned that the agreement might be viewed as perpetual insofar as they set forth a shambolic work-around in the form of an entirely unrelated measuring. Section 14.06 of the CC&R provides for "If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or avoidable for violation of the rules against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Fitzgerald Kennedy – mother of U.S. Senator Edward Kennedy." *Compl. Ex. 1.* The Plaintiff has previously articulated the absurdity of using such the *21 years after the death of last survivor of*

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

the now living descendants of Mrs. Rose Kennedy as a measuring life in this transaction. Notably, at any given time the last survivor of the now living descendants is impossible to discern as it stems from a class of people and not a single person, as is required by the Uniform Statutory Rule Against Perpetuities, as codified under SC Code *Ann.* 27-6-10 *et. esq.* ("USRAP").

Moreover, the obligation that the parties constantly assess the mortality of the remaining Kennedy clan, a group which includes private citizens with whom there is no obligation for their death to be widely reported, in order to determine if the covenants affecting a South Carolina plantation are effective, is outside of the bounds of a reasonable imposition upon the parties.

Fortunately, the Court need not consider the specific merits of this issue as Defendant Brays, in their Motion to Dismiss, has asserted that the CC&R are not subject to the USRAP for numerous reasons and therefore is estopped from arguing that the perpetual nature of the CC&R is reformed by the *measuring life. Defendant Brays Mot. Dismiss* ¶ 1-3.

B. THE OF INDIVIDUAL ASSESSMENTS ARE UNENFORCABLE AGAINST PLAINTIFF AS THEY ARE PERSONAL COVENANTS AND NOT REAL COVENANTS.

Arguendo, even if the CC&R were to survive as being valid, the individual assessments as set forth in Section 9 are unenforceable as they are inherently personal covenants that do not run with the land and therefore the obligations do not carry over to Plaintiff upon purchase of the land. In *Raintree v. Rowe,* the court set forth a three part test to analyze whether covenants create a real covenant: (1) the intent of the parties as can be determined from the instruments of record; (2) the covenant must be so closely connected with the real property that it touches and concerns the land; and (3) there must be privity of estate between the parties to the covenant. *20 Am.Jur.2d Covenants, Conditions, Etc.* §30 (1965).

The facts of *Raintree* are similar to the matter at bar except that in this instance, the

Plaintiff has proactively sought judicial intervention prior to any claim by the Defendant. In *Raintree*, an action was brought by a Corporation (as assignee of a developer's rights under a similar covenant arrangement) against a property owner to recover a balance due on maintenance assessments, country club dues, interest and attorney's fees and also to enforce claim of lien by execution and sale. On appeal, the *Raintree* court held that "Express intent of parties can prohibit a covenant from running with the land, but it cannot make a personal covenant run with the land." *Id quoting* 7 Thompson on Real Property §3155 (1962). With regard to the evidentiary burden of the covenants, "The party claiming the benefits of the restrictions has the burden of showing they are covenants running with the land." *Id.* Defendant Brays has made no showing of how these covenants might run with the land instead resting on conclusory statements by third-party attorneys and affirmative defenses of acceptance and waiver, none of which are available in a matter in which the burden is on Defendant Brays to prove that the covenants do run with the land instead of their wish that they do. *Raintree* makes clear that "The Declaration of Covenants, Conditions and Restrictions contains the recital that the covenants are to be construed to run with the land. There is no doubt that the developer intended the covenant to run. This recital is not controlling." *Id.*

> "To touch and concern the land, the object of the covenant must be annexed to, inherent in, or connected with, land or other real property or related to the land granted or demised." *Id. quoting 20 Am.Jur.2d Covenants, Conditions, Etc.* §29 (1965). The *Raintree* court goes on to review the standard for an affirmative covenant (requiring that a party do something as opposed to refrain from doing something), "As a result of the common law rule on affirmative covenants, the requirements for a covenant to run are to be more strictly applied to affirmative covenants than negative covenants." *Id.*

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

As if reading this matter, the *Raintree* court provides clear guidance on the issue of country club type dues as applicable to covenants, "This covenant creates an affirmative duty, a charge or obligation to pay money *i.e.* country club dues, for the services and use of the country club facilities which are not upon, connected with, or attached to the defendants' land in any way. The defendants are required to pay whether they use the facilities or not. The payment of a collateral sum of money does not concern the land." *Id.*

This reasoning has been upheld in South Carolina as "Covenants that require property owners to pay to a developer or homeowners' association assessments that have a beneficial effect on the value of the owners' properties touch and concern land and therefore 'run with the land.'" *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.* 368 S.C. at 357 (*citing Harbison Cmty. Assoc., Inc. v. Mueller*, 319 S.C. 99, 102 (Ct.App.1995). "Restrictive covenants will be enforced unless they are indefinite or contravene public policy." *Id.* at 362 (citing Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270 (1997)).

Section 4.02 of the CC&R explicitly sets forth a mandatory membership for all owners to have access to the Common Areas. *Compl. Ex. 1.*

Further establishing the assessment as collateral and having nothing to do with the land, the calculation for the individual monthly assessments is based upon the number of members, Section 4.02(d) states "If the owner of a Lot designates more than one Member of the Colony for any one lot the Owner shall pay the additional assessments as provided by Section 9.03 of this Declaration" *Id.* Section 9.03 states "The annual assessment for each lot shall be calculated according to the number of Members who are designated by the Owner of that a lot for the year in which the assessment is to be effective. The annual assessment for a Lot with (1) or no Member designated for that year shall be increased by fifty (50%) per cent if

two (2) Members designated for that year and by one hundred (100%) per cent if three (3) Members are designated for that year." *Id.* If the property owner can be charged a multiple of the assessment based solely on the number of "members" – irrespective of lot size, as all lots are exactly 1 acre, and irrespective of property value, or any other land based assessment, the covenants cannot be *so closely connected with the real property that it touches and concerns the land.*

Whether a given property has one or two members does not affect the property itself in any fashion and yet it is the basis for calculating the individual assessment. Obviously, this is because the fee is related to the use of membership services by individuals as opposed to having anything to do with the infrastructure services of the land. A fee for the use of recreational amenities (such as golf courses, quail shooting, and dining facilities) and common areas unrelated to a parcel of land, which are calculated based upon the number of persons admitted as members must be seen as inextricably linked to the number of persons, and thus personal and not bounded by the land – the characteristics of which have no bearing on its calculation.

For two centuries, the courts have recognized that covenants must "benefit and burden" the land. Any affirmative restrictive covenants must have a beneficial effect on the value of the owners' properties in order to be recognized as a valid covenant. *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.* 368 S.C. at 357 (*citing Harbison Cmty. Assoc., Inc. v. Mueller*, 319 S.C. 99, 102 (Ct.App.1995). The basic theory behind assessments for homeowners associations was to provide a common pooling for funds necessary to support the critical infrastructure common to neighbors as a way of ensuring the continued appreciation of

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

the neighborhood's property values, not as a means of forcing some neighbors to subsidize the quail hunting of other neighbors.

The current individual assessments in the CC&R create a negative carry at a rate of approximately 16% of the Plaintiff's purchase price of the Subject Property per annum[1]. At this rate, the value of the Subject Property would be reduced from that of the purchase price to zero in just over 6 years from purchase.

Defendant Brays Realty's own estimates for sale prices appear to be approximately 12% lower than the Plaintiff's purchase price[2], less than three years ago, despite land values all over Beaufort County increasing during the same period. The negative carry combined with the impact on sales price clearly demonstrates that these covenants cannot possibly be seen as benefitting the property value as they effectively suffocate any possibility of achieving any value over a number of years – let alone recouping (or profiting beyond) the purchase price.

In Section 4.02(c) the CC&R Defendant Brays reserves the right to deny or terminate membership of any person. *Compl. Ex. 1.* To the extent that access to the common areas and recreational amenities is governed by a membership and membership may be denied or terminated by Defendant Brays, the covenants governing assessments based upon this membership cannot be seen as running with the land insofar as land ownership would seem to be the only necessary prerequisite for access if a covenant ran with the land.

[1] $27,615.28 (annual assessment sum of $1,860 per month of individual assessment + $107.94 monthly grille assessment + $4,000 annual capital assessment – sum does not include gratuities and additional use fees, as paid through omnibus account) / $170,000 (Plaintiff's purchase price for property)

[2] Paul Burton, Broker at Brays Island Realty, had indicated that some sellers were willing to sell around the $150k (a discount of $20k to Plaintiff's purchase price) when Plaintiff listed the property in October of 2016. Plaintiff has received no communication regarding offers since the Subject Property was listed by Defendant Brays Realty on 10/21/2016.

ELECTRONICALLY FILED - 2017 Aug 18 10:46 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

The Plaintiff recognizes the need for a common fund for the maintenance of the property irrespective of the use of the recreational facilities, as part of the effective *country club membership*. The annual capital assessment of $4,000 per annum provides Defendant Brays with $1,300,000[3] of income for which to undertake the essential services of maintaining the plantation's infrastructure for homeowners. At $4,000 per annum, the annual capital assessment is approximately 2.35% of the purchase price of Plaintiff's property, which is similar to the customary fees incurred in other HOA type transactions.

Given the considerable burden, imposed at common law, for Defendant Brays to affirmatively establish that the covenants governing individual assessments for defraying expenses of recreational charges (based upon the number of members), and the defects of the covenants on the basis of their inherently perpetual construction, the Court cannot find that the CC&R are valid real property covenants and are enforceable against Plaintiff and the Subject Property.

CONCLUSION

For the reasons set forth above, as well as in the Motion for Summary Judgment, incorporated herein by reference, the Plaintiff respectfully requests that this Court grant the Motion for Summary Judgment declaring the Declaration of Covenants, Conditions and Restrictions of November 11th, 1988 invalid an unenforceable against Plaintiff and the Subject Property.

Dated: August 16th, 2017

Alexander Burns
Plaintiff

[3] Product of $4,000 per year x 325 units at the Plantation

ELECTRONICALLY FILED - 2017 Aug 17 4:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
ALEXANDER BURNS,	)	CASE NO.: 2017-CP-07-00265
	)	
PLAINTIFF,	)	
	)	
VS.	)	MEMORANDUM CONCERNING
BRAYS ISLAND PLANTATION COLONY, INC. and BRAYS ISLAND REALTY, LLC,	)	MOTIONS FOR SUMMARY JUDGMENT
	)	
DEFENDANTS.	)	

The Plaintiff's lawsuit is a baseless preemptive *pro se* attempt by a delinquent property owner to avoid paying legitimate owner fees and other amounts that he owes for his enjoyment of the amenities at Brays Island Plantation. The Plaintiff's obligation arises under valid longstanding general covenants properly filed in the real estate records that are enforceable against him. He claims breach of the rule against perpetuities and civil conspiracy. His complaint originally also included a claim for breach of the South Carolina Consumer Protection Act, which he has now dropped. The remaining claims are not valid, either. Brays Island has counterclaimed for the amounts owed. Its claims are valid. The Plaintiff and Brays Island have each moved for summary judgment. The Plaintiff's motion should be denied. Brays Island's motion should be granted.

South Carolina's rule against perpetuities originated at common law. In 1987 it was codified as a uniform law at S.C. Code 27-6-10 et seq., a copy of which is attached. The covenants at issue were adopted a year later. The rule does not apply to the covenants.

ELECTRONICALLY FILED - 2017 Aug 17 4:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

> Defendants incorrectly contend the deed restrictions are a restraint on the alienation of property or transferability of realty with no time limit and, therefore, are void as a violation the rule against perpetuities. To the contrary, the rule against perpetuities does not pertain to covenants restricting the land to certain uses. Gibson v. Huffman, 246 Ga. App. 218, 540 S.E.2d 222 (2000) citing McKinnon v. Neugent, 225 Ga. 215, 167 S.E. 593 (1969) and Reeves v. Comfort, 172 Ga. 331, 157 S.E.2d 629 (1931).

Under the common law the rule did not apply to covenants. That exclusion is preserved in Section 27-6-50 (7) of the South Carolina statute, which provides that it does not apply to "a property interest ... that was not subject to the common law rule against perpetuities."

Moreover, the rule applies only to interests that are not vested. S. C. Code 27-6-20(A). The interest of Brays Island under the covenants - in getting paid by property owners - vested at the time of its creation. Therefore, it falls outside the rule.

Further, the plaintiff does not have an interest under the covenants. Instead, he has an obligation. The rule applies only to interests, otherwise known as estates. "[T]he rule against perpetuities deals with estates in land and the vesting of estates, and does not relate to covenants restricting the land to certain uses." McKinnon, supra.

Even if the Plaintiff could clear these hurdles, the statute would not apply because Section 27-6-50(1) specifically excludes non-vested property interests arising out of a "non-donative transfer." The Plaintiff himself alleges that he purchased his property interest. It was not a donation. The fees at issue under the covenants are not donations, either. The Plaintiff alleges a "non-donative" matter that is outside the rule.

If the rule did apply, the Brays Island covenants are in compliance. Under the South Carolina statute there are two ways that this can occur. The first is under the "life in being" sub-section. S.C. Code 27-6-20(A)(1) The second is under the "90 year" subsection. S.C. Code 27-6-20(2) Either is sufficient.

ELECTRONICALLY FILED - 2017 Aug 17 4:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

The "life in being" sub-section does not require that a specific person be named. It refers only to "an individual then alive."

> The measuring life need not be specified or even mentioned in the distribution. The donor need not intend any particular person to be the measuring life. The measuring life need not be a relative of any taker, or the holder of a previous estate or of any interest in the distribution. *Understanding the Measuring Life in the Rule Against Perpetuities*, 1974 Wash. U. L. Q. 265 (1974) (citations omitted)

It is a common practice to select a prominent family in order to comply with the rule's "life in being" requirement. That was done for the covenants.

Also, vesting has occurred within 90 years after creation of the interest. That is also compliance. The covenants were created in 1989; the Plaintiff bought his property and became subject to them in 2014.

Covenants such as those at issue are well recognized and accepted by the courts. "Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." Queen's Grant II v. Greenwood Development, 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006), citing 17 S.C. Jur. Covenants §18 (2005). The Plaintiff is bound by them.

The Plaintiff's claim for civil conspiracy should also be dismissed. This is required for several reasons.

First, "the damages alleged must go beyond the damages alleged in other causes of action." Pye v. Fox, 369 S.C. 555,568, 633 S.E.2d 505 (2006) The damages alleged by the Plaintiff in his conspiracy cause of action arise solely from enforcement of the covenants, which he attacks in his only other cause of action. Because the damages are the same, the conspiracy claim fails.

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It was upon this ground that the circuit court judge dismissed the conspiracy claim in Pye, supra, (aff'd on other grounds).

Second, the "'essential consideration" in civil conspiracy" is "whether the primary purpose or object of the combination is to injure the plaintiff." Pye, supra, 369 S.C. 567. The complaint itself is clear that the lawsuit is based on general covenants applicable to all property owners at Brays Island Plantation. It is upon the "primary purpose" ground that the South Carolina Supreme Court affirmed the circuit judge's grant of summary judgment in Pye. "There was absolutely no evidence submitted at the summary judgment stage supporting an agreement between Hill and Richard Fox to injure the Pyes." Pye, supra, 369 S.C. 568.

Third, the Plaintiff has offered no proof of the required elements of this cause of action. "The elements of civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. ... It is essential that the plaintiff prove all of these elements in order to recover." Pye, supra, 369 S.C. 567. The Plaintiff has offered no proof. Even his allegations undermine his case. The Plaintiff wanted property at Brays Island, so he bought it from another owner. He did not buy it from Brays Island Plantation. He knew about the covenants. He used the amenities at the plantation and now he does not want to pay for them. Buyer's remorse and reluctance to pay for one's chosen lifestyle and investment are not grounds for civil conspiracy.

Finally, the Defendants have submitted affidavits from F. Douglas P. Evans, Kevin Rhatigan and Paul Burton establishing that there is no genuine issue of fact and that Brays Island is entitled to judgment as a matter of law. They are dispositive. Rule 56(e) SCRCP. For this final, and

independent, reason, the Court should deny the Plaintiff's motion for summary judgment and grant summary judgment in favor of Brays Island.

No doubt the Plaintiff thought that by filing a lawsuit against Brays Island Plantation before being sued himself, he could negotiate a reduction of his debt. He is wrong. The Court should dismiss his case, and he should pay his bill.

s/Carl F. Muller
Carl F. Muller SC Bar 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
864.991.8904
carl@carlmullerlaw.com
Attorney for Defendant, Brays Island Plantation Colony, Inc.

August 17, 2017

Greenville, South Carolina

ELECTRONICALLY FILED - 2017 Aug 17 4:09 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

DATE & TIME CANCELLED
2017 JUN -8 PM 12: 33
BEAUFORT COUNTY, S.C.
CLERK OF COURT
DATE & TIME CANCELLED

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE FIRST CAUSE OF ACTION AGAINST BRAYS ISLAND PLANTATION COLONY, INC.

2017 JUN 26 PM 1: 11
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff, Alexander Burns, hereby moves this Court for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting summary judgment in favor of the Plaintiff on the first cause of action seeking a declaratory judgment against Defendant Brays Island Plantation Colony, Inc.

The motion is made upon the basis that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment in its favor as a matter of law. Specifically, Defendant Brays Island Plantation Colony, Inc. has alleged no facts supporting the validity of the Brays Island Plantation Declaration of Covenants, Conditions and Restrictions, as executed on November 11th, 1988, as enforceable against Plaintiff and its property.

The motion is also based upon applicable common and statutory laws of the State of South Carolina and such memoranda of law as hereafter may be submitted.

THEREFORE, Plaintiff prays that this Court grant this Motion for Summary Judgment in favor of the Plaintiff.

June 6th, 2017

Alexander Burns
Plaintiff pro se
934 Richter Way
Mt. Pleasant, SC 29464
(843) 300-1738
law@alexanderburns.com

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	**AFFIDAVIT OF SERVICE BY MAILING**
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

2017 JUN 26 PM 1:11
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff states that on June 6th, 2017, he served a true and correct copy of the Motion for Summary Judgment upon Defendant Brays Island Planation Colony, Inc., through their counsel, by depositing the same in the US mail, postage prepaid, addressed to: Carl F. Muller, Esq. 607 Pendleton Street, Suite 201, Greenville, SC 29601.

AB

Alexander Burns

Plaintiff

2017 JUN 28 PM 12:33
BEAUFORT COUNTY, S.C.
CLERK OF COURT
DATE & TIME CANCELLED
DATE & TIME CANCELLED

Sworn before me this 6th day of June, 2017:

Lysetta R. Coleman
Commission Expires March 24,2025
South Carolina-Notary Public

Lysetta Coleman

[NOTARY SEAL]

Notary Public of South Carolina

My Commission Expires: 3-24-2025

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Beaufort) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-07-00265
Alexander Burns)
Plaintiff) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
Brays Island Plantation Colony, Inc. et al)
Defendant)

DATE & TIME CANCELLED
2017 JUN -8 AM 12:33
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff's Attorney:	Defendant's Attorney:
Alexander Burns, Bar No. pro se Address: 934 Richter Way, Mt. Pleasant, SC 29464 Phone: (843) 300-1738Fax ____ E-mail: acb@alexanderburns.com Other: ____	Carl F. Muller, Esq., Bar No. 4131 Address: 607 Pendleton St, Suite 201 Phone: 864-991-8904 Fax____ E-mail: carl@carlmullerlaw.comOther: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES/☐ NO

2017 JUN 26 PM 1:11
BEAUFORT COUNTY, S.C.
CLERK OF COURT

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

A-B
Signature of ~~Attorney for~~ Pro Se ☒ Plaintiff/☐ Defendant 06/06/2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: ____

JUDGE CODE ____
Date: ____

CLERK'S VERIFICATION

Collected by:____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

ELECTRONICALLY FILED - 2017 Jul 27 4:36 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
ALEXANDER BURNS,	)	CASE NO.: 2017-CP-07-00265
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	MOTION FOR SUMMARY JUDGMENT
BRAYS ISLAND PLANTATION COLONY, INC. and BRAYS ISLAND REALTY, LLC,	)	
	)	
DEFENDANTS.	)	
	)	

The Defendant Brays Island Plantation Colony, Inc. ("Brays Island") hereby moves for summary judgment against the Plaintiff on all remaining causes of action set forth in his Complaint, and also moves for summary judgment in its favor on its Counterclaim. The Plaintiff has withdrawn his claim under the South Carolina Consumer Protection Code. Brays Island is entitled to judgment against the Plaintiff in the amount of Thirty-two Thousand One Hundred Thirty-five and 50/100 Dollars ($32,135.50) through April 25, 2017, for additional assessments, interest at the rate of eighteen per cent (18%) per annum, all costs and expenses of collection (including court costs, expenses, and a reasonable attorney's fee) and any other amounts provided or permitted under the Covenants and agreement described in the Counterclaim or by law, and for such other and further relief as shall be proper.

The Plaintiff has failed and refused to pay all amounts justly due to Brays Island under the governing homeowners Covenants, all as more fully set forth in the Counterclaim. The Complaint

ELECTRONICALLY FILED - 2017 Jul 27 4:36 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

was filed and served by the Plaintiff *pro se* as a preemptive attempt to unduly delay collection through bogus allegations. It is without merit. The Covenants are valid and enforceable and there was no civil conspiracy by the Defendants against the Plaintiff.

This motion is based upon the law, upon the pleadings, upon the affidavit of William Fabian verifying the Counterclaim, and upon the affidavits of Kevin Rhatigan, F. Douglas P. Evans, Esq. and Michael Todd Smith, Esq. to be submitted forthwith.

There is no genuine dispute concerning the facts and judgment as aforesaid should be granted in favor of Brays Island.

s/Carl F. Muller
Carl F. Muller SC Bar 4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, SC 29601
864.991.8904
carl@carlmullerlaw.com
Attorney for Defendant, Brays Island Plantation Colony, Inc.

July 27, 2017

Greenville, South Carolina

STATE OF SOUTH CAROLINA) **)** **COUNTY OF BEAUFORT)** **)** **ALEXANDER BURNS)** **(Plaintiff))** **)** **-versus-)** **)** **BRAYS ISLAND PLANTATION)** **COLONY, INC., &)** **BRAYS ISLAND REALTY, LLC)** **(Defendants))**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CASE NO.** 2017-CP-07-00265 **COUNTERCLAIM** **ANSWER OF ALEXANDER BURNS** ***(Jury Trial Demanded)***

Now comes the Plaintiff, Alexander Burns ("Plaintiff"), and states the following as answer to Defendant Brays Island Plantation Colony, Inc. ("Defendant Brays") counterclaim.

2017 MAY 12 PM 12:21
JEAN ANN ROSENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1. Plaintiff denies every allegation not specifically admitted to.
2. Plaintiff denies paragraphs 15, 17, 20, 21, 22, 23 & 24.
3. Plaintiff admits paragraph 16 to the extent that it believes Defendant Brays to be incorporated as a not-for-profit corporation organized and existing under the laws of the State of South Carolina and having its principal place of business in Beaufort County, South Carolina.
4. Plaintiff admits paragraph 18 & 19.
5. Plaintiff denies the allegations contained in the Prayer for Relief.

Wherefore, having answered Defendant Brays' counterclaim, Plaintiff raises the following defenses, including affirmative defenses:

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES OF THE PLAINTIFF

Without prejudice to the denials of the allegations in Defendant Brays' Counterclaim, pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, the Plaintiff states affirmative defenses as follows:

First Affirmative Defense
(Ripeness)

6. The damages complained of by Defendant Brays are not ripe. Defendant Brays' claim is contingent upon a determination by this Court that the purported agreement between the parties is valid and enforceable against Plaintiff and its property. Plaintiff has already sought a declaratory judgment on this issue. As the matter of the validity and enforceability of this purported agreement is already at issue before this Court, Defendant Brays' counterclaim is not ripe.

Second Affirmative Defense
(Failure to Allege Facts)

7. Defendant Brays' claim is barred because the counterclaim fails to state facts sufficient to constitute a cause of action against Plaintiff.

Third Affirmative Defense
(Fraud in the Inducement)

8. Defendant Brays' claim is barred because the purported agreement between Defendant Brays and Plaintiff was entered by fraudulent inducement.

Fourth Affirmative Defense
(No Meeting of the Minds)

9. Defendant Brays' claim is barred because there was never a meeting of the minds to the material terms of the purported agreement between Plaintiff and Defendant Brays, and accordingly, there existed no valid and enforceable contract.

Fifth Affirmative Defense
(Unclean Hands)

10. Defendant Brays' claim is barred by the doctrine of unclean hands because the inequitable conduct of Defendant Brays directly related to the subject matter of this litigation, has caused prejudice and injury to Plaintiff.

Sixth Affirmative Defense
(Illegality)

11. To the extent that any provisions or the performance of any act under the purported agreement may be inconsistent with South Carolina law and statute, Defendant Brays' claim is barred, in whole or in part, under the doctrine of illegality.

Seventh Affirmative Defense
(Unjust Enrichment)

12. Defendant Brays' claims are barred by the doctrine of unjust enrichment.

Eighth Affirmative Defense
(Lack of Consideration)

13. Defendant Brays' claims are barred due to a failure of consideration.

Affirmative Defense
(Reservation and Non-Waiver)

14. Plaintiff reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and is consistent with the applicable South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Defendant Brays' counterclaim, Plaintiff Alexander Burns, hereby requests that this Court dismiss this counterclaim against Plaintiff, and for such other and further relief as this Court deems just and proper.

AB

Alexander Burns
Plaintiff, *pro se*
934 Richter Way
Mt. Pleasant, SC 29464

May 8th, 2017
Charleston, South Carolina

ELECTRONICALLY FILED - 2017 Apr 25 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Alexander Burns,)) Plaintiff,)) vs.)) Brays Island Plantation Colony, Inc.) and Brays Island Realty, LLC,)) Defendants.)	CASE NO.: 2017-CP-07-00265 ANSWER AND COUNTERCLAIM OF BRAYS ISLAND PLANTATION COLONY, INC.

The Defendant Brays Island Plantation Colony, Inc. (the "Defendant"), answering the Complaint of the Plaintiff, would state:

For a First Defense
General Denial

Except as hereinafter specifically admitted, the Defendant denies each and every allegation of the Complaint.

1. The Defendant admits Paragraphs 1, 2, 4, 9, 13, 14, 15, 16, 28 and 29 of the Complaint.

2. The Defendant is without sufficient information to admit or deny Paragraphs 6, 8, 12 and 18.

3. In further answer, the Defendant admits and alleges that certain of the rights and obligations of the Owners concerning the Plantation are set forth in a lawful and enforceable Declaration of Covenants, Conditions, and Restrictions originally dated November 11, 1988, and properly filed in the public records of Beaufort County, South Carolina, including amendments (the "Covenants"). The Covenants and other documents described in the Complaint speak for themselves and the Defendant denies all allegations concerning them that are at variance with the originals. The

ELECTRONICALLY FILED - 2017 Apr 25 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Plaintiff received a copy of the Covenants, and they were otherwise available to him, before he purchased the Property and became an Owner. The Plaintiff purchased the Property and has been an Owner on the Plantation since the fall of 2014. The charges complained of by the Plaintiff in his Complaint, sent monthly by the Defendant, are detailed, valid and proper, and comply with the Covenants. Approximately two years after purchasing the Property, the Plaintiff listed it for sale with the Defendant Brays Island Realty, LLC.

4. The Defendant denies all allegations not specifically admitted above, and denies that the Plaintiff is entitled to the relief requested.

For A Second Defense
Failure to State a Claim

5. The above defense and allegations are incorporated herein by reference, to the extent not inconsistent with this defense.

6. The Defendant is not liable because the Complaint fails to state facts sufficient to constitute a cause of action against it.

For a Third Defense
Laches

7. The above defenses and allegations are incorporated herein by reference, to the extent not inconsistent with this defense.

8. The Plaintiff's claims are bared by the doctrine of laches.

For A Fourth Defense
Waiver

9. The above defenses and allegations are incorporated herein by reference, to the extent not inconsistent with this defense.

10. The Plaintiff's claims are barred by the doctrine of waiver.

ELECTRONICALLY FILED - 2017 Apr 25 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

11. In his Complaint, the Plaintiff acknowledges that he was aware of the Covenants prior to purchasing the Property.

12. The Plaintiff has therefore waived his claims in the Complaint.

For a Fifth Defense
Acceptance

13. The above defenses and allegations are incorporated herein by reference, to the extent not inconsistent with this defense.

14. The Plaintiff's claims are barred by his acceptance of the Covenants.

COUNTERCLAIM

The Defendant, counterclaiming against the Plaintiff, would respectfully show unto the Court that:

15. The Defendant incorporates into this Counterclaim each and every consistent allegation of its Answer.

16. The Defendant is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and having its principal place of business in Beaufort County, South Carolina.

17. The Plaintiff is an individual, and the owner of real property at Brays Island Plantation in Beaufort County, South Carolina, governed by certain contractual covenants in favor of and enforceable by the Defendant. The Plaintiff is subject to the *in personam* jurisdiction of the State of South Carolina because of his residency in South Carolina, his ownership and use of the aforementioned real property and because of the governing covenants, which created contractual obligations to be performed in South Carolina.

18. The Court has jurisdiction over the subject matter of this counterclaim.

19. Venue for this counterclaim is properly laid in Beaufort County, South Carolina.

20. The ownership of real property at Brays Island Plantation is governed by a Declaration of Covenants, Conditions and Restrictions dated as of November 11, 1988, as amended, and originally

ELECTRONICALLY FILED - 2017 Apr 25 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

recorded at the RMC Office for Beaufort County, South Carolina, in Book 520, beginning on Page 474 (the "Covenants"). By acceptance of ownership of his lot at Brays Island Plantation, the Plaintiff covenanted and agreed to pay to the Defendant, pursuant to the Covenants, all assessments when due. Since approximately September 12, 2016, the Plaintiff has failed and refused to pay all amounts due and therefore, has breached his agreement and the Covenants.

21. The Defendant has fully performed its obligations pursuant to the agreement and the Covenants.

22. As a result of the Plaintiff's breach, and pursuant to the Covenants, the Defendant has accelerated and declared due the entire unpaid balance of all assessments now owed by the Plaintiff. Additional assessments and charges will become due in the future.

23. Under the Covenants and agreement, the Plaintiff is liable to the Defendant for all assessments due, plus late charges, interest at the rate of eighteen percent (18%) per annum, all costs and expenses of collection (including court costs and reasonable attorney's fees), and any other amounts provided or permitted thereunder or by law. The Defendant has been damaged by the Plaintiff in the total of these unpaid amounts and will continue to be so damaged to the date of judgment and collection. The Plaintiff is liable to the Defendant for all such damages, including future damages.

24. A statement of the total amount owed as of April 25, 2017 is attached as Exhibit "A" and incorporated into this Answer and Counterclaim. The total amount owed as of April 25, 2017 is Thirty-Two Thousand One Hundred Thirty-Five and 50/100 ($32,135.50) Dollars. This amount continues to increase, as aforesaid.

WHEREFORE, the Defendant prays for dismissal of the Complaint with prejudice, for judgment against the Plaintiff in the amount of Thirty-Two Thousand One Hundred Thirty-Five and 50/100 ($32,135.50) Dollars through April 25, 2017, for additional assessments, interest at the

rate of eighteen percent (18%) per annum, all costs and expenses of collection (including court costs and reasonable attorney's fees) and any other amounts provided or permitted under the Covenants and agreement or by law, and for such other and further relief as shall be proper.

/s/Carl F. Muller

Carl F. Muller, Esq. SC Bar No. 4131
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Attorney for Defendant Brays Island Plantation Colony, Inc.

Greenville, SC

April 25, 2017

ELECTRONICALLY FILED - 2017 Apr 25 4:16 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Mar 17 10:17 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**C/A No.: 2014-CP-07-00265**
COUNTY OF BEAUFORT	)	
Alexander Burns,	)	
	)	
Plaintiff,	)	
	)	**ANSWER OF**
v.	)	**BRAYS ISLAND REALTY, LLC**
	)	
Brays Island Plantation Colony, Inc. and Brays Island Realty, LLC,	)	
	)	
Defendants.	)	

NOW, comes defendant Brays Island Realty, LLC ("Brays Island Realty"), by and through its undersigned counsel, answering the Complaint of the Plaintiff herein, would respectfully show unto the court the following:

1. Each and every allegation contained in the Plaintiff's Complaint not specifically admitted herein is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE

2. Brays Island Realty admits the allegations contained in paragraphs 2, 4, 6, 7, 8, 9, 12, 13, and 18.

3. The allegations of paragraphs 31-39 of the Complaint are specifically denied.

4. Brays Island Realty lacks sufficient information to form a belief as to the allegations in Paragraphs 10, 11, 14, 15, 16, 17, 19-30, and 40-44, and therefore denies the same.

5. Brays Island Realty admits the allegation in paragraph 1 of the Complaint, only to the extent that Plaintiff is the owner of property located at 50 Gun Club Road.

ELECTRONICALLY FILED - 2017 Mar 17 10:17 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

6. Brays Island Realty admits the allegation in paragraph 3 of the Complaint, only to the extent that Brays Island Realty, LLC is a South Carolina limited liability company and conducts marketing for Brays Island Plantation Colony and real estate services for the property owners and perspective property owners at Brays Island Plantation.

7. Brays Island Realty admits the allegation in paragraph 5 of the Complaint, only to the extent that the Brays Island Declaration of Covenants, Conditions & Restrictions, as supplemented and amended, are one set of documents that govern the Brays Island Plantation.

FOR A SECOND DEFENSE

8. Brays Island Realty is not liable because the Complaint fails to state facts sufficient to constitute a Cause of Action against Brays Island Realty.

FOR A THIRD DEFENSE

9. Plaintiff's claims are barred by the equitable doctrine of laches.

FOR A FOURTH DEFENSE

10. Plaintiff's claims are barred by the equitable doctrine of waiver

11. In the Complaint Plaintiff acknowledges that he was aware of the covenants and restrictions of Brays Island Plantation prior to purchasing his property.

12. Plaintiff has accepted the covenants and restrictions and has failed to assert any rights thereunder and has therefore waived any right he has arising therefrom.

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WHEREFORE, having fully answered the Plaintiff's Complaint, the Brays Island Realty respectfully requests of this honorable court:

A. That the Complaint be dismissed with prejudice;

B. That attorney fees and costs for the defense of this action be paid to Brays Island Realty;

C. That a trial of this matter be conducted;

D. For such other and further relief as the Court deems just and proper.

HARVEY & BATTEY, P.A.

By: s/Kevin E. Dukes
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P.O. Drawer 1107, 1001 Craven Street
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ATTORNEYS FOR BRAYS ISLAND
REALTY, LLC

March 17, 2017
Beaufort, SC

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-00265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

2017 APR -7 AM 10:40
JERRI ANN RISENHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO SCRCP Rule 12(b)(6)

Alexander Burns
934 Richter Way
Mt. Pleasant, SC 29464
Plaintiff *pro se*

TABLE OF CONTENTS

INTRODUCTION	1
STANDARD OF REVIEW	2
ARGUMENT	3
--Uniform Statutory Rule Against Perpetuities	4
--Civil Conspiracy	8
--South Carolina Consumer Protection Code	11
MOTION IN ALTERNATIVE	11
CONCLUSION	12

Introduction

The matter before the Court is regarding: i) the enforceability of an agreement providing for a perpetual interest, and associated obligations, in connection with the purchase of a parcel of land located inside of a plantation development against the land itself and its owner; ii) the conspiracy between the plantation and its captive real estate broker limit the opportunity for the sale of the property to parties other than the plantation; and iii) for the violation of South Carolina's Consumer Protection Code.

In this matter, the issues arise from Plaintiff's purchase of a 1 acre parcel of land, located within the Brays Island Planation (the "Subject Property") from a third-party in 2014. The Plantation entity, Brays Island Plantation Colony, Inc. ("Defendant Brays") seeks to assert rights over Subject Property and Plaintiff through an interest conferred by the Conditions Covenants & Restrictions placed upon all properties within the Brays Island Development in 1988, which serve to perpetually bind all properties and their owners, successive owners, heirs, and so forth to many conditions, obligations, restrictions and requirements. Plaintiff has sought to terminate its obligations under the CC&R and commenced an action seeking a declaratory judgment that the CC&R are invalid and unenforceable against Plaintiff and the Subject Property. In the same action, Plaintiff alleged that Defendant Brays has conspired with a captive real estate brokerage, Brays Island Realty, LLC ("Defendant Brays Realty") to limit the avenues of sale of the Subject Property such that any owner of similarly situated property would be forced to either make perpetual payments to Defendant Brays or suffer having their property sold via Sheriff's auction at an artificially low price, potentially to Defendant Brays, who could then resell it with Defendant Brays Realty, at a substantial profit.

Standard for Review of a SCRCP Rule 12(b)(6) Motion

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion* (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245; *Hambrick v. GMAC Mortg. Corp.* (S.C.App. 2006) 370 S.C. 118, 634 S.E.2d 5, rehearing denied, certiorari dismissed; *FOC Lawshe Ltd. Partnership v. International Paper Co.* (S.C.App. 2002) 352 S.C. 408, 574 S.E.2d 228, rehearing denied, certiorari denied; *Brown v. Theos* (S.C.App. 1999) 338 S.C. 305, 526 S.E.2d 232, rehearing denied, certiorari granted, affirmed 345 S.C. 626, 550 S.E.2d 304; *Burns v. Gardner* (S.C.App. 1997) 328 S.C. 608, 493 S.E.2d 356; Dye v. Gainey (S.C.App. 1995) 320 S.C. 65, 463 S.E.2d 97.

When deciding a motion to dismiss for failure to state a claim, the question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Plyler v. Burns* (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188; Doe v. Marion (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245; *Overcash v. South Carolina Elec. and Gas Co. (S.C. 2005) 364 S.C. 569, 614 S.E.2d 619*, rehearing denied; Williams v. Condon (S.C.App. 2001) 347 S.C. 227, 553 S.E.2d 496; Dye v. Gainey (S.C.App. 1995) 320 S.C. 65, 463 S.E.2d 97; Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied; Brown v Leverette (1987) 291 SC 364, 353 SE2d 697.

If the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case, then dismissal for failure to state facts sufficient to constitute a cause of action is improper. *Sloan Const. Co., Inc. v. Southco Grassing, Inc.* (S.C. 2008) 377 S.C. 108, 659 S.E.2d 158; *Brazell v. Windsor* (S.C.App. 2007) 376 S.C. 83, 655 S.E.2d 736, rehearing denied, certiorari granted.

The complaint should not be dismissed for failure of the pleading to state facts sufficient to constitute a cause of action merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion* (S.C. 2007) 373 S.C. 390, 645 S.E.2d 245; *Clearwater Trust v. Bunting* (S.C. 2006) 367 S.C. 340, 626 S.E.2d 334; *Plyler v. Burns* (S.C. 2007) 373 S.C. 637, 647 S.E.2d 188.

Argument

The Motion To Dismiss Has No Merit

Despite moving to dismiss under SCRCP Rule 12(b)(6), Defendant Brays remains entirely silent as to its legal burden in order to establish that Plaintiff has failed to state facts sufficient to constitute a cause of action. Plaintiff's requirement, pursuant to SCRCP Rule (8)(e)(1) was that "each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required." Further, SCRCP Rule 8(a) provides that "a pleading which sets forth a cause of action…shall contain…(2) a short and plain statement of the facts showing that the pleader is entitled to relief. SCRCP Rule 10(b) requires "all averments of the facts of a cause of action or defense and demands for relief shall be made in consecutive numbered paragraphs, the contents of each which shall be limited as far as practicable to a statement of a single set of circumstances…" Review of these rules demonstrates Plaintiff's Complaint is in compliance.

Defendant Brays states no discernable legal basis by which it makes any of its assertions as the only citation made in the motion is to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. In concert with Defendant Brays' failure to cite any legal basis, there is no factual basis cited in the motion. Defendant Brays simply makes naked assertions without providing any of the requisite detail for such a motion. Such a failure of law and fact does little more than provide a framework by which Defendant Brays appears to disagree with Plaintiff; however the

motion fails to rebut Plaintiff's allegations as required of a motion to dismiss pursuant to SCRCP Rule 12(b)(6).

Uniform Statutory Rule Against Perpetuities

Defendant Brays seeks to dismiss the cause of action of violation of the Uniform Statutory Rule Against Perpetuities as adopted by South Carolina ("USRAP") under multiple, alternative, and fundamentally inconsistent theories, none of which are sounded in any relevant facts alleged in the complaint. Taken in order, Defendant Brays provides no factual basis for its statement that the transaction is a non-donative transfer and therefore inapplicable to the USRAP. (Def. Mot. Dismiss RAP #1) Plaintiff specifically alleged that all of the exceptions (such as that of a non-donative transfer) to USRAP were inapplicable and Defendant Brays provides no basis by which there might be a disagreement. (Compl. at 27)

Defendant Brays provides no factual basis for its statement that the transaction was vested when created. (Def. Mot. Dis. RAP #2) There is no reference in the CC&R regarding any vesting and the rights therein cannot be viewed as vested insofar as it fails to meet the basic definition of vested which is "not contingent; unconditional; absolute" *Black's Law Dictionary* (10th ed. 2014), *available at* Westlaw BLACKS further "A future interest is *vested* if it meets two requirements: (1) that there be no *condition* precedent to the interest becoming a present estate other than the *natural expiration* of those estates that are prior to it in possession; and (2) that it be theoretically possible to identify who would get the right to possession if the future interest should become a present estate *at any time*." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 66–67 (2d ed. 1984). Certainly Defendant Brays could not suggest that their interest in the Subject Property is solely conditioned upon Plaintiff's mortality and that upon the death of Plaintiff, the property would convey to

Defendant Brays. The interest sought by Defendant Brays pursuant to the CC&R is obviously one that is highly conditioned based upon a littany of conditions precedent, all of which serve to modify Defendant Brays' interest.

Further Defendant Brays fails to articulate how the CC&R, which were created in 1988, and vested at creation, might be enforceable against Plaintiff, who was two years old at the time. Plaintiff has alleged that the CC&R are unenforceable both against the Subject Property and Plaintiff. The nature of Defendant Brays' assertion that the CC&R are enforceable against Plaintiff requires, at the very least, the inclusion of a factual basis by which Plaintiff agreed with Defendant Brays that Plaintiff, individually, would be *perpetually* bound by the CC&R.

Defendant Brays provides no factual basis by which the CC&R has not created a property interest. (Def. Mot. Dis. RAP#3) While not defined in the USRAP, Black's Law Dictionary defines a property interest as "A legal share in something; all or part of a legal or equitable claim to or right in property." *Black's Law Dictionary* (10th ed. 2014), *available at* Westlaw BLACKS Any obligations referred to by Defendant Brays are borne of Defendant Brays' interest in the Subject Property, by virtue of the CC&R. There is no other factual basis by which Plaintiff and the Subject Property might become obligated to Defendant Brays but for the interest sought by the CC&R.

Despite providing no factual basis, Defendant Brays concludes that the interests vested within ninety-years after their creation. (Def. Mot. Dismiss RAP #4) Defendant Brays appears to be suggesting that to the extent that these interests did not vest at inception, as previously alleged, the interests will vest within ninety (90) years,[1] or might otherwise vest within twenty-one (21) years after the death of the last survivor of the descendants of Mrs. Rose Ethel

[1] The Complaint erroneously states that the USRAP requires that the interest terminate within ninety-nine years. This was a regrettable oversight on the part of the Plaintiff with apologies to the Court.

Kennedy. (Def. Mot. Dismiss RAP #5) Concerning the interest vesting within ninety (90) years, the CC&R, as alleged in the Complaint clearly states that the CC&R duration shall remain in effect for a period of thirty years and shall automatically renew for an unlimited number of ten year renewals. (Compl. ¶ 21, citing Section 14.05 of Comp. Ex. 1)

Defendant Brays states that the USRAP has not been violated because it does not require that the individual then alive be identified by his or her own name. (Def. Mot. Dismiss RAP #6) Plaintiff has alleged in the Complaint that the *last survivor of the descendants of Mrs. Rose Ethel Kennedy* is not an individual, but rather identifies a present class of individuals with a constant obligation that the class be re-examined in order to determine if at any point there might be a singular qualifying individual, and therefore does not satisfy the requirement of the USRAP.

Defendant Brays appears to contend that the Court ought to be satisfied with the fact that at some indeterminate point in history, it might be possible, after substantial genealogical inquiry into parties wholly unrelated to the transaction, despite the inherent ambiguity regarding the last survivor now living descendants (whether they be direct descendants or descendants of descendants), to discern an individual who meets the criteria, and thus dismissal in this action is appropriate as a matter of law. The sufficiency (or lack thereof) of the named individual, absent the express naming of an individual in the CC&R is inherently a factual matter and therefore dismissal on this basis is entirely inappropriate.

Defendant Brays seeks to construe the USRAP as providing a means of adapting the CC&R as opposed to declaring the Agreement invalid on the (uncited) basis that the USRAP permits the court to reform a disposition in a manner that most closely approximates the transferor's manifested plan of distribution. (Def. Mot. Dismiss RAP #7) Defendant Brays fails to provide any information as to whom the transferor in this transaction might be (whose options,

as a factual matter, include Defendant Brays, the original purchaser of the Subject Property, any intervening owner of the Subject Property, the Plaintiff, all of the above, or none of the above). Defendant Brays further provides no information as to what this, unnamed, transferor's intent might have been, except that the CC&R seeks to create an interest, which runs with the property, and attaches to every successive owner, through an unlimited number of renewals and therefore cannot be reformed to conform to the USRAP.

Defendant Brays final contention regarding the USRAP is that the USRAP does not provide for damages. (Def. Mot. Dismiss RAP #8) Plaintiff has not sought damages under the USRAP. Pursuant to the first cause of action, Plaintiff has sought a declaratory judgment holding that the CC&R is unenforceable against Plaintiff and the Subject Property.

Taken in context, Defendant Brays clearly contemplated that the USRAP may be applicable to the CC&R when drafted as the CC&R specifically addresses the rule against perpetuities and sought to circumvent the prohibition through the attempted use of a measuring life. The intent of Defendant Brays was to create a perpetual interest in Plaintiff, and all other owners' property and bind them despite the prohibition against doing so. The shambolic use of the measuring life is rendered utterly defective by the failure to name *an individual* then alive. On this basis, for the CC&R to be found to have not violated the USRAP nor created an otherwise unenforceable perpetual obligation, the Court must find, as a factual matter, that the use of a class of people who are wholly unconnected to the plantation, who must be continually investigated as to the status of their mortality and thoroughly investigated as to their lineage, in order to possibly establish the date of death of a singular individual, for whom the twenty-first anniversary of their death serves as the unequivocal termination of any interests held by

Defendant Brays, is a legitimate expectation of the parties and not a wholly shambolic artifice concocted to circumvent statutory law.

Finally, even if the CC&R would be found to not have violated the USRAP, it will be similarly found to be unenforceable by virtue of its perpetual nature as a matter of South Carolina law. "Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only when the perpetual nature of the agreement is an express term of the contract. *See Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98,102, 447 S.E.2d 199 (S.C. 1994); *See Also Childs v. City of Columbia,* 87 S.C. 566, 70 S.E. 296 (1911)

The distinction of whether the perpetual nature of the CC&R has violated South Carolina law is an essential factual determination in this matter as contracts violating the law are unenforceable. *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) ("The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained); see also 17A Am. Jur. 2d Contracts § 323 (2004) ("[I]f a question of illegality develops during the course of the trial, a court must consider that question, whether pleaded or not.")

Civil Conspiracy

In South Carolina, Civil Conspiracy requires a factual showing of three elements: 1) The combinations of two or more parties and/or entities; 2) Actions for the purpose of injuring the Plaintiff; 3) Special Damages. *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Cowburn v. Leventis,* 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005); *Ellis v.*

Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004); *see also Peoples Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470, 596 S.E.2d 51, 56-57 (2004) ("A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.") Defendant Brays does not articulate which element was not satisfied, instead electing to make a blanket assertion that *no facts alleged* constitute civil conspiracy. (Def. Mot. Dismiss Civil Conspiracy #1)

Plaintiff has alleged that Defendant Brays and Defendant Brays Realty have engaged in injurious conduct which limits Plaintiff's ability to readily sell the Subject Property for a fair market price; as the only viable brokerage option for the property is Defendant Brays Realty, who is not adequately representing the interests of Plaintiff.

As alleged in the Complaint, Defendant Brays Realty is able to charge a higher than customary commission, despite being in a position to collect both sides of the commission, as their elimination of other brokerage options enables them to serve as both the buyer and seller's broker. (Compl. ¶ 36) In addition to the lofty commission, Defendant Brays Realty receives additional marketing funds from Defendant Brays, paid by all owners (including Plaintiff), which may be used to favor the sale of certain properties as opposed to others (for example Defendant Brays Realty does not make any listings of homesites, such as Plaintiff's Subject Property, publicly available, or include them in any listing services – despite listing other homes at the Plantation). (Compl. ¶ 37) The conduct by Defendant Brays & Defendant Brays Realty may stem from benefits initially created by the CC&R however their violative conduct to the injury of Plaintiff is borne by their actions since Plaintiff became an owner of the Subject Property and subsequently tried to sell the Subject Property.

Through the exclusion of other brokerage avenues available to prospective sellers of property at the planation, Defendant Brays Realty effectively serves as the gatekeeper for anyone seeking to terminate their otherwise perpetual obligations to Defendant Brays and such limitations on the ability to leave (found through Defendant Brays Realty's own admission that the property may take years to sell – as opposed to mere weeks or months for other similarly situated properties in Beaufort County) creates special injury to the Plaintiff. (Compl. Ex. 4).

The net effect of such gatekeeping injures Plaintiff, and others similarly situated, insofar as any owner of property within the planation seeking to sell must use the services of Defendant Brays Realty. To the extent that Defendant Brays Realty does not arrange a transaction, those would-be sellers are forced to either continue perpetually paying Defendant Brays, pursuant to the CC&R or if they should choose to stop paying (through choice or financial necessity) are subject to Defendant Brays' foreclosure of the property for sale at a Sheriff's auction. The intentional or negligent withholding of a viable path for sale of the property at or near a fair market value can be seen as a natural progenitor of an owner terminating further payment to Defendant Brays.

This strategy of forcing a Sheriff's auction is articulated by Defendant Brays in their e-mail of January 20, 2017 and there are a number of foreclosure actions that have been brought before this Court by Defendant Brays on this very basis. (Comp. Ex. 3)

Section 9.08 of the CC&R "Effect of Nonpayment; Remedies of the Colony" even provides a mechanism for Defendant Brays to bid on the property at the foreclosure sale. This gives Defendant Brays the ability to force the sale by the most value inefficient means (foreclosure auction), allowing Defendant Brays to purchase the property on the most advantageous terms (effectively obliterating Plaintiff's equity), and then re-list the property with

Defendant Brays Realty for a sale at a substantial profit (and further commission to Defendant Brays Realty).

While the CC&R may be on the public record and available to the Plaintiff, there is no reference to Defendant Brays Realty or the nature of the arrangement with Defendant Brays Realty in the CC&R. As the nature of Plaintiff's cause of action is the conduct of Defendant Brays and Defendant Brays Realty, which have leveraged the restrictions of the CC&R (and not the limitations of the CC&R themselves) for their own pecuniary gain and to the special injury of Plaintiff, all of Defendant Brays' assertions regarding the availability, acceptance and use for management are irrelevant.

South Carolina Consumer Protection Code

Plaintiff respectfully withdraws its claim pursuant to the South Carolina Consumer Protection Code.

Alternative Request to Amend Complaint

In the alternative, Plaintiff respectfully requests the opportunity to amend the Complaint pursuant to SCRCP Rule 15(a) to cure any deficiencies of pleading found by this Court. Leave to amend the pleadings "shall be freely given when justice so requires and does not prejudice the other party". *Id.* A motion to amend is addressed to the sound discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice." *Kelly,* 316 S.C. at 323, 450 S.E.2d at 61. The prejudice that Rule 15 contemplates is the lack of notice that the new issue is to be tried and a lack of a full opportunity to introduce testimony to refute it. *Soil & Material Eng'rs, Inc. v. Folly Assoc.,* 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct.App.1987). In this matter, providing the Plaintiff the opportunity to amend any deficiency in the pleading would not serve to prejudice Defendant Brays, or Defendant Brays Realty, insofar as they would have

adequate notice of the new issue and a full opportunity to introduce testimony to refute it as this matter has yet to commence any discovery.

CONCLUSION

WHEREFORE, for the foregoing reasons, this Court should DENY Defendant Brays' motion to dismiss pursuant to SCRCP Rule 12(b)(6).

Respectfully submitted,

A B

Alexander Burns
Plaintiff, *pro se*

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOURTEENTH JUDICIAL CIRCUIT**
COUNTY OF BEAUFORT)	**CASE NO.** 2017-CP-07-265
)	
ALEXANDER BURNS)	
(Plaintiff))	
)	
-versus-)	
)	
BRAYS ISLAND PLANTATION)	
COLONY, INC., &)	
BRAYS ISLAND REALTY, LLC)	
(Defendants))	

COMPLAINT

2017 FEB 15 AM 11:49
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff above-named, complaining of Defendants herein, would respectfully show unto this Honorable Court:

1. The Plaintiff is a resident and citizen of Charleston County, South Carolina and owns property in Beaufort County located at 50 Gun Club Drive, Sheldon, SC, which is located within the Brays Island Plantation (the "Property").
2. Defendant, Brays Island Plantation Colony, Inc. ("Defendant Brays") is, upon information and belief, a non-profit corporation which owns and operates the "Brays Island Plantation" in Sheldon, SC (the "Plantation").
3. Defendant, Brays Island Realty, LLC ("Defendant Brays Realty") is, upon information and belief, a South Carolina limited liability company, which operates exclusively as the sales and marketing agent for the Plantation.
4. This Court has jurisdiction over the parties and the controversy of this matter.
5. Brays Island Plantation and its relationship with the owners of property within the Plantation ("Owners") is governed by the Brays Island Declaration of Covenants,

Conditions & Restrictions as originally entered into on November 11th, 1988 (the "Agreement"). (Exhibit 1)

6. On or about June 21st, 2014 Plaintiff contacted Defendant Brays Realty, through Paul Burton ("Burton"), the *broker-in-charge* for the purpose of viewing available properties. Plaintiff toured the Plantation with Burton and discussed the available home-sites.
7. On or about July 29th, 2014, Burton sent a copy of the Agreement to Plaintiff "for his benefit" prior to Closing.
8. On or about September 2nd, 2014, Plaintiff executed a "Brays Island Resale Brokerage Purchase and Sale Agreement Vacant Land" with Legacy Holdings, LLC as Seller (the "Purchase Contract") for $175,000 (the "Purchase Price").
9. On or about October 9th, 2014, Plaintiff closed on the Property (the "Closing").
10. From the Closing to present, Plaintiff receives statements issued by Defendant Brays on a monthly statement showing charges for various assessments, fees, dues, usage charges, dining fees, holiday gratuities for staff, and other charges. Such charges appear in a single omnibus statement referred to by Defendant Brays as "Owner's Account".
11. The Owner's Account is a clearing arrangement that includes elements of a Homeowner's Association ("HOA") and a country-club membership. There is no distinction made between the nature of the various charges.
12. On or about October 20th, 2016, Plaintiff contacted Burton to discuss listing Property with Defendant Brays Realty.
13. On or about October 24th, 2016, Plaintiff listed Property with Defendant Brays Realty.
14. On or about January 10th, 2017, Plaintiff contacted Bill Fabian ("Fabian"), the Director of Finance of Defendant Brays, via telephone, to discuss the fees assessed by Defendant

Brays on the Owners Account and seek to defer certain payments in lieu of the listing of Property with Defendant Brays Realty.

15. Fabian advised Plaintiff that if Plaintiff did not make all payments on the Owner's Account, Defendant Brays would seek to enforce a lien on the property, granted via the Agreement, and force sale via a Sheriff's Sale, but suggested that Plaintiff might seek to appeal to the finance committee for some dispensation.

16. On or about January 11th, 2017, at the request of Fabian, Plaintiff sent a letter to be forwarded to the finance committee to review such a request. (Exhibit 2)

17. On or about January 20th, 2017, Fabian responded, via e-mail that the proposal was reviewed by the finance committee of Defendant Brays and that any deferral would only be granted in the context of a promissory note executed by Plaintiff for a portion of the fees, with an interest rate, and a twenty (20) month amortization period. Fabian also indicated that Defendant Brays would require a confession of judgment for the outstanding amount. (Exhibit 3)

18. On January 23rd, 2017, Plaintiff inquired of Burton as to the status of the listing of the Property as well as any guidance on revising the listing price to make the property more competitive. Burton indicated that "every seller should expect that it could take several years to sell." (Exhibit 4)

FIRST CAUSE OF ACTION

(VIOLATION OF UNIFORM STATUTORY RULE AGAINST PERPETUITIES AS TO DEFENDANT BRAYS)

19. Plaintiff incorporates the allegations of the foregoing paragraphs 1 through 18 above as if fully set forth herein.

20. On November 11th, 1988, Defendant Brays sought to create a perpetual obligation, which would subsequently bind all of the properties within the Plantation and their Owners, present and future, despite the inherent prohibitions against perpetual agreements. The prohibition against perpetuities exists as a matter of public policy, and is codified in the Uniform Statutory Rule Against Perpetuities, SC Code Ann. §27-6-10 *et seq.* ("SC RAP")

21. Section 14.05 The Agreement states that the Agreement's duration shall

> be binding upon and inure to the benefit of all Owners and mortgages and their respective heirs, executors, legal representatives, successors and assigns, and shall remain in effect for a period of thirty (30) years from and after the date of this Declaration, provided that the rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon expiration of said thirty (30) year period, the Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year period for an additional ten (10) year period; provided, however that there shall be no renewal or extension of this Declaration, if, during the last year of the initial thirty (30) year period or the last year of any ten (10) year renewal period, ninety percent (90%) of the total votes of the Colony are cast in favor of terminating this Declaration at the end of the then current term.

As such, the Agreement effectively has a perpetual term governing the relationship between Plaintiff, as an Owner, and Defendant Brays.

22. Defendant Brays clearly intended the Agreement to be perpetual, understood the prohibition against perpetual agreements, and attempted to concoct loophole for a perpetual contract in Section 14.06 of the Agreement, through the use of a *proxy life*, an arbitrary person with no apparent connection to Brays Island Plantation, the measure of whose life would permit the act to extend twenty-one years beyond it. Despite the

obligation per the SC RAP to pick *an individual* Defendant instead chose the multiple unnamed survivors of the descendants of Mrs. Rose Fitzgerald Kennedy.

23. The use of Mrs. Rose Fitzgerald Kennedy is a clear sham intended to circumvent the Rules Against Perpetuities, and even as a sham it is improperly constructed.

24. The SC RAP expressly invalidates contracts that do not terminate within either:

    a. No later than twenty-one years after the death of an individual then alive; or

    b. Ninety-nine years after their creation.

25. The Agreement makes no indication that it will terminate ninety-nine years after its creation and the duration indicated by Section 14.05 clearly contemplates an Agreement existing beyond ninety-nine years.

26. Even if the Court were to indulge Defendant as to an analysis of the *proxy life,* there are only two possible outcomes:

    a. Defendant chose an individual, Mrs. Rose Fitzgerald Kennedy, who is the only named relevant *individual* alive at the time of the inception of the Agreement. Mrs. Kennedy died on January 23rd, 1995[1], and thus caused the Agreement to expire on January 23rd, 2016, which is twenty-one (21) years after her death;

    b. Defendant never named a *proxy life* insofar as the unnamed survivors of the descendants of a person do not satisfy the requirement of naming *an individual,* and thus the Agreement is an invalid perpetual contract. The last survivor of a descendant of an individual does not designate *an individual* as it would be impossible to determine which individual was at issue until all of the individuals in question, save one, were deceased. This prospective use of the survivors of a

[1] See Exhibit 5 for New York Times Obituary of Mrs. Rose Fitzgerald Kennedy.

descendant is further impossible to determine as it is unclear as to which generation of descendants it refers to (e.g. survivors of children, or survivors of grandchildren). Beyond being unduly vague and wholly impractical for the purpose of ascertaining at any given time if the Agreement were ever to violate the SC RAP, the notion that one could designate the last survivors of the descendants of a *proxy life* is clearly designed to flout the law.

27. All of the exceptions to the SC RAP pursuant to §27-6-50 are inapplicable insofar as this Agreement was not based upon:

a. a premarital or post-marital agreement;
b. separation or divorce settlement;
c. a spouse's election;
d. a similar agreement arising out of a prospective, existing or previous marital relationship between the parties;
e. a contract to make or not to revoke a will or trust;
f. a contract to exercise or not to exercise a power of appointment;
g. a transfer in satisfaction of duty or support;
h. a reciprocal transfer;
i. a fiduciary's power relating to the administration or management of assets;
j. a power to appoint a fiduciary;
k. a non-vested interest held by a charity, government or governmental agency;
l. a non-vested interest or power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, and health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses;
m. a property interest, power of appointment or arrangement

28. The Agreement was enacted after July 1st, 1987 and is subject to the SC RAP.

29. The SC RAP supersedes common law rules against perpetuities.

30. The Agreement has a perpetual term, in contravention of the SC RAP, and is invalid and therefore unenforceable against Plaintiff and the Property.

SECOND CAUSE OF ACTION

(CIVIL CONSPIRACY AS TO BOTH DEFENDANTS)

31. Plaintiff incorporates the allegations of the foregoing paragraphs 1 through 30 above as if fully set forth herein.

32. Defendant Brays and Defendant Brays Realty conspired to induce Plaintiff into entering into the purchase of the Property for the purpose of binding Plaintiff to the obligation to remittances which will generate numerous fees, commissions and other consideration for the benefit of both Defendant Brays and Defendant Brays Realty.

33. Defendant Brays and Defendant Brays Realty seeks to restrict the Property, and others similarly situated, limit resale opportunities, and subject these properties and their owners to *perpetual* fee payments via the Agreement in such a fashion as to create an unattractive environmental for potential purchasers of the properties, to the injury of Plaintiff.

34. Defendant Bray and Defendant Brays Realty's conspiracy has the effect of foreclosing any ability for Plaintiff, or those similarly situated, to escape the *perpetual* fee regime as Section 9.08 of the Agreement requires that, "No member way waive or otherwise escape liability for the assessments provided herein, including by way of illustration but not limitation, non-use of the Common Areas failure to designate Members, voluntary or involuntary termination of Membership, or abandonment of his Lot, an and Owner shall remain personally liable for assessments, interest, late charges and other amounts which accrue prior to a sale, transfer, or other conveyance of his Lot."

35. Defendant Brays has conspired with Defendant Brays Realty to enact an *effective franchise* on the sale of any properties at the Plantation through restrictions in the Agreement that seek to limit access to non-owners to the Plantation (*restriction pursuant to Section 4.02(c) & (f) limiting access to the property and requiring Owners be present*

on property for guests to have access) and further prohibit the display of any *"For Sale"* or other similar marketing of the properties (*prohibited by Section 11.03*).

36. Through this *effective franchise* granted by Defendant Brays, Defendant Brays Realty is able to charge commissions of ten (10%) percent, which is in excess of the standard residential sales commission of six (6%) percent, without providing Owners the opportunity to effectively seek competitive bids from other licensed realtors as they would not have access to the property, or the ability to effectively market the Property.

37. Moreover, Defendant Brays and Defendant Brays Realty conspire to spend the marketing budget, which is paid by Defendant Brays, from funds including those paid by Plaintiff, as well as through a special assessment on the purchasers of property at the Plantation, in such a way that appears to favor the sale of some properties as opposed to others, to the injury of Plaintiff.

38. The Defendants conspiracy was clearly for the aim of seeking to enrich their respective enterprises at Plaintiff's expense. Such an act need not be unlawful for the purpose of satisfying the required element of injuring Plaintiff but clearly sought to deprive Plaintiff of his monetary funds.

39. The Plaintiff suffered special damages insofar as the Property cannot be sold at any reasonable price by Defendant Brays Realty, prospectively for years, and subjects Plaintiff to a loss of enjoyment of the equity value of the Property, as would be realized by sale (or lack of purchase), the continued collection efforts of Defendant Brays for fees and assessments under the Agreement, and the fees paid to date to Defendant Brays under the Agreement.

THIRD CAUSE OF ACTION

(VIOLATION OF SOUTH CAROLINA CONSUMER PROTECTION CODE AS TO DEFENDANT BRAYS)

40. Plaintiff incorporates the allegations of the foregoing paragraphs 1 through 38 above as if fully set forth herein.

41. Defendant Brays' attempt to utilize a lien, which is created for specific assessments under the Agreement (for HOA fees) for all sums due under the Owner's Account is an attempt to violate Plaintiff's consumer credit rights. Defendant Brays cannot seek to conflate charges that are inherently of a consumer credit sale nature with those of a Homeowner's Association for the purpose of improving security of their claims.

42. Defendant Brays' attempt to coerce Plaintiff into executing a confession of judgment on January 20th, 2017, is a statutory violation of SC Code Ann. 37-2-415 which prohibits any confession of judgment arising out of a consumer credit sale.

43. Defendant Brays' assessment of late charges and interest, pursuant to Section 9.02 of the Agreement, is in excess of the maximum permissible interest rate insofar as the inclusion of the late charges into the calculation for purposes of assessing the eighteen (18%) percent interest rate exceed the maximum lawful interest rate of eighteen (18%) percent pursuant to SC Code Ann. 37-2-201.

44. Defendant Brays has failed to provide adequate consumer credit disclosures as required by the Federal Truth in Lending Act and South Carolina Consumer Protection Code pursuant to SC Code Ann 37-2-301 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. Granting Plaintiff compensatory damages for the losses suffered as a result of Defendants' wrongful acts, plus pre-judgment interest at the South Carolina statutory rate;
2. Declare the Agreement invalid and unenforceable against Plaintiff and the Property;
3. Granting Plaintiff the costs, expenses, and disbursements of this action;
4. An award of such other and further relief as may be just, equitable, and proper.

Respectfully submitted,

February 7th, 2017

Alexander Burns
Plaintiff

EXHIBIT 1

BRAYS ISLAND PLANTATION

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 11th day of November, 1988, by BRAYS ISLAND COMPANY, INC., a South Carolina corporation.

BRAYS ISLAND COMPANY, INC., a South Carolina corporation ("Company"), is the owner of certain real property located in Beaufort County, South Carolina known as BRAYS ISLAND PLANTATION and desires to subject such property to the provisions of this Declaration. Therefore, the Company hereby declares that the property known as Brays Island Plantation, which is described in Exhibit A attached hereto and made a part hereof, shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which 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 the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

PLAN OF DEVELOPMENT

1.01 Plan of Development of Plantation. The primary purpose of this Declaration and the foremost consideration in the origin of the same has been the creation of a distinctive and exclusive community which: (a) is aesthetically pleasing and functionally convenient; (b) emphasizes the preservation and enhancement of natural areas, wildlife, and areas conducive to the enjoyment of outdoor activities; and (c) allows for the concept of continuing to use portions of the Plantation as a working plantation. While it is anticipated that the architectural style of homes in the community will be of the type considered "plantation" or "country" homes, the establishment of objective and specific standards relating to design, size, setback lines and locations of homes and other structures makes it impossible to take full advantage of the individual characteristics of each Lot and of technological advances and environmental values. For this reason such standards are not established by these covenants. In order to implement the purposes of this Declaration, the Company shall establish and amend from time to time objective standards and guidelines which shall be in addition to this Declaration. All Lots shall be and are hereby restricted exclusively to single-family residential use and no more than one dwelling may be constructed on each such Lot except: (aa) as provided in Section 3.07 of this Declaration; and

(bb) guest houses, carriage houses and other such structures in addition to a dwelling may be constructed on a Lot with the consent of the Architectural Review Board, which consent shall be in the sole discretion of the Architectural Review Board and may in any case be denied. The Company shall have the right, but not the obligation, during the Development Period, to make improvements and changes to all Common Areas and to all Lots owned, by the Company, including, without limitation, installation and/or maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; changes in the location of the boundaries of any Lots owned by the Company or of the Common Areas; installation and maintenance of any water, sewer, and other utility systems and facilities; and installation of security, refuse disposal and/or other development support facilities.

1.02 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot with notice of the Company's plan of development as herein set forth. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article I may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of the Company.

1.03 LIMITATION ON NUMBER OF LOTS. IT IS THE EXPRESS INTENT OF THE COMPANY TO LIMIT THE NUMBER OF LOTS ON THE PLANTATION TO THREE HUNDRED TWENTY-FIVE (325) LOTS, WITH THE REMAINDER OF THE PLANTATION CONSTITUTING COMMON AREA AS DEFINED IN THIS DECLARATION. IT IS THEREFORE EXPRESSLY PROVIDED THAT NEITHER THE COMPANY NOR THE COLONY MAY DESIGNATE OR DEVELOP MORE THAN THREE HUNDRED TWENTY-FIVE (325) LOTS ON THE PLANTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, THIS SECTION 1.03 MAY NOT BE AMENDED OR MODIFIED FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE DATE OF THIS DECLARATION. THEREAFTER, THIS SECTION 1.03 MAY BE AMENDED OR MODIFIED ONLY AS PROVIDED IN SECTION 14.03 OF THIS DECLARATION; PROVIDED, HOWEVER, THE VOTES REQUIRED FOR ANY SUCH AMENDMENT OR MODIFICATION SHALL BE INCREASED FROM TWO-THIRDS (2/3) TO NINETY (90%) PER CENT OF THE OWNERS.

ARTICLE II

DEFINITIONS

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

2.01 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Brays Island Plantation Colony, Inc., as amended from time to time.

2.02 "Colony" shall mean and refer to Brays Island Plantation Colony, Inc., a South Carolina nonprofit corporation, its successors and assigns.

2.03 "Board of Governors" or "Board" shall mean and refer to the Board of Directors of the Colony, which is the governing body of the Colony.

2.04 "By-Laws of the Colony" or the "By-Laws" shall mean and refer to those By-Laws of Brays Island Plantation Colony, Inc., which govern the administration and operation of the Colony, as amended from time to time.

2.05 "Common Area" shall mean and refer to all real and personal property now or hereafter owned by or leased to the Colony for the common use and enjoyment of the Members. The Common Area consists of all of the Plantation (exclusive of those areas comprising Lots) and includes, without limitation, Recreational Amenities; roads; woodlands; fields; pastures and other open areas; lakes; docks; bridges; crops; water, sewer, drainage, gas, electrical and telephone facilities; and other utilities. The designation of any land, improvements or personal property as Common Area shall not mean or imply that the public at large or any person other than a Member acquires any right or easement of use or enjoyment therein.

2.06 "Common Expenses" shall mean and refer to all expenditures lawfully made by or on behalf of the Colony, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

2.07 "Company" shall mean and refer to BRAYS ISLAND COMPANY, INC., its successors and assigns.

2.08 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and all duly adopted amendments thereof filed for record in the Office of the Clerk of Court for Beaufort County, South Carolina.

2.09 "Development Period" shall mean and refer to that period of time beginning on the date of this Declaration and ending at such time as the first of the following events shall occur: (a) the Company no longer owns a Lot primarily for the purpose of sale; (b) the Company's election to terminate the Development Period by an amendment to this Declaration, expressly stating such termination, duly executed by the Company and recorded in the Office of the Clerk of Court for Beaufort County; or (c) the expiration of ten (10) years from the date of this Declaration. The Development Period shall be terminated

only as specifically set out above and no other activity or inactivity on the part of the Company (including, without limitation, any delay or cessation of construction, development and/or sales activities) shall extend, shorten or terminate the Development Period.

2.10 "Lot" shall mean and refer to any portion of the Property, generally circular in shape, shown on a Plat as a numbered lot, together with any improvements thereon. In the case of a revision to the Plat made pursuant to Section 3.07 of this Declaration so as to consolidate three (3) or more Lots and contiguous areas into one lot, the term "Lot" shall mean and refer to all of the area so combined into one lot as shown on the revised Plat, subject to the provisions of Section 3.07 of this Declaration.

2.11 "Member" shall mean and refer to a natural person, at least twenty-one (21) years of age, who is designated by an Owner pursuant to Section 4.02 hereof and who is shown on the records of the Colony as a Member of the Colony, entitled to the use, enjoyment and benefit of the Common Areas, subject to the provisions of this Declaration and the By-laws and rules and regulations of the Colony.

2.12 "Owner" shall mean and refer to one or more persons or entities, including the Company and including the Colony, who or which owns fee simple title to any Lot, excluding, however, persons having such an interest under a mortgage or other similar security interest granting, creating or conveying a lien upon or a security interest in a Lot. When a vote of all or any portion of the Owners or when the consent of all or any portion of the Owners is required or permitted under this Declaration for any purpose, the Owners (whether one or more persons or entities) shall be entitled to only one vote or consent, as the case may be, for each Lot owned by those Owners.

2.13 "Plantation" shall mean and refer to those tracts or parcels of land described in Exhibit A, together with all improvements located or constructed thereon and all additions thereto.

2.14 "Plat" shall mean and refer to that certain plat described in Exhibit A, together with any future revisions thereof recorded in the Office of the Clerk of Court for Beaufort County. Since the concept for development and improvement of the Plantation is subject to continuous revision and change, present and future references to the Plat shall be references only to the latest revision thereof. Any such revisions may be effected by the recording of a revised plat of the Plantation or any portion thereof; provided, however, any such revision must show on its face the approval thereof by the Company.

2.15 "Recreational Amenities" shall mean and refer to those portions of the Common Area and related facilities designated from time to time by the Company to be used for specific recreational and/or social purposes and shall

include, without limitation, the following real and personal property owned by or leased to the Colony: golf course, tennis courts, swimming pools, inn and lodge, horses, stables, barns and paddocks, skeet and trap range, sporting clays course, hunting courses, boats, docks, the river gazebo and playgrounds.

2.16 "Recreational Charges" shall mean and refer to all fees, rentals, food and beverage costs, and other charges established by rules and regulations of the Colony and which are charged to a Member with respect to his use or the use by his family, tenants, guests, and invitees of certain Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

ARTICLE III

PROPERTY RIGHTS

3.01 General. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, the ownership of one (1) share of stock of the Colony. The Owner of each Lot shall automatically become a stockholder of the Colony and shall remain a stockholder thereof until such time as his ownership ceases for any reason, at with time his stock ownership in the Colony shall automatically pass to the successor-in-title to his Lot. Lots shall not be subdivided, and, except as provided in Sections 1.01, 3.06 and 3.07 hereof, the boundaries of Lots shall remain as established in accordance with the Plat, unless the relocation thereof is made by or with the consent of the Company.

3.02 Member's General Easement of Use and Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, and subject to limitations on Colony membership as set out in Section 4.02 of this Declaration, the Owner of each Lot shall be entitled to designate Members of the Colony, which Members shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, subject to the following provisions:

(a) The right of the Colony to borrow money (i) for the purpose of improving the Plantation, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Plantation, or (iv) for providing the services authorized herein and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage or other

security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Colony shall be subject and subordinate to any and all rights, interests, options, licenses easements, and privileges herein reserved or established for the benefit of the Company or any Owner, irrespective of when such Owner acquires title to a Lot.

(b) The rights and easements reserved in Section 3.04 hereof.

(c) The right of the Company and the Colony to grant and accept easements as provided in Section 3.08 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of the shares of stock of the Colony represented by those present in person or by proxy at a duly held meeting of the Colony and, during the Development Period, by the Company.

(d) The rights and easements otherwise reserved by the Company and/or the Colony in this Declaration.

3.03 Additional Easements. The Owner of each Lot shall have a nonexclusive easement, for the uses and purposes hereinafter stated, over and on the area contiguous to such Lot and hereinafter described, such easement to be appurtenant to and to pass and run with title to such Lot; provided, however, such easement shall be subject to those rights and easements set out in Subsections 3.02(a) through 3.02(d) above, to any other rights and easements reserved unto the Company by this Declaration, and to the reasonable rules, regulations, and restrictions on such easement areas from time to time established by the Board. The uses and purposes for which such easement is granted are (i) to allow the Owner of the Lot reasonable access to and from any pasture, field, golf course, marsh, lake, pond, lagoon, creek or other waterway separated from his Lot by such easement area; (ii) to allow the Owner to construct, maintain and use docks, decks and other such facilities, subject to the limitations thereon contained in this Declaration; and (iii) to allow the Owner of the Lot to clear undergrowth and other vegetation and to provide landscaping so as to enhance the appearance of the easement area and to allow for a better view from the Lot to the areas beyond the easement area. Any such clearing and/or landscaping shall be subject to the prior approval of the Architectural Review Board, which approval shall not be unreasonably withheld. The exact location of such easement area shall be determined by the Architectural Review Board at such time as a survey is submitted to and approved by the Architectural Review Board pursuant to Section 10.05 hereof and is recorded in the Office of the Clerk of Court for Beaufort County.

3.04 Access. All Owners, by accepting title to Lots conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot and acknowledge and agree that such access, ingress and egress shall be limited to roads, walkways, trails, and waterways located within or near the Plantation from time to time. There is reserved unto the Company the right and privilege, but not the obligation, (a) to control traffic within the Plantation, (b) to maintain guarded or electronically-monitored gates or other device(s), in the sole discretion of the Company, controlling access to and from the Plantation, (c) to prohibit entry onto the Plantation by persons other than Owners, Members and guests as allowed by rules and regulations established from time to time by the Board, and (d) to require payment of toll charges for use of roads within the Plantation by permitted commercial traffic or by persons other than Owners and Members. In the event any streets in the Plantation are offered for public dedication, such streets must have a minimum right=of=way width of fifty (50) feet and all costs involved in bringing the right=of=way up to public street standards shall be borne by the Colony.

3.05 Easements for the Company. The Company shall have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing improvements in and to the Lots and for installing, maintaining, repairing, and replacing utilities, drainage facilities, sewer facilities, and such other improvements to the Plantation as are contemplated by this Declaration or as the Company desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article I hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall the Company have the obligation to do any of the foregoing.

3.06 Changes in Boundaries; Additions to Common Areas. The Company expressly reserves the right to change and realign the boundaries of the Common Areas and any Lots owned by the Company, provided that any such change or realignment of boundaries shall not increase the number of Lots to more than three hundred twenty-five (325) Lots and shall be evidence by a revision of or an addition to the Plat. In addition, the Company reserves the right, in its sole discretion, to convey, from time to time and at any time to the Colony by quit-claim deed, any portion of the Plantation, adjacent property, and/or Recreational Amenities, such property to be conveyed to the Colony as an addition to any Common Areas then owned by the Colony.

3.07 Conveyance of Common Area Adjacent to Lots. If any person or entity acquires title to two (2) or more Lots which have no other Lot lying between such two (2) or more Lots, the Company and/or the Colony (by action of the Board) may, but shall have no obligation to, convey to such person or entity fee simple title to portions of the Common Area lying adjacent to and between such Lots. Any such conveyance of portions of the Common Area shall be

subject to the following conditions, restrictions and agreements, all of which shall be appurtenant to and run with the title to such Lots and the portion of the Common Area conveyed to such person or entity:

(a) Any such conveyance of portions of the Common Area shall be made only simultaneously with or subsequent to conveyance of the adjacent Lots to such person or entity.

(b) After such conveyance, the area comprising the conveyed Common Area and the adjacent Lots shall be considered one Lot for purposes of restrictions against subdivision of Lots as set out in Section 3.01 of this Declaration; provided, however, such Lot may, with the consent of the Company, and upon the reconveyance to the Company of such portion of the Common Area, be subdivided so as to re-establish the boundaries of any Lot or Lots existing prior to any action pursuant to this Section 3.07.

(c) Appropriate revisions to the Plat shall be made and recorded so as to show the boundaries of the original Lots and the boundaries of the Common Area conveyed to the Owner of those Lots.

(d) In no event shall the total area of the Common Area conveyed to an Owner pursuant to this Section 3.07 be greater than the total area of Lots adjacent to such Common Area.

(e) Upon the conveyance of a portion of the Common Area pursuant to this Section 3.07, such portion of the Common Area shall thereafter no longer be considered a portion of the Common Area for any purposes, except as provided in (b) above.

(f) Notwithstanding the conveyance of a portion of the Common Area pursuant to this Section 3.07: (i) for purposes of Section 1.03 of this Declaration, such conveyance shall not be deemed to decrease the number of Lots on the Plantation; and (ii) the Owner of such Common Area and the adjacent Lots shall thereafter be deemed to own the same number of Lots as are shown on the Plat as of the date of this Declaration for purposes of calculating assessments, the number of homes which may be constructed on a Lot, the stock ownership in the Colony and the number of votes to which such Owner is entitled, the number of Members who may be designated by the Owner, and for all other such purposes.

(g) Neither the Company nor the Colony shall have any obligation whatsoever to make any conveyance of portions of the Common Area pursuant to this Section 3.07 and any such

conveyance, if made, may be made subject to such additional conditions and restrictions as are deemed by the Company or the Colony to be necessary or appropriate.

3.08 Easements for Utilities and Drainage. There is hereby reserved for the benefit of the Company the alienable, transferable, and perpetual rights and easement as well as the power to grant and accept conveyances and/or easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (a) all of the Common Areas and (b) any easement area adjacent to a Lot, 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, without limitation, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. To the extent practicable, all utility lines and facilities serving the Plantation 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 Plantation so encumbered, to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, to cut and remove any trees, bushes, or shrubbery, to grade, excavate, or fill, or to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

3.09 Sales and Construction Offices. Notwithstanding any provisions or restrictions therein to the contrary, there is hereby reserved for the benefit of the Company during the Development Period the alienable and transferable right and easement in and to the Plantation for the maintenance of signs, sales offices, construction offices, maintenance areas, business offices, and model dwellings, together with such other facilities as in the sole opinion of the Company may be reasonably required, convenient, or incidental to the completion, improvement, maintenance and/or sale of Lots, dwellings, or Common Areas.

3.10 Maintenance Easement. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement to enter upon any Lot and adjacent easement area for the purpose of mowing, removing, clearing, cutting, or pruning grass, underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Plantation, provided that such easements shall not impose any duty or obligation upon the Company or the Colony to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any Lots or adjacent easement areas from the water's edge of any lagoon, pond, lake, or other body of water within or adjacent to the Plantation, for the

purpose of mowing such area and keeping the same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards. Prior to the time a dwelling has been constructed on a Lot, the right and easement reserved herein my be exercised from time to time without notice to the Owner as provided in Section 5.02, it being the intent of this provision to allow a reasonable and expeditious manner of maintaining an attractive appearance for Lots prior to the time a residence is constructed thereon. The cost and expense incurred by the Company or the Colony in this connection, including a reasonable proportion of indirect costs, shall be an individual assessment under Section 9.05 of the Declaration to which Owner and his Lot are subject, and shall become a lien against such Lot. The Colony shall promptly reimburse the Company for its costs and expenses in exercising the foregoing rights and easements.

3.11 Environmental Easement. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board or by any governmental entity, such easement to include, without limitation, the right to implement drainage and erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

3.12 Wells and Effluent. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement (a) to pump water from lagoons, ponds, lakes, and other bodies of water located within the Plantation for the purpose of irrigating any portion of the Plantation, (b) 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, and (c) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities, or upon any Lot with the permission of the appropriate Owner.

3.13 Golf Course Maintenance. There is hereby reserved unto the Company, its agents and employees, the perpetual, nonexclusive right and easement over and across each Lot which is adjacent to the fairways and greens of the golf course. This reserved right and easement shall permit, but shall not obligate, the Company, its agents, employees, successors, and assigns, to go upon any such Lot to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than two (2) inches in diameter at a

level of two (2) feet above ground level. The area encumbered by this easement shall be limited to the portion of such Lot within thirty (30) feet of the golf course or such lesser area as the Company may determine.

3.14 Entry by Golfers. Each Lot near a golf fairway or green shall be subject to the right and easement on the part of golf course players and their caddies to enter upon such Lot to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be a trespass. Notwithstanding the foregoing, the Company shall be entitled to from time to time impose more restrictive rules and regulations regarding the playing and/or recovery of balls from Lots. Furthermore, golf course players or their caddies shall not be entitled to enter on any such Lots with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such Lot or in any way commit a nuisance while on any such Lot.

3.15 Conveyance of Common Areas to the Colony. The Company may at any time convey to the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to the Common Areas or any portion thereof. Within thirty (30) days after the earlier of (a) the date on which the Company has sold and conveyed title to three hundred ten (310) Lots or (b) the termination or expiration of the Development Period, the Company shall convey to the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to all of the common Areas not previously conveyed to the Colony.

3.16 Driveway Easements. The Owner of each Lot shall have an exclusive easement of right of way for access, ingress and egress, on over and along an area twenty (20') feet in width between the boundary of his Lot and the nearest roadway, the center line of such Lot easement area being shown on the Plat. Such easement shall be appurtenant to and shall pass and run with the title to such Lot; provided, however, the easement shall be subject to those rights and easements set out in Subsections 3.02(a) through 3.02(d) above, to any other rights and easements reserved unto the Company by this Declaration, and to the reasonable rules, regulations and restrictions on such easement areas from time to time established by the Board. The easement area may be relocated pursuant to Section 3.17 below, provided the easement area shall always furnish access from the Owner's Lot to a roadway shown on the Plat.

3.17 Relocation of Driveway Easements. The Company may, at the request of an Owner or for other good cause, change the location of the driveway easement lying between a Lot and a roadway, as shown on the Plat. Any such change shall be evidenced by an amendment to the Plat, which amendment shall be filed in the Office of the Clerk of Court for Beaufort County. After the filing of such amendment to the Plat, the area formerly comprising the driveway easement to that Lot shall be Common Area and the area comprising the

relocated driveway easement shall constitute the access easement described in Section 3.16 above.

3.18 Conveyance of Lots to the Colony. At such time as the Company has sold and conveyed title to three hundred ten (310) Lots, the Company shall convey to the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to the remaining fifteen (15) Lots owned by the Company. The Company may at its option, elect to convey and the Colony shall accept, all or a portion of such Lots to the Colony prior to the time the Company has sold and conveyed title to three hundred ten (310) Lots. The Lots conveyed to the Colony pursuant to the foregoing provisions may be held by the Colony or all or a portion of such Lots may be conveyed to third parties, the proceeds of any such conveyance to be used for the benefit of the Colony. During the time the title to any Lot is held by the Colony pursuant to this Section, such Lot shall not be subject to any assessments authorized by this Declaration and the Colony shall not be deemed to be an Owner for the purpose of voting on or consenting to any matter.

ARTICLE IV

COLONY OWNERSHIP; COLONY MEMBERSHIP

4.01 Colony Ownership. The total authorized and outstanding stock of the Colony shall consist of Three Hundred Twenty-Five (325) shares of stock. The Owner of each Lot shall be deemed to own one (1) share of stock of the Colony. The records of such stock ownership shall be maintained in the books and records of the Colony and no stock certificate shall be issued to evidence such ownership. Such stock ownership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such stock ownership. In the event that fee title to a Lot is transferred or otherwise conveyed, the stock ownership in the Colony which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's stock Ownership in the Colony. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall own more than one share of stock per Lot. In the event of multiple Owners of a Lot, voting shall be as provided herein. The rights and privileges of stock ownership, including the right to vote and to hold an office in the Colony, may be exercised by a stockholder or a stockholder's spouse, but in no event shall more than one vote be cast or more than one office be held for each Lot, subject, however, to the provisions of Section 14.01 of this Declaration. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as those Owners of such Lot themselves determine and advise the Secretary or an Assistant Secretary of the colony prior to any meeting. In the absence of such advice, the vote appurtenant

to such Lot shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot is equal and each Lot and shall have one (1) vote, subject, however, to the provisions of Section 14.01 of this Declaration.

4.02 Colony Membership.

(a) The Owner of each Lot shall have the right to designate three Members of the Colony and those Members shall have the nonexclusive right, privilege and easement of use and enjoyment in and to the Common Areas subject to the terms of this Declaration and the By-Laws and rules and regulations of the Board. Any Owner who is not a Member shall not have any right, privilege or easement of use and enjoyment in and to the Common Areas except that such Owner shall be permitted access to the Plantation in accordance with such rules and regulations as may be from time to time adopted by the Board. For the purposes of determining the number of Members to be designated by the Owner of each Lot, any Member and that Member's spouse shall be deemed to constitute only one Member.

(b) The Owner of each Lot shall, at the request of the Colony from time to time, advise the Colony and/or confirm to the Colony the identity of all persons designated by that Owner as Members. The Colony shall maintain a current list of such Members. In the absence of such designation and/or confirmation by the Owner, the membership relative to that owner's Lot may be suspended in the event more than one person or entity owns the Lot (or there is a dispute as to such ownership) and there is a dispute among the Owners (or those claiming ownership) as to the designated members. In such cases the Colony may, at its option, allow membership as to that Lot based upon an opinion of counsel satisfactory to the Colony in its sole discretion or based upon such other information as may be available to the Colony. The designation of Members as to any Lot may be changed upon the transfer of ownership of the Lot and on such other dates and times as shall be allowed by the Colony. In the case of a change in the designation of Members for any reason, there shall be no refund of any assessments previously assessed as to the Lot designating such Members.

(c) The Colony may for good cause (the determination of which shall be made in the reasonable discretion of the Colony) deny membership to any person or terminate the membership of any person. In no event shall the Colony, the Company, or their respective officers, directors, agents or employees have any liability

whatsoever to any party on account of denying or terminating membership of any person, denying any person who is not a Member (or is in good faith believed to not be a member) access to the Property or any Common Areas, or allowing any person who is not a Member access to the Property or any Common Areas.

(d) If the Owner of a Lot designates more than one Member of the Colony for any one Lot, the Owner shall pay the additional assessments as provided in Section 9.03 of this Declaration. An Owner shall not be entitled to any refund or rebate of assessments paid pursuant to Article IX on account of the termination or withdrawal of membership of any Member or on account of the conveyance of his Lot.

(e) The Colony may, pursuant to a rule, regulation or resolution adopted by the Board, allow temporary membership to a reasonable number of staff personnel or other persons when such action is considered to be of benefit to the Colony. Such temporary membership shall entitle the designated person or persons to the use and enjoyment of the Common Areas as may be allowed by such rule, regulation or resolution. Additionally, during the Development Period, the Company may allow the use and enjoyment of the Common Areas by a reasonable number of its employees, agents, and prospective Lot purchasers.

(f) Guests of Members shall be entitled to the use enjoyments of the Common Areas subject to such rules and regulations as may be from time to time adopted by the Board; provided, however, a guest may use and enjoy the Common Areas only at such times as the Member who invited that guest is on the Plantation.

(g) The violation by a Member of any provision of this Declaration, the By-Laws, or any rules and regulations of the Colony shall be deemed to be the same violation by the Owner who designated that member (and by all co-Owners of that Lot) and shall subject that Owner (and any co-0wners) to all fines, penalties, charges, liens and other sanctions available to the Colony under this Declaration.

ARTICLE V

MAINTENANCE

5.01 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Colony, all maintenance and repair of Lots, together with all other improvements thereon or therein, and all lawns,

landscaping, and grounds on and within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his Lot 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 and all lawns, trees, shrubs, hedges, grass and other landscaping. As provided in Sections 3.10 and 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Colony or the Company for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner shall (a) decorate, change, or otherwise alter the appearance of any portion of the exterior of a dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the Architectural Review Board as provided in Article X hereof, or (b) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize or adversely affect the soundness, safety and/or appearance of the Plantation, 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.

5.02 Responsibilities of Colony.

(a) Except as may be herein otherwise specifically provided, the Colony shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include, without limitation, the operation, maintenance, repair, and replacement of the following: (i) all roads, walks, trails, agricultural operations, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas, (ii) such utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the Common Areas, and (iv) the Recreational Amenities. Neither the Colony nor the Company shall be liable for injury or damage to any person or property caused by the elements or by any Owner, Member or any other person; resulting from any rain or other surface water which may leak or flow from any portion of the common Areas; caused by any pipe, plumbing, drain, conduit, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the colony or the Company, breaking down or as a result of the repair of the same, or related to the operation, use or existence of Recreational Amenities. Nor shall the Colony or the Company be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the common Areas or any other portion of the Plantation.

(b) In the event the Company or the Board determines that: any Owner 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 Colony hereunder is caused through the willful or negligent act of an Owner, his or its Members, family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Company or the Colony, except in the event of an emergency situation, may give such Owner written notice of the Company's or the Colony's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, 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, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Company or the Colony may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the so9le cost and expense of such Owner, and said cost and expense shall be added to and become apart of the assessment to which Owner and his Lot are subject, and shall become a lien against such Lot. In the event the Company undertakes such maintenance, cleaning, repair, or replacement, the Colony shall promptly reimburse the Company for the Company's costs and expenses.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and may obtain and continue in effect adequate

property insurance, in such form as the Board deems appropriate, FOR THE BENEFIT OF THE Colony and insuring all insurable improvements in and to the Common Areas against loss or damage or other hazards, including, without limitation, extended coverage, flood, vandalism, malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and may obtain and continue in effect a public liability insurance policy covering all the Common Areas and all damage or injury caused by the negligence of the Colony, its Members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined by the Board to be necessary or appropriate.

(c) The Board or its duly authorized agents shall have the authority to and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, (ii) errors and omission insurance, (iii) directors and officers liability insurance, and (iv) such other types and amounts of insurance as may be determined by the Board to be necessary or appropriate.

(d) The costs of all such insurance coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Colony and hereafter in force with respect to the Plantation shall be vested in the Board; provided, however, that no mortgage or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Colony shall be required to make a reasonable effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating available.

(ii) All property insurance policies shall be for the benefit of the Colony and its mortgagees as their interests may appear.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Colony and to any mortgage to which a mortgage endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Colony's Board hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their mortgages.

(v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Company, the Colony, the Colony's directors, officers, agent and employees, the Owners, the Members, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Colony's manager.

(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, Members, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Colony or of its manager, without prior demand in writing delivered to the Colony to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vii) All liability insurance shall contain cross-liability endorsements to cover liability of the Colony to an individual Owner.

(e) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, and other insurance with respect to his own Lot. The Board may require all Owners to carry public liability and property damage insurance with respect to their respective Lots and to furnish copies or certificates thereof to the Colony.

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Colony, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article

VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Colony shall restore or replace any damage or destruction to all or a part of the Common Areas unless Company (during the Development Period) together with at least a majority of the total vote of the Colony, shall otherwise agree. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve find as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be prorated among the Lots equally, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Colony under and virtue of such assessments shall be held by and for the benefit of the Colony together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Colony in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Colony. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Colony, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots In the event of damage or destruction by fire or other casualty to any Lot and in the further event that the Owner of such Lot elects not to repair or rebuild any damaged or destroyed improvements, such Owner shall promptly clear away any ruins and debris of any damaged improvements or vegetation and leave the Lot in a clean, orderly, safe and sightly condition. Should such Owner elect to repair or rebuild such improvements, such Owner shall repair or rebuild such improvements in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII

CONDEMNATION

7.01 Condemnation of Common Areas. Whenever all or any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board

acting on the agreement of a majority of the total vote of the Colony and of the Company (during the Development Period) the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Colony and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, the Company (during the Development Period) together with a majority of the total membership of the Colony, shall otherwise agree, the Colony shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board, the Architectural Review Board, and by the Company (during the Development Period). If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be prorated among the Lots equally, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Colony.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Colony.

(c) If the taking or sale in lieu thereof includes all or any part of a Lot and also includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Colony and the Owners so affected so as to give just compensation to the Owners of any Lot taken and to the Colony; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board, (ii) the Owners of all Lots, wholly or partially taken or sold, together with the mortgagees for each such Lot, and (iii) the Company (during the Development Period).

7.02 Condemnation of Lots.

(a) In the event that all or any part of a Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot elects not to restore any Lot improvements so taken or conveyed, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of the improvements remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the Lot, to the Colony as a part of the Common Areas, and thereafter any such Owner shall not have any further ownership rights or membership rights or privileges in the Colony or with respect to the Plantation and shall not be subject to any further assessments imposed by the Colony and payable after the date of such deeding.

(b) In the event that any part of the Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot elects to restore the remainder of the Lot improvements, such Owner making such election shall restore such remainder of such Lot improvements as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

ARTICLE VIII

ADMINISTRATION

8.01 Common Areas. The Colony, subject to the rights of the Company and the rights and duties of the Owners and Members set forth in this Declaration and the By-Laws of the Colony, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon

RECORD OF APPEAL 0126

(including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. Except to the extent otherwise required by the provisions of the South Carolina Code relating to nonprofit corporations, this Declaration, the By-Laws, the Colony's powers and duties may be exercised by the Board of Governors, acting through the officers of the Colony, without further consent or action on the part of the Owners. AS PROVIDED IN SECTION 14.01 HEREOF AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED IN ANY INSTRUMENTS EVIDENCING OR ESTABLISHING THE PLANTATION, THE COMPANY SHALL HAVE THE RIGHT DURING THE DEVELOPMENT PERIOD TO APPOINT OR REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OR ANY OFFICER OR OFFICERS OF THE COLONY. Each Owner, by acceptance of a deed to or other conveyance of a Lot vests in the Company such authority to appoint and remove directors and officers of the Colony as provided by Section 14.01 hereof.

8.02 Duties and Powers. The duties and powers of the Colony shall be those set forth in the provisions of the South Carolina Code relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Colony. The Colony may exercise any other right or privilege given to it expressly by this Declaration or by law, every right or privilege which may be reserved herein for the benefit of the Company and assigned to the Colony as provided for in this Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Colony shall include, but shall not be limited to, the power to accept or purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots, to furnish trash collections, water, sewer, security and/or other services for the Common Areas and/or the Lots. Notwithstanding the foregoing provisions of this Section 8.02 or any other provision of this Declaration to the contrary, during the Development Period the Colony shall not, without the written consent of the Company, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

8.03 Agreements. Subject to the prior approval of Company (during the Development Period), all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Plantation or the privilege of possession and enjoyment of any part of the Plantation. In performing its responsibilities hereunder, the Colony, through its Board, shall have the authority to delegate to persons and or committees of its choice such duties of the Colony as may be determined by the Board. In

furtherance of the foregoing and not in limitation thereof, the Colony may obtain and pay for the services of any person or entity to manage its affairs or any part thereof to the extent it deems advisable, as well as such other personnel as the Colony shall deem necessary or desirable for the proper operation of the Plantation, whether such personnel are furnished or employed directly by the Colony or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Colony, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or stockholders of the Colony by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Colony may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Plantation or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Colony.

8.04 Personal Property and Real Property for Common Use. The Colony, through action of its Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Colony and the proceeds thereof, after deducting therefrom the costs incurred by the Colony in acquiring or selling the same, shall be held by and for the benefit of the Colony. The shares of the Owners in the funds and assets of the Colony cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the stock ownership in the Colony which is an appurtenance to such Lot.

8.05 Rules and Regulations. As provided in Article XIII hereof, the Colony, through its Board, may make and enforce reasonable rules and regulations governing the use of the Lots, easement areas, and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

ARTICLES IX

ASSESSMENTS

9.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used, without limitation, to: create, maintain and operate agricultural operations on the Property; preserve and enhance natural areas conducive to the enjoyment of outdoor activities; create, improve, maintain and operate Recreational Amenities; maintain, landscape and

repair streets, walkways and like community areas, utility systems storm drainage, grounds, maintenance buildings(s) and related property, and security, cable television and utility lines and facilities; maintain satisfactory means of access to the Plantation; maintain the waterfront, lagoons and other bodies of water in a clean and orderly condition; create, improve, maintain and operate other Common Areas; repair damage caused by erosion; provide for pest control when needed; generally promote the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners, Members and occupants of the Plantation; provide those services important to the Plantation and preservation of an attractive community appearance; and maintain the privacy, security and general safety of the Owners, Members and occupants of the Plantation, all as may be more specifically authorized from time to time by the Board.

9.02 Creation of Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Colony: (a) annual assessments, such assessments to be established and collected as provided herein; (b) special assessments, such assessments to be established and collected as provided herein; and (c) individual or specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, without limitation, fines as may be imposed against such Lot in accordance with Article XIII hereof. Any such assessments, together with late charges, simple interest at the rate of eighteen (18%) per cent per annum, court costs, and attorneys' fees shall be an equitable charge and continuing lien upon the Lot, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments coming due while he is the Owner of a Lot, and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefore, but without prejudice to the rights of such grantee to recover from his granter any amounts paid by such grantee therefore; provided, however, the lien for unpaid assessments shall be subordinate and junior in lien to any first priority institutional mortgage. In the event of co-ownership of any Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments and other charges as provided herein. Assessments shall be paid in such manner and on such dates as may be fixed by the Board.

9.03 Computation of Annual Assessments. The annual assessment for each Lot shall be calculated according to the number of Members who are designated by the Owner of that a lot for the year in which the assessment is to be effective. The annual assessment for a Lot with one (1) or no Member designated for that year shall be increased by fifty (50%) per cent if two (2) Members designated for that year and by one hundred (100%) per cent if three (3) Members are designated for that year. The annual assessment for each Lot with one or no designated Member shall initially be the sum of $3,600.00 per year. It shall be the duty of the Board at least thirty (30) days prior to the Colony's annual meeting to prepare a budget covering the estimated Common Expenses

during the coming year, such budget to include a capital contribution or reserve account if necessary or desirable for the capital needs of the Colony. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be sent o each Owner at least fifteen (15) days prior to such meeting. In order to promote the development of the Plantation, the total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments (subject to adjustments as set out above for additional Members); provided, however, during the Development Period the annual assessments shall be the amount set by the Board and approved by the Company and the Company shall be responsible for the payment of annual assessments only as required by Section 9.10 hereof. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Company during the Development Period or (ii) after the Development Period, by a majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments n effect for the then current year shall be deemed implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Colony for the approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not be limited to, the following:

(a) management fees and expenses of administration, including legal and accounting fees;

(b) utility charges for utilities serving the Common Areas and charges for other common services for the Plantation, including trash collection and security services, if any such services or charges are provided or paid by the Colony, and to the extent such charges are not paid directly by Owners;

(c) the cost of any policies of insurance as required or permitted by this Declaration, including fire, flood and other hazard coverage, public liability coverage, officers and directors liability coverage, and such other insurance coverage as the Board determines to be in the interests of the Colony, the Owners and the Members;

(d) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Colony under the provisions of this Declaration;

(e) the expenses of creating, maintaining and operating Recreational Amenities to the extent such expenses are not defrayed by Recreational Charges;

(f) the expenses of the Architectural Review Board which are not defrayed by plan review charges;

(g) the expenses of maintaining and operating agricultural operations of the Plantation;

(h) the expenses of preserving and enhancing natural areas, wildlife, and areas conducive to the enjoyment of outdoor activities;

(i) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(j) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners, Members, and their families, guests, and invitees;

(k) such other expenses as may be determined from time to time by the Board to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots;

(l) the establishment and maintenance of a reasonable reserve fund or funds (i) for the creation, preservation, enhancement, maintenance, repair, and replacement of Common Areas which the Colony desires to create, preserve, enhance, maintain, repair or replace, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency or unanticipated expenditures and other matters, all as may authorized from time to time by the Board;

(m) the establishment of an insect control program;

(n) the expenses of creating, preserving and enhancing wildlife habitat and natural areas; and

(o) for such further items that the Board may, in its discretion, deem necessary or appropriate.

9.04 Special Assessments. In addition to the annual assessments authorized above, the Colony, acting through its Board, may levy, in any

assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in Section 6.02 and 7.01 hereof, any such assessment may assessment may be disapproved by (a) Company during the Development Period, or (b) after the Development Period by a majority of the votes of he Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof The Board may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments shall be prorated among the Lots equally; provided, however, during the Development Period any Lots owned by the Company shall not be subject to any such special assessment.

9.05 Individual Assessments. All unpaid recreational Charges incurred by an Owner, a Member designated by that Owner or by family, tenants, agents, guests or invitees of such Owner or Member may be specially assessed against such Owner and his respective Lot. Any expenses of the Colony occasioned by conduct in violation of this Declaration by an Owner, a Member designated by that Owner or by family, tenants, agents, guests, or invitees of such Owner or Member may be specially assessed against such Owner and his respective Lot. The individual assessments provided for in this Section 9.05 shall be levied by the Board and the amount and due date of such assessments so levied by the Board shall be as specified by the Board.

9.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Colony, as well as any other meeting of the Owners (including, without limitation, a meeting call for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof), shall be sent to all Owners not less than ten (10) days no more than fifty (50) days in advance of such meetings. He presence of stockholders or proxies entitled to cast over fifty (50%) percent of all the votes of the Colony shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of stockholders having one-third (1/3) of the total votes of the Colony. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.07 Liens. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Colony. Such lien shall be superior to all other liens and encumbrances on such Lot except only for (a) liens for ad valorem taxes, and (b) liens for all sums unpaid on a first priority institutional mortgage. Notwithstanding the foregoing to the contrary, the subordination of assessments to the Lien of such mortgages shall only apply to such

assessments which have become due and payable prior to a foreclosure sale. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to the liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

9.08 Effect of Nonpayment; Remedies of the Colony. Any assessment or any portion thereof which is not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due hall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen (18%) percent per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board, interest on the principal amount due at the rate of eighteen (18%) percent per annum, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. The Colony may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Colony, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Colony and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens on real property. The Colony shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas, failure to designate Members, voluntary or involuntary termination of Membership, or abandonment of his Lot, and an Owner shall remain personally liable for assessments, interest, late charges and other amounts which accrue prior to a sale, transfer, or other conveyance of his Lot.

9.09 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Colony shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner or such Owner's mortgagee which requests the same, a certificate in writing signed by said Treasurer, Assistant Treasurer, or manager setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other charges. Such certificate shall be conclusive

evidence against all but such Owner of payment of any assessments stated therein to have been paid.

9.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Company (but in no event earlier than October 1, 1988) and shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot according to the number of months then remaining in the then fiscal year of the Colony and the number of days then remaining in the month in which such Lot is first conveyed. Anything contained herein to the contrary notwithstanding, Company shall not, during the Development Period, be responsible for the payment of annual or special assessments on Lots, which it or its affiliates own and which do not contain occupied residences, provided that Company covenants and agrees to pay annual and special assessment for each Lot owned by Company or an affiliate and containing an occupied residence. Furthermore, during the Development Period, the Company shall fund any deficit which may exist between assessments and the annual budget of the Colony, provided, however, that the budget, assessments, and deficit, if any, shall be annually reviewed and approved by Company, and the Board, and during such period Company's obligation for funding deficits shall only be up to the amount of the Colony's budget.

ARTICLE X

ARCHITECTURAL STANDARDS AND RESTRICTIONS

10.01 Purpose. In order to preserve and enhance the natural setting, beauty and utility of the Plantation, to establish and preserve a harmonious ad aesthetically pleasing design for the Plantation, and to protect and promote the value of the Plantation and its environment, the Lots, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of ay interest in the Plantation, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Review Board. The Board shall establish the Architectural Review Board which shall consist of up to five (5), but not less than three (3), members, who may or may not be Owners or members of the Board of Governors. The regular term of office of each member shall be one year, coinciding with the fiscal year of the Colony. Any member appointed to the Architectural Review Board may be removed with or without cause by the Board of Governors at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term

of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Review Board by the Board of Governors during the Development Period shall be subject to the prior approval of Company. The Architectural Review Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Review Board shall meet upon call of the chairman and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Review Board shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein. Each member of the Architectural Review Board may be paid a stipend or honorarium as from time to time determined by the Board of Governors.

10.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, painted, stained, or maintained upon any part of the Plantation, except (a) for dwellings and other improvements which are constructed by Company, (b) such improvements as are approved by the Architectural Review Board in accordance with this article X, or (c) improvements which pursuant to this Article X do not require the consent of the Architectural Review Board.

10.04 Construction of Improvements.

(a) To assure that dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each dwelling or structure, dwellings and structures will be located with regard to the topography of each Lot taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other dwellings or structures within the Plantation.

(b) No construction or improvements on any Lots shall be undertaken or conducted on any Saturdays, Sundays, or holidays as established by the Architectural Review Board except for (1) construction activities of Company, (ii) emergency situations involving the potential loss, injury, or damage to person or property, and (iii) as otherwise permitted y the Architectural Review Board.

(c) The Architectural Review Board, in its sole discretion may require that any contractor and/or subcontractor, exclusive of those of Company, for any planned improvements within the Plantation

post payment and/or performance bonds with the Architectural Review Board to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Colony and to be in form and amounts satisfactory to the Architectural Review Board. The exterior of an improvements and landscaping permitted by this Declaration shall be completed within one year after the construction of same shall have been commenced, except where the Architectural Review Board allows for an extension of time because completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. In the event that such improvements or landscaping are not completed in accordance with approved plans and specifications within the provided periods, the Architectural Review Board shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements.

(d) Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot or Dwelling at any time, except as provided in Section 11.13 hereof and except for temporary structures for social functions as may be permitted by rules and regulations of the Board, nor shall any stable, poultry house or yard, rabbit hut, dog house or other similar yard structure be constructed or allowed to remain on any Lot without the consent of the Board, which consent shall not be unreasonably withheld. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot on which such construction has been completed.

10.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Plantation, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Company, with respect to the construction or exterior of any dwelling or with respect to any other portion of the Plantation, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks wharves, bulkheads, boat slips, boathouses, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of

the plans and specifications and related data shall have been submitted to and approved in writing by the Architectural Review Board as to the general contractor and the harmony of external design, location, and appearance in relation to surrounding structures, vegetation and topography. The related data to be submitted to the Architectural Review Board shall include without limitation, the name of the general contractor to be used by the Owner; a survey showing the topography of such Lot, the location of trees at least four (4) inches in diameter at a height of four (4) feet, other significant vegetation on such Lot, the location of not less than two (2) iron pins placed on the boundary of the Lot, the location of (or any proposed relocation of) the driveway easement described in Section 3.16 hereof, and, as to any Lot listed on Exhibit B hereto, the proposed location of the easement area described in Section 3.03 hereof; and the nature, color, type, shape, height, materials, and location of the proposed improvements. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Review Board, and the other copy shall be returned to the Owner marked "approved" or "disapproved." The Architectural Review Board shall establish a fee sufficient to cover the expenses of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be $150.00 for submission, and the Architectural Review Board shall have the right to increase or decrease this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his dwelling without the necessity of approval or review by the Architectural Review Board. The Architectural Review Board shall have the sole discretion to determine whether plans and specification and the general contractor submitted for approval are acceptable to the Colony. Following approval of any plans and specifications by the Architectural Board, representatives or agents of the Architectural Review Board shall have the right during reasonable hours to enter upon and inspect any Lot, dwelling, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the Architectural Review Board shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications or the general contractor within forty-five (45) days after such plans and specifications and the name of the general contractor have been submitted, such plans and specifications and the general contractor will be deemed to have been expressly approved. Upon approval of plans and specifications and the general contractor, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g., clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications and the general contractor by the Architectural Review Board may be based upon any grounds consistent with the objects and purposes of this Declaration, including purely aesthetic consideration.

10.06 Landscaping Approval. No landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than the Company, unless and until the plans therefore have been submitted to and approved in writing by the Architectural Review Board. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Review Board shall be entitled to promulgate standards with respect to such coverages. The landscaping plan for any Lots adjacent to golf courses shall be in general conformity with the overall landscaping plan of such golf course.

No Owner, other than the Company, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of four (4) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the Architectural Review Board, provided that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Review Board or its representative, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any Lot or dwelling by the Owner of such Lot. All of the landscaping of Lots must be completed within ninety (90) days of issuance of a certificate of occupancy.

10.07 Approval Procedures. Subject to the provisions hereof, the Board of Governors may establish reasonable procedures in addition to those set out in Sections 10.05 and 10.06 relating to architectural approval and landscaping approval. Such procedures shall be binding upon all Owners other than the Company and may provide for such matters as the specific data and materials to be submitted to the Architectural Review Board, the address to which such data and materials should be submitted, and a manner of obtaining a preliminary review of plans and specifications prior to formal submission to the Architectural Review Board.

10.08 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be designed and/or built in a good and workmanlike manner. Neither Company, the Colony, nor the Architectural Review Board shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article X, nor any defects in construction undertaken pursuant to such plans and specifications.

ARTICLE XI

USE RESTRICTIONS

11.01 Use of Lots. Except as otherwise permitted herein, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on thereon. The use of a portion of a dwelling as an office by an Owner shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, provided that in no event shall any Lot be used as the office of or storage area for any building contractor or real estate developer other than the Company. Furthermore, the operation of the Recreational Amenities and the operation by the Colony of other activities in Common Areas for which a fee may be charged shall be expressly permitted within the Plantation, exclusive of Lots, and shall not be deemed to be a violation of the terms of this Section 11.01. Lease or rental of a single family Dwelling shall also not be considered to be a violation of this covenant so long as the lease is in compliance with rules and regulations as may be promulgated and published from time to time by the Board. No Lot may be leased or rented to any entity or person who is not a Member of the Colony without the written consent of the Colony, which consent shall be in the sole discretion of the Colony and may in any case be denied. All leases and rentals shall be required to be in writing, and, prior to the commencement of any such lease or rental, the Owner shall provide the Secretary of the Colony and the managing agent of the Colony, if any, with copies of the lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

11.02 Boats and Watercraft. No person shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within or on waters adjacent to the Plantation, provided that the Board may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discharged from any yacht, boat, or other watercraft into any creek, river, marina, or other body of water within or adjacent to the Plantation. Furthermore, Owners, other than Company, shall not be entitled to lease or rent any boat slips, boathouses, or wharf, dock, or bulkhead space adjacent to Lots to persons other than other Owners, their allowed tenants, or Members.

11.03 Signs. Except as may be required by legal proceedings, no "for sale", "for rent", or other signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements, trees, or utility structures or on any Lot located within the Plantation, without the express written permission of the Architectural Review Board. The approval of any signs and posters, including, without limitation, name

and address sign, shall be upon such conditions as may be from time to time determined by the Architectural Review Board and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 11.03 shall not apply to Company. In addition, the Board, on behalf of the Colony, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas.

11.04 Mail Boxes. No mail boxes may be erected on any Lot. All mail shall be deposited and received at a facility to be erected by Company as a Common Area.

11.05 Antennas. No television antenna, satellite dish, radio receiver or sender or other similar device shall be attached to or installed on any Lot without prior written approval of the Architectural Review Board.

11.06 Water Wells and Septic Tanks. Private water wells, septic tanks, and similar sewerage facilities shall be installed or maintained on Lots only in accordance with the reasonable rules and regulations adopted by the Board from time to time.

11.07 Pets. With the exception of the Company and the Colony, no animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner, his family, tenants, guests, or invitees, upon any portion of the Plantation, provided that a reasonable number of horses and generally recognized house pets may be kept, subject to rules and regulations adopted by the Board. Any horse or pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed. Horses and pets shall be allowed on Common Areas or on property not owned by the Owner, only in accordance with rules and regulations of the Board. Upon written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 11.07, a particular pet is generally recognized house pet or whether a horse or pet is a nuisance, and the Board shall have the right to require the owner of a particular horse or pet to remove such horse or pet from the Plantation if such horse or pet is found to be a nuisance or to be in violation of these restrictions. The Board shall have the further right, subject to Section 13.03 hereof, to fine any Owner for the violation of these horse and pet restrictions by such Owner, his Members, family, tenants, guests, or invitees and an Owner shall be liable to the Colony for the cost or repair of any damage to the Common Areas caused by the horse or pet of such Owner, his Members, family, tenants, guests, or invitees or of an occupant of such Owner's Lot. Any such fine or cost of repair shall be considered an individual assessment pursuant to Section 9.05 of this Declaration to which such Lot and its Owner are subject.

11.08 Hunting and Fishing. No hunting will be allowed on the Plantation except as allowed by rules and regulations of the Board. Fishing will

be allowed within the Plantation only in areas from time to time designated by the Board in accordance with rules and regulations of the Board.

11.09 Limitations as to Use of Bodies of Water. To provide for the full enjoyment of the lagoons, lakes, ponds and other bodies of water within the Plantation, and to preserve water quality and to minimize erosion due to water turbulence, no boats with combustion type engines shall be operated in said water courses or bodies of water within the Plantation without the written consent of Company and the Colony, which permissions may be arbitrarily withheld.

The Colony (during the Development Period) may retain ownership of all bodies of water referred to above and not lying within the boundaries of a Lot and expressly reserves every reasonable use and enjoyment of said lagoons, water courses and other bodies of water in a manner not inconsistent with this Declaration. It is further expressly recognized that lagoons and bodies of water perform valuable drainage functions requiring water levels to be raised and lowered from time to time in connection with the operation of the Plantation. The Company (during the Development Period) and the Colony expressly retain all rights to adjust water levels as requirements dictate.

11.10 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Plantation, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Plantation, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Plantation. Noxious or offensive activities shall not be carried on any Lot or in any part of the Common Areas, and each Owner, his Members, family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Plantation or which could result in a cancellation of any insurance for any portion of the Plantation, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except alarm devices used exclusively for such purposes, shall be located, used or placed within the Plantation. Any Owner, or his Members, family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Plantation shall be liable to the Colony for the actual costs of removal thereof or the sum of $50.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject. No drying or hanging of any clothing or bedding shall be permitted outdoors and all garbage cans and outdoor recreational equipment such as sandboxes and basketball goals shall be installed or used in accordance with the rules and regulations of the Board.

11.11 Golf Course Areas. Owners of Lots adjacent to golf course fairways and greens, as well as their Members, families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, running walking on the fairways, picking up balls, or like interference with play.

11.12 Motor Vehicles, Trailers, Boats, Etc. Each Owner shall provide for parking of his automobiles off streets and roads within the Plantation after the issuance of a certificate of occupancy of his dwelling. Subject to the terms of this Section 11.12, there shall be no outside storage or parking upon any Lot or within any portion of the Common Areas (other than areas provided therefore within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), bus, commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft (other than in boat slips, boathouses, other docking facilities, or storage yards) boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of combustion driven or towed transportation devices. Furthermore, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other vehicles, or any of them, from entering and/or being kept, placed, stored, maintained, or operated upon any portion of the Plantation if in the opinion of the Board such prohibition shall be in the best interests of the Plantation. No Owners or other occupants of any portion of the Plantation shall repair or restore any vehicle of any kind upon any Lot or within any portion of the Common Areas, except within enclosed garages or workshops or for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. In Company's discretion, rental storage space for the above mentioned vehicles, boats, etc., may be provided in an area designated by Company.

11.13 Sales Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, during the Development Period it shall be expressly permissible for Company and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or dwellings or the developing of Lots, dwellings, and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices and signs, provided that the location of any construction trailers of any assignees of Company's rights under this Section 11.13 shall be subject to Company's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use dwellings as model residences and to use any dwelling as an office for the sale of Lots and/or dwellings and for related activities.

11.14 Repurchase Option. Subject to the provisions of Section 14.06 hereof, Company hereby reserves the right and option to purchase any Lot or dwelling within the Plantation which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer for such Lot or dwelling which is acceptable to such Owner an which is made in writing to such Owner by a third party. Upon the receipt of any such offer by an Owner, such Owner shall promptly submit a copy of the same to Company, and Company shall have a period of ten (10) days from and after the receipt by the Company of such offer in which to exercise its repurchase option by giving the Owner written notice of such exercise. If the Company fails to respond or to exercise such repurchase option within said ten (10) day period, Company shall be deemed to have waived such repurchase option. If during such ten (10) day period the Company declines to exercise such option, Company shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that Company does not exercise its repurchase options and such sale to a third party is not consummated on such terms within six (6) months of the date on which the offer is received by Company, the terms and limitations of this Section 11.14 shall again be imposed upon any sale by such Owner. If Company shall elect to purchase such Lot or dwelling, the transaction shall be consummated within sixty (60) days following delivery of written notice by Company to such Owner of Company's decision to so purchase such Lot or dwelling.

ARTICLE XII

SPECIAL RESTRICTIONS AFFECTING ALL WETLANDS, WATERFRONT, LAGOON AND MARSHLAND AREAS

12.01 Restricted Activities. In order to maintain reasonable standards of water quality for the protection of plants in or at the edge of marshes, ponds, lakes and other waterways, as well as fish, and animals using such marshes, ponds, lakes and other waterways, the Board may establish reasonable rules and regulations restricting the use of chemicals or other materials in a manner which may be harmful to the maintenance of such reasonable standards of water quality.

12.02 Docks and Decks. Docks, decks or boathouses may not be erected without written approval of the Architectural Review Board and written approval of any local, state or federal governmental departments or agencies which have jurisdiction over construction. Company reserves the right in its

uncontrolled discretion to disapprove such plans and specifications on any grounds, including without limitation, purely environmental or aesthetic reasons.

12.03 Maintenance of Docks and Decks. All Owners who construct or cause to be constructed said decks, docks and/or boathouses, must maintain such structures in good repair and keep the same safe, clean and in orderly appearance at all times. Such Owner shall paint or otherwise treat with preservatives all wood or metal (exclusive of pilings) located above the high water mark of tidal waters, inland lakes, lagoons and ponds, and shall maintain such paint and preservatives in an attractive manner. The Architectural Review Board shall be the sole judge as to whether the decks, docks and/or boathouses are safe, clean, and orderly in appearance, and properly painted or preserved in accordance with reasonable standards.

When the Company or Architectural Review Board notifies a particular Owner in writing that his decks, dock and/or boathouse fails to meet acceptable standards, said Owner shall remedy such condition within thirty (30) days to the satisfaction of the Company or Architectural Review Board. In the event such Owner fails to remedy such a condition, the Company or Colony may make the necessary repairs or take such actions as will bring the said deck, dock and/or boathouse up to acceptable standards, all such repairs and actions being a the sole expense of the Owner.

ARTICLE XIII

RULES MAKING

13.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, easement areas and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Colony to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their Members, families, tenants, guests, invitees, servants and agents, until and unless any such rules or regulations are specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Colony by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Colony; provided that in the event of such vote during the Development Period, such action must also be approved by Company.

13.02 Authority and Enforcement. Subject to the provisions of Section 13.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including without limitation, the failure to timely pay any assessments, the Board shall have the power (a) to

impose reasonable monetary fines on the Owner and member guilty of such violation which shall also constitute an equitable charge and a continuing lien upon the Lot of such Owner, (b) to suspend an Owner's right to vote in the Colony, and (c) to suspend a member's membership and the right of such Member to use any Common Areas and the Board shall have the power to impose all or any combination of these sanctions. An Owner or Member shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his Members, family, guests, tenants, or invitees, or by his co-Owners or the Members, family, guests, tenants or invitees of his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed sixty (60) days as to a Member who is also an Owner.

13.03 Procedure. Except with respect to the failure to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or Member - for violations of the Declaration, the By-Laws, or any rules and regulations of the Colony, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the person responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than five (5) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Colony may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such person with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE XIV

GENERAL PROVISIONS

14.01 Control by Company. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATOIN, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION: (a) COMPANY HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF GOVERNORS OF THE COLONY AND ANY OFFICER OR OFFICERS OF THE COLONG DURING THE DEVELOPMENT PERIOD. Every grantee of any interest in the Plantation, by acceptance of a deed or other conveyance of such interest, agrees that Company shall have the authority to appoint and remove directors and officers of the Colony in accordance with the foregoing provision. Upon the expiration of the Development Period such right to appoint and remove directors and officers of the Colony pursuant to this Section 14.01 shall pass to the Owners, and a special meeting of the Colony shall be called within a reasonable time thereafter. At such special meeting Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Company shall deliver all books, accounts, and records, if any, which Company has kept on behalf of the Colony and agreements or contracts executed by or on behalf of the Colony during such period and which Company has in its possession.

(b) IN EVERY CASE IN WHICH A QUORUM OF STOCKHOLDERS FOR THE TRANSACTIN OF BUSINESS BY THE COLONY AND/OR A MAJORITY OR GREATER VOTE OF THE STOCKHOLDERS (OR

THOSE STOCKHOLDERS REPRESENTED AT A MEETING) IS REQUIRED FOR ANY PURPOSE PURSUANT TO THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BY-LAWS OR OTHERWISE, DURING THE DEVELOPMENT PERIOD SUCH QUORUM SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN SATISFIED AND SUCH MAJORITY VOTE SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN OBTAINED IF THE COMPNAY, THROUGH ITS DULY AUTHORIZED OFFICER, ATTENDS THE MEETING OF STOCKHOLDERS AND VOTES IN FAVOR OF THE ACTION REQUIRING A MAJORITY OR GREATER VOTE. FURTHER, DURING THE DEVELOPMENT PERIOD NO ACTOIN REQUIRING A MAJORITY OR GREAER VOTE OF THE STOCKHOLDERS (OR THOSE STOCKHOLDERS RESPRESENTED AT A MEETING) SHALL BE DEEMED TO HAVE BEEN TAKEN UNLESS THE COMPANY HAS ATTENDED THE MEETING AND VOTED IN FAVOR OF SUCH ACTION. Every Grantee of any interest in the Plantation by acceptance of a deed or other conveyance of such interest, specifically and irrevocably agrees to the foregoing provision.

14.02 Amendments by Company. During the Development Period, the Company may, except as provided in Section 1.03 of this Declaration, amend this Declaration by an instrument in writing recorded in the Office of he Clerk of Court for Beaufort County, South Carolina, without the approval of any Owner; provided, however, (a) in the event that such amendment materially and adversely affects any Owner's right to the use and enjoyment of his Lot, an appurtenant easement or the Common Areas as set forth in this Declaration or materially and adversely affects the title to any Lot or an appurtenant easement, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affect thereby, or (b) 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 14.02 shall be certified by Company as having been duly approved by Company, 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 Lot agrees to be bound by such amendments as are permitted by this section 14.02 and further agrees that, if requested to do so by Company, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Plantation 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; if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot subject to this Declaration; 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 Lot or other improvements subject to this Declaration; or if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on the Lots or other improvements subject to this Declaration.

14.03 Amendments by Colony. Amendments to this Declaration, other than those authorized by Section 14.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Colony at which such proposed amendment is to be considered and shall be sent to each stockholder of the Colony.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by a stockholder of the Colony. Such amendment must be approved b Owners holding at least two-thirds (2/3) of the total votes in the Colony; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved but such mortgagee, and (ii) during the Development Period, such amendment must be approved by company.

(c) The agreement of the required percentage of the Owners and, where required, Company and 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 Colony attached to or incorporated in the amendment executed by the Colony, 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.

(d) Any such amendments to this Declaration are subject to the provisions of Section 1.03 of this Declaration.

14.04 Enforcement. Each Owner and Member shall comply strictly with the By-Laws and the rules and regulations of the Colony adopted pursuant to this Declaration, as either of the same may be amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot. Failure to comply with any of the same shall be grounds for imposing fines or other sanctions allowed

herein or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Company, the Colony, or, in a proper case, by an aggrieved Owner. Should Company or the Colony employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws, and the rules and regulations of the Colony are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Company, the Colony, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. In the case of a violation of any of the provisions of Article X of this Declaration, the remedies of the Company or the Colony shall include, without limitation, injunctive relief for the removal or replacement of any improvements, trees, or other items or material constructed or removed in violation of Article X. No delay, failure, or omission on the part of Company, the Colony, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Company or the Colony for or on account of any failure to enforce or to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Colony, however long continued.

14.05 Duration. The provisions of this Declaration shall run with and bind title to the Plantation, shall be binding upon and inure to the benefit of all Owners and mortgages and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial thirty (30) year period or the last year of any ten (10) year renewal period, ninety percent (90%) of the total votes of the Colony are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Colony votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in

the Office of the Clerk of Court for Beaufort County, South Carolina, such instrument to contain a certificate wherein the President of the Colony swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in the Plantation, by acceptance of a deed or other conveyance therefore, agrees that the provisions of this Declaration shall run with and bind title to the Plantation as provided hereby.

14.06 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or avoidable for violation of the rules against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Fitzgerald Kennedy – mother of U. S. Senator Edward Kennedy.

14.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Company or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication s to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Office of the Clerk of Court for Beaufort County, South Carolina. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

14.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women shall in all cases be assumed as though in each case fully expressed.

14.09 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

14.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Company, the Colony, the Owners, their mortgagees and the

Members as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Plantation or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Company and mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

14.11 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish the Colony in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

14.12 No Trespass. Whenever the Colony, the Company the Architectural Review Board, and their respective agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Plantation, the entering thereon and the taking of such action shall not be deemed to be a trespass.

14.13 Assignment. Notwithstanding anything to the contrary herein, the Company reserves the right, in its sole discretion, to assign to the Colony, at any time and from time to time, any easement, right and/or obligation reserved in this Declaration for the benefit of the Company. After such assignment, the Company shall have no liability or responsibility whatsoever with respect to the easement, right and/or obligation so assigned.

14.14 Notices. Notices required or permitted hereunder shall be in writing and shall be delivered by hand and sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Colony, or if no address has been so designated, at the addresses of such Owner's respective residences or Lots. All notices to the Colony shall be delivered or sent by certified mail, return receipt requested, in care of Company to Company's main office in Beaufort, South Carolina or to such other address as the Colony may from time to time notify the Owners. All notices to Company shall be delivered or sent by certified mail, return receipt requested, to Company's main office in Beaufort, South Carolina, or to such other address as Company may from time to time notify the Owners.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Company have executed this Declaration under seal, as of the date first above written.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF

BRAYS ISLAND COMPANY, INC. (SEAL)

_____ By:_____
George W. Flynt, Jr., President

_____ By_____
Henry C. Chambers, Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC. by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of January, 1989.

_____(LS)
Notary Public for South Carolina
Commission Expires:_____

EXHIBIT "A"

PLANTATION DESCRIPTION

ALL that piece, parcel or tract of land lying near the Town of Sheldon in Beaufort County, South Carolina known generally as Brays Island Plantation as shown on Sheet 2 of 7 sheets on a plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12, Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321 (the Plat).

The said tract of land, as shown on the Plat, contains 5,183.65 acres and includes the islands designated by the letters A through L inclusive.

The said tract butts and bounds as shown on the Plat; on its western and southern borders on the mean low water mark of the Pocotaligo River and Haulover Creek and their tributaries.

Excepted from the above described property are those tracts of land designated on the Plat by the Roman numerals I, II, III and IV.

Excepted also is the following described property.

ALL those certain lots of land containing one (1) acre each and being a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, said lots being shown and designated as Lots 12 and 13, Goat Island, and Lots 25 and 26, Pinckney Bluff, on a Plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said Plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12, Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321, (the "Plat"); the said lots having such size, shape, dimensions, buttings and boundings, more or less, as will be reference to said Plat (as amended) more fully appear, together with the land lying adjacent to and between the aforesaid Lots 12 and 13, Goat Island and the land lying adjacent to and between the aforesaid Lots 25 and 26, Pinckney Bluff, all of the aforesaid property to be shown and delineated on plats of the same to be recorded in the R.M.C. Office for Beaufort County.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SUPPLEMENT
TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
Book_____, Page_____

THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the 11th day of November, 1988, by SUMNER PINGREE, JR. ("Pingree"), and BRAYS ISLAND COMPANY, INC., a South Carolina corporation ("the Company").

WHEREAS, Pingree has conveyed to the Company certain property in Beaufort County, South Carolina, generally known as Brays Island Plantation, excepting, however, from such conveyance certain properties which include the lots and adjacent areas described on Exhibit A attached hereto and incorporated herein by reference ("the Excepted Property"); and

WHEREAS, the Company has subjected the property conveyed to the Company by Pingree to a Declaration of Covenants, Conditions and Restrictions ("the Declaration") dated as of November 11, 1988, to be recorded in the RMC Office for Beaufort County; and

WHEREAS, Pingree and the Company desire to subject the Excepted Property to the terms of the Declaration to the same extent as if the Excepted Property had been conveyed to the Company and described in the Declaration;

NOW, THEREFORE, for valuable consideration received by Pingree and the Company, the receipt and legal sufficiency of which are hereby acknowledged, Pingree and the Company hereby subject to the terms of the Declaration, all of the Excepted Property to the same extent as if the Excepted Property had been described in the Declaration; it being intended that the Excepted Property shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the easements, restrictions, covenants, charges, liens and conditions set out in the Declaration which are for the purpose of protecting the value and desirability of an which shall touch and concern and run with title to the Excepted Property and which shall be binding on all parties having any right, title, or interest in the Excepted Property or any portion thereof, and their respective heirs, successors, successors in title, and assigns, and which shall inure to the benefit of each owner thereof. It is further declared and agreed that for purposes of applying the terms of the Declaration to the Excepted Property, those portions of the Excepted Property designated as Lots 25 and 26 of Pinckney Bluff and designated as Lots 12 and 13 of Goat Island shall be deemed to be "Lots" as defined in the Declaration, and those portions of the Excepted Property which lie

between Lots 25 and 26 of Pinckney Bluff and those portions of the Excepted Property which lie between Lots 12 and 13 of Goat Island shall be deemed to be "Common Area" under the Declaration, which has been conveyed to the adjacent lot owners pursuant to Section 3.07 of the Declaration. It is further declared and agreed that the portion of the Excepted Property which is not included within Lots 25 and 26 of Pinckney Bluff or in Lots 12 and 13 of Goat Island, shall be subject to all of the terms and conditions of Section 3.07 of the Declaration, to the same extent as if said property had been a portion of the "Common Area" under the Declaration conveyed by Brays Island Plantation Colony, Inc., to Pingree.

IN WITNESS WHEREOF, the undersigned have executed this Supplement to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

_____

_____ _____(SEAL)
SUMNER PINGREE, JR.

BRAYS ISLAND PLANTATION, INC. (SEAL)

_____

By:_____

_____ Its:_____

By:_____

Its:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named SUMNER PINGREE, JR. sign, seal and as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

____day of January, 1989.

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC. by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instruments for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of January, 1989.

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

EXHIBIT "A"

PROPERTY DESCRIPTION

ALL those certain lots of land containing one (1) acre each and being a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, said lots being shown and designated as Lots 12 and 13, Goat Island, and Lots 25 and 26, Pinckney Bluff, on a Plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort Country in Plat Book 35 at Page 170; said Plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12 Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321, (the
"Plat"); the said lots having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said Plat (as amended) more fully appear.

TOGETHER with the land lying adjacent to and between the aforesaid Lots 12 and 13, Goat Island and the land lying adjacent to and between the aforesaid Lots 25 and 26, Pinckney Bluff, all of the aforesaid property to be shown and delineated on plats of the same to be recorded in the R.M.C. Office for Beaufort County.

100590(143R)
FA.DCCR

STATE OF SOUTH CAROLINA	)	FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (Book 520, Page 484)
	)	
COUNTY OF BEAUFORT	)	

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 11th day of September, 1990, by BRAYS ISLAND COMPANY, INC. ("the Company").

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on certain property known as Brays Island Plantation; and

WHEREAS, under the Declaration certain property is designated as Common Area, including the area shown on a plat of Inn Property at Brays Island Plantation prepared by Davis and Floyd, dated September 11, 1990, a copy of said plat attached hereto as Exhibit A, with the original to be recorded in the RMC Office for Beaufort County; the property shown on said plat being hereinafter referred to as "the Inn Property;" and

WHEREAS, the Inn Property has certain historical and environmental attributes which the Company wishes to enhance and protect by prohibiting the location of any Lot (as defined in the Declaration) on the Inn Property and by prohibiting on the portion of the Inn Property designated as parcel A on the aforesaid Plat any structures or other such amenities for the use of the general community;

NOW THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration as follows:

1. The Inn Property shall be and remain Common Area (as defined in the Declaration) owned by Brays Island Plantation Colony, Inc., and no Lot (as defined in the Declaration) shall be established or relocated onto the Inn Property.

2. As to that portion of the Inn Property designated as Parcel A on the aforesaid plat, no structure or other such amenity for the use of the general community shall be allowed on the property designated as Parcel A, which property is intended to remain generally in its natural state.

3. Notwithstanding anything to the contrary in the Declaration, the foregoing restrictions regarding the Inn Property may not be amended or modified for a period of twenty-five (25) years from the date of this Declaration. Thereafter, the foregoing restriction regarding the Inn Property may be amended or modified only as provided in Section 14.03 of the Declaration; provided, however, the vote required for any such amendment or modification shall be increased from two-thirds to ninety (90%) percent of the Owners.

4. Section 14.03(d) of the Declaration is hereby amended to read as follows:

> "Any such amendments to this Declaration are subject to the provisions of Section 1.03 of this Declaration and to the provisions of the First Amendment to Declaration of Covenants, Conditions and Restrictions."

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this First Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

BRAYS ISLAND COMPANY, INC. (SEAL)

_____

_____

By:_____
Sumner Pingree, Jr., President

_____

_____

By:_____
Henry C. Chambers, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC., hereby consents to and joins in the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

_____

_____

By:_____
Its: President

_____

_____

By:_____
Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1989, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES: THE SOUTH CAROLINA NATIONAL BANK (SEAL)

_____ By:_____

_____ Its:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED BEFORE me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of October, 1990.

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw named BRAYS ISLAND PLANTATION COLONY, INC.. by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of October, 1990.

_____ _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of October, 1990.

_____ _____

Notary Public for South Carolina
Commission Expires:_____

032991 (143R)
SA.DCCR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITION AND RESTRICTIONS (Book 520, Page 484)

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the ____day of March, 1991, by BRAYS ISLAND COMPANY, INC. ("the Company").

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on certain property known as Brays Island Plantation; and

WHEREAS, the Company desires to amend Section 4.02(a) of the Declaration relating to the designation of Members of the Colony;

NOW, THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration by deleting Section 4.02(a) in its entirety and substituting in lieu thereof the following:

4.02 Colony Membership

(a) The Owner of each lot shall have the right to designate three members of his immediate family (including himself if he is to be a Member) as Members of the Colony and those Members shall have the nonexclusive right, privilege and easement of use and enjoyment in and to the Common Areas subject to the terms of this Declaration and the By-Laws and rules and regulations of the Board. If the Owner of a lot is a multiple number of individuals, or a corporation, partnership, or other such entity, the Members designated by such Owner shall all be members of one immediate family. Any Owner who is not a Member shall not have any right, privilege or easement of use and enjoyment in and to the Common Areas except that such Owner shall be permitted access to the Plantation in accordance with such rules and regulations as may be from time to time adopted by the Board. For the purposes of determining the number of Members to be designated

by the Owner of each Lot, any Member and that Member's spouse shall be deemed to constitute only one Member. "Immediate family" shall be interpreted as meaning parents, siblings, children, and their spouses; provided, however, that in unusual situations and for good cause the Owner may petition the Board for an exception, which the Board may grant in its discretion.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this Second Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES: BRAYS ISLAND COMPANY, INC. (SEAL)

_____ By:_____
Sumner Pingree, Jr., President

_____ By:_____
Henry C. Chambers, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

_____

_____ _____
Its: President

_____

_____ _____
Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1999, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES: THE SOUTH CAROLINA NATIONAL BANK (SEAL)

_____ By:_____

_____ By:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of _____, 1991

_____(LS)
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND PLANTATION COLONY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFOREME THIS

_____day of _____, 1991

_____(LS)
Notary Public for South Carolina
Commission Expires:_____

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of _____, 1991.

_____(LS)
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (Book 520, Page 484)

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 16th day of December, 1992, by BRAYS ISLAND COMPANY, INC. ("the Company").

PRELIMINARY STATEMENT

By a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484, last amended by Second Amendment dated as of March 20, 1991, and recorded in Book 582 at page 186 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on property known as Brays Island Plantation.

Under the Declaration, certain property is designated as Common Area, including an area near and generally west of Lot 11, Goat Island, said area being shown and delineated as Parcel A on a plat prepared by Davis and Floyd, dated December 22, 1992, a copy of said plat being attached hereto as Exhibit A; this property being hereinafter referred to as the "Parcel A Property". The Company wishes to further restrict the Parcel A Property by prohibiting the location of any structures thereon except as hereinafter provided.

Under the Declaration, owners of lots at Brays Island Plantation may, subject to certain conditions, construct, maintain, and use docks, decks and other such facilities. The Company wishes to further amend the Declaration to clarify the intended use of such docks, decks and other such facilities.

NOW, THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration as follows:

1. No structures shall be allowed on the Parcel A Property, which property is intended to remain generally in its natural state; provided, however, this restriction shall not prohibit the construction, maintenance, and use of a dock, deck, or other such facilities by the owner of Lot 11, Goat Island, subject to approval by the Architectural Review Board (as defined in the Declaration) and further subject to all other restrictions, covenants, and conditions in the Declaration.

2. Section 12.02 of the Declaration is hereby amended by adding the following sentence at the end of Section 12.02:

Unless such written approval of the Architectural Review Board states otherwise, the dock, deck, boathouse or other such facility erected by an Owner shall not be used by persons other than the Owner, the Owner's successors in title and others with permission for such use from the Owner or the Owner's successor in title, subject however, to Section 12.03.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this Third Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES: BRAYS ISLAND COMPANY, INC. (SEAL)

_____ By:_____
Sumner Pingree, Jr., President

_____

_____ By:_____
Phillip Patterson, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC., hereby consents to and joins in the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES: BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

_____ By:_____

_____ Its: President

_____ By:_____

_____ Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1989, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES: THE SOUTH CAROLINA NATIONAL BANK
(SEAL)

_____ By:_____

The undersigned being the owner of Lots 12 and 13, Goat Island, Brays Island Plantation, Beaufort County, South Carolina, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

_____ By:_____

_____ Its:_____

The undersigned being the owner of Lot 10, Goat Island, Brays Island Plantation, Beaufort County, South Carolina, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

_____ By:_____

_____ By:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS
_____day of December, 1992

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND PLANTATION COLONY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of December, 1992.

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of December, 1992.

_____(LS) _____
Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named SUMNER PINGREE, JR., sign, seal and as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of December, 1992.

_____(LS) _____

Notary Public for South Carolina
Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

_____day of December 1992.

_____(LS) _____

Notary Public for South Carolina
Commission Expires:_____

FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRAYS ISLAND PLANTATION

THIS FOURTH AMENDMENT ("this Amendment") is made and entered into to be effective as of the 30th day of November, 1993, by, between and among Brays Island Company, Inc. and all persons who are Owners pursuant to that certain Declaration of Covenants, Conditions and Restrictions ("the Declaration") dated as of November 11, 1988 for Brays Island Plantation, recorded in Deed Book 520, at page 484, in the Office of the RMC for Beaufort County as amended. (Unless otherwise defined in this Amendment, all capitalized terms shall have the respective meanings set forth in the Declaration.)

BACKGROUND

The Company, the Colony, Shelbray Associates, L.P. (the "Partnership") and Sumner Pingree, Jr. ("Pingree") have entered into an Agreement dated as of September 30, 1993, as amended by Amendment to Agreement dated as of October 1, 1993 (collectively, the "Agreement"), whereby the Declaration is to be amended as hereinafter provided.

On October 1, 1993, at the Annual Meeting of Owners, written consents were obtained from Owners owning a majority of the Lots to adopt this Amendment; and on November 30, 1993, at a Special Meeting of Owners duly called upon more than ten (10) days prior written notice (which notice was accompanied by an unsigned copy of this Amendment), Owners owning more than two-thirds of the Lots approved this Amendment.

NOW THEREFORE, in accordance with Sections 14.02 and 14.03 of the Declaration, the parties hereto do hereby amend the Declaration as follows:

1. Article II of the Declaration is hereby amended by adding thereto the following defined terms:

2.17 "Agreement" means that certain Agreement entered into as of September 30, 1993 among the Colony, the Company, the Partnership and Pingree, as amended by Amendment to Agreement dated as of October 1, 1993 and all other amendments to the Agreement adopted pursuant to the terms thereof.

2.18 "Restricted Lots" means those certain 15 Lots more fully described in Exhibit A.

2.19 "Pingree" means Sumner Pingree, Jr.

2.20 "Partnership" means Shelbray Associates, L.P.

2.21 "Residual Lots" means all of the Lots to be conveyed to the Colony by the Partnership in accordance with the terms of the Agreement after the partnership has made cash distributions to its partners equal to all invested capital plus a 15% internal annual rate of return.

2.22 User Fee" means that portion of the assessment which are available as a credit against Recreational Charges otherwise incurred by the Owner; provided, however, that unless otherwise expressly provided by the Board, User Fees for any fiscal year which are not otherwise utilized during such fiscal year shall not be available as a credit against Recreational Charges incurred in the subsequent fiscal year.

2. Section 3.18 of the Declaration is hereby deleted in its entirety, and the following shall be substituted in place thereof.

3.18 Conveyance of Lots to the Colony. Company is the owner of fifteen (15) lots (the "Restricted Lots") more particularly described in Exhibit "A" attached hereto. These Restricted Lots shall not be sold (or any contract of sale, lease or other document of conveyance entered into by Company) for five (5) years prior to December, 1998, with no membership rights to be available and no assessments, Recreational Charges, User Fees or other sums levied against the Restricted Lots during this 5 year period. The restriction on sale shall not apply to transfers by Company or Sumner Pingree, Jr. ("Pingree") or members of his immediate family, any bankruptcy sale, foreclosure sale or sale be judgment creditors, but the restriction on resale shall continue in full force against all grantees (meaning all persons who receive deeds directly or indirectly from the Company to any of he Restricted Lots). Anything to the contrary contained herein notwithstanding, this restriction on resale shall not be applicable to the transaction which is the subject of that certain Contract of Sale, dated May 25, 1992, between the Company and Ramon N. Tessler regarding Lot 79, Bellevue. The Company shall have the right to perform under the terms of said contract, and Lot 79, Bellevue shall not be subject to the restrictions contained in this paragraph; provided, however, that on and after such conveyance, the Owner of such Lot shall become liable for payment of all assessments and other obligations imposed upon the Owners of Lots generally,.

3. Section 9.03 is hereby amended by deleting the second and third sentences in their entirety and substituting in place thereof the following: "The annual assessment (excluding any portion designated as a User Fee) for a Lot with one (1) or no Member designated for that year shall be increased by 50% if two (2) Members are designated for that year and by 100% if three (3) Members are designated for that year; and shall include one (1) User Fee if one (1) or no member is designated for that year, two (2) User Fees if two (2) members are

designated for that year, and three (3) User Fees if three (3) Members are designated for that year.)"

Section 9.03 is also amended by adding the following additional sentence: "Anything to the contrary set forth in this Declaration notwithstanding, (a) the Board shall be entitled to include in the assessment for each year a User Fee, which for all purposes shall be deemed an assessment but the amount of such User Fee, shall be available for use by the Member as a credit against Recreational Charges which such Member otherwise incurs for such fiscal year (with any unused User Fees not to be carried over to subsequent fiscal years unless expressly provided by the Board} and (b) assessments levied against the Partnership, the Company and owners of multiple Lots shall be limited as set forth in Sections 15.5, 15.7 and 15.8, respectively.

4. Section 11.14 is amended by deleting all references to "Company" and substituting in place thereof "Partnership".

5. The following Article XV is hereby added to the Declaration:

ARTICLE XV

Special Provisions Required by Agreement

15.1 Execution of Agreement. The Owners of the Colony have ratified, confirmed and approved the execution of the Agreement by the Colony and acknowledge that the Agreement constitutes a contract of sale whereby the Colony is acquiring the Residual Lots on the terms and conditions set forth in the Agreement. Anything to the contrary contained in the Declaration, the Articles or the By-Laws of the Colony notwithstanding, the Colony is authorized and empowered to acquire title to the Residual Lots and to dispose of the same in such manner as deemed appropriate by the Board.

15.2 Replacement of Letters of Credit. The Colony shall make appropriate arrangements with The South Bank ("SCN") or another financial institution to replace those certain letters of credit (the"LC's") issued by SCN to Beaufort County in the aggregate amount of $801,000, and cause the release and discharge of the Company and Pingree from any further liability of any nature related thereto, as well as cause the release of any collateral provided by the Company and/or Pingree related to the LC's.

15.3 Sewer Amenities. The Colony shall assume responsibility for (i) construction of the sewer system required by the South Carolina Department of Health and Environmental Control and the amenities for which the LC's have been posted; (ii) all remaining wetlands mitigation activities (if any); and (iii) construction of a boat storage area, with all said improvements to be constructed in such manner as deemed appropriate by the Board and become the sole and

exclusive property of the Colony. The Colony shall limit the total cost of the forgoing capital improvements to an amount not to exceed $1,000,000 to the fullest extent possible. The Colony shall be entitled to charge a reasonable connection fee to each Owner who constructs a dwelling unit after the date hereof and connects to said sewer system equal to the additional amount which would otherwise have been incurred in installation of a separate septic tank system. Owners required to install separate septic tank systems prior to connection to the sewer system shall not be responsible for such fee.

15.3 $1,750,000 Loan Authorization. The Colony authorized to borrow up to $1,750,000 from SCN, or any other financial institution deemed appropriate, with $1,000,000 representing a term loan which will provide funds for the capital improvements described above and up to $750,000 (or such less amount) being available for working capital. This indebtedness shall be supported by the full faith and credit of the Colony and the lender shall be provided with such collateral as may be requested by the lender from time to time; provided, however, that the lender shall be required to first pursue surplus Colony property to the fullest extent practicable to recover on the Colony's indebtedness and upon any foreclosure sale, to the extent the real property sold does not already constitute a platted Lot, said estate shall no longer be deemed part of the Common Area or converted to a Lot, with no owner thereof entitled to be considered an Owner or member of the Colony for any purpose. The Colony may refinance or otherwise replace this credit facility from time to time in the discretion of the Board of the Colony. The Colony is authorized and empowered to enter into undertakings of any nature and execute all documents required by the lender from time to time to evidence, preserve, perfect and protect the rights of the lender so long as any sum is due and owing related to the foregoing credit facilities, including (without limitation) notes, negative pledges, mortgages, security agreements, undertakings to make special assessments and indemnifications. All sums due and owing with respect to such credit facilities from time to time shall be deemed Common Expenses to be paid by way of assessments levied in accordance with the terms of this Declaration.

15.4 Divisions of Annual Assessment by Board. The Board shall be entitled to divide assessments levied against Owners into various components, including (without limitation) regular dues or assessments, User Fees, and assessments for capital expenditure, replacement reserves and retirement of the Colony's indebtedness.

15.5 Assessments of Shelbray Associates, L.P. Anything to the contrary contained in this Declaration notwithstanding, the Partnership will not be obligated to pay more than 70% of the total amount assessed against Owners as a result of the ownership of individual Lots each year (including User Fees); provided, however, that the Partnership shall be obligated to pay assessments on all Lots acquired from the Company for all of fiscal year 1993-94 at the 70%

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level, notwithstanding the fact that such acquisition may not occur until December, 1993.

15.6 Partnership's Rights to Use Common Areas and Facilities. The Partnership shall have the right to utilize all Common Areas and Recreational Amenities for guests and prospective Lot purchasers, but will pay applicable guest charges for all such usage.

15.7 Company's Assessment Arrangements. The Company will be entitled to the same assessment arrangement as the Partnership under Section 15.5 above for Lots as to which the Company retains title pending the sale thereof; provided however, that no assessment of any nature shall be levied against the Restricted Lots during the five year restriction period, all as set forth in Section 3.18.

15.8 Rights of Owners of Multiple Lots. Owners of more than one lot in the Plantation will be entitled to the same treatment as the Partnership under Section 15.5 above for all Lots in excess of one Lot.

15.9 Upgrade of Colony Services. The Partnership shall be entitled to request an upgrade of the level of Colony services prior to the commencement of each fiscal year so long as the Partnership agrees to pay all additional expenses incurred in connection with the increased level of services.

15.10 Marketing by Partnership. The Partnership will be permitted to undertake marketing activities on or about the Plantation and will receive cooperation from the Colony with respect to Lot relocation and other activities reasonably required by the Partnership to permit it to continue to dispose of Lots in a manner similar to the marketing activities employed by the Colony during the Development Period, including without limitation, exercising all rights which were available to the Company pursuant to Section 11.13 hereof during the Development Period.

15.11 Release of Company. The Colony is authorized to join in the release described in Section 18 of the Agreement, which shall release the Company and its affiliates from all liabilities to the Colony except liabilities accruing after the date of the Agreement relating to the ownership of individual Lots by the Company or its affiliates or use of the Recreational Amenities by the Company or its affiliates.

15.12 No Amendment Without Consent of Company, Colony, Partnership or Pingree. The foregoing provisions of the Declaration set forth in Section 3.18 and Article XV may not be amended without the consent of any party to the Agreement adversely affected thereby.

15.13 Conveyance of Partnership Assets to Colony. In consideration for all of the benefits related to the foregoing, at the Closing (as defined in the Agreement) the Partnership shall execute and deliver to the Colony a written undertaking to convey to the Colony all Residual Lots and other assets of the Partnership, upon the Partnership having made cash distributions to its partners equal to all invested capital and profits representing a 15% internal annual rate of return.

6. Termination of Development Period and Assignment. The Company enters into this Amendment to the Declaration to confirm the termination of the Development Period as specified in Section 2.09(b) and assigns all remaining easements, rights and interests in and to the Declaration to the Colony as provided in Section 14.13.

7. Changes of Boundaries. The Colony agrees to cooperate with the Company and the Partnership in undertaking the reasonable relocation of Lots to accommodate proposed dwellings which have been approved by the Architectural Review Board.

8. Approval of Amendments. The Company confirms that it granted the Partnership the right to vote as the Company's duly appointed proxy and attorney-in-fact for approval of this Amendment at the Special Meeting of Owners held on November 30, 1993 in accordance with Section 14.03 of the Declaration, and that all of the Company's 220 votes were cast by the Partnership in favor of the Amendment. In addition to the foregoing, the Colony confirms that proxies from a majority of Owners other than the Company were voted in favor of this Amendment at such Special Meeting.

9. Continuity. Except as modified hereinabove, the Agreement shall remain in full force and effect.

10. Status of Mortgagees. This Amendment shall be conclusively deemed not to affect the security, title and interest of any mortgagee in that no rights of any mortgagee are altered and the liens of all first priority institutional mortgages shall remain superior in all respects to liens for all assessments which may be due and owing to the Colony by the Owners.

11. Addition of Exhibit A-1. Exhibit A-1 attached hereto is hereby added to the Declaration.

12. Effectiveness. This Amendment shall be of no force or effect if the Closing (as defined in the Agreement) does not occur by December 15, 1993, with this Amendment to be recorded only in conjunction with such Closing.

EXECUTED to be effective as of the date and year first written above.

SIGNATURE PAGE FOR
AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRAYS ISLAND PLANTATION
Dated as of _____, 1993

The undersigned, being the President of Brays Island Plantation Colony, Inc. (the "Colony"), does hereby execute and deliver this Signature Page to be effective as of the above date and authorize the affixing of this Signature page to the above referenced Amendment to evidence the agreement of the Colony to be legally bound thereby. The undersigned further certifies, under oath, unequivocally, that the approval of the required number of Owners was lawfully obtained.

THE COLONY:

BRAYS ISLAND PLANTATION COLONY, INC.

_____ By: _____
It's President

SWORN and subscribed to before me
this _____day of _____1993

_____ (L.S/)
Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, after first being duly sworn, says that (s)he saw the within-named Brays Island Plantation Colony, Inc., by_____, its _____deliver the within Fourth Amendment to Declaration of Covenants, Conditions and Restrictions; and that (s)he together with the other witness whose signature appears above, witnessed the execution thereof.

_____

SWORN and subscribed to before me
This_____day of _____, 1993.

_____(L.S.)
Notary Public for South Carolina
My Commission expires:_____

SIGNATURE PAGE FOR
AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTINS
FOR
BRAYS ISLAND PLANTATION
Dated as of _____, 1993

The undersigned does hereby execute and deliver this Signature Page to be effective as of the above date and authorize the affixing of this Signature Page to the above referenced Amendment to evidence the agreement of the undersigned to be legally bound thereby as fully as if the undersigned and all other Owners had simultaneously executed the Amendment.

THE COMPANY:

BRAYS ISLAND COMPANY, INC.

_____ By:_____(SEAL)
Sumner Pingree

_____ Its:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, after first being duly sworn, says that (s)he saw the within-named Brays Island Company, Inc., by Sumner Pingree, its _____deliver the within Fourth Amendment to Declaration of Covenants, Conditions and Restrictions; and that (s)he together with the other witness whose signature appears above, witnessed the execution thereof.

_____
WITNESS

SWORN and subscribed to before me
This____day of _____, 1993.

_____
Notary Public for South Carolina
My Commission Expires:_____

EXHIBIT A-1

PROPERTY DESCRIPTION OF 15 BRAYS ISLAND LOTS

ALL of those fifteen (15) one-acre lots, a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, as shown on a plat of Brays Island Plantation, made by Davis & Floyd, Inc. Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at page 170; said plat having been last amended by a Plat dated December 22, 1992, and recorded in plat Boo 45 at page 90, said amendment representing the 27th Amendment to the subdivision plat recorded in Plat Book 35 at Page 170; the said 15 lots having such sizes, shapes, dimensions, buttings, and boundings, more or less, as will be reference to said plat (as amended) more fully appear; the said 15 lots being the following:

Scotts Neck Section: Lots 8, 15, and 16

Bellevue Section: Lots 20, 31, 40, 59, 67, 75, 77, 78, 79, and 80

Broad Marsh Section: Lot 16

Haulover Point Section: Lot 14

District 700 Maps 25, 34 and 35

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

Fifth Amendment to Declaration of Covenants, Conditions and Restrictions

Re: Brays Island Plantation Colony

WHEREAS, Brays Island Plantation Colony was created by a Declaration recorded in Record Book 520 at Page 484 in the Beaufort County, South Carolina subsequently supplemented in Record Book 520 Page 530 with amendments in Record Book 564 Page 1549; Record Book 582 Page 186; Record Book 615 Page 1043; and Record Book 670 Page 1148; and;

WHEREAS, pursuant to Section 14.03 of the Declaration, notice was given to the shareholders by the Board of the intention to amend the Declaration to delete Sections 15.5 and 15.8 of the Declaration. At a meeting of the shareholders held on November 6, 1999 for such purpose, the shareholders voted by more than a two-thirds majority in favor (in person and by proxy) to amend the Declaration in such manner.

NOW THEREFORE, in accordance with Section 14.03 of the Declaration, the Board of Directors has accepted the vote of the shareholders and has authorized the Chairman and Secretary the corporation to give public notice of such by the recording of this Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation colony that Section 15.5 and 15.8 of the Declaration (set forth in the Fourth Amendment) have been deleted, revoked and repealed and those two Sections no longer have any force or effect.

Executed on January____, 2000

Brays Island Plantation Colony, Inc.

_____)
Witness 1) By:_____
) Clarence Eidt, Jr., Chairman
)
_____) Attest:_____
Witness 2) John R. Phillips, Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

Affidavit of Probate

PERSONALLY appeared before a Notary Public of South Carolina the undersigned Sabrina M. Doxzen (as Witness 1), who after be duly sworn, states that she/he saw the within Brays Island Plantation Colony, Inc. by Clarence Eidt, Jr. as Chairman and John R. Phillips as Secretary; sign seal and deliver the within Fifth Amendment to Declaration and that she/he together with Eve P. Heaton (as Witness 2) witnessed the execution thereof.

SWORN TO before me on
January_____, 2000

_____
Eve P Heaton

Notary Public for South Carolina
My Commission Expires:_____

_____
Signature of Witness 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SIXTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Re: Brays Island Plantation colony

WHEREAS, Brays Island Plantation Colony, Inc. was created by a Declaration recorded in Book 520 at Page 484 in the Beaufort County, South Carolina Public Records subsequently supplemented in Record Book 520 at Page 530 with amendments in Record Book 564 at Page 1549; Record Book 582 at Page 186; Record Book 615 at page 1043; Record Book 670 at Page 1148 and Record Book 1259 at Page 1394; and,

WHEREAS, pursuant to Section 14.03 of the Declaration, notice was given to the shareholders by the Board of the intention to amend the Declaration to add a new Section 9.11 of the Declaration. At a meeting of the shareholders held on October 20, 2001 for such purpose, the shareholders voted by more than two-thirds majority in favor (in person and by proxy) to amend the Declaration.

NOW THEREFORE, in accordance with Section 14.03 of the Declaration, the Board of Directors has accepted the vote of the shareholders and has authorized the Chairman of the corporation to give public notice of such by the recording of this Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation Colony, Inc. that Section 9.11 of the Declaration shall be added to the Declaration as set forth on A hereto.

Executed on February ____, 2002.

_____)
Witness 1 Steven E. Craig)
)
)
_____)
Witness 2 J. Thomas Mikell)

Brays Island Plantation Colony, Inc.

By:_____
William Lowrie, Chairman

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before a Notary Public for South Carolina the undersigned _____(as Witness 1), who after being duly sworn, states that he/she saw the within Brays Island Plantation Colony, Inc. by William Lowrie as Chairman, sign, seal and deliver the within Sixth Amendment to the Bylaws and that he/she together with_____(as Witness 2) witnessed the execution thereof.

SWORN to before me on)
February_____, 2002)
)
)
)
)
)
_____)
J. Thomas Mikell)
Notary Public for South Carolina)

_____
Signature of Witness 1
Steven E. Craig

Attachment A

A new Section 9.11 is adopted to read in the following manner, to wit:

On February 21, 2002 Shelbray Associates, L.P. conveyed 59 lots to Brays Island Plantation Company, LLC. From the date of recording of that deed until February 28, 2007 no assessments (annual, special or otherwise) shall be levied against any of those 59 lots by the Colony (except for assessments due to an emergency or catastrophic event up to $1,000.00 per calendar year per lot) for so long as they are owned by Brays Island Plantation Company, LLC. Upon a conveyance of each of the 59 lots by Brays Island Company, LLC, all assessments due to the Colony after such conveyance shall become due and payable from the grantee of such lot per all the terms and conditions of Article IX of the Declaration.

STATE OF SOUTH CAROLINA	)	SEVENTH AMENDMENT TO
	)	DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT	)	CONDTIONS AND RESTRICTIONS

Re: Brays Island Plantation Colony

WHEREAS, Brays Island Plantation Colony, Inc. was created by a Declaration recorded in Record Book 520 at Page 484 in the Beaufort County, South Carolina Public Records subsequently supplemented in Record Book 520 at Page 530 with amendments in Record Book 564 at page 1549; Record Book 582 at Page 186; Record Book 615 at page 1043; Record Book 670 at Page 1148; Record Book 1259 at Page 1394; and Record Book at Page 206; and,

WHEREAS, pursuant to Section 14.03 of the Declaration, notice was given to the shareholders by the Board of the intention to amend the Declaration to add a new Section 14.15 to the Declaration. At a meeting of the shareholders held on February 20, 2004 for such purpose, the shareholders voted 205 in favor and 22 opposed (more than a two-thirds majority in favor in person and by proxy) to amend the Declaration to add a new Section 14.15 as stated on Attachment A hereto.

NOW THEREFORE, in accordance with Section 14.03 of the Declaration, the Board of Directors has accepted the vote of the shareholders and has authorized the Chairman of the corporation to give public notice of such by the recording of this Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation Colony, Inc. so that Section 14.15 of the Declaration shall hereafter be added to the Declaration as set forth on Attachment A hereto.

Executed on _____, 2004.

_____	)	Brays Island Plantation Colony, Inc.
Witness 1 E. J. Ewing, Jr.	)	
	)	
	)	
_____	)	By:_____
Witness 2		William Lortz, Chairman

****

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF PROBATE

PERSONALLY appeared before a Notary Public of South Carolina the undersigned E. J. Ewing, Jr. (as Witness 1), who being duly sworn, states that he/she saw the within Brays Island Plantation Colony, Inc. by William Lortz as Chairman, sign, seal and deliver the within Seventh Amendment to the Declarations and he together with _____(as Witness 2) witnessed the execution thereof.

SWORN to before me on)
_____, 2004)
)
)
_____(SEAL)
)
Notary Public for South Carolina)
My Commission Expires:_____)

_____
Signature of Witness 1
E. J. Ewing, Jr.

Attachment A

14.15 Marketing Fee

a. The Board shall have the authority to establish a Real Estate Marketing Fee, from time to time, in amount not to exceed two (2%) of the gross sales price of any Lot which comes under contract after December 1, 2004. This Marketing Fee shall not be payable on (i) the non-profit transfer of a Lot between spouses or issue of an owner, nor (ii) transfers for gifts, nor (iii) transfers by Court Order nor (iv) transfers to devisees or heirs by a probate proceeding, nor (v) transfers to trusts or other such legal entities pursuant to estate planning, nor (vi) the exercise of the Repurchase Option in Section 11.14 of the Declaration.

The Real Estate Marketing Fee shall become applicable to all Lots still owned by Brays Island Plantation Company, LLC, at such time as they have fulfilled their obligations to provide marketing funds pursuant to Section 15.2(b) of the Purchase Agreement of December 22, 2001 between Shelbray Associates, L.P. and Perry Harvey, et al.

b. Upon the public recording of the amendment to the Declaration to evidence the adoption of this Section 14.15, an equitable lien and charge shall be continuously imposed and instituted at that time upon every Lot within the Colony to insure the payment of the Marketing Fee notwithstanding whomsoever shall be the Owner of the Lot; provided that such lien shall be subordinate to any first mortgage to an institutional lender.

c. The Board shall deposit the monies collected by the Marketing Fees into a separate fund and shall invest the same prudently in low risk investments. The Marketing Fees collected shall be used by the Board, from time to time, for the purpose of marketing and promotion and sale of the Lots on Brays Island in order to enhance and preserve the property values of all Lots. The Marketing Fee shall not be used to supplement annual assessments or special assessments.

d. The Marketing Fee shall be payable to the Colony within ten (10) days of a closing. In addition to the equitable lien and continuing charge upon the Lot, the obligation for payment of the Marketing Fee shall be the personal obligation of the Owner of the Lot. Upon any conveyance of a Lot without payment of the Marketing Fee, the obligation shall become the joint and several personal obligation of the Seller and all subsequent Purchasers of the Lot.

e. Upon the failure of the Marketing Fee being paid when due, the Colony shall have the same remedies to collect the payment as set forth in Sections 9.02 and 9.08 of the Declaration to include payment of (i) a late charge, (ii) interest at eighteen percent (18.00%) per annum, (iii) all costs of collection and (iv) reasonable attorney's fees.

Consent

Brays Island Plantation Company, LLC consents to the terms and conditions of Section 14.15 of the Declaration of Covenants, Conditions and Restrictions adopted by the shareholders of Brays Island Plantation Colony, Inc. on February 20, 2004 and agrees to pay the Marketing Fee imposed by Section 14.15 on all lots in Brays Island Plantation owned by it after the full payment of the obligation in Paragraph 15.2 (b) of a Purchase Agreement of December 24, 2001 to spend $1,750,000 for marketing at Brays Island.

Executed on _____, 2004.

_____) Brays Island Plantation Company, LLC
Witness 1)
)
)
)
_____) By:_____
Witness 2 Managing Member

EXHIBIT 2

Alexander C. Burns
934 Richter Way
Mt. Pleasant, SC 29464

January 11th, 2017

Bill Fabian
Brays Island Planation Colony, Inc.
115 Brays Island Dr.
Sheldon, SC 29941

RE: ACCOUNT AT BRAYS ISLAND

Dear Mr. Fabian:

This letter is in response to my discussion with you as of January 10th, 2017. As I indicated to you, my personal financial circumstances have significantly changed since I purchased the property at 50 Gun Drive in 2014. As you are likely aware, I listed my property with Paul Burton of Brays Island Realty as of October 24th, 2016 and have received no indication that there has been any interest in my property.

As fond as I am of Brays Island, unfortunately the structure of the plantation has exacerbated an already difficult financial situation – I am unable to stem my financial obligations until the property is sold and am unable to do anything to hasten the transaction given the limited interest.

I propose that we consider converting the current balance payable into a mutually agreeable promissory note to be paid out of the proceeds upon the sale of my property. Provided that we can come to some agreement upon this, my intention would be to resume making monthly assessment payments going forward to avoid further delinquency.

I regret the situation and appreciate the opportunity to work through this.

Sincerely,

Alexander Burns

EXHIBIT 3

Gmail by Google

Alexander Burns <acb@alexanderburns.com>

Your Brays Island account

Bill Fabian <bfabian@braysisland.org> Fri, Jan 20, 2017 at 1:33 PM
To: "acb@alexanderburns.com" <acb@alexanderburns.com>

Mr. Burns
Thank you very much for your quick reply. Your proposal was discussed at our recent finance committee. The sentiment in the room was similar to what you and I talked about, we are not interested in suing our owners, we just need to continue receiving payments on all accounts. With that said, the finance committee has accepted your proposal with a few modifications.
The committee is willing to extend a $10,000 promissory note accruing interest at 5% per annum to you. (Your account balance at 12/31 is $13,512.44 so we would need $3,512.44 as a "down payment" at the acceptance of this agreement.) Instead of having the loan paid out of the proceeds of the sale of the property, we would like a minimum payment of no less than $500 per month towards the principal. Also, you agree to maintain your account in a current status until the note is paid in full. In the event of you defaulting on this agreement, we are asking that you to sign a "confession of judgment" document(generic form is attached for your convenience) , which allows us to proceed in our collection efforts directly to the sheriff selling your Brays Island property to satisfy the outstanding debt.
We look forward to working with you to clear up this obligation as soon as possible in a manner that is beneficial to both parties.

If you agree with these conditions please let me know and I will get the paperwork drawn up.

Sincerely,
Bill Fabian
Director of Finance
Brays Island Plantation Colony, Inc.
bfabian@braysisland.org
843-846-3139 (w)
843-812-9380 (c)

-----Original Message-----
From: Alexander Burns [mailto:acb@alexanderburns.com]
Sent: Wednesday, January 11, 2017 4:46 PM
To: Bill Fabian <bfabian@braysisland.org>
Subject: Re: Your Brays Island account

Bill-

Please see attached.

Regards,

Alex

On Tue, Jan 10, 2017 at 12:32 PM, Bill Fabian <bfabian@braysisland.org> wrote:
> Mr. Burns
>
> Please call me regarding your account. It is very important.
>
>
>

EXHIBIT 4

Gmail by Google

Alexander Burns <acb@alexanderburns.com>

50 Gun Club Dr.

Paul Burton <pburton@islc.net> Mon, Jan 23, 2017 at 1:45 PM
To: Alexander Burns <acb@alexanderburns.com>

Hello Alex
We've had some reasonable interest lately and sold several properties - predominantly homes. While you remain one of the most competitively priced properties, as I mentioned at the time of listing, this is likely to be a marathon and not a sprint, and every seller should expect that it could take several years to sell. The past 6 months has been considerably better than the same period a year before, and We will do everything possible to build on this momentum.
Hope all is well in your world.
Best
Paul

Paul Burton
Owner/Partner, Brays Island Realty,LLC
Broker in Charge
843-846-3173 (direct)
www.braysisland.com
[Quoted text hidden]

EXHIBIT 5

The New York Times

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January 23, 1995

Rose Kennedy, Political Matriarch, Dies at 104

By ROBERT D. McFADDEN

Correction Appended

Rose Fitzgerald Kennedy, the mother of President John F. Kennedy and of two United States Senators, the wife of a fabulously wealthy businessman-ambassador and the matriarch of a family whose political triumphs and personal tragedies she carried with quiet dignity for 80 years, died yesterday at the Kennedy family compound in Hyannis Port, Mass. She was 104.

Surrounded by family members at her rambling, white-shingled seaside home on Cape Cod, she died of complications from pneumonia at 5:30 P.M., her son, Senator Edward M. Kennedy of Massachusetts, said. She had been in a wheelchair, partly paralyzed and mostly silent, since 1984, when she suffered the first of a series of debilitating strokes.

Mother passed away peacefully today," Senator Kennedy said last night. "She had a long and extraordinary life, and we loved her deeply. To all of us in the Kennedy and Fitzgerald families, she was the most beautiful rose of all."

President Clinton extended his condolences last night. "Very few Americans have endured as much personal sacrifice for their country as Rose Kennedy," the President said. "She played an extraordinary role in the life of an extraordinary family. Hillary and I extend our deep-felt sympathy to the Kennedy family."

Funeral arrangements were incomplete last night.

In recent years, Mrs. Kennedy, a devout Roman Catholic who often said she drew on her faith to cope with sorrows, had remained out of the public eye that followed her nearly all her life. She spent her time reciting the rosary daily, attending Mass celebrated by a priest in her living room on Sundays and sitting on a porch overlooking Nantucket Sound on sunny weekends while her children and grandchildren paid visits and regaled her with their latest adventures.

They were the twilight years of a life she once described as a series of agonies and ecstasies, a life born into fortune and politics, wed to ambition, graced by the exhilaration of a son in the White House and others on Capitol Hill, but touched by violent death, illness, scandal and other adversities.

Tragedy Intrudes On a Privileged Life

Raised in Boston, the daughter of John (Honey Fitz) Fitzgerald, a Boston mayor and Massachusetts Congressman, the young Rose Fitzgerald knew a life most only dream of -- private schools, debutante

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON 2017-CP-07-00265

ALEXANDER C. BURNS,

Plaintiff,

-vs-

BRAYS ISLAND PLANTATION COLONY INC., et al.,

Defendants.

TRANSCRIPT OF RECORD

August 22, 2017

Beaufort, South Carolina

RECEIVED
MAR 09 2018
SC Court of Appeals

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

A P P E A R A N C E S:

Alexander Burns, Pro Se

Carl Muller, Esquire
Attorney for Defendant Brays Island

Kevin Dukes, Esquire
Attorney for Defendant Brays Island Realty

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

(August 22, 2017.)

THE COURT: All right. Burns versus Brays Island.

MR. BURNS: Good morning, Your Honor.

THE COURT: You're pro se. You're Mr. Dukes?

MR. MULLER: I'm Carl Muller.

THE COURT: Okay. All right.

MR. MULLER: Mr. Dukes is also here representing Bray's Realty who is not a party to this motion.

THE COURT: And whose motion for summary judgment is this?

MR. DUKES: This is mine, Your Honor.

MR. MULLER: And I have filed a motion on behalf of Bray's Island as well.

THE COURT: Okay. So we got competing summary judgment motions. All right. Well, you filed yours first?

MR. BURNS: I did, Your Honor.

THE COURT: Go ahead.

MR. BURNS: Thank you, Your Honor. Good morning. This motion for summary judgment was filed after Judge Mullen denied the defendant's motion to dismiss. We're filing solely on the first cause of action, which is a declaratory judgment that we've asked

the Court to deem the covenant conditions, restrictions from 1988 to be invalid as a matter of South Carolina law. Primarily, our issue is with the perpetual nature of the covenants as written under South Carolina common law.

There was a prior issue related to the uniform statutory rule against perpetuities. The defendant has pled that that's inapplicable, which actually comes into play as an estoppel issue, and, secondarily, the individual assessments don't run with the land and they're personal covenants and not real covenants and so we've asked the Court to rule that they can't be enforced against the property as real covenants as they are personal and not real.

So, getting into it, obviously, it's summary judgment under the standard issues of the fact and law. Our issue for the perpetual nature is -- starts with South Carolina Cable Network v. Alert Cable laying out the perpetual agreements are obviously disfavored in South Carolina because they are perpetual, and once you get in, you can never get out.

In this case, the duration of the covenants is governed by a 30-year term that automatically renews for a successive ten-year term but for a subsequent determination by other property owners at a 90 percent

threshold. It specifically says that it cannot be terminated what, when, why, how for any other reason you cannot disclaim it, you cannot get rid of it. Once you are in, you are stuck.

We believe that this violates the spirit of South Carolina's common law insofar as you can't have an agreement that neither parties at interest to the agreement can walk out of under any circumstances but for other third parties who may be adverse to either of the parties at interest in termination.

Similarly, we run through that issue. South Carolina Cable was a perpetual lease that had an automatic renewal in favor of one party that was at all not cancellable. The Court found that the lack of contract term was a fatal defect because if they could just continue to renew forever, then the agreement exists forever. We believe that Brays was aware of the potential issue here as in their covenants they actually have a section, 1406, where they say if any covenant, condition, or provision of this declaration shall be unlawful, void, or voidable per violation of the rule against perpetuities. Such provision shall continue only until 21 years after the death of the last reminding descendent -- I can provide the text -- of Rose Fitzgerald Kennedy. On that basis, we suggested that

that covenant -- that term was improperly constructed.

The defendant has argued that term is inapplicable, so we would ask that they be estopped from subsequently reasserting that the covenant they suggested doesn't apply cannot now be used to reform the contract, and so we're left with a perpetual agreement. If it was perpetual but for not being perpetual by use of this artifice and they're arguing that the artifice is inapplicable, then we're only left with a perpetual contract.

Similarly, going into it, we find that the standards for covenants are much higher --

THE COURT: Are you a lawyer?

MR. BURNS: I went to law school, Your Honor. I did not complete it.

THE COURT: Okay. I've had one rule against perpetuities question in 22 years of being a judge, and it was my first year, and I was hoping I would get through however long I did this without getting another one, but I saw it was marked you were pro se, and how many people know about the law of perpetuities, much less understand it.

MR. BURNS: Well, Your Honor, we'll see if we understand it.

THE COURT: I'm still not sure that I do, but

go ahead.

MR. BURNS: Thank you, Your Honor.

So the issue here is that covenants have a very high standard, and their standard is substantially higher than contracts. Obviously, in South Carolina common law, ambiguities in covenants are deemed strictly to be resolved in favor -- against the party seeking to assert them. As such, any ambiguities related to perpetuities would be enforced against them.

Now, obviously, Queens Grant and other cases have said just because things are ambiguous doesn't mean you can't use them, but Queen's Grant actually resolves some matters for us here fairly elegantly. For example, Queen's Grant talks about the idea that covenants must touch and concern the land in order to be a real property covenant. There's also an extensive discussion of the idea of affirmative covenants requiring someone to do something, like pay an assessment, has a much stricter standard than the standard of a negative covenant prohibiting someone from doing something, and the obvious reason there being if you must continue to do something, you are being deprived of a right, and therefore there's a narrower scope that you can be deprived of.

Queens Grant talks about cases from North Carolina. That actually is where the touching and

concerning of land comes from. The case is Raintree v. Rowe, which is quite applicable in this matter. Raintree v. Rowe has basically the same set of circumstances. Here, the individual assessments that we're complaining of are assessments that subsidize recreational activities like quail hunting in a golf course, et cetera, and are divorced from just sort of your run-of-the-mill road maintenance, what you have, which are covered under capital assessments.

Additionally, there's a real assessment, which is an obligation to continue paying to fund a capital project for the building of the golf course's growth. Obviously, those things have nothing to do with the property itself. Brays has effectively created a country club inside of an HOA and seeks to take the best of both worlds and apply the country club membership rules. It actually -- covenants extensively refer to members and talk about recreational amenities of members, but then they try to slam it through as a real property covenant.

The way you can sort of easily distinguish how the individual assessments versus capital assessments are personal property covenants versus real property covenants is that the capital assessments are $4,000 a year based on -- you own a property of land, you pay

$4,000, great. We all understand how that works. The individual assessments are actually calculated based upon the number of members that are designated by the owner, so the owner can designate up to three members: If it designates one member, it pays a 100 percent share; two, 150 percent share; three, a 200 percent share.

So if the calculation for the individual assessment has nothing to do with the property itself but has to do with people who are being designated by the owner as being able to go quail hunting, go play golf, stay at the inn, eat at the restaurants, those are clearly personal covenants, not real covenants.

Raintree v. Rowe was an issue where they said as part of the covenants, you have to be a member of our affiliated country club. And the North Carolina appeals Court said no, you don't, but if you are here for a personal covenant, the personal covenant can only be agreed to by one person to another, and an assignee, such as when I bought the land from another seller, it does not pass on to me and attach to me. I would have to enter into a separate agreement to be bound. I'm arguing to the extent there is an effective agreement, that agreement has the opportunity to be terminated upon reasonable notice, which is the South Carolina Alert Cable standard.

So from there, we get to this idea that covenants as created -- and I apologize for dragging you into perpetuities and covenants from 200 years ago, but the idea is that they must benefit and burden the land. That's been the law in South Carolina for two centuries. As Queen's Grant says, covenants that have a beneficial effect on the value of the property touch and concern the land and are therefore real property covenants.

Well, the individual assessments that we're discussing have effectively a negative carry rate, or sort of a negative interest on the property, of about 16 percent a year, which means that if you own the property, irrespective of real estate taxes, mortgages, anything else, your property would go from the purchase price to zero in about six years. Now, property prices all over Beaufort County over the last few years have overwhelmingly been increasing, but the testimony provided here shows that these properties may not sell for years and are likely to sell for less than the purchase price.

So if the covenants are strangling the ability to sell the property, and if you can sell the property, you're going to sell it for less, and if while you're waiting for the privilege of selling the property as the only way to escape these perpetual covenants, you

have to pay 15 percent of the property value, come what may, it cannot be seen as having a beneficial effect on the property. It's inherently a deleterious effect on the property.

So, in totality, given the very high standard for covenants, the entire standard for affirmative covenants, the requirements that covenants have beneficial effects on properties and that those beneficial effects be manifest, we run into a bit of difficulty with these covenants. Raintree v. Rowe sets out a three-part test specifically for determining whether a covenant is a real property covenant or a personal property covenant.

One of them is that the intent of the parties can be determined from instruments of record; two, the covenant must be so closely connected to the real property that it touches and concerns the land; and, three, there must be privity of the state between the parties to the covenant. And in dealing with the first issue, express intent of the parties can prohibit a covenant from running with the land, but it cannot make personal covenants run with the land.

In this case, they actually had -- in the covenants, it said these are real property covenants, and the Court said in Raintree, We don't care. Despite the

fact you say they are real property covenants, you can't just decide that they are. The Court specifically said the declaration of covenants, conditions, and restrictions contains the recitals that the covenants are to be construed to run with the land. There is no doubt that the developer intended the covenant to run. This recital is not controlling.

So even if they say, well, you know, you wanted this to run because it was in here, that's not controlling. To touch and concern the land, the object must be annexed to it, inherent in it, or connected with the land or real property granted or devised. In this case, the property that I purchased is a one-acre circle. It's inside of a larger development, but not connected inherently to the golf course or quail hunting or the inn or any of the other recreational activities, per se, any more than the YMCA is connected to the residents of a given town.

The fact that we happen to be in an annexed larger community does not actually create physical connection when there are all of the other mitigating factors, such as the calculation of the individual assessments and issues on that basis. So given the incredibly high hurdle that is set for proving these covenants and void, absence of any argument that has been

made to date as to how these specific covenants meet those standards, given the glaring evidence, we move for summary judgment on the basis that the covenants, particularly the individual assessments, are invalid and unenforceable in South Carolina law, and, moreover, are perpetual.

Thank you.

THE COURT: All right. You got anything you want to argue in opposition?

MR. MULLER: Your Honor, my name is Carl Muller. I represent Brays Island. I filed a motion for summary judgment to require Mr. Burns to pay his fees that he's required to pay under the longstanding declaration of covenants that govern Brays Island Plantation and the lots owned and the homes owned by the 325 property owners there of whom he is one.

On Thursday, I filed a five-page memorandum that sets out the law, and I would ask the Court to look at that because I've been very careful in setting out the law and describing the rule against perpetuities.

As a preliminary matter, I would like to point out two fundamental reasons that Mr. Burns should not prevail on his motion and we should prevail upon ours. First of all, Mr. Burns did not allege in his complaint what he now argues about touching and

concerning the land.

His first cause of action is only a challenge to the rule against perpetuities. His claim that the covenants do not concern and touch the land is a Johnny come lately effort after he received my memorandum in order to cobble together some sort of argument to let him survive and avoid paying his legitimate dues and fees that he has incurred for using the amenities at Brays Island.

The two cases that he cited have nothing to do with this case. Raintree vs. Rowe, which he cited, is a North Carolina case, and it was decided on the basis that the plaintiff was not the real party in interest. That's what the trial Court decided, and that's how that case was affirmed. Furthermore, in dicta in that case the Court said that the country club dues at issue in that case didn't have anything to do because the country club facilities were not connected with or attached to the defendant's land in any way.

Here what we have, Your Honor, with Brays Island is a 5,500 acre plantation on which there are 325 lots which can use the plantation. Mr. Burns has one of the lots, and his land is a part of the overall plantation, so he is totally different from the Raintree case. The South Carolina case that he mentioned,

Carolina Cable Network, is a cable TV case. It does not involve the rule against perpetuities, and it does not involve touching and concerning the land.

Furthermore, that contract did not have any term of duration, and the Court said that that contract was completely devoid of term of duration and the Court said that perpetual contracts are upheld in South Carolina under certain circumstances.

So for those sort of first-tier reasons, Mr. Burns is totally off base. He also can't prevail for another reason: He has submitted no proof. He has submitted no affidavits. We have submitted the affidavits of a lawyer in South Carolina who's an expert in real estate who says that the covenants are valid covenants. They completely comply with the South Carolina law. In fact, they were drafted in part by one of the leading lawyers in South Carolina, Austin Smythe from Moore, Smythe & McGee, so the covenants are completely valid, and he's presented no affidavits nor any law in contradiction to that.

Furthermore, we have an affidavit from Kevin Rhatigan, who is the general manager of Brays Island, who says that Mr. Burns bought his lot at Brays Island, and he just hasn't paid his money. And he knew that we were going to come after him for his money, and what he did is

he filed a peremptory challenge, thinking of everything he could hoping to negotiate himself a better deal or hoping that we would go away or that somehow he might get a Court to give him more time so that he wouldn't have to do what everybody else has to do and pay what he owes.

We also have a verification to the complaint -- to the counterclaim that we filed by Bill Fabian, who is the director of finance, and he goes through what Mr. Burns owes and why he owes the money, and Mr. Burns has never even himself filed an affidavit saying that he doesn't owe the money. He hasn't even done that.

In addition, Mr. Dukes has filed an affidavit on behalf of his client, Paul Burton, who says Mr. Burns voluntarily bought his land here a couple of years ago. He was represented at the closing by a lawyer. He got a copy of the covenants from Mr. Burton.

In fact, Mr. Burns said in his own complaint he got a copy of the covenants from Mr. Burton at the time. He said he had the highest grade in civil procedure. He's trained as a lawyer. He knows what these covenants mean, and what he's trying to do is to somehow find himself some string so that he can have a little bit more time, or maybe escape altogether.

The rule against perpetuities does not apply

for the reasons that I set out in my memorandum. First of all, the rule against perpetuities only applies to vesting of interests. There are no interests that Mr. Burns has that did not vest under the covenants. There are no interests that Brays Island has that did not vest under the covenants. Mr. Burns didn't even get any interest until he got his deed, so his interest doesn't arise -- his interest arose under the deed.

Brays Island interest arose under the covenants, and we can clearly impose those covenants upon him under the case that I cited and that he cited too, frankly, which is Queen's Grant versus Greenwood. I mean, there's nothing unusual about these covenants. They are garden variety covenants that impose obligations. They're almost 40 pages long.

I've attached them to Kevin Rhatigan's affidavit, and they detail obligations on the part of homeowners about how they can use the property, how they can use the amenities, what they have to do, and, likewise, their obligations on Brays Island about what it has to do, and the whole reason for that is this is a unified plan development to benefit everybody, and if everybody gets outside of the lines and doesn't do what they're supposed to do, including paying for the running of the plantation, then it hurts everybody.

So there's 40 pages of obligations and benefits. The problem that Mr. Burns has is that he bought his land and thought he was going to flip it. He says in his complaint that he paid 170,000 for his property. It's lot number 29 on Gun Club Drive according to the deed. He's now got it advertised for $220,000, $50,000 more than he paid for it two years ago, so he's just mad because he hasn't been able to make as much money as he wants to.

That's what's going on here. So I can go on and on and on in the detail of the South Carolina rule against perpetuities, but it's pretty cleanly set out in the five-page memo that I put together, and what do is I trace through the statute and the specific provisions of the statute that say this doesn't apply.

It doesn't apply, first of all, because the interest vested for Brays Island when the covenants were filed. The interest vested for Mr. Burns when he bought his property. The interest vested for the property owners when they became subject to the deed. Also, there's a savings clause in the covenants, even if the rule against perpetuities did apply, that says that it's tied to the life of the last to survive of Rose Kennedy's grandchildren, who were then living when the covenants were filed. That's a common way to have the rule against

the rule against perpetuities protected in a safe harbor, and that was done at the very tail end of the covenants if by some conceivable view they did apply.

Also, under the South Carolina statute, there is an additional way that the covenants can be protected, which is that the interest vests within 90 years after its creation. Well, Mr. Burns's interest vested when he bought the property, and the covenants were created in 1987, so his interest vested within 90 years after the covenants were created. All the covenants with respect to Brays Island vested when the covenants were filed. We're within 90 years of when the covenants were filed, so everything that's happening right now is vested. It's done.

Also, the covenants don't apply to a non-donated transfer. Mr. Burns was not given anything. He didn't inherit anything under a will, so he -- what he obtained is a non-donated transfer. That's another reason that the covenants don't apply. There's a Georgia case that says the rule against perpetuities doesn't even apply to covenants, period. There's no South Carolina case that says that one way or the other, but that's the common law, and that was the rule that applied in South Carolina before the rule of perpetuities was codified in a statute.

The statute that South Carolina adopted said that there is an exclusion in common law. It continues, so even that means that the covenants are not subject to Mr. Burns's rule against perpetuities, but the easy thing for the Court, the clearest path, is that Mr. Burns has filed no proof. He's got no affidavits. He's not challenged anything that we have filed, and under Rule 56(e), he can't rest on his pleadings. Once we come forward, he can't rest on his pleadings, and if he doesn't file an affidavit or something to show the Court he's got facts, then he's out, and he's out right now.

Finally, Your Honor, if Mr. Burns were to argue that he's entitled to do discovery, that would ring hollow. He's never filed the first speck of discovery. He's filed no interrogatories. He's filed no request for production. He's filed no notices of deposition. All he'll be doing --

THE COURT: Are you planning on doing any discovery?

MR. BURNS: May I, Your Honor?

THE COURT: Yeah.

MR. MULLER: All he's doing is asking for more time.

THE COURT: Well, I'll shut it down real quick. If you're saying, I don't plan to do any

discovery, then I'll hear a motion for summary judgment, but it's pretty basic law that I can't entertain a summary judgment motion until all discovery has been done.

MR. BURNS: Your Honor, if I may: My motion for summary judgment was filed solely on the first cause of action, which is a DJ. I don't plan to take any discovery on just the DJ.

The second cause of action with regard to civil conspiracy I absolutely plan to seek discovery on. The DJ action does not require discovery insofar as it's all contained in the covenants, so on that basis, I believe summary judgment was appropriate, only in the first cause of action in which the DJ is what's being sought.

In the second cause of action where I allege civil conspiracy, that is ripe for discovery, and as a matter of judicial economy, I put the motion for summary judgment for the first cause before the discovery plan for the second, and seeing no objection from either of the counsels in the past six months have found it to be appropriate.

If I may address some of opposing counsel's points, as he made great reference to motivation, and I feel fairly confident --

THE COURT: Let him finish. I wanted to hear that point. I'm sorry I interrupted you, but I wanted to cut to the chase on that point.

MR. MULLER: On the issue of discovery, Your Honor that does note trump Rule 56(e). He can't just come in here and say, I'm going to do some discovery. He's got to show specific facts, and he's got to show somehow that he's entitled to something.

THE COURT: He's saying he's not going to do any discovery on the issue of the first cause of action and therefore it's proper to hear it based, presumably, solely on the pleadings.

MR. MULLER: And I'm fine with that. The first cause of action. I'm talking about now the second --

THE COURT: So we're just talking about the rule against perpetuities invalidating the restrictive covenants.

MR. MULLER: What I'm talking about is -- just so we understand, I'm talking about denying his motion on the summary judgment on the first cause of action and granting me summary judgment on the first cause of action, which is the rule against perpetuities.

THE COURT: Have you filed anything in support of your motion?

MR. MULLER: Yes.

THE COURT: Okay.

MR. MULLER: And I filed affidavits in support of my motion.

THE COURT: You filed it under the e-filing thing?

MR. MULLER: Yes, I did.

THE COURT: Look, I wasn't planning on doing this, so I didn't look on all of that and get it, and as of yesterday morning even, I'm driving to Allendale, not sure if I'm holding court there, so I'm not up-to-date. That's all I'm asking, about what got filed and what didn't get filed.

MR. MULLER: Let me tell you what got filed. Let me tell you what got filed. He filed a motion for summary judgment on the first cause of action, which is the rule against perpetuities.

THE COURT: Okay.

MR. MULLER: I filed a motion for summary judgment on everything.

THE COURT: Okay.

MR. MULLER: I filed a motion for summary judgment on the rule of perpetuities, on his claim for civil conspiracy, and on my counterclaim to pay me the dues, pay me what he owes, and I supported that with an

affidavit from a real estate lawyer in South Carolina who says, I've been through all the covenants, and the covenants are totally valid, and what he has to say about the covenants is wrong, and what I have to say about the covenants is right.

THE COURT: Okay.

MR. MULLER: Covers both causes of action, I mean, both motions for summary judgment on the first cause of action.

I also filed an affidavit from the general manager of Brays Island, a gentleman named Kevin Rhatigan, who says Mr. Burns owes us the money, and I've looked at the counterclaim that you have filed, Mr. Muller, and it's right.

And as far as this civil conspiracy allegation goes, he alleges -- just so we're clear about this, on the civil conspiracy, he alleges that Brays Island, which runs the plantation, conspired with the real estate company to sell Mr. Burns the property from another owner, not from Brays Island. Brays Island didn't own this property. He bought it from another owner through a real estate broker using a lawyer.

So we filed an affidavit on his so-called civil conspiracy claim, and then Mr. Dukes, who represents the real estate company, says Mr. Burns filed

it. He bought the property. He knew what he was doing, and that's what he did, and we gave him a copy of the covenants and he had himself a lawyer in the transaction, so don't bother us about a civil conspiracy claim, so we move for summary judgment on the civil conspiracy claim, and that is completely unopposed by Mr. Burns, by any affidavit, which means that under Rule 56(e), he now should have judgment for that tendered against him by the Court.

He does not oppose that motion for summary judgment by anything. We also filed a motion for summary judgment that said pay us the money. This is a liquidated account. You owe us the money. It's time to pay up, and so that's where we are.

THE COURT: All right. You're just here for the show today? You're not arguing anything?

MR. DUKES: Yes, Your Honor. I have no pending motions.

THE COURT: You want to respond?

MR. BURNS: Yes, Your Honor. First and foremost, on the issue of things that I may or may not have filed in opposition, I filed an answer which I signed and verified myself. As a pro se filer, the answer was signed and filed by me in which I denied the allegations. That is sufficient as a pro se filer. That

is a sufficient filing in my defense. There's no need for a supplemental affidavit as it was drafted by me, signed by me, and attested to under Rule 11.

Second, just in case we're unclear as to my opposition, I filed and signed a memorandum in opposition, separate and apart from my memorandum in support. I filed a separate memorandum in opposition to defendant Brays's motion, so to suggest that I've been silent on the issue is just not found in the record.

Further, there are issues of my motivation and characterization of what I'm seeking. When I reached an impasse with Brays discussing my interest in terminating the membership portion, which they said other people tried to do and we don't allow it, I filed the declaratory judgment. As under the rules I had to bring all mandatory claims at that time. I added the civil conspiracy claim.

My civil conspiracy claim as pled, the sufficiency of which was tested by Judge Mullen in defendant Brays's motion to dismiss or deny, is not on the basis that the conspiracy was when I purchased the property, it was the use of the covenants and the effective disenfranchisement of this captive real estate company that can now charge whatever commissions it wants, doesn't have to actually list the property, and

can steer offers one way or the other so that people are forced to maintain and stay in on the property if they want to sell, which is the only way to alleviate the covenants.

It has nothing to do with when I bought the property, which, by the way, all properties in South Carolina have to be acquired with an attorney, that notwithstanding, the issue here is -- nowhere in the covenants does it provide for the real estate company. Brays has chosen to create this cottage industry of putting a guy in business who is Brays Island Realty who just represents those properties.

I mean, you can tell in the name, Brays Island Realty. That's what he does. He maintains the listing. He is the dual agent on the properties. I can't list a property and sell it with another agent because the covenants require that anyone visiting my property must do so while I'm present, but if I list the property with defendant Brays Realty, Mr. Burton, the broker-in-charge who is not a member of Brays Island and has no official standing, is free to walk around the property and show it to anyone that he so pleases in his capacity as a real estate agent.

So the issue is, I can't even hire my own real estate broker and have them show the property

without me being there, which I'm arguing is at my special injury. Defendant Brays Realty has a commission of 10 percent on resales, which is higher than above market, particularly in an instance where they're likely to be receiving a dual agency commission. They're basically getting two times 5 percent, where they might otherwise get two times 2 percent or 3 percent in a competitive market, and since defendant Brays and defendant Brays Realty have concocted this method to lock out any other real estate agents and force people to stay in, it is at my special injury, and that is what I have pled as my civil conspiracy claim.

Moreover, my first cause of action is a declaratory judgment deeming the covenants invalid. While Mr. Muller has given extensive testimony on the basis of the statutory rule against perpetuities, my argument rests in the common law rule against perpetuities as advanced through South Carolina Cable and other cases.

So we're fine consenting that the uniform statutory rule may be inapplicable. That actually serves to make the covenants at common law almost certainly perpetual, because if you don't violate the statutory rule, then you have to find a means by which you don't violate the common law rule, so it actually creates --

it's more of a help than an hindrance to us, frankly.

Our argument is the covenants are a cause of action as a declaratory judgment that the covenants are invalid. That's what we brought before Judge Mullen on the dismissal. That's what we're here on now. We believe that the thrust of our argument rests on the fact that it's perpetual. It also rests on the fact that the individual assessments are personal covenants. We bring that up now on the basis of the counterclaim, but that's inherently where we are.

Additionally, there are statements with absolutely no evidentiary support such as my motivation to flip the property. I listed the property for sale a year ago with Paul Burton. When I asked him as the real estate expert to give me an appropriate listing price, he suggested $220,000, which, by the way, would actually not be a profit, given all of the fees and assessments that I've paid to date and his 10 percent commission, so a $220,000 sale price would actually leave me with less money than when I started.

Obviously, there's no ability to flip the property. I have no interest in it. Frankly, I'm seeking to have the covenants declared invalid so I can walk away from this and, you know, to that vein, defendant Brays Realty has offered no showings of my

property. I've received no offers. I've received no indication that it's ever been listed or shown, and I believe that discovery on the matter of civil conspiracy will show that properties are being adversely selected in the nature of their relationship.

MR. MULLER: Just briefly, may I point out just two things? There is a leading South Carolina case on civil conspiracy. It's Pye, P-y-e, and I've cited it in my brief. What it says -- it says in order for civil conspiracy to survive, the damages alleged must go beyond the damages alleged in the other causes of action. The damages that Mr. Burns is alleging in civil conspiracy are exactly the same damages he's alleging in his first cause of action. There's no difference.

The second thing that the case says is it says that the essential consideration in civil conspiracy is whether the primary purpose or object of the combination is to injure the plaintiff. Mr. Burns has said nothing at all about anything that Brays Island or Brays Realty have done that is directed to intentionally injure him. He's complained about general things. He's complained about general covenants, and he's complained about generally an arrangement between Brays Island and Brays Island Realty, nothing about a civil conspiracy, so for that reason as well, Your Honor, his civil conspiracy

claim should not have another moment of life.

And he doesn't understand the law. When he says that the common law rule against perpetuities survives in South Carolina, that's the clearest indication that he doesn't understand it. It's been superceded by the uniform rule against perpetuities. That's the whole point of uniform law, is to supercede the common law.

So what we've got here, Your Honor, is a young man who bought something that now has seller's remorse over, and he's trying to wiggle out of it, and I would like you, if you don't mind, to take a look at the specific facts I've got and the specific law that I've got in my five-page brief.

THE COURT: I will. I'm going to take it under advisement, obviously, and read what you guys have filed, and I'll let you know what I have decided.

MR. MULLER: Thank you very much, Your Honor.

MR. BURNS: If I may address one final point?

THE COURT: What?

MR. BURNS: The issues of damages, the damages pled in the declaratory judgment are simply to be alleviated from the covenants. The special damages under the civil conspiracy, while somewhat related, are different sums of money in different pockets.

To the extent that the civil conspiracy has damaged me by having to maintain property taxes and a mortgage on the property and loss of enjoyment of the funds that I'm unable to recover from it, those are completely separate and apart from the sums otherwise payable under the declaratory judgment. Those are just two completely divorced areas of damages.

THE COURT: All right.

MR. BURNS: Thank you, Your Honor.

THE COURT: I'll let you know what I decide.

- - -

(Whereupon, the proceedings were concluded.)

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 22nd of August 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 4, 2018

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Circuit Court Reporter

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$220,000 [3] - 17:6, 28:16, 28:19
$4,000 [2] - 7:24, 8:1
$50,000 [1] - 17:7

1

10 [2] - 27:3, 28:18
100 [1] - 8:5
11 [1] - 25:3
1406 [1] - 4:19
15 [1] - 10:1
150 [1] - 8:6
16 [1] - 9:11
170,000 [1] - 17:4
1987 [1] - 18:9
1988 [1] - 3:2

2

2 [1] - 27:7
200 [2] - 8:6, 9:3
2017 [3] - 1:7, 2:1, 32:9
2017-CP-07-00265 [1] - 1:2
2018 [1] - 32:12
21 [1] - 4:23
22 [3] - 1:7, 2:1, 5:17
22nd [1] - 32:8
29 [1] - 17:5

3

3 [1] - 27:7
30-year [1] - 3:23
325 [2] - 12:16, 13:21

4

4 [1] - 32:12
40 [2] - 16:15, 17:1

5

5 [1] - 27:6
5,500 [1] - 13:21
56(e [2] - 19:8, 24:7
56(e) [1] - 21:5

9

90 [4] - 3:25, 18:6, 18:9, 18:12

A

ability [2] - 9:22, 28:21
able [2] - 8:10, 17:8
absence [1] - 11:25
absolutely [2] - 20:10, 28:12
according [1] - 17:5
account [1] - 24:13
accurate [1] - 32:4
acquired [1] - 26:7
acre [2] - 11:13, 13:21
action [18] - 2:25, 13:2, 20:7, 20:9, 20:11, 20:14, 20:16, 21:10, 21:14, 21:22, 21:23, 22:16, 23:7, 23:9, 27:13, 28:3, 29:11, 29:14
activities [2] - 7:5, 11:16
added [1] - 25:16
addition [1] - 15:13
additional [1] - 18:5
additionally [2] - 7:10, 28:11
address [2] - 20:23, 30:19
adopted [1] - 19:1
advanced [1] - 27:18
adverse [1] - 4:9
adversely [1] - 29:4
advertised [1] - 17:6
advisement [1] - 30:16
affidavit [10] - 14:21, 15:10, 15:13, 16:17, 19:10, 23:1, 23:10, 23:23, 24:7, 25:2
affidavits [5] - 14:12, 14:13, 14:19, 19:6, 22:3
affiliated [1] - 8:15
affirmed [1] - 13:15
agency [1] - 27:5
agent [3] - 26:15, 26:16, 26:23
agents [1] - 27:10
ago [4] - 9:3, 15:15, 17:7, 28:14
agreed [1] - 8:18
agreement [7] - 4:7, 4:8, 4:16, 5:6, 8:21, 8:22, 8:23
agreements [1] - 3:19
ahead [2] - 2:20, 6:1
al [1] - 1:8
Alert [2] - 3:18, 8:24
ALEXANDER [1] - 1:4
Alexander [1] - 1:15
allegation [1] - 23:16
allegations [1] - 24:25
allege [2] - 12:24, 20:16
alleged [2] - 29:10, 29:11
alleges [2] - 23:16, 23:17
alleging [2] - 29:12, 29:13
Allendale [1] - 22:10
alleviate [1] - 26:3
alleviated [1] - 30:23
allow [1] - 25:14
almost [2] - 16:15, 27:22
altogether [1] - 15:24
Amanda [2] - 1:20, 32:1
ambiguities [2] - 6:6, 6:8
ambiguous [1] - 6:11
amenities [3] - 7:18, 13:8, 16:19
annexed [2] - 11:11, 11:19
answer [2] - 24:22, 24:24
apart [2] - 25:6, 31:5
apologize [1] - 9:2
appeal [1] - 32:7
appeals [1] - 8:15
applicable [1] - 7:2
applied [1] - 18:23
applies [1] - 16:2
apply [10] - 5:5, 7:16, 15:25, 17:15, 17:16, 17:22, 18:3, 18:15, 18:19, 18:21
appropriate [3] - 20:13, 20:22, 28:15
areas [1] - 31:7
argue [2] - 12:9, 19:13
argued [1] - 5:2
argues [1] - 12:25
arguing [4] - 5:8, 8:21, 24:16, 27:1
argument [5] - 11:25, 13:6, 27:17, 28:2, 28:6
arise [1] - 16:8
arose [2] - 16:8, 16:9
arrangement [1] - 29:23
artifice [2] - 5:8
assert [1] - 6:8
assessment [3] - 6:18, 7:10, 8:8
assessments [13] - 3:10, 7:4, 7:5, 7:9, 7:22, 7:24, 8:2, 9:9, 11:23, 12:4, 28:8, 28:17
assignee [1] - 8:18
attach [1] - 8:20
attached [2] - 13:18, 16:16
attested [1] - 25:3
Attorney [2] - 1:16, 1:18
attorney [1] - 26:7
August [3] - 1:7, 2:1, 32:8
Austin [1] - 14:17
automatic [1] - 4:13
automatically [1] - 3:23
avoid [1] - 13:7
aware [1] - 4:17

B

base [1] - 14:10
based [3] - 7:25, 8:2, 21:11
basic [1] - 20:2
basis [8] - 4:25, 11:23, 12:3, 13:12, 20:12, 25:21, 27:16, 28:9
Beaufort [3] - 1:8, 9:16, 32:8
became [1] - 17:20
behalf [2] - 2:15, 15:14
beneficial [4] - 9:6, 10:2, 10:8, 10:9
benefit [2] - 9:4, 16:22
benefits [1] - 17:2
best [1] - 7:15
better [1] - 15:2
between [2] - 10:18, 29:23
beyond [1] - 29:10
Bill [1] - 15:7
bit [2] - 10:9, 15:24
bother [1] - 24:4
bought [10] - 8:19, 14:23, 15:15, 17:3, 17:18, 18:8, 23:21, 24:1, 26:5, 30:10
bound [1] - 8:21
Bray's [2] - 2:9, 2:15
BRAYS [1] - 1:7
Brays [34] - 1:16, 1:18, 2:2, 4:17, 7:14, 12:11, 12:14, 13:8, 13:20, 14:22, 14:23, 16:5, 16:9, 16:20, 17:17, 18:11, 23:11, 23:17, 23:20, 25:12, 26:10, 26:11, 26:13, 26:19, 26:20, 27:2, 27:8, 27:9, 28:25, 29:19, 29:20, 29:23, 29:24
Brays's [2] - 25:8, 25:20
brief [2] - 29:9, 30:14
briefly [1] - 29:6
bring [2] - 25:15, 28:8
broker [3] - 23:22, 26:20, 26:25
broker-in-charge [1] - 26:20
brought [1] - 28:4
building [1] - 7:12
burden [1] - 9:4
burns [2] - 15:9, 15:10
BURNS [13] - 1:4, 2:4, 2:19, 2:21, 5:14, 5:23, 6:2, 19:20, 20:5, 24:20, 30:19, 30:21, 31:9
Burns [23] - 1:15, 2:2, 12:12, 12:22, 12:24, 13:22, 14:10, 14:23, 15:14, 15:18, 16:4, 16:6, 17:2, 17:18, 18:16, 19:5, 19:12, 23:12, 23:19, 23:25, 24:8, 29:12, 29:18
Burns's [1] - 18:7
burns's [1] - 19:4
Burton [5] - 15:14, 15:17, 15:18, 26:19, 28:14
business [1] - 26:11

C

cable [1] - 14:1
Cable [6] - 3:18, 4:12, 8:25, 14:1,

27:18
calculated [1] - 8:2
calculation [2] - 8:7, 11:22
cancellable [1] - 4:14
cannot [6] - 4:1, 4:3, 5:5, 10:2, 10:21
capacity [1] - 26:23
capital [4] - 7:9, 7:12, 7:22, 7:24
captioned [1] - 32:6
captive [1] - 25:23
care [1] - 10:25
careful [1] - 12:19
Carl [3] - 1:16, 2:6, 12:10
CAROLINA [1] - 1:1
Carolina [31] - 1:8, 3:2, 3:4, 3:18, 3:20, 4:12, 6:5, 6:25, 8:15, 8:24, 9:5, 12:5, 13:12, 13:25, 14:1, 14:8, 14:13, 14:16, 14:17, 17:11, 18:4, 18:21, 18:24, 19:1, 23:1, 26:7, 27:18, 29:7, 30:4, 32:3, 32:8
Carolina's [1] - 4:6
carry [1] - 9:10
case [18] - 3:22, 7:1, 10:23, 11:13, 13:11, 13:12, 13:15, 13:17, 13:25, 14:1, 16:11, 18:20, 18:22, 25:4, 29:7, 29:15, 32:7
cases [4] - 6:10, 6:24, 13:10, 27:19
causes [2] - 23:7, 29:11
centuries [1] - 9:5
certain [1] - 14:8
certainly [1] - 27:22
certify [2] - 32:4, 32:10
cetera [1] - 7:6
challenge [2] - 13:2, 15:1
challenged [1] - 19:7
characterization [1] - 25:11
charge [2] - 25:24, 26:20
CHARLESTON [1] - 1:2
chase [1] - 21:3
chosen [1] - 26:10
circle [1] - 11:13
Circuit [5] - 1:20, 32:2, 32:3, 32:7, 32:16
circumstances [3] - 4:8, 7:3, 14:8
cited [5] - 13:10, 13:11, 16:11, 29:8
civil [21] - 15:20, 20:10, 20:17, 22:24, 23:15, 23:17, 23:24, 24:4, 24:5, 25:16, 25:18, 27:12, 29:3, 29:8, 29:9, 29:12, 29:16, 29:24, 29:25, 30:24, 31:1
claim [9] - 13:3, 22:23, 23:24, 24:4, 24:5, 25:17, 25:18, 27:12, 30:1
claims [1] - 25:16
clause [1] - 17:21
cleanly [1] - 17:12
clear [1] - 23:16
clearest [2] - 19:5, 30:4
clearly [2] - 8:12, 16:10
client [1] - 15:14
closely [1] - 10:16
closing [1] - 15:16
club [5] - 7:15, 7:16, 8:15, 13:16, 13:18
Club [1] - 17:5
cobble [1] - 13:6
codified [1] - 18:24
COLONY [1] - 1:8
combination [1] - 29:18
commission [3] - 27:2, 27:5, 28:18
commissions [1] - 25:24
common [11] - 3:4, 4:6, 6:6, 17:25, 18:23, 19:2, 27:17, 27:22, 27:25, 30:3, 30:8
COMMON [1] - 1:1
community [1] - 11:20
company [4] - 23:19, 23:25, 25:24, 26:9
competing [1] - 2:16
competitive [1] - 27:8
complained [3] - 29:21, 29:22
complaining [1] - 7:4
complaint [4] - 12:25, 15:7, 15:18, 17:4
complete [2] - 5:15, 32:5
completely [5] - 14:6, 14:15, 14:19, 24:6, 31:5, 31:7
comply [1] - 14:15
conceivable [1] - 18:3
concern [4] - 6:15, 9:7, 11:10, 13:4
concerning [3] - 7:1, 13:1, 14:3
concerns [1] - 10:17
concluded [1] - 31:12
concocted [1] - 27:9
condition [1] - 4:20
conditions [2] - 3:1, 11:3
confident [1] - 20:25
connected [5] - 10:16, 11:11, 11:14, 11:17, 13:18
connection [1] - 11:21
consenting [1] - 27:20
consideration [1] - 29:16
conspiracy [21] - 20:10, 20:17, 22:24, 23:15, 23:17, 23:24, 24:4, 24:5, 25:17, 25:18, 25:21, 27:12, 29:3, 29:8, 29:10, 29:12, 29:16, 29:24, 29:25, 30:24, 31:1
conspired [1] - 23:18
constructed [1] - 5:1
construed [1] - 11:5
contained [1] - 20:12
contains [1] - 11:4
continue [4] - 4:16, 4:22, 6:21, 7:11
continues [1] - 19:2
contract [5] - 4:15, 6:5, 5:10, 14:4, 14:5
contracts [2] - 6:5, 14:7
contradiction [1] - 14:20
controlling [2] - 11:7, 11:10
copy [3] - 15:17, 15:19, 24:2
cottage [1] - 26:10
counsel [1] - 32:11
counsel's [1] - 20:23
counsels [1] - 20:21
counterclaim [4] - 15:7, 22:24, 23:13, 28:9
country [5] - 7:15, 7:16, 8:15, 13:16, 13:17
COUNTY [1] - 1:2
County [2] - 9:16, 32:8
couple [1] - 15:15
course [2] - 7:6, 11:15
course's [1] - 7:12
COURT [30] - 1:1, 2:2, 2:5, 2:7, 2:11, 2:16, 2:20, 5:13, 5:16, 5:25, 12:8, 19:18, 19:21, 19:24, 21:1, 21:9, 21:16, 21:24, 22:2, 22:5, 22:8, 22:18, 22:21, 23:6, 24:15, 24:19, 30:15, 30:20, 31:8, 31:10
court [1] - 22:11
Court [19] - 1:20, 3:1, 3:12, 4:14, 8:16, 10:25, 11:2, 12:18, 13:14, 13:16, 14:5, 14:6, 15:4, 19:5, 19:10, 24:9, 32:2, 32:7, 32:16
covenant [18] - 3:1, 4:19, 5:1, 5:4, 6:16, 6:19, 7:20, 8:17, 10:12, 10:13, 10:16, 10:19, 10:21, 11:6
covenants [83] - 3:4, 3:11, 3:12, 3:13, 3:22, 4:18, 5:12, 6:3, 6:6, 6:14, 6:17, 7:17, 7:23, 7:24, 8:12, 8:14, 9:2, 9:3, 9:6, 9:8, 9:21, 9:25, 10:6, 10:7, 10:10, 10:22, 10:24, 11:1, 11:3, 11:4, 11:25, 12:1, 12:3, 12:14, 13:4, 14:14, 14:15, 14:18, 15:17, 15:19, 15:22, 16:4, 16:6, 16:10, 16:13, 16:14, 17:17, 17:21, 17:24, 18:2, 18:5, 18:8, 18:10, 18:11, 18:12, 18:15, 18:19, 18:21, 19:3, 20:12, 21:18, 23:2, 23:3, 23:4, 23:5, 24:3, 25:22, 26:4, 26:9, 26:17, 27:14, 27:22, 28:2, 28:3, 28:8, 28:23, 29:22, 30:23
covered [1] - 7:8
covers [1] - 23:7
create [2] - 11:20, 28:10
created [4] - 7:14, 9:2, 18:8, 18:10
creates [1] - 27:25
creation [1] - 18:7
CRR [2] - 1:20, 32:2
cut [1] - 21:3

D

damaged [1] - 31:2
damages [8] - 29:10, 29:11, 29:12, 29:13, 30:21, 30:22, 30:23, 31:7
date [3] - 12:1, 22:11, 28:18
deal [1] - 15:2
dealing [1] - 10:19
death [1] - 4:23
decide [2] - 11:2, 31:10
decided [3] - 13:12, 13:14, 30:17
declaration [3] - 4:20, 11:3, 12:14
declaratory [8] - 2:25, 25:15, 27:14, 28:3, 30:22, 31:6
declared [1] - 28:23
deed [4] - 16:7, 16:8, 17:6, 17:20
deem [1] - 3:1
deemed [1] - 8:8
deeming [1] - 27:14
defect [1] - 4:15
defendant [9] - 3:8, 5:2, 25:8, 25:20, 26:19, 27:2, 27:8, 27:9, 28:25
Defendant [2] - 1:16, 1:18
defendant's [2] - 2:23, 13:19
Defendants [1] - 1:9
defense [1] - 25:1
deleterious [1] - 10:3
denied [2] - 2:23, 24:24
deny [1] - 25:20
denying [1] - 21:20
deposition [1] - 19:16
deprived [2] - 6:22, 6:23
descendent [1] - 4:24
describing [1] -

12:20
designate [1] - 8:4
designated [2] - 8:3, 8:9
designates [1] - 8:5
despite [1] - 10:25
detail [2] - 16:17, 17:11
determination [1] - 3:25
determined [1] - 10:15
determining [1] - 10:11
developer [1] - 11:6
development [2] - 11:14, 16:22
devised [1] - 11:12
devoid [1] - 14:6
dicta [1] - 13:15
difference [1] - 29:14
different [3] - 13:24, 30:25
difficulty [1] - 10:10
directed [1] - 29:20
director [1] - 15:8
disclaim [1] - 4:3
discovery [14] - 19:13, 19:14, 19:19, 20:1, 20:3, 20:8, 20:10, 20:11, 20:17, 20:19, 21:4, 21:6, 21:10, 29:3
discussing [2] - 9:10, 25:12
discussion [1] - 6:16
disenfranchisement [1] - 25:23
disfavored [1] - 3:19
dismiss [2] - 2:24, 25:20
dismissal [1] - 28:5
distinguish [1] - 7:21
divorced [2] - 7:7, 31:7
DJ [4] - 20:7, 20:8, 20:11, 20:14
donated [2] - 18:16, 18:18
done [5] - 15:12, 18:2, 18:14, 20:4, 29:20
doubt [1] - 11:5
down [1] - 19:24
drafted [2] - 14:16, 25:2
dragging [1] - 9:2
Drive [1] - 17:5
driving [1] - 22:10
dual [2] - 26:15, 27:5
dues [3] - 13:7, 13:16, 22:25
DUKES [2] - 2:13, 24:17
Dukes [5] - 1:17, 2:5, 2:8, 15:13, 23:24
duration [3] - 3:22, 14:5, 14:6

E

e-filing [1] - 22:5
easily [1] - 7:21
easy [1] - 19:4
eat [1] - 8:11
economy [1] - 20:18
effect [3] - 9:7, 10:2, 10:3
effective [2] - 8:22, 25:23
effectively [2] - 7:14, 9:10
effects [2] - 10:8, 10:9
effort [1] - 13:5
either [2] - 4:9, 20:20
elegantly [1] - 6:13
end [1] - 18:2
enforced [2] - 3:13, 6:9
enjoyment [1] - 31:3
enter [1] - 8:21
entertain [1] - 20:2
entire [1] - 10:6
entitled [2] - 19:13, 21:8
escape [2] - 9:25, 15:24
Esquire [2] - 1:16, 1:17
essential [1] - 29:16
estate [12] - 9:13, 14:14, 23:1, 23:19, 23:22, 23:25, 25:23, 26:9, 26:23, 26:25, 27:10, 28:15
estopped [1] - 5:3
estoppel [1] - 3:9
et [2] - 1:8, 7:6
evidence [2] - 12:2, 32:6
evidentiary [1] - 28:12
exactly [1] - 29:13
example [1] - 6:13
exclusion [1] - 19:2
exists [1] - 4:18
expert [2] - 14:13, 28:15
express [1] - 10:20
extensive [2] - 6:16, 27:15
extensively [1] - 7:17
extent [2] - 8:22, 31:1

F

Fabian [1] - 15:8
facilities [1] - 13:18
fact [7] - 3:16, 11:1, 11:19, 14:16, 15:18, 28:6, 28:7
factors [1] - 11:22
facts [3] - 19:11, 21:7, 30:13
fairly [2] - 6:13, 20:25
far [1] - 23:15
fatal [1] - 4:15
favor [2] - 4:13, 6:7
February [1] - 32:12
fees [3] - 12:12, 13:7, 28:17
few [1] - 9:16
file [1] - 19:10
filed [42] - 2:14, 2:17, 2:22, 12:11, 12:17, 15:1, 15:7, 15:10, 15:13, 17:18, 17:25, 18:11, 18:12, 19:6, 19:7, 19:14, 19:15, 19:16, 20:6, 21:24, 22:3, 22:5, 22:12, 22:13, 22:14, 22:15, 22:19, 22:22, 23:10, 23:13, 23:23, 23:25, 24:11, 24:22, 24:24, 25:5, 25:7, 25:14, 30:17
filer [3] - 24:23, 24:25
filing [3] - 2:24, 22:5, 25:1
final [1] - 30:19
finally [1] - 19:12
finance [1] - 15:8
fine [2] - 21:13, 27:20
finish [1] - 21:1
first [22] - 2:18, 2:24, 5:18, 10:19, 12:24, 13:2, 14:9, 16:1, 17:16, 19:14, 20:6, 20:14, 20:19, 21:10, 21:14, 21:21, 21:22, 22:16, 23:8, 24:20, 27:13, 29:13
first-tier [1] - 14:9
Fitzgerald [1] - 4:25
five [3] - 12:17, 17:13, 30:14
five-page [3] - 12:17, 17:13, 30:14
flip [3] - 17:3, 28:13, 28:21
force [1] - 27:10
forced [1] - 26:2
foregoing [1] - 32:4
foremost [1] - 24:21
forever [2] - 4:16, 4:17
forward [1] - 19:9
frankly [3] - 16:12, 28:1, 28:22
free [1] - 26:21
fund [1] - 7:11
fundamental [1] - 12:22
funds [1] - 31:4
furthermore [3] - 13:15, 14:4, 14:21

G

garden [1] - 16:14
general [4] - 14:22, 23:10, 29:21, 29:22
generally [1] - 29:23
gentleman [1] - 23:11
Georgia [1] - 18:19
given [7] - 10:5, 11:18, 11:23, 12:2, 18:16, 27:15, 28:17
glaring [1] - 12:2
golf [4] - 7:6, 7:12, 8:10, 11:15
govern [1] - 12:14
governed [1] - 3:23
grade [1] - 15:20
grandchildren [1] - 17:24
Grant [5] - 6:10, 6:12, 6:14, 6:24, 9:6, 16:12
granted [1] - 11:12
granting [1] - 21:22
great [2] - 8:1, 20:24
Greenwood [1] - 16:12
growth [1] - 7:13
Gun [1] - 17:5
guy [1] - 26:11
guys [1] - 30:16

H

Haffenden [2] - 1:20, 32:1
harbor [1] - 18:1
hear [3] - 20:1, 21:1, 21:11
help [1] - 28:1
hereby [1] - 32:3
hereto [1] - 32:11
high [3] - 6:4, 10:5, 11:24
higher [3] - 5:12, 6:5, 27:3
highest [1] - 15:20
himself [4] - 15:2, 15:10, 15:23, 24:3
hindrance [1] - 28:1
hire [1] - 26:24
HOA [1] - 7:15
holding [1] - 22:11
hollow [1] - 19:14
homeowners [1] - 16:18
homes [1] - 12:15
Honor [19] - 2:4, 2:13, 2:19, 2:21, 5:14, 5:23, 6:2, 12:10, 13:20, 19:12, 19:20, 20:5, 21:5, 24:17, 24:20, 29:25, 30:9, 30:18, 31:9
Honorable [1] - 1:12
hoping [3] - 5:18, 15:2, 15:3
hunting [3] - 7:6, 8:10, 11:15
hurdle [1] - 11:24
hurts [1] - 16:25

I

Idea [4] - 6:14, 6:17, 9:1, 9:4
impasse [1] - 25:12
impose [2] - 16:10, 16:14
improperly [1] - 5:1
inapplicable [4] - 3:8, 5:3, 5:9, 27:21
INC [1] - 1:8
including [1] - 16:24
increasing [1] - 9:17
incredibly [1] - 11:24
incurred [1] - 13:8
indication [2] - 29:2, 30:5
individual [9] - 3:10,

7:4, 7:22, 8:2, 8:7, 9:9, 11:22, 12:4, 28:8
industry [1] - 26:10
inherent [1] - 11:11
inherently [3] - 10:3, 11:15, 28:10
inherit [1] - 18:17
injure [2] - 29:18, 29:21
injury [2] - 27:2, 27:11
inn [2] - 8:11, 11:15
inside [2] - 7:15, 11:14
insofar [2] - 4:6, 20:11
instance [1] - 27:4
Instruments [1] - 10:15
Intended [1] - 11:6
Intent [2] - 10:14, 10:20
Intentionally [1] - 29:20
Interest [17] - 4:7, 4:10, 9:11, 13:13, 16:7, 16:8, 16:9, 17:17, 17:18, 17:19, 18:6, 18:7, 18:9, 25:12, 28:22, 32:11
Interests [3] - 16:3, 16:5
Interrogatories [1] - 19:15
Interrupted [1] - 21:2
introduced [1] - 32:6
Invalid [5] - 3:2, 12:4, 27:14, 28:4, 28:23
invalidating [1] - 21:17
involve [2] - 14:2, 14:3
irrespective [1] - 9:13
ISLAND [1] - 1:7
Island [25] - 1:16, 1:18, 2:3, 2:15, 12:11, 12:14, 13:9, 13:21, 14:22, 14:23, 16:5, 16:9, 16:20, 17:17, 18:11, 23:11, 23:18, 23:20, 26:11, 26:14, 26:20, 29:19, 29:23, 29:24
issue [16] - 3:3, 3:8, 3:9, 3:17, 4:11, 4:18, 6:3, 8:13, 10:20, 13:16, 21:4, 21:10, 24:21, 25:9, 26:8, 26:24
issues [4] - 3:16, 11:23, 25:10, 30:21
itself [2] - 7:14, 8:8

J

Johnny [1] - 13:4
judge [1] - 5:17
Judge [4] - 1:12, 2:23, 25:19, 28:4
Judgment [27] - 2:12, 2:17, 2:22, 2:25, 3:16, 12:3, 12:12, 20:1, 20:3, 20:6, 20:13, 20:19, 21:21, 21:22, 22:16, 22:20, 22:23, 23:8, 24:5, 24:8, 24:11, 24:12, 25:15, 27:14, 28:3, 30:22, 31:6
Judicial [1] - 32:2
judicial [1] - 20:18

K

Kelly [1] - 32:1
Kennedy [1] - 4:25
Kennedy's [1] - 17:23
Kevin [4] - 1:17, 14:21, 16:16, 23:11
kin [1] - 32:10
knows [1] - 15:21

L

lack [1] - 4:14
land [20] - 3:11, 6:15, 7:1, 7:25, 8:19, 9:4, 9:8, 10:17, 10:21, 10:22, 11:5, 11:10, 11:12, 13:1, 13:4, 13:19, 13:23, 14:3, 15:15, 17:3
larger [2] - 11:14, 11:20
last [3] - 4:23, 9:16, 17:23
lately [1] - 13:5
law [24] - 3:3, 3:5, 3:16, 4:6, 5:14, 5:21, 6:8, 9:5, 12:5, 12:18, 12:20, 14:16, 14:20, 18:23, 19:2, 20:2, 27:17, 27:22, 27:25, 30:2, 30:3, 30:7, 30:8, 30:13
lawyer [7] - 5:13, 14:13, 15:16, 15:21, 23:1, 23:22, 24:3
lawyers [1] - 14:17
laying [1] - 3:18
leading [2] - 14:17, 29:7
lease [1] - 4:12
leave [1] - 28:19
left [2] - 5:6, 5:9
legitimate [1] - 13:7
less [4] - 5:21, 9:19, 9:23, 28:19
life [2] - 17:23, 30:1
likely [2] - 9:19, 27:4
likewise [1] - 15:20
lines [1] - 16:23
liquidated [1] - 24:13
list [3] - 25:25, 26:16, 26:18
listed [2] - 26:13, 29:2
listing [2] - 26:15, 28:15
living [1] - 17:24
lock [1] - 27:9
longstanding [1] - 12:13
look [4] - 12:18, 22:8, 22:9, 30:12
looked [1] - 23:13
loss [1] - 31:3

M

mad [1] - 17:8
maintain [2] - 26:2, 31:2
maintains [1] - 26:14
maintenance [1] - 7:8
man [1] - 30:10
manager [2] - 14:22, 23:11
mandatory [1] - 25:16
manifest [1] - 10:9
marked [1] - 5:20
market [2] - 27:4, 27:8
matter [5] - 3:2, 7:2, 12:21, 20:18, 29:3
matters [1] - 6:13
McGee [1] - 14:18
mean [5] - 6:11, 15:22, 16:13, 23:8, 26:13
means [4] - 9:12, 19:3, 24:7, 27:24
meet [1] - 12:1
member [3] - 8:5, 8:14, 26:20
members [4] - 7:18, 8:3, 8:4
membership [2] - 7:16, 25:13
memo [1] - 17:13
memorandum [6] - 12:17, 13:5, 16:1, 25:5, 25:6, 25:7
mentioned [1] - 13:25
method [1] - 27:9
might [2] - 15:3, 27:6
mill [1] - 7:7
mind [1] - 30:12
mine [1] - 2:13
mitigating [1] - 11:21
moment [1] - 30:1
money [10] - 14:24, 14:25, 15:9, 15:11, 17:9, 23:12, 24:12, 24:13, 28:20, 30:25
months [1] - 20:21
Moore [1] - 14:18
moreover [2] - 12:5, 27:13
morning [3] - 2:4, 2:22, 22:10
mortgage [1] - 31:3
mortgages [1] - 9:13
motion [21] - 2:10, 2:11, 2:14, 2:22, 2:23, 12:11, 12:23, 20:1, 20:3, 20:5, 20:18, 21:21, 21:25, 22:4, 22:15, 22:19, 22:22, 24:10, 24:11, 25:8, 25:20
motions [3] - 2:17, 23:6, 24:18
motivation [3] - 20:24, 25:10, 28:12
move [2] - 12:2, 24:5
MR [30] - 2:4, 2:6, 2:13, 2:14, 2:19, 2:21, 5:14, 5:23, 6:2, 12:10, 19:20, 19:22, 20:5, 21:4, 21:13, 21:19, 22:1, 22:3, 22:7, 22:14, 22:19, 22:22, 23:7, 24:17, 24:20, 29:6, 30:18, 30:19, 30:21, 31:9
Mullen [3] - 2:23, 25:19, 28:4
Muller [5] - 1:16, 2:6, 12:11, 23:14, 27:15
MULLER [17] - 2:6, 2:8, 2:14, 12:10, 19:22, 21:4, 21:13, 21:19, 22:1, 22:3, 22:7, 22:14, 22:19, 22:22, 23:7, 29:6, 30:18
must [8] - 6:14, 6:21, 9:4, 10:16, 10:18, 11:11, 28:18, 29:10

N

name [2] - 12:10, 26:13
named [1] - 23:11
narrower [1] - 6:23
nature [3] - 3:3, 3:17, 29:5
need [1] - 25:1
negative [3] - 6:19, 9:10, 9:11
negotiate [1] - 15:2
Network [2] - 3:18, 14:1
never [3] - 3:21, 15:10, 19:14
Ninth [1] - 32:2
non [2] - 18:16, 18:18
non-donated [2] - 18:18, 18:18
North [3] - 6:24, 8:15, 13:12
note [1] - 21:5
nothing [7] - 7:13, 8:8, 13:10, 16:13, 26:5, 29:19, 29:24
notice [1] - 8:24
notices [1] - 19:16
notwithstanding [1] - 26:8
nowhere [1] - 26:8
number [2] - 8:3, 17:5

O

object [2] - 11:10, 29:17
objection [1] - 20:20
obligation [1] - 7:11
obligations [4] - 16:15, 16:17, 16:20, 17:1
obtained [1] - 18:18
obvious [1] - 6:20
obviously [7] - 3:15, 3:19, 6:5, 6:10, 7:13, 28:21, 30:16

OF [4] - 1:1, 1:2, 1:5
offered [1] - 28:25
offers [2] - 26:1, 29:1
official [1] - 26:21
once [3] - 3:20, 4:3, 19:8
one [13] - 4:13, 5:16, 5:20, 8:5, 8:18, 10:14, 11:13, 12:16, 13:22, 14:16, 18:22, 26:1, 30:19
one-acre [1] - 11:13
opportunity [1] - 8:23
oppose [1] - 24:10
opposing [1] - 20:23
opposition [5] - 12:9, 24:22, 25:5, 25:6, 25:7
order [3] - 6:15, 13:6, 29:9
otherwise [2] - 27:7, 31:5
outside [1] - 16:23
overall [1] - 13:23
overwhelmingly [1] - 9:17
owe [2] - 15:11, 24:13
owes [5] - 15:5, 15:9, 22:25, 23:12
own [5] - 7:25, 9:12, 15:18, 23:21, 26:24
owned [2] - 12:15
owner [5] - 8:3, 8:4, 8:10, 23:20, 23:22
owners [3] - 3:25, 12:16, 17:20

P

page [3] - 12:17, 17:13, 30:14
pages [2] - 16:15, 17:1
paid [4] - 14:24, 17:4, 17:7, 28:18
part [5] - 8:14, 10:11, 13:23, 14:16, 16:17
particularly [2] - 12:4, 27:4
parties [5] - 4:7, 4:9, 4:10, 10:14, 10:19, 10:20
party [5] - 2:9, 4:13, 6:7, 13:13, 32:11
pass [1] - 8:20
past [1] - 20:21
path [1] - 19:5
Paul [2] - 15:14, 28:14
pay [10] - 6:18, 7:25, 10:1, 12:12, 12:13, 15:5, 22:24, 22:25, 24:12, 24:14
payable [1] - 31:6
paying [3] - 7:11, 13:7, 16:24
pays [1] - 8:5
pending [1] - 24:18
people [5] - 5:21, 8:9, 25:14, 26:1, 27:10
per [2] - 4:21, 11:16
percent [11] - 3:25, 8:5, 8:6, 9:12, 10:1, 27:3, 27:6, 27:7, 28:18
peremptory [1] - 15:1
period [1] - 18:21
perpetual [14] - 3:3, 3:17, 3:19, 3:20, 4:12, 5:6, 5:7, 5:9, 9:25, 12:6, 14:7, 27:23, 28:7
perpetuities [25] - 3:7, 4:22, 5:17, 5:21, 6:9, 9:3, 12:20, 13:3, 14:2, 15:25, 16:2, 17:12, 17:22, 18:1, 18:20, 18:24, 19:4, 21:17, 21:23, 22:17, 22:23, 27:16, 27:18, 30:3, 30:6
person [1] - 8:18
personal [9] - 3:11, 3:14, 7:23, 8:12, 8:17, 10:13, 10:22, 28:8
physical [1] - 11:20
plaintiff [2] - 13:13, 29:18
Plaintiff [1] - 1:5
plan [5] - 16:22, 19:25, 20:7, 20:10, 20:19
planning [2] - 18:18, 22:8
Plantation [1] - 12:15
plantation [5] - 13:21, 13:22, 13:24, 16:25, 23:16
PLANTATION [1] - 1:7
play [2] - 3:9, 8:10
pleadings [3] - 19:8, 19:9, 21:12
PLEAS [1] - 1:1
pleases [1] - 26:22
pled [4] - 3:8, 25:18, 27:12, 30:22
pockets [1] - 30:25
point [6] - 12:22, 21:2, 21:3, 29:6, 30:7, 30:19
points [1] - 20:24
portion [1] - 25:13
potential [1] - 4:18
preliminary [1] - 12:21
present [1] - 26:18
presented [1] - 14:19
presumably [1] - 21:11
pretty [2] - 17:12, 20:2
prevail [3] - 12:23, 14:10
price [4] - 9:14, 9:20, 28:15, 28:19
prices [1] - 9:15
primarily [1] - 3:3
primary [1] - 29:17
privilege [1] - 9:24
privity [1] - 10:18
Pro [1] - 1:15
pro [4] - 2:5, 5:20, 24:23, 24:25
problem [1] - 17:2
procedure [1] - 15:21
proceedings [2] - 31:12, 32:5
production [1] - 19:16
profit [1] - 28:17
prohibit [1] - 10:20
prohibiting [1] - 6:20
project [1] - 7:12
proof [2] - 14:11, 19:6
proper [1] - 21:11
properties [6] - 9:18, 10:8, 26:6, 26:12, 26:16, 29:4
property [52] - 3:13, 3:25, 6:15, 7:14, 7:19, 7:23, 7:25, 8:8, 9:7, 9:8, 9:11, 9:12, 9:14, 9:15, 9:22, 9:23, 9:24, 10:1, 10:3, 10:4, 10:12, 10:13, 10:17, 10:24, 11:1, 11:12, 11:13, 12:16, 16:18, 17:5, 17:19, 18:8, 23:19, 23:21, 24:1, 25:22, 25:25, 26:2, 26:6, 26:16, 26:18, 26:19, 26:22, 26:25, 28:13, 28:22, 29:1, 31:2, 31:3
protected [2] - 18:1, 18:5
provide [2] - 4:24, 26:9
provided [1] - 9:18
proving [1] - 11:24
provision [2] - 4:20, 4:22
provisions [1] - 17:14
purchase [2] - 9:14, 9:20
purchased [2] - 11:13, 25:21
purpose [1] - 29:17
put [2] - 17:13, 20:18
putting [1] - 26:11
Pye [1] - 29:8
PYE [1] - 29:8

Q

quail [3] - 7:6, 8:10, 11:15
Queen's [4] - 6:12, 6:14, 9:6, 16:12
Queens [2] - 6:10, 6:24
quick [1] - 19:25
quite [1] - 7:2

R

Raintree [7] - 7:1, 7:2, 8:13, 10:10, 10:25, 13:11, 13:24
rate [1] - 9:10
reached [1] - 25:11
read [1] - 30:16
real [28] - 3:11, 3:13, 3:14, 6:15, 7:10, 7:19, 7:23, 8:12, 9:8, 9:13, 10:12, 10:16, 10:24, 11:1, 11:12, 13:13, 14:14, 19:24, 23:1, 23:19, 23:22, 23:25, 25:23, 26:9, 26:23, 26:25, 27:10, 28:14
Realty [10] - 1:18, 2:9, 26:11, 26:14, 26:19, 27:2, 27:9, 28:25, 29:20, 29:24
reason [6] - 4:2, 6:21, 14:11, 16:21, 18:19, 29:25
reasonable [1] - 8:24
reasons [3] - 12:22, 14:9, 16:1
reasserting [1] - 5:4
received [3] - 13:5, 29:1
receiving [1] - 27:5
recital [1] - 11:7
recitals [1] - 11:4
RECORD [1] - 1:5
record [3] - 10:15, 25:9, 32:5
recover [1] - 31:4
recreational [3] - 7:5, 7:18, 11:16
refer [1] - 7:17
reference [1] - 20:24
reform [1] - 5:5
regard [1] - 20:9
related [3] - 3:6, 6:8, 30:24
relationship [1] - 29:5
relative [1] - 32:7
reminding [1] - 4:23
remorse [1] - 30:11
renew [1] - 4:16
renewal [1] - 4:13
renews [1] - 3:23
Reporter [3] - 1:20, 32:2, 32:16
represent [1] - 12:11
represented [1] - 15:16
representing [1] - 2:9
represents [2] - 23:25, 26:12
request [1] - 19:15
require [3] - 12:12, 20:11, 26:17
required [1] - 12:13
requirements [1] - 10:7
requiring [1] - 6:17
resales [1] - 27:3
residents [1] - 11:17
resolved [1] - 6:7
resolves [1] - 6:12
respect [1] - 18:10
respond [1] - 24:19
rest [2] - 19:8, 19:9
restaurants [1] - 8:11
restrictions [2] - 3:1, 11:4
restrictive [1] - 21:17
rests [3] - 27:17, 28:6, 28:7
Rhatigan [2] - 14:22,

23:12
Rhatigan's [1] - 16:16
rid [1] - 4:3
ring [1] - 19:13
ripe [1] - 20:17
road [1] - 7:7
Roger [1] - 1:12
Rose [2] - 4:24, 17:23
Rowe [5] - 7:2, 7:3, 8:13, 10:10, 13:11
RPR [2] - 1:20, 32:1
rule [26] - 3:7, 3:12, 4:21, 5:16, 12:20, 13:3, 14:2, 15:25, 16:2, 17:11, 17:22, 17:25, 18:1, 18:20, 18:23, 18:24, 19:4, 21:17, 21:23, 22:17, 22:23, 27:16, 27:17, 27:21, 27:24, 27:25, 30:3, 30:6
Rule [4] - 19:7, 21:5, 24:7, 25:3
rules [2] - 7:17, 25:15
run [8] - 3:10, 4:11, 7:7, 10:9, 10:22, 11:5, 11:6, 11:9
run-of-the-mill [1] - 7:7
running [2] - 10:21, 16:24
runs [1] - 23:18

S

safe [1] - 18:1
sale [2] - 28:13, 28:19
savings [1] - 17:21
saw [1] - 5:20
school [1] - 5:14
scope [1] - 6:23
Se [1] - 1:15
se [5] - 2:5, 5:20, 11:16, 24:23, 24:25
second [6] - 20:9, 20:16, 20:20, 21:15, 25:4, 29:15
secondarily [1] - 3:10
section [1] - 4:19
see [1] - 5:23
seeing [1] - 20:20
seek [1] - 20:10
seeking [3] - 6:7, 25:11, 28:23
seeks [1] - 7:15
selected [1] - 29:4
sell [8] - 9:18, 9:19, 9:22, 9:23, 23:19, 26:3, 26:16
seller [1] - 8:19
seller's [1] - 30:10
selling [1] - 9:24
separate [4] - 8:21, 25:6, 25:7, 31:5
serves [1] - 27:21
set [4] - 7:3, 11:24, 16:1, 17:12
sets [2] - 10:10, 12:18
setting [1] - 12:19
shall [2] - 4:20, 4:22
share [3] - 8:5, 8:6
show [7] - 19:10, 21:7, 24:16, 26:22, 26:25, 29:4
showings [1] - 28:25
shown [1] - 29:2
shows [1] - 9:18
shut [1] - 19:24
signed [4] - 24:23, 24:24, 25:3, 25:5
silent [1] - 25:9
similarly [2] - 4:11, 5:11
simply [1] - 30:22
six [2] - 9:15, 20:21
slam [1] - 7:19
Smythe [2] - 14:17, 14:18
so-called [1] - 23:23
solely [3] - 2:24, 20:6, 21:12
someone [2] - 6:17, 6:20
somewhat [1] - 30:24
sorry [1] - 21:2
sort [5] - 7:7, 7:21, 8:11, 13:6, 14:9
sought [1] - 20:15
SOUTH [1] - 1:1
South [28] - 1:8, 3:2, 3:4, 3:18, 3:20, 4:6, 4:11, 6:5, 8:24, 9:5, 12:5, 13:25, 14:7, 14:13, 14:15, 14:17, 17:11, 18:4, 18:21, 18:23, 19:1, 23:1, 26:6, 27:18, 29:7, 30:4, 32:3, 32:8
special [3] - 27:2, 27:11, 30:23
specific [5] - 12:1, 17:14, 21:7, 30:13
specifically [3] - 4:1, 10:11, 11:2
speck [1] - 19:14
spirit [1] - 4:5
Sr [1] - 1:12
standard [8] - 3:15, 6:4, 6:19, 8:25, 10:5, 10:6
standards [2] - 5:12, 12:2
standing [1] - 26:21
started [1] - 28:20
starts [1] - 3:17
STATE [1] - 1:1
state [1] - 10:18
State [1] - 32:3
statements [1] - 28:11
statute [5] - 17:14, 17:15, 18:4, 18:25, 19:1
statutory [4] - 3:7, 27:16, 27:21, 27:23
stay [3] - 8:11, 26:2, 27:10
steer [1] - 26:1
still [1] - 5:25
strangling [1] - 9:21
stricter [1] - 6:18
strictly [1] - 6:8
string [1] - 15:23
stuck [1] - 4:4
subject [2] - 17:20, 19:3
submitted [3] - 14:11, 14:12
subsequent [1] - 3:24
subsequently [1] - 5:4
subsidize [1] - 7:5
substantially [1] - 6:4
successive [1] - 3:24
sufficiency [1] - 25:19
sufficient [2] - 24:25, 25:1
suggest [1] - 25:8
suggested [3] - 4:25, 5:4, 28:16
summary [20] - 2:11, 2:17, 2:22, 3:15, 12:3, 12:12, 20:1, 20:3, 20:6, 20:13, 20:18, 21:21, 21:22, 22:16, 22:19, 22:22, 23:8, 24:5, 24:10, 24:11
sums [2] - 30:25, 31:5
supercede [1] - 30:7
superceded [1] - 30:6
supplemental [1] - 25:2
support [4] - 21:25, 22:4, 25:7, 28:12
supported [1] - 22:25
supposed [1] - 16:24
survive [3] - 13:7, 17:28, 29:10
survives [1] - 30:4

T

tail [1] - 18:2
talks [2] - 6:14, 6:24
taxes [2] - 9:13, 31:2
ten [1] - 3:24
ten-year [1] - 3:24
tendered [1] - 24:8
term [7] - 3:23, 3:24, 4:15, 5:1, 5:2, 14:5, 14:6
terminated [2] - 4:2, 8:23
terminating [1] - 25:13
termination [1] - 4:10
test [1] - 10:11
tested [1] - 25:19
testimony [2] - 9:17, 27:15
text [1] - 4:24
THE [29] - 2:2, 2:5, 2:7, 2:11, 2:16, 2:20, 5:13, 5:16, 5:25, 12:8, 19:18, 19:21, 19:24, 21:1, 21:9, 21:16, 21:24, 22:2, 22:5, 22:8, 22:18, 22:21, 23:6, 24:15, 24:19, 30:15, 30:20, 31:8, 31:10
therefore [3] - 6:22, 9:8, 21:11
thinking [1] - 15:1
third [1] - 4:9
three [4] - 8:4, 8:6, 10:11, 10:18
three-part [1] - 10:11
threshold [1] - 4:1
thrust [1] - 28:6
Thursday [1] - 12:17
tied [1] - 17:23
tier [1] - 14:9
today [1] - 24:16
together [2] - 13:6, 17:13
totality [1] - 10:5
totally [3] - 13:24, 14:10, 23:3
touch [4] - 6:15, 9:7, 11:10, 13:4
touches [1] - 10:17
touching [3] - 6:25, 12:25, 14:3
town [1] - 11:18
trace [1] - 17:14
trained [1] - 15:21
transaction [1] - 24:3
transcript [1] - 32:5
TRANSCRIPT [1] - 1:5
transfer [2] - 18:16, 18:18
trial [2] - 13:14, 32:8
tried [1] - 25:14
true [1] - 32:4
trump [1] - 21:5
try [1] - 7:19
trying [2] - 15:22, 30:11
TV [1] - 14:1
two [10] - 8:5, 9:6, 10:15, 12:22, 13:10, 17:7, 27:6, 27:7, 29:7, 31:7

U

unable [1] - 31:4
unclear [1] - 25:4
under [21] - 3:4, 3:16, 4:8, 7:8, 12:13, 14:8, 16:4, 16:6, 16:8, 16:9, 16:11, 18:4, 18:17, 19:7, 22:5, 24:7, 25:3, 25:15, 30:16, 30:23, 31:6
undersigned [1] - 32:1
unenforceable [1] - 12:5
unified [1] - 16:22
uniform [4] - 3:7, 27:20, 30:6, 30:7
unlawful [1] - 4:21
unopposed [1] - 24:6
unusual [1] - 16:13
up [4] - 8:4, 22:11, 24:14, 28:9
up-to-date [1] - 22:11

upheld [1] - 14:7

V

valid [3] - 14:14, 14:19, 23:3
value [2] - 9:7, 10:1
variety [1] - 15:14
vein [1] - 28:24
verification [1] - 15:6
verified [1] - 24:23
versus [4] - 2:2, 7:22, 7:23, 16:12
vest [2] - 16:4, 16:6
vested [7] - 17:17, 17:18, 17:19, 18:7, 18:9, 18:11, 18:13
vesting [1] - 16:3
vests [1] - 18:6
view [1] - 18:3
violate [2] - 27:23, 27:25
violates [1] - 4:5
violation [1] - 4:21
visiting [1] - 26:17
void [2] - 4:21, 11:25
voidable [1] - 4:21
voluntarily [1] - 15:15
vs [2] - 1:6, 13:11

W

waiting [1] - 9:24
walk [3] - 4:8, 26:21, 28:24
wants [2] - 17:9, 25:25
whole [2] - 16:21, 30:7
wiggle [1] - 30:11
works [1] - 8:1
worlds [1] - 7:16
written [1] - 3:4

Y

year [5] - 3:24, 5:18, 7:25, 9:12, 28:14
years [11] - 4:23, 5:17, 9:3, 9:15, 9:16, 9:19, 15:15, 17:7, 18:6, 18:9, 18:12
yesterday [1] - 22:10
YMCA [1] - 11:17
Young [1] - 1:12
young [1] - 30:10

Z

zero [1] - 9:15

ELECTRONICALLY FILED - 2017 Jul 31 9:51 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	C.A. No.: 2017-CP-07-00265
Alexander Burns, Plaintiff, vs. Brays Island Plantation Colony, Inc. and Brays Island Realty, LLC, Defendants	**AFFIDAVIT OF KEVIN RHATIGAN**

Personally appeared before me Kevin Rhatigan, who, upon being duly sworn, states and deposes that:

1. I am the General Manager of the Defendant Brays Island Plantation Colony, Inc. ("Brays Island") and generally familiar with and responsible for its operations, including the collection of delinquent charges from owners on the plantation. The Plaintiff Alexander Burns ("Mr. Burns") is one such delinquent owner.

2. He fell behind in his payments as recited in the Complaint. Initially, we sought payment by calling the shortfall to his attention and asking that he become current on his obligations. That was unsuccessful.

3. Then, without notice, Mr. Burns filed suit *pro se* against Brays Island. The causes of action are without merit.

4. The Covenants that he challenges in his Complaint were recorded initially almost 30 years ago and to my knowledge have never been challenged by anyone other than Mr. Burns in his *pro se* lawsuit. Even he did not challenge them before he filed his suit. A full copy of the Covenants, including all seven amendments, is attached.

5. The "civil conspiracy" allegations in his Complaint are a pure fabrication. I am aware of no conversations between the Defendants concerning Mr. Burns's proposed purchase of property on the

plantation. In my position, I would know of them had they occurred. The property that Mr. Burns purchased was not owned by Brays Island. The other Defendant is a separate company, not owned or controlled by Brays Island. There was no reason for Brays Island to "lure" Mr. Burns into ownership as he alleges.

6. By all accounts, Mr. Burns is a sophisticated businessman who knew exactly what he was doing when he purchased the property. Attached is a news article concerning him.

7. Mr. Burns owes Brays Island the amounts set forth in Brays Island's Counterclaim for the reasons set forth therein. I have read the Counterclaim and it is correct.

Kevin Rhatigan

SWORN TO before me this 31 day of July, 2017.

Notary Public for South Carolina
My Commission Expires: Nancy A. Klumb South Carolina Notary Public My commission expires 2/1/20

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EXHIBIT TO

AFFIDAVIT OF

KEVIN RHATIGAN

FILED 7/31/17

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BRAYS ISLAND PLANTATION

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

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TABLE OF CONTENTS

I. PLAN OF DEVELOPMENT

1.01	Plan of Development	1
1.02	Interest Subject to Plan of Development	2
1.03	Limitation on Number of Lots	2

II. DEFINITIONS

2.01	Articles of Incorporation	2
2.02	Colony	2
2.03	Board of Governors or Board	2
2.04	By-Laws of the Colony or the By-Laws	2
2.05	Common Area	3
2.06	Common Expenses	3
2.07	Company	3
2.08	Declaration	3
2.09	Development Period	3
2.10	Lot	3
2.11	Member	3
2.12	Owner	3
2.13	Plantation	4
2.14	Plat	4
2.15	Recreational Amenities	4
2.16	Recreational Charges	4

III. PROPERTY RIGHTS

3.01	General	4
3.02	Members' General Easement of Use and Enjoyment	5
3.03	Additional Easements	5
3.04	Access	6
3.05	Easements for the Company	6
3.06	Changes in Boundaries; Additions to Common Areas	6
3.07	Conveyance of Common Areas Adjacent to Lots	6
3.08	Easements for Utilities and Drainage	7
3.09	Sales and Construction Offices	8
3.10	Maintenance Easement	8
3.11	Environmental Easement	9
3.12	Wells and Effluent	9
3.13	Golf Course Maintenance	9
3.14	Entry by Golfers	9
3.15	Conveyance of Common Areas to the Colony	9
3.16	Driveway Easements	10
3.17	Relocation of Driveway Easements	10
3.18	Conveyance of Lots to the Colony	10

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

IV. COLONY OWNERSHIP; COLONY MEMBERSHIP

4.01 Colony Ownership..... 10
4.02 Colony Membership..... 11

V. MAINTENANCE

5.01 Responsibilities of Owners..... 12
5.02 Responsibilities of Colony..... 13

VI. INSURANCE AND CASUALTY LOSSES

6.01 Insurance..... 14
6.02 Damage or Destruction to Common Areas..... 16
6.03 Damage or Destruction to Lots..... 16

VII. CONDEMNATION

7.01 Condemnation of Common Areas..... 17
7.02 Condemnation of Lots..... 17

VIII. ADMINISTRATION

8.01 Common Areas..... 18
8.02 Duties and Powers..... 19
8.03 Agreements..... 19
8.04 Personal Property and Real Property for Common Use..... 20
8.05 Rules and Regulations..... 20

IX. ASSESSMENTS

9.01 Purpose of Assessments..... 20
9.02 Creation of Lien and Personal Obligation for Assessments.... 20
9.03 Computation of Annual Assessments..... 21
9.04 Special Assessments..... 23
9.05 Individual Assessments..... 23
9.06 Notice of Meeting and Quorum..... 23
9.07 Liens..... 23
9.08 Effect of Nonpayment; Remedies of Colony..... 24
9.09 Certificate..... 24
9.10 Date of Commencement of Annual Assessments..... 24

X. ARCHITECTURAL STANDARDS AND RESTRICTIONS

10.1 Purpose..... 25
10.2 Architectural Review Board..... 25
10.3 Permitted Improvements..... 25
10.4 Construction of Improvements..... 26
10.5 Architectural Approval..... 27
10.6 Landscaping..... 28
10.7 Appoval Procedures..... 28
10.8 Approval Not a Guarantee..... 28

XI. USE RESTRICTIONS

11.01 Use of Lots..... 29
11.02 Boats and Watercraft..... 29
11.03 Signs..... 29
11.04 Mail Boxes..... 30
11.05 Antennas..... 30
11.06 Water Wells and Septic Tanks..... 30
11.07 Pets..... 30
11.08 Hunting and Fishing..... 30
11.09 Limitations as to Use of Bodies of Water..... 30
11.10 Nuisances..... 31
11.11 Golf Course Areas..... 31
11.12 Motor Vehicles, Trailers, Boats, Etc..... 31
11.13 Sales and Construction Activities..... 32
11.14 Repurchase Option..... 32

XII. SPECIAL RESTRICTIONS AFFECTING ALL WETLANDS, WATERFRONT, LAGOON, AND MARSHLAND AREAS

12.01 Restricted Activities..... 33
12.02 Docks and Decks..... 33
12.03 Maintenance of Docks and Decks..... 33

XIII. RULE MAKING

13.01 Rules and Regulations..... 34
13.02 Authority and Enforcement..... 34
13.03 Procedure..... 34

XIV. GENERAL PROVISIONS

14.01 Control by Company..... 35
14.02 Amendments by Company..... 36
14.03 Amendments by Colony..... 36
14.04 Enforcement..... 37
14.05 Duration..... 38
14.06 Perpetuities..... 38
14.07 Interpretation..... 38
14.08 Gender and Grammar..... 39
14.09 Severability..... 39
14.10 Rights of Third Parties..... 39
14.11 Notice of Sale, Lease or Mortgage..... 39
14.12 No Trespass..... 39
14.13 Assignment..... 39
14.14 Notices..... 39

EXHIBIT A

Plantation..... 42

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)
) DECLARATION OF COVENANTS, CONDITIONS
COUNTY OF BEAUFORT) AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 11th day of November, 1988, by BRAYS ISLAND COMPANY, INC., a South Carolina corporation.

BRAYS ISLAND COMPANY, INC., a South Carolina corporation ("Company"), is the owner of certain real property located in Beaufort County, South Carolina known as BRAYS ISLAND PLANTATION and desires to subject such property to the provisions of this Declaration. Therefore, the Company hereby declares that the pro perty known as Brays Island Plantation, which is described in Exhibit A attached hereto and made a part hereof, shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which 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 the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

PLAN OF DEVELOPMENT

1.01 Plan of Development of Plantation. The primary purpose of this Declaration and the foremost consideration in the origin of the same has been the creation of a distinctive and exclusive community which: (a) is aesthetically pleasing and functionally convenient; (b) emphasizes the preservation and enhancement of natural areas, wildlife, and areas conducive to the enjoyment of outdoor activities; and (c) allows for the concept of continuing to use portions of the Plantation as a working plantation. While it is anticipated that the architectural style of homes in the community will be of the type considered "plantation" or "country" homes, the establishment of objective and specific standards relating to design, size, setback lines and locations of homes and other structures makes it impossible to take full advantage of the individual characteristics of each Lot and of technological advances and environmental values. For this reason such standards are not established by these covenants. In order to implement the purposes of this Declaration, the Company shall establish and amend from time to time objective standards and guidelines which shall be in addition to this Declaration. All Lots shall be and are hereby restricted exclusively to single-family residential use and no more than one dwelling may be constructed on each such Lot except: (aa) as provided in Section 3.07 of this Declaration; and (bb) guest houses, carriage houses and other such structures in addition to a dwelling may be constructed on a Lot with the consent of the Architectural Review Board, which consent shall be in the

sole discretion of the Architectural Review Board and may in any case be denied. The Company shall have the right, but not the obligation, during the Development Period, to make improvements and changes to all Common Areas and to all Lots owned by the Company, including, without limitation, installation and/or maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; changes in the location of the boundaries of any Lots owned by the Company or of the Common Areas; installation and maintenance of any water, sewer, and other utility systems and facilities; and installation of security, refuse disposal and/or other development support facilities.

1.02 Interest Subject to Plan of Development. Every purchaser of a Lot shall purchase such Lot with notice of the Company's plan of development as herein set forth. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article I may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of the Company.

1.03 LIMITATION ON NUMBER OF LOTS. IT IS THE EXPRESS INTENT OF THE COMPANY TO LIMIT THE NUMBER OF LOTS ON THE PLANTATION TO THREE HUNDRED TWENTY-FIVE (325) LOTS, WITH THE REMAINDER OF THE PLANTATION CONSTITUTING COMMON AREA AS DEFINED IN THIS DECLARATION. IT IS THEREFORE EXPRESSLY PROVIDED THAT NEITHER THE COMPANY NOR THE COLONY MAY DESIGNATE OR DEVELOP MORE THAN THREE HUNDRED TWENTY-FIVE (325) LOTS ON THE PLANTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, THIS SECTION 1.03 MAY NOT BE AMENDED OR MODIFIED FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE DATE OF THIS DECLARATION. THEREAFTER, THIS SECTION 1.03 MAY BE AMENDED OR MODIFIED ONLY AS PROVIDED IN SECTION 14.03 OF THIS DECLARATION; PROVIDED, HOWEVER, THE VOTE REQUIRED FOR ANY SUCH AMENDMENT OR MODIFICATION SHALL BE INCREASED FROM TWO-THIRDS (2/3) TO NINETY (90%) PER CENT OF THE OWNERS.

ARTICLE II

DEFINITIONS

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

2.01 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Brays Island Plantation Colony, Inc., as amended from time to time.

2.02 "Colony" shall mean and refer to Brays Island Plantation Colony, Inc., a South Carolina nonprofit corporation, its successors and assigns.

2.03 "Board of Governors" or "Board" shall mean and refer to the Board of Directors of the Colony, which is the governing body of the Colony.

2.04 "By-Laws of the Colony" or the "By-Laws" shall mean and refer to those By-Laws of Brays Island Plantation Colony, Inc., which govern the administration and operation of the Colony, as amended from time to time.

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2.05 "Common Area" shall mean and refer to all real and personal property now or hereafter owned by or leased to the Colony for the common use and enjoyment of the Members. The Common Area consists of all of the Plantation (exclusive of those areas comprising Lots) and includes, without limitation, Recreational Amenities; roads; woodlands; fields; pastures and other open areas; lakes; docks; bridges; crops; water, sewer, drainage, gas, electrical and telephone facilities; and other utilities. The designation of any land, improvements or personal property as Common Area shall not mean or imply that the public at large or any person other than a Member acquires any right or easement of use or enjoyment therein.

2.06 "Common Expenses" shall mean and refer to all expenditures lawfully made by or on behalf of the Colony, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

2.07 "Company" shall mean and refer to BRAYS ISLAND COMPANY, INC., its successors and assigns.

2.08 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and all duly adopted amendments thereof filed for record in the Office of the Clerk of Court for Beaufort County, South Carolina.

2.09 "Development Period" shall mean and refer to that period of time beginning on the date of this Declaration and ending at such time as the first of the following events shall occur: (a) the Company no longer owns a Lot primarily for the purpose of sale; (b) the Company's election to terminate the Development Period by an amendment to this Declaration, expressly stating such termination, duly executed by the Company and recorded in the Office of the Clerk of Court for Beaufort County; or (c) the expiration of ten (10) years from the date of this Declaration. The Development Period shall be terminated only as specifically set out above and no other activity or inactivity on the part of the Company (including, without limitation, any delay or cessation of construction, development and/or sales activities) shall extend, shorten or terminate the Development Period.

2.10 "Lot" shall mean and refer to any portion of the Property, generally circular in shape, shown on the Plat as a numbered lot, together with any improvements thereon. In the case of a revision to the Plat made pursuant to Section 3.07 of this Declaration so as to consolidate three (3) or more Lots and contiguous areas into one lot, the term "Lot" shall mean and refer to all of the area so combined into one lot as shown on the revised Plat, subject to the provisions of Section 3.07 of this Declaration.

2.11 "Member" shall mean and refer to a natural person, at least twenty-one (21) years of age, who is designated by an Owner pursuant to Section 4.02 hereof and who is shown on the records of the Colony as a Member of the Colony, entitled to the use, enjoyment and benefit of the Common Areas, subject to the provisions of this Declaration and the By-laws and rules and regulations of the Colony.

2.12 "Owner" shall mean and refer to one or more persons or entities, including the Company and including the Colony, who or which owns fee simple

title to any Lot, excluding, however, persons having such an interest under a mortgage or other similar security interest granting, creating or conveying a lien upon or a security interest in a Lot. When a vote of all or any portion of the Owners or when the consent of all or any portion of the Owners is required or permitted under this Declaration for any purpose, the Owners (whether one or more persons or entities) shall be entitled to only one vote or consent, as the case may be, for each Lot owned by those Owners.

2.13 "Plantation" shall mean and refer to those tracts or parcels of land described in Exhibit A, together with all improvements located or constructed thereon and all additions thereto.

2.14 "Plat" shall mean and refer to that certain plat described in Exhibit A, together with any future revisions thereof recorded in the Office of the Clerk of Court for Beaufort County. Since the concept for development and improvement of the Plantation is subject to continuous revision and change, present and future references to the Plat shall be references only to the latest revision thereof. Any such revisions may be effected by the recording of a revised plat of the Plantation or any portion thereof; provided, however, any such revision must show on its face the approval thereof by the Company.

2.15 "Recreational Amenities" shall mean and refer to those portions of the Common Area and related facilities designated from time to time by the Company to be used for specific recreational and/or social purposes and shall include, without limitation, the following real and personal property owned by or leased to the Colony: golf course, tennis courts, swimming pools, inn and lodge, horses, stables, barns and paddocks, skeet and trap range, sporting clays course, hunting courses, boats, docks, the river gazebo and playgrounds.

2.16 "Recreational Charges" shall mean and refer to all fees, rentals, food and beverage costs, and other charges established by rules and regulations of the Colony and which are charged to a Member with respect to his use or the use by his family, tenants, guests, and invitees of certain Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

ARTICLE III

PROPERTY RIGHTS

3.01 General. Each Owner shall be entitled to the exclusive ownership and possession of his Lot, subject to the provisions of this Declaration. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, the ownership of one (1) share of stock of the Colony. The Owner of each Lot shall automatically become a stockholder of the Colony and shall remain a stockholder thereof until such time as his ownership ceases for any reason, at which time his stock ownership in the Colony shall automatically pass to the successor-in-title to his Lot. Lots shall not be subdivided, and, except as provided in Sections 1.01, 3.06 and 3.07 hereof, the boundaries of Lots shall remain as established in accordance with the Plat, unless the relocation thereof is made by or with the consent of the Company.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

3.02 Member's General Easement of Use and Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, and subject to limitations on Colony membership as set out in Section 4.02 of this Declaration, the Owner of each Lot shall be entitled to designate Members of the Colony, which Members shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, subject to the following provisions:

(a) The right of the Colony to borrow money (i) for the purpose of improving the Plantation, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Plantation, or (iv) for providing the services authorized herein and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Colony shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of the Company or any Owner, irrespective of when such Owner acquires title to a Lot.

(b) The rights and easements reserved in Section 3.04 hereof.

(c) The right of the Company and the Colony to grant and accept easements as provided in Section 3.08 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of the shares of stock of the Colony represented by those present in person or by proxy at a duly held meeting of the Colony and, during the Development Period, by the Company.

(d) The rights and easements otherwise reserved by the Company and/or the Colony in this Declaration.

3.03 Additional Easements. The Owner of each Lot shall have a nonexclusive easement, for the uses and purposes hereinafter stated, over and on the area contiguous to such Lot and hereinafter described, such easement to be appurtenant to and to pass and run with title to such Lot; provided, however, such easement shall be subject to those rights and easements set out in Subsections 3.02(a) through 3.02(d) above, to any other rights and easements reserved unto the Company by this Declaration, and to the reasonable rules, regulations, and restrictions on such easement areas from time to time established by the Board. The uses and purposes for which such easement is granted are (i) to allow the Owner of the Lot reasonable access to and from any pasture, field, golf course, marsh, lake, pond, lagoon, creek or other waterway separated from his Lot by such easement area; (ii) to allow the Owner to construct, maintain and use docks, decks and other such facilities, subject to the limitations thereon contained in this Declaration; and (iii) to allow the Owner of the Lot to clear undergrowth and other vegetation and to provide landscaping so as to enhance the appearance of the easement area and to allow for a better view from the Lot to

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

simple title to portions of the Common Area lying adjacent to and between such Lots. Any such conveyance of portions of the Common Area shall be subject to the following conditions, restrictions and agreements, all of which shall be appurtenant to and run with the title to such Lots and the portion of the Common Area conveyed to such person or entity:

(a) Any such conveyance of portions of the Common Area shall be made only simultaneously with or subsequent to conveyance of the adjacent Lots to such person or entity.

(b) After such conveyance, the area comprising the conveyed Common Area and the adjacent Lots shall be considered one Lot for purposes of restrictions against subdivision of Lots as set out in Section 3.01 of this Declaration; provided, however, such Lot may, with the consent of the Company, and upon the reconveyance to the Company of such portion of the Common Area, be subdivided so as to re-establish the boundaries of any Lot or Lots existing prior to any action pursuant to this Section 3.07.

(c) Appropriate revisions to the Plat shall be made and recorded so as to show the boundaries of the original Lots and the boundaries of the Common Area conveyed to the Owner of those Lots.

(d) In no event shall the total area of the Common Area conveyed to an Owner pursuant to this Section 3.07 be greater than the total area of Lots adjacent to such Common Area.

(e) Upon the conveyance of a portion of the Common Area pursuant to this Section 3.07, such portion of the Common Area shall thereafter no longer be considered a portion of the Common Area for any purposes, except as provided in (b) above.

(f) Notwithstanding the conveyance of a portion of the Common Area pursuant to this Section 3.07: (i) for purposes of Section 1.03 of this Declaration, such conveyance shall not be deemed to decrease the number of Lots on the Plantation; and (ii) the Owner of such Common Area and the adjacent Lots shall thereafter be deemed to own the same number of Lots as are shown on the Plat as of the date of this Declaration for purposes of calculating assessments, the number of homes which may be constructed on a Lot, the stock ownership in the Colony and the number of votes to which such Owner is entitled, the number of Members who may be designated by the Owner, and for all other such purposes.

(g) Neither the Company nor the Colony shall have any obligation whatsoever to make any conveyance of portions of the Common Area pursuant to this Section 3.07 and any such conveyance, if made, may be made subject to such additional conditions and restrictions as are deemed by the Company or the Colony to be necessary or appropriate.

3.08 Easements for Utilities and Drainage. There is hereby reserved for the benefit of the Company the alienable, transferable, and perpetual right and easement as well as the power to grant and accept conveyances and/or easements to and from any public authority or agency, public service district, public or

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

private utility, or other person, upon, over, under, and across (a) all of the Common Areas and (b) any easement area adjacent to a Lot, 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, without limitation, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. To the extent practicable, all utility lines and facilities serving the Plantation 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 Plantation so encumbered, to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, to cut and remove any trees, bushes, or shrubbery, to grade, excavate, or fill, or to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

3.09 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of the Company during the Development Period the alienable and transferable right and easement in and to the Plantation for the maintenance of signs, sales offices, construction offices, maintenance areas, business offices, and model dwellings, together with such other facilities as in the sole opinion of the Company may be reasonably required, convenient, or incidental to the completion, improvement, maintenance and/or sale of Lots, dwellings, or Common Areas.

3.10 Maintenance Easement. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement to enter upon any Lot and adjacent easement area for the purpose of mowing, removing, clearing, cutting, or pruning grass, underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Plantation, provided that such easements shall not impose any duty or obligation upon the Company or the Colony to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any Lots or adjacent easement areas from the water's edge of any lagoon, pond, lake, or other body of water within or adjacent to the Plantation, for the purpose of mowing such area and keeping the same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards. Prior to the time a dwelling has been constructed on a Lot, the right and easement reserved herein may be exercised from time to time without notice to the Owner as provided in Section 5.02, it being the intent of this provision to allow a reasonable and expeditious manner of maintaining an attractive appearance for Lots prior to the time a residence is constructed thereon. The cost and expense incurred by the Company or the Colony in this connection, including a reasonable proportion of indirect costs, shall be an individual assessment under Section 9.05 of the Declaration to which Owner and his Lot are subject, and shall become a lien against such Lot. The Colony shall promptly reimburse the Company for its costs and expenses in exercising the foregoing rights and easements.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

3.11 Environmental Easement. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement on, over, and across all Lots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board or by any governmental entity, such easement to include, without limitation, the right to implement drainage and erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

3.12 Wells and Effluent. There is hereby reserved for the benefit of the Company, the Colony, and their respective agents and employees, an alienable, transferable, and perpetual right and easement (a) to pump water from lagoons, ponds, lakes, and other bodies of water located within the Plantation for the purpose of irrigating any portions of the Plantation, (b) 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, and (c) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities, or upon any Lot with the permission of the appropriate Owner.

3.13 Golf Course Maintenance. There is hereby reserved unto the Company, its agents and employees, the perpetual, nonexclusive right and easement over and across each Lot which is adjacent to the fairways and greens of the golf course. This reserved right and easement shall permit, but shall not obligate, the Company, its agents, employees, successors, and assigns, to go upon any such Lot to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than two (2) inches in diameter at a level of two (2) feet above ground level. The area encumbered by this easement shall be limited to the portion of such Lot within thirty (30) feet of the golf course or such lesser area as the Company may determine.

3.14 Entry by Golfers. Each Lot near a golf fairway or green shall be subject to the right and easement on the part of golf course players and their caddies to enter upon such Lot to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be a trespass. Notwithstanding the foregoing, the Company shall be entitled to from time to time impose more restrictive rules and regulations regarding the playing and/or recovery of balls from Lots. Furthermore, golf course players or their caddies shall not be entitled to enter on any such Lots with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such Lot or in any way commit a nuisance while on any such Lot.

3.15 Conveyance of Common Areas to the Colony. The Company may at any time convey to the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to the Common Areas or any portion thereof. Within thirty (30) days after the earlier of (a) the date on which the Company has sold and conveyed title to three hundred ten (310) Lots or (b) the termination or expiration of the Development Period, the Company shall convey to

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the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to all of the Common Areas not previously conveyed to the Colony.

3.16 Driveway Easements. The Owner of each Lot shall have an exclusive easement of right of way for access, ingress and egress, on over and along an area twenty (20') feet in width between the boundary of his Lot and the nearest roadway, the center line of such Lot easement area being shown on the Plat. Such easement shall be appurtenant to and shall pass and run with the title to such Lot; provided, however, the easement shall be subject to those rights and easements set out in Subsections 3.02(a) through 3.02(d) above, to any other rights and easements reserved unto the Company by this Declaration, and to the reasonable rules, regulations and restrictions on such easement areas from time to time established by the Board. The easement area may be relocated pursuant to Section 3.17 below, provided the easement area shall always furnish access from the Owner's Lot to a roadway shown on the Plat.

3.17 Relocation of Driveway Easements. The Company may, at the request of an Owner or for other good cause, change the location of the driveway easement lying between a Lot and a roadway, as shown on the Plat. Any such change shall be evidenced by an amendment to the Plat, which amendment shall be filed in the Office of the Clerk of Court for Beaufort County. After the filing of such amendment to the Plat, the area formerly comprising the driveway easement to that Lot shall be Common Area and the area comprising the relocated driveway easement shall constitute the access easement described in Section 3.16 above.

3.18 Conveyance of Lots to the Colony. At such time as the Company has sold and conveyed title to three hundred ten (310) Lots, the Company shall convey to the Colony by quit-claim deed, and the Colony shall accept, all of the Company's right, title and interest in and to the remaining fifteen (15) Lots owned by the Company. The Company may at its option, elect to convey and the Colony shall accept, all or a portion of such Lots to the Colony prior to the time the Company has sold and conveyed title to three hundred ten (310) Lots. The Lots conveyed to the Colony pursuant to the foregoing provisions may be held by the Colony or all or a portion of such Lots may be conveyed to third parties, the proceeds of any such conveyance to be used for the benefit of the Colony. During the time the title to any Lot is held by the Colony pursuant to this Section, such Lot shall not be subject to any assessments authorized by this Declaration and the Colony shall not be deemed to be an Owner for the purpose of voting on or consenting to any matter.

ARTICLE IV

COLONY OWNERSHIP; COLONY MEMBERSHIP

4.01 Colony Ownership. The total authorized and outstanding stock of the Colony shall consist of Three Hundred Twenty-Five (325) shares of stock. The Owner of each Lot shall be deemed to own one (1) share of stock of the Colony. The records of such stock ownership shall be maintained in the books and records of the Colony and no stock certificate shall be issued to evidence such ownership. Such stock ownership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

qualification for such stock ownership. In the event that fee title to a Lot is transferred or otherwise conveyed, the stock ownership in the Colony which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's stock ownership in the Colony. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall own more than one share of stock per Lot. In the event of multiple Owners of a Lot, voting shall be as provided herein. The rights and privileges of stock ownership, including the right to vote and to hold an office in the Colony, may be exercised by a stockholder or a stockholder's spouse, but in no event shall more than one vote be cast or more than one office be held for each Lot, subject, however, to the provisions of Section 14.01 of this Declaration. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as those Owners of such Lot themselves determine and advise the Secretary or an Assistant Secretary of the Colony prior to any meeting. In the absence of such advice, the vote appurtenant to such Lot shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot is equal and each Lot and shall have one (1) vote, subject, however, to the provisions of Section 14.01 of this Declaration.

4.02 Colony Membership.

(a) The Owner of each Lot shall have the right to designate three Members of the Colony and those Members shall have the nonexclusive right, privilege and easement of use and enjoyment in and to the Common Areas subject to the terms of this Declaration and the By-Laws and rules and regulations of the Board. Any Owner who is not a Member shall not have any right, privilege or easement of use and enjoyment in and to the Common Areas except that such Owner shall be permitted access to the Plantation in accordance with such rules and regulations as may be from time to time adopted by the Board. For the purposes of determining the number of Members to be designated by the Owner of each Lot, any Member and that Member's spouse shall be deemed to constitute only one Member.

(b) The Owner of each Lot shall, at the request of the Colony from time to time, advise the Colony and/or confirm to the Colony the identity of all persons designated by that Owner as Members. The Colony shall maintain a current list of such Members. In the absence of such designation and/or confirmation by the Owner, the membership relative to that Owner's Lot may be suspended in the event more than one person or entity owns the Lot (or there is a dispute as to such ownership) and there is a dispute among the Owners (or those claiming ownership) as to the designated Members. In such cases the Colony may, at its option, allow membership as to that Lot based upon an opinion of counsel satisfactory to the Colony in its sole discretion or based upon such other information as may be available to the Colony. The designation of Members as to any Lot may be changed upon the transfer of ownership of the Lot and on such other dates and times as shall be allowed by the Colony. In the case of a change in the designation of Members for any reason, there shall be no refund of any assessments previously assessed as to the Lot designating such Members.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

(c) The Colony may for good cause (the determination of which shall be made in the reasonable discretion of the Colony) deny membership to any person or terminate the membership of any person. In no event shall the Colony, the Company, or their respective officers, directors, agents or employees have any liability whatsoever to any party on account of denying or terminating membership of any person, denying any person who is not a Member (or is in good faith believed to not be a Member) access to the Property or any Common Areas, or allowing any person who is not a Member access to the Property or any Common Areas..

(d) If the Owner of a Lot designates more than one Member of the Colony for any one Lot, the Owner shall pay the additional assessments as provided in Section 9.03 of this Declaration. An Owner shall not be entitled to any refund or rebate of assessments paid pursuant to Article IX on account of the termination or withdrawal of membership of any Member or on account of the conveyance of his Lot.

(e) The Colony may, pursuant to a rule, regulation or resolution adopted by the Board, allow temporary membership to a reasonable number of staff personnel or other persons when such action is considered to be of benefit to the Colony. Such temporary membership shall entitle the designated person or persons to the use and enjoyment of the Common Areas as may be allowed by such rule, regulation or resolution. Additionally, during the Development Period, the Company may allow the use and enjoyment of the Common Areas by a reasonable number of its employees, agents and prospective Lot purchasers.

(f) Guests of Members shall be entitled to the use and enjoyment of the Common Areas subject to such rules and regulations as may be from time to time adopted by the Board; provided, however, a guest may use and enjoy the Common Areas only at such times as the Member who invited that guest is on the Plantation.

(g) The violation by a Member of any provision of this Declaration, the By-Laws, or any rules and regulations of the Colony shall be deemed to be the same violation by the Owner who designated that Member (and by all co-Owners of that Lot) and shall subject that Owner (and any co-Owners) to all fines, penalties, charges, liens and other sanctions available to the Colony under this Declaration.

ARTICLE V

MAINTENANCE

5.01 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Colony, all maintenance and repair of Lots, together with all other improvements thereon or therein, and all lawns, landscaping, and grounds on and within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his Lot 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 and all lawns, trees, shrubs, hedges, grass and other

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

landscaping. As provided in Sections 3.10 and 5.02(b) hereof, each Owner shall also be obligated to pay for the costs incurred by the Colony or the Company for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner shall (a) decorate, change, or otherwise alter the appearance of any portion of the exterior of a dwelling or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the Architectural Review Board as provided in Article X hereof, or (b) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize or adversely affect the soundness, safety and/or appearance of the Plantation, 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.

5.02 Responsibilities of Colony.

(a) Except as may be herein otherwise specifically provided, the Colony shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include, without limitation, the operation, maintenance, repair, and replacement of the following: (i) all roads, walks, trails, agricultural operations, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas, (ii) such utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the Common Areas, and (iv) the Recreational Amenities. Neither the Colony nor the Company shall be liable for injury or damage to any person or property caused by the elements or by any Owner, Member or any other person; resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas; caused by any pipe, plumbing, drain, conduit, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Colony or the Company, breaking down or as a result of the repair of the same, or related to the operation, use or existence of Recreational Amenities. Nor shall the Colony or the Company be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Plantation.

(b) In the event the Company or the Board determines that: (i) any Owner 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 Colony hereunder is caused through the willful or negligent act of an Owner, his or its Members, family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Company or the Colony, except in the event of an emergency situation, may give such Owner written notice of the Company's or the Colony's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, as the case may be, and setting

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Company or the Colony 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, and said cost and expense shall be added to and become a part of the assessment to which Owner and his Lot are subject, and shall become a lien against such Lot. In the event the Company undertakes such maintenance, cleaning, repair, or replacement, the Colony shall promptly reimburse the Company for the Company's costs and expenses.

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and may obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Colony and insuring all insurable improvements in and to the Common Areas against loss or damage or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and may obtain and continue in effect a public liability insurance policy covering all the Common Areas and all damage or injury caused by the negligence of the Colony, its Members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined by the Board to be necessary or appropriate.

(c) The Board or its duly authorized agents shall have the authority to and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, (ii) errors and omission insurance, (iii) directors and officers liability insurance, and (iv) such other types and amounts of insurance as may be determined by the Board to be necessary or appropriate.

(d) The costs of all such insurance coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Colony and hereafter in force with respect to the Plantation shall be

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

vested in the Board; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Colony shall be required to make a reasonable effort to secure insurance policies with the provisions hereinafer set forth:

(i) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating available.

(ii) All property insurance policies shall be for the benefit of the Colony and its mortgagees as their interests may appear.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Colony and to any mortgagee to which a mortgagee endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Colony's Board hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their mortgagees.

(v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Company, the Colony, the Colony's directors, officers, agent and employees, the Owners, the Members, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Colony's manager.

(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, Members, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Colony or of its manager, without prior demand in writing delivered to the Colony to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vii) All liability insurance shall contain cross-liability endorsements to cover liability of the Colony to an individual Owner.

(e) It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, and other insurance with respect to his own Lot. The Board may require all Owners to carry public liability and property damage insurance with respect to their respective Lots and to furnish copies or certificates thereof to the Colony.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

6.02 Damage or Destruction to Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Colony, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Colony shall restore or replace any damage or destruction to all or a part of the Common Areas unless Company (during the Development Period) together with at least a majority of the total vote of the Colony, shall otherwise agree. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be prorated among the Lots equally, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Colony under and by virtue of such assessments shall be held by and for the benefit of the Colony together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Colony in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Colony. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Colony, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots. In the event of damage or destruction by fire or other casualty to any Lot and in the further event that the Owner of such Lot elects not to repair or rebuild any damaged or destroyed improvements, such Owner shall promptly clear away any ruins and debris of any damaged improvements or vegetation and leave the Lot in a clean, orderly, safe and sightly condition. Should such Owner elect to repair or rebuild such improvements, such Owner shall repair or rebuild such improvements in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ARTICLE VII

CONDEMNATION

7.01 Condemnation of Common Areas. Whenever all or any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of a majority of the total vote of the Colony and of the Company (during the Development Period) the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Colony and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, the Company (during the Development Period) together with a majority of the total membership of the Colony, shall otherwise agree, the Colony shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board, the Architectural Review Board, and by the Company (during the Development Period). If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be prorated among the Lots equally, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Colony.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Colony.

(c) If the taking or sale in lieu thereof includes all or any part of a Lot and also includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Colony and the Owners so affected so as to give just compensation to the Owners of any Lot taken and to the Colony; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board, (ii) the Owners of all Lots, wholly or partially taken or sold, together with the mortgagees for each such Lot, and (iii) the Company (during the Development Period).

7.02 Condemnation of Lots.

(a) In the event that all or any part of a Lot is taken by any

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot elects not to restore any Lot improvements so taken or conveyed, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of the improvements remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the Lot, to the Colony as a part of the Common Areas, and thereafter any such Owner shall not have any further ownership rights or membership rights or privileges in the Colony or with respect to the Plantation and shall not be subject to any further assessments imposed by the Colony and payable after the date of such deeding.

(b) In the event that any part of the Lot is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot elects to restore the remainder of the Lot improvements, such Owner making such election shall restore such remainder of such Lot improvements as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

ARTICLE VIII

ADMINISTRATION

8.01 Common Areas. The Colony, subject to the rights of the Company and the rights and duties of the Owners and Members set forth in this Declaration and the By-Laws of the Colony, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. Except to the extent otherwise required by the provisions of the South Carolina Code relating to nonprofit corporations, this Declaration, the By-Laws, the Colony's powers and duties may be exercised by the Board of Governors, acting through the officers of the Colony, without further consent or action on the part of the Owners. AS PROVIDED IN SECTION 14.01 HEREOF AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY CONTAINED IN ANY INSTRUMENTS EVIDENCING OR ESTABLISHING THE PLANTATION, THE COMPANY SHALL HAVE THE RIGHT DURING THE DEVELOPMENT PERIOD TO APPOINT OR REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OR ANY OFFICER OR OFFICERS OF THE COLONY. Each Owner, by acceptance of a

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

deed to or other conveyance of a Lot vests in the Company such authority to appoint and remove directors and officers of the Colony as provided by Section 14.01 hereof.

8.02 Duties and Powers. The duties and powers of the Colony shall be those set forth in the provisions of the South Carolina Code relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Colony. The Colony may exercise any other right or privilege given to it expressly by this Declaration or by law, every right or privilege which may be reserved herein for the benefit of the Company and assigned to the Colony as provided for in this Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Colony shall include, but shall not be limited to, the power to accept or purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots, to furnish trash collections, water, sewer, security and/or other services for the Common Areas and/or the Lots. Notwithstanding the foregoing provisions of this Section 8.02 or any other provision of this Declaration to the contrary, during the Development Period the Colony shall not, without the written consent of the Company, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

8.03 Agreements. Subject to the prior approval of Company (during the Development Period), all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Plantation or the privilege of possession and enjoyment of any part of the Plantation. In performing its responsibilities hereunder, the Colony, through its Board, shall have the authority to delegate to persons and or committees of its choice such duties of the Colony as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Colony may obtain and pay for the services of any person or entity to manage its affairs or any part thereof to the extent it deems advisable, as well as such other personnel as the Colony shall deem necessary or desirable for the proper operation of the Plantation, whether such personnel are furnished or employed directly by the Colony or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Colony, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or stockholders of the Colony by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Colony may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Plantation or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Colony.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

8.04 Personal Property and Real Property for Common Use. The Colony, through action of its Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Colony and the proceeds thereof, after deducting therefrom the costs incurred by the Colony in acquiring or selling the same, shall be held by and for the benefit of the Colony. The shares of the Owners in the funds and assets of the Colony cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the stock ownership in the Colony which is an appurtenance to such Lot.

8.05 Rules and Regulations. As provided in Article XIII hereof, the Colony, through its Board, may make and enforce reasonable rules and regulations governing the use of the Lots, easement areas, and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

ARTICLE IX

ASSESSMENTS

9.01 Purpose of Assessments. The assessments for Common Expenses provided for herein shall be used, without limitation, to: create, maintain and operate agricultural operations on the Property; preserve and enhance natural areas conducive to the enjoyment of outdoor activities; create, improve, maintain and operate Recreational Amenities; maintain, landscape and repair streets, walkways and like community areas, utility systems, storm drainage, grounds, maintenance building(s) and related property, and security, cable television and utility lines and facilities; maintain satisfactory means of access to the Plantation; maintain the waterfront, lagoons and other bodies of water in a clean and orderly condition; create, improve, maintain and operate other Common Areas; repair damage caused by erosion; provide for pest control when needed; generally promote the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners, Members and occupants of the Plantation; provide those services important to the Plantation and preservation of an attractive community appearance; and maintain the privacy, security and general safety of the Owners, Members and occupants of the Plantation, all as may be more specifically authorized from time to time by the Board.

9.02 Creation of Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Colony: (a) annual assessments, such assessments to be established and collected as provided herein; (b) special assessments, such assessments to be established and collected as provided herein; and (c) individual or specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, without limitation, fines as may be imposed against such Lot in accordance with Article XIII hereof. Any such assessments, together with late charges, simple interest at the rate of eighteen (18%) per cent per annum, court costs, and attorneys' fees shall be an equitable charge and continuing lien upon the Lot, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments coming

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

due while he is the Owner of a Lot, and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid assessments shall be subordinate and junior in lien to any first priority institutional mortgage. In the event of co-ownership of any Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments and other charges as provided herein. Assessments shall be paid in such manner and on such dates as may be fixed by the Board.

9.03 Computation of Annual Assessments. The annual assessment for each Lot shall be calculated according to the number of Members who are designated by the Owner of that Lot for the year in which the assessment is to be effective. The annual assessment for a Lot with one (1) or no Member designated for that year shall be increased by fifty (50%) per cent if two (2) Members are designated for that year and by one hundred (100%) per cent if three (3) Members are designated for that year. The annual assessment for each Lot with one or no designated Member shall initially be the sum of $3,600.00 per year. It shall be the duty of the Board at least thirty (30) days prior to the Colony's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary or desirable for the capital needs of the Colony. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots for the following year to be sent to each Owner at least fifteen (15) days prior to such meeting. In order to promote the development of the Plantation, the total annual assessments shall be divided among the Lots equally, so that each Lot shall be subject to equal annual assessments (subject to adjustments as set out above for additional Members); provided, however, during the Development Period the annual assessments shall be the amount set by the Board and approved by the Company and the Company shall be responsible for the payment of annual assessments only as required by Section 9.10 hereof. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by either (i) Company during the Development Period or (ii) after the Development Period, by a majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall be deemed implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Colony for the approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not be limited to, the following:

(a) management fees and expenses of administration, including legal and accounting fees;

(b) utility charges for utilities serving the Common Areas and charges for other common services for the Plantation, including trash collection and security services, if any such services or charges are provided or paid by the Colony, and to the extent such charges are not paid directly by Owners;

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

(c) the cost of any policies of insurance as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, officers and directors liability coverage, and such other insurance coverage as the Board determines to be in the interests of the Colony, the Owners and the Members;

(d) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Colony under the provisions of this Declaration;

(e) the expenses of creating, maintaining and operating Recreational Amenities to the extent such expenses are not defrayed by Recreational Charges;

(f) the expenses of the Architectural Review Board which are not defrayed by plan review charges;

(g) the expenses of maintaining and operating agricultural operations of the Plantation;

(h) the expenses of preserving and enhancing natural areas, wildlife, and areas conducive to the enjoyment of outdoor activities;

(i) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(j) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners, Members, and their families, guests, and invitees;

(k) such other expenses as may be determined from time to time by the Board to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots;

(l) the establishment and maintenance of a reasonable reserve fund or funds (i) for the creation, preservation, enhancement, maintenance, repair, and replacement of Common Areas which the Colony desires to create, preserve, enhance, maintain, repair or replace, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency or unanticipated expenditures and other matters, all as may be authorized from time to time by the Board;

(m) the establishment of an insect control program;

(n) the expenses of creating, preserving and enhancing wildlife habitat and natural areas; and

(o) for such further items that the Board may, in its discretion, deem necessary or appropriate.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

9.04 Special Assessments. In addition to the annual assessments authorized above, the Colony, acting through its Board, may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such assessment may be disapproved by (a) Company during the Development Period, or (b) after the Development Period by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments shall be prorated among the Lots equally; provided, however, during the Development Period any Lots owned by the Company shall not be subject to any such special assessment.

9.05 Individual Assessments. All unpaid Recreational Charges incurred by an Owner, a Member designated by that Owner or by family, tenants, agents, guests or invitees of such Owner or Member may be specially assessed against such Owner and his respective Lot. Any expenses of the Colony occasioned by conduct in violation of this Declaration by an Owner, a Member designated by that Owner or by family, tenants, agents, guests, or invitees of such Owner or Member may be specially assessed against such Owner and his respective Lot. The individual assessments provided for in this Section 9.05 shall be levied by the Board and the amount and due date of such assessments so levied by the Board shall be as specified by the Board.

9.06 Notice of Meeting and Quorum. Written notice of the annual meeting of the Colony, as well as any other meeting of the Owners (including, without limitation, a meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof), shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. The presence of stockholders or proxies entitled to cast over fifty (50%) per cent of all the votes of the Colony 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 the presence in person or by proxy of stockholders having one-third (1/3) of the total votes of the Colony. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.07 Liens. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot in favor of the Colony. Such lien shall be superior to all other liens and encumbrances on such Lot except only for (a) liens for ad valorem taxes, and (b) liens for all sums unpaid on a first priority institutional mortgage. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such mortgages shall only apply to such assessments which have become due and payable prior to a foreclosure sale. All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to the liens for assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

9.08 Effect of Nonpayment; Remedies of the Colony. Any assessment or any portion thereof which is not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen (18%) per cent per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment shall include the late charge established by the Board, interest on the principal amount due at the rate of eighteen (18%) per cent per annum, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. The Colony may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Colony, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Colony and its agents the right and power to bring all actions against him personally for the collection of such assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens on real property. The Colony shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas, failure to designate Members, voluntary or involuntary termination of Membership, or abandonment of his Lot, and an Owner shall remain personally liable for assessments, interest, late charges and other amounts which accrue prior to a sale, transfer, or other conveyance of his Lot.

9.09 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Colony shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board, furnish to any Owner or such Owner's mortgagee which requests the same, a certificate in writing signed by said Treasurer, Assistant Treasurer, or manager setting forth whether the assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

9.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Company (but in no event earlier than October 1, 1988) and shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot according to the number of months then remaining in the then fiscal year of the Colony and the number of days then remaining in the month in which such Lot is first conveyed. Anything contained herein to the contrary notwithstanding, Company shall not, during the Development Period, be responsible for the payment of annual or special assessments on Lots, which it or its affiliates own and which do not contain occupied residences, provided

that Company covenants and agrees to pay annual and special assessment for each Lot owned by Company or an affiliate and containing an occupied residence. Furthermore, during the Development Period, the Company shall fund any deficit which may exist between assessments and the annual budget of the Colony, provided, however, that the budget, assessments, and deficit, if any, shall be annually reviewed and approved by Company, and the Board, and during such period Company's obligation for funding deficits shall only be up to the amount of the Colony's budget.

ARTICLE X

ARCHITECTURAL STANDARDS AND RESTRICTIONS

10.01 Purpose. In order to preserve and enhance the natural setting, beauty and utility of the Plantation, to establish and preserve a harmonious and aesthetically pleasing design for the Plantation, and to protect and promote the value of the Plantation and its environment, the Lots, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Plantation, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

10.02 Architectural Review Board. The Board shall establish the Architectural Review Board which shall consist of up to five (5), but not less than three (3), members, who may or may not be Owners or members of the Board of Governors. The regular term of office of each member shall be one year, coinciding with the fiscal year of the Colony. Any member appointed to the Architectural Review Board may be removed with or without cause by the Board of Governors at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Review Board by the Board of Governors during the Development Period shall be subject to the prior approval of Company. The Architectural Review Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Review Board shall meet upon call of the chairman and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Review Board shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein. Each member of the Architectural Review Board may be paid a stipend or honorarium as from time to time determined by the Board of Governors.

10.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, painted, stained, or maintained upon any part of the Plantation, except (a) for dwellings and other improvements which are constructed by Company, (b) such improvements as are approved by the

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Architectural Review Board in accordance with this Article X, or (c) improvements which pursuant to this Article X do not require the consent of the Architectural Review Board.

10.04 Construction of Improvements.

(a) To assure that dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each dwelling or structure, dwellings and structures will be located with regard to the topography of each Lot taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other dwellings or structures within the Plantation.

(b) No construction or improvements on any Lots shall be undertaken or conducted on any Saturdays, Sundays, or holidays as established by the Architectural Review Board except for (i) construction activities of Company, (ii) emergency situations involving the potential loss, injury, or damage to person or property, and (iii) as otherwise permitted by the Architectural Review Board.

(c) The Architectural Review Board, in its sole discretion may require that any contractor and/or subcontractor, exclusive of those of Company, for any planned improvements within the Plantation post payment and/or performance bonds with the Architectural Review Board to assure that such contractor or subcontractor shall satisfactorily complete such improvements, such bonds to be in the name of the Colony and to be in form and amount satisfactory to the Architectural Review Board. The exterior of any improvements and landscaping permitted by this Declaration shall be completed within one year after the construction of same shall have been commenced, except where the Architectural Review Board allows for an extension of time because completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. In the event that such improvements or landscaping are not completed in accordance with approved plans and specifications within the provided periods, the Architectural Review Board shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements.

(d) Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot or Dwelling at any time, except as provided in Section 11.13 hereof and except for temporary structures for social functions as may be permitted by rules and regulations of the Board, nor shall any stable, poultry house or yard, rabbit hut, dog house or other similar yard structure be constructed or allowed to remain on any Lot without the consent of the Board, which consent shall not be unreasonably withheld. During the continuance of construction by an Owner, such Owner shall require its contractors to maintain the Lot in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon comple-

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

tion of construction, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot on which such construction has been completed.

10.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Plantation, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Company, with respect to the construction or exterior of any dwelling or with respect to any other portion of the Plantation, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, boat slips, boathouses, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data shall have been submitted to and approved in writing by the Architectural Review Board as to the general contractor and the harmony of external design, location, and appearance in relation to surrounding structures, vegetation and topography. The related data to be submitted to the Architectural Review Board shall include, without limitation, the name of the general contractor to be used by the Owner; a survey showing the topography of such Lot, the location of trees at least four (4) inches in diameter at a height of four (4) feet, other significant vegetation on such Lot, the location of not less than two (2) iron pins placed on the boundary of the Lot, the location of (or any proposed relocation of) the driveway easement described in Section 3.16 hereof, and, as to any Lot listed on Exhibit B hereto, the proposed location of the easement area described in Section 3.03 hereof; and the nature, color, type, shape, height, materials, and location of the proposed improvements. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Review Board, and the other copy shall be returned to the Owner marked "approved" or "disapproved." The Architectural Review Board shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be $150.00 for submission, and the Architectural Review Board shall have the right to increase or decrease this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his dwelling without the necessity of approval or review by the Architectural Review Board. The Architectural Review Board shall have the sole discretion to determine whether plans and specifications and the general contractor submitted for approval are acceptable to the Colony. Following approval of any plans and specifications by the Architectural Review Board, representatives or agents of the Architectural Review Board shall have the right during reasonable hours to enter upon and inspect any Lot, dwelling, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Review Board shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

and specifications. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications or the general contractor within forty-five (45) days after such plans and specifications and the name of the general contractor have been submitted, such plans and specifications and the general contractor will be deemed to have been expressly approved. Upon approval of plans and specifications and the general contractor, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g., clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications and the general contractor by the Architectural Review Board may be based upon any grounds consistent with the objects and purposes of this Declaration, including purely aesthetic considerations.

10.06 Landscaping Approval. No landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner, other than the Company, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Review Board. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Review Board shall be entitled to promulgate standards with respect to such coverages. The landscaping plan for any Lots adjacent to golf courses shall be in general conformity with the overall landscaping plan of such golf course.

No Owner, other than Company, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of four (4) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the Architectural Review Board, provided that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Review Board or its representative, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any Lot or dwelling by the Owner of such Lot. All of the landscaping of Lots must be completed within ninety (90) days of issuance of a certificate of occupancy.

10.07 Approval Procedures. Subject to the provisions hereof, the Board of Governors may establish reasonable procedures in addition to those set out in Sections 10.05 and 10.06 relating to architectural approval and landscaping approval. Such procedures shall be binding upon all Owners other than the Company and may provide for such matters as the specific data and materials to be submitted to the Architectural Review Board, the address to which such data and materials should be submitted, and a manner of obtaining a preliminary review of plans and specifications prior to formal submission to the Architectural Review Board.

10.08 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed,

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be designed and/or built in a good and workmanlike manner. Neither Company, the Colony, nor the Architectural Review Board shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article X, nor any defects in construction undertaken pursuant to such plans and specifications.

ARTICLE XI

USE RESTRICTIONS

11.01 Use of Lots. Except as otherwise permitted herein, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on thereon. The use of a portion of a dwelling as an office by an Owner shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, provided that in no event shall any Lot be used as the office of or storage area for any building contractor or real estate developer other than the Company. Furthermore, the operation of the Recreational Amenities and the operation by the Colony of other activities in Common Areas for which a fee may be charged shall be expressly permitted within the Plantation, exclusive of Lots, and shall not be deemed to be a violation of the terms of this Section 11.01. Lease or rental of a single family Dwelling shall also not be considered to be a violation of this covenant so long as the lease is in compliance with rules and regulations as may be promulgated and published from time to time by the Board. No Lot may be leased or rented to any entity or person who is not a Member of the Colony without the written consent of the Colony, which consent shall be in the sole discretion of the Colony and may in any case be denied. All leases and rentals shall be required to be in writing, and, prior to the commencement of any such lease or rental, the Owner shall provide the Secretary of the Colony and the managing agent of the Colony, if any, with copies of the lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

11.02 Boats and Watercraft. No person shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within or on waters adjacent to the Plantation, provided that the Board may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discharged from any yacht, boat, or other watercraft into any creek, river, marina, or other body of water within or adjacent to the Plantation. Furthermore, Owners, other than Company, shall not be entitled to lease or rent any boat slips, boathouses, or wharf, dock, or bulkhead space adjacent to Lots to persons other than other Owners, their allowed tenants, or Members.

11.03 Signs. Except as may be required by legal proceedings, no "for sale," "for rent," or other signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements, trees, or utility structures or on any Lot located within the Plantation,

without the express written permission of the Architectural Review Board. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Architectural Review Board and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 11.03 shall not apply to Company. In addition, the Board, on behalf of the Colony, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas.

11.04 Mail Boxes. No mail boxes may be erected on any Lot. All mail shall be deposited and received at a facility to be erected by Company as a Common Area.

11.05 Antennas. No television antenna, satellite dish, radio receiver or sender or other similar device shall be attached to or installed on any Lot without prior written approval of the Architectural Review Board.

11.06 Water Wells and Septic Tanks. Private water wells, septic tanks, and similar sewerage facilities shall be installed or maintained on Lots only in accordance with the reasonable rules and regulations adopted by the Board from time to time.

11.07 Pets. With the exception of the Company and the Colony, no animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner, his family, tenants, guests, or invitees, upon any portion of the Plantation, provided that a reasonable number of horses and generally recognized house pets may be kept, subject to rules and regulations adopted by the Board. Any horse or pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed. Horses and pets shall be allowed on Common Areas or on property not owned by the Owner, only in accordance with rules and regulations of the Board. Upon written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 11.07, a particular pet is a generally recognized house pet or whether a horse or pet is a nuisance, and the Board shall have the right to require the owner of a particular horse or pet to remove such horse or pet from the Plantation if such horse or pet is found to be a nuisance or to be in violation of these restrictions. The Board shall have the further right, subject to Section 13.03 hereof, to fine any Owner for the violation of these horse and pet restrictions by such Owner, his Members, family, tenants, guests, or invitees and an Owner shall be liable to the Colony for the cost or repair of any damage to the Common Areas caused by the horse or pet of such Owner, his Members, family, tenants, guests, or invitees or of an occupant of such Owner's Lot. Any such fine or cost of repair shall be considered an individual assessment pursuant to Section 9.05 of this Declaration to which such Lot and its Owner are subject.

11.08 Hunting and Fishing. No hunting will be allowed on the Plantation except as allowed by rules and regulations of the Board. Fishing will be allowed within the Plantation only in areas from time to time designated by the Board in accordance with rules and regulations of the Board.

11.09 Limitations as to Use of Bodies of Water. To provide for the full enjoyment of the lagoons, lakes, ponds and other bodies of water within the

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Plantation, and to preserve water quality and to minimize erosion due to water turbulence, no boats with combustion type engines shall be operated in said water courses or bodies of water within the Plantation without the written consent of Company and the Colony, which permissions may be arbitrarily withheld.

The Colony (during the Development Period) may retain ownership of all bodies of water referred to above and not lying within the boundaries of a Lot and expressly reserves every reasonable use and enjoyment of said lagoons, water courses and other bodies of water in a manner not inconsistent with this Declaration. It is further expressly recognized that lagoons and bodies of water perform valuable drainage functions requiring water levels to be raised and lowered from time to time in connection with the operation of the Plantation. The Company (during the Development Period) and the Colony expressly retain all rights to adjust water levels as requirements dictate.

11.10 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Plantation, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Plantation, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Plantation. Noxious or offensive activities shall not be carried on on any Lot or in any part of the Common Areas, and each Owner, his Members, family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Plantation or which could result in a cancellation of any insurance for any portion of the Plantation, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except alarm devices used exclusively for such purposes, shall be located, used or placed within the Plantation. Any Owner, or his Members, family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Plantation shall be liable to the Colony for the actual costs of removal thereof or the sum of $50.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject. No drying or hanging of any clothing or bedding shall be permitted outdoors and all garbage cans and outdoor recreational equipment such as sandboxes and basketball goals shall be installed or used in accordance with the rules and regulations of the Board.

11.11 Golf Course Areas. Owners of Lots adjacent to golf course fairways and greens, as well as their Members, families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, running or walking on the fairways, picking up balls, or like interference with play.

11.12 Motor Vehicles, Trailers, Boats, Etc. Each Owner shall provide for parking of his automobiles off streets and roads within the Plantation after the

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

issuance of a certificate of occupancy of his dwelling. Subject to the terms of this Section 11.12, there shall be no outside storage or parking upon any Lot or within any portion of the Common Areas (other than areas provided therefor within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), bus, commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft (other than in boat slips, boathouses, other docking facilities, or storage yards) boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of combustion driven or towed transportation devices. Furthermore, the Board may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other vehicles, or any of them, from entering and/or being kept, placed, stored, maintained, or operated upon any portion of the Plantation if in the opinion of the Board such prohibition shall be in the best interests of the Plantation. No Owners or other occupants of any portion of the Plantation shall repair or restore any vehicle of any kind upon any Lot or within any portion of the Common Areas, except within enclosed garages or workshops or for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. In Company's discretion, rental storage space for the above mentioned vehicles, boats, etc., may be provided in an area designated by Company.

11.13 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, during the Development Period it shall be expressly permissible for Company and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or dwellings or the developing of Lots, dwellings, and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices and signs, provided that the location of any construction trailers of any assignees of Company's rights under this Section 11.13 shall be subject to Company's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use dwellings as model residences and to use any dwelling as an office for the sale of Lots and/or dwellings and for related activities.

11.14 Repurchase Option. Subject to the provisions of Section 14.06 hereof, Company hereby reserves the right and option to purchase any Lot or dwelling within the Plantation which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer for such Lot or dwelling which is acceptable to such Owner and which is made in writing to such Owner by a third party. Upon the receipt of any such offer by an Owner, such Owner shall promptly submit a copy of the same to Company, and Company shall have a period of ten (10) days from and after the receipt by the Company of such offer in which to exercise its repurchase option by giving the Owner written notice of such exercise. If the Company fails to respond or to exercise such repurchase option within said ten (10) day period, Company shall be deemed to have waived such repurchase option. If during such ten (10) day period the Company declines to exercise such option, Company shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that Company does not

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

exercise its repurchase option and such sale to a third party is not consummated on such terms within six (6) months of the date on which the offer is received by Company, the terms and limitations of this Section 11.14 shall again be imposed upon any sale by such Owner. If Company shall elect to purchase such Lot or dwelling, the transaction shall be consummated within sixty (60) days following delivery of written notice by Company to such Owner of Company's decision to so purchase such Lot or dwelling.

ARTICLE XII

SPECIAL RESTRICTIONS AFFECTING ALL WETLANDS, WATERFRONT, LAGOON AND MARSHLAND AREAS

12.01 Restricted Activities. In order to maintain reasonable standards of water quality for the protection of plants in or at the edge of marshes, ponds, lakes and other waterways, as well as fish, and animals using such marshes, ponds, lakes and other waterways, the Board may establish reasonable rules and regulations restricting the use of chemicals or other materials in a manner which may be harmful to the maintenance of such reasonable standards of water quality.

12.02 Docks and Decks. Docks, decks or boathouses may not be erected without written approval of the Architectural Review Board and written approval of any local, state or federal governmental departments or agencies which have jurisdiction over construction. Company reserves the right in its uncontrolled discretion to disapprove such plans and specifications on any grounds, including without limitation, purely environmental or aesthetic reasons.

12.03 Maintenance of Docks and Decks. All Owners who construct or cause to be constructed said decks, docks and/or boathouses, must maintain such structures in good repair and keep the same safe, clean and in orderly appearance at all times. Such Owner shall paint or otherwise treat with preservatives all wood or metal (exclusive of pilings) located above the high water mark of tidal waters, inland lakes, lagoons and ponds, and shall maintain such paint and preservatives in an attractive manner. The Architectural Review Board shall be the sole judge as to whether the decks, docks and/or boathouses are safe, clean, and orderly in appearance, and properly painted or preserved in accordance with reasonable standards.

When the Company or Architectural Review Board notifies a particular Owner in writing that his deck, dock and/or boathouse fails to meet acceptable standards, said Owner shall remedy such condition within thirty (30) days to the satisfaction of the Company or Architectural Review Board. In the event such Owner fails to remedy such a condition, the Company or the Colony may make the necessary repairs or take such actions as will bring the said deck, dock and/or boathouse up to acceptable standards, all such repairs and actions being at the sole expense of the Owner.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ARTICLE XIII

RULE MAKING

13.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, easement areas and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Colony to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their Members, families, tenants, guests, invitees, servants and agents, until and unless any such rules or regulations are specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Colony by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Colony; provided that in the event of such vote during the Development Period, such action must also be approved by Company.

13.02 Authority and Enforcement. Subject to the provisions of Section 13.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (a) to impose reasonable monetary fines on the Owner and Member guilty of such violation which shall also constitute an equitable charge and a continuing lien upon the Lot of such Owner, (b) to suspend an Owner's right to vote in the Colony, and (c) to suspend a Member's membership and the right of such Member to use any Common Areas and the Board shall have the power to impose all or any combination of these sanctions. An Owner or Member shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his Members, family, guests, tenants or invitees, or by his co-Owners or the Members, family, guests, tenants or invitees of his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed sixty (60) days as to a Member who is also an Owner.

13.03 Procedure. Except with respect to the failure to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or Member for violations of the Declaration, the By-Laws, or any rules and regulations of the Colony, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the person responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than five (5) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Colony may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such person with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE XIV

GENERAL PROVISIONS

14.01 Control by Company. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION: (a) COMPANY HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF GOVERNORS OF THE COLONY AND ANY OFFICER OR OFFICERS OF THE COLONY DURING THE DEVELOPMENT PERIOD. Every grantee of any interest in the Plantation, by acceptance of a deed or other conveyance of such interest, agrees that Company shall have the authority to appoint and remove directors and officers of the Colony in accordance with the foregoing provision. Upon the expiration of the Development Period such right to appoint and remove directors and officers of the Colony pursuant to this Section 14.01 shall pass to the Owners, and a special meeting of the Colony shall be called within a reasonable time thereafter. At such special meeting Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Company shall deliver all books, accounts, and records, if any, which Company has kept on behalf of the Colony and agreements or contracts executed by or on behalf of the Colony during such period and which Company has in its possession.

(b) IN EVERY CASE IN WHICH A QUORUM OF STOCKHOLDERS FOR THE TRANSACTION OF BUSINESS BY THE COLONY AND/OR A MAJORITY OR GREATER VOTE OF THE STOCKHOLDERS (OR THOSE STOCKHOLDERS REPRESENTED AT A MEETING) IS REQUIRED FOR ANY PURPOSE

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

PURSUANT TO THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BY-LAWS OR OTHERWISE, DURING THE DEVELOPMENT PERIOD SUCH QUORUM SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN SATISFIED AND SUCH MAJORITY VOTE SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN OBTAINED IF THE COMPANY, THROUGH ITS DULY AUTHORIZED OFFICER, ATTENDS THE MEETING OF STOCKHOLDERS AND VOTES IN FAVOR OF THE ACTION REQUIRING A MAJORITY OR GREATER VOTE. FURTHER, DURING THE DEVELOPMENT PERIOD, NO ACTION REQUIRING A MAJORITY OR GREATER VOTE OF THE STOCKHOLDERS (OR THOSE STOCKHOLDERS REPRESENTED AT A MEETING) SHALL BE DEEMED TO HAVE BEEN TAKEN UNLESS THE COMPANY HAS ATTENDED THE MEETING AND VOTED IN FAVOR OF SUCH ACTION. Every Grantee of any interest in the Plantation, by acceptance of a deed or other conveyance of such interest, specifically and irrevocably agrees to the foregoing provision.

14.02 Amendments by Company. During the Development Period, the Company may, except as provided in Section 1.03 of this Declaration, amend this Declaration by an instrument in writing recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, without the approval of any Owner; provided, however, (a) in the event that such amendment materially and adversely affects any Owner's right to the use and enjoyment of his Lot, an appurtenant easement or the Common Areas as set forth in this Declaration or materially and adversely affects the title to any Lot or an appurtenant easement, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (b) 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 14.02 shall be certified by Company as having been duly approved by Company, 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 Lot, agrees to be bound by such amendments as are permitted by this Section 14.02 and further agrees that, if requested to do so by Company, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Plantation 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; if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lot subject to this Declaration; 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 Lot or other improvements subject to this Declaration; or if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on the Lots or other improvements subject to this Declaration.

14.03 Amendments by Colony. Amendments to this Declaration, other than those authorized by Section 14.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Colony at which such proposed

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

amendment is to be considered and shall be sent to each stockholder of the Colony.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by a stockholder of the Colony. Such amendment must be approved by Owners holding at least two-thirds (2/3) of the total votes in the Colony; 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 the Development Period, such amendment must be approved by Company.

(c) The agreement of the required percentage of the Owners and, where required, Company 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 Colony attached to or incorporated in the amendment executed by the Colony, 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.

(d) Any such amendments to this Declaration are subject to the provisions of Section 1.03 of this Declaration.

14.04 Enforcement. Each Owner and Member shall comply strictly with the By-Laws and the rules and regulations of the Colony adopted pursuant to this Declaration, as either of the same may be amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot. Failure to comply with any of the same shall be grounds for imposing fines or other sanctions allowed herein or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Company, the Colony, or, in a proper case, by an aggrieved Owner. Should Company or the Colony employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By-Laws, and the rules and regulations of the Colony are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Company, the Colony, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. In the case of a violation of any of the provisions of Article X of this Declaration, the remedies of the Company or the Colony shall include, without limitation, injunctive relief for the removal or replacement of any improvements, trees, or other items or material constructed or removed in violation of Article X. No delay, failure, or omission on the part of Company, the Colony, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Company or the Colony for or on account of any failure to enforce or to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Colony, however long continued.

14.05 Duration. The provisions of this Declaration shall run with and bind title to the Plantation, shall be binding upon and inure to the benefit of all Owners and mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial thirty (30) year period or the last year of any ten (10) year renewal period, ninety percent (90%) of the total votes of the Colony are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Colony votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Office of the Clerk of Court for Beaufort County, South Carolina, such instrument to contain a certificate wherein the President of the Colony swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in the Plantation, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Declaration shall run with and bind title to the Plantation as provided hereby.

14.06 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Fitzgerald Kennedy, mother of U. S. Senator Edward Kennedy.

14.07 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Company or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Office of the Clerk of Court for Beaufort County, South Carolina. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

14.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women shall in all cases be assumed as though in each case fully expressed.

14.09 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

14.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Company, the Colony, the Owners, their mortgagees and the Members as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Plantation or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Company and mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

14.11 Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish to the Colony in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

14.12 No Trespass. Whenever the Colony, the Company the Architectural Review Board, and their respective agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Plantation, the entering thereon and the taking of such action shall not be deemed to be a trespass.

14.13 Assignment. Notwithstanding anything to the contrary herein, the Company reserves the right, in its sole discretion, to assign to the Colony, at any time and from time to time, any easement, right and/or obligation reserved in this Declaration for the benefit of the Company. After such assignment, the Company shall have no liability or responsibility whatsoever with respect to the easement, right and/or obligation so assigned.

14.14 Notices. Notices required or permitted hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Colony, or if no address has been so designated, at the addresses of such Owners' respective residences or Lots. All notices to the Colony shall be delivered or sent by certified mail, return receipt requested, in care of Company to Company's main office in Beaufort, South Carolina or to such other address as the Colony may from time to time notify the Owners. All notices to Company shall be delivered or sent by certified mail, return receipt requested,to Company's main office in Beaufort, South Carolina, or to such other address as Company may from time to time notify the Owners.

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

IN WITNESS WHEREOF, duly authorized officers of the undersigned Company have executed this Declaration under seal, as of the date first above written.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF

BRAYS ISLAND COMPANY, INC. (SEAL)

By: _____
George W. Flynt, Jr., President

By: _____
Henry C. Chambers, Secretary

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC. by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS
16th day of January, 1989.

_____(LS)
Notary Public for South Carolina
Commission Expires: 4/21/92

_____

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

EXHIBIT "A" v 529

PLANTATION DESCRIPTION

ALL that piece, parcel or tract of land lying near the Town of Sheldon in Beaufort County, South Carolina known generally as Brays Island Plantation as shown on Sheet 2 of 7 sheets on a plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12, Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321 (the Plat).

The said tract of land, as shown on the Plat, contains 5,183.65 acres and includes the islands designated by the letters A through L inclusive.

The said tract butts and bounds as shown on the Plat; on its western and southern borders on the mean low water mark of the Pocotaligo River and Haulover Creek and their tributaries.

Excepted from the above described property are those tracts of land designated on the Plat by the Roman numerals I, II, III and IV.

Excepted also is the following described property:

ALL those certain lots of land containing one (1) acre each and being a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, said lots being shown and designated as Lots 12 and 13, Goat Island, and Lots 25 and 26, Pinckney Bluff, on a Plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said Plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12, Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321, (the "Plat"); the said lots having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said Plat (as amended) more fully appear, together with the land lying adjacent to and between the aforesaid Lots 12 and 13, Goat Island and the land lying adjacent to and between the aforesaid Lots 25 and 26, Pinckney Bluff, all of the aforesaid property to be shown and delineated on plats of the same to be recorded in the R.M.C. Office for Beaufort County.

Para-Legal

FILED AT 4:46 P.M. BEAUFORT COUNTY S. C. RECORDED IN BOOK 520 PAGE 484
JAN 10 1989
Lloyd N. Dalton
REGISTER OF MESNE CONVEYANCE

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SUPPLEMENT
TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
Book 520, Page 484

THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 11th day of November, 1988, by SUMNER PINGREE, JR. ("Pingree"), and BRAYS ISLAND COMPANY, INC., a South Carolina corporation ("the Company").

WHEREAS, Pingree has conveyed to the Company certain property in Beaufort County, South Carolina, generally known as Brays Island Plantation, excepting, however, from such conveyance certain properties which include the lots and adjacent areas described on Exhibit A attached hereto and incorporated herein by reference ("the Excepted Property"); and

WHEREAS, the Company has subjected the property conveyed to the Company by Pingree to a Declaration of Covenants, Conditions and Restrictions ("the Declaration") dated as of November 11, 1988, to be recorded in the RMC Office for Beaufort County; and

WHEREAS, Pingree and the Company desire to subject the Excepted Property to the terms of the Declaration to the same extent as if the Excepted Property had been conveyed to the Company and described in the Declaration;

NOW, THEREFORE, for valuable consideration received by Pingree and the Company, the receipt and legal sufficiency of which are hereby acknowledged, Pingree and the Company hereby subject to the terms of the Declaration, all of the Excepted Property to the same extent as if the Excepted Property had been described in the Declaration; it being intended that the Excepted Property shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the easements, restrictions, covenants, charges, liens and conditions set out in the Declaration which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Excepted Property and which shall be binding on all parties having any right, title, or interest in the Excepted Property or any portion thereof, and their respective heirs, successors, successors in title, and assigns, and which shall inure to the benefit of each owner thereof. It is further declared and agreed that for purposes of applying the terms of the Declaration to the Excepted Property, those portions of the Excepted Property designated as Lots 25 and 26 of Pinckney Bluff and designated as Lots 12 and 13 of Goat Island shall be deemed to be "Lots" as defined in the Declaration, and those portions of the Excepted Property which lie between Lots 25 and 26 of Pinckney Bluff and those portions of the Excepted Property which lie between Lots 12 and 13 of Goat Island shall be deemed to be "Common Area" under the Declaration, which has been conveyed to the adjacent lot owners pursuant to Section 3.07 of the Declaration. It is further declared and

agreed that the portion of the Excepted Property which is not included within Lots 25 and 26 of Pinckney Bluff or in Lots 12 and 13 of Goat Island, shall be subject to all of the terms and conditions of Section 3.07 of the Declaration, to the same extent as if said property had been a portion of the "Common Area" under the Declaration conveyed by Brays Island Plantation Colony, Inc., to Pingree.

IN WITNESS WHEREOF, the undersigned have executed this Supplement to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

SUMNER PINGREE, JR. (SEAL)

BRAYS ISLAND COMPANY, INC. (SEAL)

By:

Its: President

By:

Its: Secretary

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

STATE OF SOUTH CAROLINA)
COUNTY OF ~~RICHLAND~~ CHARLESTON)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named SUMNER PINGREE, JR. sign, seal and as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

10th day of January, 1989.

_____ (LS)
Notary Public for South Carolina
Commission Expires: 4/21/92

STATE OF SOUTH CAROLINA)
COUNTY OF ~~RICHLAND~~ CHARLESTON)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC. by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

10th day of January, 1989.

_____ (LS)
Notary Public for South Carolina
Commission Expires: 4/21/92

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

EXHIBIT "A"

PROPERTY DESCRIPTION

ALL those certain lots of land containing one (1) acre each and being a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, said lots being shown and designated as Lots 12 and 13, Goat Island, and Lots 25 and 26, Pinckney Bluff, on a Plat of Brays Island Plantation, made by Davis & Floyd, Inc., Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said Plat having been amended by a Supplemental Legend dated November 1, 1988, and recorded in Book 519 at Page 2059, an Amendment to Plat dated November 2, 1988, and recorded in Book 519 at Page 2061, and a Plat showing the relocation of Lot 12, Haulover Point dated October 14, 1988, and recorded in Plat Book 35 at Page 321, (the "Plat"); the said lots having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said Plat (as amended) more fully appear.

TOGETHER with the land lying adjacent to and between the aforesaid Lots 12 and 13, Goat Island and the land lying adjacent to and between the aforesaid Lots 25 and 26, Pinckney Bluff, all of the aforesaid property to be shown and delineated on plats of the same to be recorded in the R.M.C. Office for Beaufort County.

Para-Legal

FILED AT 4:47 O'CLOCK P
BEAUFORT COUNTY S. C.
JAN 10 1989
RECORDED IN BOOK 520 PAGE 530
Floyd A. Dalton
REGISTER OF MESNE CONVEYANCE

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

29992

PREPARED BY: Gottlieb & Smith, P.A.
PO Box 51
Columbia, SC 29202

100590(143R)
FA.DCCR

1549

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

FIRST AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(Book 520, Page 484)

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 11th day of September, 1990, by BRAYS ISLAND COMPANY, INC. ("the Company").

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on certain property known as Brays Island Plantation; and

WHEREAS, under the Declaration certain property is designated as Common Area, including the area shown on a plat of Inn Property at Brays Island Plantation prepared by Davis and Floyd, dated September 11, 1990, a copy of said plat attached hereto as Exhibit A, with the original to be recorded in the RMC Office for Beaufort County; the property shown on said plat being hereinafter referred to as "the Inn Property;" and

WHEREAS, the Inn Property has certain historical and environmental attributes which the Company wishes to enhance and protect by prohibiting the location of any Lot (as defined in the Declaration) on the Inn Property and by prohibiting on the portion of the Inn Property designated as Parcel A on the aforesaid Plat any structures or other such amenities for the use of the general community;

NOW, THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration as follows:

1. The Inn Property shall be and remain Common Area (as defined in the Declaration) owned by Brays Island Plantation Colony, Inc., and no Lot (as defined in the Declaration) shall be established or relocated onto the Inn Property.

2. As to that portion of the Inn Property designated as Parcel A on the aforesaid plat, no structure or other such amenity for the use of the general community shall be allowed on the property designated as Parcel A, which property is intended to remain generally in its natural state.

3. Notwithstanding anything to the contrary in the Declaration, the foregoing restrictions regarding the Inn Property may not be amended or modified for a period of twenty-five (25) years from the date of this Declaration. Thereafter, the foregoing restriction regarding the Inn Property may be amended or modified only as provided in Section 14.03 of the Declaration; provided, however, the vote required for any such amendment or modification shall be increased from two-thirds to ninety (90%) percent of the Owners.

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4. Section 14.03(d) of the Declaration is hereby amended to read as follows:

"Any such amendments to this Declaration are subject to the provisions of Section 1.03 of this Declaration and to the provisions of the First Amendment to Declaration of Covenants, Conditions and Restrictions."

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this First Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

Jerri Harvey
Judy Blankenship
Jerri Harvey
Judy Blankenship

BRAYS ISLAND COMPANY, INC. (SEAL)

By: _____
Sumner Pingree, Jr., President

By: _____
Henry C. Chambers, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC., hereby consents to and joins in the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

Jerri Harvey
Judy Blankenship
Jerri Harvey
Judy Blankenship

BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

By: _____

Its: President

By: _____

Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1989, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

Jeanne C. Fain
Ruth Ann Stupp

THE SOUTH CAROLINA NATIONAL BANK (SEAL)

By: Norman M. Tisdale

Its: Senior Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

31 day of October, 1990.

Judy Blankenship (LS)
Notary Public for South Carolina
Commission Expires: 02/13/2000

Terri Harvey

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND PLANTATION COLONY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

31 day of October, 1990.

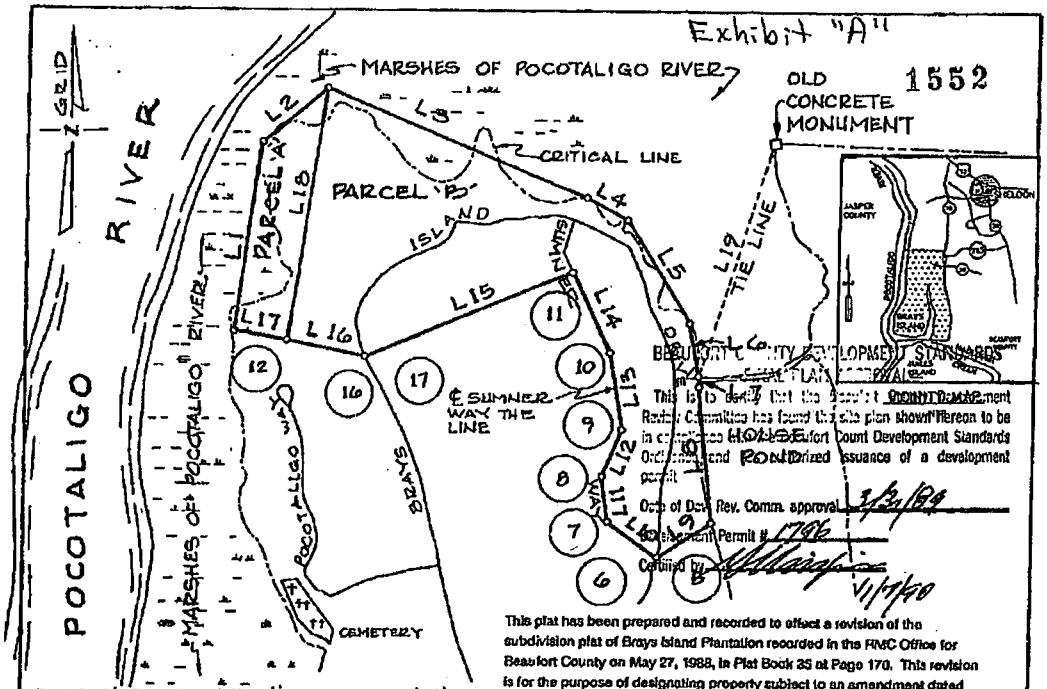
Judy Blankenship (LS)
Notary Public for South Carolina
Commission Expires: 02/13/2000

Terri Harvey

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

Exhibit "A"



REVISION 2- TITLE, NOTES & VICINITY MAP 01 NOV '90
REVISION 1- DIVIDE INTO PARCEL A & B
DATE: 04 OCTOPBER 1990

LINE NO.	DIRECTION	LENGTH
L1	N05°07'02"E	919.57'
L2	N48°15'20"E	406.42'
L3	S68°27'18"E	1382.89'
L4	S62°08'55"E	224.15'
L5	S32°46'13"E	579.29'
L6	S11°36'08"E	267.55'
L7	S05°52'04"E	56.20'
L8	S07°02'23"E	676.81'
L9	S55°05'07"W	320.43'
L10	N53°27'18"W	294.45'
L11	N08°43'42"W	230.00'
L12	N19°59'05"E	250.00'
L13	N10°34'04"W	390.00'
L14	N26°40'11"W	430.00'
L15	S66°39'18"W	1089.12'
L16	N79°35'07"W	372.76'
L17	N79°35'07"W	250.00'
L18	S06°27'22"W	1239.56'
L19	N15°41'19"E	1174.76'

ALL LINES COMPILED. NO SURVEY BY ME THIS DATE / WILLIAM C. MARTIN, RLS 10290
DATE: 2 NOV. 90

This is to certify that the Beaufort County Development Review Committee has found the site plan shown hereon to be in conformance with the Beaufort County Development Standards Ordinance and authorized issuance of a development permit.

Chmn. of Dev. Rev. Comm. approval 3/23/89
Development Permit # 1796
Certified by

This plat has been prepared and recorded to effect a revision of the subdivision plat of Brays Island Plantation recorded in the RMC Office for Beaufort County on May 27, 1988, in Plat Book 35 at Page 170. This revision is for the purpose of designating property subject to an amendment dated September 11, 1990 to the Brays Island declaration of covenants, conditions and restrictions. The Beaufort County RMC Office is requested to note this revision on the subdivision plat recorded in Plat Book 35 at Page 170. By its signature below, Brays Island Company, Inc. approves the recording of this plat as the TWELFTH Amendment to Plat recorded in Plat Book 35 at page 170.

BRAYS ISLAND COMPANY, INC.
By:

COMPILED PLAT OF
"INN PROPERTY"
AT
BRAYS ISLAND PLANTATION
BEAUFORT COUNTY, S.C.
11 SEP 1990
BRAYS ISLAND COMPANY, INC

DAVIS & FLOYD, INC.
GREENWOOD, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

1553

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

16th day of October, 1990.

Martha F. Ferguson (LS)
Notary Public for South Carolina
Commission Expires: 6-28-2000

Goldlieb & Smith

FILED AT	BEAUFORT COUNTY S.C.	RECORDED IN BOOK
11:37		564
O'CLOCK	NOV 8 1990	PAGE
A M		1549

REGISTER OF MESNE CONVEYANCES

-4-

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

21090

PREPARED BY: Gottlieb & Smith, P.A.
PO Box 51
Columbia, SC 29202

10.00

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032991(143R)
SA.DCCR

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SECOND AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(Book 520, Page 484)

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 28th day of March, 1991, by BRAYS ISLAND COMPANY, INC. ("the Company").

WHEREAS, by a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on certain property known as Brays Island Plantation; and

WHEREAS, the Company desires to amend Section 4.02(a) of the Declaration relating to the designation of Members of the Colony;

NOW, THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration by deleting Section 4.02(a) in its entirety and substituting in lieu thereof the following:

4.02 Colony Membership

(a) The Owner of each lot shall have the right to designate three members of his immediate family (including himself if he is to be a Member) as Members of the Colony and those Members shall have the nonexclusive right, privilege and easement of use and enjoyment in and to the Common Areas subject to the terms of this Declaration and the By-Laws and rules and regulations of the Board. If the Owner of a lot is a multiple number of individuals, or a corporation, partnership, or other such entity, the Members designated by such Owner shall all be members of one immediate family. Any Owner who is not a Member shall not have any right, privilege or easement of use and enjoyment in and to the Common Areas except that such Owner shall be permitted access to the Plantation in accordance with such rules and regulations as may be from time to time adopted by the Board. For the purposes of determining the number of Members to be designated by the Owner of each Lot, any Member and that Member's spouse shall be deemed to constitute only one Member. "Immediate family" shall be interpreted as meaning parents, siblings, children, and their spouses; provided, however, that in unusual situations and for good cause the Owner may petition the Board for an exception, which the Board may grant in its discretion.

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IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this Second Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

BRAYS ISLAND COMPANY, INC. (SEAL)

By: _____
Sumner Pingree, Jr., President

By: _____
Henry C. Chambers, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC., hereby consents to and joins in the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

By: _____

Its: President

By: _____

Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1989, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

THE SOUTH CAROLINA NATIONAL BANK (SEAL)

By: _____

Its: Vice President

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

1st day of August, 1991

(LS)
Notary Public for South Carolina
Commission Expires: 3-17-99

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND PLANTATION COLONY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

1st day of August, 1991

(LS)
Notary Public for South Carolina
Commission Expires: 3-17-99

ELEC[illegible]FILED 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

2 day of August, 1991.

Brenda K. Young (LS)
Notary Public for South Carolina
Commission Expires:
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires April 27, 1999.

Barbara H. Carter

Gottlieb+Smith

FILED AT	BEAUFORT COUNTY S.C.	RECORDED IN BOOK 582
O'CLOCK P M	AUG 26 1991	PAGE 186

Theresa A. Sickler
REGISTER OF MESNE CONVEYANCES

ELEC... 21 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

12amk 39085

1043

121692(1431ia)
FA.DCCR

PREPARED BY: Gottlieb & Smith, P.A.
PO Box 51, Columbia, SC 29202

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THIRD AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(Book 520, Page 484)

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 16th day of December, 1992, by BRAYS ISLAND COMPANY, INC. ("the Company").

PRELIMINARY STATEMENT

By a Declaration of Covenants, Conditions and Restrictions dated November 11, 1988, and recorded in the RMC Office for Beaufort County, South Carolina in Book 520 at page 484, last amended by Second Amendment dated as of March 20, 1991, and recorded in Book 582 at page 186 ("the Declaration"), the Company imposed certain covenants, conditions and restrictions on property known as Brays Island Plantation.

Under the Declaration, certain property is designated as Common Area, including an area near and generally west of Lot 11, Goat Island, said area being shown and delineated as Parcel A on a plat prepared by Davis and Floyd, dated December 22, 1992, a copy of said plat being attached hereto as Exhibit A; this property being hereinafter referred to as the "Parcel A Property." The Company wishes to further restrict the Parcel A Property by prohibiting the location of any structures thereon except as hereinafter provided.

Under the Declaration, owners of lots at Brays Island Plantation may, subject to certain conditions, construct, maintain, and use docks, decks, and other such facilities. The Company wishes to further amend the Declaration to clarify the intended use of such docks, decks, and other such facilities.

NOW, THEREFORE, under the authority of Section 14.02 of the Declaration, the Company hereby amends the Declaration as follows:

1. No structures shall be allowed on the Parcel A Property, which property is intended to remain generally in its natural state; provided, however, this restriction shall not prohibit the construction, maintenance, and use of a dock, deck, or other such facilities by the owner of Lot 11, Goat Island, subject to approval by the Architectural Review Board (as defined in the Declaration) and further subject to all other restrictions, covenants, and conditions in the Declaration.

2. Section 12.02 of the Declaration is hereby amended by adding the following sentence at the end of Section 12.02:

> Unless such written approval of the Architectural Review Board states otherwise, the dock, deck, boathouse or other

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such facility erected by an Owner shall not be used by persons other than the Owner, the Owner's successors in title and others with permission for such use from the Owner or the Owner's successors in title, subject, however, to Section 12.03.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Company have executed this Third Amendment to Declaration of Covenants, Conditions and Restrictions as of the date first above written.

WITNESSES:

Cindy Seighman

Janet C Hull

Cindy Seighman

Janet C Hull

BRAYS ISLAND COMPANY, INC. (SEAL)

By: _____
Summer Pingree, Jr., President

By: _____
Phillip Patterson, Secretary

The undersigned, BRAYS ISLAND PLANTATION COLONY, INC., hereby consents to and joins in the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

Cindy Seighman

Janet C Hull

Cindy Seighman

Janet C Hull

BRAYS ISLAND PLANTATION COLONY, INC. (SEAL)

By: _____

Its: President

By: _____

Its: Secretary

The undersigned being the Assignee under an Assignment of Developers Rights dated January 10, 1989, and recorded in the RMC Office for Beaufort County in Mortgage Book 436 at page 2050, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

Nancy Evans

Brenda T. Young

THE SOUTH CAROLINA NATIONAL BANK (SEAL)

By: Josephine M. Cary

Its: Vice President

The undersigned being the owner of Lots 12 and 13, Goat Island, Brays Island Plantation, Beaufort County, South Carolina, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

Cindy Seighman
Janet C Hull

SUMNER PINGREE, JR. (SEAL)

The undersigned being the owner of Lot 10, Goat Island, Brays Island Plantation, Beaufort County, South Carolina, hereby consents to the foregoing Third Amendment to Declaration of Covenants, Conditions and Restrictions.

WITNESSES:

Cindy Seighman
Janet C Hull

BRAYS ISLAND COMPANY, INC. (SEAL)

By:
Its: Chairman

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

17 day of December, 1992.

Janet C Hull (LS)
Notary Public for South Carolina
Commission Expires: 10-29-95

Cindy Seighman

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ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND PLANTATION COLONY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

17 day of December, 1992.

Janet C Hall (LS)
Notary Public for South Carolina
Commission Expires: 10-29-95

Cindy Seighman

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named THE SOUTH CAROLINA NATIONAL BANK by its duly authorized officer, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

17 day of December, 1992.

Brenda S. Young (LS)
Notary Public for South Carolina
Commission Expires:

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires April 27, 1999.

nancy Evans

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named SUMNER PINGREE, JR. sign, seal and as his act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

17 day of December, 1992.

Janet C Hall (LS)
Notary Public for South Carolina
Commission Expires: 10.29-95

Cindy Seighman

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PERSONALLY APPEARED before me the first witness subscribed above and made oath that s/he saw the within named BRAYS ISLAND COMPANY, INC., by its duly authorized officers, sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that s/he with the other witness whose name appears above as a witness, witnessed the execution thereof.

SWORN TO BEFORE ME THIS

17 day of December, 1992.

Janet C Hall (LS)
Notary Public for South Carolina
Commission Expires: 10-29-95

Cindy Seighman

ELECTRONICALLY FILED - 2017 Jul 31 12:14 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

THIS PLAT HAS BEEN PREPARED AND RECORDED TO EFFECT A REVISION OF THE SUBDIVISION PLAT OF BRAYS ISLAND PLANTATION RECORDED IN THE RMC OFFICE FOR BEAUFORT COUNTY ON MAY 27,1988, IN PLAT BOOK 35 AT PAGE 170, AS AMENDED. THIS REVISION IS FOR THE PURPOSE OF DESIGNATING PROPERTY SUBJECT TO AN AMENDMENT DATED DECEMBER 16, 1992 TO THE BRAYS ISLAND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS. THE BEAUFORT COUNTY RMC OFFICE IS REQUESTED TO NOTE THIS REVISION ON THE SUBDIVISION PLAT RECORDED IN PLAT BOOK 35 AT PAGE 170, AS AMENDED.

BY IT'S SIGNATURE BELOW, BRAYS ISLAND COMPANY, INC. APPROVES THE RECORDING OF THIS PLAT AS THE 27th AMENDMENT TO PLAT RECORDED IN PLAT BOOK 35 AT PAGE 170, AS AMENDED.

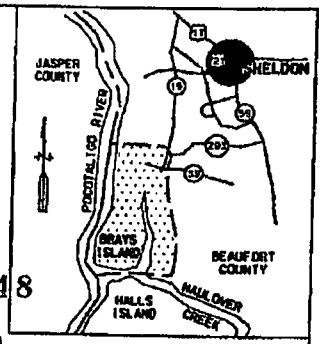
BRAYS ISLAND COMPANY. INC.

By: _____

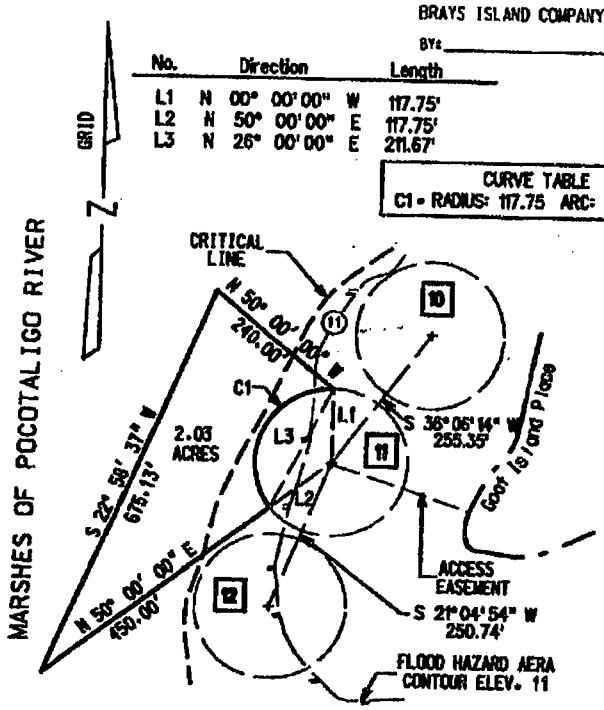
No.	Direction	Length
L1	N 00° 00' 00" W	117.75'
L2	N 50° 00' 00" E	117.75'
L3	N 26° 00' 00" E	211.67'

1048

CURVE TABLE
C1 - RADIUS: 117.75 ARC: 263.06'



VICINITY MAP
NOT TO SCALE



LEGEND

- TIE LINE
- + CENTER POINT of LOT
- ℄ of ROAD
- PROPERTY LINE
- FLOOD HAZARD LIMIT
- CRITICAL LINE

REF. MON. FOR SURVEY IS CENTER POINT MON. OF LOT 11
COORDINATES ARE
N 262,248.716
E 2,851,975.137

1. 3/4 INCH GALVANIZED IRON PIN PLACED AT CENTER OF EACH LOT (UNLESS OTHERWISE SPECIFIED). STATE PLANE COORDINATES ARE BASED ON NAD '83.
2. EACH LOT HAS A RADIUS OF 117.752 FEET AND CONTAINS 1.00 ACRE (UNLESS OTHERWISE SHOWN).
3. PURPOSE OF THIS SURVEY IS TO ESTABLISH AN AREA TO BE RESTRICTED PURSUANT TO THE 3rd AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRAYS ISLAND PLANTATION.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN.

DATE: 12/22/92

WILLIAM C. MARTIN, P.L.S. S.C. 10290

EXHIBIT A

SHOWING EXISTING PARCEL AS SHOWN ON BEAUFORT COUNTY TAX MAP 7

12-22-92

PLAT
SHOWING
PARCEL A
NEAR LOT 11
GOAT ISLAND
LOCATED ON
BRAYS ISLAND PLANTATION
IN
BEAUFORT COUNTY, SOUTH CAROLINA

SURVEYED BY
DAVIS & FLOYD, INC.
CONSULTING ENGINEERS
GREENWOOD, SOUTH CAROLINA
22 DECEMBER 1992

200 150 100 50 0 200 400
SCALE IN FEET
1 INCH = 200 FEET

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GOTTLIEB & SMITH
P. O. BOX
COLUMBIA, S. C.

92 DEC 28 P 4:00

1049

Gottlieb

FILED AT 4:00 O'CLOCK P M
BEAUFORT COUNTY S.C.
DEC 28 1992
RECORDED IN BOOK 615 PAGE 1043
REGISTER OF MESNE CONVEYANCES

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FOURTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRAYS ISLAND PLANTATION

THIS FOURTH AMENDMENT (this "Amendment") is made and entered into to be effective as of the 30th day of November, 1993, by, between and among Brays Island Company, Inc., Brays Island Plantation Colony, Inc. and all persons who are Owners pursuant to that certain Declaration of Covenants, Conditions and Restrictions (the "Declaration") dated as of November 11, 1988 for Brays Island Plantation, recorded in Deed Book 520, at page 484, in the Office of the RMC for Beaufort County as amended. (Unless otherwise defined in this Amendment, all capitalized terms shall have the respective meanings set forth in the Declaration.)

BACKGROUND

The Company, the Colony, Shelbray Associates, L.P. (the "Partnership") and Sumner Pingree, Jr. ("Pingree") have entered into an Agreement dated as of September 30, 1993, as amended by Amendment to Agreement dated as of October 1, 1993 (collectively, the "Agreement"), whereby the Declaration is to be amended as hereinafter provided.

On October 1, 1993, at the Annual Meeting of Owners, written consents were obtained from Owners owning a majority of the Lots to adopt this Amendment; and on November 30, 1993, at a Special Meeting of Owners duly called upon more than ten (10) days prior written notice (which notice was accompanied by an unsigned copy of this Amendment), Owners owning more than two-thirds of the Lots approved this Amendment.

NOW, THEREFORE, in accordance with Sections 14.02 and 14.03 of the Declaration, the parties hereto do hereby amend the Declaration as follows:

1. Article II of the Declaration is hereby amended by adding thereto the following defined terms:

2.17 "Agreement" means that certain Agreement entered into as of September 30, 1993 among the Colony, the Company, the Partnership and Pingree, as amended by Amendment to Agreement dated as of October 1, 1993 and all other amendments to the Agreement adopted pursuant to the terms thereof.

2.18 "Restricted Lots" means those certain 15 Lots more fully described in Exhibit A-1.

2.19 "Pingree" means Sumner Pingree, Jr.

2.20 "Partnership" means Shelbray Associates, L.P.

2.21 "Residual Lots" means all of the Lots to be conveyed to the Colony by the Partnership in accordance with the terms of the Agreement after the Partnership has made cash distributions to its partners equal to all invested capital plus a 15% internal annual rate of return.

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2.22 "User Fee" means that portion of the assessment which are available as a credit against Recreational Charges otherwise incurred by the Owner; provided, however, that unless otherwise expressly provided by the Board, User Fees for any fiscal year which are not otherwise utilized during such fiscal year shall not be available as a credit against Recreational Charges incurred in the subsequent fiscal year.

2. Section 3.18 of the Declaration is hereby deleted in its entirety, and the following shall be substituted in place thereof:

3.18 Conveyance of Lots to the Colony. Company is the owner of fifteen (15) lots (the "Restricted Lots") more particularly described in Exhibit "A" attached hereto. These Restricted Lots shall not be sold (or any contract of sale, lease or other document of conveyance entered into by Company) for five (5) years prior to December 1, 1998, with no membership rights to be available and no assessments, Recreational Charges, User Fees or other sums levied against the Restricted Lots during this 5 year period. The restriction on sale shall not apply to transfers by Company to Sumner Pingree, Jr. ("Pingree") or members of his immediate family, any bankruptcy sale, foreclosure sale or sale by judgment creditors, but the restriction on resale shall continue in full force against all grantees (meaning all persons who receive deeds directly or indirectly from the Company to any of the Restricted Lots). Anything to the contrary contained herein notwithstanding, this restriction on resale shall not be applicable to the transaction which is the subject of that certain Contract of Sale, dated May 15, 1992, between the Company and Ramon N. Tessler regarding Lot 79, Bellevue. The Company shall have the right to perform under the terms of said contract, and Lot 79, Bellevue shall not be subject to the restrictions contained in this paragraph; provided, however, that on and after such conveyance, the Owner of such Lot shall become liable for payment of all assessments and other obligations imposed upon the Owners of Lots generally.

3. Section 9.03 is hereby amended by deleting the second and third sentences in their entirety and substituting in place thereof the following: "The annual assessment (excluding any portion designated as a User Fee) for a Lot with one (1) or no Member designated for that year shall be increased by 50% if two (2) Members are designated for that year and by 100% if three (3) Members are designated for that year; and shall include one (1) User Fee if one (1) or no member is designated for that year, two (2) User Fees if two (2) members are designated for that year, and three (3) User Fees if three (3) Members are designated for that year. (For example, if the annual assessment per Lot is $10,000 and the Board has established a $3,000 User Fee, the annual assessment will be $16,500 for a Lot with two (2) Members designated for that year and $23,000 for a Lot with three (3) Members designated for that year.)"

Section 9.03 is also amended by adding the following additional sentence: "Anything to the contrary set forth in this Declaration notwithstanding, (a) the Board shall be entitled to include in the assessment for each year a User Fee, which for all purposes shall be deemed an assessment but the amount of such User Fee shall be available for use by the Member as a credit against Recreational Charges which such Member otherwise incurs for such fiscal year (with any unused User Fees not to be carried over to subsequent fiscal years unless expressly provided by the Board) and (b) assessments levied against the Partnership, the Company and owners of multiple Lots shall be limited as set forth in Sections 15.5, 15.7 and 15.8, respectively.

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4. Section 11.14 is amended by deleting all references to "Company" and substituting in place thereof "Partnership".

5. The following Article XV is hereby added to the Declaration:

ARTICLE XV

Special Provisions Required by Agreement

15.1 Execution of Agreement. The Owners of the Colony have ratified, confirmed and approved the execution of the Agreement by the Colony and acknowledge that the Agreement constitutes a contract of sale whereby the Colony is acquiring the Residual Lots on the terms and conditions set forth in the Agreement. Anything to the contrary contained in this Declaration, the Articles or the Bylaws of the Colony notwithstanding, the Colony is authorized and empowered to acquire title to the Residual Lots and to dispose of the same in such manner as deemed appropriate by the Board, with the proceeds from the sale of Residual Lots to be utilized in such a manner as deemed appropriate by the Board.

15.2. Replacement of Letters of Credit. The Colony shall make appropriate arrangements with The South Carolina National Bank ("SCN") or another financial institution to replace those certain letters of credit (the "LC's") issued by SCN to Beaufort County in the aggregate amount of $801,000, and cause the release and discharge of the Company and Pingree from any further liability of any nature related thereto, as well as cause the release of any collateral provided by the Company and/or Pingree related to the LC's.

15.3. Sewer Amenities. The Colony shall assume responsibility for (i) construction of the sewer system required by the South Carolina Department of Health and Environmental Control and the amenities for which the LC's have been posted; (ii) all remaining wetlands mitigation activities (if any); and (iii) construction of a boat storage area, with all said improvements to be constructed in such manner as deemed appropriate by the Board and become the sole and exclusive property of the Colony. The Colony shall limit the total cost of the forgoing capital improvements to an amount not to exceed $1,000,000 to the fullest extent possible. The Colony shall be entitled to charge a reasonable connection fee to each Owner who constructs a dwelling unit after the date hereof and connects to said sewer system equal to the additional amount which would otherwise have been incurred in installation of a separate septic tank system. Owners required to install separate septic tank systems prior to connection to the sewer system shall not be responsible for such fee.

15.3. $1,750,000.00 Loan Authorization. The Colony is authorized to borrow up to $1,750,000 from SCN, or any other financial institution deemed appropriate, with $1,000,000 representing a term loan which will provide funds for the capital improvements described above and up to $750,000 (or such lesser amount) being available for working capital. This indebtedness shall be supported by the full faith and credit of the Colony and the lender shall be provided with such collateral as may be requested by the lender from time to time; provided, however, that the lender shall be required to first pursue surplus Colony property to the fullest extent practicable to recover on the Colony's indebtedness and upon any foreclosure sale, to the extent the real property sold does not already constitute a platted Lot, said real estate shall no

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longer be deemed part of the Common Area or converted to a Lot, with no owner thereof entitled to be considered an Owner or member of the Colony for any purpose. The Colony may refinance or otherwise replace this credit facility from time to time in the discretion of the Board of the Colony. The Colony is authorized and empowered to enter into undertakings of any nature and execute all documents required by the lender from time to time to evidence, preserve, perfect and protect the rights of the lender so long as any sum is due and owing related to the foregoing credit facilities, including (without limitation) notes, negative pledges, mortgages, security agreements, undertakings to make special assessments and indemnifications. All sums due and owing with respect to such credit facilities from time to time shall be deemed Common Expenses to be paid by way of assessments levied in accordance with the terms of this Declaration.

15.4. Divisions of Annual Assessments by Board. The Board shall be entitled to divide assessments levied against Owners into various components, including (without limitation) regular dues or assessments, User Fees, and assessments for capital expenditure, replacement reserves and retirement of the Colony's indebtedness.

15.5. Assessments of Shelbray Associates, L.P. Anything to the contrary contained in this Declaration notwithstanding, the Partnership will not be obligated to pay more than 70% of the total amount assessed against Owners as a result of the ownership of individual Lots each year (including User Fees); provided, however, that the Partnership shall not have any membership or use privileges (or credits for User Fees) related to lots as to which reduced assessments are paid; and further provided, however, that the Partnership shall be obligated to pay assessments on all Lots acquired from the Company for all of fiscal year 1993-94 at the 70% level, notwithstanding the fact that such acquisition may not occur until December, 1993.

15.6. Partnership's Rights to Use Common Areas and Facilities. The Partnership shall have the right to utilize all Common Areas and Recreational Amenities for guests and prospective Lot purchasers, but will pay applicable guest charges for all such usage.

15.7. Company's Assessment Arrangements. The Company will be entitled to the same assessment arrangement as the Partnership under Section 15.5 above for Lots as to which the Company retains title pending the sale thereof; provided, however, that no assessment of any nature shall be levied against the Restricted Lots during the five year restriction period, all as set forth in Section 3.18.

15.8. Rights of Owners of Multiple Lots. Owners of more than one lot in the Plantation will be entitled to the same treatment as the Partnership under Section 15.5 above for all Lots in excess of one Lot.

15.9. Upgrade of Colony Services. The Partnership shall be entitled to request an upgrade of the level of Colony services prior to the commencement of each fiscal year so long as the Partnership agrees to pay all additional expenses incurred in connection with the increased level of services.

15.10. Marketing by Partnership. The Partnership will be permitted to undertake marketing activities on or about the Plantation and will receive cooperation from the Colony with

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respect to Lot relocations and other activities reasonably required by the Partnership to permit it to continue to dispose of Lots in a manner similar to the marketing activities employed by the Colony during the Development Period, including without limitation, exercising all rights which were available to the Company pursuant to Section 11.13 hereof during the Development Period.

15.11. Release of Company. The Colony is authorized to join in the release described in Section 18 of the Agreement, which shall release the Company and its affiliates from all liabilities to the Colony except liabilities accruing after the date of the Agreement relating to the ownership of individual Lots by the Company or its affiliates or use of the Recreational Amenities by the Company or its affiliates.

15.12. No Amendment Without Consent of Company, Colony, Partnership or Pingree. The foregoing provisions of the Declaration set forth in Section 3.18 and Article XV may not be amended without the consent of any party to the Agreement adversely affected thereby.

15.13. Conveyance of Partnership Assets to Colony. In consideration for all of the benefits related to the foregoing, at the Closing (as defined in the Agreement) the Partnership shall execute and deliver to the Colony a written undertaking to convey to the Colony all Residual Lots and other assets of the Partnership, upon the Partnership having made cash distributions to its partners equal to all invested capital and profits representing a 15% internal annual rate of return.

6. Termination of Development Period and Assignment. The Company enters into this Amendment to the Declaration to confirm the termination of the Development Period as specified in Section 2.09(b) and assigns all remaining easements, rights and interests in and to the Declaration to the Colony as provided in Section 14.13.

7. Changes of Boundaries. The Colony agrees to cooperate with the Company and the Partnership in undertaking the reasonable relocation of Lots to accommodate proposed dwellings which have been approved by the Architectural Review Board.

8. Approval of Amendment. The Company confirms that it granted the Partnership the right to vote as the Company's duly appointed proxy and attorney-in-fact for approval of this Amendment at the Special Meeting of Owners held on November 30, 1993 in accordance with Section 14.03 of the Declaration, and that all of the Company's 220 votes were cast by the Partnership in favor of the Amendment. In addition to the foregoing, the Colony confirms that proxies from a majority of Owners other than the Company were voted in favor of this Amendment at such Special Meeting.

9. Continuity. Except as modified hereinabove, the Agreement shall remain in full force and effect.

10. Status of Mortgagees. This Amendment shall be conclusively deemed not to affect the security, title and interest of any mortgagee in that no rights of any mortgagee are altered and the liens of all first priority institutional mortgages shall remain superior in all respects to liens for all assessments which may be due and owing to the Colony by the Owners.

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11. Addition of Exhibit A-1. Exhibit A-1 attached hereto is hereby added to the Declaration.

12. Effectiveness. This Amendment shall be of no force or effect if the Closing (as defined in the Agreement) does not occur by December 15, 1993, with this Amendment to be recorded only in conjunction with such Closing.

EXECUTED to be effective as of the day and year first written above.

SIGNATURE PAGE FOR
AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRAYS ISLAND PLANTATION
dated as of Novenber 30, **1993**

The undersigned, being the President of Brays Island Plantation Colony, Inc. (the "Colony"), does hereby execute and deliver this Signature Page to be effective as of the above date and authorize the affixing of this Signature Page to the above referenced Amendment to evidence the agreement of the Colony to be legally bound thereby. The undersigned further certifies, under oath, unequivocally, that the approval of the required number of Owners was lawfully obtained.

Edward Menzie
Witness

THE COLONY:

BRAYS ISLAND PLANTATION COLONY, INC.

By: David H Clarke (SEAL)
Its President

SWORN and subscribed to before me
this 30th day of November 1993

(L.S.)
Notary Public for South Carolina
My commission expires: 4/1/2004

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me the undersigned witness, who, after first being duly sworn, says that (s)he saw the within-named Brays Island Plantation Colony, Inc., by DAVID H. CLARK, its PRESIDENT deliver the within Fourth Amendment to Declaration of Covenants, Conditions and Restrictions; and that (s)he together with the other witness whose signature appears above, witnessed the execution thereof.

Edward J. Menzie
WITNESS

SWORN and subscribed to before me
this 30th day of NOVEMBER, 1993.

(L.S.)
Notary Public for South Carolina
My commission expires: 11/15/04

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SIGNATURE PAGE FOR
AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRAYS ISLAND PLANTATION
dated as of November 30, 1993

The undersigned does hereby execute and deliver this Signature Page to be effective as of the above date and authorize the affixing of this Signature Page to the above referenced Amendment to evidence the agreement of the undersigned to be legally bound thereby as fully as if the undersigned and all other Owners had simultaneously executed the Amendment.

THE COMPANY:

BRAYS ISLAND COMPANY, INC.

By: _____ (SEAL)
Sumner Pingree
Its Chairman

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF Charleston)

PERSONALLY appeared before me the undersigned witness, who, after first being duly sworn, says that (s)he saw the within-named Brays Island Company, Inc., by Sumner Pingree, its Chairman deliver the within Fourth Amendment to Declaration of Covenants, Conditions and Restrictions; and that (s)he together with the other witness whose signature appears above, witnessed the execution thereof.

WITNESS

SWORN and subscribed to before me
this 30th day of November, 1993.

(L.S.)
Notary Public for South Carolina
My commission expires: 5-5-2002

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EXHIBIT A-1

PROPERTY DESCRIPTION OF 15 BRAYS ISLAND LOTS

ALL of those fifteen (15) one-acre lots, a part of Brays Island Plantation, near the Town of Sheldon, Beaufort County, South Carolina, as shown on a plat of Brays Island Plantation, made by Davis & Floyd, Inc. Consulting Engineers, dated August, 1987, and recorded in the RMC Office for Beaufort County in Plat Book 35 at Page 170; said plat having been last amended by a Plat dated December 22, 1992, and recorded in Plat Book 45 at page 90, said amendment representing the 27th Amendment to the subdivision plat recorded in Plat Book 35 at Page 170; the said 15 lots having such sizes, shapes, dimensions, buttings, and boundings, more or less, as will be reference to said plat (as amended) more fully appear; the said 15 lots being the following:

Scotts Neck Section: Lots 8, 15 and 16

Bellevue Section: Lots 20, 31, 40, 59, 67, 75, 77, 78, 79 and 80

Broad Marsh Section: Lot 16

Haulover Point Section: Lot 14

District 700, Maps 25, 34 and 35

Ed Mruzie

FILED
TERESA A. HARRIS
R.M.C.
BEAUFORT COUNTY, S.C.
2017 DEC -8 PM 12:47

1158

BK 670 PG 1148
FOLDER #

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FIFTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
BRAYS ISLAND PLANTATION

This Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions ("Fifth Amendment") is made as of the 11th day of November, 1996, by Brays Island Plantation Colony, Inc. (the "Colony").

RECITALS

WHEREAS by Declaration of Covenants, Conditions and Restrictions dated November 11, 1988 (the "Declaration"), recorded in the RMC office for Beaufort County, South Carolina, in Book 520 at Page 484, certain covenants, conditions and restrictions were placed on certain property known as Brays Island Plantation; and

WHEREAS, Article XIV, Section 14.03 of the Declaration provides for the procedure to amend the aforementioned Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation; and

WHEREAS, on November 9, 1996, at the Annual Meeting of the Owners, proper notice having been given, Owners comprising more than two-thirds (2/3) of the total votes of the Colony approved the following amendment to Article III, Section 3.18.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Brays Island Plantation Colony, Inc., as Declarant to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation dated November 11, 1988, hereby amends the Declaration as follows:

1. **Section 3.18** of the Declaration is hereby deleted in its entirety and the following shall be substituted in place thereof:

> **3.18** **Conveyance of Lots to the Colony**. Brays Island Company, Inc. is the owner of fourteen (14) lots (the "Lots") more particularly described in Exhibit "A" attached hereto. These Lots shall be marketed on a date agreed upon by the Colony, Brays Island Company, Inc. and Shelbray Associates, L.P. The monthly assessments, recreational charges or user fees for each of the Lots due the Colony shall commence and shall be paid by Brays Island Company, Inc. sixty (60) days after the first date that the Lots are advertised for sale. Notwithstanding the payment of dues by Brays Island Company, Inc. as aforesaid, membership in the Colony and voting rights with respect to each of the Lots shall be reinstated only to those persons or entities who purchase individual Lots from Brays Island Company, Inc., its successors and/or assigns.

IN WITNESS WHEREOF, the duly authorized officers of the undersigned Declarant have

executed this Fifth Amendment as of the date first above written.

WITNESSES:

BRAYS ISLAND PLANTATION COLONY, INC.

Janet Eichner

By:

Judy Blankenship

Attest:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Janet Eichner who on oath says that s/he saw the within **BRAYS ISLAND PLANTATION COLONY, INC.** by RICHARD H. GOSS its Chairman, and Robert Cieslukowski, its Secretary, attest the same, and the said Corporation by said officers, seal said Amendment, and, as its act and deed, deliver the same, and that s/he with Judy Blankenship witnessed the execution thereof.

Janet Eichner

SWORN to before me this 11
day of March, 1997.

Judy Blankenship
Notary Public for South Carolina
My commission expires: 2-13-2000

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Dukes

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JOHN A. SULLIVAN, JR
R.M.C.
BEAUFORT COUNTY, S.C.

97 MAR 17 AM 10:17

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BEAUFORT COUNTY SC - ROD
BK 01548 PG 0286
FILE NUM 2002014022
RECORDING FEES 10.00
RECORDED BY V GARVIN RCPT# 35604
RECORDED 02/28/2002 04:14:56 PM

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SIXTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Re: Brays Island Plantation Colony

WHEREAS, Brays Island Plantation Colony, Inc. was created by a Declaration recorded in Record Book 520 at Page 484 in the Beaufort County, South Carolina Public Records subsequently supplemented in Record Book 520 at Page 530 with amendments in Record Book 564 at Page 1549; Record Book 582 at Page 186; Record Book 615 at page 1043; Record Book 670 at Page 1148 and Record Book 1259 at Page 1394; and,

WHEREAS, pursuant to Section 14.03 of the Declaration, notice was given to the shareholders by the Board of the intention to amend the Declaration to add a new Section 9.11 of the Declaration. At a meeting of the shareholders held on October 20, 2001 for such purpose, the shareholders voted by more than a two-thirds majority in favor (in person and by proxy) to amend the Declaration.

NOW THEREFORE, in accordance with Section 14.03 of the Declaration, the Board of Directors has accepted the vote of the shareholders and has authorized the Chairman of the corporation to give public notice of such by the recording of this Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation Colony, Inc. that Section 9.11 of the Declaration shall be added to the Declaration as set forth on Attachment A hereto.

Executed on February 21, 2002.

Witness 1 Steven E. Craig

Witness 2 J. Thomas Mikell

Brays Island Plantation Colony, Inc.

By: _____
William Lowrie, Chairman

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF PROBATE

PERSONALLY appeared before a Notary Public of South Carolina the undersigned Steven E. Craig (as Witness 1), who after being duly sworn, states that he/she saw the within Brays Island Plantation Colony, Inc. by William Lowrie as Chairman, sign, seal and deliver the within Sixth Amendment to the Bylaws and the he/she together with J. Thomas Mikell (as Witness 2) witnessed the execution thereof.

SWORN to before me on
February 21, 2002

J. Thomas Mikell

J. Thomas Mikell
Notary Public for South Carolina
My Commission Expires: March 12, 2009

Signature of Witness 1
Steven E. Craig

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Attachment A

A new Section 9.11 is adopted to read in the following manner, to wit:

On February 21, 2002 Shelbray Associates, L.P. conveyed 59 lots to Brays Island Plantation Company, LLC. From the date of recording of that deed until February 28, 2007 no assessments (annual, special or otherwise) shall be levied against any of those 59 lots by the Colony (except for assessments due to an emergency or catastrophic event up to $1,000.00 per calendar year per lot) for so long as they are owned by Brays Island Plantation Company, LLC. Upon a conveyance of each of the 59 lots by Brays Island Plantation Company, LLC, all assessments due to the Colony after such conveyance shall become due and payable from the grantee of such lot per all the terms and conditions of Article IX of the Declaration.

4 10 15 Mitchell 9642

BEAUFORT COUNTY SC- ROD
BK 01958 PGS 1692-1695
DATE: 05/21/2004 09:34:09 AM
INST # 2004033220 RCPT# 245855

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

SEVENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Re: Brays Island Plantation Colony

WHEREAS, Brays Island Plantation Colony, Inc. was created by a Declaration recorded in Record Book 520 at Page 484 in the Beaufort County, South Carolina Public Records subsequently supplemented in Record Book 520 at Page 530 with amendments in Record Book 564 at Page 1549; Record Book 582 at Page 186; Record Book 615 at page 1043; Record Book 670 at Page 1148; Record Book 1259 at Page 1394; and Record Book 1548 at Page 206; and,

WHEREAS, pursuant to Section 14.03 of the Declaration, notice was given to the shareholders by the Board of the intention to amend the Declaration to add a new Section 14.15 to the Declaration. At a meeting of the shareholders held on February 20, 2004 for such purpose, the shareholders voted 205 in favor and 22 opposed (more than a two-thirds majority in favor in person and by proxy) to amend the Declaration to add a new Section 14.15 as stated on Attachment A hereto.

NOW THEREFORE, in accordance with Section 14.03 of the Declaration, the Board of Directors has accepted the vote of the shareholders and has authorized the Chairman of the corporation to give public notice of such by the recording of this Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions for Brays Island Plantation Colony, Inc. so that Section 14.15 of the Declaration shall hereafter be added to the Declaration as set forth on Attachment A hereto.

Executed on May 18 **, 2004.**

E.J. Ewing, Jr.
Witness 1 - E.J. Ewing, Jr.

Jude Long
Witness 2 -

Brays Island Plantation Colony, Inc.

By: William Lortz
William Lortz, Chairman

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****

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF PROBATE

PERSONALLY appeared before a Notary Public of South Carolina the undersigned E. J. Ewing, Jr. (as Witness 1), who after being duly sworn, states that he/she saw the within Brays Island Plantation Colony, Inc. by William Lortz as Chairman, sign, seal and deliver the within Seventh Amendment to the Declaration and the he together with Jude Dontje (as Witness 2) witnessed the execution thereof.

SWORN to before me on
May 18, 2004, 2004

Jennifer L. Day (SEAL)

Notary Public for South Carolina
My Commission Expires: March 3, 2014

My Commission Expires
March 3, 2014

E. J. Ewing, Jr.
Signature of Witness 1

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Attachment A

14.15 Marketing Fee

a. The Board shall have the authority to establish a Real Estate Marketing Fee, from time to time, in an amount not to exceed two (2%) of the gross sales price of any Lot which comes under contract after December 31, 2004. This Marketing Fee shall not be payable on (i) the non-profit transfer of a Lot between spouses or issue of an owner, nor (ii) transfers for gifts, nor (iii) transfers by Court Order, nor (Iv) transfers to devisees or heirs by a probate proceeding, nor (v) transfers to trusts or other such legal entities pursuant to estate planning, nor (vi) the exercise of the Repurchase Option in Section 11.14 of the Declaration.

The Real Estate Marketing Fee shall become applicable to all lots still owned by Brays Island Plantation Company, LLC, at such time as they have fulfilled their obligations to provide marketing funds pursuant to Section 15.2(b) of the Purchase Agreement of December 22, 2001 between Shelbray Associates, L.P. and Perry Harvey, et al.

b. Upon the public recording of the amendment to the Declaration to evidence the adoption of this Section 14.15, an equitable lien and charge shall be continuously imposed and instituted at that time upon every Lot within the Colony to insure the payment of the Marketing Fee notwithstanding whomsoever shall be the Owner of the Lot; provided that such lien shall be subordinate to any first mortgage to an institutional lender.

c. The Board shall deposit the monies collected by the Marketing Fees into a separate fund and shall invest the same prudently in low risk investments. The Marketing Fees collected shall be used by the Board, from time to time, for the purpose of marketing and promotion and sale of the Lots on Brays Island in order to enhance and preserve the property values of all Lots. The Marketing Fee shall not be used to supplement annual assessments or special assessments.

d. The Marketing Fee shall be payable to the Colony within ten (10) days of a closing. In addition to the equitable lien and continuing charge upon the Lot, the obligation for payment of the Marketing Fee shall be the personal obligation of the Owner of the Lot. Upon any conveyance of a Lot without payment of the Marketing Fee, the obligation shall become the joint and several personal obligation of the Seller and all subsequent Purchasers of the Lot.

e. Upon the failure of the Marketing Fee being paid when due, the Colony shall have the same remedies to collect the payment as set forth in Sections 9.02 and 9.08 of the Declaration to include the payment of (i) a late charge, (ii) interest at eighteen percent (18.00%) per annum, (iii) all costs of collection and (iv) reasonable attorney's fees.

Consent

Brays Island Plantation Company, LLC consents to the terms and conditions of Section 14.15 of the Declaration of Covenants, Conditions and Restrictions adopted by the shareholders of Brays Island Plantation Colony, Inc. on February 20, 2004 and agrees to pay the Marketing Fee imposed by Section 14.15 on all lots in Brays Island Plantation owned by it after the full payment of the obligation in Paragraph 15.2 (b) of a Purchase Agreement of December 24, 2001 to spend $1,750,000 for marketing at Brays Island.

Executed on May 18, 2004.

Witness 1

Witness 2

Brays Island Plantation Company, LLC

By: Penny Haury
Managing Member

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EXHIBIT NO. 2

TO AFFIDAVIT OF

KEVIN RHATIGAN

FILED 7/31/17

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Wall Street playboy, 28, investigated over $250million losses to his insurance empire after checking himself into mental hospital and moving to South Carolina

- **Alexander Chatfield Burns built a portfolio of businesses in his mid-20s**
- **Enjoyed private cigar clubs and would attend the best restaurants**
- **Financier facing growing questions following a stay at Bellevue Hospital**
- **He later resigned from a company he founded, Southport Lane**
- **Regulators say he siphoned off millions of insurance holdings and swapped them with worthless assets**

By WILLS ROBINSON FOR DAILYMAIL.COM
PUBLISHED: 18:54 EST, 21 March 2015 | **UPDATED:** 09:03 EST, 22 March 2015

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A 28-year-old Wall Street businessman is being investigated over $250million losses made by the insurance empire he set up.

Alexander Chatfield Burns amassed a huge number of businesses, including several insurance companies, in his mid-20s.

Colleagues said he would regular attended cigar clubs, the finest restaurants and even donated wine to the Guggenheim museum in the city.

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It's a girl! Hoda Kotb becomes a mom for the first time at 52 after adopting a baby daughter named Haley Joy
The Today Show anchor

'It's our normal': Flip Or Flop's Christina El Moussa reveals what it is like working with ex Tarek... and says they have no plans to stop Talking on GMA

'Absolutely never': Flip Or Flop's Tarek El Moussa denies he was suicidal during gun incident... and reveals he also suffered testicular cancer

Make-up free Gwyneth Paltrow embraces the natural look as she and beau Brad Falchuk make rare appearance together on coffee run
The low-key couple

Champagne showers: Malia Obama hangs at Aspen hotspot while guests dance on tables and spray over 200 bottles of Veuve

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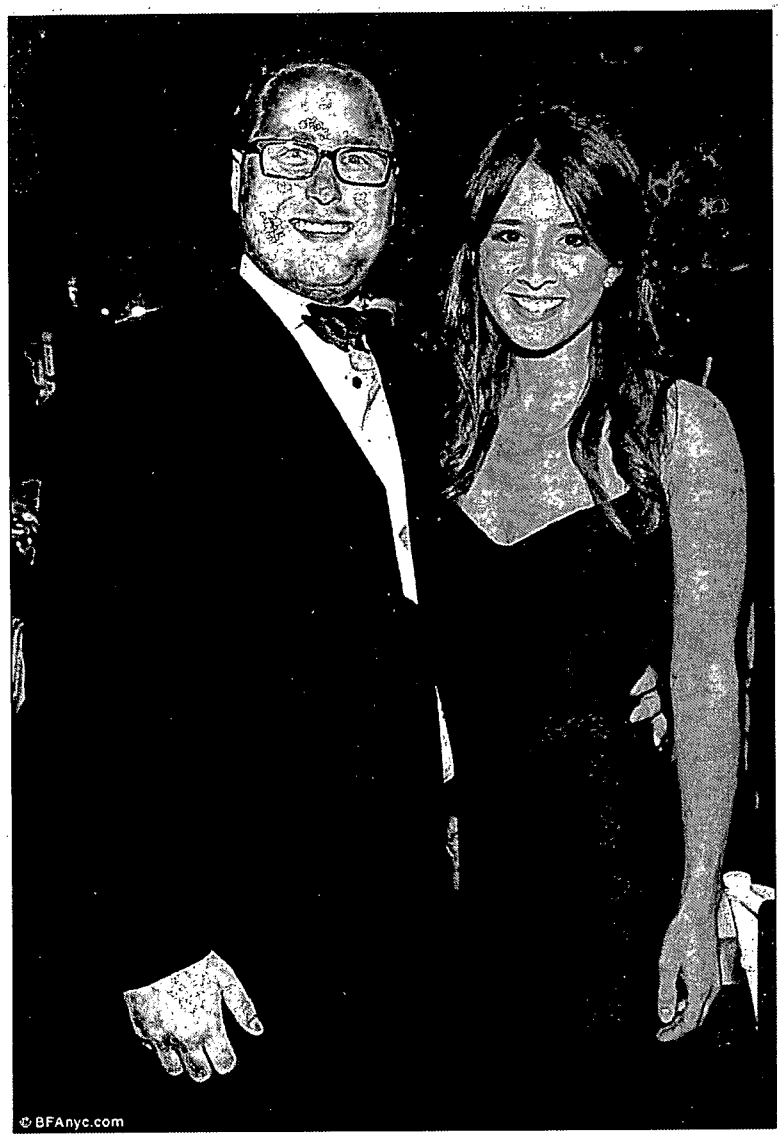

Alexander Chatfield Burns, 28 (pictured with friend Andrea Johnson) amassed a huge number of businesses, including several insurance companies, in his mid-20s. But is now facing an investigation after his companies reportedly lost $250million

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▸How can you tell a celebrity romance is the real deal? Experts reveal signs a couple is genuine (and when it's probably a fraud)
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▸The never-ending vacation! Bella Thorne poses in a bikini AGAIN as she cruises the Caribbean with her gal pals
The 19-year-old actress

▸'I plummeted to the stage': Julie Andrews reveals how she almost DIED while filming her iconic Mary Poppins flying scene when a support wire broke

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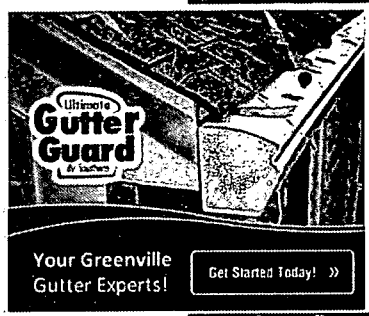
Millie's amazing gesture



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Tot was born in January

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Former Game Of Thrones star Rose Leslie strips off for steamy shower scene with lesbian love Helene York in new legal drama The Good Fight

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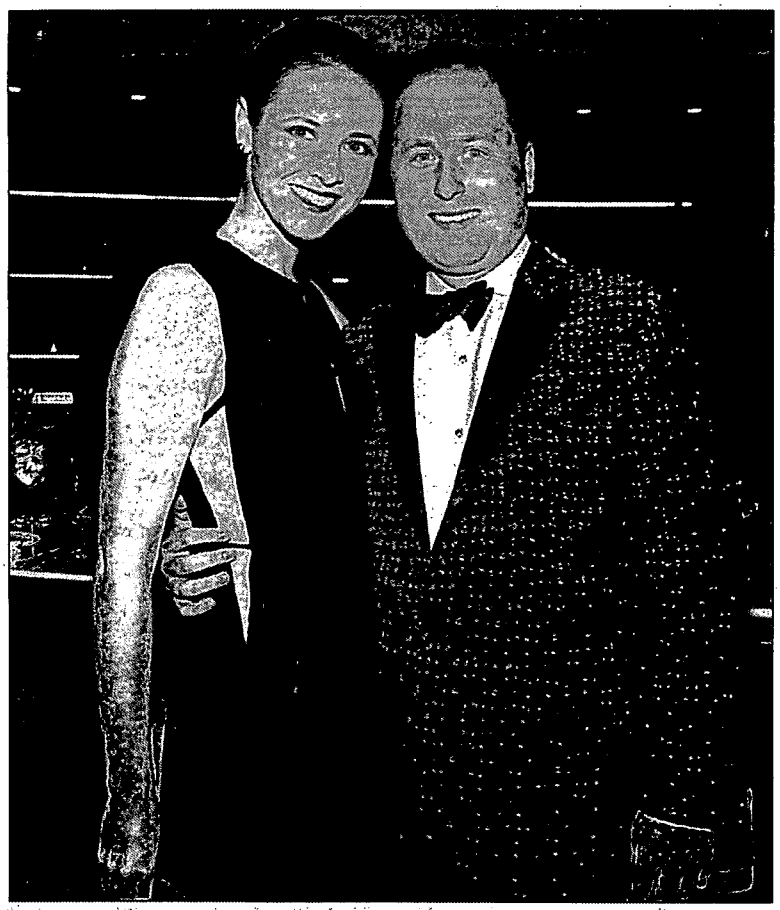

Colleagues said he would regular attended cigar clubs, the finest restaurants and even donated wine to the Guggenheim museum in the city

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But the financier is facing growing questions after he booked himself into Bellevue Hospital in New York a year ago and resigned from Southport Lane Management LLC, leaving a series of unusual asset transfers behind, the **Wall Street Journal** reported.

Regulators in Delaware say Southport under Mr. Burns siphoned off millions of dollars of mainstream insurance holdings and swapped them with assets that are either over-valued or worthless.

Among them is a painting Mr Burns initially believed to be by Caravaggio, but was later discredited as a copy by three art experts.

Since the probe he has moved into a historic building in downtown Charleston, South Carolina.

The Journal reported that Mr Burns had two insurance companies, two offshore reinsurers, a brokerage firm and a web of dealings with other insurers.

His massive portfolio left him in charge of investing hundreds of millions of dollars in additional assets.

Regulators seized control of the two main insurance companies last April.

One based in Delaware is being liquidated, one in Louisiana has been sold. The insurance-company losses total nearly $250 million.

▶ PICTURED: Bachelor yet Josh Murray is seen kissing his ex-fiancee Amanda Stanton before heading into LA hotel together
Hot date in Hollywood

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Burpee Gardening

▶ Blonde bombshell Katy Perry flaunts her slimline figure in chic khaki co-ords as she arrives at BBC radio studios in London
The 32-year-old singer

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The 32-year-old singer

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Regulators in Delaware say Southport Lane Management under Mr Burns siphoned off millions of dollars of mainstream insurance holdings and swapped them with assets that are either over-valued or worthless

According to court documents obtained by the Journal, the companies still active have tens of millions of dollars in questionable assets.

James Denlon, a Louisiana Insurance Commissioner, told the newspaper Mr Burns 'apparently is convincing and good at snookering regulators.'

Jeffrey Leach, a former president at Southport, told the Journal he wanted to be a 'superrich guy'.

'His goal was to build this into a multibillion-dollar insurance operation,' he added.

In statements sent through his lawyer, Mr Burns has called a lawsuit started against him by former employees Southport is 'baseless'.

He blamed 'highly unexpected' events at the insurance companies which prompted a restructuring.

He added that Southport complied with all relevant laws and that he doesn't face any litigation.

Mr Burns has not been accused of any wrongdoing and is not party of any criminal or civil proceeding.

Read more:
Young Financier's Insurance Empire Collapses - WSJ

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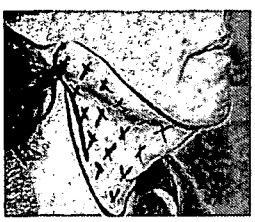

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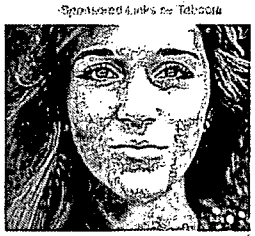
South Beach Skin Lab

12 Mysterious Photos That Cannot be Explained #5 Will Scare the Life out of You!
Definition



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Back to business! Emily Ratajkowski touches down at Milan Fashion Week after having 'private naked photos stolen by hackers'

Tom Schwartz dresses in drag for bachelor party on Vanderpump Rules while Katie Maloney gets lap dance Celebrated his bachelor party

Jeopardy! host Alex Trebek, 76, delights fans by RAPPING lyrics to Kanye, Drake and Desiigner then admits: 'I'm not too good at it but I was getting into it'

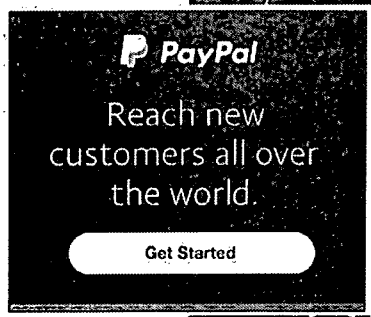
'This is very unexpected': Andi Dorfman stuns Nick Viall after his muddy date with Raven on The Bachelor Showed up at his hotel

'Nice implants': Kylie Jenner reignites boob job rumors as she poses for a VERY busty selfie in a low-cut crop top Previously denied it

Get back! The moment Stella McCartney 'rear-ends taxi driver then drives away from scene of accident without leaving her details'

Brooklyn Beckham manages to raise a smile as he steps out in London after breaking his collarbone in horrific snowboarding accident Victoria Beckham's son

The Sweet Escape! Gwen Stefani soars to new heights as she boards private jet with Blake Shelton and her son Taking a trip



Hello, it's me! Cate Blanchett is almost unrecognizable as she joins in on stage for drag show performance of Adele's hit song wearing a pink beanie

Her little man! Jessica Biel takes adorable son Silas, 22 months, shopping in LA She was seen scooping the tot up into her arms as he wriggled around

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS C/A No.: 2017-CP-07-00265
Alexander Burns, Plaintiff, v. Brays Island Plantation Colony, Inc. and Brays Island Realty, LLC, Defendants.	)	AFFIDAVIT OF PAUL BURTON

PERSONALLY appeared before me, Paul Burton, who being duly sworn, deposes and says as follows:

1. My name is Paul Burton. I am the Broker in Charge and a member of Brays Island Realty, LLC ("Brays Realty"). I am familiar with all operations of Brays Realty.
2. I am a licensed Real Estate Broker in the State of South Carolina.
3. I interacted with the Plaintiff, Alexander Burns, when he purchased the property located at 50 Gun Club Drive, Sheldon, SC (the "Property"). I listed the Property for Mr. Burns when he decided to sell the Property.
4. I have reviewed the Complaint filed by Mr. Burns and the claims he has made against Brays Realty are without merit.
5. I provided Mr. Burns with a copy of the Declaration of Covenants, Conditions and Restrictions for Brays Island (the "Covenants"), and Mr. Burns acknowledged receipt of the Covenants in the Purchase and Sale Agreement dated September 4, 2014, and attached hereto as Exhibit "A" (the "Contract").

6. Brays Realty did not create and does not have the authority to enforce the Covenants.
7. Brays Realty did not coerce Mr. Burns to enter into the Contract or to purchase or sell any property at Brays Island.
8. Mr. Burns was represented in the purchase of the Property by attorney Clay Olsen of Charleston, SC.
9. Owners at Brays Island may select to list their property for sale with any licensed South Carolina Broker. Mr. Burns was in no way required to list the Property with Brays Realty, and he voluntarily elected to do so.
10. Brays Realty markets all of its lot listings equally.
11. Brays Realty has never received payment from Mr. Burns.
12. Brays Realty has never restricted Mr. Burns from the use or enjoyment of his property in anyway.

Paul Burton
Broker in Charge Brays Island Realty, LLC

SWORN to before me this
16th day of August, 2017

Katie Selena Mikell
Notary Public for South Carolina
My commission expires: MY COMMISSION EXPIRES 4/3/2027

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Exhibit "A"

Brays Island Realty, LLC
115 Brays Island Drive
Sheldon, SC 29941
Phone: (843) 846-3100
Fax: (843) 466-1151

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

BRAYS ISLAND RESALE BROKERAGE PURCHASE AND SALE AGREEMENT VACANT LAND

PURCHASER: Alexander C. Burns and / or assigns

SSN: _____ SSN: _____

whose address is 92 Hasell St #301, Charleston, SC 29401

Phone: _____ Office Phone: _____ ("Purchaser").

SELLER: Legacy Holdings LLC

SSN: _____ SSN: _____

whose address is Lot 29 Bellevue, AKA 50 Gun Club Drive, Sheldon, SC 29941

Residence Phone: _____ Office Phone: _____ ("Seller").

This Purchase and Sale Agreement ("Agreement") is submitted this Sept 2nd ,2014 to Seller by Purchaser and shall become binding upon the parties hereto on the date of execution by Seller as indicated on the last page hereof.

WITNESSETH:

1. Real Property: Seller agrees to sell and Purchaser agrees to purchase the following described real estate 50 Gun Club Drive,AKA lot 29 Bellevue, Sheldon, SC 29941in Brays Island Plantation (the "Brays Island Plantation") Sheldon, SC 29941 In Beaufort County, South Carolina, (hereinafter "Property").

This sale and conveyance of the Property shall be subject to all applicable restrictions, covenants, easements, options and affirmative obligations recorded as of the closing date in the Office of the Register of Deeds for Beaufort County, South Carolina.

1.1 Purchase Price: The Purchase Price of the Property isOne Hundred Seventy Thousand Dollars (see Item 18.1, Additional provisions), payable as follows:

1.2 $25,000.00, as an initial earnest money deposit, to be deposited into escrow within 3 business days of a fully executed agreement (to be held by the Escrow Agent hereinafter named);

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1.3 $145,000.00, representing the balance of the Purchase Price, due and payable at Closing by cash or certified funds.

2. **Financing**: This Agreement is contingent upon Purchaser obtaining financing as described in the Financing Addendum attached as Exhibit "A" (if applicable).

3. **Closing Date**: Purchaser and Seller agree that the closing of this transfer shall take place on or before Friday October 10th, 2014("Closing Date" or "Closing"). Closing shall be held at the offices of Purchaser's attorney in Beaufort, South Carolina, or such other place as Purchaser and Seller may agree upon. Upon Closing, Seller shall deliver physical possession of the Property to Purchaser.

4. **Conveyance of Property/Title**: At Closing, Seller shall convey marketable title to the Property to Purchaser in fee simple by general warranty deed, free from encumbrances except such as are herein agreed to be assumed by Purchaser. If an owner's title commitment can be issued by an ALTA title insurance company, without any unusual or extraordinary exceptions, this shall constitute evidence of marketable title. In case legal steps are necessary to perfect the title, such action must be taken by Seller promptly at Seller's own expense. If any defect is found in the title which cannot be corrected within thirty (30) days, the earnest money deposit is to be returned to the Purchaser and this Agreement terminated.

Title to the Property shall be taken as follows: **To be determined prior to closing.**

5. **Closing Expenses and Prorations**:

6.1Seller shall be responsible for paying the Deed Recording Fee (formerly referred to as documentary stamps) as required by Section 12-24-20 of the Code of Laws of South Carolina 1976, as amended, as well as for preparation of the deed. Purchaser shall be responsible for all financing costs, legal fees in connection with the title examination, title insurance costs, any other fees for recording the deed, any loan documentation and for any Beaufort County transfer fees, if applicable. As to any other expenses associated with Closing, Seller and Purchaser will pay such closing expenses customarily paid by sellers and purchasers in Beaufort County, South Carolina. All assessments, Beaufort County taxes, and other applicable charges shall be prorated as of the closing date.

6.2 Seller and Purchaser acknowledge that if Seller is not a resident of South Carolina at the time of closing, Seller and Purchaser have certain responsibilities if Seller recognizes a gain on the sale of the property.

(a) S.C. Form I-290 – Purchaser, through their attorney, is required to withhold 7% of the gain amount if Seller is an individual and 5% of the gain amount if Seller is a Corporation, and shall deposit it, along with Form I-290 with the South Carolina Department of Revenue.

(b) IRS Form 8288 – If Seller is also a non-U.S. citizen, Purchaser is responsible for withholding 10% of the gain amount and depositing it, along with Form 8288 with the IRS.

6.3 Pursuant to Section 14.15 of the Restrictive Covenants referred to in Section 8 hereafter, this transaction is subject to a Real Estate Marketing Fee payable at closing to Brays Island Plantation Colony. The Real Estate Marketing fee shall be in an amount established by Brays Island Plantation Colony not to exceed 2% of

the gross sales price of any property. Funds raised by the collection of this fee shall be deposited in an account by Brays Island Plantation Colony for the restricted use of marketing Brays Island Plantation. The Real Estate Marketing Fee shall not be payable on (i) the non-profit transfer of a property between spouses or issue of an owner, nor (ii) transfers for gifts, nor (iii) transfers by court order, nor (iv) transfers to devisees or heirs by a probate proceeding, nor (v) transfers to a trust or other such legal entities pursuant to estate planning, nor (vi) the exercise of the repurchase option pursuant to Section 11.14 of the Restrictive Covenants as referred to in Paragraph 7 hereafter. **For the calendar year 2014 the Real Estate Marketing Fee is 1.5% of the property's gross sales price. The Real Estate Marketing Fee shall be collected at closing by Purchaser's attorney. Payment shall be the responsibility of the Purchaser.**

6. **Cooperating Brokerage:** Purchaser and Seller warrant that they have had no dealings relating to the sale and purchase of Property with any real estate agent or broker other than members of Brays Island Realty, LLC sales staff, unless one is specifically identified in Paragraph 19 below.

7. **Restrictions and Covenants:** It is expressly understood and agreed by Purchaser that the Property shall be conveyed subject to all recorded plats, all special easements as shown thereon, any applicable restrictions or covenants of record and subject to those general easements, equitable restrictions, limitations on use and affirmative obligations contained in the Declaration of Covenants, Conditions and Restrictions for Brays Island recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 520 at Page 484, as supplemented in Deed Book 520 at Page 530, as amended by the First Amendment in Deed Book 564 at Page 1549, by the Second Amendment in Deed Book 582 at Page 186, by the Third Amendment in Deed Book 615 at Page 1043, by the Fourth Amendment in Deed Book 670 at Page 1148, by the Fifth Amendment in Deed Book 928 at Page 911 and further amended in Book 1259 at Page 1394, by the sixth amendment in Deed Book 1548 at Page 286 and as amended from time to time (hereinafter called the "Restrictive Covenants")., a copy of which has been provided to Purchaser simultaneously with the execution of this Agreement the receipt of which is hereby acknowledged (*Initials here*). Purchaser acknowledges that the Covenants include the following provisions:

7.1 **Architectural Requirements:** No structure or improvement may be erected, placed or altered on the Property except in compliance with the Architectural Guidelines referenced in the Covenants. Any proposed building plan and site plan must be submitted to, and approved in writing by the Colony prior to commencement of construction. Purchaser agrees that the actual construction of the Property will have no material variation from the plans approved by the Colony unless the Colony shall have also approved these variations in writing. The Colony may grant or deny approval of Purchaser's plans, in its sole discretion, including purely aesthetic considerations.

7.2 **Property Owners Association:** In order to provide for the preservation, maintenance, security and operation of common facilities within Brays Island Plantation, as well as to provide the owners of property within Brays Island Plantation with services for the use, and benefit of said owners, there has been created the Brays Island Plantation Colony, Inc. (the "Colony"). All property owners in Brays Island Plantation are deemed to own one share of stock of the Colony. Ownership of that stock cannot be separated from the ownership of the lot. There are three hundred and twenty-five (325) shares of stock and three hundred and twenty-five (325) lots and each lot has one equal vote.

7.3 **Assessments:** The Colony is granted the right to assess property owners within its jurisdiction in order to carry out the prescribed functions. Purchaser hereby acknowledges that it is aware of the right of the Colony to levy and enforce assessments and Purchaser hereby agrees to pay promptly all such assessments which are properly made against Purchaser by the Colony. The Colony assessment is established each fiscal year from October first through September 30th. Currently the monthly assessment is **$1757.00 PER MONTH** for a lot if the

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owner has designated only one member. A member and his or her spouse count as only one member. If additional members, to a maximum of three (3), are designated (in accordance with the Second Amendment to the Brays Island Declaration of Covenants, Conditions and Restrictions), in any given year, the annual assessments will be increased by fifty percent (50%) for that year for one additional member and by one hundred percent (100%) if a total of three members are designated for that year.

8. **Repurchase Option**: Purchaser hereby acknowledges that the Restrictive Covenants grant to Colony a right of first refusal in all resale of lots at Brays Island Plantation. This Agreement is subject to that right and is contingent on Colony waiving that right. Purchaser likewise agrees that in the event Purchaser desires to sell the Property and any improvements thereon in the future, it shall be offered for sale to the Colony for the same price at which the highest bona fide offer has been made for the Property and improvements, and the Colony shall have ten (10) days from receipt of written notice of such offer within which to exercise this option to purchase the Property and improvements at this price. Should the Colony fail to refuse within ten (10) days to purchase the Property and improvements at the offered price, then Purchaser shall have the right to sell the Property, subject, however to all covenants, restrictions, limitations and affirmative obligations contained in this Agreement, the Restrictive Covenants and plats of record. This paragraph shall not be construed to impair the right of foreclosure of a mortgage on the Property and improvements thereon.

9. **Condition Of Property**: Unless there is an inspection called for elsewhere in this contract or in an addendum to this contract, Purchaser acknowledges inspecting the Property, and agrees to purchase the Property "as is". Seller has not made any commitments or accepted any obligations other than as expressly stated in this Contract.

10. **Sewer Service**: Certain lots within Brays Island Plantation are allowed to be served by individual septic tank systems, but other lots (principally the Brays Island Plantation and Bellevue Section) are served by a central collection and treatment system. For those lots served by septic, a permit must be obtained from DHEC for the installation of the septic tank system. The cost of that system must be paid by Purchaser when the system is installed. For those lots served by the central collection system, the sewer lines will be installed adjacent to each lot at the expense of the Colony. Purchaser will be responsible for the installation of a grinder sewage pump station, including the electrical controls, and the necessary piping for connecting to the central collection system.

The Property is served by the central collection system.

11. **Water Service**: Each lot within Brays Island Plantation will be served by an individual well for water supply. A permit to drill the well must be obtained from the Beaufort County Health Department. Purchaser will bear the expense of installing and maintaining the well. If a permit has been obtained by Seller, Seller agrees to assign such permit to Purchaser at Closing.

12. **Beaufort County Impact Fees**: Beaufort County has ordinances which generally provide for the collection of certain fees at the time of building permit issuance for new residential construction and will be the expense of Purchaser. No fee is due at the time of closing on the lot, but rather is due at the time of issuance of the building permit.

13. **Representations**: By execution of this Agreement, it is understood and agreed by Seller and Purchaser that the Broker in this transaction, Brays Island Realty, LLC, is acting only as the real estate agent in this transaction and as such has no responsibility for, and makes no representations concerning the condition of the Property or title to the Property, nor is it responsible or accountable for payment of the Purchase Price or for any other funds, except the

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earnest money deposits which it shall arrange to be held in escrow by the Escrow Agent subject to the terms of this Agreement. Broker does not guarantee payment of any check received as down payment.

14. **Default**: Upon the failure of Purchaser to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a four (4) day right to cure, it is understood and agreed by and between the parties hereto that Seller may at its option because of the difficulty in ascertaining actual resulting damages, retain the earnest money deposit as liquidated and agreed damages. It is understood by and between the parties hereto that upon a default by Seller, and after notice with a four (4) day right to cure, Purchaser may: (a) cancel the Agreement and obtain a refund of the earnest money deposit; (b) enforce the performance of this Agreement by specific performance; or (c) sue for damages.

15. **Escrow Agent**: The Escrow Agent hereinabove referred to shall be Clay Olson, Esq. whose address is 93 Beaufain St Charleston, South Carolina . The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing. The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its counsel fees, costs, disbursements and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims or demands arising out of this transaction. Upon the failure of Purchaser to comply with the requirements as set forth herein and pursuant to the above referenced Paragraph 17, Escrow Agent shall be empowered to dispose of the earnest money deposit as provided for in said paragraph without incurring any liability. In the event of a dispute by and between Seller and Purchaser which cannot be resolved, Escrow Agent shall have the option of depositing the earnest money deposit with the Clerk of Court for Beaufort County pending resolution of the disposition of said funds and upon depositing said funds, Escrow Agent shall bear no further responsibility.

16. **Miscellaneous**:

16.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of South Carolina. If either party is required to institute suit against the other party to enforce its rights under this Agreement, and if such party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto. All the undertakings contained herein which remain executory at Closing shall survive the closing and shall remain in full force and effect.

16.2 If Purchaser is a corporation or partnership, Purchaser shall provide evidence that the persons executing this Agreement are authorized to act on behalf of the entity and that the undersigned individuals agree and confirm that the financing described in this Agreement will require the personal endorsement of the principals involved in the purchasing entity. The undersigned will supply all requested financial information to the permanent lender.

ELECTRONICALLY FILED - 2017 Aug 22 8:58 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

ELECTRONICALLY FILED - 2017 Aug 22 8:58 AM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

16.3 This Agreement may be executed by facsimile signature and shall be binding when the faxed signature page executed by Seller is received by Purchaser and the faxed signature page executed by Purchaser is received by Seller and upon Purchaser's payment of the earnest money deposit.

16.4 Time is of the essence for this Agreement.

16.5 **Termination Of Offer:** If Seller does not accept this offer on or before 5:00 PM EDT on September 5th, 2014This offer shall become null and void.

17. **Agency Disclosure: BOTH PURCHASER AND SELLER ACKNOWLEDGE RECEIVING, READING AND UNDERSTANDING THE SOUTH CAROLINA AGENCY DISCLOSURE FORM AND ARE AWARE THAT BRAYS ISLAND REALTY, L.L.C. IS ACTING AS THE SELLER'S AGENT IN THIS TRANSACTION.**

17.**Additional Provisions, If any:** Purchaser shall have a seven day due diligence period from the date of a fully executed agreement, during which time they may cancel this agreement at their sole discretion by notifying the seller in writing, and have all earnest money promptly returned. In December of 2012, Brays Island Plantation's members voted upon and authorized the expansion and improvement of the Golf Grill dining facility due to increased usage. This assessment will be due and payable in early 2014 in the amount of $6,993.11 per member, or it may be financed in the approximate amount of $107.94 per month.
Property Shall appraise for at least the Purchase Price, by a qualified South Carolina appraiser as appointed by Purchaser's lender, in their sole discretion. In the event the property does not appraise for the Purchase Price, this offer shall be null and void.

IN WITNESS WHEREOF, Purchaser has caused this Agreement to be duly executed as of the 2nd day of September, 2014 .

WITNESSES:

_____

_____

PURCHASER:

_____

Alexander C. Burns

September **IN WITNESS WHEREOF,** Seller has caused this Agreement to be duly executed as of the 4th day of ~~August~~ , 2014.

WITNESSES:

_____

_____

SELLER: _____

Joseph Cedarland for legacy holdings, LLC

_____

ELECTRONICALLY FILED - 2017 Aug 10 2:39 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-07-00265

Alexander Burns,

Plaintiff,

vs.

Brays Island Plantation Colony, Inc. and Brays Island Realty, LLC,

Defendants

AFFIDAVIT OF F. DOUGLAS P. EVANS

Personally appeared before me F. Douglas P. Evans, who, upon being duly sworn, states and deposes that:

1. I am F. Douglas P. Evans, attorney-at-law, duly licensed and in good standing in the Bar of the State of South Carolina, and a name partner in the Greenville, South Carolina law firm Brown, Massey, Evans, McLeod & Haynsworth, LLC. For thirty-six (36) years my practice has primarily involved real estate matters.

2. I have reviewed scores of covenants concerning subdivisions and planned communities, including many that have provided for payments by property owners for dues, amenities, property improvements and the like. I have also drafted such covenants and filed them for record restricting real property and imposing obligations on owners of the property, including financial obligations.

3. I am familiar with the law concerning such covenants.

4. I have reviewed the Brays Island Plantation Declaration of Covenants, Conditions and Restrictions made as of November 11, 1988, executed January 10, 1989, and recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Deed Book 520 at Page 484, along with seven (7) amendments thereto which have subsequently been

ELECTRONICALLY FILED - 2017 Aug 10 2:39 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP070265

recorded from time to time (collectively the "Covenants"). These Covenants are the controlling documents.

5. I have reviewed the Summons and Complaint in this case. Attached to the Complaint are unsigned documents that purport to be such Covenants, which are unsigned and bear no evidence of filing. Accordingly, they are not binding.

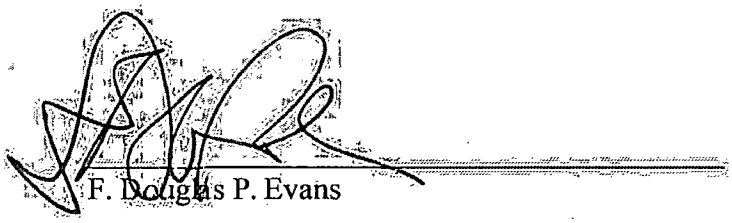
6. The signatures of the officers of Brays Island Company, Inc., who signed the original Covenants were witnessed by Augustine T. Smythe, who was a name partner at the Charleston law firm of Buist, Moore, Smythe & McGee, P.A. (now merged with Womble Carlyle Sandridge & Rice, LLP). Mr. Smythe himself was for decades one of the leading lawyers in South Carolina. His signature as a witness evidences that he was involved in preparation of the original Covenants. One can be assured that the original Covenants are letter perfect and in full compliance with the law.

7. Also, I have reviewed the Covenants and am of the opinion, based upon my education and experience, that they are legal, valid, and binding as written and in full compliance with South Carolina law, including but not limited to the Rule Against Perpetuities.

8. I have reviewed the pleadings in this case and the Plaintiff's Motion for Summary Judgment. I am of the opinion, again based upon my education and experience, that such Motion for Summary Judgment is at variance with the facts and law and should not be granted.

9. I have had no prior involvement with the Defendants and offer this Affidavit as

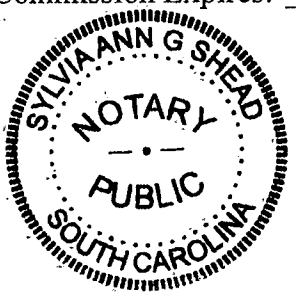
an independent expert.



F. Douglas P. Evans

SWORN TO before me this 10th day of August, 2017.

Notary Public for South Carolina
My Commission Expires: 1/20/2026



ELECTRONICALLY FILED - 2017 Aug 10 2:39 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0700265

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	C.A. No.: 2017-CP-07-00265
Alexander Burns, Plaintiff, vs. Brays Island Plantation Colony, Inc. and Brays Island Realty, LLC, Defendants	**VERIFICATION**

PERSONALLY APPEARED before me William Fabian, who, being first duly sworn, states:

1. I am William Fabian of Beaufort, South Carolina, and the Director of Finance of Brays Island Plantation Colony, Inc., the Plaintiff in this action.

2. As such, I am familiar with the matters alleged in the Counterclaim. I prepared Exhibit "A".

3. I have read the allegations in the Counterclaim, and they are true to the best of my knowledge and belief.

William Fabian

SWORN TO before me this 25th day of April, 2017.

Notary Public for Beaufort County
My Commission Expires: Nancy A. Klumb South Carolina Notary Public My commission expires 2/1/20

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EXHIBIT "A"

BUR01 - Mr. Alexander Burns
92 Hasell Street #301
Charleston, SC 29401

Phone : 843 793 4270
Alt. No: 203 894 7298

Owner of Lot 29BV located at 50 Gun Club Dr. on Brays Island Plantation

Date Charged	Due Date	Regular Assessments	Capital & Grill Assessments	User Fees	Payments	Sub-total Balance Due
Balance Forward:						0
09/30/16	09/30/16	1,860.00	4,107.94			5,967.94
10/31/16	10/31/16	1,950.00	307.94			8,225.88
11/30/16	11/30/16	1,905.00	107.94			10,238.82
12/31/16	12/31/16	1,905.00	107.94	850.00		13,101.76
01/01/17	01/01/17	1,905.00	107.94			15,114.70
02/28/17	02/28/17	13,335.00	2,509.08			30,958.78
03/31/17	03/31/17	-	-	-	-	30,958.78
04/25/17	04/25/17	-	-	-	-	30,958.78
Totals		**22,860.00**	**7,248.78**	**850.00**	-	

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Simple Interest	Total Balance due
89.52	
123.39	
153.58	
196.53	
226.72	
386.98	
1,176.72	**32,135.50**