

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2017-002196

RECEIVED
MAY 22 2018
SC Court of Appeals

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

v.

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

AND

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

v.

South State Bank.....Respondent

VOLUME II

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RECORD ON APPEAL
Volume II

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Section 5.3. Association's Responsibility.

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

(b) In the event that the Developer or the Board of Directors determines that: (i) any Owner, Multi-Family Association or Commercial Center Association has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the negligence of an Owner, his family, tenants, guests or invitees, and the Association or the Board of Directors has given written notice of the Association or the Board of Directors' intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, Multi-Family Association or Commercial Center

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

ARTICLE VI Covenant for Maintenance Assessments

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

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

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

Section 6.3. Maximum Annual Assessment. Until May 1, 1988, the maximum monthly assessment shall be Thirty-three (\$33.00) Dollars per Dwelling.

(a) From and after May 1, 1988, the maximum monthly assessment may be increased by the Board of Directors each calendar year not more than 10% above the maximum monthly assessment for the previous calendar year without a vote of the membership.

(b) From and after May 1, 1988, the maximum monthly assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, or by written consent in lieu of such meeting.

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

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

Section 6.5. Notice and Quorum for Any Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 or 6.4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the first meeting. No such subsequent meeting shall be held more than 90 days after the first meeting.

Section 6.6. Frequency of Meetings. The Board of Directors shall hold regular meetings at least once a month, quarterly or annually as determined by the Board.

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

annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not assessments on a specific Dwelling have been paid. A properly executed certificate of the Association as to the status of assessments on a Dwelling is binding upon the Association as of the date of its issuance.

Section 5.8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18) percent per annum or (b) the maximum rate provided by applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Dwelling (as in the foreclosure of a mortgage), or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Dwelling.

Section 5.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling shall not affect the assessment lien. However, the sale or transfer of any Dwelling pursuant to mortgage foreclosure or any deed or other proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII Use Restrictions

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

Section 7.2. Buildings, Fences, Walls, etc. No building, fence, wall or other structure, and no change in topography, including or excluding (as shall be determined, created or maintained) shall be placed or altered on any Dwelling without the prior written approval of the Association. The Association, upon demand, shall furnish a certificate signed by an officer of the Association setting forth whether or not the proposed structure, fence, wall or other improvement, or change in topography, conforms to the requirements of the Declaration and the rules and regulations of the Association. Any change in exterior appearance of any building, wall, fence or other structural improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. Provided, that upon the Developer's selling of all the Dwellings in the Subdivision, the Association shall have no authority to require approval of any such change.

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

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

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

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

No Dwelling or structure shall be "time shared", nor shall any Dwelling or structure be owned, used or operated in violation of the statutory provisions regulating Vacation Time Sharing Plans, S.C. Code Ann. §14-82-10 et seq. (1983 Supp.), as the same may be amended from time to time, nor shall any Dwelling or structure be owned, used or operated so as to constitute such Dwelling or structure as a "time sharing unit" within the meaning of such statutory provisions.

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

Section 7.6. Temporary Structures. No structure of a temporary character shall be placed upon any Lot or Dwelling at any time, provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by the contractor during construction of a house, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or construction of any other structure. No structure shall be placed on any portion of the Common Areas at any time either temporarily or permanently.

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

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

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

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

- (a) Twenty (20') feet to the front line of the Lot (the line abutting on a street), nor
- (b) Five (5') feet to the side lines of the Lot, nor
- (c) Ten (10') feet to the rear line of the Lot;

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

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

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

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

Section 7.13. Elevation and Drainage Changes. No changes in the elevation of any lot or the drainage characteristics of the Subdivision shall be made without the approval of the Board of Directors. Any change in elevation or drainage shall be made in accordance with the requirements of the local government having jurisdiction over the Subdivision.

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

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

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

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

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

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

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

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

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

(b) signs not exceeding four (4) inches in height.

(c) signs not exceeding four (4) inches in height shall be permitted on the Developer's premises for creating and maintaining sales, rental, management or marketing signs in Common Areas or on any other property owned by the Developer.

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

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

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

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

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

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

Section 7.25. Pets. No animals, livestock, birds, or fowl shall be kept on the Property. All animals must be kept in a cage or enclosure at all times and must be kept in a cage or enclosure when they are outside the Owner's Dwelling and must not be kept in a cage or enclosure when they are outside the Owner's Dwelling. Non-owners (e.g., renters or leasees) may not keep any pets on any part of the Property, without prior written approval of the Owner, said approval to be filed with the Association.

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

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

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

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

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

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

Section 7.32. Special Landmarks. Each Owner accepts and agrees to the fact that the Subdivision is a special landmark and that the Subdivision is a part of the historic and cultural heritage of the community. The Developer agrees hereby to disclose any and all information regarding the Subdivision's status as a special landmark and to take all necessary steps to protect the Subdivision's status as a special landmark. Liability for any property damage or personal injury resulting from erosion along the bank of the Intracoastal Waterway, and all ditches, streams, lakes, lagoons or other bodies of water or watercourses located in the Subdivision.

Section 7.33. Traffic Regulations. Traffic regulations or other rules shall be established and enforced under the authority of the Developer within the Subdivision.

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

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

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

Sealed by _____ Increase a Size of Lots. Lot or lots may be subdivided so as to increase the size of the original plan of subdivision, or to combine two or more lots which have been conveyed for a single building or other subordinate use to revert to the original plan of subdivision, or to make any such combination which would not be in violation of the restriction, that may be done only if the written consent of the Developer in final had and obtained. In such instances, the adjoining Owners, or either Owners in the Subdivision shall not have the right to oppose or interfere with such Lot rearrangement. Such rights shall be exclusively that of the Developer.

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

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

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

ARTICLE VIII General Provisions

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

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

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

Section 8.5. Amendment.

any amendments by the Commission. Amendments to this Declaration, other than those authorized by Section 8.5(n) above, shall be proposed and adopted in the following manner:

- 33 -

EST 1354 PMS 889

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

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

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

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

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

Section 8.9. In the event of a violation or breach of any of these restrictions by any Owner, or agent of such Owner, the Owner of any Dwelling in the Subdivision, or any of them, shall be liable for the cost of any necessary, small

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

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

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

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

WITNESS:

Frank Collins

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

John W. West

Keith D. Bell
(as to Peoples Joint Venture Group, Inc.)

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

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

By: Samuel D. Burns, President

By: Anthony G. Beach, Vice President

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

By: George N. Magyath, Jr., President

By: George N. Magyath, Jr., Secretary

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

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

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

Robert J. Morris
(Witness)

SWORN TO before me this

23rd day of October, 1984.

John D. Hill (L.S.)
Notary Public for South Carolina

My Commission Expires: 9-1-91

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

PROBATE
(As to Peoples Joint
Venture Group, Inc.)

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

John D. Hill
(Witness)

SWORN TO before me this

23rd day of October, 1984.

John D. Hill (L.S.)
Notary Public for South Carolina

My Commission Expires: 9-1-91

EXHIBIT "A"

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

LOTS

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

STREETS AND ROADS

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

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

Spice Bush Crescent.

EXHIBIT "B"

Additional Property

All that certain piece, parcel or tract of land together with the improvements thereon or to be constructed thereon, more particularly shown and designated as "Enterprise Tract" containing 1016.765 acres, more or less, on "Boundary Survey of Enterprise Tract" prepared by S. J. 2, Incorporated dated November 1, 1933, recorded in the office of the Horry County Clerk of Court in Plat Book 75 at page 188, which survey or plat is incorporated herein and made a part hereof by reference.

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

ALSO:

All that certain piece, parcel or tract of land lying, being and situate in the County of Horry, State of South Carolina, and being shown on a map prepared by Sur-Tech, Incorporated, dated April 24, 1934 and to be recorded herewith. Being more particularly described as follows:

Commencing at the southern corner of the Enterprise tract, property of James H. Dunsbury, Nominee, North 43 degrees 03 minutes 03 seconds East 338.20 feet to an iron pin; thence turning and running South 66 degrees 07 minutes 01 seconds West 158.72 feet to an iron pin; thence turning and running South 28 degrees 05 minutes 10 seconds 74.93 feet to an iron pin; thence turning and running South 28 degrees 50 minutes 55 seconds West 118.72 feet to an iron pin; thence turning and running North 87 degrees 47 minutes 35 seconds West 338.45 feet to the point of beginning.

This is the same property conveyed to Myrtle Beach Golf & Yacht Club, a South Carolina partnership, by deed of Green Springs Enterprises, Inc. dated July 11, 1934, recorded in the office of the Horry County Clerk of Court on September 6, 1934, in Deed Book 295 at page 27.

ALSO:

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

ALSO:

All easements, rights, interests, licenses, or uses, natural or other rights appurtenant to or associated with the property described above.

Changes in Covenants - 10/30/69

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

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

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

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

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

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

Add Section 7.3.1

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

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

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

(c) Single garage door entry not to exceed 8 feet.

(d) Building materials and paint to match existing structure.

(e) Driveway installed with macadam or concrete at time of construction. Owner responsible for providing drainage culvert and protection of drainage ditch under and along side of driveway entry.

Correct add to Sect 7.5 Building
Attaches.

1351-096

896

Exhibit 6

31847

-85

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

FILED
Horry County
JAN 29 PM 2 25
CLERK OF COURT

12921

Developer:
MYRTLE BEACH GOLF & YACHT CLUB,
A GENERAL PARTNERSHIP
Post Office Box 8300
Myrtle Beach, South Carolina 29578-8300

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

Horry County Assessor

184-17-ACC
Map Book Parcel
1/20/85

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

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

W I T N E S S E T H:

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

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

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

- (a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational or commercial portions of the Subdivision;
- (b) To preserve the quality of the natural amenities of the Subdivision;
- (c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;
- (d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;
- (e) To prevent any property Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any Owners of Property in the Subdivision; and
- (f) To keep property values in the Subdivision high, stable and in a state of reasonable appreciation; and

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

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

WHEREAS, by Declaration dated as of October 23, 1984, recorded in the office of the Henry County Clerk of Court on October 28, 1984, in Deed Book 910 at page 250 ("the Original Declaration"), the Developer imposed certain covenants, liens, restrictions and reserved certain easements in and to the property described therein and in this Declaration; and

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

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

ARTICLE I Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section 1.18. Mortgage, with an initial capital letter, shall mean and refer to the holder of a Mortgage.

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

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

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

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

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

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

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

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

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

Section 1.28. Subdivision Plat shall mean and refer to that certain plat prepared by Sur-Tech, Incorporated, dated October 23, 1984, recorded in the office of the Clerk of Court for Horry County, South Carolina, in Plat Book 83 at page 9 as amended by that certain plat prepared by Sur-Tech, Incorporated, dated October 23, 1984, revised January 8, 1986, recorded in said Clerk's office in Plat Book 83 at page 210, together with: (1) any future revisions thereof; or (2) any subdivision plat for any portion of the Additional Property as may be submitted to the terms of this Declaration, and recorded from time to time said Clerk's office.

ARTICLE II Plan of Development

Section 2.1. Plan of Development of the Subdivision. The Subdivision initially shall consist of the Property described on Exhibit "A" attached hereto. The Property shall also include certain improvements to the Common Areas, including roads, utility systems, drainage systems and other improvements serving the Dwellings, and various Recreational Amenities to the extent the same are, from time to time, installed and existing and submitted to the provisions hereof. The dimensions of the property constituting the Subdivision are shown on the Subdivision Plat. The property within the Subdivision shall be subject to the covenants, easements and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, for as long as Developer: (i) owns any portion of the Common Areas; or (ii) owns any Multi-Family Area; or (iii) owns any Dwelling primarily for the purpose of sale of the Dwelling; or (iv) has the option to add the Additional Property or any portion thereof to the Development; to make improvements and changes to all Common Areas and to any or all Dwellings or any other property owned by Developer: (1) installation and maintenance of any improvements in and to the Common Areas, including the Recreational Amenities; (2) changes in the location of the boundaries of the Common Areas, any Recreational Amenities, and any Dwellings owned by Developer or of the dedicated or undedicated Common Areas; (3) installation and maintenance of any water, sewer and other utility systems and facilities, to include, but not limited to, T.V.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

The Association; Membership and Voting Rights

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

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

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

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

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

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

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

2. October 20, 1989.

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

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

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

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

ARTICLE IV Property Rights in the Common Areas

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

Section 4.2. Title to Common Areas. The Developer hereby covenants for itself, its successors and assigns, that on or before October 30, 1988, it will convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds fee simple title to the Common Areas, subject, however, to all liens and encumbrances of record and to the following covenant, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.3. Association's Responsibility.

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

rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, draft, conduit, appliance, equipment, security system or utility line or facility, the responsibility of the maintenance of which is that of the Association, deducting out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the subdivision. No diminution or abatement of assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments and Club Dues being a separate and independent covenant on the part of each Owner.

(b) In the event that the Developer or the Board of Directors determines that: (i) any Owners, Multi-Family Association or Commercial Center Association has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association except in the event of an emergency situation, may give such Owner, Multi-Family Association or Commercial Center Association written notice of the Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner, Multi-Family Association or Commercial Center Association, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner, Multi-Family Association or Commercial Center Association, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner, Multi-Family Association or Commercial Center Association to comply with the provisions hereof after such notice, the Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, Multi-Family Association or Commercial Center Association, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and his Dwelling or Commercial Center Association are subject and shall become a lien against such Dwelling or Commercial Center Association, or, in the case of a Multi-Family Association or Commercial Center Association, shall be added to and become a part of the assessments for all Owners within such Multi-Family Association or Commercial Center Association and shall become a lien

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

ARTICLE VI
Covenant for Maintenance Assessments

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

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

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

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

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

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

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

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

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

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

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

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

Section 6.2. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling shall not affect the assessment lien. However, the sale or transfer of any Dwelling pursuant to mortgage foreclosure or any deed or other proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII Use Restrictions

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

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

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

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

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

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

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

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

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

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

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

- (a) Twenty (20') feet to the front line of the Lot (the line abutting on a street), nor
- (b) Five (5') feet to the side lines of the Lot, nor
- (c) Ten (10') feet to the rear line of the Lot;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7.24. Motorcycles. Motorcycles (except motorscooters, motorcycles with less than 8 h.p.) are prohibited from all Lots, streets and Common Areas, except from any Common Storage Area so designated by the Developer.

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

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

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

Section 7.28. Prohibition of Open Outdoor Storage. No junk, debris or materials of any kind shall be stored on a Lot other than in an approved enclosed structure, which shall be attached to the principal Dwelling or in a manner that is visible from any other Lot, Common Area, street, easement or amenity area. Firewood and bicycles may be stored outside in side or rear yards only, provided they are not visible from any Common Area, easement, street or amenity area. 831-591-541

Section 7.28. Prohibition of Accessory Structures. No dog houses, garages, carports, or any other accessory structure shall be constructed upon any Lot, except an attached storage compartment, porch, swimming pool, swing set and similar play structure which has been approved in writing by the Architectural Review Board prior to installation or construction.

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

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

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

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

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

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

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

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

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

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

ARTICLE VIII General Provisions

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

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

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

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

Section 8.5. Amendment.

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

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

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

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

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

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

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

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

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

Section 8.9. In the event of a violation or breach of any of these restrictions by any Owner, or agent of such Owner, the Owners of Dwellings in the Subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, whenever there shall have been built on any Dwelling in the Subdivision any structure which is in violation of these restrictions, to enter upon the Property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The Association is hereby granted a perpetual easement across each Dwelling for the purposes of carrying out

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its responsibilities under this Section, and any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should Developer employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Developer's counsel shall be paid by the Owner of such Dwelling or Dwellings in breach thereof.

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

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

WITNESS the execution hereof as of the 21st day of January, 1988.

WITNESS:

Daniel B. Shelly, Jr.

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

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

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

By: [Signature]
Samuel D. Burns, President

By: [Signature]
Lindsay C. Roach, Vice President

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

Mirreza A. Depina

By: George N. Magrath, Jr.
Secretary

Paul A. Depina
(As to Peoples Joint Venture
Group, Inc.)

By: George N. Magrath,
President

STATE OF SOUTH CAROLINA)
COUNTY OF HORRIS)

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

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

Daniel B. Buckley, Jr.
(witness)

SWORN TO before me this
21st day of January, 1985.

Harry S. Kous (L.S.)
Notary Public for South Carolina

My Commission Expires: 4/19/91

BOOK 931 PAGE 598
598

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

PROBATE
(As to Peoples Joint
Venture Group, Inc.)

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

Virginia A. Alpin
(Witness)

SWORN TO before me this

28th day of January, 1986.

Paul E. Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/27/89

BOOK 931 PAGE 599
599

EXHIBIT "A"

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

LOTS

All those certain pieces, parcels or lots of land, together with the improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of 249 numbered lots and being shown on the Subdivision Plat as Lots G-1 through G-4 inclusive, H-1 through H-9 inclusive, I-1 through I-23 inclusive, M-1 through M-8 inclusive, S-1 through S-13 inclusive, T-1 through T-14 inclusive, Y-1 through Y-15 inclusive, X-1 through X-8 inclusive, JA-1 through JA-14 inclusive, KA-1 through KA-9 inclusive, LA-1 through LA-8 inclusive, NA-1 through NA-8 inclusive, PA-1 through PA-5 inclusive, VA-1 through VA-7 inclusive, ZA-1 through ZA-11 inclusive, AB-1 through AB-12 inclusive, and BD-1 through BD-23 inclusive, and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

MULTI-FAMILY AREAS

All those certain pieces, parcels or tracts of land, together with the improvements thereon or to be constructed thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, consisting of numbered tracts and being shown on the Subdivision Plat as Tracts MA, QA, RA, PA, UA, VA and WA and having such boundaries and measurements as are set forth on the Subdivision Plat, which is incorporated herein and made a part hereof by reference.

STREETS AND ROADS

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

Blue Heron Boulevard from Enterprise Road to just north of
Multi-Family Tract WA;
Spice Bush Crescent;
Sweet Gum Crescent;
Laguna Point;
White Heron Crescent;

807 921 PWT 000

600

Snowy Egret Crescent;
 Snowy Egret Trail;
 Heron Point;
 Royal Pine Drive;
 Eagle Crescent;
 Meadow Crescent;
 Pebble Beach Crescent;
 Cardinal Crescent;
 Augusta Crescent;
 Carolina Wren Crescent;
 Wintergreen Point;
 Wood Duck Cove;
 Royal Fern Crescent;
 Historic Drive;
 Scotman's Crescent;
 Night Heron Crescent;
 Mallard View Point; and
 Greenlake Point

ENTRY PARCELS

All those certain pieces, parcels or lots of land, together with the
 improvements thereon or to be constructed thereon, situate, lying and
 being on the southwestern side of Enterprise Road in Socastee Township,
 Horry County, South Carolina, consisting of Parcel A. and Parcel B as
 shown on the Subdivision Plat, which is incorporated herein and made a
 part hereof by reference.

NOT 931 DEC 601

601

EXHIBIT "B"

Additional Property.

All that certain piece, parcel or tract of land together with the improvements thereon or to be constructed thereon, more particularly shown and designated as "Enterprise Tract" containing 1016.706 acres, more or less, on "Boundary Survey of Enterprise Tract" prepared by Sur-Tech, Incorporated dated November, 1983, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 100, which survey or plat is incorporated herein and made a part hereof by reference.

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

ALSO:

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

Commencing at the southern corner of the Enterprise tract, property of James H. Duncanson, Nominee, North 43 degrees 37 minutes 03 seconds East 338.20 feet to an iron pin; thence turning and running South 56 degrees 07 minutes 01 seconds East 168.75 feet to an iron pin; thence turning and running South 23 degrees 05 minutes 18 seconds 74.93 feet to an iron pin; thence turning and running South 28 degrees 50 minutes 59 seconds West 118.72 feet to an iron pin; thence turning and running North 47 degrees 47 minutes 35 seconds West 336.46 feet to the point of beginning.

This is the same property conveyed to Myrtle Beach Golf & Yacht Club, a South Carolina partnership, by deed of Green Springs Enterprises, Inc. dated July 11, 1984, recorded in the office of the Horry County Clerk of Court on September 5, 1984, in Deed Book 898 at page 87.

ALSO:

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

ALSO:

All easements, rights, leasehold estates, licenses, riparian, littoral or other rights appurtenant to or associated with the property described above.

BOOK 931 PAGE 602

602

Exhibit 7

(5)
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

AGREEMENT

WHEREAS, Property Consultants, Inc. ("Consultants"), is the owner of a real estate development in Horry County, South Carolina, popularly known as Myrtle Beach Golf and Yacht Club ("MBGYC"), which development is presently operating under Chapter 11 of the Bankruptcy Laws of the United States; and

WHEREAS, Peoples Federal Savings & Loan Association ("Peoples"), is the owner and holder of a first mortgage on Tract II of MBGYC, consisting of the golf course, club house, recreational amenities, and Tract I and Tract II roads; and

WHEREAS, Myrtle Beach Golf and Yacht Club Association, Inc., ("POA") is an eleemosynary corporation organized and existing under the laws of the State of South Carolina, and which Association has certain rights in Tract I of MBGYC, as a result of ownership by its members in Tract I of MBGYC; and

WHEREAS, Consultants, MBGYC, Peoples, and POA, in the furtherance of their respective financial interests in MBGYC wish to enter into an agreement with respect to their rights and liabilities, one to another, in accordance with a plan to release for foreclosure the MBGYC property under lien to Peoples and to facilitate the development of the property in furtherance of the interests of these parties. Said property is more particularly described in Exhibits A, B, C, and D attached hereto and incorporated by reference (hereinafter referred to as "Subject Property").

NOW THEREFORE, in consideration of the exchange of promises and obligations, by the parties, one to another, the sufficiency of which consideration is hereby expressly acknowledged, the parties do agree as follows:

1. Peoples agrees not to enforce its claim against the bankruptcy estate of MBGYC for any deficiency.

2. Consultants, MBGYC, and POA agree that Peoples, its successors and assigns, has permanent and unfettered rights of ingress and egress to Tract II, but agree to execute the necessary amendment of the Declaration of Restrictive Covenants and/or alienable easements for ingress and egress over the

existing roadway network within MBGYC, provided, further, that these rights of ingress and egress are not subject to present or subsequent fee, tariff, or charge, provided, however, that Consultants, MBGYC, and POA reserve the rights to make a reasonable determination of the destination of parties entering the property through the security gate. POA, Consultants, and MBGYC, jointly and severally, agree to enforce the Restrictive Covenants, as they may be amended, from time to time, giving particular scrutiny to Covenant Compliance on those lots and parcels of land which are adjacent and contiguous to the golf course.

3. Consultants and MBGYC agree to a lifting of the automatic stay provided by 11 U.S.C. Section 362(a) as to the subject property to allow a foreclosure proceeding by Peoples. Consultants, MBGYC, and POA further hereby consent to said

foreclosure proceeding and release and waiver of defenses or claims thereto.

4. Consultants and MBGYC agree to turn over to Peoples copies of all plans and specifications on the golf course, clubhouse, and any other golf course related structures.

5. Consultants and POA agree to make available for Peoples' review, all marketing materials and contracts to be utilized by Consultants, and Peoples reserves and is given the right to review and grant prior approval of said documentation so that all representations regarding the golf course operation and club house operation are reasonable and accurate.

6. Consultants agree to construct an alternate entrance to the property so that major construction vehicles necessary for the future development of the project will not have to pass through the guard gate and travel over the main entrance road leading to the developed housing in the project and the golf course.

7. Consultants, MBGYC, and POA agree to consent to the appointment of a receiver, to administer the golf course and amenities and to collect revenues, from whatever source revenues which may be generated on the golf course and amenities package, and consent to the release of the Subject Property from the present stay of the Bankruptcy Court, so as to allow Peoples to commence a foreclosure action and proceed, through sale, the Subject Property.

8. The POA agrees to assign the \$2,000.00 deposit on kitchen accessories held by Coastal of Carolina to Peoples.

9. The POA agrees to assign all rights to kitchen equipment, etc., in club house.

Upon foreclosure and sale of the Subject Property, and if Peoples is the successful bidder at the foreclosure sale, Peoples agrees as follows:

1. Peoples will convey the guard gate, pool, roads, shuffleboard courts, and tennis courts to the POA. The precise legal description of said property will be determined by survey.

2. Peoples, its successors and assigns, will assume responsibility of the maintenance and landscaping of the entrance road from the existing guard gate to the golf course club house, provided that no further common area maintenance fees, either now or in the future, will be charged to Peoples or its successors.

3. Peoples will cause the following deed restriction to be placed on the property: "The only permitted use of this property is as a golf course, country club, or other ancillary use relating to golf course or country club use."

4. Peoples, its successors and assigns, agree to charge members of the POA greens fees at 75% of the greens fee schedule offered to the public at large until September 1, 1989.

5. Peoples, its successors and assigns, agree to offer memberships to members of the POA on the same basis that it offers memberships to public at large, provided, however, that there shall be no requirement to offer memberships. This provision will be reduced to a deed restriction.

6. Peoples, its successors and assigns, agree to provide members of the POA desiring to play golf the same opportunities to reserve tee times as the public at large.

Upon the release of the Tract II golf course amenities package from the bankruptcy proceeding, Peoples agrees as follows:

1. Peoples agrees to assume the \$675.00 per month lease obligation of the POA to Copalco for the greens mower, provided an inspection of the equipment and a review of the lease reveal that the lease terms are on fair market terms and conditions.

2. Peoples agrees to assume the \$800.00 per month lease obligation of the POA to Textron for the motorized maintenance carts provided an inspection of the equipment and a review of the lease reveal that the lease terms are on fair market terms and conditions.

3. Peoples agrees to provide permanent loan financing to the purchasers of the following real property located in Tract II of MBGYC:

Lot 13, Block CB	Lot 47, Block CB	Lot 4, Block MB
Lot 6, Block MB	Lot 2, Block PB	Lot 3, Block PB
Lot 3, Block SB	Lot 38, Block CB	Lot 51, Block CB
Lot 5, Block NB	Lot 7, Block NB	Lot 4, Block SB
Unit AD-C-101	Unit AD-C-102	Unit AD-C-103
Unit AD-C-104	Unit AD-C-105	Unit AD-C-106
Unit AD-B-103		

This end loan financing will be subject to the usual underwriting standards of Peoples and Peoples' normal rates for such properties. - Each loan will be secured by a first mortgage on the real property being financed.

The parties' agreements are further predicated upon the following:

1. MBGYC does agree to cause the appropriate filing and service of a passive notice of this settlement for relief from stay pursuant to Rule 4001 of the Bankruptcy Rules. Said filing and service shall occur on or before the end of business on Wednesday, July 27, 1988. MBGYC shall use its best efforts to arrange for a hearing on such notice, if any objection is filed, no less than five days after termination of notice period and no later than 10 days after termination of notice period, provided that failure to accomplish same will void this agreement.

Further, the terms and provisions of this agreement shall be void if the court does not approve this agreement.

2. The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument.

3. This document represents the entire agreement between the parties and may not be modified except by written instrument executed by the parties hereto, their successors and assigns.

4. Each party signatory to this agreement represents, warrants and guarantees that he/she/it/they have full authority to execute this agreement so as to make it valid, and binding upon the parties, their successors and assigns.

5. All of the terms and provisions herein are subject to approval of the agreement in its entirety by the United States Bankruptcy Court for the District of South Carolina.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 25th day of July, 1988.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENT OF:

WITNESSES:

PROPERTY CONSULTANTS, INC.

Ted Miller
Lawrence L. Johnson, Jr.

By: Robert E. Deane
Its: _____

PEOPLES FEDERAL SAVINGS AND LOAN
ASSOCIATION

Ted Miller
Lawrence L. Johnson, Jr.

By: J. A. Hynes
Its: SENIOR V.P. PRESIDENT

MYRTLE BEACH GOLF AND YACHT CLUB

Ted Miller
Lawrence L. Johnson, Jr.

By: Robert E. Deane
Its: _____

MYRTLE BEACH GOLF AND YACHT CLUB
ASSOCIATION, INC.

Robert E. Deane
Dorothy L. Frankel
Robert E. Deane
Dorothy L. Frankel

By: Thomas M. Delmonico
Its: Secretary & Director

By: Raymond A. Kane
Its: PRESIDENT AND DIRECTOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Robert E Sease as _____ of Property Consultants, Inc., sign, seal and as her/his act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Ted. Hill

SWORN to BEFORE me this

25th day of July, 1988.

Lawrence J. Jones (L.S.)
Notary Public for South Carolina

My Commission Expires: June 30, 1990

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within George M. McFarland, Jr. as Senior Vice President of Peoples Federal Savings and Loan Association sign, seal and as her/his act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Ted Allen

SWORN to BEFORE me this

25th day of July, 1988.

Laurence Johnson, Jr. (L.S.)
Notary Public for South Carolina

My Commission Expires: June 30, 1990

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath than (s)he was present and saw the within
Thomas M. Robinson as Secretary & Director
and Raymond A. Kene as President & Director
of Myrtle Beach Golf and Yacht Club Association, Inc., sign, seal and as their act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

SWORN to BEFORE me this

26 day of July, 1988.

Dorothy L. Franklin (L.S.)
Notary Public for South Carolina

My Commission Expires: 10/30/97

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Robert E. Jesse as _____ of Myrtle Beach Golf and Yacht Club, as its own act and as Debtor-in-possession, sign, seal and as its act and deed, deliver the within Agreement; that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Test True

SWORN to BEFORE me this

25th day of July, 1988.

Lawrence Johnson, Jr. (I.S.)
Notary Public for South Carolina

My Commission Expires: June 30, 1990

EXHIBIT "A"

All those certain pieces, parcels or tracts of land described below, consisting of two groups of parcels, designated below as "Amenities Parcels" and "Tract II Parcels".

AMENITIES PARCELS:

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed of Tract II-A (89.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

(end of Amenities Parcels description)

(continued)

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.025 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.06 acres) and Parcel K (1.07 square feet) on map of same prepared by

(continued)

EXHIBIT "B"
(continued)

Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.066 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO; all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.28 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page

(continued)

EXHIBIT "C"
(continued)

139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres) and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1988, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1988, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT D

Lot 2, Block AB of Phase I of Myrtle Beach Golf and Yacht Club.

Unit WA-506, a Savannah Unit in Phase I of Myrtle Beach Golf and Yacht Club.

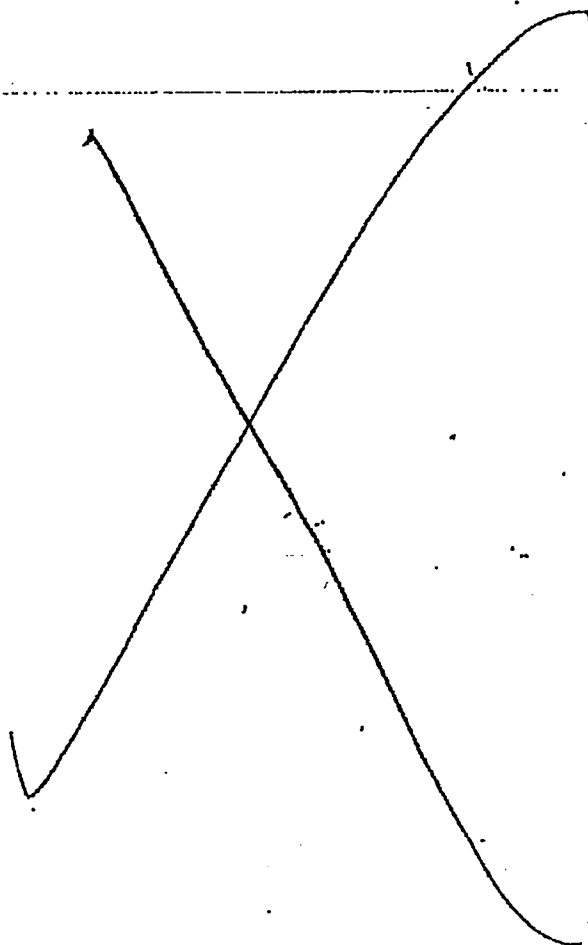


Exhibit 8

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

COURT OF COMMON PLEAS
88-CP-26-_____

Peoples Federal Savings &
Loan Association,

Plaintiff

vs.

Myrtle Beach Golf & Yacht Club)
a general Partnership,)
Myrtle Beach Golf & Yacht)
Club, Inc., a South Carolina)
corporation, MBG&YC II, Inc.,)
formerly known as Peoples)
Joint Venture Group, Inc.,)
Myrtle Beach Golf &)
Yacht Club Association, Inc.,)
Teatros Y Cinemas, S.A., a)
Panamanian Company, American)
Community Development Group,)
Inc., f/k/a Justice Investment)
Corp., John A. Hinson,)
Individually and as Trustee)
of West Coast Pension and)
Profit Sharing Trust,)
Sears Roebuck & Co., Universal)
Resort Travel, Inc., d/b/a)
A-Port-of-Call Travel Agency,)
Stan Parker, Ed Hudson, Austin)
Kelly Advertising, Inc., POA)
Acquisition Corp., d/b/a)
Peterson Outdoor Advertising)
of South Carolina, Custom)
Glass, Inc., the Parnell-)
Martin Companies, Inc.,)
Loyola Federal Savings &)
Loan Association, Equipment)
Leasing, Division of)
American Federal Bank, FSB,)
Chambers of South)
Carolina, Williams Trucking)
Co., Inc., Palmetto Turf Farms,)
Inc., Danny Player, d/b/a)
Player's Landscaping, Whaley)
Corp., d/b/a Socastee Hardware)
Store, Cornelius Toomey,)

SUMMONS

NON-JURY MATTER

FORECLOSURE

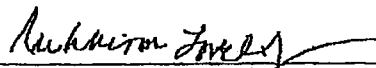
AMOUNT: \$5,100,000.00

HURRY COUNTY
88 SEP 12 PM 3:38
BILLIE G. NICHOLS
CLERK OF COURT

Individually and for the)
Benefit and on Behalf of all)
other similarly situated,)
and Midway Nursery, Inc.)
Defendants.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices at 1310 Second Avenue, Conway, South Carolina 29526, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.


RICHARD M. LOVELACE, JR.
LOVELACE & BATTLE, P.A.
Attorneys for Plaintiff
Peoples Federal Savings
& Loan Association
Post Office Box 1704
Conway, South Carolina 29526
Area Code (803) 248-7321

Conway, South Carolina
7th day of September, 1988.

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

COURT OF COMMON PLEAS
88-CP-26-

Peoples Federal Savings &
Loan Association,

Plaintiff

vs.

COMPLAINT

Myrtle Beach Golf & Yacht Club
a general Partnership,
Myrtle Beach Golf & Yacht
Club, Inc., a South Carolina
corporation, MBG&YC II, Inc.,
formerly known as Peoples
Joint Venture Group, Inc.,
Myrtle Beach Golf &
Yacht Club Association, Inc.,
Teatros Y Cinemas, S.A., a
Panamanian Company, American
Community Development Group,
Inc., f/k/a Justice Investment
Corp., John A. Hinson,
Individually and as Trustee
of West Coast Pension and
Profit Sharing Trust,
Sears Roebuck & Co., Universal
Resort Travel, Inc., d/b/a
A-Port-of-Call Travel Agency,
Stan Parker, Ed Hudson, Austin
Kelly Advertising, Inc., POA
Acquisition Corp., d/b/a
Peterson Outdoor Advertising
of South Carolina, Custom
Glass, Inc., the Parnell-
Martin Companies, Inc.,
Idyola Federal Savings &
Loan Association, Equipment
Leasing, Division of
American Federal Bank, FSB,
Chambers of South
Carolina, Williams Trucking
Co., Inc., Palmetto Turf Farms,
Inc., Danny Player, d/b/a
Player's Landscaping, Whaley
Corp., d/b/a Socastee Hardware
Store, Cornelius Toomey,

NON-JURY MATTER

FORECLOSURE

AMOUNT: \$5,100,000.00

Horry County
88 SEP 12 PM 3:38
BILLY G. RICHARDSON
CLERK OF COURT

Individually and for the
Benefit and on Behalf of all
other similarly situated,
and Midway Nursery, Inc.
Defendants.

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

1. That this is an action for foreclosure of a
mortgage upon real estate situated and located in Horry
County, South Carolina.

2. That Plaintiff Peoples Federal Savings & Loan
Association is a Savings and Loan Association duly organized
and existing under and by virtue of the laws of the United
States of America and is maintaining offices and agents in
Horry County, South Carolina.

3. That upon information and belief, Defendant Myrtle
Beach Golf & Yacht Club, is a general partnership duly
organized and existing under and by virtue of the laws of
South Carolina and is maintaining offices and agents in Horry
County, South Carolina, and is the owner of the real property
hereinafter referred to; that Defendant Myrtle Beach Golf &
Yacht Club, Inc. is a South Carolina corporation and as such
is the Managing General Partner of Myrtle Beach Golf & Yacht
Club; that Defendant MBGYC II, Inc., formerly known as
Peoples Joint Venture Group, Inc., is also a South Carolina
corporation and is a General Partner in Myrtle Beach Golf &

Yacht Club; that the remaining Defendants are made parties to this cause by virtue of the fact that said remaining Defendants may have or claim to have some right, title and/or interest in or lien upon the real property which is the subject of this action, which rights and interests are inferior and subordinate to the rights and claims of Plaintiff, all as more fully hereinafter alleged.

4. That on or about October 9, 1985, for value received, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner Peoples Joint Venture Group, Inc., a South Carolina corporation, made, executed and delivered to Plaintiff Peoples Federal Savings & Loan Association, a certain Promissory Note wherein and whereby said Defendant Myrtle Beach Golf & Yacht Club, a general partnership, promised to pay to Plaintiff the sum of Five Million One Hundred Thousand and No/100 (\$5,100,000.00) Dollars, together with interest at the rate equal to the current "prime rate", as that term is therein defined in the note, plus one (1%) percent per annum. A copy of said note is attached hereto and incorporated herein as Exhibit "A".

5. That in order to better secure the payment of said note and debt, in accordance with the terms and conditions therein, Defendant Myrtle Beach Golf & Yacht Club, a general

partnership, by its managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner Peoples Joint Venture Group, Inc., a South Carolina corporation, did execute and deliver on October 9, 1985, to Plaintiff Peoples Federal Savings & Loan Association, its successors and assigns, a certain Mortgage and Security Agreement covering the following described property:

AMENITIES PARCELS

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of

"Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, recorded in said Clerk's office in Plat Book 79 at page 166.

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same

prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if

any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts

of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

6. That thereafter said mortgage was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County, in Mortgage Book 1079 at page 430. A copy of the aforesaid mortgage of real estate is attached hereto as Exhibit "B" and made a part and parcel hereof by reference.

7. That according to the terms and conditions of said

note and mortgage, payment in full was due to be made on or before December 31, 1986, and if there was a default in the punctual payment of principal and accrued interest, then, at the option of the holder of the note and mortgage, the entire balance of the note, both principal and interest, would immediately become due and payable without notice, and if the note and mortgage were placed in the hands of an attorney-at-law for collection, the costs of collection, including attorney's fees, would be additional sums secured by the mortgage.

8. That on or about October 9, 1985, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by its managing general partner, Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and by general partner, Peoples Joint Venture Group, Inc., a South Carolina corporation, did execute and deliver to Plaintiff Peoples Federal Savings & Loan Association, its successors and assigns, a certain Assignment of Rents & Profits whereby Plaintiff Peoples Federal Savings & Loan Association was granted the right, title and interest of Defendant Myrtle Beach Golf & Yacht Club, a general partnership, in and to the rents from the following described property:

AMENITIES PARCELS

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in

the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

(end of Amenities Parcels description)

ALSO,

EXHIBIT "B"

All those certain pieces, parcels or tracts of land

together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made

a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at

page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08

acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

9. That thereafter said Assignment of Rents & Profits was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County, in Deed Book 999 at Page 32. A copy of the aforesaid Assignment of Rents & Profits is attached hereto as Exhibit "C" and made a part and parcel hereof by reference.

10. That the security interest of Plaintiff Peoples Federal Savings & Loan Association was perfected by a UCC Financing Statement, a copy of which is attached hereto and incorporated herein as Exhibit "D", which was filed in the Office of the Clerk of Court for Horry County on October 22, 1985, identified as No. 94022, to secure a lien upon the following: all improvements, appurtenances, fixtures (whether detachable or not), equipment, heating and cooling systems, furnishings, building materials and supplies, owned by the

debtor located on the real property described on Exhibit "B" attached hereto, together with all the attachments thereto, and any additions, substitutions or accretions thereto.

11. That on December 31, 1986, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and also by general partner MBGYC II, Inc., did execute and deliver to Plaintiff Peoples Federal Savings & Loan Association a certain Note, Mortgage and Guaranty Modification Agreement, whereby in consideration of the premises described in Mortgage Book 1079 at page 430 and for other valuable consideration, the parties agreed to extend the maturity date of the note from December 31, 1986 to April 30, 1987.

12. That thereafter said Note, Mortgage and Guaranty Modification Agreement was recorded on February 12, 1987, in the Office of the Clerk of Court for Horry County in Mortgage Book 1230 at page 32. A copy of the aforesaid Modification is attached hereto as Exhibit "E" and made a part and parcel hereof by reference.

13. That on April 24, 1986, Defendant Myrtle Beach Golf & Yacht Club, a general partnership, by managing general partner Myrtle Beach Golf & Yacht Club, Inc., a South Carolina corporation, and also by general partner MBGYC II, Inc., did execute and deliver to Plaintiff Peoples Federal

Savings & Loan Association a Second Note, Mortgage and Guaranty Modification Agreement, whereby in consideration of the premises described in Mortgage Book 1079 at page 430 and for other valuable consideration, the parties agreed to extend the maturity date of the note from April 30, 1987 to October 31, 1987.

14. That thereafter the said Second Note, Mortgage and Guaranty Modification Agreement was recorded on April 29, 1987, in the Office of the Clerk of Court for Horry County in Mortgage Book 1253 at page 366. A copy of the aforesaid Modification is attached hereto as Exhibit "F" and made a part and parcel hereof by reference.

15. That the note of October 9, 1985, is and has been in default since November 1, 1987, and the conditions of said note and mortgage has been broken and Plaintiff Peoples Federal Savings & Loan Association elects to, and does declare the full balance of said indebtedness due and payable; that there is due on said note and mortgage as of August 8, 1988, the sum of Six Million Two Hundred Sixty-Nine Thousand One Hundred Twenty-eight and 70/100 (6,269,128.70) Dollars, plus interest, to accrue at a rate of One Thousand Three Hundred Eighty-two and 87/100 (\$1,382.87) Dollars per diem.

16. The mortgage also provides that in the event of a default, the mortgagee, to the extent provided by law, shall

be entitled, as a matter of right if it so elects, to the appointment of a receiver to enter upon and take possession of the mortgaged premises; and, under the circumstances and as the instruments provide, Plaintiff is informed and believes that it is entitled to the immediate appointment of a receiver to collect all rent and income from the property and to do matters necessary for its protection and preservation.

17. That upon information and belief, said information having been obtained from the public records of Horry County, South Carolina, the Defendants below-named may have or claim some interest in, or lien upon the premises. However the lien of Plaintiff Peoples Federal Savings & Loan Association is prior and superior to those matters and things hereinbelow alleged:

- (a) The Defendant, Teatros Y Cinemas, S.A., a Panamanian Company, is made a party to this action by virtue of that certain mortgage on the Amenities Parcels from Myrtle Beach Golf & Yacht Club, a general partnership, filed July 1, 1986, in Mortgage Book 1153 at page 15.
- (b) The Defendants, American Community Development Group, Inc., f/k/a Justice Investment Corp. and John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust are made a party to this action by virtue of: (1) that certain mortgage on the Amenities Parcel, from Myrtle Beach Golf & Yacht Club, a general partnership, filed April 2, 1987, in Mortgage Book 1245 at page 196; (2) that certain confession of judgment filed on April 1, 1987, in

Judgment Roll #71151; the attorney of record for the Plaintiff being John M. Leiter, Esquire, Post Office Box 7516, Myrtle Beach, South Carolina; and (3) that certain UCC financing statement, filed January 20, 1986, in Roll No. 95191.

- (c) The Defendant, Sears Roebuck & Co., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, the date of the order being September 28, 1987, filed in Judgment Roll #71057; the attorney of record for the Plaintiff being John P. Bacot, Jr., Esquire, Post Office Box 15439, Surfside Beach, South Carolina 29587.
- (d) The Defendant, Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed October 23, 1987 in Judgment Roll #71367; the attorney of record for the Plaintiff being J.M. "Bud" Long, Jr., Esquire, 5001 North Kings Highway, Suite 201, Myrtle Beach, South Carolina 29577.
- (e) The Defendant, Stan Parker, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, filed October 30, 1987 in Judgment Roll #71502. There is no attorney of record.
- (f) The Defendant, Ed Hudson, is made a party to this action by virtue of that certain judgment against Myrtle Beach & Golf Yacht Club, filed October 30, 1987 in Judgment Roll #71503. There is no attorney of record.
- (g) The Defendant, Austin Kelly Advertising, Inc., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, filed September 3, 1987 in Judgment Roll #71627; the attorney of record for the

Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.

- (h) The Defendant, POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed December 7, 1987, in Judgment Roll No. 71869; the attorney of record for the Plaintiff being William R. Thrailkill, Esquire, Post Office Drawer 13520, Surfside Beach, South Carolina 29576.
- (i) The Defendant, Custom Glass, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 1, 1988 in Judgment Roll No. 72147; the attorney of record for the Plaintiff being William Little of Dusenbury, Hendrix, & Little, 802 27th Avenue North, Myrtle Beach, South Carolina, 29577.
- (j) The Defendant, Parnell-Martin Companies, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 26, 1988 in Judgment Roll No. 72320; the attorneys for the Plaintiff being Harris, Hanna & Smith, P. O. Box 14510, Surfside Beach, South Carolina, 29587.
- (k) The Defendant, Loyola Federal Savings & Loan Association, is made a party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed May 17, 1988 in Judgment Roll No. 73525. The attorney of record for the Plaintiff being E. McLeod Singletary, Esquire, the McNair Law Firm, 18th Floor, NCNB Tower, Post Office Box 11390, Columbia, South Carolina, 29211.
- (l) The Defendant, Equipment Leasing, Division of American Federal Bank, FSB,

is made party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed April 21, 1988 in Judgment Roll No. 73272; the attorney for the Plaintiff being Craig Allen of Williams & Henry, P. O. Box 10307, Greenville, S. C., 29603.

- (m) The Defendant, Chambers of South Carolina, is made a party to this action by virtue of that certain Transcript of Judgment from the Magistrate's Court of Olin Blanton against Myrtle Beach Golf and Yacht Club, filed May 25, 1988 in Judgment Roll No. 73594. There is no attorney of record.
- (n) The Defendant, Williams Trucking Co., Inc. is made a party to this action by virtue of that certain Mechanic's Lien against Myrtle Beach Golf & Yacht Club, a general partnership, et al, filed August 20, 1987, in Mechanic's Lien Book 63 at page 46; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.
- (o) The Defendant, Palmetto Turf Farms, Inc., is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 19, 1987, in Mechanic's Lien Book 63 at page 43; filing individual of record for the Plaintiff being J. Craven Jones, Vice President, Palmetto Turf Farms, Inc., S.C. Highway 327, Effingham, South Carolina 29541.
- (p) The Defendant, Danny Player, d/b/a Player's Landscaping, is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, filed August 18, 1987, in Mechanic's Lien Book 63 at page 42; the attorney of record for the Plaintiff being Gregory B. Askins, Askins, Chandler & Askins, Post Office

Box 218, Hemingway, South Carolina 29554.

- (q) The Defendant, Whaley Corporation, d/b/a Socastee Hardware Store is made a party to this action by virtue of that certain Mechanic's Lien on Tract II and Tract III, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 12, 1987, in Mechanic's Lien Book 63 at page 1; the attorney of record for the Plaintiff being John E. Batten, IV, Esquire, Batten & Batten, Post Office Box 14400, Surfside Beach, South Carolina 29587.
- (r) The Defendant, Cornelius Toomey, individually and for the Benefit and on Behalf of all others similarly situated, by virtue of that certain suit filed January 12, 1988 in Roll No. 88-CP-26-104. The Attorney of record being Jay Bultz, 627-A Pine Drive, Surfside Beach, South Carolina.
- (s) The Defendant, Midway Nursery, Inc., is made a party to this action by virtue of that certain suit filed January 25, 1988 at Roll No. 88-CP-26-236. The attorney of record being Robert H. O'Donnell of Schneider & O'Donnell, Post Office Box 662, Georgetown, South Carolina, 29440.

18. Plaintiff Peoples Federal Savings & Loan Association, by reason of the above alleged facts, is entitled to and demands an Order of Judgment from this Court which declares that Peoples Federal Savings & Loan Association has a first mortgage lien on the premises described herein.

WHEREFORE, having fully set forth its Complaint, the Plaintiff Peoples Federal Savings & Loan Association prays as follows:

(a) That a receiver of the mortgaged premises be appointed with authority to take possession thereof and collect the rents, issues and profits thereof during the pendency of this action and to hold the same as further security for Plaintiff's debt;

(b) That the Court duly inquire into the matters and things herein alleged and award judgment in favor of the Plaintiff Peoples Federal Savings & Loan Association against the debtor Defendants for the amount owing to the Plaintiff as set forth in this Complaint, together with further sums it has advanced and may be required to advance in the future for the protection of its security, together with a reasonable attorney's fee for the services of Plaintiff's attorneys in handling this foreclosure and for the costs of this action;

(c) That Plaintiff's mortgage be foreclosed, the equity of redemption barred, the mortgaged premises be sold, the proceeds of the sale applied, first to the costs of this action, including a reasonable attorney's fee aforesaid, next to the amount found due to the Plaintiff and the balance, if any, to be disbursed in accordance with the Order of this Court;

(d) For such other and further relief as this Honorable Court may deem just and proper.

Richard M. Lovelace, Jr.
RICHARD M. LOVELACE, JR.
LOVELACE & BATTLE, P.A.
Post Office Box 1704
Conway, South Carolina 29526
Attorneys for Plaintiff

Conway, South Carolina
1 day of September, 1988.

Exhibit 9

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

COURT OF COMMON PLEAS
88-CP-26-3297

Peoples Federal Savings &
Loan Association,

Plaintiff

vs.

MASTER'S REPORT AND
JUDGMENT OF FORECLOSURE
AND SALE

Myrtle Beach Golf & Yacht Club)
a general Partnership,)
Myrtle Beach Golf & Yacht)
Club, Inc., a South Carolina)
corporation, MBG&YC II, Inc.,)
formerly known as Peoples)
Joint Venture Group, Inc.,)
Myrtle Beach Golf &)
Yacht Club Association, Inc.,)
Teatros Y Cinemas, S.A., a)
Panamanian Company, American)
Community Development Group,)
Inc., f/k/a Justice Investment)
Corp., John A. Hinson,)
Individually and as Trustee)
of West Coast Pension and)
Profit Sharing Trust,)
Sears Roebuck & Co., Universal)
Resort Travel, Inc., d/b/a)
A-Port-of-Call Travel Agency,)
Stan Parker, Ed Hudson, Austin)
Kelly Advertising, Inc., POA)
Acquisition Corp., d/b/a)
Peterson Outdoor Advertising)
of South Carolina, Custom)
Glass, Inc., the Parnell-)
Martin Companies, Inc.,)
Loyola Federal Savings &)
Loan Association, Equipment)
Leasing, Division of)
American Federal Bank, FSB,)
Chambers of South)
Carolina, Williams Trucking)
Co., Inc., Palmetto Turf Farms,)
Inc., Danny Player, d/b/a)
Player's Landscaping, Whaley)
Corp., d/b/a Socastee Hardware)
Store, Cornelius Toomey,)

FILED
HORRY COUNTY
JAN 7 1989
DELE C. ROBERTSON
CLERK OF COURT

Individually and for the
Benefit and on Behalf of all
other similarly situated,
and Midway Nursery, Inc.
Defendants.

Pursuant to an Order of Reference signed January 18, 1989, by the Honorable Dan F. Laney, Jr., the above encaptioned matter was referred to this Court with finality and with any right of appeal to be made directly to the Supreme Court of the State of South Carolina.

A hearing was held in the matter on October 4th and 5th, 1989. Peoples Federal Savings and Loan Association (hereinafter "Peoples Federal") was present and represented by its Attorney Michael W. Battle. Myrtle Beach Golf and Yacht Club, Inc. and MBG&YC II, Inc. were present and represented by their Attorney Michael G. Smith. Defendant American Community Development Group, Inc., f/k/a Justice Investment Corp., John A. Hinson, Individually and as Trustee of West Coast Pension and Profit Sharing Trust (hereinafter "ACDG"), were present and represented by their Attorneys Dalton B. Floyd, Jr. and Katherine DeAngelo. Sears Roebuck and Company was present through its attorney, John B. Badot. Whaley Corporation, d/b/a Socastee Hardware Store, was present and represented by its attorney, John E. Batten, IV.

STATEMENT OF THE CASE

This case is a foreclosure action in which Peoples Federal seeks to foreclose its first mortgage on a tract of land known as the Amenities Parcel owned by Myrtle Beach Golf and Yacht Club, a General Partnership. Myrtle Beach Golf and Yacht Club, through its partners Myrtle Beach Golf and Yacht Club, Inc. and MBG&YC II, Inc., have consented to the foreclosure. The remaining issues before the Court are the claims that ACDG has on the question of priority of the mortgage lien held by Peoples Federal over its mortgage lien.

During the course of the hearing, I had the opportunity to observe the demeanor the witnesses on the stand and take into account any bias or prejudice those witnesses had. I have determined the credibility of the witnesses and in light of the relevant, competent and admissible testimony and exhibits entered into evidence before the court, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. This is an action for foreclosure of a mortgage upon real estate situated and located in Horry County, South Carolina. Plaintiff Peoples Federal Savings and Loan Association is a savings and loan association duly organized and existing under and by virtue of the laws of the United States of America. Plaintiff maintains offices and does business in Horry County, South Carolina.

2. Defendant Myrtle Beach Golf and Yacht Club, a General Partnership, is duly organized and existing under and by virtue of the laws of the State of South Carolina, and is the owner of the real property being foreclosed which is hereinafter described in Schedule A. Defendant Myrtle Beach Golf and Yacht Club, Inc. is a South Carolina corporation, and is the managing general partner of Myrtle Beach Golf and Yacht Club. Defendant MBG&YC II, Inc., f/k/a Peoples Joint Venture Group, Inc., is also a South Carolina corporation and a partner of Myrtle Beach Golf and Yacht Club. The remaining Defendants are parties to this cause of action by virtue of the fact that they have or claim some right, title or interest or lien upon the real property which is the subject of the foreclosure action.

3. On or about October 9, 1985, for value received, Defendant Myrtle Beach Golf and Yacht Club, a General Partnership, made executed and delivered to Peoples Federal a promissory note, wherein and whereby the Defendant Myrtle Beach Golf and Yacht Club promised to pay to the Plaintiff the sum of Five Million One Hundred Thousand (\$5,100,000) Dollars, together with interest at the rate equal to the current "prime rate" plus one (1%) percent per annum. Prime rate means the prime rate charged by Peoples Federal, as said rate shall change from time to time.

4. In order to better secure the payment of the note and debt, Defendant Myrtle Beach Golf and Yacht Club executed and delivered on October 9, 1985, to Peoples Federal a Mortgage and Security Agreement covering the property described in Schedule "A" and incorporated herein by reference.

5. The above described mortgage was recorded on October 16, 1985, in the Office of the Clerk of Court for Horry County in Mortgage Book 1079 at page 430. According to the terms and conditions of the note and mortgage, payment in full was due to be made on or before December 31, 1986. If there was a default in the punctual payment of principal and accrued interest, at the option of Peoples Federal, the entire balance of the note, both principal and interest, would become immediately due and payable without notice, and if the note and mortgage were placed in the hands of an attorney for collection, the cost of collection, including attorney's fees would be additional sums secured by the mortgage.

In order to foreclose the mortgage, Plaintiff had to hire the services of the law firm of Lovelace & Battle, P.A. The amount of attorney fees was not submitted at the hearing. However, the law firm of Lovelace & Battle, P.A. has submitted the amount of attorney fees to this Court in the form of an Affidavit. Based upon the complex nature of the

foreclosure, and upon the Affidavit submitted by Lovelace & Battle, P.A., I find and conclude that Sixty Thousand (\$60,000.00) Dollars is a reasonable attorney's fee.

6. On or about October 9, 1985, Defendant Myrtle Beach Golf and Yacht Club executed and delivered to Peoples Federal an Assignment of Rents and Profits, whereby Peoples Federal was granted the right, title and interest of Defendant Myrtle Beach Golf and Yacht Club in and to the rents from the property described hereinbefore.

7. On or about October 16, 1985, the Assignment of Rents and Profits was recorded in the Office of the Clerk of Court for Horry County, in Deed Book 999 at page 32.

8. The mortgage given to Peoples Federal on the above-described property also contained a Security Agreement which gave it a security interest on all improvements, appurtenances, fixtures (whether detachable or not) equipment, heating and cooling systems, furnishings, building materials and supplies owned by the debtor located on the real property described hereinabove. The security interest of Peoples Federal was perfected by a UCC Financing Statement which was duly filed in the Office of the Clerk of Court for Horry County on October 22, 1985, and identified as Number 94022.

9. The note of October 9, 1985, is, and has been, in default since November 1, 1987, and the conditions of said

note and mortgage have been breached and Peoples Federal elected to and did declare the full balance of said indebtedness due and payable. There is due on said note and mortgage as of October 2, 1989, the sum of Eight Million One Hundred Ninety Thousand Nine Hundred Thirty-three and 43/100 (\$8,190,933.43) Dollars, together with attorney's fees of Sixty Thousand (\$60,000) Dollars, plus interest, to accrue at the rate of One Thousand Three Hundred Eighty-two and 87/100 (\$1,382.87) Dollars per diem.

10. The mortgage also provides that in the event of a default Peoples Federal, to the extent provided by law, shall be entitled as a matter of right if it so elects to the appointment of a receiver, to enter upon and take possession of the mortgaged premises as provided by the mortgage. Pursuant to the terms of the mortgage, a Receiver was duly appointed. The Receiver has made expenditures under the mortgage which were necessary to preserve the Plaintiff's interest in the security pursuant to the mortgage documents. The Receiver has indicated that the net expenditures over and above receipts was One Million Three Hundred Forty-one Thousand Nine Hundred Twenty-three and 97/100 (\$1,341,923.97) Dollars. That amount has been properly included within the mortgage amount due Peoples Federal.

11. The Defendants below named have, or claim, some interest in or lien upon the premises being foreclosed. However, the lien of Peoples Federal is prior and superior to those interests or claims. The other parties' interests in the property is set forth hereinbelow:

- (a) The Defendant, Teatros Y Clnemas, S.A., a Panamanian Company, is made a party to this action by virtue of that certain mortgage on the Amenities Parcels from Myrtle Beach Golf & Yacht Club, a general partnership, filed July 1, 1986, in Mortgage Book 1153 at page 15.
- (b) The Defendants, American Community Development Group, Inc., f/k/a Justice Investment Corp. and John A. Hinson, Individually and as Trustee of West Coast

Pension and Profit Sharing Trust are made a party to this action by virtue of: (1) that certain mortgage on the Amenities Parcel, from Myrtle Beach Golf & Yacht Club, a general partnership, filed April 2, 1987, in Mortgage Book 1245 at page 196; (2) that certain confession of judgment filed on April 1, 1987, in Judgment Roll #71161; the attorney of record for the Plaintiff being John M. Leiter, Esquire, Post Office Box 7516, Myrtle Beach, South Carolina; and (3) that certain UCC financing statement, filed January 20, 1986, in Roll No. 95191.

- (c) The Defendant, Sears Roebuck & Co., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, the date of the order being September 28, 1987, filed in Judgment Roll #71057; the attorney of record for the Plaintiff being John P. Bacot, Jr., Esquire, Post Office Box 15439, Surfside Beach, South Carolina 29587.
- (d) The Defendant, Universal Resort Travel, Inc., d/b/a A-Port-of-Call Travel Agency, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed October 23, 1987 in Judgment Roll #71367; the attorney of record for the Plaintiff being J.M. "Bud" Long, Jr., Esquire, 5001 North Kings Highway, Suite 201, Myrtle Beach, South Carolina 29577.
- (e) The Defendant, Stan Parker, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, filed October 30, 1987 in Judgment Roll #71502. There is no attorney of record.
- (f) The Defendant, Ed Hudson, is made a party to this action by virtue of that certain

judgment against Myrtle Beach & Golf Yacht Club, filed October 30, 1987 in Judgment Roll #71503. There is no attorney of record.

- (g) The Defendant, Austin Kelly Advertising, Inc., is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, et al, filed September 3, 1987 in Judgment Roll #71627; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.
- (h) The Defendant, POA Acquisition Corp., d/b/a Peterson Outdoor Advertising of South Carolina, is made a party to this action by virtue of that certain judgment against Myrtle Beach Golf & Yacht Club, Inc., filed December 7, 1987, in Judgment Roll No. 71869; the attorney of record for the Plaintiff being William R. Thrailkill, Esquire, Post Office Drawer 13520, Surfside Beach, South Carolina 29576.
- (i) The Defendant, Custom Glass, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 1, 1988 in Judgment Roll No. 72147; the attorney of record for the Plaintiff being William Little of Dusenbury, Hendrix, & Little, 802 27th Avenue North, Myrtle Beach, South Carolina, 29577.
- (j) The Defendant, Parnell-Martin Companies, Inc., is made party to this action by virtue of that certain judgment against Myrtle Beach Golf and Yacht Club, filed January 26, 1988 in Judgment Roll No. 72320; the attorneys for the Plaintiff being Harris, Hanna & Smith, P. O. Box 14510, Surfside Beach, South Carolina, 29587.
- (k) The Defendant, Loyola Federal Savings & Loan Association, is made a party to this

action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed May 17, 1988 in Judgment Roll No. 73525. The attorney of record for the Plaintiff being E. McLeod Singletary, Esquire, the McNair Law Firm, 18th Floor, NCNB Tower, Post Office Box 11390, Columbia, South Carolina, 29211.

- (l) The Defendant, Equipment Leasing, Division of American Federal Bank, FSB, is made party to this action by virtue of that certain judgment filed against Myrtle Beach Golf and Yacht Club, filed April 21, 1988 in Judgment Roll No. 73272; the attorney for the Plaintiff being Craig Allen of Williams & Henry, P. O. Box 10307, Greenville, S. C., 29603.
- (m) The Defendant, Chambers of South Carolina, is made a party to this action by virtue of that certain Transcript of Judgment from the Magistrate's Court of Olin Blanton against Myrtle Beach Golf and Yacht Club, filed May 25, 1988 in Judgment Roll No. 73594. There is no attorney of record.
- (n) The Defendant, Williams Trucking Co., Inc. is made a party to this action by virtue of that certain Mechanic's Lien against Myrtle Beach Golf & Yacht Club, a general partnership, et al, filed August 20, 1987, in Mechanic's Lien Book 63 at page 46; the attorney of record for the Plaintiff being David R. Gravely, Esquire, The Bellamy Law Firm, Post Office Box 357, Myrtle Beach, South Carolina 29577.
- (o) The Defendant, Palmetto Turf Farms, Inc., is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 19, 1987, in Mechanic's Lien Book 63 at page 43; filing individual of record for the Plaintiff being J. Craven Jones,

Vice President, Palmetto Turf Farms,
Inc., S.C. Highway 327, Effingham, South
Carolina 29541.

- (p) The Defendant, Danny Player, d/b/a Player's Landscaping, is made a party to this action by virtue of that certain Mechanic's Lien on Tract II, against Myrtle Beach Golf & Yacht Club, filed August 18, 1987, in Mechanic's Lien Book 63 at page 42; the attorney of record for the Plaintiff being Gregory B. Askins, Askins, Chandler & Askins, Post Office Box 218, Hemingway, South Carolina 29554.
- (q) The Defendant, Whaley Corporation, d/b/a Socastee Hardware Store is made a party to this action by virtue of that certain Mechanic's Lien on Tract II and Tract III, against Myrtle Beach Golf & Yacht Club, a general partnership, filed August 12, 1987, in Mechanic's Lien Book 63 at page 1; the attorney of record for the Plaintiff being John E. Batten, IV, Esquire, Batten & Batten, Post Office Box 14400, Surfside Beach, South Carolina 29587.
- (r) The Defendant, Cornelius Toomey, Individually and for the Benefit and on Behalf of all others similarly situated, by virtue of that certain suit filed January 12, 1988 in Roll No. 88-CP-26-104. The Attorney of record being Jay Bultz, 627-A Pine Drive, Surfside Beach, South Carolina.
- (s) The Defendant, Midway Nursery, Inc., is made a party to this action by virtue of that certain suit filed January 25, 1988 at Roll No. 88-CP-26-236. The attorney of record being Robert H. O'Donnell of Schneider & O'Donnell, Post Office Box 662, Georgetown, South Carolina, 29440.

12. Prior to February 24, 1984, Justice, Inc.

approached Peoples Federal about the development of certain land known as The Enterprise Tract. The initial concept was

that Peoples Federal was to be paid interest for loans to the project, plus receive and equity participation through a wholly-owned subsidiary service corporation if any profits were made on the development of the property.

13. On or about February 24, 1984, George N. Magrath, Jr. incorporated Peoples Joint Venture Group, Inc. Peoples Joint Venture Group, Inc. was a wholly-owned service corporation subsidiary of Peoples Federal Savings and Loan. Peoples Joint Venture Group, Inc. was a twenty-five (25%) percent owner of the partnership of Myrtle Beach Golf and Yacht Club.

14. Peoples Joint Venture Group, Inc. was authorized to issue one thousand (1000) shares of Class A Stock, with One (\$1.00) Dollar par value. Five hundred (500) shares were actually issued at the organizational meeting of the Shareholders and Board of Directors. The First Report of Corporation indicates that one thousand (1000) shares of stock were issued. However, the stock certificates and the minutes of the meetings indicate that only five hundred (500) shares were actually issued.

15. The remaining seventy-five (75%) percent of the partnership of Myrtle Beach Golf and Yacht Club was owned by a corporation known as Myrtle Beach Golf and Yacht Club, Inc., which served as the managing partner. Peoples Joint Venture Group, Inc. had the right to participate in major

management decisions.

16. On February 29, 1984, Myrtle Beach Golf and Yacht Club, Inc. and Peoples Joint Venture Group, Inc., through the partnership of Myrtle Beach Golf and Yacht Club, obtained an option to purchase 1,035 acres of land known as Enterprise Landing. The purchase price was Six Thousand (\$6,000) Dollars per acre. The partnership had the right to take down the property over a period of time in ten separate tracts. At the time that the option was closed and the first tract actually purchased, the seller of the land offered the partnership One Million (\$1,000,000) Dollars in cash not to close the land and to release the seller from the option. The land was worth more than the actual purchase price. The partnership refused the offer, closed, and began development of the property.

17. Tract 1 represented the first phase of construction of the development. Tract 2 represented that land which was to become an eighteen-hole golf course, tennis courts and swimming pool. Tract 2 is commonly known as the Amenities Parcel and the parcel upon which the Plaintiff seeks foreclosure in this hearing.

18. During the course of the development of Tract 1, Plaintiff made several loans to the partnership for construction and development of Tract 1. Interest was paid

on the loans either through closings of houses or through refinancing. Most of those loans were made on or about February 29, 1984. With the exception of a Three Million (\$3,000,000) Dollar loan on the Amenities Parcel, virtually all of those loans have either been paid or extinguished through foreclosure.

19. Prior to June 30, 1985, Myrtle Beach Golf and Yacht Club paid a dividend or profit to Peoples Joint Venture Group in the amount of Sixty-one Thousand Two Hundred Fifty (\$61,250) Dollars.

20. Some time in June, 1985, ACDG decided it would buy the majority of Rod Propps' developments. Arthur Andersen was retained to come up with a plan whereby the purchase of those developments could be effected. ACDG was a publicly held corporation and Merrill-Lynch Capital Corporation was to finance the purchase of Propps' developments.

21. ACDG had an appraisal done of the property as of August 1, 1985. The appraisal indicated that the net present value of the remaining property and tracts of Myrtle Beach Golf and Yacht Club was Fourteen Million One Hundred Thousand (\$14,100,000) Dollars.

22. On August 9, 1985, Peoples Federal sold all of its stock in Peoples Joint Venture Group to Rod Propps. The sale of the stock was a bona fide, arms-length transaction in which the Plaintiff exchanged its stock for a note and

mortgage in the amount of Four Hundred Three Thousand (\$403,000) Dollars. The value of Four Hundred Three Thousand (\$403,000) Dollars represented the appreciated value in the land as a result of the development and the equity of Peoples Joint Venture Group, Inc. in the property which existed when purchased. Peoples Joint Venture Group, Inc., as a twenty-five percent owner of the contractual right to purchase Tract III of the land at a fixed price of Six Thousand (\$6,000) Dollars an acre, had a value of approximately Four Hundred Three Thousand (\$403,000) Dollars, at least to the extent it had the right to participate in the purchase of Tract III. The testimony of both the seller and the purchaser of the stock was that that price represented the fair market value of the stock and was a fair price and a bona fide transaction. This Court agrees that the sale of the stock was a bona fide transaction in which Peoples Federal duly sold its stock and interest in Peoples Joint Venture Group, Inc. and thereby divested itself of any interest through its subsidiary in the partnership of Myrtle Beach Golf and Yacht Club. In November of 1985, the name of the corporation was changed from Peoples Joint Venture Group, Inc. to MGB&YC II, Inc.

23. After August 9, 1985, Peoples Federal had no interest in the partnership of Myrtle Beach Golf and Yacht Club except as a lender.

24. On August 13, 1985, Loyola Federal Savings and Loan Association became a major lender for the development by committing to lend Thirteen Million (\$13,000,000) Dollars for the construction of the housing for the development of Myrtle Beach Golf and Yacht Club. Peoples Federal remained a lender on the project, with its main focus on the development of the golf course and Amenities Parcel.

25. Peoples Federal's initial loan on the Amenities Parcel was the above mentioned Three Million (\$3,000,000) Dollars loan. That loan was made on February 29, 1984. Thereafter, on October 16, 1985, Peoples Federal paid out the remaining principal on the Three Million (\$3,000,000) Dollar loan by a new loan to Myrtle Beach Golf and Yacht Club for Five Million One Hundred Thousand (\$5,100,000) Dollars. At the time the 5.1 Million Dollar loan was made and secured, Peoples Federal had no rights over the partnership and, in fact, did not exercise any control of the partnership. In addition, it had no rights to profit from the partnership.

26. On September 30, 1985, ACDG wired Two Hundred Fifty-seven Thousand (\$257,000) Dollars to Myrtle Beach Golf and Yacht Club, Inc. The purpose of the wire was a deposit for the purchase (by ACDG) of the stock in Myrtle Beach Golf and Yacht Club. On October 2, 1985, an additional Four Hundred Ninety-three Thousand (\$493,000) Dollars was wired to Justice, Inc. for the purchase of stock in Myrtle Beach Golf

and Yacht Club, Inc. During the same time, a contract was entered and ratified by the Board of Directors for ACDG approving of the purchase of Myrtle Beach Golf and Yacht Club, Inc. stock.

27. On October 30, 1985, One Hundred Fifty Thousand (\$150,000) Dollars was wired to Justice, Inc. ostensibly for Myrtle Beach Golf and Yacht Club, the General Partnership.

28. On January 9, 1986, Rod Propps, Dale Murray and ACDG decided to cancel the agreement to purchase the stock of Myrtle Beach Golf and Yacht Club, Inc. Justice, Inc. promised to pay back the Seven Hundred Fifty (\$750,000) Dollars used as a down payment, and Justice, Inc. signed a note for Seven Hundred Fifty Thousand (\$750,000) Dollars. Myrtle Beach Golf and Yacht Club, Inc. also promised to pay back the One Hundred Fifty Thousand (\$150,000) Dollars, and a note was signed for that amount by Myrtle Beach Golf and Yacht Club, Inc. The notes were open and unsecured. Part of the agreement for obtaining the notes was that ACDG would be let out of its obligation to purchase the shares of Myrtle Beach Golf and Yacht Club, Inc. In addition, Rod Propps and all of his employees were released from any claims which ACDG may have had against them.

29. On March 12, 1987, ACDG filed a Lis Pendens on the entire development and brought suit against Rod Propps, Justice, Inc. and the General Partnership of Myrtle Beach

Golf and Yacht Club. On April 2, 1987, ACDG entered into a Settlement Agreement with Rod Propps, Justice, Inc. and the General Partnership of Myrtle Beach Golf and Yacht Club. The result of the settlement is contained in a Settlement Agreement filed with the Court under Civil Action No. 87-CP-26-691. The result of the settlement is that the partnership Myrtle Beach Golf and Yacht Club signed new notes and gave ACDG a lien on all property owned by Myrtle Beach Golf and Yacht Club. The partnership and Propps confessed a judgment to ACDG for Nine Hundred Thousand (\$900,000) Dollars.

30. The Settlement Agreement was made an Order of the Court in which the Court found and ordered as follows:

"It appearing to this Court that the parties hereto have settled their differences, and having been duly aware of the facts and circumstances involved in this matter, and upon the joint motion of the parties, by and through their undersigned attorneys, it is hereby

ORDERED, ADJUDGED AND DECREED that the stipulation for preliminary and permanent injunction and settlement agreement, a copy of which is attached hereto, is hereby incorporated by reference as if set forth herein by fully text; and the same be, and is hereby adopted, and made the order of this Court in this matter and shall hereafter be a mandatory injunction upon the parties in each and every detail.

31. The Order was signed by Attorneys for ACDG and by Attorneys for Defendants Myrtle Beach Golf and Yacht Club, a General Partnership, and others.

32. Part of the Order stated that the Defendant shall execute a mortgage on the property owned by the Defendants described in the Plaintiff's Lis Pendens filed March 12, 1987. This Mortgage shall be in favor of ACDG and shall be junior only to the liens described in said mortgage.

33. The mortgage to ACDG and the one which it seeks to foreclose in this hearing contains the following language:

"As to the property described in the Amenities Parcel above, the lien of this mortgage is junior and subordinate to the lien of the following mortgages, together with any extensions and/or renewals thereof:

A. Mortgage of Myrtle Beach Golf and Yacht Club, a General Partnership, to Peoples Federal Savings and Loan Association in the original principal amount of Five Million One Hundred (\$5,100,000) Dollars dated October 9, 1985, and in said Clerk's Office on October 16, 1985 in Real Estate Mortgage Book 1079 at page 430, including any security interest evidenced by any UCC Financing Statements of record of any assignments of rents and profits executed in connection with the foregoing mortgage.

34. In June, 1986, Myrtle Beach Holding Corporation bought out all of Rod Propps' and Justice, Inc.'s interest in Myrtle Beach Golf and Yacht Club, a General Partnership. Part of the transaction entailed the infusion of cash in the amount of One Million Eight Hundred Thousand (\$1,800,000) Dollars secured by a mortgage from Teatros Y. Cinemas, a Defendant in this action. The result of the infusion of One

Million Eight Hundred (\$1,800,000) Dollars was that the loans were brought current for the lienholders owed money by Myrtle Beach Golf and Yacht Club, a General Partnership. The loan from Teatros Y. Cinemas preceded the Mortgage and Security Agreement given to ACDG and that mortgage was expressly made subordinate to the loan of Teatros Y. Cinemas.

35. On June 3, 1988, ACDG put Myrtle Beach Golf and Yacht Club, the General Partnership, into involuntary bankruptcy.

36. On May 4, 1989, the United States District Court, through the United States Bankruptcy Judge, William Thurmond Bishop, entered an Order authorizing the sale of property, which is the subject of this action, free and clear of liens, claims, and encumbrances which removed the stay of the Bankruptcy Court from the foreclosure proceeding and permitted the Plaintiff to pursue its rights to foreclose the Amenities Parcel herein.

37. During the entire time that Plaintiff has had the 5.1 Million Dollar loan and other loans to Myrtle Beach Golf and Yacht Club, it has classified the debts on its books as loans and not as equity investments. The independent auditors of Peoples Federal, Arthur Young, examined the loans and permitted, without exception, the classifications of the debts as loans, instead of equity investments.

CONCLUSIONS OF LAW

1. The within foreclosure, the claims of the remaining Defendants, and all issues before this Court are governed by the laws of the State of South Carolina.

2. Plaintiff's note and mortgage in the amount of Five Million One Hundred Thousand (\$5,100,000) Dollars are valid on their face and constitute valid binding agreements on the property known as the Amenities Parcel of Myrtle Beach Golf and Yacht Club.

3. The Mortgage, Assignment of Rents and Profits, and the Uniform Commercial Code Statement were duly filed on October 16, 1985, and were public notice to all other parties. Plaintiff's lien is a first lien and is superior to all the liens of the Defendants named hereinabove.

4. Peoples Joint Venture Group, Inc. was organized and maintained as a separate entity from the Plaintiff. At all times herein it was a wholly-owned subsidiary service corporation of the Plaintiff, but its identity was kept separate.

5. Peoples Joint Venture Group, Inc. was a partner in Myrtle Beach Golf and Yacht Club with Myrtle Beach Golf and Yacht Club, Inc. However, Peoples Federal never became a partner with Myrtle Beach Golf and Yacht Club, Inc. or any other affiliate in connection with the development of Myrtle Beach Golf and Yacht Club. At all times herein Peoples

Federal kept its identity as a lender in all transactions.

6. Even if Peoples Federal had become a joint venturer in the development of Myrtle Beach Golf and Yacht Club, that status was effectively dissolved on August 9, 1985, when the Plaintiff sold all of its stock in Peoples Joint Venture Group, Inc. to R. L. Propps. The sale of stock was a bona fide, arms-length transaction in which Peoples Federal divested itself of any interest in profits or control of the development of Myrtle Beach Golf and Yacht Club, except as a lender.

7. Peoples Federal correctly classified its transactions with Myrtle Beach Golf and Yacht Club as loans instead of equity investments in its accounting procedures.

8. Credible evidence was not introduced at trial that Rod L. Propps converted, misappropriated or any way mishandled the funds belonging to ACDG or any predecessor of that corporation. At all times herein, R. L. Propps was an agent of ACDG, not an agent or employee of Peoples Federal. ACDG is not entitled to any damages or judgment for damages from Peoples Federal.

9. Even if Rod L. Propps had converted, misappropriated, or in some way mishandled the funds belonging to ACDG, any debts owed by Rod L. Propps were released in exchange for payment of the notes given by

Justice Inc. and Myrtle Beach Golf and Yacht Club, Inc. to ACDG.

10. At the times Rod L. Propps wired, or caused to be wired, money to Justice, Inc. or Myrtle Beach Golf and Yacht Club, Inc., he was acting as an agent and employee of American Community Development Group. The payment of money by American Community Development Group to Justice, Inc. and Myrtle Beach Golf and Yacht Club, Inc. has more of the appearance of an equity investment than the loans of the Plaintiff.

11. The remaining interests of the other Defendants, including ACDG, are correct as set out in the complaint.

12. In its Settlement Agreement of April 2, 1987, American Community Development Group expressly represented to this Court that its lien position was subordinate to Peoples Federal's lien position. That representation was relied upon by the Court, the parties, and Peoples Federal, which continued to make construction advances after the settlement was entered. ACDG is judicially estopped from claiming that its lien is now superior to Peoples Federal's lien.

13. The failure of ACDG to change the mortgage which expressly contained a provision that its lien was subordinate to the lien of Peoples Federal constituted a waiver of any rights it may have to claim a superior lien to Peoples Federal.

14. The Order of the Honorable David McInnis dated April 2, 1987, constitutes a valid and binding order and collaterally estops ACDG from claiming priority for its lien position over the lien position of the Plaintiff in the within action.

15. The purchase of the development known as Myrtle Beach Golf and Yacht Club by Myrtle Beach Holding Corporation and the infusion of One Million Eight Hundred Thousand (\$1,800,000) Dollars in cash removed any questions of whether Peoples Federal's loan should be considered as a loan or an equity investment.

16. Peoples Federal has properly established the amount of its debt and it is entitled to foreclose the mortgage and cause it to be sold at public auction. In addition, it is entitled to the first lien position through its mortgage and security interest.

DISCUSSION

The main issue before this Court is whether Peoples Federal was a partner with Myrtle Beach Golf and Yacht Club, Inc. or some other affiliate at the time it loaned Five Million One Hundred Thousand (\$5,100,000) Dollars to Myrtle Beach Golf and Yacht Club, the partnership. Peoples Federal contends it was acting solely as a lender in the transaction, while Defendant ACDG claims that Peoples Federal was a

of interest in capital of property; and (3) community of interest in control and management. Wyman v. Davis, 223 S.C. 172, 74 S.E.2d 694 (1953).

In the development of Myrtle Beach Golf and Yacht Club Peoples Federal went through two phases in its relationship with the developers of that project. Prior to August 9, 1985, it owned Peoples Joint Venture Group, Inc., a subsidiary service corporation created to participate as a general partner in Myrtle Beach Golf and Yacht Club. Peoples Joint Venture Group, Inc.'s rights to control were limited by the actual partnership agreement. In addition, its profit interests were limited to twenty-five (25%) percent of the profits. The other partner, Myrtle Beach Golf and Yacht Club, Inc. was the managing partner and it was entitled to seventy-five (75%) percent of the profits. After August 9, 1985, Peoples Federal dissolved its relationship with Peoples Joint Venture Group, Inc. by selling the corporation to Rod L. Propps. All of Peoples Federal's employees immediately resigned from any positions they held with Peoples Joint Venture Group, Inc.

ACDG claims that prior to August 9, 1985, Peoples Federal and Peoples Joint Venture Group, Inc. were actually one and the same. ACDG claimed that Peoples Joint Venture Group, Inc. was the alter-ego of Peoples Federal. Peoples Federal contends that it maintained Peoples Joint Venture

Group, Inc. at all times as a separate entity. ACDG's expert witness Tom Myers admitted that in form the identity between Peoples Federal and Peoples Joint Venture Group, Inc. was always kept separate, but he claims that in substance the distinction was blurred.

The examples cited by ACDG's expert were that Five Hundred (\$500.00) Dollars was used to capitalize the corporation. The same directors for Peoples Federal were directors for Peoples Joint Venture Group, Inc. The same address was used for both corporations. The officers of Peoples Joint Venture Group, Inc. were employees of Peoples Federal and those employees were only paid a token salary by Peoples Joint Venture Group, Inc. In essence, ACDG's expert claims that Peoples Federal is not entitled to maintain the corporate veil created with Peoples Joint Venture Group, Inc.

A leading case in South Carolina on piercing the corporate veil is Sturkie v. Sifly, 280 S. C. 453, 313 S.E.2d 316 (1984). That case refers to a two-pronged test which is used to determine whether corporate entities should be disregarded. The first deals with the formalities of the corporation. The second part requires that there be an element of injustice or fundamental unfairness if the corporate entity is to be disregarded. Both tests must be passed before a corporate entity may be disregarded.

On the first prong of the test there are several factors that should be considered. Those factors listed in Sturkie dealt with whether the corporation: (1) was undercapitalized; (2) failed to observe corporate formalities; (3) paid no dividends; (4) were insolvent; (5) lacked corporate records; (6) had its corporate funds siphoned off by the dominant stockholder; and (7) was a mere facade for the operations of its dominate stockholders.

On the surface it may appear that some of the factors favoring disregarding the corporate entity were present in the relationship between Peoples Federal and Peoples Joint Venture Group, Inc. However, if the sole function of Peoples Joint Venture Group, Inc. is considered, then a deeper analysis will reveal the propriety of the corporate entity. The sole function of Peoples Joint Venture Group, Inc. was to participate in profits or losses generated by the development of Myrtle Beach Golf and Yacht. The partnership agreement shows that Myrtle Beach Golf and Yacht Club, Inc. was the managing partner. Peoples Joint Venture Group Inc.'s rights and actual activities were limited throughout its existence as a subsidiary of Peoples Federal.

Looking at the factors set out in Sturkie from the point of view of the sole function of Peoples Joint Venture Group, Inc., the contention by Peoples Federal that the subsidiary was a separate entity is stronger than ACDG's claim that

Peoples Joint Venture Group, Inc. was Peoples Federal's alter-ego. At the time Peoples Federal sold the stock to Rod L. Propps, the corporation was solvent, therefore, the issues of capitalization and funds do not apply. Further, Peoples Federal did observe corporate formalities; it maintained corporate records and it was not used as a facade for the actions of Peoples Federal. Peoples Joint Venture Group, Inc. was merely a service corporation created to warehouse profits or losses for Peoples Federal. It was not created to enter contracts or provide services to third parties.

Corporations such as Peoples Joint Venture Group, Inc. are permitted for savings and loan associations even though the industry is closely regulated. Pursuant to 12 U.S.C. 1464 (C) (4) (b), Peoples Federal was permitted to invest in Peoples Joint Venture Group, Inc. That service corporation was permitted to function as a separate entity. As a separate entity, that service corporation may enter joint ventures without entangling Peoples Federal in the Joint Venture. Opinion of the General Counsel dated August 7, 1984.

The second part of the test for piercing the corporate veil requires an element of injustice or fundamental unfairness if the acts of the corporation be disregarded. It is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial

reflection. Baker v. Equitable Leasing Corp., 275 S.C. 359, 271 S.E.2d 596 (1980). If any general rule can be laid down, it is that any corporation will be looked upon as a legal entity until sufficient reason to the contrary appears. Sturkie v. Sifley, 313 S.E.2d at 318. However, when the notion of legal entity is used to protect fraud, justify wrong or defeat public policy, the law will regard the corporation as an association of persons. Sturkie v. Sifley, 373 S.E.2d at 318.

ACDG simply did not offer credible evidence that Peoples Federal used Peoples Joint Venture Group, Inc. to protect fraud, justify wrong or defeat public policy. ACDG claimed that Peoples Federal used its position as a lender to save its investment as an owner. However, that claim fails in view of the fact that the alleged investment was a note and mortgage for Four Hundred Three Thousand (\$403,000) Dollars. That note and mortgage was foreclosed in an earlier foreclosure and it is not even the subject of this action. In this action, Peoples Federal is foreclosing its loan for 5.1 Million Dollars, which occurred after the \$403,000 note and mortgage were obtained.

An even more important reason for maintaining the corporate veil turns on the question of whether the evidence shows that if the separate identity of Peoples Joint Venture Group, Inc. is upheld, will ACDG suffer injustice or

fundamental unfairness? The corporate form may be disregarded only where equity requires the action to assist a third party. Sturkie v. Sifley, 313 S.E. 2d at 319; Crabtree Investments, Inc. vs. Aztec Enterprises, Inc., 479 F.Supp. 448 (MD LA. 1979).

A general rule has been laid down for determining whether ACDG has suffered injustice or a fundamental unfairness. The burden of proving fundamental unfairness requires that ACDG establish: (1) Peoples Federal was aware of ACDG's claim against Peoples Joint Venture Group, Inc., and (2) thereafter, Peoples Federal acted in a self-serving manner with regard to the property of the corporation and in disregard of ACDG's claim to the property. Sturkie v. Sifley, 313 S.E.2d at 319; 18 C.J.S. Corporations, Section 6 (Cum. Supp. 1982).

The facts in the present case show that the rule does not apply to Peoples Joint Venture Group, Inc. On August 9, 1985, Peoples Federal gave up its rights to Peoples Joint Venture Group, Inc., and therefore gave up its claim to profits or control. Further, the security given to ACDG did not exist until a year and a half after Peoples Federal obtained the 5.1 Million Dollar mortgage from Myrtle Beach Golf and Yacht. Finally, ACDG was aware of Peoples Federal's superior lien position at the time it acquired its mortgage and it expressly consented to its subordinate position.

Even if ACDG showed a fundamental unfairness, it cannot overcome the fact that on August 9, 1985, Peoples Federal divested itself from any interest in Peoples Joint Venture Group, Inc. After August 9, 1985, Peoples Federal did not have a right to participate in major management decisions. It did not have a right to participate in future profits.

ACDG's expert seeks to overcome the sale of stock by claiming it was a sham transaction. He claims the stock had no value and the consideration for the stock had no value. However, the evidence at the hearing does not support his claim. In determining the bona fide nature of the transaction, the Court should look at the situation as it existed on August 9, 1985, and not a later date after bankruptcy.

As of August 1, 1985, an appraiser for ACDG appraised the development and found that it had a net present value of Fourteen Million One Hundred Thousand (\$14,100,000) Dollars. Loyola Federal Savings and Loan Association had committed to loan to Myrtle Beach Golf and Yacht Club over Thirteen Million (\$13,000,000) Dollars. That loan actually closed five days after the sale occurred. Sales contracts were in place for over 12 Million Dollars. Deposits were held in escrow for more than 1 Million Dollars. Both Rod Propps and George N. Magrath, Jr. testified that the price given for the stock was fair and that the transaction was bona fide. Based

on the evidence, this Court finds that the sale was bona fide.

ACDG claims that even if the sale itself was bona fide, the relationship between Peoples Federal and Myrtle Beach Golf and Yacht Club was too entangled to be separated after August 9, 1985. ACDG argues that a de facto partnership existed between Peoples Federal and Justice, Inc. from the onset of the project. However, ACDG did not offer any credible evidence that a de facto partnership existed.

As indicated above, such a relationship did not exist because of Peoples Federal's ownership of Peoples Joint Venture Group, Inc. ACDG did not offer any persuasive proof that Peoples Federal directly controlled or shared in the profits of Myrtle Beach Golf and Yacht Club before or after August 9, 1985.

ACDG did introduce two documents which were created in 1984 by Justice, Inc., which stated that Peoples Federal and Justice, Inc. were developing Myrtle Beach Golf and Yacht as joint venturers. Apparently, Peoples Federal did nothing to correct those statements even though the statements were incorrect. If ACDG had relied on those statements and made a loan to Myrtle Beach Golf and Yacht, it may claim that a partnership by estoppel existed. Section 33-41-380, Code of Laws of S. C. (1976). However, ACDG did not learn of the statements until well after it obtained the notes and

mortgages. Further, Rod Propps was the head of ACDG during the times money was transferred from ACDG to Myrtle Beach Golf and Yacht and was fully aware of the relationship between Peoples Federal and Myrtle Beach Golf and Yacht. Finally, the notes were not signed by the partnership or MBG&YC II, Inc. The notes were signed by individual corporations. ACDG cannot prove reliance on the documents or claim estoppel.

ACDG's expert witness testified about the correct accounting procedures for classifying assets. His theory was that if the asset should be classified by accounting standards as an equity investment, then the priority given a loan status should be denied Peoples Federal. Although ACDG's expert did not cite any authority for his findings, he did refer to a speech he had given to Federal Home Loan Bank Board Regulators, a proposed regulation, and a Statement of Position dated 1986 for the American Institute of Certified Public Accountants as authority for his claim that Peoples Federal was an equity investor and not a lender in connection with Myrtle Beach Golf and Yacht Club.

ACDG's expert did admit that the ultimate determination of the status of Peoples Federal was a legal question for the Court and not an accounting question. Using the legal analysis set forth above, Peoples Federal's intent and actions were those of a lender. The forms used by Peoples

Federal prove that fact and conclusion. Further, the testimony of George N. Magrath, Jr. and Rod L. Propps prove that fact.

The Court questioned ACDG's expert on his conclusion in some detail. The expert stated that his opinion was based on his belief that the sale of stock was a sham transaction and on the nature of the loans and repayments between Peoples Federal and Myrtle Beach Golf and Yacht. The bona fide character of the sale of stock has already been addressed and this Court believes the sale of stock was not a sham, but was a bona fide transaction.

The second belief about the nature of the loans ordinarily would require an indepth analysis of proper accounting procedures and how loans are made. However, this Court finds that such analysis is unnecessary for two reasons. First, at all times Peoples Federal has carried the transaction as loans on their books. Each year they have been audited by Arthur Young, who conducted an independent examination of the loans. This Court finds it significant that Arthur Young's auditors never took exception to Peoples Federal's classification of the asset as a loan.

The second reason comes from the testimony of ACDG's own expert. ACDG's expert was asked if anything, in his opinion, could have occurred which would have changed his opinion that the transaction was equity investments as opposed to loans.

ACDG's expert testified that if outside capital were infused into the project which brought the loans current and if a third party acquired the project then his opinion would probably change.

Apparently ACDG's expert was not aware of the testimony that in June of 1986 Myrtle Beach Holding Corporation, a third party, bought all the stock in Myrtle Beach Golf and Yacht, Inc. and MBG&YC II, Inc., or that 1.8 Million Dollars in cash was infused into the project, bringing the loans current and paying off mechanics liens and materialmen. However, that fact occurred, and it occurred prior to the time ACDG acquired any security interest in Myrtle Beach Golf and Yacht Club. That fact was shown by the express agreement that ACDG's mortgage is subordinate to the 1.8 Million Dollar loan of Teatros Y. Cinemas, which provided the additional cash.

In addition to the above-mentioned reasons, the claim of ACDG to a superior lien position is defeated by its own acts and omissions. Without addressing the question of whether ACDG was entitled to claim under its mortgage, the facts show that ACDG obtained its mortgage and a confession of judgment by expressly representing to the Court that its lien rights were subordinate to the lien rights of Peoples Federal.

The settlement was entered by the parties whom ACDG claims were partners with Peoples Federal with the express

understanding that the security interest given ACDG was given as a subordinate lien to the lien of Peoples Federal. Further, Peoples Federal continued making disbursements on the 5.1 Million Dollar loan after the mortgage was given ACDG.

The Order of Judge McInnis settling the case incorporates the statements or agreement that ACDG's mortgage is subordinate to Peoples Federal's mortgage. ACDG consented to the Order and has never sought to amend it.

For the foregoing reasons, ACDG is estopped from asserting lien priority over Peoples Federal's mortgage. The general rule is that where a party joins in the application for an order rendered in a proceeding instituted by that party, then that party is estopped to deny the order's validity. Way v. Way, 132 S.C. 288, 128 S.E. 705 (1925); Carrigan v. Drake, 36 S.C. 354, 15 S.E. 339 (1891). Under the settlement agreement, ACDG was a moving party and expressly agreed to its subordinate position. Judge McInnis incorporated that agreement in his order in every detail. ACDG cannot now invalidate that Order which gave it the rights which it seeks to assert herein. State v. Spartanburg & U. R. Co., 8 S.C. 129, (1875).

CONCLUSION

The relief sought by Peoples Federal should be granted. The property described in its mortgage should be foreclosed and the property sold at the next appropriate sales date. The priority of liens are hereby found to be set in the Order contained in Peoples Federal's Complaint.

IT IS ORDERED, ADJUDGED AND DECREED:

1. That pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, this Order shall constitute a final judgment.
2. That there is due to Peoples Federal on the obligation and mortgage set forth in the Complaint the sum of Eight Million Two Hundred Fifty Thousand Nine Hundred Thirty-three and 43/100 (\$8,250,933.43) Dollars representing the "Total Debt" due Plaintiff as set out in paragraph (9) supra., together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.
3. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph 9, and later accrued interest on the principal) shall bear interest hereafter.
4. That the Defendant liable for the aforesaid debt does, on or before the date of sale of the property hereinafter described, pay to the Plaintiffs, or Plaintiff's

attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

5. That on default of payment, at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Master-in-Equity at public auction, at 11:00 a.m., on April 2, 1990, at the County Courthouse, in the City of Horry, County and State aforesaid, on the following terms, that is to say:

a. FOR CASH: the undersigned will require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance same to be forfeited and applied to the costs and Peoples Federal's debt.

b. Purchaser to pay for deed stamps and cost of recording the deed.

6. If Peoples Federal be the successful bidder at said sale, for a sum, not exceeding the amount of costs, disbursements, expenses and the indebtedness of said Peoples Federal in full, said Peoples Federal may pay to the undersigned only the amount of the costs, disbursements and expenses crediting the balance of the bid on Peoples Federal's indebtedness.

7. Deficiency judgment being waived, the bidding will not remain open after the date of the sale.

8. That the undersigned will by advertisement according to law, give notice of the time, and place of such sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. Peoples Federal, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within ten (10) days after date of sale, then the undersigned may advertise the said premises for sale on the next or some subsequent Salesday, at the risk of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the undersigned do apply the proceeds at the sale as follows:

First: To payment of the amount of the costs, disbursements, and expenses of this action.

Next: To the payment of all taxes and assessments due on the date of sale.

Next: To the payment to the Plaintiff or said Plaintiff's attorneys, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on same.

Next: Any surplus funds be held pending the further Order of this Court.

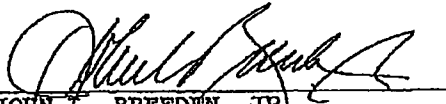
10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. And, IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defendants and all persons whosoever claiming under them be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises be sold, or any part thereof.

12. IT IS FURTHER ORDERED, that the deed of conveyance made pursuant to said sale shall contain the names of only the Plaintiff, the Defendant and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

13. A description of the premises herein ordered to be sold is attached hereto as Schedule "A".

AND IT IS SO ORDERED.


JOHN L. BREEDON, JR.
MASTER-IN-EQUITY

Conway, South Carolina

6 day of March, 1990.

SCHEDULE "A"

AMENITIES PARCELS

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed of Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855

at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same

prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County,

South Carolina, being shown as Parcel 1 (0.38 acres), Parcel 8 (0.36 acres) and Parcel 17 (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 2 (0.08 acres), Parcel 8-A (0.17 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

AMENITIES PARCELS

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property

described on Exhibit "B" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "C" attached hereto and made a part hereof by reference.

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

DERIVATION OF TITLE

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

EXHIBIT "B"

All those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.07 acres), Parcel G (0.0001 acres) and Parcel H (0.001 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 142, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such

boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel L (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel Q (0.01 acres), Parcel R (0.0007 acres), Parcel S (0.09 acres), Parcel T (0.09 acres), Parcel U (0.05 acres), and Parcel V (0.10 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel J (0.05 acres) and Parcel K (1.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11,

1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcels 4 (0.006 acres), Parcel 5 (0.0003 acres) and Parcel 6 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 3 (0.23

acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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ALSO, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as "Tract III-Out Parcel B" (0.74 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Exhibit 10

STATE OF SOUTH CAROLINA

Horry County, S.C.

1990 MAY 25 PM 3:16

MASTER'S DEED

COUNTY OF HORRY

WHEREAS, Peoples Federal Savings and Loan Association, on or about the 12th day of September in the year of our Lord one thousand nine hundred eighty-eight, did file a petition in the Court of Common Pleas for the County of Horry, State of South Carolina, against Horry Beach Golf and Yacht Club, a general partnership, at all times a partnership, the action being at issue, was heard by the Honorable the said Court on the 6th day of May in the year of our Lord one thousand nine hundred ninety, whereupon the Judge of said Court, after full hearing thereof and mature deliberation in the premises, did ORDER, ADJUDGE, AND DECREE that the premises particularly set forth and described hereinafter, should be sold by John L. Breeden, Jr., as Master, hereinafter called

party of the first part, on the terms and for the purposes mentioned in said Decree of Final Order, all of which will more fully appear by reference to the registry of the said Court, Judgement Roll No. 12576; and the party of the first part after having duly advertised the said premises for sale at public outcry on the 2nd day of April the year of our Lord one thousand nine hundred ninety, did openly and publicly, and after the manner of auction, offer the said premises for sale, and as provided by law, did then sell the same unto Peoples Federal Savings and Loan Association, P.O. Box 220, Conway, S.C. 29526, State aforesaid, hereinafter called parties of the second part, whether one or more, for the sum of Five Million Seven Hundred Thousand (\$5,700,000) Dollars, being at that price the highest bidder for the same.

NOW KNOW ALL MEN BY THESE PRESENTS That the said party of the first part, in consideration of the premises and the sum of Five (\$5.00) Dollars paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release, unto the said parties of the second part

SEE ATTACHMENT FOR PROPERTY DESCRIPTION

RECORDED
1990 MAY 27 PM 3:56
R. D.

378

Together with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging, or in any wise appertaining, and the reservations and remainder, rents, issues, and profits thereof; and also the estate, right, title, interest, power, possession, property, benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons rightfully claiming or to claim the same or any part thereof by, from, or under them or through either of them.

TO HAVE AND TO HOLD the said premises, with its hereditaments, privileges, and appurtenances, unto the said parties of the second part, its ^{successors} and assigns, forever.

IN WITNESS WHEREOF, I, the said John L. Breeden, Jr. as Master, under and by virtue of the said Decretal Final Order, have hereunto set my Hand and Seal, this the 24th day of May in the year of our Lord one thousand nine hundred ninety, and in the two hundred and thirtieth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of

Naomi Black
Mary Alice Cox

John L. Breeden, Jr. (L. S.)
Master for Horry County.

THE STATE OF SOUTH CAROLINA

by John L. Breeden, Jr. Master,
Peoples Bank, State of South Carolina

FILE TO REAL ESTATE

STATE OF SOUTH CAROLINA,
County of

I hereby certify that the above and filed was filed for record in the office of the Clerk of the Court of Horry County, South Carolina, on the 24th day of May, 1920, and immediately thereafter on the two property indexes and only in the Book of Deeds Book 133 at Page 1.

Witness my hand and seal this 24th day of May, 1920, in Book 133 at Page 1.

Clerk of Court of Horry County, South Carolina

Notary Public for South Carolina

There is no objection to this filing on the part of the State of South Carolina

Notary Public for South Carolina

THE STATE OF SOUTH CAROLINA,
County of Horry

PROBATE

PERSONALLY appeared Naomi Black and made oath that the deponent saw John L. Breeden, Jr. as Master, sign, seal and as his act deliver the within deed; and that deponent, together with Mary Alice Cox witnessed the due execution thereof and signed their names as witnesses thereto.

SWORN to before me, this 24th

day of May, 1920,
Mary Alice Cox (L. S.)
Notary Public for South Carolina.
My commission expires 11-09-29

Naomi Black

ATTACHMENT

HORRY COUNTY ASSESSOR

AMENITIES PARCELS

all the parcels, parcels, tracts of land, and other with the improvements thereon, situated, lying and being in Seacrest Township in the County of Horry, State of South Carolina, containing 171.953 acres, more or less, and being in the aggregate shown as Tract II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated dated February 28, 1984, recorded in the office of the Horry County Clerk of Court in Plat Book 79 at page 208, which plat is incorporated herein and made a part hereof by reference. Tract II is composed of Tract II-A (59.644 acres, more or less), Tract II-B (65.547 acres, more or less), Tract II-C (0.453 acre, more or less), Tract II-D (0.454 acre, more or less), Tract II-E (9.373 acres, more or less), Tract II-F (13.982 acres, more or less) Lake (19.048 acres, more or less), and Tennis & Swimming Club (3.452 acres, more or less), all as is more fully shown on said plat.

LESS AND EXCEPTING THEREFROM, HOWEVER, the property described on Exhibit "b" attached hereto and made a part hereof by reference.

ALSO included as a portion of the Amenities Parcels is the property described on Exhibit "c" attached hereto and made a part hereof by reference.

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Sur-Tech, Incorporated, dated November, 1983, and shown in said Clerk's office in Plat Book 79 at page 145

WITNESSETH

Tract II is the same property conveyed to Myrtle Beach Golf & Yacht Club, a General Partnership, by deed of James H. Dusenbury, as Nominee, dated February 29, 1984, recorded in said Clerk's office on March 13, 1984, in Deed Book 855 at page 769.

BOOK 1395 PAGE 380

380

THE TRAMP

[illegible]

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown, as Parcel D (0.05 acres), Parcel E (0.19 acres), Parcel F (0.0004 acres) and Parcel W (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel E (0.008 acres), Parcel M (0.05 acres), Parcel N (0.26 acres), and Parcel P (0.03 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

A part hereof by reference.
ALSO, all those certain places, parcels or tracts
or in connection with the improvements thereon, if
any, located in Section Township, Horry County,
South Carolina. City of as Parcel O in
Block, Parcel in Block, Parcel in Block
(Parcel), Parcel in Block, Parcel in Block
(Parcel), and Parcel in Block (all of same
prepared by John W. Inc. dated September 20, 1985,
recorded in the Office of the Horry County Clerk of
Court in Plat Book 87 at page 139, and having such
boundaries and measurements as are more fully shown
on said map, which is incorporated herein and made
a part hereof by reference.

BOOK 1395 PAGE 381

981

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel B (0.35 acres), Parcel C (0.02 acres), Parcel D (0.03 acres), Parcel E (0.07 square feet) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 - Portion of Tract II (0.12 acres), Parcel 2 (0.056 acres), and "C" Portion of Tract II (0.04 acres) on map of same prepared by Justice, Inc. dated September 11, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 137, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

EXHIBIT "C"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel A (0.256 acres) and Parcel B (0.332 acres) on map of same prepared by Justice, Inc. dated September 14, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 136, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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BOOK 1395 PAGE 382

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Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 1 (0.006 acres), Parcel 2 (0.0004 acres) and Parcel 3 (0.21 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 138, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 4 (0.23 acres), Parcel 9 (0.10 acres), Parcel 10 (0.02 acres), and Parcel 20 (0.004 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 140, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 11 (0.06 acres), Parcel 12 (0.01 acres), Parcel 13 (0.08 acres), Parcel 14 (0.04 acres), Parcel 15 (0.11 acres), Parcel 16 (0.02 acres) and Parcel 21 (0.003 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 139, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

Also, all those certain pieces, parcels or tracts of land together with the improvements thereon, if any, located in Socastee Township, Horry County, South Carolina, being shown as Parcel 7 (0.04 acres), Parcel 8 (0.11 acres), and Parcel 19 (0.01 acres) on map of same prepared by Justice, Inc. dated September 20, 1985, recorded in the office of the Horry County Clerk of Court in Plat Book 87 at page 141, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

BOOK 1395 PAGE 383

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Also, all those certain pieces of parcels of tracts of land together with the improvements thereon, all of which are located in the County of Horry, South Carolina, being in the tract of 17-001, as shown on a map of said tract prepared by the Horry County Clerk of Court, and having such boundaries and measurements as are more fully shown on said map, which is incorporated herein and made a part hereof by reference.

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Horry County

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY
STAMP TAX
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EX. 1984

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Horry County

STATE OF SOUTH CAROLINA
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Horry County

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
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STAMP TAX
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EX. 1984

Exhibit 11

39677
Dued BK 43
P 9361
FILED
90 NOV -7 PM 2:14
THE CONTENTS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION.

STATE OF SOUTH CAROLINA
COUNTY OF Horry

EASEMENT MAINTENANCE
AGREEMENT

THIS EASEMENT MAINTENANCE AGREEMENT is made and executed this 12th day of September, 1990, by and between PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, a federally chartered savings and loan whose address is Post Office Box 1740, Conway, South Carolina 29526, and MYRTLE BEACH GOLF AND YACHT CLUB ASSOCIATION, INC., a South Carolina eleemosynary corporation whose address is 97 Bay Road, Myrtle Beach, South Carolina 29577.

WHEREAS, Peoples Federal Savings and Loan Association, Property Consultants, Inc., and Myrtle Beach Golf and Yacht Club Association, Inc., entered an Agreement dated July 25, 1985, which was incorporated into an Order of the United States District Court for South Carolina, Bankruptcy Division; and

WHEREAS, Peoples Federal Savings and Loan Association agreed to assume responsibility of the maintenance and landscaping of the entrance road from the existing (as of July 10, 1985) golf course clubhouse, provided that a fee be charged to the golf course clubhouse, certain area maintenance fees, either now or in the future, will be charged to Peoples Federal Savings and Loan Association, or its successors and assigns; and

WHEREAS, Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc. wish to memorialize their agreement in writing;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained therein, and the granting and acceptance of the responsibilities set forth herein, Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc. agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.1 Maintenance and Landscaping. As of the date of this Agreement, Peoples Federal Savings and Loan Association agrees to be bound by and subject to the terms of this Agreement so as to assume responsibility for the maintenance of the entrance road from the existing guard gate to the golf course clubhouse and the landscaping of said road.

1.2 Administrator. Peoples Federal Savings and Loan Association shall be the Administrator of this Agreement and shall act with the advice and consent of Myrtle Beach Golf and Yacht Club Association, Inc. (hereinafter "Association").

ARTICLE II

MAINTENANCE AND LANDSCAPING

2.1 ADMINISTRATOR'S DUTIES. The specific provisions set forth herein, the duties and duties of the Administrator shall include the following:

1. To provide for and to fund the maintenance, repair, replacement and landscaping of the

entrance road from the existing guard house to the golf course clubhouse;

2. To employ and discharge the persons necessary for the operation, maintenance, repair and replacement of the entrance road;

2.2 Maintenance. The Administrator shall cause to be maintained: (i) the wearing surface, subsurface and base of the paved portion of the entrance road; and (ii) the grass and landscaped areas of the entrance road.

2.3 Repair, Replacement and Capital Improvement. Major repair and replacement, and capital improvements, that can be anticipated, will be approved, scheduled, and funded on a timely basis. Emergency problems caused by storm damage, disaster, or other cause, that threaten traffic flow or safety will be corrected as soon as possible.

2.4 Landscape. The grade elevation changes, landscaping and planning for the entrance road has been approved as it currently exists. The Administrator, shall cause such landscaping and planning to be maintained consistent with maintenance provided for similar areas located in Horry County, South Carolina.

2.5 Security. The Association shall provide security at the entrance. Security operations include the standard patrol and visibility regulations now in effect and hereafter be deemed necessary by the Association. Traffic controls and signs will be maintained in conformity with the Uniform Act Regulating Traffic, South Carolina Code

Section 56-5-6310 (1976). The Association makes no representation or warranty, express or implied, as to the effectiveness of such security procedures provided hereunder to prevent or deter vehicular or pedestrian accidents, or

2. Supplemental Maintenance, Landscape or Security Service. The Association may submit a request to the Administrator for supplemental maintenance or landscaping for the entrance road. If the request goes beyond the standards established herein, the Administrator shall require the Association to pay for the proposed extra service.

ARTICLE III

ACCESS AND EGRESS

3.1 Access and Egress. The Myrtle Beach Golf and Yacht Club Association, Inc., agrees that the agents, employees, guests and invitees of Peoples Federal Savings and Loan Association, its successors and assigns, have permanent and unfettered rights of ingress and egress over the roadway network within Myrtle Beach Golf and Yacht Club, and these rights of ingress and egress are not subject to a fee, tariff, or charge.

ARTICLE IV

4.1 Association's Duties. Upon execution of this Agreement, the Association covenants and agrees that the duties and responsibilities assumed by the Administrator shall exempt

the Administrator from any homeowners dues, maintenance fees, or special assessments which may be due and owing from the Administrator because of its position as a property owner in Myrtle Beach Golf and Yacht Club.

ARTICLE V

LIABILITY FOR PAYMENT: LIENS

5.1 Liability of Administrator. The Administrator is bound to fulfill its duties and obligations as set forth in this Agreement. The liability of the Administrator for failure to fulfill its duties and obligations shall be the same as its liability would be for failure to pay any special assessment, homeowners dues or maintenance fees.

ARTICLE VI

MISCELLANEOUS

6.1 Inspection of Records. The Association shall have the right to inspect the records of payments and expenditures made pursuant to this Agreement. Said inspection shall take place during normal business hours, after reasonable notice to the Administrator.

6.2 Severability. Invalidation of any provision, term or phrase of this Agreement by adjudication of any court or tribunal shall not affect the other provisions hereof which are hereby intended to be severable and shall remain in full force and effect.

6.3 Duration. This Agreement shall run with and bind

the property owned by the Administrator, its successors or assigns. This Agreement shall inure to the benefit and be enforceable by the Administrator, its successors and assigns in perpetuity, or by the Association, its successors and assigns in perpetuity.

6.4 Amendment. All amendments to this Agreement shall be recorded in the Office of the R.M.C. for Horry County, South Carolina, and shall be executed by the Association and the Administrator.

6.5 Binding Arbitration. In the event of disagreement concerning the provisions of this Agreement between the Administrator or the Association, the parties shall attempt to negotiate a settlement within thirty (30) days after one of the parties has notified the other of its intent to go to binding arbitration. If no settlement is reached within that thirty-day period, the disagreement must be submitted for binding arbitration in accordance with the rules of the American Arbitration Association and the South Carolina Uniform Arbitration Act. The cost of the arbitration, including reasonable costs and attorneys fees of the prevailing party shall be the responsibility of the parties not prevailing. All arbitration shall take place in Horry County, South Carolina.

6.6 Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches

36/1

which may have occurred.

6.7. Conflicts. This Agreement is executed to amend and restate the Order of the Bankruptcy Court and the Agreement entered into between Peoples Federal Savings and Loan Association and Myrtle Beach Golf and Yacht Club Association, Inc., dated July 25, 1985, and in the event that any of the provisions hereof conflict with the provisions of the Order and Agreement referred to therein, this Agreement shall control.

6.9 Notices. All notices or other written communications shall be personally delivered or placed in the U. S. Mail (first class or registered or certified mail) postage prepaid, to the parties at the addresses stated above, or at such other address as the Association shall provide to the Administrator in writing. Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed.

WITNESSES:

MYRTLE BEACH GOLF AND YACHT
CLUB ASSOCIATION

Judith A. McRae
CR. H. H. H. H.

Donald C. McRae
DONALD McRAE - PRESIDENT

BOOK 1433 PAGE 367

PEOPLES FEDERAL SAVINGS
AND LOAN ASSOCIATION

Ellen Hixley
Debra B. Jordan

George N. Magrath, Jr.
EXECUTIVE VICE PRESIDENT

STATE OF SOUTH CAROLINA
COUNTY OF Horry

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Myrtle Beach Golf and Yacht Club, by George McGrew, its President, sign, seal and as its act and deed, deliver the within Basement Maintenance Agreement; that deponent with other witness whose name is subscribed above witnessed the execution thereof.

SWORN to before me this

12th day of September, 1990.

Wanda L. Benjamin (L.S.)
Notary Public for South Carolina

My Commission Expires: 7-11-99

BOOK 1493 PAGE 308

STATE OF SOUTH CAROLINA
COUNTY OF Horry.

PROBATE

...RKO LIA appeared before me the undersigned witness
and state that (s)he was present and saw the within named
Peoples Federal Savings and Loan Association, by George N.
Magrath, Jr. its Executive Vice President, sign, seal and as
its act and deed, deliver the within Easement Maintenance
Agreement; that deponent with other witness whose name is
subscribed above witnessed the execution thereof.

Ellen D. Lively

SWORN to before me this

10th day of September, 1990.

James B. Jordan (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-16-99.

NOTARY PUBLIC

Exhibit 12

9020⁰⁰
4570⁰⁰
90
1111 1540 59/66
pg. 482
STATE OF SOUTH CAROLINA
COUNTY OF Horry

INDEMNITY DEED

FILED
HARRY COUNTY
APR 15 PM 3:30

R.M.C.

KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, hereinafter referred to as Grantor, in the State aforesaid for and in consideration of the sum of ten and 10/100 (\$10.00) dollars and other valuable consideration to it paid by Heron Point Golf Club Limited Partnership, hereinafter referred to as Grantee (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released; and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns the following described property:

AND ATTACHED SCHEDULE "A" FOR DESCRIPTION

GRANTEE'S ADDRESS: Heron Point Golf Club Limited Partnership
Post Office Box 26888
Greenville, S. C. 29618

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

- (a) The only permitted use of this property is as a golf course, country club, or other ancillary use relating to golf course or country club use;
- (b) Grantee, its successors and assigns agree to offer memberships to members of Myrtle Beach Golf and Yacht Club Association, Inc., its successor or assigns on the same basis that it offers memberships to the public at large, provided, however, that there shall be no requirement to offer memberships.

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

BOOK 1540 PAGE 482
1682

and filed for record in the Office of the R.M.C. for Horry County
in Real Estate Plat Book 119 at pages 262.

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

- (a) Right-of-way easement given by Myrtle Beach Golf & Yacht Club, a General Partnership to Horry Telephone Cooperative, Inc. dated April 14, 1985, recorded in said Register's office on June 21, 1985 in Deed book 67 at page 259.
- (b) Memorandum of Exclusive Right and License given by Myrtle Beach Golf & Yacht Club, a General Partnership to Satellite Industries, Inc., a North Carolina corporation doing business in the State of South Carolina in the name of Cablevision Industries, dated December 31, 1984, recorded in said Register's office on July 3, 1985 in Deed book 979 at page 232.
- (c) Declaration for water distribution and sewage collection systems given by Myrtle Beach Golf & Yacht Club, a General Partnership to Grand Strand Water and Sewer Authority, dated January 6, 1988, recorded in said Register's office on February 13, 1988 in Deed book 1026 at page 471.
- (d) Deed and Easement given by Myrtle Beach Golf & Yacht Club, a General Partnership to Grand Strand Water and Sewer Authority, dated August 10, 1988, recorded in said Register's office on September 8, 1988 in Deed Book 1370 at page 388.
- (e) Basement Maintenance Agreement given by Peoples Federal Savings and Loan Association given to Myrtle Beach Golf & Yacht Club Association, Inc., dated September 9, 1990, recorded in said Register's office on November 7, 1990 in Deed Book 1433 at page 361.
- (f) Restrictions, covenants and conditions contained in Deed from James H. Dusenbury, as Nominee, to Myrtle Beach Golf & Yacht Club, a General Partnership, dated February 28, 1984, recorded in said Register's office on March 13, 1984, in Deed Book 855 at page 769.
- (g) Restrictions, covenants and conditions contained in Deed from James H. Dusenbury, as Nominee, to Haron Point Golf Club, Inc., dated April 25, 1989 recorded in said Register's office on May 2, 1989, in Deed Book 1306 at page 642.

TOGETHER with all and singular, the Rights, Members,

15407483

483

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

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

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

WITNESS the execution hereof by Grantor this 11th day of April, in the year of our Lord one thousand nine hundred and ninety-two and in the two hundred sixteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION

BY: [Signature]

ITS: _____

BY: [Signature]

ITS: Vice President

[Signature]
[Signature]

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

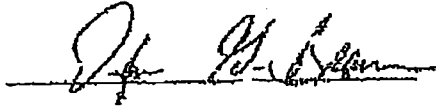
484

484

STATE OF SOUTH CAROLINA
COUNTY OF Horry

PROBATE

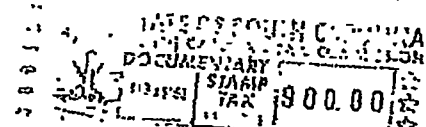
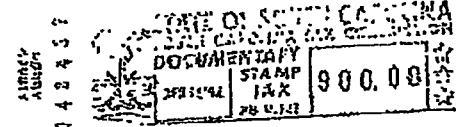
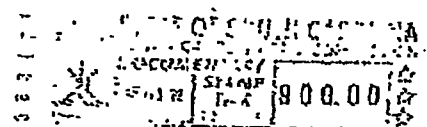
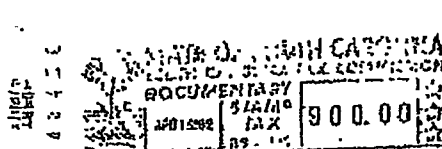
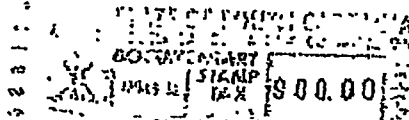
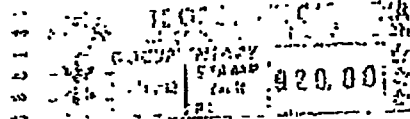
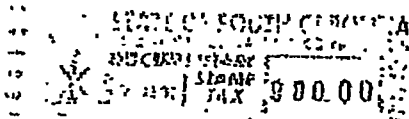
PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Grantbox sign, seal and as its corporate act and deed, deliver the within Deed of Real Estate; that deponent with the other witnesses whose names is subscribed above witnessed the execution thereof



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

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

My Commission Expires: 3/1/97



BOOK 1540 PAGE 485

485

EXHIBIT MAP

Parcel One

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

Parcel C, containing 0.077 acres, more or less;
Parcel D, containing 13.345 acres, more or less;
Parcel H, containing 14.522 acres, more or less;
Parcel N, containing 3.527 acres, more or less;
Parcel N-1, containing 7.587 acres, more or less;
Parcel O, containing 5.614 acres, more or less;
Parcel Q, containing 27.088 acres, more or less;
Parcel T, containing 34.843 acres, more or less;
Parcel U, containing 4.219 acres, more or less;
Parcel V, containing 9.864 acres, more or less;
Parcel Z, containing 1.019 acres, more or less;
Parcel AA, containing 10.535 acres, more or less;
Parcel AB, containing 11.924 acres, more or less; and
Osprey Lake, containing 19.637 acres, more or less;

on survey of Haddon Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Architectural Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 112 at pages 100.

TOGETHER WITH a non-exclusive easement for access to and egress from the property described above across Tract I and the remaining portion of "Enterprise Tract" as shown on "Boundary Survey of Enterprise Tract" prepared for Justice Builders by Survey Tech, Incorporated, dated November, 1983, recorded in said Register's office in Plat Book 79 at page 150.

448444

STATE OF SOUTH CAROLINA
DOCUMENTARY TAX
12-5-92
800.00

STATE OF SOUTH CAROLINA
DOCUMENTARY TAX
12-5-92
800.00

448444

STATE OF SOUTH CAROLINA
DOCUMENTARY TAX
12-5-92
810.00

BOOK 1540 PAGE 486

12-5-92
4-16-92
(Parcel 1)

446

ALSO,

Parcel Two

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

Parcel S, containing 0.639 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AB, containing 0.140 acre, more or less;
Parcel AF, containing 0.060 acre, more or less;
Parcel AC, containing 4.636 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

ALSO,

Parcel Three

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

HORRY COUNTY ASSESSOR

184-17-a3-055 & 184-17-a1-042

Map -- Dlx -- Parcel

4-16-22

BOOK 1540 PAGE 487

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184-17-a3-055 & 184-17-a1-042
Map -- Dlx -- Parcel
(Tract II)

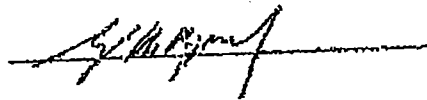
STATE OF SOUTH CAROLINA
COUNTY OF HORRY

AFFIDAVIT OF
TRUE CONSIDERATION

GRANTOR: Peoples Federal Savings & Loan Association
GRANTEE: Haxon Point Golf Club Limited Partnership
TRUE CONSIDERATION: \$8,100,000.00
DATE: April 15, 1992

PERSONALLY appeared before me the George W. McGrath, Jr.
who, being duly sworn, says:

That (s)he is familiar with the above-captioned deed in which
there is recited a nominal consideration and that the true
consideration is as shown above.



Sworn to and subscribed before me
this 15th day of April, 1992.

M. D. Battle
Notary Public for South Carolina
My Commission Expires: 3/3/97

BOOK 1540 PAGE 488

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Exhibit 13

Deed Book 1554
Page 782

1159 560

FILED
STATE OF SOUTH CAROLINA, COUNTY OF HORRY, DEED-CLAIM DEED TO MYRTLE BEACH
GOLF AND YACHT CLUB ASSOCIATION, INC.
COUNTY OF HORRY 92 JUN 10 PM 2:11 AS NOMINEE

R.M.C.

WHEREAS, Peoples Federal Savings and Loan Association has foreclosed mortgages on certain pieces, parcels or tracts of land in Socastee Township, in the County of Horry, State of South Carolina, described as Tracts I and II on "Compiled Map of Tracts I and II, Myrtle Beach Golf and Yacht Club" prepared by Sur-Tech, Incorporated, dated February 28, 1984, recorded in Real Estate Plat Book 79 at page 208; and

WHEREAS, prior to foreclosure of such properties, Peoples Federal Savings and Loan Association had released from its mortgages and Myrtle Beach Golf and Yacht Club, a South Carolina general partnership, had conveyed certain lots and tracts described in other surveys to third party purchasers; and

WHEREAS, certain discrepancies in lot lines appear to have occurred as a result of the various surveys referred to in the descriptions to the properties conveyed to said third party purchasers; and

WHEREAS, Peoples Federal Savings and Loan Association has conveyed portions of the properties it has foreclosed upon by a deed dated April 15, 1992 and recorded in Deed Book 1540 at page 482 in the Office of the R.M.C. for Horry County, South Carolina, referred to in a survey dated April 6, 1992 by Engineering and Technical Services, Inc. and recorded in Real Estate Plat Book 119 at page 100; and

WHEREAS, none of the properties conveyed in the Deed filed in Deed Book 1540 at page 482 are described hereinbelow; and

WHEREAS, Peoples Federal Savings and Loan Association wishes to release any claims it may have to any gores or slivers of property as a result of its foreclosures and the discrepancies in property lines created with inconsistent surveys by quitclaiming any interest it may have in said gores or slivers of properties to the various third party purchasers from Myrtle Beach Golf and Yacht Club, a general partnership, by naming and constituting Myrtle Beach Golf and Yacht Club, Inc. as Nominee for said third party purchasers, thereby causing any legal title Peoples Federal Savings and Loan Association may have to said gores or slivers of property to be conveyed to said third party purchasers through Myrtle Beach Golf and Yacht Club Association, Inc.

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION SENDS

GREETING:

BOOK 1554 PAGE 782

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NOW, KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, in consideration of the premises and also in consideration of the sum of Five and No/100 (\$5.00) Dollars to Peoples Federal Savings and Loan Association in hand at and before the sealing and delivery of these presents by Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee, or its successors or assigns (the receipt whereof is hereby acknowledged) has remised, released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee and its successors, successors in title and assigns forever, all right, title, and interest in and to:

(SEE EXHIBIT "A" ATTACHED HERETO)

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

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Myrtle Beach Golf and Yacht Club Association, Inc. as Nominee and its successors, successors in title, and assigns, forever--so that neither Peoples Federal Savings and Loan Association nor its successors or assigns nor any other person or persons, claiming under Peoples Federal Savings and Loan Association or its successors and assigns, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS Peoples Federal Savings and Loan Association hand and

BOOK 1554 PAGE 783

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seal this 15th day of May in the year of our Lord one thousand
nine hundred and ninety-two and in the two hundred and sixteenth
year of the Sovereignty and Independence of the United States of
America.

Signed, Sealed and Delivered
in the Presence of:

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION

BY: [Signature]
ITS: Executive Vice President

Christina A Miller
John R. Wick

STATE OF SOUTH CAROLINA }
COUNTY OF HORRY }

PROBATE

PERSONALLY appeared before me the undersigned witness and made
oath that (s)he was present and saw the within Peoples Federal
Savings and Loan Association, by George H. Magrath, Jr., its
Executive Vice President, sign, seal and as its act and
deed, deliver the within Quit-Claim Deed; that deponent with the
other witness whose name is subscribed above witnessed the
execution thereof.

Christina A Miller

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

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: 12-5-91

BOOK 1554 PAGE 784

EXHIBIT "A"

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situated, lying and being in Socastee Township in the County of Horry, State of South Carolina, being shown and designated as "Parcel F, containing .098 acre, more or less; Parcel G, containing .017 acre, more or less; Parcel H, containing .137 acre, more or less; Parcel I, containing .081 acre, more or less; Parcel J, containing .14 acre, more or less; Parcel K, containing .001 acre, more or less; Parcel A, containing .005 acre, more or less; Parcel B, containing .014 acre, more or less; Parcel R, containing .0034 acre, more or less; Parcel AH, containing .613 acre, more or less; Parcel J-I, containing .355 acre, more or less; Parcel AG, containing .011 acre, more or less; Parcel AB, containing .002 acre, more or less; and any gores or slivers of property created as a result of the discrepancies in surveys of said properties.

Said parcels are shown on a survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S. dated April 6, 1992 and recorded in Real Estate Plat Book 119 at page 100, which plat is incorporated herein and made a part hereof by reference.

This property is a portion of the property acquired by Grantor by Master's Deed filed June 19, 1990 and recorded in Deed Book 1395 at page 379, and by Master's Deed filed January 22, 1992 and recorded in Deed Book 1446 at page 467 in the Office of the R.M.C. for Horry County, South Carolina.

GRANTOR'S ADDRESS:

Myrtle Beach Golf and Yacht Club
Association, Inc.
6725 Bay Road, Unit 106
Myrtle Beach, South Carolina 29575

HORRY COUNTY ASSESSOR

114-01-01-023, 025, 024, 021 & 040

Map Bk Parcel

6-11-92

BOOK 1554 PAGE 785

785

Exhibit 14

Dec 11 1994

15 9560

Page 786

FILED

STATE OF SOUTH CAROLINA, S.C. QUIT-CLAIM DEED
COUNTY OF HORRY 92 JUN 10 PM 2:14

R.M.C.

WHEREAS, Peoples Federal Savings and Loan Association believes it acquired legal title to the boulevards, roads, streets, courts or easement areas described in Exhibit "A" through its foreclosure of certain mortgages on property formerly known as "Enterprise Tract Landing" and developed as "Myrtle Beach Golf and Yacht Club;" and

WHEREAS, Peoples Federal Savings and Loan Association wishes to convey its rights to such property to Myrtle Beach Golf and Yacht Club Association, Inc. after reserving to itself its rights as a mortgagee in that certain mortgage from Haron Point Golf Course Limited Partnership to a non-exclusive easement for access to and egress from the property described herein; and

WHEREAS, this conveyance is subject to the Easement Maintenance Agreement given by Peoples Federal Savings and Loan Association to Myrtle Beach Golf and Yacht Club Association, Inc. dated September 9, 1990, recorded in the Office of the R.M.C. on November 7, 1990 in Deed Book 1433 at page 361;

WHEREAS, Peoples Federal Savings and Loan Association has conveyed portions of the properties it has foreclosed upon by a deed dated April 15, 1992 and recorded in Deed Book 1540 at Page 482 in the Office of the R.M.C. for Horry County, South Carolina, and

WHEREAS, none of the properties conveyed in the deed filed in Deed Book 1540 at Page 482 are described hereinbelow.

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION SENDS GREETING:

NOW, KNOW ALL MEN BY THESE PRESENTS, that Peoples Federal Savings and Loan Association, in consideration of the premises and also in consideration of the sum of Five and No/100 (\$5.00) Dollars to Myrtle Beach Golf and Yacht Club Association, Inc. in hand at and before the sealing and delivery of these presents by Myrtle Beach Golf and Yacht Club Association, Inc. or its successors or assigns (the receipt whereof is hereby acknowledged) has remised,

BOOK 1554 PAGE 786

786

released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said Myrtle Beach Golf and Yacht Club Association, Inc., its heirs, successors, successors in title and assigns forever, after reserving its rights as a mortgagee across said property, the right, title, and interest in and to:

(SEE EXHIBIT "A" ATTACHED HERETO)

This conveyance shall be subject to all easements of record and all rights to use the roads, streets, courts or common areas existing at the time of this conveyance.

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

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Myrtle Beach Golf and Yacht Club Association, Inc., its heirs, successors, successors in title, and assigns, forever--so that neither Peoples Federal Savings and Loan Association nor its successors or assigns nor any other person or persons, claiming under Peoples Federal Savings and Loan Association or its successors and assigns, shall at any time hereafter, by any way or means, have, claim, or demand any right or title to the aforesaid premises or appurtenances except its easement rights across said property.

WITNESS Peoples Federal Savings and Loan Association hand and seal this _____ day of June in the year of our Lord one thousand nine hundred and ninety-two and in the two hundred and sixteenth year of the Sovereignty and Independence of the United States of

BOOK 1554 PAGE 787

787

America.

Signed, Sealed and Delivered
in the Presence of:

Clara Thompson
Michael H. Battle

PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION

BY: [Signature]

PTS: [Signature]

STATE OF SOUTH CAROLINA }

COUNTY OF Horry }

PROBATE

PERSONALLY appeared before me the undersigned witness and made
oath that (s)he was present and saw the within Peoples Federal
Savings and Loan Association, by _____, its
_____, sign, seal and as its act and
deed, deliver the within Quit-Claim Deed; that deponent with the
other witness whose name is subscribed above witnessed the
execution thereof.

Clara Thompson

SWORN to before me this
10th day of June, 1992.

Michael H. Battle (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/8/97.

BOOK 1554 PAGE 788

788

EXHIBIT "A"

All those certain boulevards, road, streets, courts, or common areas located in Socastee Township, Horry County, South Carolina, for the property formerly known as "Enterprise Tract Landing" and developed as "Myrtle Beach Golf and Yacht Club." Said boulevards, roads, streets, courts, or common areas are shown on a plat dated October 23, 1984, revised January 9, 1985, by Sur-Tech, Inc., and recorded in Real Estate Plat Book 83 at page 216 in the Office of the R.M.C. for Horry County, South Carolina, and on a plat dated February 12, 1986, recorded in the Office of the R.M.C. in Plat Book 89 at pages 137 through 144.

This property is a portion of the property acquired by Grantor by Master's Deed filed June 19, 1990 and recorded in Deed Book 1395 at page 379, and by Master's Deed filed January 22, 1991 and recorded in Deed Book 1446 at page 467 in the Office of the R.M.C. for Horry County, South Carolina.

GRANTOR'S ADDRESS: Myrtle Beach Golf and Yacht Club
Association, Inc.
6725 Bay Road, Unit 106
Myrtle Beach, South Carolina 29575

HORRY COUNTY ASSESSOR

154-17, 154-18, 154-19, 154-20 (Streets)
Map Bk Parcel

6-11-92

BOOK 1554 PAGE 789

789

Exhibit 15

875351
EPPS, GRAVELY & BOWERS, P.A.
POST OFFICE BOX 357
MYRTLE BEACH, S.C. 29578
(843) 448-2400

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

WAIVER OF RESTRICTIONS

FILED
HORRY COUNTY, S.C.
2005 MAY -5 AM 11:33

WHEREAS, Peoples Federal Savings and Loan Association conveyed certain property to Heron Point Golf Club Limited Partnership ("Grantee") by Deed dated April 15, 1992, and April 15, 1992, in Deed Book 1540, at Page 482, records of Horry County, South Carolina (the "Heron Point Deed"); and

WHEREAS, the Heron Point Deed contained certain restrictive covenants; and

WHEREAS, First Federal Savings and Loan Association of Charleston ("Grantor") is the successor to Peoples Federal Savings and Loan Association; and

WHEREAS, Grantee has agreed to sell to Enterprise Road Development, LLC ("Enterprise") the property described on Exhibit "A" attached hereto and made a part and parcel hereof (the "Enterprise Tracts") which is a portion of the property conveyed to it by the Heron Point Deed; and

WHEREAS, Grantor has agreed to release the Enterprise Tracts from the restrictive covenants contained in the Heron Point Deed, as an inducement to Enterprise to purchase the Enterprise Tracts;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent that this document be relied upon by Enterprise, its successors and assigns, Grantor does hereby waive, relinquish and release the following restrictive covenants as the same may apply, if at all, to the Enterprise Tracts so that said restrictive covenants originally contained in the Heron Point Deed shall no longer encumber or affect the Enterprise Tracts:

- (a) The only permitted use of this property is as a golf course, country club or other ancillary use relating to golf course or country club use;
- (b) Grantee, its Successors and Assigns agree to offer memberships to members of Myrtle Beach Golf and Yacht Club Association, Inc., its Successors or Assigns on the same basis that it offers memberships to the public at large, provided, however, that there shall be no requirement to offer memberships.

It is the intent hereof that said restrictive covenants no longer affect the Enterprise Tracts.

IN WITNESS WHEREOF, First Federal Savings and Loan Association of Charleston as successor to Peoples Federal Savings and Loan Association have caused these presents to be made and executed this 22 day of March, 2005.

FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON

By: [Signature]
Its: Sr. Vice President

[Signature]
(witness sign here)

[Signature]
(notary sign here)

For Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

574

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF Charleston)

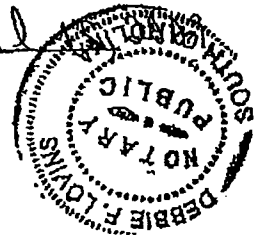
I, the undersigned notary, do hereby certify that the above subscribed First Federal Savings and Loan Association of Charleston by and through its duly authorized officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22 day of March, 2005.

Debbie F. Loring
Notary Public for South Carolina

My Commission Expires: April

(Seal)



Poor Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

TOTAL P. 02

EXHIBIT "A"

Parcel I:

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 5.09 Acres, more or less, and being more particularly shown and described on that certain Plat prepared by DDC Engineers, Inc. dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 3, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting From the Aforesaid Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 132 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated April 21, 2004, revised May 24, 2004 and recorded June 2, 2004 in Plat Book 197 at Pages 206, 206A and 206B, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

Parcel II:

ALL AND SINGULAR, that certain piece, parcel or tract of land containing 2.61 Acres, more or less, and being more particularly shown and designated on that certain Plat prepared by DDC Engineers, Inc., dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 2, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting Therefrom:

Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 335 of Cypress River Plantation, as shown on plat entitled "Cypress River Plantation Phase 2C" prepared by DDC Engineers, Inc. dated June 24, 2004, and revised July 28, 2004, recorded August 18, 2004, in Plat Book 199, at Page 79, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained within the foregoing property.

Also Less and Excepting Therefrom:

Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 336 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated September 20, 2004 and recorded October 25, 2004 in Plat Book 200 at Page 180, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained in the foregoing property.

Poor Quality Due To
Condition of Original.
Ballery V. Skipper, RMC

576

Exhibit 16



Heron Point Golf Club

425B Chikoma Avenue
PO Box 3286
Greenville, S.C. 29648
phone: (864) 942-0106, fax: (864) 227-9695
e-mail: jerry@carolinagolfnet.com

To: Charlie Clark
From: Jerry Spearman
Date: November 8, 2005
Subject: Progress Report

The following is information concerning the changes and progress for both Heron Point and the Myrtle Beach area.

Myrtle Beach -- The Grand Strand Area

The Economy: Beginning in late 2000 the Grand Strand Area began experiencing signs of recession that was amplified by the 9-11-2001 attack. These factors, coupled with an already over building of golf courses not only reduced the number of golfers coming to the Grand Strand, but reduced the number of rounds available to each course and the rate that could be charged. Expenses continued to increase at the inflation rate and property taxes increased at two or three times that rate. All of this meant that not only Heron Point but most of the golf courses on the Strand experience serious financial difficulties.

The general economy of the Grand Strand, and especially the housing market, now is booming. This is resulting in a shift from too few hotel and condo rooms and too many golf courses to near equilibrium in that sector of the market. Another major change is that at least fifteen golf courses have closed or have announced that they will close this fall. Most of these are being turned into real estate development. A list of these courses is attached. Both the improved economy and the closing of a number of golf courses will help those remaining courses increase the number of rounds played and the rate per round. Heron Point will certainly benefit.

The Outlook: The old saying "All Good Things Must Come To An End" seems to be out in the future for the Grand Strand housing market. From all indications, the demand is still quite strong. If a few more golf courses close and the housing boom continues, there will be more demand for tee times from the golf package marketing companies, similarly to the way it was in the mid 1980's. The results of these changes will be slow but obvious.

Heron Point

Operating Results: As has occurred with many other golf courses, Heron Point has gone through a very difficult financial period. The business could have failed except

for the improved economy, a fifty thousand dollar capital contributions from three of the Limited Partners and the admission of a new limited partner, the sale of surplus land and the assistance of First Federal by reducing the interest rate and deferring principal payments. Also, the Golf Course Owner's association was able to have legislation passed to lower property taxes by about forty percent.

To reach the revenue and profits results of 1997 and build a cash reserve will take a few more years, but from all economic indications, that will occur. Revenues are up this year compared to last year, (see attached financial summary). Golf course maintenance expenses are also up, but this is due to trying to catch up on deferred maintenance from the down years.

Improvements: The club house was in bad need of major repairs. With a portion of the cash from the land sale the roofing was replaced, the building was painted inside and out, two new heating and air conditioning units were replaced, and several fixtures were replaced.

Golf course improvements consisted of new sand in the sand traps, two new sand traps, drainage repairs and some natural area added. The course is now in very good condition.

Long Range Outlook: The long range outlook for both the Grand Strand Area and Heron Point is very good. The changes occurring in the market are encouraging and should bring the 1997 results again. The question must be answered: however, as to whether to attempt to change the use of the property from a golf course to real estate development. The prospects of this change would be encouraging except for the deed restriction on the property that requires that it remain a golf course.

There are over five hundred homes in the portion of the property affected by this restriction. To change the restriction and the zoning probably is not impossible, but would be very difficult and would require a creative approach to satisfy a majority of the home owners. The Partnership would be open to this change if a successful approach could be found and would work with First Federal to that end.

The long range plan for the Partners is to sell the property when it will yield a good return. If the market continues to improve as expected, this goal could be realized within the next few years. In the short range, every effort will be made to improve the number of rounds played and the rate per round while holding expenses to a minimum.



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2015-CP-26-03173

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

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff

vs.

South State Bank,

Third Party Defendant.

CERTIFICATE OF SERVICE

FILED
CLERK OF COURT
HORRY COUNTY, SC
2017 MAR 13 PM 4:59

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

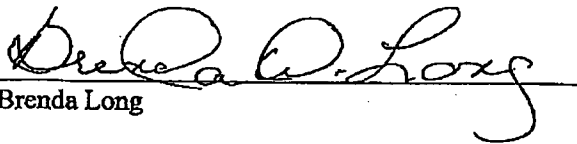
DOCUMENTS SERVED:

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

COUNSEL SERVED:

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

Audra M. Byrd, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 2116
Myrtle Beach, SC 29578
Attorney for South State Bank


Brenda Long

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
In the Court of Common Pleas
Civil Action No.: 2015-CP-26-03173

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

Plaintiffs,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

Transcript of Proceedings, June 5, 2017

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2015-CP-26-03173

4

5

6 Condo World Development,)
7 LLC)

8

vs. .

Transcript of Record

9

10 Myrtle Beach Golf &)
11 Yacht Club Association,)
12 Inc.)

13

14

June 5, 2017
Conway, South Carolina

15

16

BEFORE:

17

Honorable Larry B. Hyman, Judge.

18

19

APPEARANCES:

20

Howell V. Bellamy, III, Esq.
Attorney for the Plaintiff

21

22

Audra McCall Byrd, Esq.
Christopher H. Pearce, Esq.
Laurence R. Wells, IV, Esq.
Attorneys for the Defendant

23

24

25

Teresa J. F. Bautz, RPR
Official Court Reporter

26

E X H I B I T S

NO.	DESCRIPTION	ID	EV
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3	No exhibits submitted.		
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22	Exhibits retained by Clerk of Court.		
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1 (The hearing commenced at approximately
2 10:04 a.m.)

3 THE COURT: Next we have Condo-World Development
4 versus are Myrtle Beach Golf and Yacht. Mr. Bellamy,
5 Ms. Byrd, Mr. Pearce, Mr. Wells, lots of folks, a
6 motion to dismiss. And it's brought by South State
7 Bank.

8 MS. BYRD: Yes, sir, Your Honor.

9 THE COURT: Good to see you, Ms. Byrd.

10 MS. BYRD: Yes, sir, good to see you.

11 THE COURT: Where have you been?

12 MS. BYRD: I have been working hard, keeping me
13 tied up.

14 THE COURT: Well, it's been so long since I've
15 seen you, used to see you quite often.

16 MS. BYRD: Yes, sir.

17 THE COURT: How about your father-in-law, how's he
18 doing?

19 MS. BYRD: He's doing great. He's actually over
20 in -- he was in Rome for two weeks.

21 THE COURT: Good for him, good for him.

22 MS. BYRD: And now he's in England.

23 THE COURT: Mr. Pearce.

24 MR. PEARCE: Yes, Your Honor, how are you?

25 THE COURT: I'm doing well; how about you?

1 MR. PEARCE: Doing great.

2 THE COURT: Okay. Well, I'm glad to hear it.

3 Now, Ms. Byrd, this is your motion?

4 MS. BYRD: Yes, sir, Your Honor, it is.

5 THE COURT: All right. Let's hear it.

6 MS. BYRD: Okay. I represent South State Bank,
7 and we filed a motion to dismiss under Rule 12(b)(6).
8 I know Your Honor, I believe, has heard a few motions
9 in this case, so I'll try to be --

10 THE COURT: I'm a little familiar with it.

11 MS. BYRD: Okay. So I'll just tell --

12 THE COURT: Well, let me just -- I don't want to
13 cut you short.

14 MS. BYRD: Okay.

15 THE COURT: But, Mr. Pearce, didn't South State
16 sign off?

17 MR. PEARCE: I'm sorry, Your Honor?

18 THE COURT: Didn't South State sign off on this
19 matter? I mean, isn't that why you brought them in,
20 because they may have had some enforceable rights?

21 MR. PEARCE: Historically, Your Honor, we brought
22 a Rule 19 motion to dismiss the entire action unless
23 the Plaintiffs brought in South State Bank which is a
24 successor in interest to People's. They refused to do
25 that, and we had a hearing on that. And Your Honor

1 basically instructed us, the association, to file a
2 third-party complaint against South State Bank.

3 THE COURT: So that was my idea?

4 MR. PEARCE: It was your idea.

5 THE COURT: It sounds better now that you say it.

6 MR. PEARCE: So that's how we're here. And
7 Ms. Byrd and the bank, obviously we've had some
8 discussions, they obviously don't like it whether it
9 was my idea or your idea.

10 THE COURT: All right. Let's hear from Ms. Byrd.

11 MS. BYRD: Thank you, Your Honor.

12 THE COURT: Maybe I was thinking they would sign
13 off.

14 MS. BYRD: No, Your Honor. South State was
15 brought in as a Third-Party Defendant by the
16 association, Myrtle Beach Golf and Yacht Club
17 Association. And the association has alleged three
18 causes of action against -- I'm sorry -- yes, three
19 causes of action -- well, four, against South State.
20 The first cause of action is a breach of contract cause
21 of action. And as Your Honor might remember, this
22 involves the development of a large piece of property.

23 THE COURT: Right.

24 MS. BYRD: And the Golf and Yacht Club was put
25 into involuntary bankruptcy in 1984 or '88.

1 THE COURT: Way back.

2 MS. BYRD: And as a part of that, there was an
3 agreement signed by People's Federal Bank.

4 THE COURT: Which is successor -- I mean, a
5 predecessor of South State?

6 MS. BYRD: Well, according to the complaint, it
7 was People's, then First Federal, then South State.

8 THE COURT: Exactly.

9 MS. BYRD: And in that bankruptcy agreement, there
10 are three provisions that are of particular relevance
11 here. And I have a copy of the agreement. If I can
12 bring that up, it might be helpful.

13 THE COURT: Okay. I've heard a lot about this
14 agreement, but I haven't seen it.

15 MS. BYRD: Oh, well, I'm so excited to be the
16 first one to give it to you. May I approach, Your
17 Honor?

18 THE COURT: Yeah. I was afraid both sides were
19 scheduled to show up to me.

20 MS. BYRD: Leave it to me.

21 THE COURT: All right. But I also understand this
22 agreement was never filed here in Horry County. The
23 clerk never got a copy of it or anything like that.

24 MS. BYRD: No, Your Honor. And as far as we can
25 tell, it was never filed and even in the bankruptcy

1 court proceedings. But the first provision of the
2 bankruptcy agreement that is relevant to our motion and
3 the third-party claims is on page two, paragraph two.

4 THE COURT: All right.

5 MS. BYRD: In the last sentence of that agreement,
6 the association, the consultants and Myrtle Beach Golf
7 and Yacht Club agreed to enforce restrictive covenants
8 as they are amended from time to time.

9 And what's important about that, Your Honor, is
10 that People's Federal was specifically excluded from
11 that provision.

12 THE COURT: And it says very clearly, giving
13 particular scrutiny to the covenant compliance on those
14 lots and parcels of land which are adjacent and
15 contiguous to the golf course. Isn't that the same
16 stuff we're talking about?

17 MS. BYRD: Yes, sir, Your Honor.

18 THE COURT: All right.

19 MS. BYRD: So, again, what's important about that
20 is People's agreed to a lot of things in this
21 agreement, but that was not one of the things that they
22 were included in.

23 THE COURT: Okay.

24 MS. BYRD: The second provision of relevance here
25 is on page four.

1 THE COURT: Why was People's -- I mean, did they
2 continue with the security interest after the fact,
3 after the bankruptcy?

4 MS. BYRD: After the bankruptcy, the reason why
5 they even signed this agreement was to have the
6 property released from the bankruptcy from the
7 automatic stay so that the foreclosure --

8 THE COURT: So it could be foreclosed?

9 MS. BYRD: Yes, sir.

10 THE COURT: I understand.

11 MS. BYRD: And People's was the successful bidder
12 at the foreclosure sale.

13 THE COURT: All right, okay.

14 MS. BYRD: On page four in paragraph three, that
15 requires People agree to --

16 THE COURT: Did People's take title to all of the
17 property that has not been conveyed out, common areas,
18 contiguous tracts, People's took title to everything;
19 right?

20 MS. BYRD: Yes, Your Honor.

21 THE COURT: Okay, all right. I just want to be
22 clear on that.

23 MS. BYRD: And they also agreed that in the event
24 that they were the successful bidder at the foreclosure
25 sale, that they would include a deed restriction that

1 stated the only permitted use of the property is a golf
2 course, country club or ancillary use related to a golf
3 club.

4 THE COURT: Okay. Now, where was that?

5 MS. BYRD: That is on page four in paragraph
6 three.

7 THE COURT: Okay. All right.

8 MS. BYRD: Okay. And then the last provision
9 that's relevant to our motion is on page six at
10 paragraph two. And that provision reads, the parties
11 between and among themselves will execute general
12 releases so as to acquit, indemnify and hold harmless
13 each other from any claims or causes of action between
14 and/or among them prior to the execution of the date of
15 this instrument.

16 THE COURT: Okay.

17 MS. BYRD: So that's the background and that's
18 really what gives rise to the third-party claim.

19 THE COURT: Was there a general release ever
20 executed?

21 MS. BYRD: No, Your Honor. And it's not alleged
22 in the pleading that there ever was any further general
23 release, and it's not attached to the pleading in 1992.
24 So after the foreclosure sale and after the bankruptcy
25 agreement, People's continued to own the property until

1 1992, when it sold the property to Heron Point. And in
2 the 1992 deed, it included the restriction that is
3 cited in the bankruptcy agreement.

4 THE COURT: So South State, People's, whoever,
5 complied with the requirement of the agreement?

6 MS. BYRD: Right.

7 THE COURT: That's your position?

8 MS. BYRD: Yes, Your Honor.

9 THE COURT: Okay, all right.

10 MS. BYRD: And then thereafter, People's quit
11 claimed all of the remaining property that it owned to
12 the association. So after that point they --

13 THE COURT: You mean, that would be most likely
14 the common areas?

15 MS. BYRD: Yes, sir, Your Honor.

16 THE COURT: Okay.

17 MS. BYRD: And then in 2005 when First Federal
18 apparently was the current holder of the mortgage note,
19 they executed a waiver of restrictions in favor of
20 Heron Point where this -- and I don't know if Your
21 Honor has seen a copy of that, but I also have a copy
22 of that if you want to see.

23 THE COURT: Okay. All right. So in the
24 bankruptcy court -- and let's just refer to it as South
25 State.

1 MS. BYRD: Okay.

2 THE COURT: When I say that, I mean People's
3 Federal and First Federal, whatever it was. South
4 State agreed to restrict; right?

5 MS. BYRD: It agreed to include that language in
6 the deed.

7 THE COURT: And if it took it, the property, at
8 the bankruptcy sale; okay?

9 MS. BYRD: Yes, Your Honor.

10 THE COURT: And there was a -- I mean, a
11 foreclosure sale.

12 MS. BYRD: Um-hum.

13 THE COURT: And there was a foreclosure sale, it
14 did take title. And then it conveyed the property out,
15 and pursuant to that agreement included the restrictive
16 language?

17 MS. BYRD: Yes, Your Honor.

18 THE COURT: And sold it to Heron Point?

19 MS. BYRD: Yes, Your Honor.

20 THE COURT: Then at some time Heron Point comes
21 back and asks for a release?

22 MS. BYRD: A release of the restrictions, yes,
23 Your Honor.

24 THE COURT: And South State obliges?

25 MS. BYRD: That's correct.

1 THE COURT: Okay. And that's the agreement you
2 have right there?

3 MS. BYRD: Yes, sir.

4 THE COURT: And that's just between -- I don't
5 need it -- it's just between Heron and South State
6 Bank?

7 MS. BYRD: That's correct, Your Honor.

8 THE COURT: Okay, all right.

9 MS. BYRD: And, Your Honor, importantly, this
10 agreement, the waiver of restrictions was filed with
11 the clerk of the register of deeds in Horry County on
12 May the 5th, 2005. So with regard to --

13 THE COURT: Does it reference the prior agreement
14 in the bankruptcy court?

15 MS. BYRD: No, Your Honor.

16 THE COURT: So if Heron Point came to me and asked
17 me to examine the title, and I had examined the title,
18 I would simply find a restriction placed on the
19 property in favor of South State that South State
20 subsequently released. Had there been any other
21 conveyances out to anyone else, someone who could come
22 in as a third party and claim the protection of that
23 easement?

24 MS. BYRD: Not that I'm aware of, Your Honor.

25 THE COURT: All right, okay.

1 MS. BYRD: Okay.

2 THE COURT: So South State, how would South -- I
3 mean, Heron know that this could not be released?

4 MS. BYRD: Your Honor, I don't believe that
5 there's any way that they could have known that it
6 couldn't be released.

7 THE COURT: All right. Let's go ahead.

8 MS. BYRD: So with regard to the breach of
9 contract claim, it's alleged that South State breached
10 the bankruptcy agreement, the 1992 deed to Heron Point,
11 and failed to act in good faith. And the allegation is
12 that they breached that by not providing notice or
13 information regarding the 2005 waiver that was filed
14 with the Clerk of Court.

15 Your Honor, our position is that this is clearly
16 barred by the statute of limitations. For a breach of
17 contract action is a three-year statute, and we use the
18 discovery rule. And case law is very clear that in the
19 case of a recorded document, the statute begins to run
20 as soon as it's filed.

21 THE COURT: Okay.

22 MS. BYRD: And in this case there's no --

23 THE COURT: Maybe I would like to see that 2005
24 waiver.

25 MS. BYRD: May I approach, Your Honor?

1 THE COURT: Yes.

2 MS. BYRD: And these are attached to the
3 third-party complaint, Your Honor.

4 THE COURT: Now, is Heron Point -- I should know
5 this -- is Heron Point the same as Condo-World, or has
6 Heron Point made another conveyance?

7 MS. BYRD: Your Honor, the Plaintiffs in the case
8 are Heron Point and Condo-World Development.

9 THE COURT: Okay, all right.

10 MS. BYRD: And I'm not certain about that.

11 THE COURT: But are they the same, are they the
12 same folks?

13 MR. PEARCE: Your Honor, I can clarify it, and
14 Mr. Bellamy or Bellamy II or III, but Heron Point still
15 owns the golf course. Condo-World a number of years
16 later is an entity that's held by the same principal,
17 owner Roy Clyburn. He ended up purchasing --

18 THE COURT: As a matter of convenience they have
19 two companies?

20 MR. PEARCE: Right. He ended up purchasing the
21 South State Bank note, as you described it, he ended up
22 purchasing that at a reduced cost to, I think in 2012
23 or sometime thereafter but well after this 2005
24 incident, he purchased the note from the bank.

25 THE COURT: Did South State finance it for Heron

1 Point? You said there's a note out there? I thought
2 maybe they bought it at foreclosure.

3 MS. BYRD: First Federal held the note and
4 mortgage.

5 THE COURT: Okay. But then they foreclosed. And
6 they bought it at foreclosure, they took title, they
7 don't own a note.

8 MR. PEARCE: The bank, South State Bank, and
9 successor interest originally financed the property for
10 Heron Point. And they had the note at the time of the
11 2005 transfer. Subsequently, that note
12 because People's --

13 THE COURT: Well, that's what I was asking you.
14 Subsequently when they sold it to Heron Point, did they
15 finance it?

16 MR. PEARCE: They did, they financed it.

17 MS. BYRD: Yes.

18 THE COURT: Okay. That makes it clear then, okay.
19 Now I understand.

20 MS. BYRD: Yes, Your Honor.

21 THE COURT: All right.

22 MS. BYRD: And so in this case because it was
23 registered and recorded May the 5th, 2005, the statute
24 began to run at that time. So at the latest, the
25 statute expired on May the 5th, 2008. And this action

1 was filed in March of 2017, nine years after the
2 statute expired.

3 THE COURT: Okay.

4 MS. BYRD: So we think the breach of contract
5 claim should clearly be dismissed.

6 THE COURT: Okay. Is this a summary judgment or a
7 12(b)(6)?

8 MS. BYRD: This is a 12(b)(6). And I'm using only
9 the allegations in the complaint.

10 THE COURT: Okay.

11 MS. BYRD: And everything I've handed you are
12 attachments.

13 THE COURT: So you have raised the statute then;
14 right?

15 MS. BYRD: Yes.

16 THE COURT: In your complaint?

17 MS. BYRD: Yes.

18 THE COURT: All right. Well, does anybody else
19 have a dog in this fight other than you?

20 MS. BYRD: Chris might.

21 THE COURT: I mean, I see this band of bandits
22 back here on the next row here, and they seem to be
23 interested in this. But this is your motion?

24 MS. BYRD: Yes, Your Honor.

25 THE COURT: This is your motion, okay.

1 MS. BYRD: And there's three other claims, and I
2 can do those, we can go one at a time or however.

3 THE COURT: Okay. So right now you're talking
4 about which claim?

5 MS. BYRD: The breach of contract claim.

6 THE COURT: The breach the contract, okay. Now,
7 Mr. Pearce, let's talk about that. And Ms. Byrd, I'm
8 going to get back to you. It's just that it's easier
9 for me to do them one at a time.

10 MS. BYRD: Yes, sir.

11 THE COURT: Mr. Pearce, we're talking about an
12 agreement, and I assume that's what the contract is,
13 the agreement?

14 MR. PEARCE: The agreement, yes, sir.

15 THE COURT: All right. The agreement was executed
16 back in what, 19 -- no, it's earlier than that, '88?

17 MS. BYRD: Yes, sir, Your Honor.

18 THE COURT: July the 25th of 1988; right?

19 MR. PEARCE: Sounds correct, Your Honor.

20 THE COURT: Okay. And, Ms. Byrd, you don't
21 challenge the legality of the agreement; do you? I
22 mean, it's properly executed and --

23 MS. BYRD: Your Honor, for purposes of this
24 motion, I accept that it is, absolutely, of course.

25 THE COURT: All right. So we have an agreement,

1 Mr. Pearce. We have an agreement that was executed in
2 1988, an agreement that apparently for the purposes of
3 this part of the hearing was breached in 2005 with the
4 waiver of those restrictions. Now, tell me about, how
5 does the statute not run here?

6 MR. PEARCE: Okay. Your Honor, just briefly, and
7 you touched on it a little earlier, this is a 12(b)(6)
8 motion. I'm not going to bore Your Honor with the
9 standard of review for that motion, but we're looking
10 at a four corners review in the light most favorable to
11 my client at this point.

12 THE COURT: Well, that's what I'm looking for
13 here. I want to know...

14 MR. PEARCE: The statute of limitations argument,
15 Your Honor, is interesting. Basically Ms. Byrd relies
16 on the three-year statute of limitations as the
17 governing statute.

18 THE COURT: What statute do you think would apply;
19 do you think there's a different one on breach of
20 contract?

21 MR. PEARCE: In this instance, I do, Your Honor,
22 in relation to the fact that the 2005 document that was
23 filed and put in the public record, I believe that it
24 is -- qualifies as a sealed instrument. And to the
25 extent it's not a sealed instrument, I think that the

1 statute 19-1-160 gives us the protection of a sealed
2 instrument by virtue of that document.

3 THE COURT: Well, bring me back up to speed on
4 that. How does that...

5 MR. PEARCE: That would make the statute of
6 limitations 20 years, Your Honor, not three. And
7 that's just the one issue that I would bring up.

8 THE COURT: And you're talking about 20 -- like in
9 a mortgage situation, 20 years?

10 MR. PEARCE: Correct, Your Honor. And just to be
11 clear, all of the case law and the statute of
12 limitations that Ms. Byrd has cited as motion for
13 summary judgment case law and directed verdict case
14 law, in relation to that, the case of Garner v. Houck
15 has -- survives through to the day.

16 But basically that case law says that if there's
17 any question about the reasonableness of the actions of
18 a party in regards to the statute of limitations and
19 when the statute of limitations began and ran, that
20 that issue is to be decided by the finder of fact,
21 whether it be a jury or judge, once the matter is moved
22 forward.

23 I don't believe that it's ripe for being dismissed
24 at a motion to dismiss stage.

25 THE COURT: But we're talking about an action,

1 just your action for breach of contract; is that
2 correct?

3 MR. PEARCE: Correct.

4 THE COURT: Correct, okay.

5 MR. PEARCE: Your Honor, one thing I need to
6 clarify, Ms. Byrd stated to you that the bank, South
7 State Bank entities, would have had no knowledge or
8 understanding of the bankruptcy agreement. That is not
9 true. I understand she's not been a part of the
10 discovery in this case --

11 THE COURT: Well, I think I asked her, how would
12 they know.

13 MR. PEARCE: The reason they would know is it's in
14 their file.

15 THE COURT: I really ask in the context if I were
16 an attorney --

17 MR. PEARCE: Right.

18 THE COURT: -- who was asked to certify title, how
19 would I pick it up?

20 MR. PEARCE: To clarify just a couple things, the
21 bankruptcy agreement, we found that document and that
22 document was originally produced early on in this
23 litigation by South State Bank. It was in their files.
24 They produced it to us under response to a Rule 45
25 subpoena.

1 We've not gone back and tried to broaden that
2 subpoena to see what other documents they have, but it
3 was in their file. They produced it to us. And the
4 issue of the bankruptcy agreement and the bankruptcy
5 court, Your Honor, I've gone to the bankruptcy court
6 clerk in Columbia, Atlanta and Washington looking for
7 this bankruptcy file, and nobody has it. And I don't
8 have an explanation to offer the Court as to why that
9 is, but that's the way it is.

10 I contacted every lawyer that I could find that
11 signed that agreement, and none of them have their
12 files because of the time that's passed. But everybody
13 that looks at the agreement says, yeah, that was the
14 agreement we made, that was what we understood to be
15 the trigger to release the property so it could be
16 foreclosed on. And that bankruptcy agreement is
17 referenced time and time again in the other documents
18 relating to the workout of this golf course property.
19 So it's not like people at the time didn't know.

20 And, again, the bank is the party that produced it
21 to us. So now to sit here at a motion to dismiss
22 hearing and say, golly, we had no idea that it was out
23 there, well, you had to or you should have because it
24 was in your file.

25 And then, we moved forward a number of years, and

1 I understand the Court's concern with the amount of
2 time that passed, I'm kind of stuck with the facts and
3 circumstances that I've been dealt in this case. But
4 in 2005, Heron Point comes to the bank and says, you
5 know, we want a waiver of these deed restrictions so
6 that we can sell this property.

7 And through that transaction the bank got roughly
8 a hundred thousand dollars, Heron Point got a hundred
9 thousand dollars. There's other evidence and
10 information, again, which doesn't lend itself to the
11 motion to dismiss argument that says the bank and Heron
12 Point have been talking about this for a long time, and
13 they've been talking about it in the context of dealing
14 with the association.

15 THE COURT: Let's say that's true. Let's say
16 that's absolutely dead on the truth, they were
17 monkeying around, they knew all about it. Say that
18 they did. How did we get past the fact that the breach
19 is when they conveyed it? Doesn't make any difference
20 if they talked about it, if they knew about it, the
21 breach occurred when they waived it.

22 And the waiver was filed in the public record in
23 2005, and what, nine years before this action was
24 brought, nine years before. The property's out there,
25 I would assume somebody is doing something with the

1 property in the meantime.

2 I mean, you seem to be telling me, if I have an
3 agreement and it gets recorded for some reason, that
4 all of a sudden the statute of limitations for the
5 breach of that agreement is 20 years instead of three
6 years. You know, the clerk used to be, I don't know if
7 she would do it now or not, but used to you could file
8 anything you wanted if you had a few dollars. You just
9 go and file any kind of agreement, bingo, all of a
10 sudden you got a 20-year statute of limitations on it.

11 I don't think that's right. I think that the
12 statute of limitations on the contract action is three
13 years. I mean, show me where it's extended because it
14 happened to have been -- the waiver was filed in the --

15 MR. PEARCE: This is the end result that this was
16 intended to accomplish. Again, Garner v. Houck, the
17 case law there says that the reasonableness of a
18 party's actions in regards to response of the statute
19 of limitations a factual issue, and I believe that to
20 be the case.

21 Again, I understand it's an odd situation with the
22 waiver of the restrictions being the breach. But
23 again, our argument is to the extent that that is a
24 sealed instrument that the 20-year statute of
25 limitations would apply and/or it would be protected

1 under --

2 THE COURT: Well, when did your folks find out
3 that it was done?

4 MR. PEARCE: Our folks found out that that was
5 done through this litigation.

6 THE COURT: Like nine years later they didn't know
7 anything about it?

8 MR. PEARCE: That's correct, Your Honor. The two
9 parcels that were sold by Heron Point were directly
10 adjacent to and were integrated into the Cypress River
11 Plantation development.

12 THE COURT: And you say nothing has occurred on
13 any of this property that would give it --.

14 MR. PEARCE: No, they've built houses on it. The
15 issue is you would have had to have gone out and
16 surveyed the property lines in order to determine what
17 ownership of the property had been transferred or
18 conveyed.

19 THE COURT: When did they start building houses
20 and all; I mean, when did they --

21 MR. PEARCE: I don't have that information.

22 THE COURT: Apparent, you know, there's something
23 going on here, you know.

24 MR. PEARCE: Your Honor, I don't have that
25 information. Again, in talking with my folks, and

1 again, we're going well beyond the 12(b)(6) argument,
2 but my folks said, look, all along this perimeter of
3 our property construction was going on, houses were
4 being built. Until they started doing a detailed
5 review and analysis of this and until Heron Point
6 brought the lawsuit nine years later, that's when it
7 became apparent that this is what had taken place.

8 THE COURT: Okay.

9 MR. PEARCE: And, again, the bank did know it, it
10 was in their files, nobody bothered to look. And it
11 was convenient for them not to look because it
12 benefitted them to the tune of a hundred thousand
13 dollars.

14 THE COURT: All right. Ms. Byrd, you're next.

15 MS. BYRD: Yes, Your Honor. And I just want to be
16 very brief.

17 THE COURT: Okay.

18 MS. BYRD: I understood your question to me as how
19 would Heron Point have known that it couldn't obtain,
20 not the bank.

21 THE COURT: My question was how would an attorney
22 who was hired by Heron Point know?

23 MS. BYRD: Right. That's what I thought your
24 question was, not how would South State know.

25 THE COURT: Okay.

1 MS. BYRD: I understood that South State had this
2 in their file.

3 THE COURT: All right. I would think that South
4 State would have had it somewhere. I don't know that,
5 but I would certainly think that it was stuck somewhere
6 after the three name changes.

7 MS. BYRD: Yes, sir.

8 THE COURT: Or two. Or three, I don't know how
9 many more there are. Anyway, Ms. Byrd, what's your
10 next?

11 MS. BYRD: Okay. The next cause of action, we can
12 deal with two at the same time, contractual
13 indemnification and equitable indemnification. And as
14 a basis for that, contractual indemnification, the
15 association cites the bankruptcy agreement at page six,
16 paragraph two, that we looked at earlier where the
17 parties between and among themselves will execute
18 general releases so as to acquit, indemnify and hold
19 harmless each other from any claims or causes of action
20 between and/or among them prior to the execution of the
21 date of this instrument.

22 THE COURT: I saw that. That's what, four or
23 five, page four, paragraph two.

24 MS. BYRD: Page six, paragraph two.

25 THE COURT: Wait a minute. I'm sorry. Yes, I see

1 it, yes.

2 MS. BYRD: Yes, Your Honor. And you asked earlier
3 about whether or not there was a generally signed.
4 There wasn't one alleged in the pleading, and there
5 wasn't one attached to the pleading. So first, Your
6 Honor, we believe that this provision is not sufficient
7 to constitute a contract for indemnification.

8 But even if the Court finds that this is a
9 contract for indemnification, it clearly would not
10 apply to the case here, because based on the clear
11 language of the provision, it applies to claims between
12 and/or among the parties. And in this case it was
13 Condo-World and Heron Point and Myrtle Beach Golf and
14 Yacht Club Association.

15 THE COURT: And it says prior to the execution --

16 MS. BYRD: Exactly, Your Honor.

17 THE COURT: -- of the date of these instruments.

18 MS. BYRD: And this was signed in 1988. So we're
19 talking about a claim that is, you know, 30 years plus
20 after this was signed. So based on the clear language,
21 it doesn't apply because the cause of action is not
22 between the parties here, and it didn't occur prior to
23 the execution date. So we believe the contractual
24 indemnification claim fails.

25 THE COURT: Well, Mr. Pearce, I mean, wouldn't you

1 look at this and say it was the intent of the parties
2 to say, okay, we're all here in the bankruptcy court,
3 we're fussing and feuding, we're going to lay it all to
4 rest right now. From this point back, this takes care
5 of it all, we're not going to -- we're not going to
6 raise any issues prior to this, it's ended right here.
7 I mean, isn't that what that agreement was for; I mean,
8 isn't that what the clause is? I mean, from a
9 practical standpoint, isn't that what they're saying?

10 MR. PEARCE: Your Honor, that indemnity agreement,
11 our position on it is that the bank is a party to that
12 agreement. What they are trying to argue is that, hey,
13 when we sold the property we were no longer bound by
14 these covenants, I guess. I'll admit --

15 THE COURT: I don't think that's what she's
16 saying.

17 MS. BYRD: No, Your Honor, that's not what we're
18 saying at all. What we're saying is if the Court finds
19 this is a valid contract and we accept it's true that
20 it is --

21 THE COURT: You mean the whole, the agreement en
22 toto, or are you talking about that clause?

23 MS. BYRD: This clause.

24 THE COURT: Okay.

25 MS. BYRD: For purposes of the motion, I think,

1 we'll -- we do have to assume this is -- we take it as
2 true. But we think based on the clear language of what
3 it says, it's limited to actions among the parties and
4 prior to the date of execution. It's clear as it is.

5 THE COURT: I mean, isn't that -- let's just look
6 at prior to the date of execution, you know. If we
7 take it as a valid contractual obligation, if we look
8 at the clear wording of the -- that clause, that
9 paragraph, doesn't it just clearly say, prior to the
10 execution of the date of this instrument?

11 MR. PEARCE: Your Honor, again, the only
12 differentiation that I would make is that People's did
13 take title to this property, and then they did sell it
14 to Heron Point. And as far as the parties and who's --
15 how they got to be in the position of obligation under
16 this agreement, I would just clarify that.

17 Your Honor, I don't necessarily disagree with the
18 reading of that paragraph. But what we've ended up
19 here is based upon this agreement, we've had a breach
20 of this agreement sometime later, which then takes us
21 back in time to this agreement, which I agree, it's
22 very old, it's been around a long time.

23 But the question in my mind becomes when does the
24 settlement agreement over the passage of time no longer
25 become enforceable or at issue.

1 THE COURT: Well, why didn't your association
2 record this and make it a part of the record here in
3 Horry County?

4 MR. PEARCE: Your Honor, I can't answer that for
5 you. At the time that this was going on, Allen
6 Jeffcoat who's now an expert for the Plaintiffs was a
7 lawyer.

8 THE COURT: I mean, it's a waiver, you know, not
9 to do that. I mean, it just --

10 MR. PEARCE: For the association. He was the
11 lawyer for the association, I can't answer that. He
12 was also the lawyer for the developer, I can't answer
13 that. My research says that they then had an attorney
14 by the name of Anoni, and then Fred Parsons was their
15 attorney for a number of years. But I can't answer
16 that question for you. Fred has since retired
17 obviously.

18 THE COURT: Okay. And nobody even has a copy of
19 the agreement?

20 MR. PEARCE: The general release agreement, Your
21 Honor?

22 THE COURT: Yes.

23 MR. PEARCE: Not that we've been able to discover
24 to this point.

25 THE COURT: Okay, all right.

1 MR. PEARCE: And, Your Honor, just to clarify, I
2 have gone to Richard Lovelace, I've gone to Mike
3 Battle, I've gone to everybody that was involved in
4 this litigation either at the bankruptcy side or the
5 foreclosure side. Richard and Mike basically lost all
6 of their files in a warehouse fire. I mean, everywhere
7 we go it's a dead end. And part of that is the passage
8 of time is that it makes it very difficult to address
9 these matters in any detail.

10 THE COURT: Yes, ma'am.

11 MS. BYRD: Your Honor, the next claim is equitable
12 indemnification. And essentially, I think it's an
13 alternate, you know, cause of action. And if the Court
14 finds that this was a contract for indemnification but
15 just doesn't apply, then we don't have to deal with
16 equitable indemnification.

17 But, Your Honor, even if there's no contract this
18 equitable indemnification claim also fails. Because
19 under South Carolina case law you have to have
20 liability, be compelled to pay damages for equitable
21 indemnification to apply, and there has to be --

22 THE COURT: It's premature; isn't it, at this
23 juncture?

24 MS. BYRD: Yes, Your Honor. Also, there's a lack
25 of a special relationship which is a required element

1 of that claim. There's no relationship whatsoever
2 between South State and the association.

3 THE COURT: Could it be arguably -- or could it be
4 argued that the agreement creates some sort of
5 relationship?

6 MS. BYRD: That is what is alleged in the
7 pleadings, Your Honor, that a relationship is created
8 by this --

9 THE COURT: Well, do you have anything for me that
10 would show that --

11 MR. PEARCE: Your Honor, this agreement set off a
12 relationship with the parties that went on from '88 to
13 '92 and beyond, where these two parties were
14 interacting with each other, operating the golf course,
15 working on the development, trying to preserve the
16 value of the assets of People's, the association was
17 working --

18 THE COURT: But doesn't that tell me exactly what
19 the Plaintiffs are saying, hey, you were involved in
20 this whole deal, you knew everything that was going on.
21 Doesn't that just counter your argument that, you know,
22 we should have an extended statute of limitations, we
23 really didn't understand or know what was going on,
24 but --

25 MR. PEARCE: The timeframe I'm talking about is

1 '88 to '92. And that's when the special relationship
2 was at its height between these parties. The timeframe
3 that you're talking about is when we jump forward to
4 '05, and literally you're talking --

5 THE COURT: 13 years.

6 MR. PEARCE: -- 13 years later. And, you know,
7 the bank has gone through several reiterations, our
8 board has changed multiple times. I think there's just
9 a distinct difference in what we're discussing here,
10 and my comments were in response to Ms. Byrd's
11 allegation or assertion that there was no special
12 relationship between the parties. And I don't think
13 that's the case. Back in the '88 to '92 and around
14 that timeframe, these parties were working together
15 quite frequently on these issues.

16 MS. BYRD: Well, and Your Honor, I just want to
17 again state that under our well-established case law,
18 in order to claim equitable indemnification, then they
19 would have to -- Mr. Pearce's clients would have to
20 establish that they were compelled to pay damages.

21 THE COURT: And you're not even asking for damages
22 or monetary -- or excuse me, the Plaintiffs are not
23 even asking for monetary damages against you,
24 Mr. Pearce, or your clients. This is basically a DJ
25 action.

1 MR. PEARCE: That's arguably true, Your Honor.
2 Contractual indemnity and equitable indemnity in South
3 Carolina includes cost of litigating, it includes costs
4 of attorney's fees, it includes other aspects of things
5 like this. And part of our argument is we've been in
6 this protracted litigation with Heron Point and
7 Condo-World for a number of years now, we've
8 experienced costs and expenses. And that would be at
9 least in relevant part of our damages, but what --

10 THE COURT: Can that support your action if that's
11 your only damages?

12 MR. PEARCE: Well, Your Honor, the other damages
13 that really haven't been discussed or alluded to is --

14 THE COURT: No, we're talking about monetary
15 indemnification --

16 MR. PEARCE: I understand.

17 THE COURT: -- requires that you are required to
18 pay.

19 MR. PEARCE: Right.

20 THE COURT: Now, can an action for equitable
21 indemnification be based upon nothing more than your
22 expenses?

23 MR. PEARCE: And that's not necessarily our theory
24 of the case. Obviously our theory of the case is if
25 the golf course is allowed to go away and redevelop by

1 virtue of either the 2005 deed restriction waiver or
2 some other potential waiver, then, you know, every
3 property owner and the association is going to be
4 injured or damaged by virtue of that occurring is my
5 client's theory of the case, in regards to other
6 damages.

7 THE COURT: Ms. Byrd.

8 MS. BYRD: Yes, Your Honor. Again, I know this is
9 a rule 12(b)(6) motion, and I think that's critical.
10 Because I'm looking at the complaint and the damages
11 that have been alleged are the costs and expenses
12 incurred in defending this case brought by Condo-World.

13 So based solely on the pleadings, those are the
14 only damages that are alleged. And that's not enough
15 under our case law, Your Honor. And the final --

16 THE COURT: Tell me about it. What case law?

17 MS. BYRD: The final cause of action is -- I'm
18 sorry?

19 THE COURT: What case law?

20 MS. BYRD: Vermeer Carolina, Inc. versus Wood
21 Chuck Chipper Corp.

22 THE COURT: All right. What does it say?

23 MS. BYRD: It says -- well, let me give you --
24 well, because it cites another case as well. It
25 says --

1 THE COURT: Okay. I'll take either of them.

2 MS. BYRD: The indemnity plaintiff must prove the
3 following elements to recover damages on an equitable
4 indemnity claim. The indemnity defendant is at fault
5 in causing the damages of a third party, the plaintiff
6 has no fault for those damages, the plaintiff incurred
7 expenses that were necessary to protect his interest in
8 defending the third-party's claim which were the fault
9 of the defendant.

10 So in other words, the defendant --

11 THE COURT: Well, that says that -- according to
12 that, it would be supported by a claim for expenses of
13 litigation; wouldn't it?

14 MS. BYRD: Well, Your Honor, what this says is
15 that the indemnity defendant, in other words, there has
16 to be a third party, not damages to him, not his
17 damages.

18 THE COURT: Well, that would be Condo-World;
19 wouldn't it?

20 MS. BYRD: Right. And they're not seeking
21 damages, they are seeking a declaratory judgment. So
22 there's no damages caused to Condo-World.

23 THE COURT: But does it say that that has to be in
24 the form of -- or do you have any case law that says
25 that has to be in the form of monetary damages?

1 I mean, he has alleged damage to property. That's
2 the basis of his claim; right, Mr. Pearce?

3 MS. BYRD: He's alleged expenses necessary to
4 defend against the Plaintiff's claims.

5 THE COURT: Okay. Is that the only thing he
6 has -- is that the only thing you got in your
7 complaint?

8 MR. PEARCE: Your Honor --

9 THE COURT: You got to have more than that.

10 MR. PEARCE: Your Honor, this is the answer and
11 third-party complaint here with numerous exhibits. And
12 we incorporated every complaint, answer, exhibit, into
13 this third-party complaint.

14 As far as that one interlineation in my complaint,
15 you know, part of what we were trying to put out there
16 additionally was that we believe we were due indemnity
17 for costs and expenses of litigation aside from our
18 other damages. If that --

19 THE COURT: But do you -- this is 12(b)(6) -- do
20 you make proper allegations in your complaint to
21 support an action for equitable indemnification?

22 MR. PEARCE: My position is we do, Your Honor.
23 And if the absence of some other damages is critical,
24 we'll amend and add it. I mean, our assumption was
25 that with this document and all of the back and forth

1 between the Plaintiffs and Defendants and the other
2 exhibits, then that would be an unnecessary
3 re-allegation. But we can certainly do that.

4 THE COURT: Well, that would, of course -- you
5 could move to that. But, you know, the question here
6 is have you made the allegations?

7 MS. BYRD: And, again, Your Honor, if the Court
8 finds that there's contractual indemnification, then
9 the equitable indemnification fails as a matter of law.
10 Because there would be a contract, so you're not
11 entitled to an equitable indemnification claim.

12 And the last cause of action is a permanent
13 injunction --

14 THE COURT: Well, run that by me one more time
15 there, Ms. Byrd.

16 MS. BYRD: Well, he's pled it as an alternative
17 claim because if you have a contract, then equity won't
18 control. So you --

19 THE COURT: Right.

20 MS. BYRD: -- don't have that equitable cause of
21 action. So if the Court's finds, well, okay, there is
22 a contract and this is it and the bankruptcy agreement,
23 and it's limited to claims between the parties --

24 THE COURT: Mr. Pearce, why would you say
25 there wasn't? You pled that there was a contractual

1 right to indemnification; haven't you?

2 MR. PEARCE: We have, Your Honor. And I think
3 Ms. Byrd is right.

4 THE COURT: Isn't that your position?

5 MR. PEARCE: We're -- the equitable indemnity
6 claim is basically an alternative claim --

7 THE COURT: Okay.

8 MR. PEARCE: -- if the contractual indemnity claim
9 were to fail.

10 THE COURT: Okay. All right.

11 MS. BYRD: And the last cause of action, Your
12 Honor, is the action for a permanent injunction. And
13 there's -- the association is seeking to enjoin South
14 State from any future waiver of restrictions related to
15 the property. And, Your Honor, our position is that
16 there's just no controversy here for the Court to
17 decide.

18 South State has already waived, or First Federal
19 and South State's successor, has already waived every
20 restriction that was placed on the property in 2005.
21 So there's nothing else we can waive, it's already been
22 waived. So there's no need for the Court to --

23 THE COURT: I'm sure that's Condo-World's position
24 too; isn't it?

25 MS. BYRD: I would assume so, Your Honor.

1 MR. PEARCE: Your Honor, on its face, again, the
2 document that was signed by the bank has a legal
3 description attached to it. And it limits the waiver
4 to the -- I think it's roughly seven or nine acres that
5 were part of that transaction. But that's been part of
6 our concern this entire time is my client's believe
7 that the 2005 transaction was a test balloon.

8 THE COURT: Is the bank still a holder?

9 MR. PEARCE: Of?

10 THE COURT: South State doesn't hold any interest
11 in that -- any of the properties; does it, didn't they
12 convey it all out?

13 MS. BYRD: Yes, Your Honor.

14 MR. PEARCE: That's correct. And in candor with
15 the Court, with the note that Mr. Plyler purchased
16 through Condo-World, he holds the note now. But our
17 position is that the 2005 transaction was a test
18 balloon, it was orchestrated by the parties to deal
19 with the association which is cited in the
20 memorandum --

21 THE COURT: So what your position is is that now
22 Condo-World and Heron -- or what was it? I'm sorry.

23 MR. PEARCE: Condo-World and Heron Point.

24 THE COURT: Heron Point are the holders of title
25 now, they are fee simple owners; right?

1 MR. PEARCE: They are.

2 THE COURT: Subject to, they have some sort of
3 financing agreement with South State; is that right?

4 MR. PEARCE: They don't any --

5 MS. BYRD: No, Your Honor.

6 THE COURT: South State sold the paper on it?

7 MS. BYRD: Yes, Your Honor.

8 THE COURT: Okay. So they have an individual that
9 actually holds the paper on it?

10 MS. BYRD: It's an LLC, Your Honor.

11 THE COURT: Okay. So someone else got the paper,
12 and they bought a bunch of property. And you're saying
13 that they are only developing part of it, and you're
14 afraid they are going to develop the rest; right?

15 MR. PEARCE: That's generally correct, Your Honor.
16 But we believe that --

17 THE COURT: I think that's a pretty good
18 assumption. If they bought it, that's when they plan
19 to do is develop it.

20 MR. PEARCE: That's correct. And our
21 understanding or our belief of what's going to happen
22 is depending on how this litigation goes, they'll go
23 back to the bank or whoever they feel like they need
24 waivers from to obviate their obligations under the
25 settlement agreement and the other documentation and

1 then use that --

2 THE COURT: But hasn't the bank released all the
3 property anyway? Was it a release of everything?

4 MS. BYRD: Yes, Your Honor. We no longer own it.

5 THE COURT: This 2005 document that --

6 MR. PEARCE: Yeah. That restriction of waivers
7 did not release the deed restrictions on the remainder
8 of the property. It's specifically limited by the
9 legal description to that nine acres. Now, that
10 subsequently have released or sold, I think they
11 factored to a company in Texas their note at a reduced
12 cost by virtue of these multiple failed banks.

13 They sold it to a company in Texas. Mr. Clyburn
14 became aware of that and purchased it at about 30 cent
15 on the dollar, 25 or 30 cent on the dollar. And they
16 don't hold the note on the property nor a mortgage on
17 the property by virtue of that. But the deed
18 restriction in '05 did not release and cannot be read
19 to release the remainder of the deed restrictions.

20 THE COURT: Okay. Well, doesn't that kind of
21 cause me to have to look at this a little differently
22 if there are -- how many acres are there all together,
23 the golf course and other properties, how many acres
24 are we talking about?

25 MS. BYRD: 164. ,

1 THE COURT: 164 acres. Are you telling me that
2 this litigation only involves seven or nine acres?

3 MS. BYRD: No. And, Your Honor, I want to be
4 clear. What I do mean that the waiver released what
5 was left that we sold to Heron Point. But once we quit
6 claimed all the property in the area in that
7 development with -- we own nothing. We don't hold the
8 note, we don't own any property. We quit claimed it,
9 we have no interest whatsoever.

10 THE COURT: And you quit claimed it to?

11 MS. BYRD: The association. So we can't enforce,
12 or there's nothing that South State can do.

13 THE COURT: What I'm getting at is either Heron
14 Point got everything with the restriction lifted, or
15 the association got it; right?

16 MS. BYRD: Right.

17 THE COURT: Is there any property owned by Heron
18 Point or Condo-World that is presently subject to this
19 restriction, these restrictions?

20 Is there anything -- what am asking you is when
21 this 2005 document was signed, okay, it looks like
22 it's -- you're talking about parcel one, parcel two,
23 and I guess it's two parcels there. One was five acres
24 and another was 2.5 acres.

25 MR. BELLAMY: Your Honor, may I?

1 THE COURT: Yes, Mr. Bellamy, tell me about it.

2 MR. BELLAMY: There's one parcel alone is 164
3 acres, and the two other remaining parcels comprised
4 roughly about six acres, which was the property that
5 Heron Point back in 2005 -- that Heron Point sold to
6 Enterprise Road Development, LLC, which became a part
7 of the Cypress River subdivision.

8 THE COURT: Okay.

9 MR. BELLAMY: So it's --

10 THE COURT: Are you telling me the only thing that
11 Heron Point owns now is about seven or eight acres?

12 MR. BELLAMY: No. The 164 acres is what Heron
13 Point owns currently.

14 THE COURT: Okay. All right. I'm looking at this
15 waiver of restrictions given by People's Federal
16 Savings and Loan Association in favor of Heron Point
17 Golf Club Limited Partnership, okay.

18 It releases exactly what? It releases the
19 restrictions as to what, the whole 164 acres, or just
20 the property described on Exhibit A, which is only
21 about eight acres?

22 MS. BYRD: Your Honor, I think based on the
23 document, it released only what is listed in Exhibit A.
24 But, again, South State did release this or First
25 Federal did this at a time when it had an interest in

1 the property and could release.

2 THE COURT: Okay.

3 MS. BYRD: In other words, we no longer hold the
4 note or the mortgage, we don't own anything.

5 THE COURT: I understand.

6 MS. BYRD: So we can't do anything.

7 THE COURT: And I -- you know, gosh, I'm somehow
8 not getting my question over. South State, People's
9 Federal Savings, whoever, when they went to the
10 foreclosure, they bought how much property?

11 MS. BYRD: I believe it was the total 164 acres.

12 THE COURT: They bought 164 acres, okay.

13 MS. BYRD: Yes, Your Honor.

14 THE COURT: They divested themselves of that
15 property, one, by deed in 1992 to Heron Point Golf Club
16 Limited Partnership.

17 MS. BYRD: Yes, Your Honor.

18 THE COURT: Right, okay.

19 MS. BYRD: Yes, Your Honor.

20 THE COURT: Subsequent to that they deeded out the
21 balance of the property to the homeowners association
22 by quit claim.

23 MS. BYRD: That's right, Your Honor.

24 THE COURT: Okay. After that, some eight years
25 later -- or no, 13 years later, Heron Point comes back

1 and says, we want to make sure that we can develop this
2 property, we want you to release that restriction you
3 put in. South State, or People's Federal Savings it
4 looks like, says okay, and they sign a release.

5 That waiver of restrictions seems to describe only
6 the property described in Exhibit A, which is 5.9 acres
7 and 2.51 acres, eight acres; okay?

8 MS. BYRD: Yes, Your Honor.

9 THE COURT: What about the other 157 acres, how
10 did that get released?

11 MS. BYRD: I understand, Your Honor. And I think
12 that it has not, is the answer. I mean, based on the
13 waiver of restriction --

14 THE COURT: Okay. That's what you're complaining
15 about, we don't want them to release it?

16 MS. BYRD: But we don't --

17 MR. PEARCE: That is correct, Your Honor. That's
18 the bottom line is we want --

19 THE COURT: Whew.

20 MS. BYRD: But, Your Honor, I think that that's
21 right. And I'm sorry I misunderstood what you were
22 asking me, but I guess the point is South State is not
23 in a position where it can release anything else. It
24 doesn't own any property there, it doesn't hold a note
25 or mortgage.

1 So if it's going to be released from the
2 restrictions, it's going to be from some other bank
3 that holds the note and mortgage. And South State, as
4 alleged in his complaint, doesn't own it.

5 THE COURT: But since when was a deed restriction,
6 when did it have anything to do with a mortgage? There
7 are deed restrictions on this property that rise out of
8 an agreement entered into in the bankruptcy court in
9 1988. So that agreement required the bank, its
10 predecessor, South State predecessor, whether it's
11 People's Federal or Federal Savings, whatever they
12 are -- there's been several changes, and I'm sorry I
13 can't keep up with them -- but South State, required
14 South State to restrict when you deed it out, okay.

15 They deeded it out and they restricted it, they
16 complied, they -- apparently. When they deeded it out,
17 they did it in two deeds, one to Heron Point and then
18 the common areas went back to the homeowners
19 association by way of quit claim, okay.

20 So what we got here, then, is even though South
21 State may have divested itself of the property, that
22 has nothing to do, from what I've seen, with any
23 mortgage that it may have held and later sold. It goes
24 back to the original document which required it to
25 restrict the property.

1 Well, if it restricted the property, isn't it the
2 person, the party in interest, who could release that
3 restriction at any time, like they did on the eight
4 acres?

5 MS. BYRD: Well --

6 THE COURT: Don't we have to look at them? Even
7 though they say, we don't hold a mortgage on it
8 anymore, okay, you don't hold a mortgage. But you
9 still have that right to restrict, or you reserve the
10 right to restrict.

11 MS. BYRD: Well, I think that as to South State,
12 the new holder of the mortgage would be the successor.
13 In other words, the allegation is because we're not a
14 party, South State's not a party, to the waiver of
15 restrictions, that was People's Federal. But and I
16 understand that we're the successor in interest.

17 So as to that obligation, that is now with our
18 successor which is the company that holds the note and
19 mortgage. We don't have any legal --

20 THE COURT: Yeah, but --

21 MS. BYRD: -- or equitable right to do anything
22 out there.

23 THE COURT: But does the right and obligation, the
24 obligation to restrict, does it arise out of your
25 mortgage that was originally given, or does it arise

1 out of this agreement in 1988 in the bankruptcy court?

2 MS. BYRD: Well, I think, Your Honor, if at all,
3 it rises out of the deed that was in 1992, deed to
4 Heron Point.

5 THE COURT: There you go, exactly. And that was
6 in conjunction with the mortgage that was given that
7 you keep talking about.

8 MS. BYRD: Yes, sir.

9 THE COURT: Surely there was a mortgage, you know.
10 But the restrictions arise out of the deed --

11 MS. BYRD: Yes, Your Honor.

12 THE COURT: -- as a result of the 1988 bankruptcy
13 agreement.

14 MS. BYRD: Right.

15 THE COURT: So I don't -- if you look at the face
16 of the mortgage, the mortgage might have some reference
17 to the restriction, but that's simply because it was
18 probably included in the deed. It has probably nothing
19 to do with the right of the bank to foreclose or what
20 it would foreclose on. But that deed to Heron Point
21 for -- how many acres did they buy? Did they buy 164
22 acres?

23 MS. BYRD: I would have to add it up.

24 MR. PEARCE: Roughly, Your Honor, they did. They
25 bought the entirety of the golf course and supporting

1 amenities.

2 THE COURT: All right. Let's just call it 164
3 acres. And in the deed it has this restriction; right?

4 MS. BYRD: Yes, Your Honor.

5 THE COURT: Okay. Later, we get -- just 164
6 acres -- later we get this waiver of restriction in
7 2005 which seems to release the restriction on about
8 eight acres. Mr. Pearce says he's concerned about you
9 releasing it on the balance of the property; is that
10 right, Mr. Pearce?

11 MR. PEARCE: That's correct, Your Honor.

12 THE COURT: Is that where you're coming from?
13 Okay.

14 MR. PEARCE: That's our issue with the last cause
15 of action.

16 THE COURT: Okay. He's saying there's another 150
17 some acres out there, and we don't want you to release
18 it on that, we think we have a contractual right that
19 would prevent you from doing that. And is that what
20 you're asking for in your lawsuit?

21 MR. PEARCE: That is basically it, Your Honor, in
22 a nutshell between the multiple causes of action,
23 between the breach of contract down to the injunction.

24 THE COURT: Okay. And, Ms. Byrd, suppose "
25 Mr. Pearce wasn't out here fussing and his people,

1 okay. And suppose I came to you with this problem, and
2 I said, Ms. Byrd, I want to buy this piece of property,
3 they've got about a hundred and 50 some acres here that
4 they got way back in 1992. In 2005, they got the bank
5 to release this restriction that was on it.

6 I want to buy the rest of that property, but I
7 want to get that restriction off of there. Who would
8 you go to to see to release that restriction?

9 MS. BYRD: Your Honor, it would be --

10 THE COURT: The bank.

11 MS. BYRD: I think --

12 THE COURT: Even though the bank might not care,
13 that's where you would go.

14 MS. BYRD: Right.

15 THE COURT: Where else could you go?

16 MS. BYRD: But I think you would have to go to the
17 bank that held the note mortgage. Because they have
18 some interest in the property where South State has
19 no --

20 THE COURT: Well, you might have to get them to do
21 it also. And I would agree with that. I would agree
22 if you got a bank holding a note and mortgage out here
23 that properly they should be made a party in case there
24 was a default and they had to foreclose. They might be
25 foreclosing and get something less than what they

1 traded for.

2 MS. BYRD: Right.

3 THE COURT: Most cases the bank wouldn't care if
4 you lifted the restrictions, makes it more marketable
5 to them. But you've got to go back to the person, to
6 the seller who originally reserved this restriction on
7 the property. You've got to do both at least.

8 MS. BYRD: I understand. And I think it's just
9 complicated because the case law is really clear that,
10 you know, when we don't own a property out there, we
11 lose the right to enforce a restrictive covenant. What
12 he's saying is, I'm not asking you to enforce it, I
13 just don't want you to waive it.

14 THE COURT: Think of it like this. You know,
15 there's a 30-acre tract next door to your home. And
16 somebody comes up and wants to buy it, and you say,
17 okay, I will sell it to you, but I'm going to restrict
18 it. You don't have any interest anymore in that
19 property except that restrictive right. You have the
20 right to enforce that restriction or release it.

21 And I think that's what Mr. Pearce is fussing
22 about. Mr. Pearce is saying, we don't want you to
23 release any other property; right?

24 MR. PEARCE: That's it, Your Honor.

25 THE COURT: Mr. Bellamy back there is saying, we

1 want you to release all of it. But it hasn't been done
2 yet; has it yet, Mr. Bellamy? Has the rest of it been
3 released, has the restrictive covenant been released on
4 the balance of the 164 acres?

5 MR. BELLAMY: Not by the bank. The bank no longer
6 owns the note and the mortgage. They have --

7 THE COURT: Somebody else has got it.

8 MR. BELLAMY: They have no other interest in the
9 property. But bear in mind, if you look at the --

10 THE COURT: Well, let me ask you this. You and I
11 are probably the only ones in this courtroom that used
12 to have a key to the courthouse and came in and did our
13 title work at night.

14 MR. BELLAMY: Right.

15 THE COURT: When that stuff was permitted.
16 Mr. Bellamy, do you agree or disagree that in spite of
17 the fact that the bank may have sold the note and
18 mortgage that it held, South State would still be
19 required to sign off on any release of its
20 restrictions?

21 MR. BELLAMY: Let me try to answer you, and I hope
22 I don't confuse the Court. You have to go back to the
23 inception of the development of this property between
24 Rod Propps and People's Federal. He prepared a
25 document, what's called a development agreement.

1 THE COURT: Okay.

2 MR. BELLAMY: And that agreement applied to a lot
3 of property that was out there. And it basically
4 provided that no lot or no part of the 160 or whatever
5 was subject to any restriction until they complied with
6 the provisions of that agreement. It is undisputed
7 that the provisions of that agreement were never
8 complied with.

9 THE COURT: To even restrict it to begin with?

10 MR. BELLAMY: Yes, sir, to begin with. So when
11 People -- and bear in mind, move on to this agreement,
12 it says it's a State of South Carolina, County of
13 Richland agreement. It ain't a bankruptcy agreement.
14 It's an agreement, and it never was recorded in Horry
15 County. In fact, it never was recorded in Richland
16 County. And when our client bought the property,
17 there was no knowledge that this so-called agreement
18 existed.

19 Now, so when People's subsequent to this sold it
20 to our client, no reference was made in any
21 documentation as to this agreement. It was never
22 mentioned, never told, never set out anywhere.

23 The only thing People's had at that point because
24 the development agreement, amended development
25 agreement, had not been complied with, all People's had

1 was -- could impose on the property in selling it to
2 our client was the restriction. And as Ms. Byrd has
3 indicated, they complied with it.

4 But by not complying with the development
5 agreement, there were two things it required. All
6 People's could convey was what they conveyed. But was
7 it a covenant that ran with the land, or was it
8 personal? In that case, because they didn't comply
9 with the development agreement, all they could have
10 possibly conveyed was a personal covenant.

11 People's conveyed what they agreed to do. Our
12 client took the position when we tried to go to the
13 homeowners association when the golf course was going
14 broke, going busted, and asked them to work with us.
15 At that point we were told, no, no, no, we're not going
16 to give you anything. So our client was forced to go
17 to this Court to ask the Court to determine inasmuch as
18 they would not agree, would they agree to moving
19 forward.

20 This case finally boils down to, was the covenant
21 that People's Federal put in its deed to our client,
22 was it a personal covenant or a covenant running with
23 the land. If they didn't comply with it, there's
24 nothing here really to talk about. The bank has not
25 done anything wrong. First Federal was the one that

1 released the nine acres. And for that reason we're
2 going in a direction of what the bank does. And
3 besides this, the case law is pretty clear. Bank
4 doesn't own any property, they don't have any ability
5 to enforce it.

6 THE COURT: All right. Let's do this --

7 MR. BELLAMY: So the question is does the
8 association have standing to enforce the restriction,
9 period.

10 THE COURT: Well --

11 MR. PEARCE: Your Honor?

12 THE COURT: Yes.

13 MR. PEARCE: Two brief points. This is a 12(b)(6)
14 motion.

15 THE COURT: I know. And we've gotten way beyond
16 that.

17 MR. PEARCE: And one thing I want to point out,
18 and Mr. Bellamy Skeets was not at the deposition of the
19 corporate attorney for Heron Point that we took up in
20 Greenville, and perhaps he's not looked at the
21 documents or the exhibits from that deposition. But
22 this deed restriction that we're all arguing and
23 fighting about is in the transactional record,
24 contract, documents, you name it.

25 Now, the problem is, just to respond to what he's

1 saying, Mr. Millon Plyler, and Mr. Jerry Spearman, Sr.,
2 both died around the '07 period of time. And then we
3 go into Roy Clyburn being the controlling partner, and
4 Roy basically says, I don't know nothing about nothing.

5 But when you look at the documents and you look at
6 the transactional record that Mr. Brown, the corporate
7 attorney, testified to for Heron Point, those documents
8 are replete with references to this deed restriction.
9 So to sit here before the Court and say Heron Point
10 didn't know, Mr. Clyburn may not have known, but his
11 partners, Millon Plyler and Jerry Spearman, Sr.,
12 certainly knew about it. And their lawyer even
13 testified that they had to be reasonably aware of it
14 because it was in the documents, and how would they not
15 have known. So I can't let that go that they don't
16 have knowledge or didn't know about this restriction,
17 because they certainly did.

18 THE COURT: All right. Each of you please submit
19 me a proposed order, and try to get it to me by the end
20 of next week. And I'll rule on the 12(b)(6) motions;
21 okay?

22 MR. PEARCE: Thank you, Your Honor.

23 MS. BYRD: Thank you, Your Honor.

24 THE COURT: All right, thank you very much.

25 (The hearing concluded at approximately

1 11:11 a.m.)

2 (End of Transcript of Record.)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)

5
6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 4th day of October,
14 2017.

15
16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18
19
20 *S/Teresa J. F. Bautz*

21 TERESA J.F. BAUTZ, RPR
22 Official Court Reporter
23
24
25

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
In the Court of Common Pleas
Civil Action No.: 2015-CP-26-03173

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

v.

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

And

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

v.

South State Bank,
Third-Party Defendant.

**Motion to Dismiss Third-Party Complaint of Myrtle Beach Golf & Yacht Club Association,
Inc. Filed on behalf of Third Party Defendant South State Bank, April 21, 2017**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

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

Plaintiffs,)

vs.)

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

Defendant.)

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

Defendant/Third Party)
Plaintiff,)

vs.)

South State Bank,)

Third Party Defendants.)

**MOTION TO DISMISS THIRD PARTY
COMPLAINT OF MYRTLE BEACH GOLF
& YACHT CLUB ASSOCIATION, INC.
FILED ON BEHALF OF THIRD PARTY
DEFENDANT SOUTH STATE BANK**

COMES NOW Third Party Defendant South State Bank ("South State"), by and through its undersigned counsel, and hereby submits this Motion the Third Party Complaint filed by Myrtle Beach Golf & Yacht Club Association, Inc. ("the Association") pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, counsel would show that the Motion to Dismiss should be granted as a matter of law.

FACTUAL BACKGROUND

According to the Third Party Complaint filed in this matter, in or around February 1984, Justice, Inc. ("Justice") and Peoples Federal Savings and Loan ("Peoples") entered into a real estate development project to develop a large tract of land located in Horry County, South Carolina otherwise known as the Myrtle Beach Golf & Yacht Club. [Third Party Compl. at ¶ 33]. Approximately four years later, in June of 1988, American Community Development Corporation placed Myrtle Beach Golf & Yacht Club into involuntary bankruptcy. [Id. at ¶ 45]. During the bankruptcy proceedings, Myrtle Beach Golf & Yacht Club, Peoples, Property Consultants, Inc., and the Association entered into an agreement in order to release the property so that a foreclosure of the property could be pursued by Peoples. [Id. at ¶ 47 and Ex. 7]. This agreement was executed by the parties on July 25, 1988 ("the Bankruptcy Agreement").

In the Bankruptcy Agreement, the parties made numerous assurances regarding the development of the property and the terms of the foreclosure. Three provisions of the Bankruptcy Agreement are of particular relevance with regard to the Third Party Complaint. First, in paragraph two on page two of the Bankruptcy Agreement, only the Association, Property Consultants, Inc. and Myrtle Beach Golf & Yacht Club, jointly and severally, agreed "to enforce the Restrictive Covenants, as they may be amended, from time to time, giving particular scrutiny to Covenant Compliance on those lots and parcels of land which are adjacent and contiguous to the golf course." [Third Party Compl. at Ex. 7]. Peoples was specifically accepted from this provision and made no agreement to enforce the Restrictive Covenants related to the property. Second, in paragraph three on page four of the Bankruptcy Agreement, it was agreed that in the event Peoples was the successful bidder at the foreclosure sale of the property, it would cause the following deed restriction to be placed on the property: "The only permitted

use of this property is a golf course, country club, or other ancillary use relating to golf course or country club use." [Id. at Ex. 7]. Finally, paragraph two on page six of the Bankruptcy Agreement provides: "The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument." [Id. at Ex. 7].

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

Based on the foregoing, the Association filed the current Third Party Complaint against South State (as the alleged present successor in interest to Peoples and First Federal) alleging causes of action for breach of contract, contractual indemnification, equitable indemnification and permanent injunction.

LEGAL STANDARD

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

ARGUMENT

I. THE ASSOCIATION’S THIRD PARTY CLAIM FOR BREACH OF CONTRACT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

The applicable statute of limitations for filing an action based upon “a contract, obligation, or liability” is three (3) years. S.C. Code Ann. §15-3-530 (1) (1976). In determining when the statute of limitations begins to run, South Carolina courts have consistently adopted the “discovery rule.” See Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991); Santee Portland Cement Co. v. Daniel International Corp., 299 S.C. 269, 384 S.E.2d 693 (1989); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). Under the discovery rule, the statute of limitations commences when “the injured party knows or should have known by the exercise of due diligence that a cause of action arises from the wrongful conduct.” Walsh v. Woods, 358 S.C. 259, 264, 594 S.E.2d 548, 551 (Ct. App. 2004). A cause of action arises when it ought to have been discovered through reasonable diligence when “the facts and circumstances

would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist.” Id. at 265, S.E.2d at 551 (quoting Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998)). In addition, the fact that the injured party may not realize the entire extent of the damage is irrelevant in determining when the statute of limitations begins to run. Dean, at 364, S.E.2d at 647; *see also*, Dillon County Sch. Dist. No. Two v. Lewis Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). In Carolina Marine Handling, Inc. v. Lasch, the Court wrote:

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

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

In support of its cause of action for breach of contract, the Association alleges that South State breached the Bankruptcy Agreement and the 1992 Indenture Deed “by not providing the Association with any notice or information regarding the 2005 Waiver of Restrictions issued for the benefit of South State Bank and Heron Point Golf Club Limited Partnership.” [Third Party Compl. at ¶ 76].

Essentially, the Association bases its breach of contract claim solely on the Waiver of Restrictions executed in 2005 and recorded with the Horry County Register of Deeds on May 5, 2005, nearly twelve years prior to the filing of the present Third Party Complaint. To the extent the Association claims it was unaware of the Waiver of Restrictions, there is no dispute that the Waiver of Restrictions was recorded with the Horry County Register of Deeds and was a public

record. As such, at a minimum, the Association had constructive notice of the Waiver and knew or should have known of its existence. Thus, the Association's notice of any breach of contract arose in 2005, and the time permitted by law to file suit ran out, at the latest, in 2008. The present action was not commenced until 2017, nine years after the statute of limitations expired. Therefore, the Association's claims should be dismissed as a matter of law.

II. THE ASSOCIATION'S CLAIMS FOR INDEMNIFICATION FAIL AS A MATTER OF LAW.

In its Third Party Complaint, the Association alleges causes of action for contractual and equitable indemnification. For the reasons set forth below, as well as the arguments set forth above regarding the statute of limitations, both claims fail as a matter of law.

A. Contractual Indemnification

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

In this case, there exists no contract for indemnification between the parties. The Association relies on the following provision contained in the Bankruptcy Agreement in support of its contractual indemnification claim: "The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any

claims or causes of action between and/or among them, prior to the execution of the date of this instrument." [Third Party Compl. at Ex. 7 (emphasis added)]. There is no general release attached to the Third Party Complaint or alleged in the pleading. Stated differently, there is no contract between the Association and South State, and no alleged contract was attached to the pleadings. Thus, in the absence of such contract, or a provision allowing indemnity between the parties, the Association's claim for contractual indemnification fails.

Further, based upon the language of the provision cited by the Association, it is clear that any contemplated indemnification agreement would encompass only claims or causes of action between or among the parties to the Bankruptcy Agreement occurring prior to July 25, 1988, the date of the execution of the Bankruptcy Agreement. Thus, even if such general release agreement existed, which is not even alleged, it would not apply to Plaintiff's claims against the Association nearly thirty years after the Bankruptcy Agreement was signed. Therefore, the Association's claim for contractual indemnification must be dismissed as a matter of law.

B. Equitable Indemnification

South Carolina law recognizes the principle of equitable indemnification. Generally, a party may maintain an equitable indemnification action if he was compelled to pay damages because of negligence imputed to him as a result of the tortious act of another. *See, e.g., Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999). However, equitable indemnification is only allowed where a "special relationship" exists between the parties. *Id.* "According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of

another in which he does not join.” *Id.* (citing Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 24, 301 S.E.2d 552 (1983)).

Once a sufficient relationship is established, an indemnity plaintiff must prove the following elements to recover damages on an equitable indemnity claim: (1) the indemnity defendant is at fault in causing the damages of the third party; (2) the plaintiff has no fault for those damages; and (3) the plaintiff incurred expenses that were necessary to protect his interest in defending the third party’s claim, which were the fault of the defendant. *Inglese*, 403 S.C at 299, 742 S.E.2d at 692.

Here, the Association generally alleges a special relationship with South State but provides no factual basis to support such a relationship. In fact, in its Third Party Complaint, the Association clearly alleges that South State is a remote assignee of Peoples and First Federal with absolutely no relationship whatsoever with the Association. Even assuming a special relationship exists between the Association and South State, the Association has failed to plead any liability or damages caused to a third party for which the Association is responsible. To the contrary, the Plaintiff seeks a declaratory judgment from the Court in this action, not damages from the Association. As such, the Association’s claim for equitable indemnification fails as a matter of law and must be dismissed.

III. THE ASSOCIATION CANNOT ASSERT AFFIRMATIVE CLAIMS AGAINST SOUTH STATE AS A REMOTE ASSIGNEE OF PEOPLES AND FIRST FEDERAL.

Under South Carolina law, the rights of an assignee can be no greater than those of the assignor. Dixie Wood Preserving Co. v. Albert Gersten & Associates, 244 S.C. 57, 64-65, 135 S.E.2d 368, 371 (1964). “However, absent an agreement to the contrary, the common law

assignee takes only the benefits, not the burdens of the assigned obligation.” Rosemond v. Campbell, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (1986). Therefore, “as against the assignee, the obligor *can only assert a claim defensively* when the assignee seeks to enforce the obligation; *he has no common law right to sue the assignee affirmatively* on a claim against the assignor arising from the underlying obligation.” Id. (emphasis added). The distinction between a defense and affirmative claim is critical in this case.

In this case, the Association alleges that South State is an assignee or successor in interest to Peoples, a signatory and party to the Bankruptcy Agreement and Peoples Federal, a signatory and party to the Waiver of Restrictions. However, taking these allegations as true, South State, as an assignee, is not subject to the claims of the Association for the conduct or actions of either Peoples or Peoples Federal. Thus, every claim asserted by the Association fails as a matter of law and should be dismissed.

CONCLUSION

For the reasons set forth above, the Third Party Complaint against South State Bank should be dismissed.

Respectfully submitted,

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 DEFENDANT SOUTH STATE BANK

APRIL 21, 2017

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
In the Court of Common Pleas
Civil Action No.: 2015-CP-26-03173

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

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

**Supplemental Memorandum of Law in Support of Motion to Dismiss Third-Party
Complaint of Myrtle Beach Golf & Yacht Club Association, Inc. filed on behalf of Third
Party Defendant South State Bank, filed April 24, 2017**

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

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

Plaintiffs,)

vs.)

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

Defendant.)

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

Defendant/Third Party
Plaintiff,)

vs.)

South State Bank,)

Third Party Defendants.)

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
THIRD PARTY COMPLAINT OF MYRTLE
BEACH GOLF & YACHT CLUB
ASSOCIATION, INC. FILED ON BEHALF
OF THIRD PARTY DEFENDANT SOUTH
STATE BANK**

COMES NOW Third Party Defendant South State Bank ("South State"), by and through its undersigned counsel, and hereby submits this Supplemental Memorandum in Support of its Motion to Dismiss the Third Party Complaint filed by Myrtle Beach Golf & Yacht Club Association, Inc. ("the Association") pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. For the reasons set forth herein, counsel would show that the Motion to Dismiss should be granted as a matter of law.

PROCEDURAL HISTORY

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

FACTUAL BACKGROUND

According to the Third Party Complaint filed in this matter, in or around February 1984, Justice, Inc. ("Justice") and Peoples Federal Savings and Loan ("Peoples") entered into a real estate development project to develop a large tract of land located in Horry County, South Carolina otherwise known as the Myrtle Beach Golf & Yacht Club. [Third Party Compl. at ¶ 33]. Approximately four years later, in June of 1988, American Community Development Corporation placed Myrtle Beach Golf & Yacht Club into involuntary bankruptcy. [Id. at ¶ 45]. During the bankruptcy proceedings, Myrtle Beach Golf & Yacht Club, Peoples, Property Consultants, Inc., and the Association entered into an agreement in order to release the property

so that a foreclosure of the property could be pursued by Peoples. [Id. at ¶ 47 and Ex. 7]. This agreement was executed by the parties on July 25, 1988 ("the Bankruptcy Agreement").

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

On September 12, 1988, Peoples filed for foreclosure and was the successful bidder for the property at the subsequent judicial sale. [Id. at ¶ 47]. Peoples continued to own and operate the property for some time thereafter but eventually sold the property to Heron Point Golf Club Limited Partnership as evidenced by the Indenture Deed recorded April 15, 1992 with the Horry

County Register of Deeds in Deed Book 1540 at Page 483. As required under the terms of the Bankruptcy Agreement, the deed to Heron Point included the specified deed restriction language. [*Id.* at ¶¶ 50-51]. Peoples subsequently quitclaimed all of its remaining interest in the property to the Association. [*Id.* at ¶ 53-54]. On March 22, 2005, Heron Point Golf Club Limited Partnership obtained a Waiver of Restrictions from First Federal Savings and Loan Association of Charleston (successor in interest to Peoples) ("First Federal") regarding the property in which it waived the following restriction: "The only permitted use of this property is a golf course, country club or other ancillary use relating to golf course or country club use." [*Id.* at ¶ 55].

LEGAL STANDARD

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

ARGUMENT

I. THE ASSOCIATION'S THIRD PARTY CLAIM FOR BREACH OF CONTRACT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

The applicable statute of limitations for filing an action based upon "a contract, obligation, or liability" is three (3) years. S.C. Code Ann. §15-3-530 (1) (1976). In determining when the statute of limitations begins to run, South Carolina courts have consistently adopted the

“discovery rule.” See Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991); Santee Portland Cement Co. v. Daniel International Corp., 299 S.C. 269, 384 S.E.2d 693 (1989); Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). Under the discovery rule, the statute of limitations commences when “the injured party knows or should have known by the exercise of due diligence that a cause of action arises from the wrongful conduct.” Walsh v. Woods, 358 S.C. 259, 264, 594 S.E.2d 548, 551 (Ct. App. 2004). A cause of action arises when it ought to have been discovered through reasonable diligence when “the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist.” Id. at 265, S.E.2d at 551 (quoting Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998)). In addition, the fact that the injured party may not realize the entire extent of the damage is irrelevant in determining when the statute of limitations begins to run. Dean, at 364, S.E.2d at 647; *see also*, Dillon County Sch. Dist. No. Two v. Lewis Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). In Carolina Marine Handling, Inc. v. Lasch, the Court wrote:

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

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

In support of its cause of action for breach of contract, the Association alleges that South State breached the Bankruptcy Agreement and the 1992 Indenture Deed “by not providing the Association with any notice or information regarding the 2005 Waiver of Restrictions issued for

the benefit of South State Bank and Heron Point Golf Club Limited Partnership.” [Third Party Compl. at ¶ 76].

Essentially, the Association bases its breach of contract claim solely on the Waiver of Restrictions executed in 2005 and recorded with the Horry County Register of Deeds on May 5, 2005, nearly twelve years prior to the filing of the present Third Party Complaint. To the extent the Association claims it was unaware of the Waiver of Restrictions, there is no dispute that the Waiver of Restrictions was recorded with the Horry County Register of Deeds and was a public record. As such, at a minimum, the Association had constructive notice of the Waiver and knew or should have known of its existence.

“[C]onstructive notice or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world.” Spence v. Spence, 368 S.C. 106, 119, 628 S.E.2d 869, 876 (2006). A party is charged with constructive notice of the contents of documents filed in conformity with applicable statutory law, which an inquiry would have revealed. See Fuller-Ahrens v. SC Dept. of Highways and Pub. Transp., 311 S.C. 177, 427 S.E.2d 920 (Ct.App.1993). “The statute of limitations begins to run at the time the individual has inquiry or constructive notice.” Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 799-800 (Ct. App. 1997) (holding that the statute of limitations began to run, at the latest, when the contested documents were publicly filed with the clerk of court).

Based upon the foregoing, the Association had notice of any alleged breach of contract on May 5, 2005, the date on which the Wavier was recorded with the Clerk of Court, and the time permitted by law to file suit expired, at the latest, in May of 2008. The present action against South State was not commenced until February 14, 2017, almost nine years after the

statute of limitations expired. Therefore, the Association's claims should be dismissed as a matter of law.

II. THE ASSOCIATION'S CLAIMS FOR INDEMNIFICATION FAIL AS A MATTER OF LAW.

In its Third Party Complaint, the Association alleges causes of action for contractual and equitable indemnification. For the reasons set forth below, as well as the arguments set forth above regarding the statute of limitations, both claims fail as a matter of law.

A. Contractual Indemnification

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

In this case, there exists no contract for indemnification between the parties. The Association relies on the following provision contained in the Bankruptcy Agreement in support of its contractual indemnification claim: "The parties between and among themselves will execute general releases so as to acquit, indemnify, and hold harmless each other from any claims or causes of action between and/or among them, prior to the execution of the date of this instrument." [Third Party Compl. at Ex. 7 (emphasis added)]. There is no general release attached to the Third Party Complaint or alleged in the pleading. Stated differently, there is no contract between the Association and South State, and no alleged contract was attached to the

pleadings. Thus, in the absence of such contract, or a provision allowing indemnity between the parties, the Association's claim for contractual indemnification fails.

Further, even if the Court determines the Bankruptcy Agreement is a valid contract for indemnification, it is clear from the language of the provision that any contemplated indemnification agreement would encompass only claims or causes of action between or among the parties to the Bankruptcy Agreement occurring prior to July 25, 1988, the date of the execution of the Bankruptcy Agreement. Thus, even if such general release agreement existed, which is not even alleged, it would not apply to Plaintiff's claims against the Association nearly thirty years after the Bankruptcy Agreement was signed. Therefore, the Association's claim for contractual indemnification must be dismissed as a matter of law.

B. Equitable Indemnification

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

Once a sufficient relationship is established, an indemnity plaintiff must prove the following elements to recover damages on an equitable indemnity claim: (1) the indemnity

defendant is at fault in causing the damages of the third party; (2) the plaintiff has no fault for those damages; and (3) the plaintiff incurred expenses that were necessary to protect his interest in defending the third party's claim, which were the fault of the defendant. *Inglese*, 403 S.C at 299, 742 S.E.2d at 692.

Here, the Association generally alleges a special relationship with South State but provides no factual basis to support such a relationship. In fact, in its Third Party Complaint, the Association clearly alleges that South State is a remote assignee of Peoples and First Federal with absolutely no relationship whatsoever with the Association. Even assuming a special relationship exists between the Association and South State, the Association has failed to plead any liability or damages caused to a third party for which the Association is responsible. To the contrary, the Plaintiff seeks a declaratory judgment from the Court in this action, not damages from the Association. As such, the Association's claim for equitable indemnification fails as a matter of law and must be dismissed.

III. THE ASSOCIATION'S CLAIM FOR PERMENANT INJUNCTION FAILS AS A MATTER OF LAW BECAUSE SOUTH STATE HAS NO REMAINING INTEREST IN THE PROPERTY.

In its Third Party Complaint, the Association contends that South State is the present successor-in-interest to both First Federal and Peoples. However, the Association alleges that South State no longer holds a note or mortgage related to the property. [*Third Party Compl.* at ¶¶ 66-67]. Instead, as alleged in the Third Party Complaint, in November of 2011, First Federal assigned the note and mortgage related to the property to VFC Partners 15, LLC, and in April of 2012, VFC Partners 15, LLC assigned the note and mortgage related to the property to Condo World Development, LLC (the current holder and Plaintiff herein). [*Id.*]. Moreover, the Association alleges that Peoples sold or quitclaimed all ownership interest in the property in

1992. [Id. at ¶¶ 50, 53-54]. Finally, the Association avers that in 2005, First Federal waived the only restrictions contained in its 1992 Indenture Deed to Heron Point with the recording of the Waiver of Restrictions filed with the Horry County Register of Deeds. [Id. at Ex. 15]. As such, South State does not maintain any legal or equitable ownership interest in the property at issue in this litigation and any deed restrictions contained in the 1992 Indenture Deed have been waived as set forth above. Yet, in its request for a permanent injunction, the Association requests the Court order that "South State Bank be enjoined from any future waiver of deed restrictions relating to the Heron Point Golf Course property." [Id. at ¶ 91]. Because any deed restrictions contained in the 1992 Indenture Deed have already been waived, there is no justiciable controversy before this Court. There exist no further deed restrictions relating to the Heron Point Golf Course property that South State could possibly waive at a future date.

To the extent the Association is seeking an Order requiring South State to enforce the alleged deed restrictions or restrictive covenants affecting the property, the Association's request also must fail. Under South Carolina law, a party seeking to enforce a restrictive covenant must be benefitted from its enforcement. McLeod v. Baptiste, 315 S.C. 246, 247, 433 S.E.2d 834, 835 (1993). In McLeod, the original grantor of a restrictive covenant sought to enforce it against a grantee where the original grantor no longer owned any real property which would be benefitted by its enforcement. Id. The Court held that a "grantor lacks standing to enforce a covenant against a grantee when the grantor no longer owns property which would benefit from the enforcement of that restrictive covenant." Id. In this case, it is undisputed that South State, who notably was not the original grantor of the 1992 Indenture Deed, does not hold any interest or real property that would benefit from the enforcement of the subject covenant. As such, South State has no standing to enforce the subject covenant. Id.; *see also*, 17 S.C. Jur. Covenants § 96

(2016) ("A grantor establishing covenants can enforce them, so long as he remains a property owner.") (citations omitted); 20 Am. Jur. 2d Covenants, § 242 ("Where a person no longer has any land in the vicinity which might be affected by the disregard of a covenant, he or she cannot enforce the restriction, at least absent a showing that the original covenanting parties intended to allow enforcement by one who is not a landowner.").

For the reasons set forth above, the Association's request for a permanent injunction against South State must be dismissed.

IV. THE ASSOCIATION CANNOT ASSERT AFFIRMATIVE CLAIMS AGAINST SOUTH STATE AS A REMOTE ASSIGNEE OF PEOPLES AND FIRST FEDERAL.

Under South Carolina law, the rights of an assignee can be no greater than those of the assignor. Dixie Wood Preserving Co. v. Albert Gersten & Associates, 244 S.C. 57, 64-65, 135 S.E.2d 368, 371 (1964). "However, absent an agreement to the contrary, the common law assignee takes only the benefits, not the burdens of the assigned obligation." Rosemond v. Campbell, 288 S.C. 516, 523, 343 S.E.2d 641, 645 (1986). Therefore, "as against the assignee, the obligor *can only assert a claim defensively* when the assignee seeks to enforce the obligation; *he has no common law right to sue the assignee affirmatively* on a claim against the assignor arising from the underlying obligation." Id. (emphasis added). The distinction between a defense and affirmative claim is critical in this case.

In this case, the Association alleges that South State is an assignee or successor in interest to Peoples, a signatory and party to the Bankruptcy Agreement and Peoples Federal, a signatory and party to the Waiver of Restrictions. However, taking these allegations as true, South State, as an assignee, is not subject to the claims of the Association for the conduct or actions of either

Peoples or First Federal. Thus, every claim asserted by the Association fails as a matter of law and should be dismissed.

CONCLUSION

For the reasons set forth above, the Third Party Complaint against South State Bank should be dismissed.

Respectfully submitted,

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ATTORNEYS FOR THIRD PARTY
DEFENDANT SOUTH STATE BANK

APRIL 24, 2017

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
In the Court of Common Pleas
Civil Action No.: 2015-CP-26-03173

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

Plaintiffs,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

**Myrtle Beach Golf & Yacht Club Association, Inc.'s Notice of Motion and Motion to
Reconsider and/or Motion to Alter or Amend Judgment, filed August 2, 2017**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2015-CP-26-03173

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

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC.'S NOTICE OF
MOTION AND MOTION TO
RECONSIDER AND/OR MOTION TO
ALTER OR AMEND JUDGMENT**

**TO: THIRD-PARTY DEFENDANT SOUTH STATE BANK AND ITS ATTORNEY,
AUDRA M. BYRD, ESQUIRE**

PLEASE TAKE NOTICE THAT Defendant Myrtle Beach Golf & Yacht Club Association, Inc. ("MBGYC") by and through his undersigned counsel, will move at a time and place to be arranged by the Court and counsel involved for a hearing as to the reconsideration of the attached Order in relation to Third-Party Defendant South State Bank's prior Motion to Dismiss pursuant to Rule 59(e), SCRCP. See attached Exhibit A. Said Order was received by counsel for MBGYC on Wednesday, July 26, 2017.

Pursuant to Rule 11, South Carolina Rules of Civil Procedure, consultation of this matter was had with opposing counsel and/or would serve no useful purpose at this time.

THE PEARCE LAW GROUP, P.C.

By: /s/ Christopher H. Pearce
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ATTORNEYS FOR DEFENDANT
MYRTLE BEACH GOLF & YACHT
CLUB ASSOCIATION, INC.

August 2, 2017

THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Fifteenth Judicial Circuit
In the Court of Common Pleas
Civil Action No.: 2015-CP-26-03173

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

Plaintiffs,

v.

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant

And

Myrtle Beach Golf & Yacht Club Association, Inc.,

Defendant/Third-Party Plaintiff,

v.

South State Bank,

Third-Party Defendant.

**Myrtle Beach Golf & Yacht Club Association, Inc.'s Memorandum in Support of Motion to
Reconsider and/or Motion to Alter or Amend Judgment, dated August 24, 2017**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

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

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant/Third Party
Plaintiff,

vs.

South State Bank,

Third Party Defendant.

**MYRTLE BEACH GOLF & YACHT CLUB
ASSOCIATION, INC.'S MEMORANDUM
IN SUPPORT OF MOTION TO
RECONSIDER AND/OR MOTION TO
ALTER OR AMEND JUDGMENT**

**TO: THIRD-PARTY DEFENDANT SOUTH STATE BANK AND ITS ATTORNEY,
AUDRA M. BYRD, ESQUIRE**

The Defendant Myrtle Beach Golf & Yacht Club Association, Inc. (hereinafter, "MBGYC"), by and through its undersigned counsel, hereby submits this Memorandum in Support of its Motion to Reconsider and/or Motion to Alter or Amend Judgment. For the reasons set forth below, counsel would show that South State Bank's Motion to Dismiss the Third-Party Complaint of MBGYC should not have been granted as to MBGYC's causes of action for breach of contract, contractual indemnification, and equitable indemnification. The basis for this motion is that MBGYC stated facts sufficient to constitute cause of actions for breach of contract, contractual indemnification, and equitable indemnification. This Motion is made pursuant to Rule 59(e), SCRCP.

PROCEDURAL HISTORY

South State Bank ("South State") moved to have MBGYC's Third Party Complaint dismissed by the Court pursuant to Rule 12(b)(6) for failure to state a cause of action. A hearing was held before the Court on June 5, 2017, at the Horry County Judicial Center in Conway, South Carolina. Present at the hearing for South State was Attorney Audra M. Byrd. MBGYC was represented at the hearing by Attorney Christopher H. Pearce. Also present were Howell V. Bellamy, Jr. and Howell V. Bellamy, III, counsel for the Plaintiffs. Subsequently, the Court issued the Order Granting In Part And Denying In Part the Motion to Dismiss ("Order"). Thereafter, MBGYC, by and through its undersigned counsel, filed a Motion to Reconsider and/or Motion to Alter or Amend Judgment. Plaintiffs also filed Motion to Reconsider, Alter or Amend Order / Judgment Pursuant to Rules 52 and 59, SCRCP.

ARGUMENT

I. Motion to Dismiss Standard

Under Rule 12(b)(6), SCRCP, a defendant may move for dismissal based on a failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004), aff'd 645 S.E.2d 245, 2007 WL 1321978; accord Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of a motion for failure to state a cause of action based solely

upon the allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (finding trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." Flateau, 355 S.C. at 202, 584 S.E.2d at 415; *see* Baird, 333 S.C. at 527, 511 S.E.2d at 73 (declaring that if the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (concluding a motion to dismiss cannot be sustained if the facts alleged in the complaint and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case). In considering a motion to dismiss, the court must consider whether the complaint, viewed in the light most favorable to the plaintiff, and with all doubts resolved in his behalf, articulates any valid claim for relief. *See* Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998); *see also* Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

II. Breach of Contract

According to the Order, the Court found that the three-year statute of limitations generally applicable to contracts applies to the Association's cause of action for breach of contract, and because the action was filed nearly nine years after the statute of limitations expired, the Association's claim for breach of contract must be dismissed. However, if there is conflicting evidence as to whether claimant knew or should have known he or she had a cause of action, for statute of limitation purposes, it is a question for the jury. See Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993). In the case at hand, there is conflicting evidence as to whether MBGYC knew or should have known it had a cause of action against South State in relation to the 2005 Waiver of Restrictions for statute of limitations purposes, and therefore, that question is one for the jury. Therefore, South State's motion to dismiss MBGYC's Third-Party breach of contract cause of action should have been denied.

III. Contractual Indemnification

According to the Order, the Court found that the indemnification agreement does not apply to Plaintiffs' claims against the Association because Condo-World Development, LLC and Heron Point Golf Club Limited Partnership, Plaintiffs herein, are not parties to the bankruptcy agreement. Therefore, the Court found that the Association's claim for contractual indemnification must be dismissed.

Again, a motion to dismiss under Rule 12(b)(6), SCRCP, should not be granted and the complaint dismissed merely because the court doubts the Plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). Based on the arguments of Counsel for the parties, there is potentially conflicting evidence as to the nature and content of the alleged contractual indemnity agreement and the intent of the original parties to the prior bankruptcy court settlement agreement. Likewise, it could be found that since South State is successor-in-

interest to Peoples Federal Savings and Loan Association, South State agreed to indemnify MBGYC from said claims, including the instant claim brought by the Plaintiffs. Thus, South State's motion to dismiss MBGYC's Third-Party contractual indemnification cause of action should have been denied.

IV. Equitable Indemnification

According to the Order, the Court found that MBGYC has not stated a cause of action for equitable indemnity due to the lack of a special relationship between MBGYC and South State and MBGYC's failure to allege necessary damages incurred by MBGYC as caused by a third party. However, a special relationship does exist between the parties based on the prior bankruptcy court settlement agreement and other related contractual agreements between the parties extending back more than 25 years. Further, MBGYC's potential damages at minimum include attorney's fees and costs for the present litigation as incurred by MBGYC and possible diminution in value damages as well. As such, there is conflicting evidence as to a special relationship between MBGYC and South State and MBGYC's failure to allege necessary damages incurred by MBGYC as caused by a third party. Therefore, South State's motion to dismiss MBGYC's Third-Party equitable indemnification cause of action should have been denied.

CONCLUSION

For the foregoing reasons, Myrtle Beach Golf & Yacht Club Association, Inc.'s Motion to Reconsider and/or Motion to Alter or Amend Judgment should be granted.

[SIGNATURE PAGE TO FOLLOW]

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

August 24, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY CUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2017-002196

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

v.

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

AND

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

v.

South State Bank.....Respondent

Notice of Appeal, October 18, 2017

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY – 15th CIRCUIT
Court of Common Pleas

Honorable Larry B. Hyman, Circuit Court Judge

Civil Action No.: 2015-CP-26-3173

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

vs.

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

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

vs.

South State Bank. Third Party Defendant / Respondent

NOTICE OF APPEAL

Appellant Myrtle Beach Golf & Yacht Club Association, Inc., appeals the Order of the Honorable Larry B. Hyman, dated September 29, 2017 (the "September 29, 2017 Order"). A copy of the September 29, 2017 Order is attached hereto as Exhibit A. Appellant received written notice of entry of the September 29, 2017 Order on October 4, 2017. The September 29,

2017 Order denies Appellant's Motion to Reconsider an Order, dated July 26, 2017, granting in part and denying in part the motion to dismiss Appellant's Third-Party Complaint. A copy of the July 26, 2017 Order is attached hereto as Exhibit B. This appeal is interlocutory in nature.

[SIGNATURE PAGE TO FOLLOW]

October 18, 2017

/s/ Christopher Pearce

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*Attorneys for Plaintiffs
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Point Golf Club Limited Partnership*

EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2603173

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

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

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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

For Clerk of Court Office Use Only

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

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

Christopher H. Pearce 1314 Professional Drive Myrtle
Beach, SC 29577
Laurence Raymond Wells IV 1314 Professional Drive
Myrtle Beach, SC 29577
Audra McCall Byrd PO Box 2116 Myrtle Beach, SC 29578
Kerry Kathleen Jardine 1314 Professional Dr Myrtle Beach,
SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Rence N. Elvis - Clerk of Court

Court Reporter:

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

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

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



Horry Common Pleas

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

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-10-03 15:48:32 page 3 of 3

ELECTRONICALLY FILED - 2017 Oct 18 2:47 PM - HORRY - COMMON PLEAS - CASE#2015CP2603173.
ELECTRONICALLY FILED - 2017 Oct 04 10:28 AM - HORRY - COMMON PLEAS - CASE#2015CP2603173

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

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

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

Plaintiffs,)

vs.)

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

Defendant.)

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

Defendant/Third Party
Plaintiff,)

vs.)

South State Bank,)

Third Party Defendants.)

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

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

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

PROCEDURAL HISTORY

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

FACTUAL BACKGROUND

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

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

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

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

LEGAL STANDARD

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

CONCLUSIONS OF LAW

A. Breach of Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Contractual Indemnification.

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

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

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

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

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

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

C. Equitable Indemnification.

1. Adequate Remedy at Law.

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

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

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

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

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

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

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

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

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

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

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

D. Permanent Injunction

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

CONCLUSION

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

NOW, THEREFORE,

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

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

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

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

AND IT IS SO ORDERED.

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

Dated this _____ day of _____, 2017.

_____, South Carolina



Horry Common Pleas

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

So Ordered

s/ Larry B. Hyman 2152

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY CUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2017-002196

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

v.

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

AND

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

v.

South State Bank.....Respondent

Certificate of Appellant