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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case No.: 2014-CP-07-1435
Appellate Case No.: 2016-000637

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; and SOUTH BEACH SWIMMING POOL, INC., ... Petitioner,

v.

SEA PINES SOUTH BEACH OWNERS ASSOCIATION, INC., ... Respondent.

APPENDIX

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The South Carolina Court of Appeals

Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot, LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., Appellants,

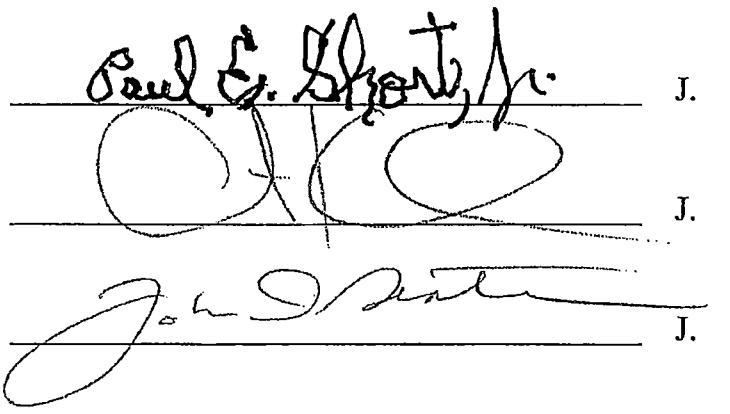
v.

Sea Pines South Beach Owners' Association, Inc., Respondent.

Appellate Case No. 2016-000637

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

J.

Columbia, South Carolina

FILED

March 22, 2018

cc:
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John Michael Jordan, Esquire

Kirsten Elena Small, Esquire
The Honorable Marvin H. Dukes, III

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

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CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

REPLY OF APPELLANTS

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Catwalk, LLC; Moondog, LLC; Let, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc. (hereinafter, collectively, "Catwalk, *et al.*"), file their Reply to the "Return to Petition for Rehearing" of the Sea Pines South Beach Property Owners' Association, Inc. (hereinafter, the "Association"), received by the undersigned on March 5, 2018, as follows:

1. The plain language of the 1973 Covenants is that the 1973 Covenants are "the sole applicable covenants" encumbering commercial property in Sea Pines.

When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense. [1]

The 1973 Covenants state that the 1973 Covenants are "the sole applicable covenants" encumbering commercial real property in Sea Pines "conveyed subsequent to the recording" of the 1973 Covenants.[2]

The 1973 Covenants state: ". . . to the extent that there is a conflict between those covenants and restrictions previously recorded, . . . and those of the instant declaration, the provisions of the instant declaration shall govern and restrict commercial properties. . ."

The intent of the declarant is plain. Upon recording of the 1973 Covenants, the 1973 Covenants govern commercial property to the exclusion of any previously recorded

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[1] *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 777 S.E.2d 425 (Ct.App. 2015).

[2] R, pp. 143, 158.

covenants.[3]

In its opinion, the Court not enforced the unambiguous language of the 1973 Covenants, but rather has impermissibly engaged in a construction of them so as to defeat the plain meaning of them.

Neither the language of the 1973 Covenants, nor the law of South Carolina authorize the result reached by the Court in its Opinion 2018-UP-069.

2. The Court mis-applied the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2017).

By the plain text in them, the 1970 Covenants purport to create an interest in real property. The 1970 Covenants state that they "run with and bind the land;"[4] are binding on "the successors and assigns" of the Declarant;[5] and create an obligation to pay assessments that is a "continuing lien" on the real estate encumbered by the 1970 Covenants.[6]

S. C. Code Ann. § 15-3-380 (Supp. 2017), reads:

> No action shall be commenced in any case for the recovery of real property *or for any interest therein* against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a

---

[3] The listing of the 1970 Covenants along with the 1973 Covenants in subsequent deeds does not change the result. The 1970 Covenants are still the "sole applicable covenants" governing commercial property to the exclusion of any "previously recorded" covenants, which category includes the 1970 Covenants.

[4] R. p. 74.

[5] R. p. 74.

[6] R. p. 71.

> defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period. (Our emphasis.)

The only evidence in the record is that the Association made no effort to enforce the 1970 Covenants against owned by Catwalk, *et al.*, or any if their predecessors title for a period of more than 40 years, from August 18, 1970, to July of 2013.[7]

Irrespective of the fact that this case might present an issue of novel impression, the 1970 Covenants do create an interest in property because the 1970 Covenants touch and concern the land, because they run with the land, are binding on successors, create an obligation to pay assessments and create a continuing lien. The plain language of S. C. Code Ann. § 15-3-380 (Supp. 2017), bars a claim to assert "any interest" in property after a lapse of 40 years.[8]

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.

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[7] *See:* Affidavit of George W. Williams, Jr., paragraph 7, R. pp. 166-167; Affidavit of Charles A. Scarminach, Jr., paragraph 11, R. pp. 208-209; Affidavit of Ned E. Gilleland, Jr., R. pp. 246-254; Affidavit of Richard T. Sonberg, R. pp. 243-245; Affidavit of Donald E. Sigmon, R. pp. 288-291; Affidavit of Robert A. Gossett, Jr., R. pp. 255-265.

[8] The "non-waiver" language relied on by the Court is unavailing. The express language of the "non-waiver" term limits it to a "waiver or estoppel of the right to enforce" the 1970 Covenants. R. p. 75. While a party can waive a statue of limitations defense, the waiver it must arise from either an express agreement to do so, or some other action inconsistent with the intention to rely on the statute. *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004). . The "non-waiver" language relied on by the Court does not include an express waiver of the statute of limitations, and thus does not relieve the Association of the bar of S. C. Code Ann. § 15-3-380 (Supp. 2017).

Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.[9]

The Court's ruling that S. C. Code Ann. § 15-3-380 (Supp. 2017), does not bar the Association's claim is contrary to the language of the statute.[10] As a matter of law, the Association's claim is barred.

3. Summary Judgment in favor of the Association was improper under Rule 56, SCRCP.

In its Opinion 2018-UP-069, the Court found that Summary Judgment in favor of the Association was proper because both the 1970 Covenants and the 1973 Covenants were listed in the legal descriptions of subsequent deeds. By doing so, the Court impermissibly weighed evidence rather than simply determining whether or not a scintilla of evidence in opposition to the motion existed. Any conflicts in the evidence are in the light most favorable to the party opposing the motion.[11]

CONCLUSION

For the reasons stated in the foregoing arguments and in the Petition for Rehearing filed herein, Catwalk, *et al.*, urge the Court to rehear and reverse its Opinion 2018-UP-069

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[9] *See: Centex International, Inc. v. S. Carolina Department of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013)(internal citations omitted).

[10] In its Return, the Association makes the specious argument that 40 years did not elapse between the recording of the 1970 Covenants on August 18, 1970, and the first time that the Association sought to enforce them against the property of Catwalk, et al., which occurred no earlier July of 2013.

[11] Rule 56, SCRCP. *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 407 S.E.2d 658 (Ct.App.1991). Applying this standard dictates reversal of the grant of Summary Judgment to the Association.

of February 7, 2018, and to reverse the January 22, 2016, and March 18, 2016, Orders of the Trial Judge, and to find that the 1970 Covenants do not encumber the commercial property of Catwalk, *et al.*, by the express language of the 1973 Covenants, and find that the Association's claim is barred by S. C. Code Ann. § 15-3-380 (Supp. 2017).

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This 8th Day of March, 2018.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Hon. Marvin H. Dukes, III, Master in Equity

Case No. 2014-CP-07-1435
Ct. App. No. 2016-000637

Catwalk, LLC, Moondog, LLC, LET, LLC,
Lost Parrot, LLC, Vacation Inn, LLC, SBM, LLC,
and South Beach Swimming Pool, Inc., ... Appellants,

v.

Sea Pines South Beach Owners' Association, Inc. ..... Respondent.

RETURN TO PETITION FOR REHEARING

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In a Petition for Rehearing, Petitioners must "...state with particularity the points supposed to have been overlooked or misapprehended by the court". Rule 221(a), SCACR. Petitioners arguments were addressed seriatim in the Court's Opinion dated February 7, 2018. Nothing was overlooked. Petitioners also contend that the Court misapprehended all their arguments, but the Court is correct and the Petition should be denied.

I. **The Court** correctly held that **Petitioners' properties are encumbered by the 1970 Covenants *and* the 1973 Commercial Use Covenants.**

Petitioners argue the Court erred by refusing to read the term "sole applicable covenants" in isolation. Pet'n at 1. Petitioners' argument, however, is contrary to the basic rule of construction: "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E. 2d 862, at 863-864 (1998). Here, the recitals declare it is the intent of the 1973 Commercial Use Covenants ("1973 Commercial Covenants") to restrict commercial use properties in the environmentally sensitive areas of Hilton Head Island. (R. pp. 142-43).

The Record shows:

- Petitioners do not dispute that their properties lie within the 103-acre South Beach parcel, land that is unquestionably subject to the 1970 Covenants;
- The 1970 Covenants recognize the right of the developer to develop the South Beach parcel as it deemed most suitable, and provide for

the addition of "*complementary* additions and modifications" to the 1970 Covenants (R. pp. 74-75);

- The 1970 Covenants created Respondent Sea Pines South Beach Owners' Association, Inc. ("the Association") and empowered it to administer and enforce the 1970 Covenants (R. pp. 67-68);

- Petitioners' properties are commercial properties. Consequently, they are also subject to the 1973 Commercial Covenants that govern, *inter alia*, all land within the South Beach parcel (R. pp. 80, 143);

- The recitals of the 1973 Commercial Covenants state their purpose is recognize and preserve the environment of Hilton Head Island (R. p. 142);

- The 1973 Commercial Covenants recognize the existence and continuing enforceability of the 1970 Covenants by reserving "the right to add, in Deeds of Conveyance, additional covenants in respect to properties conveyed by such deed" and by providing that "to the extent that there is a conflict between those restrictions previously recorded" and the 1973 Commercial Covenants, the latter shall prevail (R. p. 143);

- There is no dispute that the titles to Petitioners' properties trace back to deeds stating that the properties are conveyed subject to both the 1970 Covenants and the 1973 Commercial Covenants (Resp.'s Br. at 5-6).

In light of the foregoing facts—none of which Petitioners dispute—this Court correctly affirmed the Master in Equity's conclusion that the phrase "sole applicable covenants," when read in the context of the 1973 Commercial Covenants as a whole, did not preclude the continuing applicability of the 1970 Covenants. As the Master in Equity explained in denying Petitioners' motion to alter or amend the order granting summary judgment:

> The word "applicable" (which in this context means relevant) refers to any part of the 1970 covenants which would have dealt specifically with commercial properties. If the 1973 Covenants were intended to completely replace the 1970 covenants, the word "applicable" would be unnecessary, and the word "sole" could have stood alone. Likewise, the phrase "to the extent there is a conflict..." implies that the 1973 covenants were intended as a commercial covenant overlay to act in conjunction with the 1970 covenants."

(R. p. 14).

Petitioners next argue this Court misapprehended the presumption that covenants are to be interpreted in favor of the "free and unrestricted use of land." Pet'n at 2. As the Association pointed out in its brief, this argument was first raised in Petitioners' motion to alter or amend the judgment. Resp.'s Br. at 13. Consequently, the argument was not properly before this Court. *See Chastain v. Hiltabidle*, 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009) ("[A]n appellate court cannot address an issue unless it was raised to and ruled upon by the [lower] court.").

Nonetheless, the argument fails. Petitioners grasp a sentence in this Court's Opinion ("In light of these seemingly inconsistent provisions...") and argue it is a finding by the Court of a legal ambiguity. (At the same time, Petitioners state there is *no* ambiguity. *See* Pet'n at 2 n.3.) Petitioners are wrong, because the Court's language was simply a statement of the issue before it. The Court's construction of the contractual covenants is correct.

II. The Court correctly ruled that S.C. Code Ann. § 15-3-380 does not apply.

Petitioner next argue that the Court erred in rejecting their convoluted argument for the application of S.C. Code Ann. § 15-3-380, which applies to actions for adverse possession. Petitioners maintain that the 1970 Covenants constitute an "interest in land," rendering § 15-3-380 relevant. In rejecting this argument, this Court correctly recognized that "[n]o South Carolina case suggests an 'interest' in property includes the type of claim at issue in this case." Op. at 2; *see* Resp.'s Br. at 20-21.

The Court correctly held that no South Carolina case holds that a contractual covenant becomes is an interest in property as the term is used in S.C. Code Ann. § 15-3-380. Petitioners offer no authority, from South Carolina or anywhere else, to the contrary. Petitioners rely on *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 181 S.E. 66 (1935), and *In re Daufuskie Island Properties, LLC*, 431 B.R. 612 (Bankr. D.S.C. 2009), for the proposition that "if the 1970 Covenants do not create an interest in real property, then [they] are a mere personal covenant, not binding on successors in interest to the real property." Pet'n at 5 n.10. In the first place, this is a new argument, raised for the first time in the petition for rehearing, and is not properly before the Court. In any event, Petitioners misread the cases they cite. Both *Epting* and *Daufuskie* recognizes distinguish personal covenants (which do not relate to the land and thus do not run with it) from real covenants (which touch

and concern real property and thus run with it). Further, *Epting* explicitly recognizes that a covenant to pay assessments runs with the land.

Additionally, these properties were first conveyed in 1984 and the deeds of conveyance state the properties are encumbered by the 1970 Covenants, the 1973 Commercial Use Covenants, and other covenants of record. (R. pp. 85-88, 160-165.)

In addition, even if § 15-3-380 were applicable, 40 years have not passed. *See* Resp.'s Br. at 20-21.

Petitioners also argue that non-waiver provision of the 1970 Covenants does not apply to S.C. Code Ann. § 15-3-380. Pet'n at 5. This misreads the Court's Opinion. The Court found there was no law supporting the argument that a covenant is an interest in property as the term is used in § 15-3-380. That being the case, the non-waiver provision controls.

III. The Court correctly affirmed summary judgment for Respondent.

Petitioners set forth a laundry list of "undisputed facts" that they claim are contrary to the Court's affirmance. Pet'n at 8-10. These "facts," however, amount to no more than a rephrasing of arguments already considered, and properly rejected, by the Court.

IV. Petitioners improperly request the Court to grant them summary judgment.

Petitioners maintain that the Court failed to address the lower court's rejection of their estoppel-based arguments and denial of their motion for

summary judgment. Pet'n at 10 n.19. As this Court correctly recognized, however, "the denial of summary judgment is not directly appealable." Op. at 2 n.1).

CONCLUSION

For these reasons, Sea Pines South Beach Owners' Association, Inc. respectfully asks the Court to deny the Petition for Rehearing.

Respectfully submitted,

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March 1, 2018
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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case Number 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
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SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

PETITION FOR REHEARING

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Catwalk, LLC; Moondog, LLC; Let, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc. (hereinafter, collectively, "Catwalk, *et al.*"), Petition the South Carolina Court of Appeals for Rehearing of this case. Opinion 2018-UP-069 of the South Carolina Court of Appeals was filed on February 7, 2018.

1. The Court has misapprehended the meaning of the following text from the 1973 Covenants:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.

In its opinion, the Court reads the above language to contemplate the "possible applicability of other covenants." This reading ignores the plain and unmistakable language of the 1973 covenants which is that the 1973 Covenants are the: ". . . sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration."[1]

The subsequent text regarding conflicts with covenants previously recorded simply

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[1] It is undisputed that the real property owned by Catwalk, *et al.*, are commercial properties as the same are described in the 1973 Covenants. *See:* Complaint, paragraph 24, p. 7, R. 22; Answer and Counterclaim paragraph 8, p. 2, R. 30; Affidavit of Charles A. Scarminach, Paragraph 10, p. 3, R. 208; Affidavit of Robert A. Gossett, Jr., Paragraph 2, p. 1, R. 255. The Trial Judge found that the Catwalk, *et al.*, properties are commercial properties. *See:* January 22, 2016, Order, paragraph 6, p. 4, R. 8.

reinforces the text that the 1973 Covenants govern commercial property, irrespective of the existence of any other previously recorded declaration of covenants.

That is because any previously recorded declaration purporting to encumber commercial property is in direct conflict with the plain text of the 1973 Covenants stating that the 1973 Covenants are the "sole applicable covenants restricting and affecting commercial properties." Any other reading renders the "sole applicable covenants restricting and affecting commercial properties" language meaningless.

Further, the Court's ruling finds an ambiguity (". . .in light of these seemingly inconsistent provisions within the document. . .") and then misapplies the governing law related to such. The governing law where an ambiguity is found is this: ". . .courts interpret restrictive covenants strictly and resolve any doubt or ambiguity in the covenants in favor of the free and unrestricted use of land."[2]

Thus, in this case, to the extent that the Court finds that the text of the 1973 Covenants creates any inconsistency or ambiguity, it is bound to resolve inconsistency or ambiguity in favor of the free use of property.[3] The imposition of the encumbrance of the 1970 Covenants based on any perceived inconsistency is precisely the opposite of what the law requires.

The plain and unambiguous text of the 1973 Covenants is that the 1973 Covenants are the "sole applicable covenants" governing commercial property. The Court's reading

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[2] *Hyer v. McRee*, 306 S.C. 210, 212, 410 S.E.2d 604, 605 (Ct.App.1990).

[3] Catwalk, *et al.*, do not argue the existence of an ambiguity in the 1973 Covenants. The text stating that the 1973 Covenants are the "sole applicable covenants" could not be more plain.

of the 1973 Covenants renders the plain language of them meaningless, and the Court's reading utilizes a perceived ambiguity to impose an additional declaration of covenants on the property of Catwalk, *et al.* This result is contrary to the law of South Carolina which obliges the Court to enforce unambiguous contracts according to the plain language used in them, and, where any ambiguity is found, to resolve them in favor of the free use of real property.[4]

2. The Court mis-applied the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2017).

In this case, the undisputed fact is that the Sea Pines South Beach Owner's Association, Inc. (hereinafter, the "Association"), did not claim that the 1970 Covenants encumbered the commercial property of Catwalk, *et al.*, or any of its predecessors in title, for more than forty years.

S. C. Code Ann. § 15-3-380 (Supp. 2017), reads:

> No action shall be commenced in any case for the recovery of real property *or for any interest therein* against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or

---

[4] When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense. *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 777 S.E.2d 425 (Ct.App. 2015). The contract and the language used must be considered as a whole. *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 688 S.E.2d 597 (Ct. App. 2010). Words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *State Accident Fund v. South Carolina Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010). Every term contained in a contract must be considered and given effect if possible. *Valley Public Service Authority v. Beech Island Rural Community Water District*, 319 S.C. 488, 494, 462 S.E.2d 296, 299 (Ct. App. 1995). Courts interpret restrictive covenants strictly and resolve any doubt or ambiguity in the covenants in favor of the free and unrestricted use of land." *Hyer v. McRee*, 306 S.C. 210, 212, 410 S.E.2d 604, 605 (Ct.App.1990).

> grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period. (Our emphasis.)

In its opinion, the Court finds that the rights claimed by the Association, are not an "interest" in property.[5] This finding is contrary to the language of the 1970 Covenants. The text of the 1970 Covenants read, in Article VIII, "General Provisions" as follows, in relevant part:

> "Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Developer of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns . . ."[6]

Further, the 1970 Covenants impose an obligation to pay assessments to the Association for the maintenance of common elements.[7] Covenants including such language have been held to run with land and to touch and concern the land.[8]

The 1970 Covenants state that the obligation to pay assessments *creates a continuing lien* upon any property subject to the 1970 Covenants. The 1970 Covenants

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[5] By making this argument, Catwalk, *et al.*, do not concede that the 1970 Covenants encumber their property. The argument is made to demonstrate that the rights claimed by the Association are an "interest" in real property, and that S. C. Code Ann. § 15-3-380 (Supp. 2017), bars its claim.

[6] R. p. 74. The language of the 1970 Covenants removes any doubt that the parties intended that the 1970 Covenants run with the land. *See: West v. Newberry Electric Co-op.*, 357 S.C. 537, 593 S.E.2d 500 (Ct. App. 2004).

[7] *See:* 1970 Covenants, Article V, Section 1 and Section 2. R. p. 71.

[8] *Harbison Community Association, Inc. v. Mueller*, 319 S.C. 99, 459 S.E.2d 860 (Ct. App. 1995); *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corporation*, 368 S.C. 342, 628 S.E.2d 902 (Ct. App.2006).

read, in relevant part:

> The Annual and Special Assessments together with such interest thereon and the costs of collection therefore as herein provided, shall be a charge and continuing lien upon the land and all the improvements thereon against which each such assessment is made.[9]

Thus, the Association, by claiming that the 1970 Covenants encumber the real property of Catwalk, *et al.*, , asserts rights that run with the land, which touch and concern the land, and which impose a continuing lien upon the real property of Catwalk, *et al.* S. C. Code Ann. § 15-3-380 (Supp. 2017), bars a suit to assert "any interest" in real property after a period of 40 years. A right that runs with the land and touches and concerns the land is an "interest." A continuing lien on real property is an "interest."[10]

The Court also mis-applies the law of South Carolina by finding that the "non-waiver" language in the 1970 Covenants precludes application of the statute of limitations. The bar of the statute of limitations set out in S. C. Code Ann. § 15-3-380 (Supp. 2017), is not dependent on any knowing and voluntary relinquishment of rights. Rather, it is a legal

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[9] R. p. 71.

[10] *See: Blacks Law Dictionary, Sixth Edition*, in which "interest" is defined as follows:

> The most general term that can be employed to denote a right, claim title or legal share in something.... More particularly, it means a right to have the advantage accruing to anything; any right in the nature of property but less than title.

The rights claimed by the Association are an "interest" in real property. By the text of the 1970 Covenants, the covenants run with the land, touch and concern the land, and create a continuing lien encumbering the land. Further, if the 1970 Covenants do not create an interest in real property, then the 1970 Covenants are a mere personal covenant, not binding on the successors in interest to the real property. *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 181 S.E. 66 (1935); *In re Daufuskie Island Properties, LLC*, 431 B.R. 612, 624 (Bankr. D.S.C. 2009).

bar to the bringing of a suit for the recovery of any interest in real property after forty years of inaction.

Because the only evidence in this case is that the Association did not make any claim based on the 1970 Covenants for a period of more than 40 years, its claim is barred by the plain and unambiguous text of S. C. Code Ann. § 15-3-380 (Supp. 2017).

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.[11] The Court's ruling limits the effect of S. C. Code Ann. § 15-3-380 (Supp. 2017), in a way that is contrary to the plain language of the statute.

3. This case comes to the Court on an Order granting a Motion for Summary Judgment.[12] Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. The evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.

The Court's finding that because of a listing of the 1970 Covenants in a subsequent deeds, along the recording data for the 1973 Covenants, the only reasonable inference is

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[11] *See: Centex International, Inc. v. S. Carolina Department of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013)(internal citations omitted).

[12] January 22, 2016, Order of Hon. Marvin H. Dukes, III. R. pp. 5-13.

that the property of Catwalk, *et al.*, is encumbered by the 1970 Covenants is wrong as a matter of law, and is an impermissible weighing of conflicting evidence.

This Court's finding is founded on a deed from the Sea Pines Company and a deed from a Trustee in Bankruptcy which include a list of covenants and restrictions in the legal description that includes the recording data for 1970 Covenants and the 1973 Commercial Covenants.[13]

While the text in the deeds referred to by the Court reads as it does, the mere listing of the documents in the deeds does not undo the language contained in them. One must still read the documents to determine the effect of them, if any.

The text of the 1973 Commercial Covenants read, in relevant part:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.[14]

And also:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE

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[13] *See:* January 22, 2016, Order, p. 4, R. 8.

[14] R. p. 148. The only evidence is that the properties of Catwalk, *et al.*, are commercial properties that were conveyed subsequent to the recording of the 1973 Covenants.

> BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[15]

The Court's finding ignores the plain language of the 1973 Covenants, and renders it meaningless. The law of South Carolina obliges the Court to construe the 1973 Covenants according to its plain and unambiguous text.[16] By its plain language, the 1973 Commercial Covenants govern property subjected to them in a deed, to the exclusion of ". . . those covenants and restrictions previously recorded. . . ." The only evidence in the record is that the 1970 Covenants was recorded previous to the 1973 Covenants. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.[17]

In addition, including the recording data for the 1970 Covenants in deeds of a later time does nothing to alter the following undisputed facts in the record:

(a) The Association failed to enforce its claimed rights under the 1970 Covenants against the commercial property of Catwalk, *et al.*, and their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

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15 R. p. 158.

16 *Sifonios v. Town of Surfside Beach, supra.*

17 *Sifonios v. Town of Surfside Beach, supra.*

(b) The Association never sought to collect any regular or special assessment imposed by it from Catwalk, *et al.*, or their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(c) Neither Catwalk, *et al.*, nor any of their predecessors in title, have ever attended any regular or special meeting of the Association, paid any regular or special assessment to the Association, claimed to be members of the Association, claimed any rights under the 1970 Covenants, made use of any of the common property of the Association or participated in the affairs of the Association with respect to any of the commercial properties within the South Beach Marina Village.

(d) The declarant of both the 1970 Covenants and the 1973 Commercial Covenants considered the properties of Catwalk, *et al.*, to be commercial, and assessed the Catwalk, *et al.*, properties in that fashion.

(e) The plain language of the 1973 Commercial Covenants is that the 1973 Commercial Covenants are the "sole applicable" covenants governing commercial property conveyed subsequent to the recording of the 1973 Covenants, which includes all of the properties of Catwalk, *et al.*, to the exclusion of any previously recorded covenants, namely the 1970 Covenants.[18]

(f) The Association took advantage of the 2013 Agreement concerning the dredging of Braddock Creek, whereby Catwalk, *et al.*, contributed forty (40%) of the total cost, and the Association contributed only 31% per cent of the total cost. If the property of Catwalk, *et*

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[18] There is no law supporting the Court's finding that the listing of both of these documents in a subsequent deed alters the language used in them or the import of it. Nor is there any evidence that the drafter of the deeds intended such.

al., was, indeed, encumbered by the 1970 Covenants, then the entire Association would have been responsible for the costs of the dredging that was assumed solely by Catwalk, *et al.*, and the Association, combined. This would have been a significant benefit to Catwalk, *et al.*, and a significant detriment to the Association.[19]

Even in light of the listing of the recording data for the 1970 Covenants in later deeds, the above undisputed facts, alone or in combination, qualify as a "mere scintilla" of evidence sufficient to overcome the Motion for Summary Judgment of the Association. In light of these undisputed facts, it was error for the Court to affirm the grant summary judgment in favor of the Association.

CONCLUSION

For the reasons stated in the foregoing arguments, Catwalk, *et al.*, urge the Court to rehear and reverse its Opinion 2018-UP-069 of February 7, 2018, and to reverse the January 22, 2016, and March 18, 2016, Orders of the Trial Judge, and to grant Summary Judgment in favor of Catwalk, *et al.*, finding that the 1970 Covenants do not encumber the

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[19] In its Opinion, the Court does not address Catwalk, *et al.*'s appeal of the Trial Judge's finding that Catwalk, *et al.*'s, claims based on estoppel failed on three grounds: (a) the non-waiver language in the 1970 Covenants; (b) there was no showing of prejudice or reliance; and, (c) no evidence that the Association intended to relinquish a known right. With respect to the first point, the non-waiver language in the 1970 Covenants simply does not address the estoppel claim. With respect to the second point, the only evidence is that the Association took advantage of the dredging agreement that treated the Association and Catwalk, *et al.*, as wholly separate entities and thus avoided participating at all in the cost of the dredging that was carried wholly by Catwalk, *et al.* As to the third point, it relates to waiver, and does not address the estoppel claim. The elements of an estoppel claim are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). The undisputed facts in the record show all three, or at a minimum, show a scintilla of evidence sufficient to defeat the Associations's motion for summary judgment.

commercial property of Catwalk, *et al.*

Respectfully Submitted:

COLTRANE AND WILKINS, LLC

By: _____

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This 19th Day of February, 2018.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot, LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc, Appellants,

v.

Sea Pines South Beach Owners' Association, Inc., Respondent.

Appellate Case No. 2016-000637

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Unpublished Opinion No. 2018-UP-069
Heard December 12, 2017 – Filed February 7, 2018

AFFIRMED

Curtis Lee Coltrane, of Coltrane & Wilkins, LLC, of Hilton Head Island, for Appellants.

John Michael Jordan and Kirsten Elena Small, both of Nexsen Pruet, LLC, of Greenville, for Respondent.

PER CURIAM: Catwalk, LLC; Moondog, LLC; Let, LLC; Lost Parrot, LLC; Vacation Inn, LLC; SMB, LLC; and South Beach Swimming Pool, Inc. (collectively, Appellants) appeal the Master-in-Equity's grant of summary judgment in favor of Sea Pines South Beach Owners Association (the Association) declaring property owned by Appellants is subject to covenants created in 1973 (1973 Commercial Covenants), as well as covenants previously created in 1970 (1970 Covenants). We affirm.[1]

1. Appellants' argue the "sole applicable" language used in the 1973 Commercial Covenants is plain language that precluded application of the 1970 Covenants to their property. We disagree.

The 1973 Commercial Covenants expressly acknowledge the existence and possible applicability of other covenants by indicating if there is conflict between covenants, the 1973 Commercial Covenants are controlling. In light of these seemingly inconsistent provisions within the document, the master did not err in not finding the use of "sole applicable" was controlling plain language sufficient to preclude application of the 1970 Covenants. *See Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006) ("Restrictive covenants are contractual in nature."); *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998) ("[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (1985))).

2. Appellants further argue section 15-3-380 of the South Carolina Code (2005) applies to this case. They maintain the Association is, for the first time in more than forty years, asserting an "interest" in their properties by claiming it is subject to the 1970 Covenants.[2] We disagree.

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[1] Appellants also appeal the denial of their own summary judgment motion as to the applicability of the subject covenants. However, the denial of summary judgment is not immediately appealable. *See Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994) ("This [c]ourt has repeatedly held that the denial of summary judgment is not directly appealable.").

[2] Section 15-3-380 provides:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by

No South Carolina case suggests an "interest" in property includes the type of claim at issue in this case, and we decline to extend the statute thusly. Additionally, the 1970 Covenants contain a nonwaiver provision,[3] meaning the Association's action or inaction in enforcing the 1970 Covenants against Appellants' properties is not germane to a determination of their applicability.

3. Finally, Appellants contend they presented a scintilla of evidence the 1970 Covenants do not apply to their properties, thereby precluding summary judgment. Again, we disagree.

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). The conflicting language used in the 1973 Commercial Covenants could give rise to differing inferences. However, because the 1970 Covenants were specifically included in subsequent deeds of conveyance,[4] the only *reasonable* inference is the 1970 Covenants remain in effect as to Appellants' properties.

> virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

[3] The 1970 Covenants contain a nonwaiver provision: "failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter."

[4] Appellants' titles, with the exception of South Beach Swimming Pool, Inc., trace back to a 1984 deed of conveyance between Sea Pines Plantation Company and South Beach Marina Village, a partnership. The 1984 deed specifically incorporates the 1970 Covenants and the 1973 Commercial Covenants. The property owned by South Beach Swimming Pool, Inc. was conveyed by a 1987

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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deed which specifically incorporated the 1970 Covenants and 1973 Commercial Covenants.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case No. 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

ORDER REFERRING CASE

This case is before the undersigned for disposition of the Plaintiffs' Motion to Refer this case to the Hon. Marvin H. Dukes, III, Master In Equity for Beaufort County, South Carolina. The Motion came to be heard at the Beaufort County Courthouse at 10:00 o'clock, A. M., on February 10, 2015. Present were Curtis L. Coltrane, counsel to the Plaintiffs, and J. Michael Jordan, counsel to the Defendant.

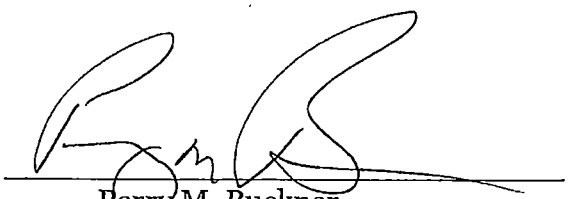
Having reviewed both the Complaint and the Answer and Counterclaim and heard argument from counsel, I find that the main purpose of both the Plaintiffs and the Defendant is to obtain an order of Court determining whether or not the declaration of restrictive covenants is enforceable by the Defendant against the Plaintiffs. Actions to enforce restrictive covenants are in equity. Arceneaux v. Arrington, 284 S.C. 500 (Ct. App. 1985).

#1
PnB

Accordingly, this case is referred to the Hon. Marvin H. Dukes, III, Master In Equity for Beaufort County, South Carolina, under Rule 53(b), SCRCP. Judge Dukes may, in the event he makes a determination that the issues presented in this case are

legal issues or factual issues properly tried by a jury, refer this case back to the Circuit Court for a trial by jury on any such issues.

IT IS SO ORDERED.



Perry M. Buckner
Presiding Judge
Beaufort County Court of Common Pleas

Walterboro, South Carolina
This 18th Day of February, 2015.

#2

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CATWALK, LLC, MOONDOG, LLC, LET, LLC, LOST PARROT, LLC, VACATION INN, LLC, SBM, LLC, AND SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC.,

Defendant.

Case No. 2014-CP-07-01435

ORDER ON PLAINTIFFS' MOTION AND DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

2016 JAN 22 PM 4:12
JEAN ROSEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The dispositive question before the Court, raised by the parties in the Motion and Cross Motion for Summary Judgment, is whether Commercial Use Covenants recorded in 1973 exempt Plaintiffs' properties from the obligations of 1970 Covenants for South Beach, Sea Pines Plantation, Hilton Head Island, South Carolina. The Court finds Plaintiffs properties are encumbered by and subject to the 1970 Covenants and the 1973 Commercial Use Covenants. The Court grants Defendant's Cross Motion for Summary Judgment and denies Plaintiffs' Motion for Summary Judgment.

THE PARTIES:

Plaintiffs Catwalk, LLC, Moondog, LLC, LET, LLC, Lost Parrot, LLC, Vacation Inn, LLC, SBM, LLC, and South Beach Swimming Pool, Inc. (hereafter "Plaintiffs") are South Carolina corporations which own real property in South Beach, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina. Defendant Sea Pines South Beach Owners Association, Inc. ("the Association") is a South Carolina corporation chartered in 1969 to

maintain and administer the common properties in South Beach, enforce the covenants and restrictions governing real property in South Beach, and collect and disburse necessary assessments and charges.

PROCEDURAL HISTORY:

Plaintiffs filed their lawsuit on June17, 2014 seeking a declaration that their properties are not encumbered by the 1970 Covenants, that Plaintiffs are not members of the Association, and that Plaintiffs have no liability for assessments made or imposed by the Association. Defendant answered and counterclaimed alleging Plaintiffs' properties are encumbered by the 1970 Covenants and Plaintiffs are members of the Association subject to the rights and obligations of South Beach property owners. Plaintiffs subsequently filed a Motion for Reference pursuant to Rule 53(b), SCRCP. On February 18, 2014 an Order was entered referring this matter to the Master in Equity.

Plaintiffs filed their Motion for Summary Judgment on June 15, 2015. Defendant filed its Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment on August 7, 2015. The Court received and reviewed the parties' briefs and supporting affidavits, examined relevant covenants filed of record in Beaufort County. heard oral arguments on August 19, 2015, and received and reviewed letter briefs following oral arguments.

STANDARD OF REVIEW:

Plaintiffs and Defendant filed Motions for Summary Judgment. A party seeking summary judgment in its favor must show there is no genuine issue of material fact. Rule 56(c), SCRCP. As stated in *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607,610, 230 S.E. 2nd 447,448 (1976), this requires "plain, palpable and indisputable facts... on which reasonable minds cannot differ." If the non-moving party presents evidentiary facts from which the Court

may conclude or infer that a dispute exists, the motion must be denied. See, e.g. *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E. 2nd 92 (S.C. App. 2007). Such facts may be shown by the answer, discovery, and affidavits. See Rule 56(c), SCRCP.

As the non-moving parties in the others' motions, Plaintiffs and Defendant are entitled to have facts viewed in the light most favorable to each.

UNDISPUTED FACTS:

In this matter relevant facts are not in dispute. These are:

1. South Beach is a 102.63 acre planned unit development community in Sea Pines Plantation, Hilton Head Island, South Carolina.
2. Two covenants are at issue: (1) the *Covenants and Restrictions for South Beach and Provisions for the South Beach Owners' Association, Inc.* dated June 25, 1970 recorded by Lighthouse Beach Company in Book 176 at Page 203 in the Office of the Register of Deeds for Beaufort County, as amended from time to time ("the 1970 Covenants') and (2) the *Commercial Use Covenants* dated January 25, 1973 recorded by Lighthouse Beach Company in Book 206 at Page 1143 in the aforesaid Office (the 1973 Commercial Covenants').
3. The real property subject to the 1970 Covenants is that 102.63 acre parcel or property described in Exhibit A to the 1970 Covenants as the parcel of land shown as South Beach on a Plat Recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 18 at Page 126.
4. Plaintiffs' properties are within the 102.63 acre South Beach parcel.
5. The Commercial Use Covenants recorded in 1973 apply to all property owned by Lighthouse Beach Company on Hilton Head Island designated for commercial use.

This includes commercial property in the South Beach parcel.

6. Plaintiffs' properties are subject to the 1973 Commercial Covenants.
7. Plaintiffs' titles, with the exception of Plaintiff South Beach Swimming Pool, Inc., trace back to a Deed between the Sea Pines Plantation Company and South Beach Marina Village, a Partnership, dated January 3, 1984 and recorded in Deed Book 385 at Page 1224. Between 1984 and 2008 Plaintiffs or their predecessors acquired title to properties originally conveyed in the January 3, 1984 deed
8. The January 3, 1984 deed states that the properties are conveyed subject to the 1970 Covenants recorded in Book 176 at Page 203 and the 1973 Commercial Covenants recorded in Book 206 at Page 1143.
9. The title to the property now owned by Plaintiff South Beach Swimming Pool, Inc. arose from a 1987 Deed of the Trustee of the Hilton Head Liquidation Company. The Trustee conveyed this property as part of the plan of reorganization of Sea Pines Plantation and other properties approved by the United States Bankruptcy Court.
10. The property now owned by South Beach Swimming Pool, Inc. was also conveyed subject to the 1970 Covenants and 1973 Commercial Covenants. Deed Book 1198 at Page 450.
11. The 1970 Covenants contain a non-waiver provision: "...failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter."

PARTIES ARGUMENTS:

Plaintiffs' Argument for Summary Judgment

Plaintiffs argue their properties are subject to the 1973 Commercial Covenants, but not the 1970 Covenants. As such, they contend they are not members of the Association and not subject to Annual Assessments and Special Assessments by the Association. Plaintiffs point to one sentence in the 1973 Commercial Covenants as the basis of their argument. That sentence, from the recitations of the 1973 Commercial Covenants, states:

> It being the true intent and purpose of this declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by Lighthouse Beach Company, subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by reference to individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of Lighthouse Beach Company, that to the extent that there is a conflict between these restrictions and covenants previously recorded, as set forth above, and those of the instant declaration, the provisions of the instant Declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.

Plaintiffs argue that a portion of the above statement, that these are the "sole applicable covenants", means their properties are not subject to the 1970 Covenants, also recorded by Lighthouse Beach Company.

Defendant's Response:

Defendant raises three legal responses to Plaintiffs' argument:

(1) The 1973 Commercial Covenants state, in the sentence before the quotation above: "The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed...." Plaintiffs' acquired their property starting in 1984, and in each instance the 1970 Covenants and 1973 Commercial Covenants were added to the Deeds of Conveyance, precisely as permitted by the quoted language.

(2) The sentence Plaintiffs rely upon expressly recognizes that commercial property may be subject to additional covenants by stating that a conflict between the 1973 Commercial Covenants and other covenants may exist.

(3) The 1973 Commercial Use Covenants address design, aesthetic, and environmental considerations and are intended to be the applicable covenants and restrictions for those issues only.

Defendant's Argument for Summary Judgment

Defendant argues it is entitled to summary judgment:

(1) There is no dispute that Plaintiffs' properties are within the parcel encumbered by the 1970 Covenants;

(2) Plaintiffs' title documents state the properties are encumbered by the 1970 Covenants and the 1973 Commercial Covenants; and

(3) The language of the 1973 Commercial Covenants shows that they overlay, not supplant, the 1970 Covenants.

LEGAL ANALYSIS AND CONCLUSIONS

It is well-settled law that restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent as determined from the

entire document. *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E. 2nd 862 (1998): *RV Resort and Yacht Club Owners Ass'n* v. *BillyBob's* 386 S.C. 313, 688 S.E.2nd 555 (2010). Wording will be given its common and ordinary meaning. *Taylor*, id. Restrictive covenants differ from contracts in that they run with the land, meaning they are enforceable by and against later grantees. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S. C. 342, 628 S. E. 2nd 902 (Ct. App. 2006).

Neither Plaintiffs nor Defendant argue that the covenants are voidable, unenforceable, or ambiguous. "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Pres. Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 316, 751 S.E. 2nd 256, 259 (2013). See also *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.* 412 S.C. 387, 772 S.E. 2nd 528 (Ct. App. 2015) *reh'g denied* June 19, 2015). "The court is required to give effect to the plain meaning of the words in an unambiguous contract." *Schulmeyer v. State Farm Fire & Cas. Co.* 353 S.C. 491, 497, 579 S.E. 2nd 132, 135 (2003

The 1970 Covenants recorded by Lighthouse Beach Company create a planned unit development community known as South Beach. They provide for the creation of the Association and grant the Association the authority to maintain and administer common properties, enforce covenants, and collect and disburse necessary assessments and charges. The 1970 Covenants encumber all real property within the 102.63 acre South Beach parcel. Plaintiffs' properties lie within that parcel. The 1970 Covenants state that each owner of real property within the South Beach parcel shall be a member of the Defendant Association.

The 1973 Commercial Covenants state: "Lighthouse Beach Company recognizes that said properties are situate in an environmentally sensitive area and that any development of said

property is a matter of concern to both the developing party and the Community-at-large" and memorialize a desire by Lighthouse Beach Company to develop its property, wherever situated, "...pursuant to an orderly plan which contemplates the environmental impact on the Community-at-Large." The 1973 Covenants provide that Lighthouse Beach Company may add additional covenants to Deeds of Conveyance and recognize that commercial property may be subject to other covenants and restrictions.

By its plain meaning, the 1970 Covenants create a planned unit development community and give authority to the Association to maintain and administer the community. The 1973 Commercial Covenants set forth design, environmental and other standards and requirements to assure that commercial property is in keeping with stated environmental and aesthetic goals.

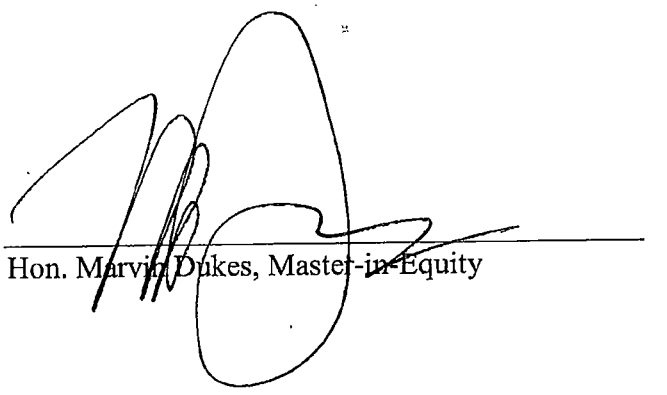
To the extent a property in South Beach is commercial in nature, the 1973 Commercial Covenants complement rather than conflict with other community restrictions. The Court finds that as a matter of law Plaintiffs' properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants. Accordingly, Plaintiffs are members of the Association, with all rights and obligations of membership.

Plaintiffs' Motion for Summary Judgment seeks a ruling that the Association is barred by S. C. Code Ann. §15-3-380. Section 380 is the limitations period for an action for possession of real property. An action for possession is brought pursuant to S. C. Code Ann. §15-67-10. No such action or claim was plead by Defendant. That issue is denied.

Plaintiffs' also seek summary judgment claiming waiver, abandonment, or estoppel. The 1970 Covenants contain an unambiguous non-waiver provision. Moreover, Plaintiffs made no showing of prejudice or reliance, nor that the Association intended to relinquish a known right. See, e.g. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2nd 465 (2007). That issue is also denied.

The Court DENIES Plaintiffs' Motion for Summary Judgment.

The Court GRANTS Defendant's Cross Motion for Summary Judgment. Final Judgment is hereby entered in favor of Defendant on all Counts in Plaintiffs' Complaint. Final judgment is also entered in favor of Defendant on its Counterclaim by the Court's finding that Plaintiffs' properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants, and Plaintiffs are members of Defendant Association.



Hon. Marvin Dukes, Master-in-Equity

January 12, 2016
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 **CP**-07-01435

Catwalk, LLC, et al.

PLAINTIFF(S)

Sea Pines South Beach Property Owners Association

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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.

☐ **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

☐ **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.

JASON A. ROSE AU
BEAUFORT COUNTY S.C.
CLERK OF COURT
2016 MAR 18 PM 4:46

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me on Plaintiff's Motion to Amend, filed 2/4/2016. After hearing from all parties, I hereby deny the motion for the reasons previously stated in the order and because of the following:

The word "applicable" (which in this context means relevant) refers to any part of the 1970 covenants which would have dealt specifically with commercial properties. If the 1973 covenants were intended to completely replace the 1970 covenants, the word "applicable" would be unnecessary, and the word "sole" could have stood alone. Likewise, the phrase "to the extent there is a conflict···" implies that the 1973 covenants were intended as a commercial covenant overlay to act in conjunction with the 1970 covenants.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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)
		$
		$
		$

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.**

Circuit Court Judge | 3069 **Judge Code** | 3/15/16 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 19 day of March 16 and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of March 16 to attorneys of record or to parties (when appearing pro se) as follows:

Curtis Lee Coltrane

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Michael Jordan

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT STAFF

Court Reporter: N/A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07- 1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

2014 JUN 17 AM 11:15

COMPLAINT
(A Non-Jury Matter)

Catwalk, LLC, Moondog, LLC, Vacation Inn, LLC, and South Beach Swimming Pool, Inc., complaining of the Sea Pines South Beach Property Owners' Association, Inc., alleges as follows:

BY WAY OF A FIRST CAUSE OF ACTION

1. Catwalk, LLC, is a Limited Liability Company, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

2. LET, LLC, is a Limited Liability Company, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

3. Lost Parrot, LLC, is a Limited Liability Company, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

4. Moondog, LLC, is a Limited Liability Company, organized and existing under the

laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

5. SBM, LLC, is a Limited Liability Company, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

6. South Beach Swimming Pool, Inc., is a South Carolina corporation, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

7. Vacation Inn, LLC, is a Limited Liability Company, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

8. Sea Pines South Beach Owners' Association, Inc., is a South Carolina corporation, organized and existing under the laws of South Carolina, and which maintains its principal office and owns real property in Beaufort County, South Carolina.

9. The Plaintiffs' bring this action under the authority of S. C. Code Ann. § 15-53-10, *et seq.*, (Supp. 2013), for the purpose of seeking a declaratory judgment that a recorded Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203 does not encumber the real property owned by the Plaintiffs.

10. Catwalk, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All those certain pieces, parcels or lots of land shown on a plat entitled "Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation" prepared by Jerry L. Richardson, SCRLS #4784, dated February 21, 1980, and recorded

in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14; and which are more specifically shown and designated "Common Areas" on that certain plat entitled "A Survey of South Beach Marina, a Section of Sea Pines Plantation", dated March 24, 1988, prepared by Jerry L. Richardson, SCRLS #4784, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 128.

11. LET, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows: Unit A of the Lands End Tavern Horizontal Property Regime as more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 498 at Page 979, as amended by Amendment and Restatement recorded in Official Record Book 2990 at Page 1882, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

12. Lost Parrot, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain Unit 300 in the South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.

13. Moondog, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The

Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

AND

All that certain piece, parcel or lot of land with improvements thereon, containing 1.279 acres, more or less, and being designated on a plat entitled "Plat of 1.279 Acres, South Beach Area of Sea Pines Plantation, Beaufort County, South Carolina", dated November 9, 1987, and prepared by Surveying Consultants of Hilton Head, Inc., by Terry G. Hatchell, SCRLS #11059, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69.

AND

All that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

The parcel is also known as Parcel II, Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing Lands End Tavern Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2990 at Page 1882.

14. SBM, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

All those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as Unit B, Unit C and Unit D or the Lands End Tavern Horizontal Property Regime in Sea Pines Plantation, and being more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 498 at Page 979, as amended by Amendment and Restatement recorded in Official Record Book 2990 at Page 1882, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common

Elements as described in the Master Deed.

Also, all that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, commonly known as BOAT RAMP at SOUTH BEACH MARINA VILLAGE as more particularly shown and described on that certain plat entitled "A Survey of South Beach Marina Village, A Section of Sea Pines Plantation" by Surveying Consultants of Hilton Head Inc., Terry G. Hatchell, SCRLS #11059, dated March 8, 1988, and recorded March 24, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 128.

15. South Beach Swimming Pool, Inc., owns real property in Beaufort County, South Carolina, that is known and described as follows:

All that certain piece, parcel or lot of land, situate, lying and being in The Town of Hilton Head Island, Beaufort County, South Carolina, containing 0.463 acres, more or less, and shown and described as "Pool Parcel" on a plat entitled "A Boundary Survey of 3.961 Acres, A Section of South Beach Area, Sea Pines Plantation" dated November 11, 1999, and revised June 8, 2000, prepared by Terry G. Hatchell, SCRLS No. 11059, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 75 at Page 121.

16. Vacation Inn, LLC, owns real property in Beaufort County, South Carolina, that is known and described as follows:

All those certain Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 114/115, in South Beach Marina Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as shown on the Plans and Specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.

AND

All that certain piece, parcel or lot of land known as Parcel 1, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

This parcel is also known as Unit 1, Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2990 at Page 1882.

AND

All those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-C, 203-D. 204-A, 204-B, 204-C, 204-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 212-A, 212-B, 212-C, 212-D, 213-A, 213-B, 213-C, 213-D, 214-A, 214-B, 214-C, 214-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, 216-D, 217-A, 217-B, 217-C and 217-D, in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) per cent interest in each said Unit as shown on the Plans and Specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.

17. The Sea Pines South Beach Owners' Association, Inc., is a property owners' association established by the Lighthouse Beach Company, A South Carolina Limited Partnership, under a recorded "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina, and Provisions for the Sea Pines South Beach Owners' Association, Inc. (hereinafter, the "Sea Pines South Beach Covenants)"

18. The Sea Pines South Beach Covenants were recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, on August 18, 1970.

19. On February 15, 1973, the Lighthouse Beach Company, A South Carolina Limited Partnership, recorded a "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., which Constitute Covenants Running with certain Commercial Lands of Lighthouse Beach Company (hereinafter, the "Commercial Covenants").

20. The Commercial Covenants were recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 206 at Page 1143.

22. The Commercial Covenants apply to Commercial Property, which is described as follows in Article 2 of the Commercial Covenants:

> Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.

23. The Commercial Covenants read as follows, in relevant part:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.

24. The properties described in Paragraphs 10-16 above are "Commercial Property" as described in the Commercial Covenants.

25. The Sea Pines Plantation Company was the successor in interest to Lighthouse Beach Company.

26. By a deed dated September 30, 1967, Sea Pines Land Company, Inc., conveyed certain property, which includes the properties described in Paragraphs 10-16 above to the

Sea Pines Plantation Company. The September 30, 1967, deed is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 150 at Page 42.

26. On October 17, 1974, the Sea Pines Plantation Company, Inc., recorded a "Declaration of Covenants and Restrictions By Sea Pines Plantation Company, Inc." (hereinafter, the 1974 Covenants").

27. The 1974 Covenants are recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 224 at Page 1036.

28. Among other things, the 1974 Covenants state how commercial properties within Sea Pines contribute to the "Community Fund" as the same is defined in the 1974 Covenants.

29. By a deed dated January 3, 1984, the Sea Pines Plantation Company conveyed property, which includes the properties described in Paragraphs 10-16 above to "South Beach Marina Village, A Partnership." The January 3, 1984, deed is recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 385 at Page 1224.

30. The January 3, 1984, deed specifically makes the property conveyed therein subject to the Commercial Covenants, and the 1974 Covenants. The January 3, 1984, deed also makes reference to the Sea Pines South Beach Covenants. However, since the express language of the Commercial Covenants states that the Commercial Covenants are the "sole applicable covenants restricting Commercial Property", the reference to the Sea Pines South Beach Covenants is insufficient to bind the property conveyed in the January 3, 1984.

31. At no time did the Sea Pines South Beach Owners' Association, Inc., or its predecessor in interest, claim that the property conveyed to the Sea Pines Plantation

Company in the September 30, 1967, deed was subject to the Sea Pines South Beach Covenants.

32. At no time did the Sea Pines South Beach Owners' Association, Inc., or its predecessor in interest, claim that the property conveyed to South Beach Marina Village, A Partnership, in the January 3, 1984, deed was subject to the Sea Pines South Beach Covenants.

33. Beginning in July of 2013, the Sea Pines South Beach Owners' Association, Inc., asserted that the real property owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC; and, South Beach Swimming Pool, Inc., and which is described in Paragraphs 10, 11, 12, 13, 14, 15 and 16 above is encumbered by the Sea Pines South Beach Covenants.

34. Beginning in July of 2013, the Sea Pines South Beach Owners' Association also asserted that Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, are members of the Sea Pines South Beach Owners' Association, Inc., and are obligated to pay assessments imposed by the Sea Pines South Beach Owners' Association, Inc., under the authority of the Sea Pines South Beach Covenants.

35. Prior to July of 2013, and for a period of more than 40 years, the Sea Pines South Beach Owners' Association, Inc., never asserted that Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, or any of their predecessors in title were members of the Sea Pines South Beach Owners' Association, Inc.

32. Prior to July of 2013, and for a period of more than 40 years, the Sea Pines South Beach Owners' Association, Inc., never sought to collect any assessments imposed by the Sea Pines South Beach Owners' Association, Inc., from Catwalk, LLC; Moondog, LLC; LET,

LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, or any of their predecessors in title.

36. It was not the intent of Lighthouse Beach Company, or the Sea Pines Plantation Company that the Commercial Properties now owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, would be subject to the Sea Pines South Beach Covenants, or that the owners of those properties would be members of the Sea Pines South Beach Property Owners' Association, Inc.

37. The Sea Pines South Beach Covenants do not encumber the properties owned by from Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, and which are described in Paragraphs 10-16 above.

BY WAY OF A SECOND CAUSE OF ACTION

38. Each and every allegation of Paragraphs 1 through 37 above is re-alleged, as if fully repeated herein.

39. To the extent that the Sea Pines South Beach Property Owners' Association, Inc., ever had any right to enforce the Sea Pines South Beach Covenants against the properties owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, arising from the recording of the Sea Pines South Beach Covenants, the existence of any such right is denied, it has waived the same through its inaction for a period of more than forty (40) years.

BY WAY OF A THIRD CAUSE OF ACTION

40. Each and every allegation of Paragraphs 1 through 39 above is re-alleged, as if fully repeated herein.

41. To the extent that the Sea Pines South Beach Property Owners' Association, Inc., ever

had any right to enforce the Sea Pines South Beach Covenants against the properties owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, arising from the recording of the Sea Pines South Beach Covenants, the existence of any such right is denied, it has abandoned the same through its inaction for a period of more than forty (40) years.

BY WAY OF A FOURTH CAUSE OF ACTION

42. Each and every allegation of Paragraphs 1 through 41 above is re-alleged, as if fully repeated herein.

43. To the extent that the Sea Pines South Beach Property Owners' Association, Inc., ever had any right to enforce the Sea Pines South Beach Covenants against the properties owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, the existence of any such right is denied, it now estopped to enforce the same as a result of its inaction for a period of more than forty (40) years.

BY WAY OF A FIFTH CAUSE OF ACTION

44. Each and every allegation of Paragraphs 1 through 43 above is re-alleged, as if fully repeated herein.

45. Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, and their predecessors in title have owned and occupied the properties described in Paragraphs 10 through 16 above for a period of more than forty (40) years without complying with the Sea Pines South Beach Covenants.

46. Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, and their predecessors in title have owned and occupied the properties described in Paragraphs 10 through 16 above for a period of more than forty (40) years without paying

any assessments authorized by the Sea Pines South Beach Covenants.

47. Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC and SBM, LLC, and their predecessors in title have owned and occupied the properties described in Paragraphs 10 through 16 above for a period of more than forty (40) years without participating in any way with the activities of the Sea Pines South Beach Property Owners' Association, Inc., or claiming to be a member thereof.

48. As described herein, the ownership of the properties described in Paragraphs 10 through 16 above by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC, and SBM, LLC, has been continuous, hostile, open, actual, notorious and exclusive against the interest in the property now claimed by Sea Pines South Beach Property Owners' Association, Inc., for a period of more than forty (40) years.

49. Any right that the Sea Pines South Beach Property Owners' Association, Inc., may have ever had any right to enforce the Sea Pines South Beach Covenants against the properties owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; and SBM, LLC, is now barred by S. C. Code Ann. § 15-3-380 (Supp. 2013), as a result of its inaction, and the continuous, hostile, open, actual, notorious and exclusive possession of Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; and SBM, LLC, for a period of more than forty (40) years.

CONCLUSION

Wherefore, Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC, pray that this Honorable Court inquire into the matters set forth herein, and that it render its Judgment, declaring that the real property Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC, and described in this

Complaint is not encumbered by the Sea Pines South Beach Covenants, that they are not members of the Sea Pines South Beach Property Owners' Association, Inc., and that they have no liability for assessments made or imposed by the Sea Pines South Beach Property Owners' Association, Inc., and for all other and further relief as this Honorable Court may deem just and proper.

COLTRANE & WILKINS, LLC

By: _____

Curtis L. Coltrane
South Carolina Bar Number 1344
Post Office Drawer 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (Fax)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 16th day of June, 2014.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
CATWALK, LLC; MOONDOG, LLC: LET, LLC; LOST PARROT, LLC; VACATION INN, LLC; SBM, LLC; and SOUTH BEACH SWIMMING POOL, INC., Plaintiffs, vs. SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC., Defendant.	Case No. 2014-CP-07-01435 **ANSWER AND COUNTERCLAIM** (Jury Trial Demanded)

Defendant Sea Pines South Beach Property Owners' Association, Inc. (the "Association"), answering the allegations in Plaintiffs' Complaint, states as follows:

FOR A FIRST DEFENSE

1. The Association denies each and every allegation of Plaintiffs' Complaint, unless admitted herein, and demands strict proof thereof.

FOR A SECOND DEFENSE

2. The Association lacks sufficient information to form a belief as to the allegations set forth in Paragraphs 1-7 of Plaintiffs' Complaint and therefore denies same.
3. The Association admits the allegations in Paragraph 8 of the Complaint.
4. The Association lacks sufficient information to form a belief as to the allegations in Paragraph 9-16 of Plaintiffs' Complaint and therefore denies same.
5. The Association admits the allegations in Paragraphs 17-20 of the Complaint.

6. The Complaint lacks a Paragraph 21.

7. The Association admits the language quoted in Paragraphs 22 and 23 is taken from recorded covenants.

8. The Association lacks sufficient information to form a belief as to Paragraphs 24-26 and therefore denies same.

9. Answering Paragraphs 26-29, the Association conditionally admits the existence and recording of the 1974 Covenants, but conditions said admission by stating that the 1974 Covenants have been amended, modified or changed by agreement and by judicial order since their recordation.

10. The Association answers Paragraph 30 by stating the terms of the conveyances speak for themselves. The Association denies the conclusion that the terms are insufficient to bind Plaintiffs.

11. The Association denies Paragraphs 31 and 32.

12. Answering Paragraph 33, the Association believes Plaintiffs' property is subject to the Sea Pines South Beach Covenants.

13. Answering Paragraph 34, the Association believes Plaintiffs are obligated to pay owner assessments.

14. The Association lacks sufficient information regarding Plaintiffs' formation and title to form a belief as to the allegations in Paragraph 35 and therefore denies same.

15. The Association denies the allegations in the paragraph erroneously numbered 32, which follows paragraph 35.

16. The Association lacks sufficient information to form a belief as to the alleged intent of third parties stated in paragraph 36 and therefore denies same.

17. Paragraph 37 is denied.

18. Answering Paragraph 38, the Association restates each response in Paragraphs 1-17 above as if set forth fully herein.

19. Paragraph 39 is denied.

20. Answering Paragraph 40, the Association restates each response in Paragraphs 1-19 above as if set forth fully herein.

21. Paragraph 41 is denied.

22. Answering Paragraph 42, the Association restates each response in Paragraphs 1-21 above as if set forth fully herein.

23. Paragraph 43 is denied.

24. Answering Paragraph 44, the Association restates each response in Paragraphs 1-23 above as if set forth fully herein.

25. The Association lacks sufficient information regarding Plaintiffs' formation and title to form a belief as to the allegations in Paragraph 45 and therefore denies same.

26. The Association lacks sufficient information regarding Plaintiffs' formation and title to form a belief as to the allegations in Paragraph 46 and therefore denies same.

27. The Association lacks sufficient information regarding Plaintiffs' formation and title to form a belief as to the allegations in Paragraph 47 and therefore denies same.

28. The Association denies Paragraphs 48 and 49.

FOR A THIRD DEFENSE

29. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action.

FOR A FOURTH DEFENSE

30. Plaintiffs are misjoined and the actions should be severed pursuant to SCRCP 21.

FOR A FIFTH DEFENSE

31. Plaintiffs are estopped by their own actions, including but not limited to the participation in and accrual of benefits to them through the efforts of Defendant, specifically the dredging of Braddock Cove.

FOR A SIXTH DEFENSE

32. Plaintiffs have waived any rights to assert the claims in their Complaint, which are denied, by their conduct including, but not limited to the participation in and accrual of benefits to them through the efforts of Defendant, specifically the dredging of Braddock Cove.

FOR A SEVENTH DEFENSE

33. The express terms of the Covenants referenced by Plaintiffs state that the provisions of the Covenants may not be waived.

BY WAY OF COUNTERCLAIM OF DEFENDANT: FIRST COUNT

34. Defendant/Counterclaimant Sea Pines South Beach Property Owners' Association, Inc. (the "Association") is a corporation chartered by and in good standing with the State of South Carolina.

35. The Association's principal place of business is Beaufort County, South Carolina.

36. The Association is established pursuant to the Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina, and Provisions for the South Beach Owners' Association, Inc. (the "Covenants and Restrictions") recorded in Official Record Book 176 at Page 203 of the Register of Deeds of Beaufort County, South Carolina.

37. The Covenants and Restrictions above apply to, govern, and bind all the real property described in the covenants recorded in Book 176 at Page 203 and the referenced Plat Book 18 at Page 126.

38. Catwalk, LLC, on information and belief, owns real property described in Paragraph 10 of the Complaint which is subject to the Covenants and Restrictions of the Association.

39. LET, LLC, on information and belief, owns real property described in Paragraph 11 of the Complaint which is subject to the Covenants and Restrictions of the Association.

40. Lost Parrot, LLC, on information and belief, owns real property described in Paragraph 12 of the Complaint which is subject to the Covenants and Restrictions of the Association.

41. Moondog, LLC, on information and belief, owns real properties described in Paragraph 13 of the Complaint which is subject to the Covenants and Restrictions of the Association.

42. SBM, LLC, on information and belief, owns real properties described in Paragraph 14 of the Complaint which is subject to the Covenants and Restrictions of the Association.

43. South Beach Swimming Pool, LLC, on information and belief, owns real property described in Paragraph 15 of the Complaint which is subject to the Covenants and Restrictions of the Association.

44. Vacation Inn, LLC, on information and belief, owns real properties described in Paragraph 16 of the Complaint which is subject to the Covenants and Restrictions of

the Association.

45. Each and every property in Paragraphs 38-44 are within the real property subject to the Declarations and Covenants of the Association.

BY WAY OF COUNTERCLAIM: SECOND COUNT

46. Plaintiffs are estopped from asserting any exemption from or lack of application of the Declarations and Covenants to their properties by their own actions, including but not limited to the participation in and accrual of benefits to them through the efforts of Defendant, specifically the dredging of Braddock Cove.

BY WAY OF COUNTERCLAIM: THIRD COUNT

47. To the extent Plaintiffs assert the Declarations and Covenants are inapplicable to them, which assertion is denied, Plaintiffs have waived any rights to such assertion by their conduct including but not limited to the participation in and accrual of benefits to them through the efforts of Defendant, specifically the dredging of Braddock Cove.

DEMAND FOR JURY TRIAL

48. Defendant demands a trial by jury.

WHEREFORE, having fully answered Plaintiffs' allegations, Defendant respectfully requests that Plaintiffs Complaint be dismissed with costs, and this Honorable Court declare that each and every Plaintiffs' property or properties described in the Complaint is subject to and encumbered by the Covenants of the Sea Pines South Beach Property Owners' Association, Inc., as such other and further relief as deemed just and proper.

J. Michael Jordan
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400 Main St. Office Campus, Suite 100A (29926)
Hilton Head Island, SC 29925-3526
843.689.6277

Attorneys for Defendant
SEA PINES SOUTH BEACH PROPERTY
OWNERS' ASSOCIATION, INC.

August 25, 2014
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

2014 AUG 27 AM 9:44

BEAU
PORT COUNTY, S.C.
COURT

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.;	)	
Plaintiffs,	)	
vs.	)	REPLY TO COUNTERCLAIMS
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

Catwalk, LLC, Moondog, LLC, Vacation Inn, LLC, and South Beach Swimming Pool, Inc., by way of Reply to the Answer and Counterclaims of the Sea Pines South Beach Property Owners' Association, Inc., alleges as follows:

BY WAY OF A FIRST REPLY

1. Each and every allegation of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied, unless hereinafter admitted, qualified or explained.

2. The allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., do not allege any fact requiring response from the Plaintiffs, or any of them. To the extent that any allegation of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is deemed to require a response from the Plaintiffs, or any of them, the same is denied.

3. The allegations and conclusions of law set out in Paragraph 31 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

4. The allegations and conclusions of law set out in Paragraph 32 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

5. The allegations and conclusions of law set out in Paragraph 33 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

6. The Plaintiffs admit the allegations of Paragraph 34 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc.

7. The Plaintiffs admit the allegations of Paragraph 35 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc.

8. The Plaintiffs admit the allegations of Paragraph 36 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc.

9. The allegations and conclusions of law set out in Paragraph 37 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

10. In response to the allegations of Paragraph 38 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff Catwalk, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All those certain pieces, parcels or lots of land shown on a plat entitled "Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation" prepared by Jerry L. Richardson, SCRLS #4784, dated February 21, 1980, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14; and which are more specifically shown and designated "Common Areas" on that certain plat entitled "A Survey of South Beach Marina, a Section of Sea Pines Plantation", dated March 24, 1988, prepared by Jerry L. Richardson, SCRLS #4784, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book

35 at Page 128.

Any other or further allegation of Paragraph 38 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

11. In response to the allegations of Paragraph 39 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff LET, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows: Unit A of the Lands End Tavern Horizontal Property Regime as more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 498 at Page 979, as amended by Amendment and Restatement recorded in Official Record Book 2990 at Page 1882, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

Any other or further allegation of Paragraph 39 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

12. In response to the allegations of Paragraph 40 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff Lost Parrot, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain Unit 300 in the South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.

Any other or further allegation of Paragraph 40 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

13. In response to the allegations of Paragraph 41 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff Moondog, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.
>
> AND
>
> All that certain piece, parcel or lot of land with improvements thereon, containing 1.279 acres, more or less, and being designated on a plat entitled "Plat of 1.279 Acres, South Beach Area of Sea Pines Plantation, Beaufort County, South Carolina", dated November 9, 1987, and prepared by Surveying Consultants of Hilton Head, Inc., by Terry G. Hatchell, SCRLS #11059, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69.
>
> AND
>
> All that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.
>
> The parcel is also known as Parcel II, Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing Lands End Tavern Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2990 at Page 1882.

Any other or further allegation of Paragraph 41 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

14. In response to the allegations of Paragraph 42 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff SBM, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All those certain pieces, parcels or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as Unit B, Unit C and Unit D or the Lands End Tavern Horizontal Property Regime in Sea Pines Plantation, and being more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 498 at Page 979, as amended by Amendment and Restatement recorded in Official Record Book 2990 at Page 1882, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.
>
> Also, all that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, commonly known as BOAT RAMP at SOUTH BEACH MARINA VILLAGE as more particularly shown and described on that certain plat entitled "A Survey of South Beach Marina Village, A Section of Sea Pines Plantation" by Surveying Consultants of Hilton Head Inc., Terry G. Hatchell, SCRLS #11059, dated March 8, 1988, and recorded March 24, 1988, in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 128.

Any other or further allegation of Paragraph 42 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

15. In response to the allegations of Paragraph 43 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff South Beach Swimming Pool, Inc., admits that it owns real property in Beaufort County, South Carolina, that is

known and described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being in The Town of Hilton Head Island, Beaufort County, South Carolina, containing 0.463 acres, more or less, and shown and described as "Pool Parcel" on a plat entitled "A Boundary Survey of 3.961 Acres, A Section of South Beach Area, Sea Pines Plantation" dated November 11, 1999, and revised June 8, 2000, prepared by Terry G. Hatchell, SCRLS No. 11059, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 75 at Page 121.

Any other or further allegation of Paragraph 43 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

16. In response to the allegations of Paragraph 44 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., the Plaintiff Vacation Inn, LLC, admits that it owns real property in Beaufort County, South Carolina, that is known and described as follows:

> All those certain Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 114/115, in South Beach Marina Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as shown on the Plans and Specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.
>
> AND
>
> All that certain piece, parcel or lot of land known as Parcel 1, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.
>
> This parcel is also known as Unit 1, Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 2990 at Page 1882.

AND

All those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-C, 203-D. 204-A, 204-B, 204-C, 204-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 212-A, 212-B, 212-C, 212-D, 213-A, 213-B, 213-C, 213-D, 214-A, 214-B, 214-C, 214-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, 216-D, 217-A, 217-B, 217-C and 217-D, in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) per cent interest in each said Unit as shown on the Plans and Specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 508 at Page 632.

Any other or further allegation of Paragraph 44 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is denied.

17. The allegations and conclusions of law set out in Paragraph 45 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

18. The allegations and conclusions of law set out in Paragraph 46 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

19. The allegations and conclusions of law set out in Paragraph 46 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., are denied.

20. The allegations of Paragraph 47 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., does not allege any fact requiring response from the Plaintiffs, or any of them. To the extent that any allegation of Paragraph 47 of the Answer and Counterclaim of the Sea Pines South Beach Owners' Association, Inc., is deemed to require a response from the Plaintiffs, or any of them, the same is denied.

CONCLUSION

Wherefore, having Replied in full to the Answer and Counterclaim of the Sea Pines

South Beach Owners' Association, Inc., Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC, pray that the same be dismissed, with costs, and further pray that this Honorable Court inquire into the matters set forth herein and in the Complaint of the Plaintiffs, and that it render its Judgment, declaring that the real property Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC, and described in this Complaint is not encumbered by the Sea Pines South Beach Covenants, that they are not members of the Sea Pines South Beach Property Owners' Association, Inc., and that they have no liability for assessments made or imposed by the Sea Pines South Beach Property Owners' Association, Inc., and for all other and further relief as this Honorable Court may deem just and proper.

COLTRANE & WILKINS, LLC

By: _____

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(843) 785-5552 (Fax)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina
This 26th day of August, 2014.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

2015 JUN 10 AM 10:
BEAUFORT COUNTY, S.C.

Please take notice that Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot, LLC; Vacation Inn, LLC; SBM, LLC; and, South Beach Swimming Pool, Inc. (hereinafter, the "Plaintiffs"), by and through its undersigned counsel, shall move before the Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Judge for Beaufort County, South Carolina, at the Beaufort County Court House, 102 Ribaut Road, Beaufort, South Carolina, on the 10th day following the service hereof, at 10:00 o'clock, A. M., or at such other time and place as set by the Court, for summary judgment in their favor and against the Sea Pines South Beach Owners' Association, Inc. (hereinafter, the "Association"), pursuant to Rule 56, South Carolina Rules of Civil Procedure ("SCRCP"), on the grounds that there is no genuine issues as to any material fact and the Plaintiffs are entitled to judgment as a matter of law.

The Plaintiffs' motion is based upon the pleadings, the record on file with the Court, this notice, the Affidavits of Robert A. Gossett, Jr., Ned E. Gilleland, Sr., Richard T. Sonberg and Charles A. Scarminach, Esq., served herewith, Rule 56, SCRCP, and all other law as is

then and there applicable.

SUMMARY JUDGMENT STANDARD

Under Rule 56, SCRCP, Summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Café Associates Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (S.C. 1991). Under Rule 56, SCRCP, Summary Judgment is appropriate:

> [I]f the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In determining whether any material issue of fact exists, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion. *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (S.C. App 2003). The purpose of Summary Judgment is to expedite the disposition of cases that do not require the services of a fact-finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003). "For purposes of Summary Judgment, and issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action." *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (S.C. App. 1988). Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact. Rule 56(e) SCRCP states a party may not rest upon the mere allegations or denials of his pleadings. *Hoard ex rel. Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010).

FACTS

The following facts are undisputed, or cannot be disputed by the Association:

1. The Plaintiffs are the owners of multiple parcels of real property situate in a commercial tract within Sea Pines on Hilton Head Island.[1]

2. The Sea Pines South Beach Property Owners' Association, Inc., is a residential homeowners association that was established by the Lighthouse Beach Company, A South Carolina Limited Partnership, in a recorded "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina" (hereinafter, the "Sea Pines South Beach Covenants").[2]

3. The Sea Pines South Beach Covenants were recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on August 18, 1970, in Official Record Book 176 at Page 203.[3]

4. On February 15, 1973, the Lighthouse Beach Company, A South Carolina Limited Partnership, recorded a "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., which Constitute Covenants Running with certain Commercial Lands of Lighthouse Beach Company (hereinafter, the "Commercial Covenants").[4]

5. The Commercial Covenants were recorded in the Office of The Register of Deeds for

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[1] *See:* Complaint, Paragraphs 10 through 16; Affidavit of Robert A. Gossett, paragraphs 3 through 9; Affidavit of Charles A. Scarminach, Page 10.

[2] *See:* Complaint, Paragraph 17; Answer and Counterclaim, Paragraph 5.

[3] *See:* Complaint, Paragraph 18; Answer and Counterclaim, Paragraph 5; Affidavit of Charles A. Scarminach, Paragraph 5.

[4] *See* Complaint, Paragraph 19; Answer and Counterclaim, Paragraph 5; Affidavit of Charles A. Scarminach, Paragraph 6.

Beaufort County, South Carolina, in Official Record Book 206 at Page 1143.[5]

6. The Commercial Covenants apply to Commercial Property, which is described as follows in Article 2 of the Commercial Covenants:

> Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.[6]

7. The Commercial Covenants read as follows, in relevant part:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[7]

8. The real property owned by the Plaintiffs that lie within South Beach Marina Village

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5 *See*: Complaint, Paragraph 21; Answer and Counterclaim, Paragraph 5; Affidavit of Charles A. Scarminach, Paragraph 6.

6 *See*: Complaint, Paragraph 22; Answer and Counterclaim, Paragraph 7; Affidavit of Charles A. Scarminach, Paragraph 7. There is a subsequent "Declaration of Covenants and Restrictions by Sea Pines Plantation Company, Inc.", recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 224 at Page 1036, that includes terms related to Commercial properties in Sea Pines. The subsequent declaration does not affect the issues present in this case.

7 *See*: Complaint, Paragraph 23; Answer and Counterclaim, Paragraph 5; Affidavit of Charles A. Scarminach, Paragraph 8. There is a subsequent

are "Commercial Properties" as the same are described in the Commercial Covenants.[8]

9. At various times prior to January 3, 1984, the Sea Pines Plantation Company owned all or substantially all of the real property lying within the confines of the South Beach Marina Village.[9]

10. On or about January 3, 1984, the Sea Pines Plantation Company conveyed all of the real property that it owned within the confines of South Beach Marina Village to South Beach Marina Village, A Partnership.[10]

11. Between 1988 and 1998, South Beach Marina Village, A Partnership, subsequently conveyed all of the property it owned within the confines of South Beach Marina Village to various entities and individuals, including Ned E. Gilleland, Sr.; the Gilleland Family Partnership; South Beach Marina Limited Partnership; and Robert A. Gossett, Jr.[11]

12. Between 1984 and 2008, Robert A. Gossett, Jr., and the Plaintiffs herein acquired all of the real property lying within the confines of the South Beach Marina Village with the exception of a single quarter share of one unit in the "South Beach Inn" which is known as R550-017-000-1212-0217(D).[12]

13. All of the properties lying within the confines of South Beach Marina Village, with

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8 *See:* Complaint, Paragraph 24; Answer and Counterclaim Paragraph 8. The Association asserts a lack of information to admit or deny the allegation, but does not allege any fact to controvert the allegation in the Complaint; Affidavit of Charles A. Scarminach, Paragraph 10; Affidavit of Robert A. Gossett, Jr., Paragraph 2.

9 *See:* Affidavit of Charles A. Scarminach, Paragraph 9.

10 *See:* Affidavit of Charles A. Scarminach, Paragraph 9; Affidavit of Ned E. Gilleland, Sr., Paragraph 3.

11 *See:* Affidavit of Ned E. Gilleland, Jr., Paragraphs 3, 4 and 5; Affidavit of Richard T. Sonberg, Paragraph 3; Affidavit of Robert A. Gossett, Jr., Paragraphs 6, 9,

12 *See:* Affidavit of Robert A. Gossett, Jr., Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9.

the exception of a single quarter share of one unit in the "South Beach Inn" which is known as R550-017-000-1212-0217(D), are currently owed by the Plaintiffs.[13]

14. In July of 2013, the Association asserted that the real property owned by the Plaintiffs was subject to the Sea Pines South Beach Covenants.[14]

15. Between August 18, 1970, and July of 2013, the Association never:

(a) Asserted never that any of the properties owned by the Sea Pines Company in the South Beach Marina Village were encumbered or otherwise affected by the Sea Pines South Beach Covenants, that the Sea Pines Company was obligated to pay assessments to the Association arising under the South Beach Covenants, that the Sea Pines Company was a member of the Association, or that the Sea Pines Company had any rights or obligations arising from the Sea Pines South Beach Covenants.[15]

(b) Asserted that any of the properties owned by Ned E. Gilleland, Sr., or South Beach Marina Village, a Partnership, or Gilleland Family Partnership, in the South Beach Marina Village were encumbered or otherwise affected by the Sea Pines South Beach Covenants, that Ned E. Gilleland, Sr., or South Beach Marina Village, a Partnership, or Gilleland Family Partnership were obligated to pay assessments to the Association arising under the South Beach Covenants, that Ned E. Gilleland, Sr., or South Beach Marina Village, a Partnership, or Gilleland Family Partnership were members of the Association, or that Ned E. Gilleland, Sr., or South Beach Marina Village, a Partnership, or Gilleland Family Partnership had any rights or obligations arising from the Sea Pines South Beach Covenants.[16]

(c) Asserted that any of the properties owned by South Beach Marina Limited Partnership, in the South Beach Marina Village were encumbered or otherwise affected by the Sea Pines South Beach Covenants, that South Beach Marina Limited Partnership was obligated to pay assessments to the Association arising under the South Beach Covenants, that South Beach Marina Limited Partnership, was a member of the Association, or that South

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13 *See:* Affidavit of Robert A. Gossett, Jr., Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9.

14 *See:* Complaint, Paragraph 33; Answer and Counterclaim, Paragraph 12. The Association does not allege that it asserted that the Sea Pines South Beach Covenants encumbered the Plaintiffs' property prior to July of 2013.

15 *See:* Affidavit of Charles A. Scarminach, Paragraph 11.

16 *See:* Affidavit of Ned E. Gilleland, Sr., Paragraph, 6, 7 and 8.

Beach Marina Limited Partnership, had any rights or obligations arising from the Sea Pines South Beach Covenants.[17]

(d) Asserted that any of the properties owned by Robert A. Gossett, Jr., or the Plaintiffs, in the South Beach Marina Village were encumbered or otherwise affected by the Sea Pines South Beach Covenants, that Robert A. Gossett, Jr., or any of the Plaintiffs were obligated to pay assessments to the Association arising under the South Beach Covenants, that Robert A. Gossett, Jr., or any of the Plaintiffs were members of the Association, or that Robert A. Gossett, Jr., or any of the Plaintiffs had any rights or obligations arising from the Sea Pines South Beach Covenants.[18]

16. Neither the Sea Pines Company, South Beach Marina Village, A Partnership, Ned E. Gilleland, Sr., the Gilleland Family Partnership, South Beach Marina Limited Partnership, Robert A. Gossett, Jr., or any of the Plaintiffs have ever paid a regular or special assessment to the Association related to any of the properties owned by them within the confines of South Beach Marina Village.[19]

17. Neither South Beach Marina Village, A Partnership, Ned E. Gilleland, Sr., the Gilleland Family Partnership, South Beach Marina Limited Partnership, Robert A. Gossett, Jr., or any of the Plaintiffs have ever attended any regular or special meeting of the Association in their capacity as an owner of any of the properties owned by them within the confines of South Beach Marina Village.[20]

18. Neither the Sea Pines Company, South Beach Marina Village, A Partnership, Ned E. Gilleland, Sr., the Gilleland Family Partnership, South Beach Marina Limited Partnership,

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[17] *See:* Affidavit of Richard T. Sonberg, Paragraphs 4, 8 and 9.

[18] *See:* Affidavit of Robert A. Gossett, Jr., Paragraphs 10, 11 and 12.

[19] *See:* Affidavit of Charles A. Scarminach, Paragraph 12; Affidavit of Ned E. Gilleland, Sr., Paragraph 9; Affidavit of Richard T. Sonberg, Paragraph 9; Affidavit of Robert A. Gossett, Jr., Paragraph 13.

[20] *See:* Affidavit of Ned E. Gilleland, Sr., Paragraph 10; Affidavit of Richard T. Sonberg, Paragraph 10; Affidavit of Robert A. Gossett, Jr., Paragraph 14.

Robert A. Gossett, Jr., or any of the Plaintiffs, have ever asserted that they had any rights of any nature arising under the Sea Pines South Beach Covenants, related to any of the properties owned by them lying within the confines of South Beach Marina Village.[21]

19. Neither South Beach Marina Village, A Partnership, Ned E. Gilleland, Sr., the Gilleland Family Partnership, South Beach Marina Limited Partnership, Robert A. Gossett, Jr., or any of the Plaintiffs have ever made any use of Common Property owned by the Association, in any way that is related to their ownership of real property within the confines of South Beach Marina Village.[22]

20. On or about October 22, 2013, the South Island Dredging Association, Inc., The Harbour Town Yacht Club Boat Slip Owners Association, Inc., the Gull Point Property Owners Association, Inc., South Beach Marina, Inc., and the Sea Pines South Beach Property Owners Association, Inc., entered into an Agreement for the purpose, among other things, of providing funding to pay for the dredging of waterways described as the Harbour Town Marina and Braddock Cove Creek.[23]

21. South Beach Marina, Inc., is a corporation organized and existing under the laws fo the State of South Carolina, with its principal place of business in Beaufort County, South Carolina. Robert A. Gossett, Jr., is a principal in South Beach Marina, Inc. South Beach Marina, Inc., is the corporate entity through which Robert A. Gossett, Jr., as principal of

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[21] *See:* Affidavit of Charles A. Scarminach, Paragraph 13; Affidavit of Ned E. Gilleland, Sr., Paragraph 11; Affidavit of Richard T. Sonberg, Paragraph 11; Affidavit of Robert A. Gossett, Jr., Paragraph 15.

[22] *See:* Affidavit of Ned E. Gilleland, Sr., Paragraph 12; Affidavit of Richard T. Sonberg, Paragraph 12; Affidavit of Robert A. Gossett, Jr., Paragraph 16.

[23] Braddock Cove Creek is the same body of water described in the Answer and Counterclaim of the Association and herein as Braddock Cove.

Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., contributed to the funding of the dredging of Braddock Cove Creek.

22. The terms and conditions of the October 22, 2013, Agreement, include the following:

> 3. **Liability for Allocated Costs.** Each Participating Party is solely and only responsible for payment of the Project allocated to each under the Agreement. Each Participating Party will promptly pay to Project Administrator its required contributions to pay any allocation to its account, and as necessary thereafter to balance the accounts of the parties following completion of the Project with the Agreement.

23. South Beach Marina, Inc., contributed the sum of Seven Hundred Eighty Seven Thousand and no/100 ($787,000.00) Dollars, or approximately 40% of the total cost of the dredging of Braddock Cove Creek.

ARGUMENT

The properties lying within South Beach Marina Village are all commercial properties. By the express language of the Commercial Covenants, the Commercial Covenants are: ". . . the sole applicable covenants restricting Commercial Property. . . ."[24]

The rules applicable to the construction of contracts are applicable to the construction of covenants in deeds. 17 S.C. Juris. *Covenants* § 69 (1993). However, covenants that restrict the free use of property must be strictly construed against limitations upon the property's free use. *Hyer v. McRee,* 306 S.C. 210, 410 S.E.2d 604 (SCApp.1991).[25] Where there is doubt, the doubt must be resolved in favor of the property's free use. *Id.* As

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[24] *See:* Affidavit of Charles A. Scarminach, Paragraph 8.

[25] Thus, to the extent the Association argues that the existence of the Sea Pines South Beach Covenants in the chain of title to any of the Plaintiffs' properties creates an ambiguity as to their applicability, as a matter of law, the ambiguity is resolved against the Association.

voluntary contracts, restrictive covenants will be enforced unless they are indefinite or contravene public policy. 17 S.C. Juris. *Covenants* § 100 (1993) (citing *Sea Pines Plantation Co. v. Wells,* 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987)). *See also: Houck v. Rivers,* 316 S.C. 414, 416, 450 S.E.2d 106, 108 (Ct. App. 1994) overruled on other grounds by *Buffington v. T.O.E. Enterprises,* 383 S.C. 388, 680 S.E.2d 289 (2009).

In this case, the plain language of the Commercial Covenants is that the Commercial Covenants are the only covenants that govern commercial property. The only evidence in this case is that the Plaintiffs' real property within South Beach Marina Village is commercial property. If the language of a contract is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect. *Lee v. Univ. of S. Carolina,* 407 S.C. 512, 757 S.E.2d 394 (SC 2014).

In addition to the above, to the extent that the Association claims an interest in the Plaintiffs' real property arising from the Sea Pines South Beach Covenants, the Association is barred from asserting such a claim as a result of its inaction for a period of more than 40 years.[26] S. C. Code Ann. § 15-3-380 (Supp. 2014), reads:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall

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[26] The Sea Pines South Beach Covenants were recorded in August 18, 1970. *See:* Complaint, Paragraph 18; Answer and Counterclaim, Paragraph 5. The first time that the Association made any claim that the Sea Pines South Beach Covenants encumbered any of the Plaintiffs' real property was July o f 2013. *See:* Affidavit of Robert A. Gossett, Jr., Paragraphs 10, 11 and 12. *See also:* Affidavit of Charles A. Scarminach, Paragraphs 11 and 12; Affidavit of Ned E. Gilleland, Sr., Paragraphs 6, 7 and 8; Affidavit of Richard T. Sonberg, Paragraphs 6, 7 and 8.

be deemed valid against the world after the lapse of such a period.

Under the express language of S. C. Code Ann. § 15-3-380 (Supp. 2014), the Association's inaction for a period of more than 40 years operates as a complete bar to the Association's claim "for any interest" in the Plaintiffs' real property.

In its Answer and Counterclaim, the Association asserts that the Plaintiffs are estopped to claim that the Sea Pines South Beach Covenants do not apply to their property, or that the Plaintiffs have waived any right they had to assert that the Sea Pines South Beach Covenants do not apply to their property. The basis of both the estoppel and waiver claims is: "...the participation in and accrual of benefits to them through the efforts of the [Association], specifically the dredging of Braddock Cove."[27] The allegation appears to be that the Association undertook to dredge Braddock Cove, that the Plaintiffs received a benefit from the Association's work. Based on the receipt of the benefit by the Plaintiffs, the Association claims that the Plaintiffs have waived their right to, or are estopped to, argue that their real properties are not encumbered by the Sea Pines South Beach Covenants.

First, the factual basis of the Association's argument is wrong. The Plaintiffs did not receive any benefit from the dredging of Braddock Cove that they did not pay for pro-rata, through South Beach Marina, Inc.[28] The Plaintiffs' contribution through South Beach Marina, Inc., was nearly 40% of the total cost of the dredging of Braddock Cove, which

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[27] *See:* Answer and Counterclaim, Paragraphs 31, 32, 46 and 47. Braddock Cove is a tidal waterway that fronts property owned by the Association and its members, and the South Beach Marina Village and all of the properties in it. Braddock Cove also fronts the Gull Point Marina, but the interests of the Gull Point Marina are not at issue in this action.

[28] *See:* Affidavit of Robert A. Gossett, Jr., Paragraphs 18, 19 and 20; Exhibit "A" to Affidavit of Robert A. Gossett, Jr.

exceeds the contribution of the Association.[29] The contract for the dredging of Braddock Cove, to which the Association is a party, sets out the express terms of the agreement by the parties to it, and the contract neither mentions nor makes any reference to the Sea Pines South Beach Covenants.[30]

A party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended.[31] There is no evidence to suggest that any of the Plaintiffs knew or could have known that by contributing to the dredging of Braddock Cove through South Beach Marina, Inc., they would waive their right to contest the Association's claim that Sea Pines South Beach Covenants encumbered their property.

The essential elements that must be shown by a party claiming an estoppel are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position.[32] There is no evidence that the Plaintiffs did anything that the Association relied on in connection with the dredging of Braddock Cove, and there is no evidence that the Association changed its position to its detriment based on anything the Plaintiffs did or are claimed to have done The contract for the dredging of Braddock Cove sets out the complete agreement of the parties to it in connection with the dredging project.

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29 *See:* Exhibit "A" to Affidavit of Robert A. Gossett, Jr. The contribution of the Association to the dredging of Braddock Cove was around 31% of the total cost.

30 *See:* Exhibit "A" to Affidavit of Robert A. Gossett, Jr.

31 *See: Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (S.C. 1992).

32 *See: Janasik v. Fairway Oaks Villas Horizontal Property Regime, supra.*

CONCLUSION

The Plaintiffs are entitled to Summary Judgment in this case, because there is no evidence showing the existence of a genuine issue of material fact related to the following:

1. The Sea Pines South Beach Covenants do not encumber the Plaintiffs' real property within the confines of South Beach Marina Village. The covenants applicable to the Plaintiffs' real property are the Commercial Covenants.

2. Even if the Sea Pines South Beach Covenants could be construed to be applicable to the Plaintiffs' real property within the confines of South Beach Marina Village, the Association is barred from enforcing them by S. C. Code Ann. § 15-3-380 (Supp. 2014), and its own inaction and failure to enforce them for a period of more than 40 years.

Further, there is no evidence that the Plaintiffs either waived their right to contest the applicability of the Sea Pines South Beach Covenants to their real property within the confines of South Beach Marina Village, or that the Plaintiffs are estopped to contest the applicability of the Sea Pines South Beach Covenants to their real property within the confines of South Beach Marina Village, that arises from the dredging of Braddock Cove.

Because not genuine issue of material fact exists with respect to any of the claims asserted in this action, as described above, the Plaintiffs are entitled to and move this Court for a grant of Summary Judgment in its favor. Rule 56, SCRCP; *Redwend Limited Partnership v. Edwards, supra.*; *Dawkins v. Fields, supra.*; *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc., supra.*; *Hoard ex rel. Hoard v. Roper Hospital, Inc., supra.*

Respectfully Submitted:

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This 10th day of June, 2015.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
CATWALK, LLC., MOONDOG, LLC., LET, LLC., LOST PARROT, LLC., VACATION INN, LLC., SBM, LLC., AND SOUTH BEACH SWIMMING POOL, INC., Plaintiffs, vs. SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., Defendant.	Case No. 2014-CP-07-01435 **DEFENDANT'S COMBINED RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT**

DEFENDANT SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, files its Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment. Defendant's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment is based upon the pleadings of record, discovery exchanged among the parties, the attached affidavit, the exhibits hereto, and documents recorded in the public records of Beaufort County, South Carolina.

QUESTION PRESENTED

The motions filed by Plaintiffs and Defendant pose one basic question for the Court: are Plaintiffs' properties subject to the 1970 Sea Pines South Beach Covenants which mandate that property owners must be members of the Sea Pines South Beach Owners Association, Inc.? If the answer is "yes', Defendant Sea Pines South Beach Owners' Association, Inc. is entitled to summary judgment. If the answer is "no", Plaintiffs are entitled to summary judgment.

PROCEDURAL HISTORY

Plaintiffs are seven affiliated corporations which own real property in South Beach, Sea Pines, Hilton Head Island, South Carolina. Plaintiffs filed their lawsuit as a non-jury matter in the Beaufort County Court of Common Pleas on June 17, 2014. Defendant Sea Pines South Beach Owners Association, Inc. ("the Association") is a South Carolina corporation chartered in 1969 whose purpose is to maintain and administer the common properties in South Beach, enforce covenants, and collect and disburse assessments. Defendant filed its Answer and Counterclaim on August 25, 2014. Plaintiffs later filed their Motion for Reference. On February 18, 2014, an Order entered referring this matter to the Master in Equity. Plaintiffs filed their

Motion for Summary Judgment on June 15, 2105. This pleading is Defendant's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment.

FACTUAL STATEMENT

Sea Pines is a private community governed by recorded covenants. In the broadest sense, the covenants define the rights, duties, and privileges of property owners and require owners to contribute to a common fund for maintenance, security, and improvements. A property owner (1) is automatically a member of the corporation which provides services and administers the funds and (2) is obligated to pay an owner's assessment. An owner may not opt out, just as an owner of real property in Beaufort County may not opt out of property taxes.

Sea Pines South Beach ("South Beach") is a subdivision of Sea Pines. South Beach consists of 102.63 acres of land located at the southern tip of Sea Pines, Hilton Head Island. South Beach is a mixed use area with residential, recreational, and commercial properties. South Beach, as with other discrete areas within Sea Pines, has additional covenants which govern it. In the case of South Beach, these originate with the *Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina and Provisions for the Sea Pines South Beach Owners' Association, Inc.*, dated June 25, 1970 ("1970 Covenants") and recorded in Book 176 at Page 203 in the Office of the Register of Deeds for Beaufort County. The 1970 Covenants apply to all property within the 102.63 acre South Beach parcel. A plat of the parcel is recorded in Plat Book 18 at Page 126. There is no distinction among residential, commercial, developed, or unimproved property.

The 1970 Covenants establish the Association, the Defendant herein. The Association maintains and administers the common areas in South Beach, enforces covenants, and levies and collects assessments. Every person and entity who owns a lot or dwelling unit in South Beach agree to pay annual and special assessments. Every owner subject to an assessment is a member of the Association.

Plaintiffs' properties at issue are within the 102.63 acre South Beach parcel ("Plaintiffs' Properties"). Their property is subject to the 1970 Covenants. Plaintiffs' lawsuit asks this Court to excuse them from obligatory membership in the Association and payment of assessments. Plaintiffs raise three arguments for their position that they do not have to contribute for the common good of South Beach. Plaintiffs argue that (1) a subsequent Commercial Use Covenants, recorded in 1973 in Deed Book 206 at Page 1143 ("the Commercial Use Covenants"), exempts Plaintiffs' Properties from Association membership and the obligations of the 1970 Covenants, (2) even if Plaintiffs' Properties are not exempt from the Association, it waived, abandoned, or is estopped from asserting its present and future rights to enforce the 1970 Covenants, and (3) any action by the Association is barred by Section 15-3-380 of the Code of Laws of South Carolina.

There is no dispute that Plaintiffs' Properties are within the 102.63 acre parcel. Plaintiffs are thus subject to the rights and obligations of the 1970 Covenants. These include membership in the Association and its corresponding rights and obligations. The Association contends the 1973 Commercial Use Covenants do not exempt Plaintiffs from these obligations. The

Commercial Use Covenants are additional restrictions if there is a commercial use of property. They do not preempt Plaintiffs from the 1970 Covenants or any other Sea Pines covenants. As to waiver, estoppel, and abandonment, the 1970 Covenants contain a clear non-waiver provision. Such provisions are valid and enforceable. Plaintiffs do not claim the non-waiver provision is ambiguous.

South Carolina Code Section 15-3-380 provides for a 40 year limitations period for an action for possession by a person under claim of title by written instrument. Defendant's Answer and Counterclaim does not claim possession of any of Plaintiffs' Properties by title of written instrument or otherwise.

I
DEFENDANT'S RESPONSE TO MOTION

The Association's response to Plaintiffs' Motion for Summary Judgment is contained in the Association's own Cross Motion for Summary Judgment, which follows. Since the Association will show it is entitled to summary judgment it necessarily follows that Plaintiffs' motion must be denied.

Plaintiffs' First Cause of Action must be denied because the clear and unambiguous provisions of the 1970 Covenants require the conclusion that Plaintiffs' Properties are within the South Beach parcel and Plaintiffs must be members of the Association.

As for Plaintiffs other causes of action, Plaintiffs submitted affidavits in support of their theories that Defendant waived (Second Cause of Action), abandoned (Third Cause of Action), is estopped (Fourth Cause of Action), or is barred by South Carolina Code Section 15-3-380 (Fifth Cause of Action) from claiming the 1970 Covenants apply to Plaintiffs' Properties. As will be shown, however, these affidavits are immaterial owing to the plain language of the covenants at issue, including the non-waiver provision of the 1970 Covenants. In addition, Plaintiffs have failed to show prejudice, reliance, or that the Association "unequivocally intended to relinquish a known right," which are required elements of these theories. See, Strickland v. Strickland 650 S.E.2d 465, 375 S.C. 76 (2007). Finally, the statute Plaintiffs rely upon for their Fifth Cause of Action has no applicability to the facts of this case.

II
DEFENDANT'S CROSS MOTION FOR SUMMARY JUDGMENT

DEFENDANT SEA PINES SOUTH BEACH OWNERS ASSOCIATION, INC., files this its Cross-Motion for Summary Judgment. Defendant's Cross Motion is timely filed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Defendant's Cross-Motion for Summary Motion Judgment establishes that Plaintiffs, owners of property in Sea Pines South Beach, Sea Pines Plantation, Hilton Head Island, are as a matter of law members of the Association and subject to the rights and obligations set forth in the 1970 Covenants. There is no genuine issue of material fact: Plaintiffs' ownership of real property in Sea Pines South Beach subjects them to the 1970 Covenants. This includes

membership in the Association and its corresponding rights and obligations, including the obligation to pay Association assessments.

A. SUMMARY JUDGMENT STANDARD

The Court is well aware of the burden of the moving party seeking summary judgment. Movant must show there is no genuine issue of material fact. S.C.R.Civ.P. 56(c). As stated in *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607,610, 230 S.E. 2nd 447,448 (1976), this requires "plain, palpable and indisputable facts... on which reasonable minds cannot differ." If the non-moving party presents evidentiary facts from which the Court may conclude or infer that a dispute exists, the motion must be denied. See, e.g. *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E. 2nd 92 (S.C. App. 2007). Such facts may be shown by the answer, discovery, and affidavits. See S.C.R.Civ. P. 56(c).

B. ARGUMENT

1. Plaintiffs' properties are subject to the 1970 Covenants and Plaintiffs are members of the Association as a matter of law.

On August 18, 1970 the Lighthouse Beach Company recorded the 1970 Covenants. **Exhibit 1**. The 1970 Covenants are recorded in Book 176 at Page 203 in the Office of the Register of Deeds for Beaufort County, South Carolina. As stated in the "witnesseth" or recitals, the purpose is to create "a planned unit development community known as South Beach". In addition, the 1970 Covenants state that the Association has been incorporated to maintain and administer the common properties, enforce the covenants, and levy and collect necessary assessments and charges needed for its purposes. See Exhibit 1, 1970 Covenants, page 1.

Article II, Section 1 of the 1970 Covenants states that all the real property described in Exhibit A to the document "shall be ...subject" to the covenants. Exhibit A to the Covenants reads:

> All that certain piece, parcel or block of land situate, lying and being on Hilton Head Island, in Beaufort County, South Carolina, shown and designated as South Beach on plat thereof recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 18 at Page 126.

Plats of the 102.63 acre South Beach parcel are attached as **Exhibit 2.**

Plaintiffs admit their properties lie within the South Beach parcel. **Exhibit 3,** Plaintiffs Response to Defendant's Request to Admit and Second Interrogatories, Response to Request No. 1.

Article V of the 1970 Covenants, titled Covenants for Maintenance Assessments, states that "each Owner of any lot" will "pay to the [Sea Pines South Beach Owners'] Association: (1) Annual assessments or charges; (2) Special Assessments...."

Article III, Membership, states that any owner subject to the Covenants "shall be a member of the Association." Plaintiffs state as a self-styled undisputed fact that the Association is a mere residential homeowners association, (Plaintiffs' Motion, page 3) and by inference they

are exempt. That is not only disputable, it is wrong. All property owners are members of the Association by the plain language of the 1970 Covenants.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Pres. Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 316, 751 S.E. 2nd 256, 259 (2013). See also *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.* 412 S.C. 387, 772 S.E. 2nd 528 (Ct. App. 2015) *reh'g denied* June 19, 2015). "The court is required to give effect to the plain meaning of the words in an unambiguous contract." *Schulmeyer v. State Farm Fire & Cas. Co.* 353 S.C. 491, 497, 579 S.E. 2nd 132, 135 (2003).

Plaintiffs' property is in the South Beach parcel. Plaintiffs do not contend the 1970 Covenants are ambiguous. Article I of the 1970 Covenants states that all property within the parcel is subject to the covenants. Article V states that all owners must pay assessments. Article III says that an owner subject to an assessment shall be a member of the Association.

2. Plaintiffs' title documents show the properties are subject to the 1970 Covenants

Plaintiffs' assert that they acquired Plaintiffs' Properties through a deed dated January 3, 1984, recorded in Deed Book 385 Page 1224 ("the 1984 Deed"). *See* Complaint, paragraph 29, and paragraphs 9-14 of p. 5 of Plaintiffs' Motion. A copy of the 1984 Deed is attached as **Exhibit 4**. The 1984 Deed and the other recorded documents by which Plaintiffs acquired Plaintiffs' Properties expressly conveyed them "subject to" the 1970 Covenants." Plaintiffs' Properties are all within the South Beach parcel described by metes and bounds in Exhibit A to the 1970 Covenants and they were never amended to remove Plaintiffs' Properties. Plaintiffs' Properties are, as stated in the 1984 Deed, subject to the 1970 Covenants, members of the Association, and subject to assessments.

Plaintiffs' title insurance policies, produced in discovery, identify exceptions to coverage including covenants, conditions, easements, and affirmative obligations as shown on recorded instruments applicable to the insured property.

The title insurance policies show conclusively that Plaintiffs' properties are subject to the 1970 Covenants.

Attached as **Exhibit 5** are five title insurance policies produced by Plaintiffs in response to Defendant's discovery request. Every policy:

1) Relates to property in South Beach owned by a Plaintiff or Plaintiffs;
2) Identifies the covenants, conditions, easements, and affirmative obligations for the insured property;
3) Identifies, among many others, the 1970 Covenants recorded in Deed Book 176 at Page 203 and the Commercial Use Covenants recorded in Deed Book 206 at Page 1143; and
4) Was prepared by Plaintiffs' counsel or firm.

3. The Commercial Use Covenants do not exempt Plaintiffs from Association membership

The Commercial Use Covenants, dated January 25, 1973, and recorded in Book 206 at Page 1143, **Exhibit 6**, are covenants running with the land for all retail commercial property on Hilton Head Island, wherever located, owned at the time of recording by Lighthouse Beach

Company. The Commercial Use Covenants "...make...a declaration of restrictive covenants affecting certain properties designated for commercial use". These covenants are not specific to South Beach.

The Commercial Use Covenants set forth, as examples, limitations on building size (Part I, 1), conditions for signage (Part I, 5), parking (Part I, 6) and sewerage requirements (part I, 8). An honest reading of the Commercial Use Covenants shows they create a restricted template for a business to follow if it plans to operate on land acquired from the Lighthouse Beach Company. The document aptly describes its provisions as "use restrictions."

Plaintiffs seize upon the term "sole applicable covenants" and argue these covenants preempt or exclude all others. This argument, taken to its logical conclusion, means that any commercial entity whose title may be traced back to Lighthouse Beach Company is not subject to other covenants, not just those relating to South Beach and the Association, but in the case of Plaintiffs all other applicable Sea Pines covenants.

The fallacy of Plaintiffs' argument is seen in the following quotes from the Commercial Use Covenants:

The first is found at the top of the second page of the Commercial Use Covenants, Exhibit 6, Deed Book 206 at Page 1144, immediately before the "sole applicable covenants" provision upon which Plaintiffs rely:

> The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application of the uniform covenants contained herein. Notice of such additional covenants will in all cases, be set forth in the contract of sale relating to such property."

The second is found at Page 1144:

> [I]t is the true intent and purpose of Lighthouse Beach Company, that to the extent that there is a conflict between those restrictions and covenants previously recorded,...the provisions of the instant Declaration shall govern and restrict commercial properties.

The third is found at the seventeenth page, Deed Book 206 Page 1159:

> The Company reserves in each instance the right to add in any contract or deed hereafter made, modifications and/or additions to the restrictive covenants as contained in this Declaration of Covenants, with such modified covenants being made applicable by reference to conveyances of land made subsequent to such modifications.

If, as Plaintiffs claim, the Commercial Use Covenants are the only covenants applicable to them, no conflict with other covenants and restrictions is possible. Yet in the body of the Commercial Use Covenants there are clear statements acknowledging that other covenants and restrictions exist and apply. This is inconsistent with the argument advanced by Plaintiffs.

4. The United States Bankruptcy Court found the 1970 Covenants applicable

One property at issue is a 3.961 acre parcel, the South Beach Pool tract, now owned by Plaintiff South Beach Swimming Pool, Inc. The corporation acquired the property from Robert A. Gossett (Deed Book 1320 at Page 1119). Mr. Gossett acquired the property from Sea Pines

Company (Deed Book 1198 at Page 450). Sea Pines Company's title arose out of the reorganization of Sea Pines by the United States Bankruptcy Court commencing in 1986.

The cornerstone of the Sea Pines reorganization was the sale by the Bankruptcy Trustee of numerous parcels of land to a new entity, the Sea Pines [Plantation] Company, Inc. The Limited Warranty Deed transferring the parcels is recorded in Deed Book 490 at Page 415. **Exhibit 7.** The properties transferred are set forth as Exhibit E to the Limited Warranty Deed and include, among others, the 3.961 acre parcel now owned by Plaintiff South Beach Swimming Pool, Inc. See Limited Warranty Deed, Exhibit E, Parcel A-21, South Beach Pool and Playground Area, at Page 479. The Trustee's Limited Warranty Deed further identifies the Permitted Exceptions (listed as Exhibit F to the Limited Warranty Deed) for each parcel transferred. The Trustee's Limited Warranty Deed states that the South Beach Pool and Playground Area, the parcel now owned by Plaintiff South Beach Swimming Pool, Inc. is subject to the 1970 Covenants. See Limited Warranty Deed, Exhibit F, Parcel A-21, item "d", at Page 500.

This determination was made 14 years after the filing of the Commercial Use Covenants upon which Plaintiffs rely. Mr. Gossett purchased and sold, and South Beach Swimming Pool, Inc. purchased the property with notice of and subject to the rights and obligations of the 1970 Covenants.

5. Other commercial entities in South Beach are members of the Association

Sea Pines Real Estate and South Beach Tennis Club are commercial property owners in South Beach. Both are members of the Association. *See* **Exhibit 8**, Affidavit of George Williams.

6. The 1970 Covenants contain an enforceable non-waiver provision

The 1970 Covenants state:

> Article VIII, Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, and **failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter.**

(Emphasis supplied.)

Plaintiffs do not assert that the language is ambiguous or otherwise does not mean precisely what it says. South Carolina courts have long held that non-waiver provisions are recognized and enforceable. *See Cobb & Seal Shoe Store v. Aetna Ins. Co.*78 S.C. 388, 58 S. E. 1099 (1907) "The non-waiver agreement should be given full effect as the contract of the parties." At 397. *See also Crotts v. Fletcher Motor Co.*, 219 S. C. 210, 64 S. E. 2nd 540 (1951); *Tilley v. Pacesetter Corp.*, 333 S.C. 508, 508 S. E. 2nd 16 (1998). Plaintiffs argue that the burden falls on the Defendant to monitor the agreement, rather than for Plaintiffs to comply with the agreed terms. This was soundly rejected over a century ago "[N]either the company nor its agent was under any obligation to the plaintiff to watch its officers and employees for violations of the policy and warn them against continuing such violations. The plaintiff's duty was to have the

conditions of the contract in mind and observe them, and he cannot shift the duty to the shoulders of the defendant's agent". *Cobb & Seal Shoe Store, supra,* at 395.

7. Section 15-3-380 of the Code of Laws is inapplicable

Plaintiffs base their Fifth Cause of Action on South Carolina Code Section 15-3-380. The statute provides for a 40 year limitations period for an action for adverse possession by a person under claim of title by written instrument. The statute states:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

The statute protects a person in possession of realty from an action commenced by another claiming possession of all or a part of the realty if such a claim has not been made in forty years. Defendant's Answer and Counterclaim does not claim possession of any of Plaintiffs' Properties by title of written instrument or otherwise.

C. CONCLUSION

The deeds by which Plaintiffs acquired Plaintiffs' Properties expressly include the 1970 Covenants. Undeniably, the properties are within the designated area for membership in the Association. Therefore, the 1970 Covenants apply to Plaintiffs' properties. The grantor exercised its right to add the 1970 Covenants, among others, in the 1984 Deed and other title documents for the properties that became Plaintiffs' Properties. The 1970 Covenants and the 1973 Commercial Use Covenants are clear and unambiguous and can be applied harmoniously. The Court should enter judgment for Defendant on Count I.

Plaintiffs' alternative counts II through V must be dismissed because the 1970 Covenants include a non-waiver provision that is binding on Plaintiffs. In addition, Plaintiffs have failed to show prejudice, reliance or that the Association unequivocally relinquished its known right, which are necessary elements of these theories. As to Plaintiffs' statutory claim, South Carolina Code Section 15-3-380 does not apply to the undisputed facts of this case. The statute only precludes claims for possession of real property, or a part thereof. Defendant does not claim possession of any part of Plaintiffs' Properties.

Defendant moves for an Order of this Court declaring Plaintiffs are subject to the 1970 Covenants and are members of the Association with the rights and obligations set forth in the 1970 Covenants and subsequent amendments.

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SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC.

August 7, 2015
Hilton Head Island, South Carolina

Sea Pines Land Use Covenants

Covenant Title:	Covenants and Restrictions for South Beach and Provisions for the South Beach Owners' Association, Inc.
Date:	June 25, 1970
Book Number:	176
Page Number:	203
Company Name(s):	Lighthouse Beach Company South Beach Owners' Association, Inc. Sea Pines Management Company, Inc.
General Location of Interpretive Litigation:	
Keywords:	

This Declaration, made this 25th day of June, A.D., 1970, by LIGHTHOUSE BEACH COMPANY, a South Carolina Limited Partnership with its principal place of business at Hilton Head, South Carolina, hereinafter called Company.

WITNESSETH:

WHEREAS, Company is the owner of the real property described in Article II of this Declaration and desires to create thereon a planned unit development community known as South Beach with permanent parks, playgrounds, open spaces, lakes, boat docks, boat channels, fishing docks, swimming pools, roadways, bike trails, common parks within townhouse areas, and other Common Properties for the benefit of the said community; and

WHEREAS, Company desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces, lakes boat docks, boat channels, fishing docks, swimming pools, roadways, bike trails, common parks within townhouse areas, and other Common Properties; and to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made, as provided in Article II, to the covenants, restrictions, easements, affirmative obligations, charges, and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, Company has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties and administering and enforcing

the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Company has caused to be incorporated under the laws of the State of South Carolina, as a non-profit corporation, SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth.

NOW, THEREFORE, the Company declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (sometimes referred to as "the covenants") hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context clearly shall indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to the Sea Pines South Beach Owners' Association, Inc., a South Carolina non-profit corporation.

(b) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land with any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties". The term "Common Properties" shall include any personal property acquired by the Association if said property is designated as "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners of the Properties, (subject to the fee schedules and operating rules adopted by the Association).

(d) "Lot" shall mean and refer to any improved or unimproved plat of land shown upon any recorded final subdivision map of any part of the Properties with the exception of Common Properties as heretofore defined.

(e) "Dwelling Unit" shall mean and refer to any portion of any building situated upon the Properties designed and intended for use and occupancy by a single family. "Dwelling Unit" shall include, without limiting the term, each apartment in any Multi-family structure, each townhouse (when two or more are located on a single lot), and each unit in a residential condominium.

(f) "Multi-family Structure" shall mean and refer to any building containing two or more Dwelling Units under one roof except when each Dwelling Unit is situated upon its own individual lot.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations or other legal entities, of the fee simple title to any Lot or Dwelling Unit situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgages unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

(h) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section 1 of Article II hereof.

(i) "Company" shall mean the Lighthouse Beach Company and its successors and assigns.

ARTICLE II

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, leased and occupied, subject to these covenants, is located on Hilton Head Island, Beaufort County, South Carolina, and is more particularly described in

Exhibit A hereto attached and by reference incorporated herein. All of the real property hereinabove described shall hereinafter be referred to as "Existing Property". The Company intends to develop the Existing Property in accordance with its Master Plan dated March 15, 1970. However, the Company reserved the right to review and modify the Master Plan from time to time based on its continuing research and design program.

Unless otherwise stated therein, the Master Plan shall not bind the Company, its successors and assigns to adhere to the Master Plan in the development of the land shown thereon. Subject to its right to modify the Master Plan as stated herein, the Company will convey the Common Properties shown on the Master Plan to the Association as provided in Article IV, Section 2. It also shall be understood that the Company shall be free to develop such portions or sections of the lands depicted in the Master Plan, as, in the reasonable exercise of its discretion, it deems in the best interest of the entire development, without regard to the relative location of such portions or sections within the overall plan; that it shall not be required to follow any predetermined sequence or order of improvements and development; and that it may bring within the plan of these covenants additional lands, and develop the same before completing the development of the existing property.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. The Company, its successors, and assigns shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development.

The additions authorized under this and the succeeding sub-section shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(b) Other Additions. Upon approval in writing of the Association pursuant to three-fourths (3/4) of the vote at a duly called meeting, the owner of any property other than the Company who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws of The Association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property, together with the covenants and restrictions established upon any other properties as one plan. No such merger or consolidation, however, shall effect

any revocation, change of or addition to the Covenants established by this Declaration within the Existing Property as herein provided.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Company and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot or Dwelling Unit which is subject by the Covenants to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership.

CLASS "A". Class "A" Members shall be all those owners as defined in Section One (1) with the exception of the Company. Class "A" Members shall be entitled to one vote for each Lot or Dwelling Unit in which they hold the interest required for membership by Section One (1). When more than one person holds such interest or interests in any Lot or Dwelling Unit all such persons shall be members, and the vote for such Lot or Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Dwelling Unit. A Member casting a vote representing a Dwelling Unit owned by such Member shall not be entitled to cast an additional vote for the Lot upon which said Dwelling Unit is situated. In the event a single Dwelling Unit is sold in fee with a Lot, the vote with respect thereto shall thereafter be cast on the basis of the Dwelling Unit only. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, the vote shall be split equally among the co-owners.

CLASS "B". The Class "B" Member shall be the Company. The Class "B" Member shall be entitled to one vote plus one vote for each held by a Class "A" Member. One vote of the Class "A" Membership shall be equivalent to one vote of Class "B" Membership. The total vote of the Association shall consist of the sum of the votes of Class "A" Members and of the votes of Class "B" Members.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment. Subject to the provisions of these covenants and the rules and regulations of the Association, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot or Dwelling Unit.

Section 2. Title to Common Properties. The Company may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Company, the Association is able to maintain the same, but notwithstanding any provision herein, the Company hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties to the Association within one hundred and eighty (180) days of the time they are completed. Said Common Properties may be conveyed subject to all restrictive covenants of record.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Company and of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any member of any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either nonpayment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein.

(e) The right of the Company to dedicate or transfer to any public or private utility, utility easements on any part of the Common Properties.

(f) The right of the Association to give or sell all or any part of the Common Properties including leaseholder interest to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer and determination as to purpose and conditions shall be authorized by the vote of three-fourth (3/4) of the vote at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company for each Lot and Dwelling Unit owned by it within the Properties hereby covenants and each Owner of any Lot or Dwelling Unit shall by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these covenants and to pay to the Association: (1) Annual Assessments or charges: (2) Special Assessments for the purposes set forth in Section 4 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing lien on the land and all the improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. In the case of co-ownership of a Lot or Dwelling Unit, all of such co-owners of the Lot or Dwelling Unit shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the improvement, maintenance, and operation of Common Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January 1, 1973, the annual assessments shall be not more than five and no/100 ($5.00) dollars per month per Lot or Dwelling Unit unless a higher annual assessment is approved by three-fourths (3/4) of the vote at the annual meeting. The owner of one or more Dwelling Units who also owns the Lot upon which said one or more Dwelling Units are located shall pay one assessment for each Dwelling Unit but shall not be assessed for the Lot upon which the Dwelling Units are located. From and after January 1, 1973, the annual assessment may be increased each year by five percent (5%) of the maximum authorized assessment for the preceding year unless three-fourths (3/4) of the vote at the annual meeting votes against said increase or votes to increase said annual assessment by a greater amount or to decrease the annual assessment. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a Waiver by the Association of its right to revert to the full assessment for the remaining year or years of the then current period fixed as provided in the preceding paragraph.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of three-fourths (3/4) of the vote at a duly called meeting of Members, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The Limitations of Section 3 hereof shall not apply to any change in the Maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under Article 2, Section 2, hereof, and under the By-Laws of the Association.

Section 6. Quorum for any Action Authorized. The presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Section 4.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The Assessments for any year, after the first year, shall become due and payable the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof, as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board Of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against such Lot or Dwelling Unit for each assessment period and shall, at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. The personal obligation of the Owner: The Lien Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon at the rate of eight percent (8%) per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by a mortgagee/owner to a subsequent owner.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

(a) The grantee of property over which said grantee holds a utility easement;

(b) All properties to the extent of any easement therein other than an easement which does not adversely affect the owner's use of the property;

(c) All Common Properties as defined in Article I, Section 2, hereof;

(d) All properties exempted from taxation by the laws of the State of South Carolina, upon the terms and to the extent of such legal exemptions;

(£) Properties owned by the Company used for recreation facilities; home and villa maintenance and service; meeting room and conference facilities and Dwelling Units occupied by the service and operating staff. Only land within the Existing Property which has been subdivided into Lots, and the plats thereof filed for public record in the Beaufort County Court House shall constitute a Lot for purposes of these assessments. Projected Locations for future platted

lots shown on the Master Plan will not be subject to assessment.

ARTICLE VI
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing and Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereon in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall be an obligation running with the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one additional arbitrator, and the decision of the majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE VII
ARCHITECTURAL CONTROL

Section 1. Review and Approval of Landscaping Specifications for Additions, Alterations or Changes to Structures. No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the Common Properties, nor shall any landscaping be done, nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by Lighthouse Beach Company and its duly appointed agent.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Developer or the Owner of any land subject to this Declaration, their respective legal representative, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless three-fourths (3/4) of the vote at the annual meeting approves a change in the covenants and restrictions. The covenants may be amended at any time if three-fourths (3/4) of the vote at a duly called meeting of the Association approves the change. Provided, however, that no such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such change, and unless written notice of the proposed agreement

is sent to every Owner of a Lot or Dwelling Unit and the Company at least thirty (30) days in advance of any action taken. During the period ending one (1) year from the date these covenants are recorded the Company may amend or add to these covenants, without the consent of the membership, to clarify or make provision for any items which the Company in its sole discretion considers necessary or desirable. The Company shall not, by reason of the power herein reserved, have the right to alter the amount, or method of making, annual or special assessments.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a Lot or Dwelling Unit shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address.

Section 3. Enforcement. Enforcement of these covenants and restriction shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damage, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Sub-section, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof which are hereby declared to be severable, and which shall remain in full force and effect.

IN WITNESS WHEREOF the Developer has caused this instrument to be executed the day and year first above written, by its president and attested by its secretary, and the corporate seal affixed, pursuant to a resolution duly and unanimously adopted by its Board of Directors.

The foregoing Declaration of Covenants and Restrictions is hereby approved and accepted as binding upon South Beach Owners' Association, Inc., its successors and assigns.

IN WITNESS WHEREOF, South Beach Owners' Association, Inc., has caused this instrument to be executed this 25th day of June, 1970, by its president and attested by its secretary, and its corporate seal to be hereto affixed.

PERSONALLY appeared before me Carolyn Warren who, on oath, says that s/he saw the within named Lighthouse Beach Company by Sea Pines Management Company, Inc., General Partner, by Charles E. Fraser, its President, and D.L. McCrary, its Secretary, sign the within instrument, and the said corporation, by said officers, seal said Declaration of Covenants and Restrictions and as its act and deed, deliver the same, and that he with Connie D. Herman witnessed the execution thereof.

Carolyn Warren

SWORN to before me this 25th day of June 1970.

Connie D. Herman
Notary Public
South Carolina

PERSONALLY appeared before me Carolyn Warren who, on oath, says that she saw the within named South Beach Owners' Association, Inc. by Harold D. Depkin, its President, and D.L. McCrary, its Secretary, sign the within instrument, and the said

corporation, by said officers, seal said instrument and as its act and deed, deliver the same, and that he with Connie D. Herman witnessed the execution thereof.

Carolyn Warren

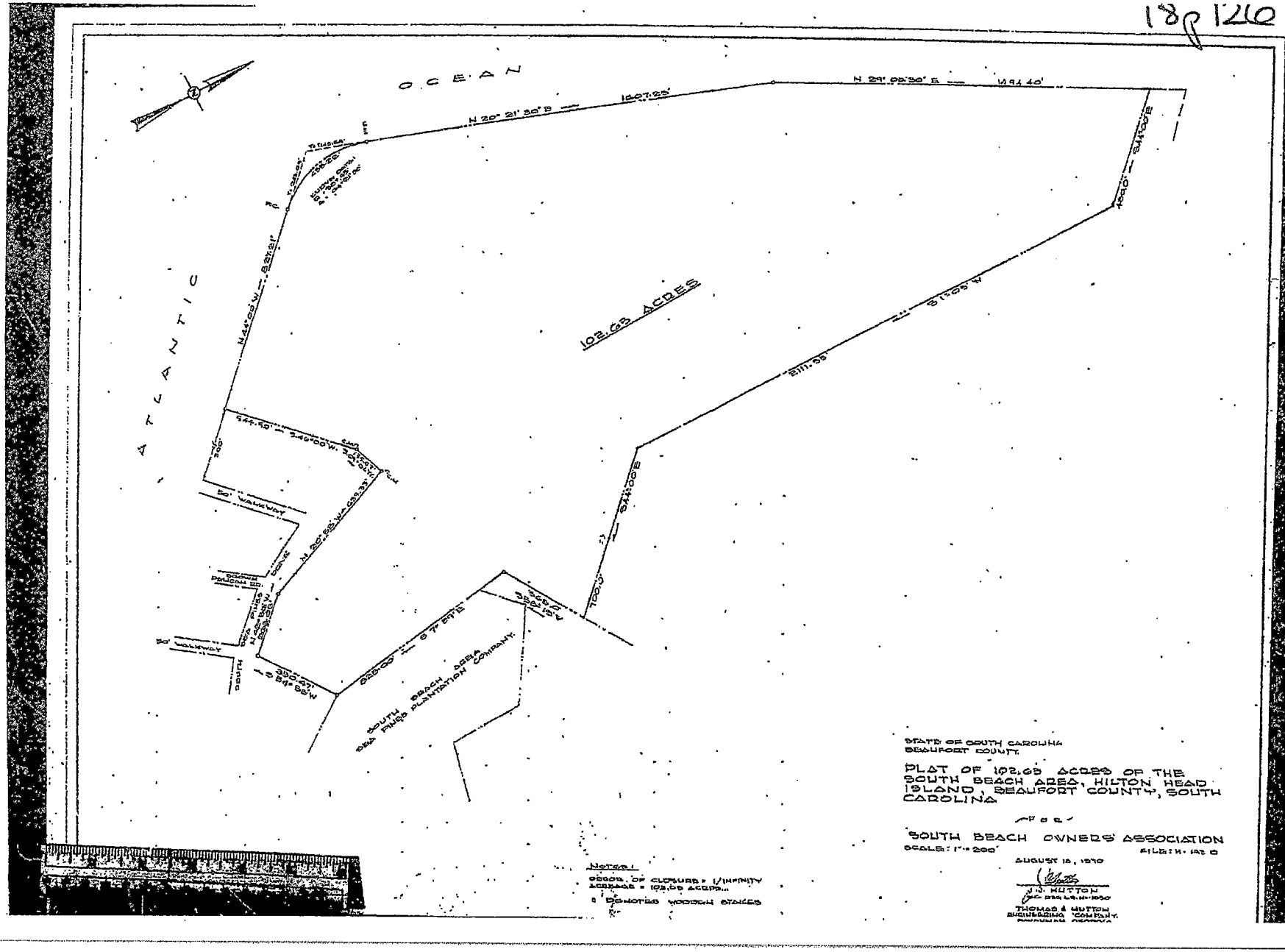
SWORN to before me this 25th day of June, 1970.

Connie D. Herman
Notary Public
South Carolina

EXHIBIT A

All that certain piece, parcel or block of land situate, lying and being on Hilton Head Island, in Beaufort County, South Carolina, shown and designated as South Beach on plat thereof recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat Book 18 at Page 126.

18 p 126


OCEAN
ATLANTIC
N 29° 09' 30" E — 1491.40'
N 20° 21' 30" E — 1807.23'
N 44° 03' W — 827.61'
102.63 ACRES
S 31° 05' W
2111.33'
S 41° 00' E
1600'
S 49° 00' W
744.40'
50' WALKWAY
N 20° 58' W 663.32'
SOUTH PELICAN DR.
N 40° 58' W 225.00'
S 49° 02' E
330.00'
S 7° 57' E
330.00'
S 82° 03' W
330.00'
SOUTH BEACH AREA
SEA PINES PLANTATION COMPANY
Notes:
BASIS OF CLOSURE = 1/INFINITY
ACREAGE = 102.63 ACRES±
DENOTES WOODEN STAKES
STATE OF SOUTH CAROLINA
BEAUFORT COUNTY
PLAT OF 102.63 ACRES OF THE SOUTH BEACH AREA, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
FOR
SOUTH BEACH OWNERS' ASSOCIATION
SCALE: 1" = 200'
FILE #: 142 B
AUGUST 18, 1970
W. D. HUTTON
S.C. REG. L.S. NO. 1050
THOMAS & HUTTON ENGINEERING COMPANY


N
Approximate metes and bounds area of Sea Pines South Beach Property Owners Association, Inc. per Exhibit A to Covenants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC., Plaintiffs,	)	
vs.	)	RESPONSE TO DEFENDANT'S REQUEST TO ADMIT AND SECOND INTERROGATORIES
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC., Defendant.	)	

TO: THE DEFENDANT AND J. MICHAEL JORDAN, ESQ., DEFENDANT'S ATTORNEY:

The Plaintiffs, Catwalk, LLC, Moondog, LLC, LET, LLC, Lost Parrott, LLC, Vacation Inn, LLC, SBM, LLC and South Beach Swimming Pool, Inc. (hereinafter collectively "Plaintiff") by and through their undersigned Attorney, in the above cause, hereby responds to the Defendant's Request to Admit and Second Interrogatories, and states as follows:

1. *Admit that each and every property of Plaintiffs' described in Plaintiffs' Complaint (Plaintiffs' Properties") lies within the property described as "Plat of 102.63 acres of the South Beach area, Hilton Head Island, Beaufort County, South Carolina" dated August 18, 1970 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 18 at Page 126.*

In Response to Defendant's Request to Admit Number 1, the Plaintiffs admit only that the properties owned by them lie within the boundaries of the property shown on the Plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 18 at Page 26.

2. *Admit that Plaintiffs, in response to discovery propounded by Defendant, produced, among other documents, the following First American Title Insurance policies:*

a. *Policy Number 5011300-0937128e*
b. *Policy Number FA-31-639828*
c. *Policy Number FA-PL-114515*
d. *Policy Number FA-31-383092*
e. *Policy Number FA-31-382523*
f. *Policy Number FA-31-382526*
g. *Policy Number EOS 212007*

The Plaintiffs admit only that the Plaintiffs produced the several title insurance policies listed under Defendants' Request to Admit Number 2.

3. *Admit that each policy identified in Request Number 2 above relates in whole or in part to some or all of Plaintiffs' Properties at issue in this lawsuit.*

In Response to Defendant's Request to Admit Number 3, the Plaintiffs admit only that the several title insurance policies listed under Defendants' Request to Admit Number 2 relate to properties owned by one or more of the Plaintiffs.

4. *Admit that each and every policy identified above sets forth Exemptions from Coverage including covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.*

In Response to Defendant's Request to Admit Number 4, the Plaintiffs admit only that the several title insurance policies listed under Defendants' Request to Admit Number 2 include a "Schedule B-1" which lists, among other things, documents that are recorded in the public record for Beaufort County, South Carolina.

5. *Admit that every First American Title policy identified above states that Plaintiffs' Properties are subject to numerous covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, including those found in Deed Book 176 at Page 203.*

Defendants' Request to Admit Number 5 is denied

6. *Admit that no First American Title policy identified above states that Plaintiffs' Properties are subject only to the recorded covenant, easements and affirmative obligations recorded in the Office of the Register of Deeds for Beaufort County, South*

Carolina in Deed Book 206 at Page 1143.

Defendants' Request to Admit Number 6 is denied.

7. *Admit that the Exemptions from Coverage as described in request Number 4 above for each and every policy identified in Number 2 above* was prepared by Plaintiffs' counsel Coltrane & Wilkins, LLC or predecessor firms in which Plaintiffs' counsel were principals.

In Response to Defendant's Request to Admit Number 7, the Plaintiffs admit that the several title insurance policies listed under Defendants' Request to Admit Number 2 were prepared by Coltrane & Wilkins, LLC, or firms in which Curtis L. Coltrane and John W. Wilkins were employees or members.

8. *Admit the Covenants and Restrictions for South Beach and Provisions for South Beach Owners' Association, Inc., recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, provides in Article VII, Section 3: "...and failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of the shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter."*

In response to Defendant's Request to Admit Number 8, the Plaintiffs admit only that the text quoted in part in Defendant's Request Number 8 appears in the declaration of covenants and restrictions that is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

SECOND INTERROGATORIES

6. *If your answer to Request Number 1 above is anything other than an unconditional admissions, state all facts which form the basis of your denial or conditional admission.*

No answer is required.

7. *If your answer to Request Number 2 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.*

No answer is required.

8. If your answer to Request Number 3 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.

No answer is required.

9. If your answer to Request Number 4 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.

No answer is requried.

10. If your answer to Request Number 5 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.

The title insurance policies listed under Defendant's Request to Admit Number 2 do not state that the subject property is either subject to or not subject to any item listed in Schedule "B-1". The several policies state only that the title insurer will neither defend nor indemnify the owner from any claim that arises from any of them.

11. If your answer to Request Number 6 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.

The title insurance policies listed under Defendant's Request to Admit Number 2 do not state that the subject property is either subject to or not subject to any item listed in Schedule "B-1". The several policies state only that the title insurer will neither defend nor indemnify the owner from any claim that arises from any of them.

12. If your answer to Request Number 7 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.

No answer is required.

13. *If your answer to Request Number 8 above is anything other than an unconditional admission, state all facts which form the basis of your denial or conditional admission.*

No answer is required.

COLTRANE & WILKINS, LLC

By: _____

Curtis L. Coltrane
South Carolina Bar Number 1344
Post Office Drawer 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (Fax)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 8th day of July, 2015.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That

SEA PINES PLANTATION COMPANY

In the State aforesaid, for and in consideration of the sum of Tenand 00/100 ($10.00) Dollars and other good and valuable consideration to it paid by SOUTH BEACH MARINA VILLAGE, a partnership, 26 Land's End Court, Hilton Head Island, South Carolina 29928, 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 SOUTH BEACH MARINA VILLAGE, a partnership, its Successors and Assigns forever, the following described property, to wit:

ALL that piece, parcel or tract of land shown and described on a plat entitled, "A Plat of the South Beach Marina Tract, A Section of Sea Pines Plantation" prepared by Jerry L. Richardson, Registered Land Surveyor S.C. #4784, dated February 21, 1980, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 29 at Page 14, as follows:

Beginning at a Point of Commencing on the eastern right-of-way of South Sea Pines Drive as shown on the said Plat of Record, thence north 46°00'00" east a distance of 156.52' to a point, said point being the Point of Beginning, thence north 44°00'00" west a distance of 74.74' to a point, thence north 43°31'00" east a distance of 30.00' to a point, thence north 44°00'00" west for a distance of 175.91' to a point, thence south 46°00'00" west a distance of 15.74' to a point, thence north 44°00'00" west a distance of 126.94' to a point, thence north 07°14'03" west a distance of 50.24' to a point, thence south 70°27'02" west a distance of 52.72' to a point, thence north 07°42'05" west a distance of 209.39' to a point, thence north 81°00'00" east a distance of 346.62' to a point, thence south 42°07'00" west a distance of 141.92' to a point, thence south 43°59'59" east a distance of 10.00' to a point, thence south 15°11'02" east a distance of 59.92' to a point, thence south 46°00'00" west a distance of 51.74' to a point, thence south 44°00'00" east a distance of 19.70' to a point, thence north 46°00'00" east a distance of 21.89' to a point, thence south 44°00'00" east a distance of 31.33' to a point, thence south 46°00'00" west a distance of 76.14' to a point, thence south 44°00'00" east a distance of 47.40' to a point, thence south 46°00'00" west a distance of 8.76' to a point, thence north 44°00'00" west a distance of 16.02' to a point, thence south 46°00'00" west a distance of 26.12' to a point, thence south 44°00'00" east a distance of 4.43' to a point, thence south 46°00'00" west a distance of 17.25' to a point, thence south 44°00'00" a distance of 5' to a point, thence north 46°00'00" east a distance of 8.76' to a point, thence south 44°00'00" east a distance of 29.88' to a point, thence north 46°00'00" east a distance of 8.52' to a point, thence south 44°00'00" east a distance of 23.56' to a point, thence north 46°00'00" east a distance of 23.30' to a point, thence north 44°00'00" west a distance of 23.53' to a point, thence north 46°00'00" east a distance of 11.56' to a point, thence south

SOUTH CAROLINA DOCUMENTARY STAMP TAX 999.00 JAN 1984 PD 11222

SOUTH CAROLINA DOCUMENTARY STAMP TAX 57.00 JAN 1984 PD 11222

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
530	17		128	

FILED IN DEED BOOK 385 PAGE 1224
FILED AT 052000 ON 01/10/84

44°00'00" east a distance of 177.28' to a point, thence north 45°32'00" east a distance of 22.26' to a point, thence south 44°00'00" east a distance of 39.94' to a point, thence south 46°00'00" west a distance of 150.00' to a point, said point being the aforesaid Point of Beginning.

AND, also, a perpetual non-exclusive Easement for Parking, Ingress & Egress over the shaded area shown on the said Plat of Record subject to Grantee's obligation to contribute to the up-keep and maintenance of the said shaded area.

SAVE AND EXCEPTING a non-exclusive Easement of Parking, Ingress & Egress for Grantor, its guests and invitees over existing parking areas, walkways, and driveways existing as of August 18, 1980, on the above described property; and

SAVE AND EXCEPTING FURTHER, a non-exclusive easement for access over those areas shown as "Access Easement" and "Walkway Easement" on the aforesaid plat of record; and

SAVE AND EXCEPTING FURTHER, a non-exclusive right and easement to use such restroom and washroom facilities now existing on the property adjacent to the South Beach General Store and the Land's End Building as shown on the aforesaid Plat of Record.

For a more detailed description as to metes, distances and bounds reference to the aforesaid Plat of Record may be had.

The property described herein is conveyed subject to the following restrictions, covenants, encumbrances and limitations of use:

1. Easements, restrictions, covenants, rights-of-way and non-monetary encumbrances of record, including, but not limited to, those recorded in Deed Book 150 at Page 41, Deed Book 172 at Page 316, as amended in Deed Book 195 at Page 103 and in Deed Book 223 at Page 2052, Deed Book 176 at Page 203, as amended in Deed Book 182 at Page 260; and Deed Book 224 at Page 1036, as amended; and in Deed Book 206 at Page 1143; and

2. Reservations of easements affecting the property as contained in the restrictions recorded in Deed Book 172 at Page 316, Deed Book 224 at Page 1036 as amended, and in Deed Book 206 at Page 1143; and

3. Reservations of easements for installation and maintenance of power, telephone, water and sewer lines; and

4. A deed restriction prohibiting the use of the property described herein for the construction of amusement parks of any kind, miniature golf courses, tennis courts, racquet ball, squash, hand ball courts, health and fitness clubs or facilities, real estate sales or rental offices, residential development of any kind to include living quarters, lodging facilities, residences, dwellings for overnight accommodations, whether in existing buildings or in facilities to be constructed, swimming pools, skating rinks, outdoor movie theaters, fireworks sales, wholesale outlets of any kind, outdoor musical concerts other than at certain hours and with the approval of the Grantor, pornographic books or sex paraphernalia sales, churches, post offices, schools, taxicab or limousine depots, gasoline or other fuel sales (excluding, however, fuel sales for boats) and automobile services and repair shops, and any immoral or illegal purposes in general; and

FILED IN DEED BOOK 385 PAGE 1225
FILED AT 052000 ON 01/10/84

5. A deed reservation in favor of the Grantor reserving to the said Grantor or its assignee the right of first refusal for the operation of any facility engaged in the sale or rental of bicycles, mopeds or other motorized two wheeled vehicles (if such motorized vehicles may be permitted at some future date within Sea Pines Plantation) or any other types of vehicles; and

6. Sea Pines Plantation Company's South Beach Commercial Covenants recorded in Book 206 at Page 1143 in the aforesaid Clerk's Office; and

7. An exception to the normal warranties title contained herein for any portion of the property described herein lying below the mean high water makr of the Atlantic Ocean, Calibogue Sound, Braddock Cove, Stoney Creek, marshland or tidewater streams within the bounds of, or adjacent to, the said described property; and

8. An exception to the normal warranties of title contained herein to any claim that may arise due to the fact that portions of the described property and/or improvements extend out into and/or over Braddock Cove as shown on the plats recorded in Plat Book 24 at Pages 48 and 49 and the above referred to Plat of Record.

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 South Beach Marina Village, a partnership, its Successors and Assigns forever.

AND the said SEA PINES PLANTATION COMPANY does hereby bind itself and its Successors, to warrant and forever defend all and singular the said premises unto the said South Beach Marina Village, a partnership, its Successors and Assigns, against itself and its Successors whomsoever lawfully claiming or to claim the same or any part thereof.

THE WITHIN DEED was prepared in the offices of Novit & Scarminach, P.A., Post Office Drawer 14, Hilton Head Island, South Carolina 29938.

The property conveyed hereby is a portion of the same property conveyed to the within Grantor by that Deed recorded in Deed Book 150 at Page 42 in the Office of the Clerk of Court for Beaufort County, South Carolina.

FILED IN DEED BOOK 395 PAGE 1236
FILED AT 292000 ON 31/10/84

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name and its corporate seal to be hereto affixed this 3 day of JANUARY in the year of our Lord, one thousand nine hundred and eighty-four, and in the two hundred and eighth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

SEA PINES PLANTATION COMPANY

By: _____ Its Vice President

Attest: _____ Its Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me KATHY WELLMAN who, on oath, says that (s)he saw the within named SEA PINES PLANTATION COMPANY, by Dennis R. Gerwing, its Vice President and Charles A. Scarminach, its Secretary, sign the within Deed, and the said Corporation, by said officers, seal said Deed, and as its act and deed, deliver the same, that (s)he with Terry L. Wynn witnessed the execution thereof.

SWORN to before me this 3 day of JANUARY, 1984

_____ (witness)

_____
Notary Public for South Carolina
My Commission Expires: 10/28/92

RECORDED THIS 19th DAY OF January 1984
IN BOOK PO PAGE _____
FEES, $ _____
Mary A. Gray W.S.
AUDITOR, BEAUFORT COUNTY, S. C.

Dowling

FILED IN DEED BOOK 385 PAGE 1227
FILED AT 090000 ON 01/19/84 28284
BOOK NUMBER 385 PAGES 1224- 1227
FILING FEE 4.00
STATE STAMPS 1578.00
COUNTY STAMPS 863.50
TOTAL FEES 2437.50
HENRY JACKSON
CLERK OF COURT BFT CNTY. SC

_____

First American Title

Loan Policy

Loan Policy of Title Insurance

ISSUED BY

First American Title Insurance Company

POLICY NUMBER

5011300-0937128e

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.

(Covered Risks Continued on Page 2)

In Witness Whereof, First American Title Insurance Company has caused its corporate name to be hereunto affixed by its authorized officers as of Date of Policy shown in Schedule A.

First American Title Insurance Company

FIRST AMERICAN TITLE INSURANCE COMPANY INCORPORATED SEPTEMBER 24, 1968 CALIFORNIA

Dennis J. Gilmore
President

Timothy Kemp
Secretary

For Reference:
File #: REGOS-13-022
Loan #: New

GOLTRANE & WILKINS, LLC
Title Wave, Inc.
By: John W. Wilkins, Esq.

(This Policy is valid only when Schedules A and B are attached)

This Jacket was created electronically and constitutes an original document

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5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection
   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
   (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
   (b) failure of any person or Entity to have authorized a transfer or conveyance;
   (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
   (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
   (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
   (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
   (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
   (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
      (i) contracted for or commenced on or before Date of Policy; or
      (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
   (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
   (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
(a) a fraudulent conveyance or fraudulent transfer, or
(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11 (b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
(i) the amount of the principal disbursed as of Date of Policy;
(ii) the amount of the principal disbursed subsequent to Date of Policy;
(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
(iv) interest on the loan;
(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
(vi) the expenses of foreclosure and any other costs of enforcement;
(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
(viii) the amounts to pay taxes and insurance; and
(ix) the reasonable amounts expended to prevent deterioration of improvements;
But the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The insured named in Schedule A.
(i) The term "Insured" also includes
(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is obligor under the provisions of Section 12(c) of these Conditions;
(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
(D) successors to an Insured by its conversion to another kind of Entity;
(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
(2) if the grantee wholly owns the named Insured, or
(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action.

It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured.

The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the

time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim Insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) If a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way; Santa Ana, CA 92707. Phone: 888-632-1642.

FATIC-438
Schedule A
ALTA Loan Policy (6-17-06)

SC-#: 997-0309
Gross Premium: $15,907.20
SI:
Other Policy:
RI: $12,500,000.00

First American Title Insurance Company

SCHEDULE A

First American Title Insurance Company
1 First American Way
Santa Ana, California 92707

Issuing Office File No.: REGOS-13-022 Policy No.: 5011300-0937128c

Loan No.:

Address Reference: various, Hilton Head Island, SC 29928

Date of Policy: DATE/TIME OF RECORDING OF MORTGAGE Amount of Insurance: $10,531,000.00

1. Name of Insured:
Bank of America, N.A., its successors and/or assigns as their interests may appear

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
Fee Simple

3. Title is vested in:
Moondog, L.L.C. (Tracts I-V) and Catwalk, L.L.C. (Tract VI) and Lost Parrot, L.L.C. (Tract VII) and Vacation Inn, L.L.C. (Tracts VIII-XI) and SBM, LLC (Tract XII) and LET, LLC (Tract XIII)

4. The Insured Mortgage and its assignments, if any, are described as follows:
Mortgage from Moondog, L.L.C. and Catwalk, L.L.C. and Lost Parrot, L.L.C. and Vacation Inn, L.L.C. and SBM, LLC and LET LLC to Bank of America, N.A., dated April 25, 2013, recorded April 26, 2013 at 11:48:15 AM in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3234, at Page 1992, to secure $10,531,000.00.

5. The Land referred to in this policy is described as follows:
See Attached Exhibit "A" for Legal Description.

6. This policy incorporates by reference those ALTA endorsements selected below or attached hereto : ALL ENDORSEMENTS ATTACHE

4-06	(Condominium)	4.1-06 (Condominium)
5-06	(Planned Unit Development)	5.1-06 (Planned Unit Development)
6-06	(Variable Rate)	6.2-06 (Variable Rate - Negative Amortization)
8.1-06	(Environmental Protection Lien)	
	Paragraph b refers to the following state statute(s): NONE	
9-06	(Restrictions, Encroachments, Minerals)	
13.1-06	(Leasehold Loan)	
14-06	(Future Advance - Priority)	
14.1-06	(Future Advance - Knowledge)	
14.3-06	(Future Advance - Reverse Mortgage)	
22-06	(Location) The type of improvement is a , and the street address is as shown above.	

COLTRANE & WILKINS, LLC / Title Wave, Inc.
(Insert above line name of Agent)

By: _____
John W. Wilkins

FATIC-438
Schedule A
ALTA Loan Policy (6-17-06)

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: REGOS-13-022 Policy No.: FA-5011300-0937128c

LEGAL DESCRIPTION:

TRACT I (Salty Dog Café and Restaurant Parcel):

ALL that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

This parcel is also known as Unit III Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2990 at Page 1882.

TMS# R550-017-000-1089-0001

TRACT II (South Beach Sales Office Parcel - 224 S. Sea Pines Drive):

ALL that certain piece, parcel or lot of land with improvements thereon, containing 1.279 acres, more or less, and being designated on a plat entitled "Plat of 1.279 Acres South Beach Area of Sea Pines Plantation, Beaufort County, South Carolina" dated November 9, 1987, and prepared by Surveying Consultants of Hilton Head Island, Inc., Terry G. Hatchell, S.C.R.L.S. #11059, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69.

TMS# R550-019-000-0245-0000

TRACT III (Gazebo Parcel):

ALL that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

This parcel is also known as Unit II Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2990 at Page 1882.

TMS# R550 017 000 1213 0001

TRACT IV (Salty Dog T-Shirt Factory Parcel - 67 Arrow Road):

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bay Commercial Subdivision on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot Number Seventy-Three (73) on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 29. Said property having dimensions, metes and bounds as shown on the above mentioned plat.

TMS# R552-014-000-0872-0000

TRACT V (Salty Dog Warehouse Parcel - 69 Arrow Road):

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bay Commercial Subdivision on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot Number 44 on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 28 at Page 190. Said property having dimensions, metes and bounds as shown on the above mentioned plat.

TMS# R552-014-000-0845-0000

TRACT VI (Common Areas):

FATIC-138
Schedule A
ALTA Loan Policy (6-17-06)

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: REGOS-13-022 Policy No.: FA-5011300-0937128e

LEGAL DESCRIPTION:

ALL those certain pieces, parcels or lots of land shown on a plat entitled "Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation" prepared by Jerry L. Richardson, S.C.R.L.S. #4784, dated February 21, 1980, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14; which are more specifically shown and designated "Common Areas" on that certain plat entitled "A Survey of South Beach Marina Village, a Section of Sea Pines Plantation," dated March 24, 1988, prepared by Jerry L. Richardson, SCRLS #4784, and recorded in said Register of Deeds Office in Plat Book 35 at Page 128.

A portion of this parcel is also known as the Common Area of Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2990 at Page 1882.

AND ALSO, a perpetual non-exclusive Easement for Parking, Ingress and Egress over the shaded area shown on the above-mentioned Plat of record.

AND ALSO, a perpetual non-exclusive Easement for wood deck and stair encroachments as set forth in the Mutual Drainage and Encroachment Easement Agreement recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2927 at Page 1668.

TMS# R550-017-000-1128-0000 & R550-017-000-1240-0000

TRACT VII (The Wreck of the Salty Dog Restaurant Parcel):

ALL that certain Unit 300 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, South Carolina, as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632.

ALSO, all the right, privileges and common elements appertaining to the above-described unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

TMS# R550-017-000-1212-0300

TRACT VIII (Retail Shops):

ALL those certain Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, and 114/115 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632.

ALSO all the rights, privileges and common elements appertaining to the above described units as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

TMS# R550-017-000-1212-0101 through 0114.

TRACT IX (General Store Parcel):

ALL that certain piece, parcel or lot of land known as Parcel I, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

This parcel is also known as Unit I Lands End Tavern Horizontal Property Regime by virtue of the Amendment and Restatement of the Master Deed Establishing the Lands End Tavern Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2990 at Page 1882.

FATIC-438
Schedule A
ALTA Loan Policy (6-17-06)

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: REGOS-13-022 Policy No.: FA-5011300-0937128e

LEGAL DESCRIPTION:

TMS# R550-017-000-1139-0001

TRACT X (South Beach Marina Quartershares):

ALL those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-C, 203-D, 204-A, 204-B, 204-C, 204-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 212-A, 212-B, 212-C, 212-D, 213-A, 213-B, 213-C, 213-D, 214-A, 214-B, 214-C, 214-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, 216-D, 217-A, 217-B, 217-C in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in each said Unit as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarters and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492; as amended in Deed Book 533 at Page 2492, and re-recorded in Deed Book 539 at Page 2099; in Deed Book 539 at Page 2102; in Deed Book 542 at Page 1737; in Deed Book 547 at Page 11, and re-recorded in Deed Book 553 at Page 387; in Deed Book 572 at Page 134, and in Deed Book 572 at
Page 138.

TMS# R550-017-000-1212-0201 through 0217

TRACT XI (1732 Bluff Villas):

ALL that certain Apartment situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Apartment Number 1732 of South Beach Village Bluff Apartments Horizontal Property Regime 56, and being more particularly shown and described by reference to the Master Deed of South Beach Associates establishing said Horizontal Property Regime, said Master Deed Being dated the 28th day of August, 1972, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 201 at Page 1128.

ALSO, all the rights, privileges and common elements appertaining to the above-described Apartment set forth in the Master Deed and By-Laws of the South Beach Village Horizontal Property Regime 56.

TMS# R550-017-000-0973-0035

TRACT XII (South Beach Marina):

ALL those certain pieces, parcels, or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as Unit B, Unit C, and Unit D of the LANDS END TAVERN HORIZONTAL PROPERTY REGIME in SEA PINES PLANTATION, and being more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1988, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 498 at Page 979, as amended by Amendment and Restatement recorded in Record Book 2990 at Page 1882, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

ALSO, all the rights, privileges, and common elements appertaining to the above described Units as set forth in the Master Deed and By-Laws of the Lands End Tavern Horizontal Property Regime.

TMS# R550-017-000-1208-0002; R550-017-000-1208-0003; R550-017-000-1208-0004

ALSO, all that certain piece, parcel, or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, commonly known as the BOAT RAMP at SOUTH BEACH MARINA VILLAGE as more particularly shown and described on that certain plat entitled "A Survey of South Beach Marina Village, a Section of Sea Pines Plantation" by Surveying Consultants of Hilton Head Island, Inc. Terry G. Hatchell, SCRLS#11059, dated March 8, 1988, and recorded March 24, 1988, in the ROD Office for Beaufort County, South Carolina, in Plat Book 35 at Page 128.

FATIC-438
Schedule A
ALTA Loan Policy (6-17-06)

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: REGOS-13-022 Policy No.: FA-5011300-0937128c

LEGAL DESCRIPTION:

AND, ALSO, a Nonexclusive Easement, for dry storage for not more than twenty (20) boats as provided in that certain Nonexclusive Easement for Boat Storage dated March 22,1988 and recorded on March 24, 1988 in the ROD Office for Beaufort County, South Carolina, in Record Book 498 at Page 1066.

ALSO, A NON-EXCLUSIVE EASEMENT for access, ingress, and egress over the roads and driveways in South Beach Marina Village, and for vehicular parking in designated parking areas, all as shown on the aforesaid plat.

TMS# R550-017-000-1209-0000

TRACT XIII (Lands End Tavern):

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows: Unit A of the Lands End Horizontal Property Regime as more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1988, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 498 at Page 979, as amended by Amendment and Restatement recorded in Record Book 2990 at Page 1882 together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

TMS# R550-017-000-1208-0001

First American Title Insurance Company

SCHEDULE B

EXCEPTIONS FROM COVERAGE

Issuing Office File No.: REGOS-13-022 Policy Number: FA-5011300-09371280

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.

4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.

5. Any mineral or mineral rights leased, granted or retained by current or prior owners.

NOTE: Exceptions Numbered 1-5 Above are Hereby Deleted.

6. Taxes and assessments for the year 2013 and subsequent years, not yet due and payable.

7. Matters of survey shown on plats which are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 232; in Plat Book 35 at Page 128; in Plat Book 24 at Page 48; in Plat Book 29 at Page 14; in Plat Book 33 at Page 127; in Plat Book 34 at Page 78; in Plat Book 34 at Page 79; in Plat Book 37 at Page 107; in Plat Book 35 at Page 129; in Plat Book 21 at Page 57; in Plat Book 24 at Page 76; in Plat Book 23 at Page 71; in Plat Book 31 at Page 226; in Plat Book 31 at Page 234; in Plat Book 72 at Page 79; in Plat Book 20 at Page 73; in Plat Book 75 at Page 121; and in Plat Book 131 at Page 73 (Applicable to South Beach Marina Village - TRACTS I-III, VI-X, XII, XIII)

8. Matters of survey shown on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 20 at Page 73 (Applicable to TRACT XI)

9. Matters of survey shown on plats recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 19 at Page 140; in Plat Book 20 at Page 195; in Plat book 24 at Page 29; in Plat Book 28 at Page 190; in Plat Book 29 at Page 29, and in Plat Book 42 at Page 154 (Applicable to Palmetto Bay Commercial Subdivision -TRACTS IV & V)

10. Matters of survey shown on plats recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69; in Plat Book 20 at Page 155, and in Plat Book 27 at Page 29.
(Applicable to TRACT II)

11. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 224 at Page 1036; in Deed Book 232 at Page 937; in Deed Book 234 at Page 1416; in Deed Book 234 at Page 1833; in Deed Book 236 at Page 1255; in Deed Book 244 at Page 1231; in Deed Book 249 at Page 1960; in Deed Book 255 at Page 1255; in Deed Book 273 at Page 432; in Deed Book 358 at Page 1032; in Deed Book 420 at Page 1825; in Deed Book 495 at Page 2140; in Deed Book 590 at Page 875; in Deed Book 390 at Page 166; in Record Book 1415 at Page 2452; in Deed Book 490 at Page 712; in Deed Book 519 at page 1355; in Deed Book 520 at page 1907; in Deed Book 558 at Page 2407; in Deed Book 490 at Page 766; in Deed Book 490 at Page 771; in Deed Book 519 at Page 1150; in Deed Book 538 at Page 1105; in Deed Book 519 at Page 1161; in Deed Book 195 at Page 93; in Deed Book 454 at Page 525; in Deed Book 544 at Page 1992; in Deed Book 544 at Page 1994; in Deed Book 544 at Page 1999; in Deed Book 545 at Page 2542; in Deed Book 564 at Page 157; in Deed Book 153 at Page 183; in Deed Book 153 at Page 184; in Deed Book 354 at Page 337; in Deed Book

11. 430 at Page 1160; in Deed Book 453 at Page 1625; in Deed Book 452 at Page 691; in Deed Book 148 at Page 34; in Deed Book 232 at Page 2013; in Record Book 1464 at Page 625; in Record Book 1760 at Page 843; in Record Book 2259 at Page 146; in Record Book 2711 at Page 727; in Record Book 2711 at Page 736; in Record Book 2711 at Page 738; in Record Book 2711at Page 742; in Record Book 2711at Page 746; and in Record Book 3143 at Page 2106, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title (Applicable to Sea Pines Plantation - TRACTS I-III, VI-XIII)

12. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632; in Deed Book 528 at Page 452; in Deed Book 532 at Page 2492; in Deed Book 539 at Page 2099; in Deed Book 539 at Page 2102; in Deed Book 547 at Page 11; in Deed Book 572 at Page 134; in Deed Book 572 at Page 138; in Deed Book 172 at Page 316; in Deed Book 195 at Page 103; in Deed Book 223 at Page 2052; in Deed Book 313 at page 1881; in Deed Book 150 at Page 41; in Deed Book 403 at Page 1112; in Deed Book 176 at Page 203; in Deed Book 182 at Page 260; in Deed Book 435 at Page 532; in Deed Book 206 at Page 1143; in Deed Book 144 at Page 155; in Deed Book 572 at Page 127; in Deed Book 498 at Page 1048; in Deed Book 78 at Page 306; in Record Book 738 at Page 1771; in Record Book 846 at Page 1204; in Deed Book 193 at Page 1653; in Deed Book 435 at Page 1982; in Deed Book 440 at Page 309; in Deed Book 465 at Page 1100; in Deed Book 235 at Page 644; in Deed Book 263 at Page 1219; in Deed Book 130 at Page 34; and in Record Book 2927 at Page 1668; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title (Applicable to South Beach Marina Village - TRACTS I-III, VI-X, XII, XIII).

13. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 78 at Page 306; Deed Book 291 at Page 1474; in Deed Book 295 at Page 476; in Deed Book 302 at Page 685; in Book 302 at Page 696; in Deed Book 310 at Page 945; in Deed Book 317 at Page 382; in Deed Book 520 at Page 1907; in Deed Book 526 at Page 1876, in Deed Book 596 at Page 29; in Record Book 2873 at Page 1338, and in Record Book 2873 at Page 1341, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c) but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title
(Applicable to Palmetto Bay Commercial Subdivision - TRACTS IV & V).

14. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 263 at Page 329; in Deed Book 371 at Page 1460; in Deed Book 172 at Page 316; in Deed Book 223 at Page 2052; in Deed Book 313 at Page 1881; in Deed Book 150 at Page 41; in Deed Book 176 at Page 203; and in Record Book 3211 at Page 2124, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title (Applicable South Beach Village Bluff Horizontal Property Regime 56 - TRACT XI).

15. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for South Beach Marina Village Horizontal Property Regime, dated May 1, 1988, and recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 508, at Page 632; in the related by-laws; in any instrument creating the estate or interest insured by this policy; and in any amendment or restatement thereto, or in any related instrument referred to in any of the instruments aforesaid, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title (Applicable to TRACTS VII, VIII & X)

16. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and

16. recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 498, at Page 979; as Amended and Restated in Record Book 2990 at Page 1882, in the related by-laws; in any instrument creating the estate or interest Insured by this policy; and in any amendment or restatement thereto, or in any related instrument referred to in any of the instruments aforesaid, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title. (Applicable to TRACTS I, III, VI, IX, XII & XIII)

17. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for South Beach Village Bluff Horizontal Property Regime 56, dated August 28, 1972, and recorded in the Office of the Register of Deeds for Beaufort County in Deed Book 201, at Page 1128; in the related by-laws; in any instrument creating the estate or interest Insured by this policy; and in any amendment or restatement thereto, or in any related instrument referred to in any of the instruments aforesaid., but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of Title (Applicable to TRACT XI)

18. Any right, Title or interest of anyone whomever in any of the Land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas, or any tidal area below the mean high water mark, or the spring tide flood-water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure Title to the portion of the Land which lies below the mean high water mark of rivers, creeks or ocean, nor Title to any portion of the Land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

19. Any inaccuracy in any statement made as to the quantity of Land contained within the boundaries of the Land described in Schedule A.

20. County tax map numbers and street addresses are included for informational purposes only.

First American Title Insurance Company

SCHEDULE B

Issuing Office File No.: REGOS-13-022 Policy Number: FA-5011300-0937128e

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

1. 23 unrecorded leases of parties in possession.

ENDORSEMENT

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

Issuing Office
File No.: REGOS-13-022

Attached to
Commitment
Policy No.: 5011300-0937128e

This policy is hereby amended by deleting paragraph No. 13 from the Conditions and Stipulations.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

This endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

FIRST AMERICAN TITLE INSURANCE

COLTRANE & WILKINS, LLC

By: _____
Authorized Signatory

FATIC-431
Schedule A
ALTA Loan Policy

SC - #: 997-0309
Gross Premium: $8,102.25
SI: ☐
Other Policy:
RI: $11,520,500.00

COMMERCIAL ☑ RESIDENTIAL ☐ NEW HOME ☐ RESALE ☐ 2ND MORTGAGE ☐ REFINANCE ☑ TIMESHARE ☐ OTHER ☐

First American Title Insurance Company

SCHEDULE A

Issuing Office File No.: **REGOS-05-342** Policy No.: **FA- 31-639828**

Date of Policy: **September 20, 2005 @ 1:08:20 PM** Amount of Insurance: **$12,500,000.00**

1. Name of Insured:
   Regions Bank, its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:
   Fee Simple

3. Title to the estate or interest in the land is vested in:
   Moondog, L.L.C., Catwalk, L.L.C., Vacation Inn, L.L.C., Lost Parrot, L.L.C., SBM, L.L.C., and LET, L.L.C.

4. The insured mortgage and assignments thereof, if any, are described as follows:
   Mortgage from Moondog, L.L.C., Catwalk, L.L.C., Vacation Inn, L.L.C., Lost Parrot, L.L.C., SBM, L.L.C., and LET, L.L.C. to Regions Bank, dated September 16, 2005, recorded September 20, 2005, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2223, at Page 1427, to secure $12,500,000.00.

5. The land referred to in this policy is described as follows:
   See Attached Exhibit "A" for Legal Description.

Alford & Wilkins, P.C.

By: _____
John W. Wilkins

PI. 00164

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: **REGOS-05-342**

LEGAL DESCRIPTION:

MOONDOG, L.L.C PARCELS:

Salty Dog Café and Restaurant Parcel:

ALL that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

South Beach Sales Office Parcel (224 S. Sea Pines Drive):

ALL that certain piece, parcel or lot of land with improvements thereon, containing 1.279 acres, more or less, and being designated on a plat entitled AA Plat of 1.279 Acres South Beach Area of Sea Pines Plantation, Beaufort County, South Carolina@ dated November 9, 1987, and prepared by Surveying Consultants of Hilton Head Island, Inc., Terry G. Hatchell, S.C.R.L.S. #11059, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69.

Gazebo Parcel:

ALL that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

Salty Dog T-Shirt Factory Parcel:

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bay Commercial Subdivision on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot Number Seventy-Three (73) on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 29. Said property having dimensions, metes and bounds as shown on the above mentioned plat.

Salty Dog Warehouse Parcel (69 Arrow Road)

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bay Commercial Subdivision on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot Number 44 on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 28 at Page 190. Said property having dimensions, metes and bounds as shown on the above mentioned plat.

Tax Map ID 552-14-845

CATWALK, L.L.C. PARCELS

Common Areas & Boardwalks:

ALL of the parcels designated as "Common Area" contained within the following property:

ALL that certain piece, parcel or lot of land shown and described on a plat entitled AA Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation prepared by Jerry L. Richardson, S.C.R.L.S. #4784, dated February 21, 1980, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14.

AND ALSO, a perpetual non-exclusive Easement for Parking, Ingress and Egress over the shaded area shown on the above-mentioned Plat of record.

LOST PARROT, L.L.C. PARCEL

The Wreck of the Salty Dog Restaurant Parcel:

ALL that certain Unit 300 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, South Carolina, as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632, as amended.

ALSO, all the right, privileges and common elements appertaining to the above-described unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

VACATION INN, L.L.C. PARCELS

Retail Shops:

ALL those certain Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632.

ALSO all the rights, privileges and common elements appertaining to the above described units as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

General Store Parcel:

ALL that certain piece, parcel or lot of land known as Parcel I, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

South Beach Marina Quartershares:

ALL those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-C, 203-D, 204-A, 204-B, 204-C, 204-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 212-A, 212-B, 212-D, 213-A, 213-B, 213-C, 213-D, 214-A, 214-B, 214-C, 214-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, 216-D, 217-A, and 217-B in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in each said Unit as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarters and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest for each Unit Quarter in and to the items of personal property and furnishing located therein.

1732 Bluff Villas:

ALL that certain Apartment situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, and being known as Apartment Number 1732 of South Beach Village Bluff Apartments Horizontal Property Regime 56, and being more particularly shown and described by reference to the Master Deed of South Beach Associates establishing said Horizontal Property Regime, said Master Deed Being dated the 28th day of August, 1972, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 201 at Page 1128.

SBM, LLC PARCELS

South Beach Marina:

ALL those certain pieces, parcels, or tracts of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as Unit B, Unit C, and Unit D of the LANDS END TAVERN HORIZONTAL PROPERTY REGIME in SEA PINES PLANTATION, and being more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1998, in the ROD Office for Beaufort County, South Carolina, in Deed Book 498 at Page 979, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

ALSO, all the rights, privileges, and common elements appertaining to the above described Units as set forth in the Master Deed and By-Laws of the Lands End Tavern Horizontal Property Regime.

ALSO, all that certain piece, parcel, or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, commonly known as the BOAT RAMP at SOUTH BEACH MARINA VILLAGE as more particularly shown and described on that certain plat entitled "A Survey of South Beach Marina Village, a Section of Sea Pines Plantation" by Surveying Consultants of Hilton Head Island, Inc. Terry G. Hatchell, SC RLS#11059, dated March 8, 1988, and recorded March 24, 1988, in the ROD Office for Beaufort County, South Carolina, in Plat Book 35 at Page 128.

AND, ALSO, a Nonexclusive Easement, for dry storage for not more than twenty (20) boats as provided in that certain Nonexclusive Easement for Boat Storage dated March 22,1988 and recorded on March 24, 1988 in the ROD Office for Beaufort County, South Carolina, in Record Book 498 at Page 1066, (hereinafter the "Boat Storage Easement"). Said boat storage easement being subject to the terms, conditions, and limitations

contained in the Boat Storage Easement and as listed in Schedule B, Section 2.

AND, ALSO, an assignment of any and all rights of the Grantor to assess, levy and collect fees and charges in connection with the operation and use of the Boat Ramp.

ALSO, A NON-EXCLUSIVE EASEMENT for access, ingress, and egress over the roads and driveways in South Beach Marina Village, and for vehicular parking in designated parking areas, all as shown on the aforesaid plat.

Boatslips:

ALL that personalty and fixtures consisting of the boatslips and docks at South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as shown and described on that certain plat of survey entitled "A Survey of South Beach Marina Village, A Section of Sea Pines Plantation" by Surveying Consultants of Hilton Head Island, Inc., Terry G. Hatchell, S.C.R.L.S. # 11059, said plat being dated March 8, 1988, and recorded March 24, 1988, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 128 and more particularly described as Boatslips 1 through 99 as shown on the aforesaid plat, together with the "stationary walk" as described on the aforesaid plat.

LET, LLC PARCEL

Lands End Tavern:

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows: Unit A of the Lands End Horizontal Property Regime as more particularly described in that certain Master Deed of South Beach Marina Village, a Partnership, establishing the Lands End Tavern Horizontal Property Regime, dated March 22, 1988, and recorded March 24, 1988, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 498 at Page 979, together with all rights and hereditaments appurtenant thereto as described and set forth in said Master Deed, including an undivided interest in the Common Elements as described in the Master Deed.

First American Title Insurance Company

SCHEDULE B

Issuing Office File No.: **REGOS-05-342** Policy Number: **FA- 31-639828**

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any rights, interests, or claims affecting the land which a correct survey would disclose and which are not shown by the public records.
3. Any lien for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records.
4. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
5. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Taxes and assessments for the year 2001 and subsequent years, not yet due and payable.

NOTE: Exceptions Numbered [NOT APPLICABLE] Above are Hereby Deleted.

7. **Easements, encroachments, overlaps and other matters shown on plats which are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 232; in Plat Book 35 at Page 128; in Plat Book 24 at Page 48; in Plat Book 24 at Page 49; in Plat Book 29 at Page 14; in Plat Book 33 at Page 127; in Plat Book 34 at Page 127; in Plat Book 34 at Page 78; in Plat Book 34 at Page 79; in Plat Book 37 at Page 107; in Plat Book 35 at Page 129; in Deed Book 500 at Page 411; in Plat Book 21 at Page 57; in Plat Book 24 at Page 76; in Plat Book 23 at Page 71; Plat Book 29 at Page 14; in Plat Book 31 at Page 226; in Plat Book 24 at Page 76; in Deed Book 500 at Page 411; in Plat Book 21 at Page 57; in Plat Book 29 at Page 29, in Plat Book 19 at Page 140; in Plat Book 20 at Page 195; in Plat Book 24 at Page 29; in Plat Book 28 at Page 190; in Plat Book 29 at Page 29; in Plat Book 42 at Page 154, and in Plat Book 52 at Page 50, in Plat Book 20 at Page 73.**

First American Title Insurance Company

CONTINUATION OF SCHEDULE B - EXCEPTIONS

Issuing Office File No.: **REGOS-05-342** Policy Number: **FA- 31-639828**

8. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632; in Deed Book 528 at Page 452; in Deed Book 532 at Page 2492; in Deed Book 533 at page 1804; in Deed Book 539 at page 2099; in Deed Book 539 at Page 2102; in Deed Book 542 at page 1737; in Deed Book 547 at Page 11; in Deed Book 553 at page 387; in Deed Book 572 at page 134; in Deed Book 572 at Page 138; in Record Book 1068 at Page 992; in Record Book 1068 at Page 997; in Deed Book 172 at page 316; in Deed Book 195 at Page 103; in Deed Book 223 at page 2052; in Deed Book 313 at Page 1881; in Deed Book 150 at page 41; in Deed Book 403 at page 1112; in Deed Book 176 at page 203; in Deed Book 182 at Page 260; in Deed Book 435 at page 532; in Deed Book 206 at Page 1143; in Deed Book 144 at page 155; in Deed Book 308 at page 806; in Deed Book 385 at Page 1224; in Deed Book 434 at Page 785; in Deed Book 517 at page 1915; in Deed Book 498 at page 907; in Deed Book 604 at Page 1237; in Deed Book 435 at Page 1976; in Deed Book 440 at page 301; in Deed Book 388 at Page 1268; in Deed Book 407 at page 654; in Deed Book 498 at page 1055; in Deed Book 541 at Page 2436; in Deed Book 572 at page 131; in Deed Book 498 at page 1060; in Deed Book 498 at page 1066; in Deed Book 498 at page 1074; in Deed Book 190 at page 255; in Deed Book 246 at page 2087; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Mortgage Book 417 at page 1186; in Mortgage Book 426 at page 1720; in Deed Book 572 at page 127; in Record Book 678 at page 1374; in Deed Book 224 at Page 1036; in Deed Book 495 at Page 2140; in Deed Book 390 at Page 166; in Deed Book 490 at page 712; in Deed Book 519 at page 1355; in Deed Book 520 at page 1907; in Lease Book 10 at page 145; in Deed Book 424 at page 1785; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Deed Book 435 at Page 1970; in Deed Book 435 at page 1980; in Deed Book 435 at Page 1982; in Deed Book 440 at page 297; in Deed Book 440 at page 299; in Deed Book 440 at Page 309; in Deed Book 308 at page 806; and in Record Book 1244 at page 2281, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title.

9. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas, or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

10. Any inaccuracy in any statement made as to the quantity of land contained within the boundaries of the land described in Schedule A.

11. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for South Beach Marina Village Horizontal Property Regime Horizontal Property Regime, dated N/A, and recorded in the Office of the Clerk of Court for Beaufort County in Deed Book 508, at Page 632, as amended and/or supplemented; in the related by-laws; in any instrument creating the estate or interest insured by this policy; and in any other related instrument referred to in any of the instruments aforesaid.

12. Rights of tenants in possession under unrecorded leases.

First American Title Insurance Company

CONTINUATION OF SCHEDULE B - EXCEPTIONS

Issuing Office File No.: **REGOS-05-342** Policy Number: **FA- 31-639828**

13. **Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 312 at Page 1429; in Deed Book 78 at Page 306; in Deed Book 291 at Page 1474; in Deed Book 295 at Page 476; in Deed Book 302 at Page 685; in Deed Book 302 at Page 696; in Deed Book 310 at Page 945; in Deed Book 317 at Page 382; in Deed Book 280 at Page 637; in Deed Book 520 at Page 1907; in Deed Book 526 at Page 1876, and in Deed Book 596 at Page 29, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title (applies to Salty Dog T-Shirt Factory and Salty Dog Warehouse only).**

14. **Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in: DB 124 P 35; DB 224 P 1036; DB 390 P 166; DB 490 P 712; DB 519 P 1355; DB 520 P 1907; DB 558 P 2407; DB 490 P 766; DB 490 P 771; RB 1316 P 1720; DB 519 P 1150; DB 519 P 1161; DB 195 P 93; DB 454 P 525; DB 153 P 183; DB 153 P 184; DB 354 P 337; DB 430 P 1160; DB 453 P 1625; DB 452 P 691; DB 148 P 34; DB 232 P 2013 But deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c) (applies to 1732 Bluff Villas only).**

15. **Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for BLUFF VILLAS Horizontal Property Regime, dated 8-28-72, and recorded in the Office of the Clerk of Court for BEAUFORT County in Deed Book 201, at Page 1128; in the related by-laws; in any instrument creating the estate or interest insured by this policy; and in any other related instrument referred to in any of the instruments aforesaid (applies to 1732 Bluff Villas only)**

First American Title Insurance Company

SCHEDULE B PART II

Issuing Office File No.: **REGOS-05-342** Policy Number: **FA- 31-639828**

In addition to the matters set forth in Part I of this Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. **None.**



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RPS Page Separator



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Region: South East **Entry Date:** 11/14/2006 3:36:52PM

ScannerID: 005



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Date Printed: 11/14/2006 Time Printed: 3:36:52PM

FATIC-431 ,
Schedule A
ALTA Loan Policy

SC - #: 199
Gross Premium: $8,625.00
SI: ☐
Other Policy:
RI: $1,850,000.00

COMMERCIAL ☐ RESIDENTIAL ☐ NEW HOME ☐ RESALE ☐ 2ND MORTGAGE ☐ REFINANCE ☐ TIMESHARE ☐ OTHER ☐

First American Title Insurance Company

SCHEDULE A

Issuing Office File No.: **REGOS01178**

Policy No.: **FA- 31-382523**

Date of Policy : **November 06, 2001 @ 2:10:01 PM**

Amount of Insurance: **$7,400,000.00**

1. Name of Insured:
   Bank of America, N.A., its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:
   Fee Simple

3. Title to the estate or interest in the land is vested in:
   Robert A. Gossett, Jr.

4. The insured mortgage and assignments thereof, if any, are described as follows:
   First Mortgage and Security Agreement from Moondog, L.L.C., Catwalk, L.L.C., Vacation Inn, L.L.C., and Lost Parrot, L.L.C. to Bank of America, N.A., dated November 05, 2001, recorded November 06, 2001 at 2:10:01 PM, in the Office of the Register of Deeds for Beaufort County in Record Book 1493, at Page 2102, to secure $7,400,000.00.

5. The land referred to in this policy is described as follows:
   See Attached Exhibit "A" for Legal Description.

Curtis L. Coltrane, P.C.
(Insert above line name of Agency)

By: _____
John W. Wilkins

FATIC-431
Schedule A
ALTA Loan Policy

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: **REGOS01178**

LEGAL DESCRIPTION:

MOONDOG, L.L.C PARCELS:

Salty Dog Café and Restaurant Parcel:

ALL that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

Tax Map ID 550-17-1089

South Beach Sales Office Parcel (224 S. Sea Pines Drive):

ALL that certain piece, parcel or lot of land with improvements thereon, containing 1.279 acres, more or less, and being designated on a plat entitled "A Plat of 1.279 Acres South Beach Area of Sea Pines Plantation, Beaufort County, South Carolina" dated November 9, 1987, and prepared by Surveying Consultants of Hilton Head Island, Inc., Terry G. Hatchell, S.C.R.L.S. #11059, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 69.

Tax Map ID 550-19-245

Gazebo Parcel:

ALL that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

CATWALK, L.L.C. PARCELS:

Common Areas & Boardwalks:

ALL of the parcels designated as "Common Area" contained within the following property:

ALL that certain piece, parcel or lot of land shown and described on a plat entitled "A Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation" prepared by Jerry L. Richardson, S.C.R.L.S. #4784, dated February 21, 1980, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14.

AND ALSO, a perpetual non-exclusive Easement for Parking, Ingress and Egress over the shaded area shown on the above-mentioned Plat of record.

LOST PARROT, L.L.C. PARCEL:

South Seaport Restaurant Parcel:

ALL that certain Unit 300 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, South Carolina, as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632, as amended.

ALSO, all the right, privileges and common elements appertaining to the above-described unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

VACATION INN, L.L.C. PARCELS

Retail Shops:

ALL those certain Units 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632.

ALSO all the rights, privileges and common elements appertaining to the above described units as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

General Store Parcel:

ALL that certain piece, parcel or lot of land known as Parcel I, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

Quartershares:

ALL those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-C, 203-D, 204-A, 204-B, 204-C, 204-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 212-A, 212-D, 213-A, 213-B, 213-C, 213-D, 214-A, 214-B, 214-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, 216-D, 217-A, and 217-B in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in each said Unit as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarters and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest for each Unit Quarter in and to the items of personal property and furnishing located therein.

FATIC-432
Schedule B Part I
ALTA Loan Policy

First American Title Insurance Company

SCHEDULE B

Issuing Office File No.: **REGOS01178** Policy Number: **FA- 31-382523**

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any rights, interests, or claims affecting the land which a correct survey would disclose and which are not shown by the public records.
3. Any lien for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records.
4. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
5. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Taxes and assessments for the year 2001 and subsequent years, not yet due and payable.

NOTE: Exceptions Numbered One through Four (1-4) Above are Hereby Deleted.

7. **Easements, encroachments, overlaps and other matters shown on plats which are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 232; in Plat Book 35 at Page 128; in Plat Book 24 at Page 48; in Plat Book 24 at Page 49; in Plat Book 29 at Page 14; in Plat Book 33 at Page 127; in Plat Book 34 at Page 127; in Plat Book 34 at Page 78; in Plat Book 34 at Page 79; in Plat Book 37 at Page 107; in Plat Book 35 at Page 129; in Deed Book 500 at Page 411; in Plat Book 21 at Page 57; in Plat Book 24 at Page 76; in Plat Book 23 at Page 71; Plat Book 29 at Page 14; in Plat Book 31 at Page 226; in Plat Book 24 at Page 76; in Deed Book 500 at Page 411; in Plat Book 21 at Page 57.**

First American Title Insurance Company

CONTINUATION OF SCHEDULE B - EXCEPTIONS

Issuing Office File No.: REGOS01178 Policy Number: FA- 31-382523

8. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632; in Deed Book 528 at Page 452; in Deed Book 532 at Page 2492; in Deed Book 533 at page 1804; in Deed Book 539 at page 2099; in Deed Book 539 at Page 2102; in Deed Book 542 at page 1737; in Deed Book 547 at Page 11; in Deed Book 553 at page 387; in Deed Book 572 at page 134; in Deed Book 572 at Page 138; in Record Book 1068 at Page 992; in Record Book 1068 at Page 997; in Deed Book 172 at page 316; in Deed Book 195 at Page 103; in Deed Book 223 at page 2052; in Deed Book 313 at Page 1881; in Deed Book 150 at page 41; in Deed Book 403 at page 1112; in Deed Book 176 at page 203; in Deed Book 182 at Page 260; in Deed Book 435 at page 532; in Deed Book 206 at Page 1143; in Deed Book 144 at page 155; in Deed Book 308 at page 806; in Deed Book 385 at Page 1224; in Deed Book 434 at Page 785; in Deed Book 517 at page 1915; in Deed Book 498 at page 907; in Deed Book 604 at Page 1237; in Deed Book 435 at Page 1976; in Deed Book 440 at page 301; in Deed Book 388 at Page 1268; in Deed Book 407 at page 654; in Deed Book 498 at page 1055; in Deed Book 541 at Page 2436; in Deed Book 572 at page 131; in Deed Book 498 at page 1060; in Deed Book 498 at page 1066; in Deed Book 498 at page 1074; in Deed Book 190 at page 255; in Deed Book 246 at page 2087; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Mortgage Book 417 at page 1186; in Mortgage Book 426 at page 1720; in Deed Book 572 at page 127; in Record Book 678 at page 1374; in Deed Book 224 at Page 1036; in Deed Book 495 at Page 2140; in Deed Book 390 at Page 166; in Deed Book 490 at page 712; in Deed Book 519 at page 1355; in Deed Book 520 at page 1907; in Lease Book 10 at page 145; in Deed Book 424 at page 1785; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Deed Book 435 at Page 1970; in Deed Book 435 at page 1980; in Deed Book 435 at Page 1982; in Deed Book 440 at page 297; in Deed Book 440 at page 299; in Deed Book 440 at Page 309; in Deed Book 308 at page 806; and in Record Book 1244 at page 2281, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 (c), but this policy insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title.

9. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas, or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

10. Any inaccuracy in any statement made as to the quantity of land contained within the boundaries of the land described in Schedule A.

11. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney and limitations created by the South Carolina Horizontal Property Act provisions Section 27-32-10 et seq. South Carolina Code of Laws, 1976, as amended, or set forth in the Master Deed for South Beach Marina Village Horizontal Property Regime Horizontal Property Regime, dated N/A, and recorded in the Office of the Clerk of Court for Beaufort County in Deed Book 508, at Page 632, as amended and/or supplemented; in the related by-laws; in any instrument creating the estate or interest insured by this policy; and in any other related instrument referred to in any of the instruments aforesaid.

12. Rights of tenants in possession under unrecorded leases.

First American Title Insurance Company

SCHEDULE B PART II

Issuing Office File No.: REGOS01178 Policy Number: FA- 31-382523

In addition to the matters set forth in Part I of this Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. **Collateral Assignment of Rents, Leases and Profits from Lost Parrot, L.L.C., Vacation Inn, L.L.C., Moondog, L.L.C., and Catwalk, L.L.C., to Bank of America, N.A., dated November 5, 2001, and recorded November 6, 2001, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1493 at Page 2150.**

FATIC-711
ALTA FORM 4

SC - # 199

CONDOMINIUM ENDORSEMENT
ENDORSEMENT
ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

Issuing Office File No.: **REGOS01178**

Attached to Policy No.: **FA- 31-382523**

The Company insures the insured against loss or damage sustained by reason of:

1) The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.

2) The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the title to the unit and its common elements.

3) Present violations of any restrictive covenants which restrict the use of the unit and its common elements and which are contained in the condominium documents, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture of reversion of title.

4) The priority of any lien for charges and assessments at Date of Policy provided for in the condominium statutes and condominium documents over the lien of any insured mortgage identified in Schedule A.

5) The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.

6) Any obligation to remove any improvements which exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.

7) The failure of title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsement, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

This endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

Curtis L. Coltrane, P.C.
(Insert above line name of Agency)

By _____
John W. Wilkins

FATIC-703
ALTA FORM 5

SC - # 199

PLANNED UNIT DEVELOPMENT ENDORSEMENT

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

Issuing Office File No.: **REGOS01178**

Attached to Policy No.: **FA- 31-382523**

The Company insures the insured against loss or damage sustained by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the land, except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.

2. The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for any document referred to in Schedule B over the lien of any insured mortgage identified in Schedule A.

3. The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

This endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

Curtis L. Coltrane, P.C.
(Insert above line name of Agent)

By _____
John W. Wilkins

FATIC-719
ALTA FORM 8.1

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

SC - # 199

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

Issuing Office File No.: **REGOS01178**

Attached to Policy No.:**FA- 31-382523**

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for residential purposes

The Company insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

(a) any environmental protection lien which, at date of policy, is recorded in those records established under state statutes at date of policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which land is located, except as set forth in Schedule B; or

(b) any environmental protection lien provided for by any state statute in effect at date of policy, except environmental protection liens provided for by the following state statutes:

NONE

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements; nor does it increase the face amount thereof.

This endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

Curtis L. Coltrane, P.C.
(Insert above line name of Agent)

By: _____
John W. Wilkins

FATIC-700

ENDORSEMENT

ISSUED BY

FIRST AMERICAN TITLE INSURANCE COMPANY

Issuing Office File No.: **REGOS01178**

Attached to Commitment:
Policy No. **FA- 31-382523**

Effective June 6, 2002, by virtue of the Amendment to First Mortgage and Security Agreement recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1590 at Page 1627, Exhibit A of Schedule A is amended such that Lot 73 Palmetto Bay Commercial Property, which is further described below, is added to the "Moondog, L.L.C. Parcels" set forth in Exhibit "A":

ALL that certain piece, parcel or lot of land situate, lying and being in Palmetto Bay Commercial Subdivision on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot Number Seventy-Three (73) on a plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 29. Such property having dimensions, metes and bounds as shown on the above-mentioned plat.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

This endorsement shall not be valid or binding unless signed by either a duly authorized officer or agent of the Company.

Curtis L. Coltrane, P.C.
(Insert above line name of Agent)

6/6/02
Issue Date

By : _____
John W. Wilkins

FATIC 412
ALTA Loan Policy (10/17/92)

Policy No. **FA-31-** 382523

POLICY OF TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the Insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
   (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
   (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the Insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY Parker S. Kennedy PRESIDENT

ATTEST Mark L. Arneson SECRETARY

ALTA Loan Policy (10/17/92)

FATIC 412
ALTA Loan Policy (10/17/92)

Policy No. FA-31- 382526

[illegible] TITLE INSURANCE

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the Insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
   (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
   (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the Insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

[illegible] Title Insurance Company

Parker S. Kennedy PRESIDENT

[illegible] Mark R. Arneson SECRETARY

ALTA Loan Policy (10/17/92)

FATIC-031
Schedule A
ALTA Loan Policy

SC - #: 997-0309
Gross Premium: $1,425.00
SI: ☐
Other Policy:
RI: $0.00

COMMERCIAL ☑ RESIDENTIAL ☐ NEW HOME ☐ RESALE ☐ 2ND MORTGAGE ☐ REFINANCE ☐ TIMESHARE ☐ OTHER ☐

First American Title Insurance Company

SCHEDULE A

Issuing Office File No.: REGOS00022 Policy No.: FA- 31-382526

Date of Policy: March 17, 2000 @ 2:26:00 PM Amount of Insurance: $800,000.00

1. Name of Insured:
   Wachovia Bank, N.A.Its Successors and/or Assigns as their interest may appear
2. The estate or interest in the land which is encumbered by the insured mortgage is:
   Fee Simple
3. Title to the estate or interest in the land is vested in:
   Robert A. Gossett, Jr. and South Beach Swimming Pool, Inc.
4. The insured mortgage and assignments thereof, if any, are described as follows:
   Mortgage from Robert A. Gossett, Jr. and South Beach Swimming Pool, Inc. to Wachovia Bank, N.A., dated March 15, 2000, recorded March 17, 2000 at 2:26:00 PM, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1271, at Page 427, to secure $800,000.00.
5. The land referred to in this policy is described as follows:
   See Attached Exhibit "A" for Legal Description.

Alford & Wilkins, P.C.

By: _____
John W. Wilkins

FATIC-631
Schedule A
ALTA Loan Policy

First American Title Insurance Company

EXHIBIT A

Issuing Office File No.: REGOS00022

LEGAL DESCRIPTION:

PARCEL I (General Store)

ALL that certain piece, parcel or lot of land known as Parcel I, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

PARCEL II (Gazebo)

ALL that certain piece, parcel or lot of land known as Parcel II, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

PARCEL III (Restaurant)

ALL that certain piece, parcel or lot of land known as Parcel III, South Beach Marina Village, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, as more specifically described by reference to that certain plat prepared by Surveying Consultants of Hilton Head, Inc., dated March 8, 1988, last revised November 21, 1988, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 37 at Page 107.

Parcels I, II and III being the same properties conveyed to the within Mortgagor by deed of South Beach Marina Village, a Partnership, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on October 24, 1994, in Record Book 738 at Page 1771.

PARCEL IV (Retail Shops)

ALL those certain Units 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, and 115 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632.

ALSO all the rights, privileges and common elements appertaining to the above described units as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

PARCEL V (Quartershares)

ALL those certain Unit Quarters 201-A, 201-B, 201-C, 201-D, 202-A, 202-B, 202-C, 202-D, 203-A, 203-B, 203-

C, 203-D, 205-A, 205-B, 205-C, 205-D, 206-A, 206-B, 206-C, 206-D, 207-A, 207-B, 207-C, 207-D, 208-A, 208-B, 208-C, 208-D, 209-A, 209-B, 209-C, 209-D, 210-A, 210-B, 210-C, 210-D, 211-A, 211-B, 211-C, 211-D, 213-A, 213-B, 213-C, 213-D, 215-A, 215-B, 215-C, 215-D, 216-A, 216-B, 216-C, and 216-D in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in each said Unit as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarters and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest for each Unit Quarter in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Units as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

PARCEL VI (Common Area)

ALL of the parcels designated as "Common Area" contained within the following property:

ALL that certain piece, parcel or lot of land shown and described on a plat entitled, "A Plat of the South Beach Marina Tract, a Section of Sea Pines Plantation" prepared by Jerry L. Richardson, S.C.R.L.S. No. 4784, dated February 21, 1980, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 29 at Page 14.

Parcels IV, V and VI being the same properties conveyed to the within Mortgagor by deed of Ned E. Gilleland, Sr. recorded July 23, 1998, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1068 at Page 970.

PARCEL VII (Pool and Tennis Courts)

ALL that certain piece parcel or tract of land, lying and being in Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, shown and described as "Remaining Portion Parcel B, 3.221 Ac." on a plat entitled "A Boundary Survey of 3.961 Acres, A Section of South Beach Area," prepared by Terry G. Hatchell, S.C.R.L.S. No. 11059, dated November 9, 1999, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 72 at Page 79.

LESS AND EXCEPT

ALL that certain piece parcel or tract of land, lying and being in Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, consisting of 0.052 acres, more or less, shown and described as "Parcel A" a plat entitled "An ALTA/ACSM Land Title Survey of 3.961 Acres, A Section of South Beach Area," prepared by Terry G. Hatchell, S.C.R.L.S. No. 11059, dated March 16, 1999, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 71 at Page 14.

Parcel VII being the same property conveyed to the within Mortgagor by deed of Sea Pines South Beach Owners Association, Inc., dated December 13, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1249 at Page 1898, and by deed of Sea Pines Company, Inc., dated July 28, 1999, and recorded Record Book 1198 at Page 450.

PARCEL VIII (Quartershare)

ALL that certain Unit Quarter Number 204-A in South Beach Marina Village Horizontal Property Regime,

Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in said Unit 204 as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

Parcel VIII being the same property conveyed to the within Borrower by deed of William Addington, Janet Addington, Stephen Follrod and Karen Follrod dated May 25, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1176 at Page 1383.

PARCEL IX (Quartershare)

ALL that certain Unit Quarter Number 212-A in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in said Unit 212 as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

Parcel IX being the same property conveyed to the within Borrower by deed of Keybank National Association dated November 16, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1239 at Page 1784.

PARCEL X (Quartershare)

ALL that certain Unit Quarter Number 212-D in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in said Unit 212 as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

Parcel X being the same property conveyed to the within Borrower by deed of Waldo D. Apgar dated February 19, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1139 at Page 714.

Parcel XI (Quartershare)

ALL that certain Unit Quarter Number 214-A in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in said Unit 214 as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

Parcel XI being the same property conveyed to the within Borrower by deed of Lawrence L. Weier and Betty A. Weier dated February 10, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1139 at Page 2336.

PARCEL XII (Quartershare):

ALL that certain Unit Quarter Number 217-B in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina, which consists of undivided twenty-five (25%) percent interests in said Unit 217 as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in Deed Book 528 at Page 452 and re-recorded in Deed Book 532 at Page 2492, as amended.

ALSO, an undivided twenty-five (25%) percent interest in and to the items of personal property and furnishing located therein.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime and in the Supplemental Declaration referred to hereinabove.

Parcel XII being the same property conveyed to the within Borrower by deed of Lawrence L. Weier and Betty A. Weier dated February 10, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1144 at Page 240.

PARCEL XIII (Retail Shop)

ALL that certain Unit 107 in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation,

Hilton Head Island, Beaufort County, South Carolina, as shown on the plans and Specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632, as amended.

ALSO, all of the rights, privileges and common elements appertaining to the above described Unit as set forth in the Master Deed and By-Laws of the South Beach Marina Village Horizontal Property Regime.

Parcel XIII being the same property conveyed to the within Borrower by deed of 107 Partnership dated December 29, 1999, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 1247 at Page 1951.

FATIC-133
Schedule B Part I
ALTA Loan Policy

SC - # 997-0309

First American Title Insurance Company

SCHEDULE B

Issuing Office File No.: REGOS00022 Policy Number: FA- 31-382526

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any rights, interests, or claims affecting the land which a correct survey would disclose and which are not shown by the public records.
3. Any lien for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records.
4. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
5. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Taxes and assessments for the year 2000 and subsequent years, not yet due and payable.

NOTE: Exceptions Numbered [NOT APPLICABLE] Above are Hereby Deleted.

7. **Easements, encroachments, overlaps and other matters shown on plats which are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 232; Plat Book 35 at Page 128; Plat Book 24 at Page 48; Plat Book 29 at Page 14; Plat Book 33 at Page 127; Plat Book 34 at Page 78; Plat Book 34 at Page 79; Plat Book 37 at Page 107; Plat Book 35 at Page 129; in Plat Book 31 at Page 226; in Plat Book 24 at Page 76; Plat Book 24 at Page 49; Deed Book 500 at Page 411; Plat Book 21 at Page 57.**

First American Title Insurance Company

CONTINUATION OF SCHEDULE B - EXCEPTIONS

Issuing Office File No.: REGOS00022 Policy Number: FA- 31-382526

8. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 434 at Page 745; Deed Book 434 at Page 751; Deed Book 434 at Page 757; Deed Book 434 at Page 763; Deed Book 434 at Page 769; Deed Book 434 at Page 775; Deed Book 434 at Page 108; Deed Book 224 at Page 1036; Deed Book 390 at Page 166; Deed Book 490 at Page 712; Deed Book 519 at Page 1355; Deed Book 519 at Page 1355; Deed Book 520 at Page 1907; Deed Book 508 at Page 632; Deed Book 528 at Page 452; Deed Book 532 at Page 2492; DB 533 P 1804; DB 539 P 2099; DB 539 P 2102; DB 542 P 1737; DB 547 P 11; DB 553 P 387; DB 572 P 134; DB 572 P 138; RB 1068 P 992; RB 1068 P 997; DB 172 P 316; DB 150 P 41; DB 176 P 203; DB 206 P 1143; DB 144 P 155; DB 144 P 155; DB 308 P 806; DB 385 P 1224; DB 434 P 785; DB 517 P 1915; DB 498 P 907; DB 435 P 1976; DB 440 P 301; DB 388 P 1268; DB 407 P 654; DB 498 P 1055; DB 541 P 2436; DB 572 P 131; DB 498 P 1060; DB 498 P 1074; DB 190 P 255; DB 246 P 2087; DB 434 P 781; DB 435 P 1986; DB 440 P 305; MB 417 P 1186; MB 426 P 1720; DB 572 P 127; RB 678 P 1374; Record Book 1247 P1955, and Deed Book 568 P1; Record Book 1068 at Page 992; Record Book 1068 at Page 997; Deed Book 424 at Page 1785; Deed Book 434 at Page 781; Deed Book 435 at Page 1986; Deed Book 440 at Page 305; Deed Book 435 at Page 1970; Deed Book 435 at Page 1980; Deed Book 435 at Page 1982; Deed Book 440 at Page 297; Deed Book 440 at Page 299; Deed Book 440 at Page 309; Deed Book 508 at Page 392; Deed Book 738 at Page 1771; Record Book 966 at Page 469; Deed Book 308 at Page 806; Deed Book 519 at Page 1150; Deed Book 519 at Page 1161; Deed Book 195 at Page 93; Deed Book 454 at Page 525; Deed Book 153 at Page 183; Deed Book 153 at Page 184; Deed Book 354 at Page 337; Deed Book 430 at Page 1160; Deed Book 43 at Page 1625; Deed Book 452 at Page 691; Deed Book 232 at Page 2013; Deed Book 78 at Page 306; Deed Book 150 at Page 41; Deed Book 176 at Page 203; Deed Book 206 at Page 1143; Deed Book 498 at Page 907; Deed Book 246 at Page 2087; Deed Book 308 at Page 806; Deed Book 385 at Page 1224; Deed Book 434 at Page 785; Deed Book 517 at Page 1915; Deed Book 498 at Page 1055; Deed Book 498 at Page 1060; Deed Book 498 at Page 1063; Deed Book 498 at Page 1066; Deed Book 498 at Page 1074; Deed Book 508 at Page 632; Deed Book 738 at Page 1771; Deed Book 144 at Page 155; Deed Book 190 at Page 255; Deed Book 541 at Page 2436; Deed Book 846 at Page 1204; Deed Book 435 at Page 1976; Deed Book 440 at Page 301; Deed Book 388 at Page 1268; Deed Book 407 at Page 1055; Deed Book 604 at Page 1237; Record Book 1068 at Page 966; Record Book 738 at Page 1771.

FATIC-433
Schedule B Part II
ALTA Loan Policy

SC - # 997-0309

First American Title Insurance Company

SCHEDULE B PART II

Issuing Office File No.: REGOS00022 Policy Number: FA- 31-382526

In addition to the matters set forth in Part I of this Schedule B, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

1. None.

00038

00038

Batch Control Page

6091-00038-P

Order Number: SCCol245R

Sequence Number: 00038

Branch Location: SouthEast

Entry Date: 4/28/2004

Firm Location:

ALFORD & WILKINS, PC
18 Pope Ave. Executive Park, Suite 1

Hilton Head Island, SC 29938
(843) 842-5500

00038 Date Printed: 4/28/2004 Time Printed: 1:57:06PM 00038

FATIC-930 (Rev - 10/17/98)
Schedule A
ALTA Homeowner's Policy of Title Insurance (10/17/98)

SC - #: 997-0309
Gross Premium: $195.00
SI: ☐
Other Policy:
RI:

RESIDENTIAL ☒ NEW HOME SALE ☐ RESALE ☒ FORECLOSURE ☐

First American Title Insurance Company

(Eagle Protection Owner's Policy)

SCHEDULE A

Issuing Office File No: REGOS-05-248 Policy No: EOS 212007

Date of Policy: **September 13, 2005 @ 7:45:00 AM** Policy Amount: **$55,000.00**

(or the date and time of the recording of the instrument vesting insured title, whichever is later)

Deductible Amounts and Maximum Dollar Limits of Liability
For Covered Risk 14, 15, 16 and 18:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14 (Subdivision Law Violation):	1% of Policy Amount or $2,500 (whichever is less)	$10,000
Covered Risk 15 (Building Permit):	1% of Policy Amount or $5,000 (whichever is less)	$25,000
Covered Risk 16 (Zoning):	1% of Policy Amount or $5,000 (whichever is less)	$25,000
Covered Risk 18 (Encroachment of Boundary Walls or Fences):	1% of Policy Amount or $2,500 (whichever is less)	$5,000

Street Address of the Land: **212-B South Beach Marina Village, Hilton Head Island, SC 29928**

1. Name of Insured: **Vacation Inn, L.L.C.**

2. Your interest in the land covered by this Policy is: **Fee Simple**

3. The land referred to in this Policy is described as follows:
See Attached Exhibit "A" for Legal Description

Alford & Wilkins, P.C.

By: _____
John W. Wilkins

(IP 1/99)
(Rev. 10/17/98)

First American Title Insurance Company

EXHIBIT A

Issuing Office File No: **REGOS-05-248**

LEGAL DESCRIPTION:

ALL that certain Unit Quarter 212-B in South Beach Marina Village Horizontal Property Regime, Sea Pines Plantation, Hilton Head Island, South Carolina, which consists of an undivided twenty-five (25%) percent interest in said Unit 212-B as shown on the plans and specifications described in the Master Deed for said Horizontal Property Regime recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632. Said Unit Quarter and the occupancy time periods assigned thereto are more fully described in that certain Supplemental Declaration of Multiple Ownership, Rights, Covenants, Conditions and Restrictions recorded in said Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 528 at Page 452, and re-recorded in Deed Book 532 at Page 2492, as further supplemented.

ALSO, and undivided twenty-five (25%) percent interest in and to the items of personal property and furnishings located therein.

SC - # 997-0309

First American Title Insurance Company

(Eagle Protection Owner's Policy)

SCHEDULE B
EXCEPTIONS

Issuing Office File No.: **REGOS-05-248** Policy Number: **EOS 212007**

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Policy Date, and any adverse claim to all or part of the land that is, at Policy Date, or was previously, under water
3. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Policy Date.
4. Taxes and assessments for the year 2003 and subsequent years.
5. **Easements, encroachments, overlaps and other matters shown on plats recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 232; in Plat Book 35 at Page 128; in Plat Book 24 at Page 48; in Plat Book 29 at Page 14; in Plat Book 33 at Page 127; in Plat Book 34 at Page 78; in Plat Book 34 at Page 79, Plat Book 35 at Page 232; in Plat Book 35 at Page 128; in Plat Book 24 at Page 48; in Plat Book 24 at Page 49; in Plat Book 29 at Page 14; in Plat Book 33 at Page 127; in Plat Book 34 at Page 127; in Plat Book 34 at Page 78; in Plat Book 34 at Page 79; in Plat Book 37 at Page 107; in Plat Book 35 at Page 129; in Deed Book 500 at Page 411; in Plat Book 21 at Page 57; in Plat Book 24 at Page 76; in Plat Book 23 at Page 71; in Plat Book 31 at Page 226; in Plat Book 31 at Page 234; in Plat Book 21 at Page 14, and in Plat Book 72 at Page 79, and in Plat Book 37 at Page 107.**
6. **Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 124 at Page 35, as amended; in Deed Book 224 at Page 1036, as amended; in Deed Book 390 at Page 166, as amended; in Deed Book 490 at Page 712, as amended; in Deed Book 519 at Page 1355, as amended; in Deed Book 520 at Page 1907; in Deed Book 558 at Page 2407; in Deed Book 490 at Page 766; in Deed Book 490 at Page 771; in Record Book 1316 at Page 1720; in Deed Book 519 at Page 1150; in Deed Book 538 at Page 1105; in Deed Book 519 at Page 1161; in Deed Book 195 at Page 93; in Deed Book 454 at Page 525; in Deed Book 153 at Page 183; in Deed Book 153 at Page 184; in Deed Book 354 at Page 337; in Deed Book 430 at Page 1160; in Deed Book 453 at Page 1625; in Deed Book 452 at Page 691; in Deed Book 148 at Page 34, and in Deed Book 232 at Page 2013 (Sea Pines Class B).**

First American Title Insurance Company

CONTINUATION OF SCHEDULE B - EXCEPTIONS

Issuing Office File No.: REGOS-05-248 Policy Number: FA- EOS 212007

7. Covenants, conditions, easements, affirmative obligations and other matters shown on instruments recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 508 at Page 632; in Deed Book 532 at Page 2492; in Deed Book 533 at page 1804; in Deed Book 539 at page 2099; in Deed Book 539 at Page 2102; in Deed Book 542 at page 1717; in Deed Book 547 at Page 11; in Deed Book 553 at page 387; in Deed Book 572 at page 134; in Deed Book 572 at Page 138; in Record Book 1068 at Page 992; in Record Book 1068 at Page 997; in Deed Book 172 at page 316; in Deed Book 195 at Page 103; in Deed Book 223 at page 2052; in Deed Book 313 at Page 1881; in Deed Book 150 at page 41; in Deed Book 403 at page 1112; in Deed Book 176 at page 203; in Deed Book 182 at Page 260; in Deed Book 435 at page 532; in Deed Book 206 at Page 1143; in Deed Book 144 at page 155; in Deed Book 527 at Page 237; in Record Book 678 at Page 1374; in Deed Book 385 at Page 1224; in Deed Book 434 at Page 785; in Deed Book 517 at page 1915; in Deed Book 498 at page 907; in Deed Book 604 at Page 1237; in Deed Book 435 at Page 1976; in Deed Book 440 at page 301; in Deed Book 388 at Page 1268; in Deed Book 407 at page 654; in Deed Book 498 at page 1055; in Deed Book 541 at Page 2436; in Deed Book 572 at page 131; in Deed Book 498 at page 1060; in Deed Book 498 at page 1066; in Deed Book 498 at page 1074; in Deed Book 190 at page 255; in Deed Book 246 at page 2087; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Deed Book 385 at Page 1224; in Deed Book 434 at Page 785; in Deed Book 517 at Page 1915; in Record Book 1068 at Page 970; in Record Book 1068 at Page 986; in Record Book 1493 at Page 2098; in Deed Book 498 at Page 1066; in Record Book 675 at Page 984; in Record Book 678 at Page 1369; in Record Book 1265 at Page 1925; in Deed Book 498 at Page 1063; in Deed Book 498 at Page 1043; in Deed Book 198 at Page 1078; in Lease Book 18 at Page 650; in Deed Book 498 at Page 1048; in Deed Book 78 at Page 306; in Record Book 738 at Page 1771; in Record Book 846 at Page 1204; in Deed Book 498 at Page 979; in Deed Book 501 at Page 1031; in Record Book 675 at Page 998; in Record Book 678 at Page 1374; in Record Book 846 at Page 1204; in Record Book 949 at Page 312; in Record Book 949 at Page 302; in Record Book 949 at Page 320; in Deed Book 193 at Page 1653; in Deed Book 435 at Page 1982; in Deed Book 440 at Page 309; in Lease Book 20 at Page 808; in Deed Book 465 at Page 1100; in Deed Book 235 at Page 644; in Deed Book 263 at Page 1219; in Deed Book 384 at Page 510; in Deed Book 130 at Page 34; in Deed Book 440 at Page 297; in Deed Book 440 at Page 299; in Lease Book 10 at Page 145; in Deed Book 424 at Page 1785; in Deed Book 435 at Page 1970; in Deed Book 435 at Page 1980; in Record Book 1265 at Page 1935; in Mortgage Book 417 at page 1186; in Mortgage Book 426 at page 1720; in Deed Book 572 at page 127; in Record Book 678 at page 1374; in Deed Book 224 at Page 1036; in Deed Book 495 at Page 2140; in Deed Book 390 at Page 166; in Deed Book 490 at page 712; in Deed Book 519 at page 1355; in Deed Book 520 at page 1907; in Deed Book 434 at page 781; in Deed Book 435 at page 1986; in Deed Book 440 at page 305; in Deed Book 440 at Page 309; in Deed Book 308 at page 806; and in Record Book 1244 at page 2281. (apply to South Beach Marina Village).



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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC., which constitute covenants running with certain commercial lands of Lighthouse Beach Company.

COMMERCIAL USE COVENANTS
January 25, 1973

WHEREAS, LIGHTHOUSE BEACH COMPANY, a Limited Partnership organized and existing under the laws of the State of South Carolina, is the owner of certain lands located on Hilton Head Island, Beaufort County, South Carolina; and

WHEREAS, LIGHTHOUSE BEACH COMPANY desires to make, publish and record a declaration of restrictive covenants affecting certain properties designated for commercial use and desires to have said restrictive covenants filed in the Office of the Clerk of Court for Beaufort County, South Carolina, reserving the right in each instance to add additional restrictive covenants in respect to said properties; and

WHEREAS, LIGHTHOUSE BEACH COMPANY recognizes that said properties are situate in an environmentally sensitive area and that any development of said property is a matter of concern to both the developing party and the Community-at-large; and

WHEREAS, LIGHTHOUSE BEACH COMPANY desires to insure that all properties now, or hereafter, owned by it are developed pursuant to an orderly plan which contemplates among other things the environmental impact on the Community-at-large of any proposed developmental scheme for such properties;

NOW THEREFORE, LIGHTHOUSE BEACH COMPANY does hereby declare that the provisions contained herein are rights, restrictions, conditions and affirmative obligations all constituting covenants running with the land which is conveyed by LIGHTHOUSE BEACH COMPANY by deed or other written instrument in which reference is

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specifically made to these covenants. The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application of the uniform covenants contained herein. Notice of such additional covenants will, in all cases, be set forth in the contract of sale relating to such property. 1144

IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY, subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY, that to the extent that there is conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant Declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.

DEFINITIONS

1. Whenever used herein, the term "the Company" shall refer to LIGHTHOUSE BEACH COMPANY, its successors and assigns.

2. Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.

3. The term "Owner" when used in these covenants and restrictions shall refer to both the original owner, builder and developer of any tract, subdivision or lot of land as well as any subsequent owner of a parcel of land upon which commercial uses are to be or have been made, and shall specifically include the owner of a condominium dwelling within a structure located on such property.

4. The term "Class "B" Multi-Family Residence Areas" shall refer to any original tract, subdivision or lot of land, as well as any subsequently subdivided portion thereof, intended for multi-family residential use and which has been subjected to the provisions of these restrictions and covenants by reference in deeds to property issued by the Company.

The Covenants and Restrictions below will be referred to as the Commercial Use Restrictions of January 25, 1973, and will be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, and will be incorporated by reference in deeds to commercial property issued by LIGHTHOUSE BEACH COMPANY by reference to the Book and Page of recording in the realty records in the Office of the Clerk of Court for Beaufort County, South Carolina.

PART I

COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO COMMERCIAL PROPERTY OWNED BY LIGHTHOUSE BEACH COMPANY.

1. No building, fence or other structure shall be erected, placed or altered on any lot in such Commercial Property until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), and construction schedule

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shall have been approved in writing by the Company, its successors or assigns. Refusal of approval of plans, location or specifications may be based by the Company upon any ground, including purely aesthetic conditions, which, in its sole and uncontrolled discretion, the Company shall deem sufficient, provided, however, that such approval by the Company shall not be unreasonably withheld. Elements that will be considered by the Company before plans or specifications are approved include, but are not limited to, the following: (a) the ratio of hard surface to natural tree or landscaped surface as reflected in the Master Plan; (b) location of utility lines; (c) the ratio of parking spaces to building capacity; the adequacy of recreational facilities when viewed against the number of persons such facilities are projected to serve; (d) an acceptable plan to provide for the capture and disposition of any surface water run-off on the property; (e) adequacy of proposed restaurant facilities, convention facilities, meeting areas, or auditoriums when viewed against the number of persons such facilities are projected to serve and the desirability of each Commercial venture being reasonably self-sufficient; and (f) whether any of the proposed improvements to be constructed on the Property exceed the maximum allowable height for such improvements which, without the written consent of the Company, may not exceed five (5) floors or sixty-two (62) feet above mean sea level. In no event will the Company approve plans and specifications that do not meet, at least, the minimum standards for construction as established by the "Southern Standard Building Code" in effect at the time such approval is requested. No alterations in the exterior appearance of any building or structure shall be made after initial construction without like approval by the Company. Approval shall not be unreasonably withheld and permission shall not be refused to make any addition or modification to any structure on the property so long as the proposed addition

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or modification is constructed of materials of comparable quality with the existing structures on the property and the design and site plan of said addition or modification is compatible with the existing structures on the property. One (1) copy of all plans and related data, as approved by the Company, shall be furnished the Company for its records and all improvements constructed on the property must be constructed pursuant to such plans and specifications with no material variations therefrom unless approved, in writin, by the Company. A variation will be deemed "material" in any case where such variation would not meet minimum standards for construction as established by the "Southern Standard Building Code" in effect at the time a request for approval of plans, as provided for hereinabove, was made. 1147

2. The exterior of any structure on Commercial Property must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or building due to strikes, fires, national emergency or natural calamities.

3. It shall be the responsibility of the owner of land subject to these covenants to prevent the development of any unclean, unsightly or unkept conditions at any buildings or on the grounds of said tract of land which conditions would tend to substantially decrease the beauty of Hilton Head Island as a whole or of the specific tract of land subject to these covenants. If said lot owner does not maintain said land and any improvements thereon according to the standards which LIGHTHOUSE BEACH COMPANY has established, after ten (10) days' written notice to the lot

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owner and failure of the land owner to correct the defective conditions, LIGHTHOUSE BEACH COMPANY, at the land owner's expense, may enter upon the premises and correct the defective conditions.

4. No noxious or offensive activity shall be carried on upon any Commercial Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence 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 owners thereof.

5. The Company reserves the right to restrict the size, color and content of any signs to be erected on such Commercial Property. Property identification and like signs exceeding a combined total of more than ten (10) square feet may not be erected without the written permission of the Company. The Company will use, as criteria for approval of signs to be erected on Commerical Property, the manual "Street Graphics", published in 1972 by the American Institute of Landscape Architects Foundation under grants from the Department of Housing and Urban Development. The size of all such signs shall be that appropriate for twenty-five (25) miles per hour traffic as set forth in said manual. In no event will the Company approve the erection of signs which do not conform to the criteria set forth in said manual.

6. Each Commercial Property owner shall provide adequate space for off-street parking for use by customers of the commercial venture.

7. Each Commercial Property owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Company.

8. Prior to the construction and use of a commercial structure on any Commercial Property, proper and suitable provision shall be made for the disposal of sewage by connection with the sewer mains of the Forest Beach Public Service District. No sewage shall be emptied or discharged into the ocean, any creek, marsh, river, sound or beach or shorelines thereof, nor shall disposal of sewage by means of septic tank or tanks be permitted on any Commercial Property except as approved as a temporary measure by the county sanitary engineer.

9. The Company reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use the electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over the rear ten (10) feet of each lot and ten (10) feet along one (1) side of all Commercial Property sites and such other areas as are shown on the applicable plat; provided further, that the Company may cut drainways for surface water whenever and wherever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation, and to maintain reasonable standards of health, safety and appearance. It further reserves the right

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to locate wells, pumping stations and tanks within any Commercial Property designated for such use on the applicable plat of a subdivision or to locate same upon any lot with the permission of the owner of such Commercial Property. Such rights may be exercised by any licensee of the Company but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

10. The Company reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement on, over and under the ground to construct a paved bicycle path to interconnect to any other such paved bicycle paths which are now or will be constructed along those roads now known as South Forest Beach Drive, Pope Avenue, and Cordillo Parkway on, in, or over the first ten (10) feet of each lot or tract on each side thereof which is bounded by the right-of-way of the aforesaid roads, provided, however, that in any case where the Company has reserved easements pursuant to paragraph 9 hereinabove and this paragraph 10, the Company will use its best efforts to make the area of said easements coincide one with the other wherever reasonably possible. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such paved bicycle path.

11. No structure of a temporary character shall be placed upon any Commercial Property at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of any permanent structure, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or for any commercial uses or permitted to remain on the lot after completion of construction.

12. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any Commercial Property at any time, either temporarily or permanently, without written approval by the Company.

13. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within a permanent structure within a screened area as required in paragraph 14 herein, or buried underground.

14. Each Commercial Property owner must construct a screening fence to shield and hide from view any service yards or areas. Plans for such fence delineating the size, design, texture, appearance and location must be approved by the Company prior to construction.

15. No private water wells may be drilled or maintained on any Commercial Property so long as Forest Beach Public Service Commission, their agents, successors or assigns, plans a water distribution line within fifty (50) feet of such lot with an average daily water pressure in such line adequate for normal business use by such distribution lines; provided further that such water distribution line must be completed within five (5) days from the date of completion of any permanent structure or a private well may be drilled by the Commerical Property owner.

16. No large trees measuring six (6) inches or more in diameter at a point four (4) feet above ground level may be removed without the written approval of the Company, unless located within ten (10) feet of any permanent structure, driveway, or parking area, or within ten (10) feet of the approved site for such building,

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driveway, or parking area. The objective of this provision is to insure that all Commercial Property has an adequate tree border on each side of such property abutting on a road or street, and, further, to insure that no trees are removed from any Commercial Property except in those specific instances where failure to remove a tree or trees would substantially impair or prohibit the use of the property for the purpose approved by the Company. An owner of Commercial Property affected by these covenants and restrictions shall be deemed in violation of this provision in each instance of the removal proscribed hereinabove, whether such removal be deliberate or the result of negligence on the part of such owner or his agent or agents.

17. No Commercial Property site shall be subdivided, or its boundaries changed, except with the written consent of the Company, which consent will not be unreasonably withheld. However, the Company hereby expressly reserves to itself, its successors or assigns, the right to replat any two (2) or more lots shown on a plat of Commercial Property sites in order to create a modified site or sites and to take such other steps as are reasonably necessary to make such replatted lots suitable and fit as Commercial Property sites including, but not limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of said replatted lots, provided that no lot originally shown on a recorded plat is reduced by more than twenty (20) per cent from its original size but further provided, that any such lot may be reduced in size to a minimum of one (1) acre whether or not such reduction in size is more than twenty (20) per cent of the area of the lot as originally platted. The restrictions and covenants herein apply to each Commercial Property site so created.

18. No improvements may be made on any Commercial Property

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which exceed a height of five floors or sixty-two (62) feet above mean sea level unless approved, in writing, by the Company. The Company reserves the right to establish maximum height restrictions which are less than sixty-two (62) feet in any Contract of Sale for commercial property, and to allow an additional measure of height over and above sixty-two (62) feet, up to a maximum amount of eight (8) feet for use as a roof wall for the purpose of concealing roof-mounted equipment essential to the operation of any commercial buildings constructed on the property.

19. In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price; and should the Company fail or refuse, within thirty(30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation, or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

20. In addition to the foregoing, the following additional covenants and restrictions shall apply to all Commercial Property which is designated, approved for use, or used for the operation of a hotel, motel, motor hotel, or motor lodge.

(a) All Commercial Property designated for such use shall be used solely for the operation of a hotel, motel, motor hotel, or motor lodge, including the rental of rooms to overnight guests, the rental of banquet and convention facilities, the operation of retail food and refreshment facilities including the sale of alcoholic beverages for consumption on the premises, if permitted by law, and the rental of retail shop or office space provided, however, that such retail shop or office space may not be used for "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area, unless approved, in writing, by the Company. The term "operation of retail food and refreshment facilities" as used in these covenants is limited to those establishments which offer food and beverage services to the general public at seated tables and booths or bars limited on the interior of an all-weather building, within employ of the operators providing table service to customers, or counter service in the case of bars, unless LIGHTHOUSE BEACH COMPANY approves, in writing, the operation of the facility without table service, and specifically does not include, unless approved, in writing, by the Company, the operation of a "fast food" or "Take-out food" facility on the premises.

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21. In addition to the foregoing, the following additional covenants and restrictions shall apply to all Commercial Property which is designated, approved for use, or used as a Class "B" Multi-Family Residence Area, including common-wall townhouse structures, apartments, villas, and all other types of multi-family residential buildings:

(a) No plans will be approved unless the proposed house or structure will have the minimum required square footage of enclosed dwelling area, and not exceed the maximum square footage of dwelling or maximum number of dwelling units, or maximum height above the ground, or maximum number of residential dwelling floors. Such minimum and maximum requirements for each lot will normally be specified in each sales contract and expressly stipulated in each deed. The term "enclosed dwelling area" as used in these minimum size requirements does not include garages, boat sheds, terraces, decks, open porches, and the like areas. The term does include, however, screened porches, if the roof of such porches forms an integral part of the roof line of the main dwelling or if they are on the ground floor of a two story structure.

(b) Since the establishment of standard inflexible building set back lines for locating houses or other structures on lots tends to force construction of buildings both directly behind and directly to the side of other homes or buildings with detrimental effect on privacy,

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view, preservation of important trees, etc., no specific set back lines are established by these covenants. In order to assure, however, that location of villas, townhouses, or other structures will be staggered, so that the maximum amount of view and breeze will be available to each dwelling unit, and that the structures will be located with regard to the topography of each individual lot, taking into consideration the height of dunes, the location of large trees, and similar considerations, the Company reserves unto itself, its successors, and assigns, the right to control absolutely and to decide the precise site of any villa, townhouse, dwelling or other structure or structures, and to cluster or otherwise arrange any structures or complex of structures on any lot or subdivision of lots within the Class "B" Multi-Family Residence Areas for reasons which may in the sole and uncontrolled discretion and judgment of the Company seem sufficient PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the lot or tract owner to recommend a specific site, and PROVIDED FURTHER, that in the event an agreed location is stipulated in writing in the contract of purchase the Company shall approve automatically such location for a residence, or group of residential units.

(c) All lots in said residence areas shall be used for residential purposes exclusively. The facilities included on the site may include common meeting rooms, housekeeping supply rooms, and social rooms. No structure or structures shall be erected, altered, placed

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or permitted to remain on any lot or subdivision of lots except as provided for in these covenants and restrictions. The Company expressly reserves the right to: (a) determine and limit the number of villas, townhouses, or other residential units or group of such units to be placed on a given tract, area or lot of land; (b) determine and limit the maximum height of any and all such structures; and (c) determine and limit the total maximum occupancy or density of all units combined within a given subdivision or complex.

(d) Notwithstanding the provisions of paragraph 2 of Part I hereof, the exterior of all villas, townhouses and other structures must be completed within two (2) years after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities.

PART II

ADDITIONS, LIMITATIONS, DURATION AND VIOLATION OF COVENANTS, TOGETHER WITH AFTERWORD.

All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Company for a period of twenty-five (25) years from the execution date of this Declaration after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of Commercial Property substantially affected by such change in covenants has been recorded, agreeing to change said covenants in whole or in part.

SLP

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement.

Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

In addition to the foregoing, LIGHTHOUSE BEACH COMPANY, its successors or assigns, shall have the right, whenever there shall have been built on any Commercial Property any structure which is in violation of these restrictions, to enter upon such property where such violation(s) exist(s), and summarily abate or remove the same at the expense of the owner if, within thirty (30) days after receipt of written notice of such violation(s) it(they) shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass.

SLQ

The Company reserves in each instance the right to add in any contract or deed hereafter made, modifications and/or additions to the restrictive covenants as contained in this Declaration of Covenants, with such modified covenants being made applicable by reference to conveyances of land made subsequent to such modifications.

It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting and affecting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific reference in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to, covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.

IN WITNESS WHEREOF, LIGHTHOUSE BEACH COMPANY has executed these presents acting by and through its duly authorized officers as of the 25th day of January, 1973.

WINESSES:

LIGHTHOUSE BEACH COMPANY

BY SEA PINES MANAGEMENT CO., INC.
(General Partner)

Louise B. Williams

By Charles E. Fraser (SEAL)
Its President

Donna S. Boswell

Attest [signature]
Its Assistant Secretary

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

1160

PERSONALLY appeared before me Donna S. Boswell and made oath that he saw the within named LIGHTHOUSE BEACH COMPANY by Sea Pines Management Company, Inc., General Partner, by Charles E. Fraser, its President, and S. Larry Phillips, its Assistant Secretary, sign, seal and as its act and deed, deliver the within written Declaration of Covenants and Restrictions for Commercial Property for the uses and purposes therein mentioned and that he with Louise P. Williams witnessed the execution thereof.

Donna S. Boswell

SWORN TO before me this 25th day of January, 1973.

Louise P. Williams (SEAL)
Notary Public for South Carolina
My Commission expires: Feb. 24, 1981

10 10 1/2 10

FILED AT	BEAUFORT COUNTY S. C.	RECORDED IN BOOK
11:30		256
O'CLOCK	FEB 15 1973	PAGE
A M		1143

M W Zeigler Jr.
CLERK OF COURT, CP COMMON PLEAS
533

-18-

510

6

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY STAMP TAX
NOV 17'87 999.00
P.B. 11222

STATE OF SOUTH CAROLINA
SOUTH CAROLINA TAX COMMISSION
DOCUMENTARY STAMP TAX
NOV 17'87 300.00
P.B. 11222

J. S & P/J P S
415

Revenue Stamps Collected
$ 20,130.00
Beaufort County, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LIMITED WARRANTY DEED

NOW, KNOW ALL MEN BY THESE PRESENTS, that on or about November 24, 1986, Gardner-Matthews Plantation Company (86-03801), Hilton Head Holdings Corporation (86-03802), Hilton Head Hotel Company (86-03803), Vacation Resorts Holding, Inc. (86-03804), Vacation Resorts, Inc. (86-03805), The Hilton Head Company, Inc. (86-03808), Hilton Head Holdings Corporation, f/k/a Ginn Holding Corp. (86-03868), Hilton Head Company, a Delaware corporation (86-03869), Sea Pines Plantation (86-03870), Hilton Head Holdings Corporation (86-03869), Sea Pines Plantation (86-03870), Hilton Head Holdings Corporation formerly known as Ginn Holding Corp. (86-03871), Hilton Head Company, a Delaware Corp. (86-03884), and Sea Pines Plantation Company (86-03885) filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. On November 24, 1986, United States District Court Judge Sol Blatt, Jr., withdrew the reference of the above-stated cases to the United States Bankruptcy Court and the cases were retained and reserved in the United States District Court pursuant to 28 U.S.C. Sections 157 and 1334;

WHEREAS, by Order of the District Court entered November 26, 1986, John F. Curry was appointed Interim Trustee for the above-named Debtors and by Order entered December 23, 1986, was appointed Trustee pursuant to 11 U.S.C. Section 1104;

WHEREAS, by Orders of the District Court entered January 6, 1987, March 20, 1987 and August 24, 1987, the above-stated cases were consolidated into Gardner-Matthews Plantation Company (86-03801), Hilton Head Hotel Company (86-03803), Vacation Resorts Holdings, Inc. (86-03804),

INITIALS

Vacations Resorts, Inc. (86-03865), and Hilton Head Holdings Corporation (86-03871) (hereinafter referred to as "Debtors");

WHEREAS, the Trustee managed the affairs and operated the businesses of these Debtors pursuant to 11 U.S.C. Section 1106;

WHEREAS, after proper notice and a hearing held on October 13, 1987, the District Court entered an Order confirming the Second Amended Joint Plan of Reorganization on October 15, 1987, which Order became final on October 25, 1987, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference;

WHEREAS, after proper notice and a hearing on October 14, 1987 on the Trustee's amended Complaint to Sell the Debtors' Sea Pines Assets Free and Clear of Liens, Encumbrances and Other Interests, the District Court entered an Order on October 26, 1987, authorizing the Trustee to sell the Sea Pines Assets free and clear of all liens, encumbrances and other claims, except for certain Permitted Exceptions, a copy of which Order is attached hereto as Exhibit "B" and incorporated herein by this reference;

WHEREAS, on October 22, 1987, John F. Curry, Trustee in Bankruptcy for Hilton Head Holdings Corporation and Sea Pines Plantation Company (as Seller), and Sea Pines Associates, Inc. (as Buyer), did enter into an Asset Purchase Agreement for the Sea Pines Assets, which Asset Purchase Agreement was approved by Order of the District Court on October 22, 1987, a copy of which is attached as Exhibit "C";

WHEREAS, Sea Pines Plantation Company has agreed to amend its Articles of Incorporation to change its corporate name to Hilton Head Liquidation Corp. in order to allow Buyer, Sea Pines Associates, Inc., or its designee, to form a new South Carolina corporation under the name of

1.01.LIT

Sea Pines Plantation Company, Inc., to take title to certain of the assets being conveyed pursuant to the Asset Purchase Agreement;

WHEREAS, Sea Pines Plantation Company so amended its Articles of Incorporation, effective November 1, 1987, and is now known as Hilton Head Liquidation Corp., a copy of which amended Articles of Incorporation are attached hereto as Exhibit "D";

NOW, THEREFORE, Hilton Head Liquidation Corp., a South Carolina corporation, by John F. Curry, its Trustee (hereinafter referred to as "Grantor"), in consideration of the premises and also in consideration of the sum of One and No/100 ($1.00) to it in hand paid at and before the sealing and delivery of these presents by Sea Pines Plantation Company, Inc., whose address is P. O. Box 7000, Hilton Head Island, South Carolina 29938 (hereinafter referred to as "Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and released, and by these presents, does grant, bargain, sell, convey and release unto the said Grantee, its successors and assigns forever, all of its rights, title and interest, whatever the same may be, in and to all of the property described on Exhibit "E" which is attached hereto and incorporated herein by this reference, subject to the Permitted Exceptions listed on Exhibit "F" which is attached hereto and incorporated herein by this reference.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said Premises belonging to or in any wise incident or appertaining thereto.

TO HAVE AND TO HOLD, all and singular the Premises aforementioned unto the said Grantee, its successors and assigns forever.

AND the said Grantor does by and for itself, its successors and assigns warrant and promises to forever defend all and singular the said

1.01.LITG23

Premises unto the said Grantee, its successors and assigns, against itself and its successors and assigns and any person claiming by, through and under Grantor.

IN WITNESS WHEREOF, Grantor has caused these Presents to be executed by their duly authorized representatives and officers and their corporate seals to be hereto affixed this 17th day of November, in the year of Our Lord One Thousand Nine Hundred Eighty-seven and the two hundred and twelfth year of sovereignty and independence of the United States of America.

SIGNED, SEALED AND DELIVERED
in the presence of:

Nancy D. Olan

Louise R. Lund

HILTON HEAD LIQUIDATION CORP.,
(formerly known as Sea Pines
Plantation Company), a South
Carolina corporation

By: John F. Curry
John F. Curry, its Trustee

PARCEL "A-21"

479

SOUTH BEACH POOL & PLAYGROUND AREA

ALL that certain piece, parcel or tract of land, containing 3.961 Acres as shown on a plat entitled "An As-built, Tree and Topographic Survey of 3.961 Acres South Beach Area, A Section of Sea Pines Plantation," dated November 13, 1987, prepared by Surveying Consultants of Hilton Head Island, Inc., Terry G. Hatchell, S.C.R.L.S. #11059, and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Plat Book 35 at Page 12.

The property or property rights described herein, if any, are a portion of the same property conveyed by Deed dated December 12, 1975, and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Deed Book 233 at Page 614.

BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	Submap	Parcel	Block
550	17		1193	

PARCEL A-21

SOUTH BEACH POOL AND PLAYGROUND AREA

a) Easements, etc. as reflected on the plats recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina in Plat Book 24 at Page 49, Plat Book 27 at Page 29 and Plat Book 29 at Page 14.

b) Declaration of Rights, Restrictions, Conditions, etc. Which Constitute Covenants Running with certain Lands of the Hilton Head Company as set forth in the instrument recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 78 at Page 306 and as amended.

c) Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, etc. Which Constitute Covenants Running With Certain Lands of the Sea Pines Land Company dated August 20, 1967, recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 150 at Page 41 and as amended.

d) Declaration of Rights, Restrictions, Easements, set-back lines, rights-of-way, options, conditions, etc. as recorded in Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 176 at Page 203 amended in Deed Book 182 at Page 260, Deed Book 443 at Page 67, re-recorded in Deed Book 435 at Page 532, and as amended.

e) Declaration of Covenants and Restrictions dated September 22, 1975, recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 232 at Page 937.

f) Additional Consent regarding Traffic Control as recorded in said Office of the Register of Mesne Conveyance in Beaufort County in Deed Book 453 at Page 1625.

g) Easements contained in Memorandum of Contract of Sale between Sea Pines Plantation Company and Ned E. Gilleland recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 308 at Page 806.

h) Easements contained in Deed from Sea Pines Plantation Company to South Beach Marina Village recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 385 at Page 1224.

i) Easements contained in Deed from Sea Pines Plantation Company to Arthur R. Ashe, Jr. recorded in said Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 235 at Page 644.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

AFFIDAVIT OF GEORGE W. WILLIAMS, Jr.

Affiant George W. Williams, Jr., being duly sworn, deposes and states;

1. I am a resident and citizen of Beaufort County, South Carolina, am over the age of 21, and have no legal impediments preventing me from giving my affidavit. All facts stated herein are based upon my personal knowledge,
2. I am President of Sea Pines South Beach Property Owners' Association, Inc., defendant in the lawsuit styled Case No. 2014-CP-07- 01435, *Catwalk, LLC et al. v. Sea Pines South Beach Owners' Association, Inc.*
3. As President of Sea Pines South Beach Owners Association, Inc., I am familiar with and have access to the records of the Association.
4. Sea Pines South Beach Owners Association, Inc. ('the Association") is a South Carolina corporation established in 1969 to maintain and administer the common properties in Sea Pines South Beach and to collect and disburse assessments and charges necessary for the maintenance, administration, and enforcement of Declaration of Covenants and Restrictions for Sea Pines South Beach, recorded in Deed Book 176 at Page 203, as amended from time to time. All real property within the 102.63 acre South Beach parcel, recorded in Plat Book 18 at Page 126, is subject to the Declaration of Covenants and Restrictions.
5. Plaintiffs' properties are in the South Beach parcel.
6. An owner of real property in South Beach must be a member of the Association.
7. In 2013, I was the President of the Association. At that time the issue of the dredging of Braddock Cove was before the Association. The Association understood that a special assessment to fund the dredging would be necessary. As President, I asked the Association's attorney, John. P. "Jack" Qualey, Jr., to review the covenants and identify all properties within the Association membership area. Based upon the information received from Mr. Qualey, the Association learned of numerous properties that were not on the Association's membership roll. A list of the owners, dated May 25, 2013 is attached. At that point, in order to preserve its rights and give the owners the opportunity to comply with the covenants, a letter was sent

advising the owners of their obligations under the covenants. A copy of the letter sent to Mr. Robert A. Gossett, plaintiffs' principal, dated March 27, 2014 is attached.

8. It was never the intent of the Association to waive its enforcement rights. The Association records show that from time to time over the years dues statements, meeting notices, and proxies were sent to Plaintiffs, but it was not until 2013 that the Association had a comprehensive review of its membership.
9. Each Plaintiff in the lawsuit identified in Paragraph 2 above owns real property in Sea Pines South Beach. Each Plaintiff in the above lawsuit, as an owner of real property in South Beach, is obligated by the Declaration of Covenants to pay assessments and must be a member of the Association.
10. All real property in the South Beach parcel is subject to the Declaration of Covenants and Restrictions for Sea Pines South Beach. All commercial, residential, common, and undeveloped property is subject to the Declaration of Covenants and Restrictions.
11. Sea Pines Real Estate and South Beach Tennis Club are commercial properties within South Beach. Both are Association members.

George W. Williams, Jr.

Sworn to before me this 7th
Day of August, 2015

Notary Public for North Carolina
My commission expires:

CHERYL PARKS
Notary Public, North Carolina
Buncombe County
My Commission Expires
August 08, 2020

G.S. § 10B-41 NOTARIAL CERTIFICATE FOR ACKNOWLEDGMENT

Buncomb County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

George W Williams
Name(s) of principal(s)

Date: August 7, 2015

(Official Seal)

CHERYL PARKS
Notary Public, North Carolina
Buncombe County
My Commission Expires
August 08, 2020

Cheryl Parks
Official Signature of Notary

Cheryl Parks, Notary Public
Notary's printed or typed name

My commission expires: 08-08-2020

SOUTH BEACH COMMERCIAL AREA OWNERS
PER BEAUFORT COUNTY ASSESSOR RECORDS
MAY 25, 2013

1. South Beach Racquet Club, Inc.
P. O. Box 5994
Hilton Head Island, SC 29938

TMS: R550-017-000-1127-0000
Property Address: 230 S. Sea Pines Drive
.62 acres (PB 34/54)

2. South Beach Racquet Club, Inc.
P. O. Box 5994
Hilton Head Island, SC 29938

TMS: R550-017-000-1204-0000
.79 acres (PB 33/13)

3. SBM, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928
South Beach Marina – Boat Slips (PB 35/128)
(This is technically not a "real estate interest" (boatslips are personal property).

4. South Beach Swimming Pool, Inc.
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Property Address: 232 S. Sea Pines Drive
TMS: R550-017-000-1031-0000 1231-0000
.463 acres (Pool Area PB 75/121)

5. South Beach Racquet Club, Inc.
P. O. Box 5994
Hilton Head Island, SC 29938

TMS: R550-019-000-0306-0000
2.48 acres (PB 33/17 and PB 34/202)

6. Moondog, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Property Address: 228 S. Sea Pines Drive
TMS: R550-019-000-0245
1.28 acres (PB 35/69)

7. Moondog, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit III Lands End Tavern
"Salty Dog Café"
TMS: R550-017-000-1089-0001 (PB 37/107)

8. Vacation Inn, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit I Lands End Tavern HPR General Store
TMS: R550-017-000-1139-0001 (PB 131/73)

9. LET, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit A Lands End Tavern HPR
TMR: 550-017-000-1208-0001 (PB35/129 and PB131/73)

10. SBM, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit B Lands End Tavern HPR
Blue Water Tackle Shop
TMS: R550-017-000-1208-0002 (PB 131/73 and PB 35/129)

11. SBM, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit C Lands End Tavern HPR
Blue Water Marina and Enclosed Storage
TMS: R550-017-000-1208-0003 (PB 35/129 and PB 131/73)

12. SBM, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit D Lands End Tavern HPR
"Harbourmaster"
TMS: R550-017-000-1208-0004 (PB 131/73 and PB 35/129)

13. Moondog, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit II Lands End Tavern HPR
"Gazebo Area"
TMS: R550-017-000-1213-0001 (PB 131/73)

14. Catwalk, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Common areas of Lands End Tavern
TMS: R550-017-000-1240-0000

13. Catwalk, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Common area of South Beach Marina
TMS: R550-017-000-1128-0000
.64 acres (PB 131/73)

14. Catwalk, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Parcel B – Tennis/Playground area
TMS: R550-017-000-1229-0000
2.76 acres (PB 72/79)

15. Lost Parrott, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Unit 300 South Beach Marina Village HPR
Wreck of the Salty Dog
TMS: R550-017-000-1212-0300
(PB 35/232)

16. Vacation Inn, LLC — Total - 31
South Beach Marina Inn Horizontal Property Regime
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Vacation Inn Quartershares
Units 101-114 14 units
TMS: R550-017-000-1212-0101 through 114
Units 201-217 17 units
TMS: R550-017-000-1212-0201 through 0217
(taxed as individual units)

17. SBM, LLC
224 S. Sea Pines Drive
Hilton Head Island, SC 29928

Boat Ramp
TMS: R550-017-000-1209-0000
1 acre (PB 35/128)

Compiled by Jack Qualey

SEA PINES SOUTH BEACH
OWNERS ASSOCIATION

P.O. Box 7366 Hilton Head Island, SC 29938
southbeachhomeowners@gmail.com

5/27/2014

Dear Bob

I believe you are aware that before the start of the dredging project we had an outside review of the extent of the area and properties that fall within SPSBOA. In that review we discovered that parts of Scaup Court, all of Pintail and Merganser Court and the commercial properties were included. We are now in the process of reviewing our financial status and any outstanding dredge assessments and annual dues. In this process we have found that due to an oversight we neglected to send you a detail billing for the 2014 dues. In our previous review we discovered there are 43 properties within the marina complex that are assessable for annual dues. I have attached the listing of the commercial properties we received from our attorney, Jack Qualey, and have marked it up as to the properties within the marina complex. For 2014 the annual dues are $20 per property which having 43 properties comes to a total of $860 due. Payment by June 15, 2014 would be appreciated. Should you have any questions I can be reached at 843-363-6601.

George W. Williams, Jr.
President

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

RETURN TO DEFENDANT'S COMBINED RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

2015 AUG 18
BEAUFORT COUNTY

Catwalk, LLC, Moondog, LLC, Vacation Inn, LLC, and South Beach Swimming Pool, Inc. (hereinafter, the "Plaintiffs"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, files their Return to "Defendant's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment" of the Sea Pines South Beach Property Owners' Association, Inc. (hereinafter, the "Association") and states as follows:

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(1)

1. The "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina", recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on August 18, 1970, in Official Record Book 176 at Page 203 (hereinafter, the "Sea Pines South Beach Covenants") do not apply because the Plaintiffs' property is commercial property and is governed by the Commercial Covenants recorded on February 15, 1973 in Official Record Book 206 at Page 1143 (hereinafter, the "Commercial Covenants").

a. The Commercial Covenants state:

> "It being the true intent and purpose of this Declaration that **the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties** conveyed by Lighthouse Beach Company, subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, **it is the true intent and purpose of Lighthouse Beach Company, that to the extent that there is conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant Declaration shall govern and restrict commercial properties** hereafter conveyed in deeds making reference to this Declaration."[1] (Emphasis added)

An unambiguous covenant will be enforced according to its obvious meaning. [2] A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant.[3] Restrictive covenants are contractual in nature, thus the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.[4] Ambiguities in a restrictive covenant are to be strictly construed against the party seeking to enforce it; however, the rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. [5]

The express intention of Lighthouse Beach Company in the Commercial Covenants

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1 *See:* Commercial Covenants.

2 *Harvey v. Marsh Hawk Plantation*, 310 S.C. 355, 426 S.E.2d 792 (SC 1993) citing *Donald E. Baltz, Inc. v. R.V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441 (SC 1966).

3 *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (SC 1987).

4 *Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (SCApp. 1985).

5 *Id.*, at 336 S.E.2d at 18–19.

was for the Commercial Covenants alone to govern the commercial properties in Sea Pines.

The Commercial Covenants state that they shall control relating to commercial properties in event of a conflict with any other recorded covenants.

b. In his un-controverted affidavit, Charles A. Scarminach states:

(1) The property in South Beach Marina Village is "commercial property" as described in the Commercial Covenants.

(2) That the Association never made any assertion that any of the commercial properties in South Beach Marina Village were encumbered or affected by the Sea Pines South Beach Covenants while Sea Pines Plantation Company owned them.

(3) Sea Pines Plantation Company never paid any assessments relating to any properties in South Beach Marina Village to the Association during the time that Sea Pines Plantation Company owned them.[6]

c. All properties owned by the Plaintiffs have been and are currently assessed as commercial properties.[7]

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(2)

2. The Association argues that because Plaintiffs' title insurance policies list the Sea Pines South Beach Covenants in the exceptions, that binds them to those Covenants. The title policies recite numerous other covenants as well, including the Commercial Covenants. The title policies conclusively establish only that a cloud on the title exists that the title insurer will not fix. There is no language in the policies that purports to state that any of the exceptions are valid or actually encumber the title. The policies state only that the insurer will neither defend nor indemnify the insured with respect to any claim based on any item in Schedule B(II).

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6 *See:* Affidavit of Charles A. Scarminach paragraphs 9, 10, 11, 12 and 13.

7 *See:* Supplemental Affidavit of Robert A. Gossett, Jr.; Affidavit of Donald E. Sigmon.

As with any other contract, a title insurance policy must be construed according to its plain language. [8] There is no language in any of the title insurance policies that states that the listing of any document in Schedule B(II) means that the insured property is, in fact, encumbered by the document.

BY WAY OF REPLY TO ASSOCIATION'S ARGUMENT B(3)

3. The Association attempts to argue that the Commercial Covenants do not exempt the Plaintiffs from the obligations imposed by the Sea Pines South Beach Covenants. To the contrary, the express language of the Commercial Covenants is that only the Commercial Covenants apply to the commercial properties in Sea Pines, which includes the Plaintiffs' properties in South Beach Marina Village.[9] As cited above, real property covenants are contracts and unambiguous language in them controls the meaning of them.

A restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.[10] Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property.[11]

The Association attempts to argue that because Lighthouse Beach Company "reserves in each instance the right to add, in Deeds of Conveyance, additional covenants..." that is evidence that the Plaintiffs' properties are subject to the Sea Pines South Beach

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8 *North American Products v. P. J. Richardson*, 411 SC 371, 769 S.E.2d 237 (SC 2015).

9 See: Affidavit of Charles A. Scarminach, paragraph 10. The Association does not contest the fact that the Plaintiffs' properties are commercial properties.

10 *Hardy v. Aiken*, 369 S.C. 160, 631 S.E2d 539 (SC 2006); *Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (SC 1980).

11 *Id.*, 369 SC 160, at 166, citing *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (SC 1998).

Covenants. All this language means, though, is that Lighthouse Beach Company, reserved its rights to amend, add or limit the covenants on the commercial properties. The quoted language does nothing more than to state what the law recognizes.[12] There is no evidence in the record, however, to show that the developer ever did so.

The intent and effect of the Commercial Covenants is demonstrated by the actions of the parties, including the Association, over a period of more than 40 years. All of the properties owned by the Plaintiffs are assessed as commercial properties, and the Plaintiffs have never paid any assessments to the Association, or participated in the affairs of the Association. The Association did not take any action to enforce any of alleged rights in the Plaintiffs' properties for a period exceeding 40 years.[13]

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(4)

4. The Association argues that the Bankruptcy Court Limited Warranty Deed transferring title to numerous parcels of land, including the "South Beach Pool" parcel included a list of "permitted exceptions" which listed, among others, the Sea Pines South Beach Covenants, that the Bankruptcy Court held "found" that the Sea Pines South Beach Covenants apply to the parcel owned by he Plaintiff South Beach Swimming Pool, Inc.[14]

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[12] See: *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp*, 368 S.C. 342, 628 S.E.2d 902 (SC 2006). a developer may generally reserve to himself the right to amend restrictive covenants in its sole discretion, and may do so without the consent of the grantee, so long as he exercises that right in a reasonable manner.

[13] *See:* Affidavit of Charles A. Scarminach, paragraphs; Affidavit of Ned E. Gilleland, Sr., paragraphs 6-12; Affidavit of Richard T. Sonberg, paragraphs 4, 7-12; Affidavit of Donald E. Sigmon, paragraphs 3-6; Affidavit of Robert A. Gossett, Jr., paragraphs 10-16; Supplemental Affidavit of Robert A. Gossett, Jr., paragraphs 3 and 4.

[14] The Association has put forth no evidence to support its argument that the Bankruptcy Court either "found", "determined" or "held" that the Sea Pines South Beach Covenants were binding on the owner of the South Beach Pool Parcel. The text of the deed includes no such language.

Including any recorded document as a "permitted exception" to title does not "subject" the property conveyed to the permitted exception. All it does is prohibit the Grantee from asserting any claim against the Grantor arising from the permitted exception. Whether or not any of the permitted exceptions actually affect the title to the property conveyed is a separate question.

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(5)

5. The Association states that other commercial entities in the South Beach Marina Village area are members of the Association. The Defendant refers to the Affidavit of George W. Williams, Jr., who served as President of the Sea Pines South Beach Property Owners' Association in 2013. In his affidavit, George W. Williams, Jr., states that "**In 2013**, I was the President of the Association. At that time the issue of the dredging of Braddock Cove was before the Association.... **As President, I asked the Association's attorney, John P. "Jack" Qualey, Jr., to review the covenants and identify all properties within the Association membership area. Based upon the information received from Mr. Qualey, the Association learned of numerous properties that were not on the Association's membership roll . . .**" (Emphasis supplied)[15]

Mr. Williams then contradicts himself in stating that "The Association records show that "from time to time over the years dues statements, meeting notices and proxies were sent to Plaintiffs".[16] No examples of any such "dues statements, meeting notices and

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[15] *See:* Affidavit of George W. Williams, Jr., paragraph 7. What happened here is obvious. The Association determined that it would find a way to shift the burden of paying for its share of the dredging of Braddock Cove away from its members, and it sought to shift it to the commercial properties owned by the Plaintiffs through the assertion of this bogus claim that the commercial properties were subject to the Sea Pines South Beach Covenants.

[16] *See:* Affidavit of George W. Williams, Jr., paragraph 8.

proxies" are attached to the affidavit, and none have been produced by the Association. Both of the statements in the George W. Williams, Jr., affidavit cannot be true.[17]

In his affidavit, George W. Williams, Jr., testifies that the "South Beach Racquet Club, Inc." is a member of the Association. This assertion is disputed by the South Beach Racquet Club, Inc., and has been disputed by the South Beach Racquet Club, Inc., since the Association first made its claim in 2013.[18]

In his affidavit, George W. Williams, Jr., also testifies that "Sea Pines Real Estate" is a member of the Association. There is no mention of "Sea Pines Real Estate" on the list of commercial properties that the Association claims to have "discovered" to be members of the Association in 2013, which it now claims to be bound by the Sea Pines South Beach Covenants.[19] No evidence is proffered to demonstrate that any entity known as "Sea Pines Real Estate" now owns or ever has owned any property in the South Beach area of Sea Pines.

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(6)

6. The Association contends that because the Sea Pines South Beach Covenants contain

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[17] The affidavit of George W. Williams, Jr., or at least that portion of it containing the statement that the records of the Association reflect that it sent any meeting notices, assessment notices or anything else to the Plaintiffs prior to July of 2013, should be disregarded as a sham affidavit. The purported testimony is contradictory to the previous sworn testimony in the same affidavit which is that the Association "learned" that the Plaintiffs' properties were in the membership area in 2013. See also the May 27, 2014, letter of George W. Williams, Jr., attached to his affidavit as an exhibit, in which he again states that the Association "discovered" the commercial properties were members of the Association in 2013. Both statements cannot be true and the statement that the Association did anything prior to 2013 appears to made for the sole purpose of attempting to create some issue of fact. *See: McMaster v. DeWitt*, 411 SC 138, 767 S.E.2d 451 (SCApp. 2014); *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (SC 2004).

[18] *See:* Affidavit of Donald E. Sigmon.

[19] Again, both the statement in Mr. Williams' affidavit regarding Sea Pines Real Estate, and his testimony related to list of commercial properties, which does not include "Sea Pines Real Estate" as an owner of any property in the South Beach area of Sea Pines, cannot be true. *See:* Note 17 above.

a non-waiver provision, the Association's failure to take any action to enforce its claimed rights under them for a period of more than 40 years cannot amount to a waiver. While the language quoted in the Sea Pines South Beach Covenants does contain a non-waiver term, the Association cites no support for its claim that the non-waiver language means that there is no consequence for the Associations' failure to enforce its claimed rights for a period of more than 40 years.[20]

In construing a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning.[21]

In this case, the Sea Pines South Beach Covenants, read as a whole, do not support the interpretation urged by the Association. The notion that the Association can ignore the covenants for an unlimited time with no consequence is not encompassed by the language of the whole document.[22]

BY WAY OF REPLY TO THE ASSOCIATION'S ARGUMENT B(7)

7. The Association asserts that S.C. Code Ann. §15-3-380 (Supp. 2015), does not apply

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[20] The non-waiver term in the Sea Pines South Beach Covenants would have no effect on the bar of the 40 year lapse in S. C. Code Ann. § 15-3-380 (Supp. 2013). Whether or not there has been a waiver is not relevant to the Association's failure to assert its claim within the period of limitations.

[21] *Ecclesiastes Prod. Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 498–99, 649 S.E.2d 494, 502 (SCApp. 2007); *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952); *In re: Reserve Golf Club of Pawleys Island, LLC*, 428 B.R. 678, 683 (Bankr. D.S.C. 2010).

[22] The cases relied on by the Association are inapplicable to the facts of this case. *Cobb & Seal Shoe Store v. Aetna Insurance Company*, 78 SC 388, 58 S.E. 1099(SC 1907), and *Crotts v. Fletcher Motor Company*, 219 S.C. 64 S.E.2d 540 (SC 1951), deal with non-waiver agreements executed by an insured in connection with an investigation of a loss by the insurer. Neither addresses the effect of a party's unreasonable delay in exercising a claimed right. The case of *Tilley v. Pacesetter Corporation*, 333 S.C. 508, 508 S.E.2d 16 (S.C. 1998), is a statutory interpretation case that does not address the issues in this case in any way.

to the within action because "Defendant's Answer and Counterclaim does not claim possession of any of Plaintiffs' properties by title of written instrument or otherwise."[23]

S.C. Code Ann. §15-3-380 (Supp. 2015), is not limited to a claim for possession of real property. S.C. Code Ann. §15-3-380 (Supp. 2015), reads:

> "No action shall be commenced in any case for the recovery of real property **or for any interest therein** against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period." (emphasis added).

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.[24]

The Association seeks to assert an interest in the Plaintiffs' real property under and by virtue of the Sea Pines South Beach Covenants. S.C. Code Ann. §15-3-380 (Supp. 2015), by its plain language, is not limited to a possessory claim but rather encompasses any claim asserting "any interest" in real property.

The Sea Pines South Beach Covenants by which the Association claims an interest in the Plaintiffs' real property were recorded in June of 1970. The Association failed to act

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[23] *See:* The Association's Response to Motion for Summary Judgment, P. 3 and page 8.

[24] *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (SC 2007).

in any manner to assert the interest it now claims until July of 2013, or three years past the expiration of the 40 year statute of limitations.[25]

CONCLUSION

The Association has not shown the existence of any issue of material fact that precludes a grant of Summary Judgment on its motion. The only evidence in the record is that the Plaintiffs' properties are subject to the Commercial Covenants and not to the Sea Pines South Beach Covenants. In addition, the only evidence in the record is that the Association did not do anything to assert any claim that the Plaintiffs' properties were subject to the Sea Pines South Beach Covenants for a period of more than forty (40) years, and are therefore barred from doing so now by S.C. Code Ann. §15-3-380 (Supp. 2015).

As is shown above, the Association has failed to show that it is entitled to a grant of Summary Judgment on its motion, and the Plaintiffs urge that the Court dismiss the same.

Respectfully Submitted:

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Hilton Head Island, South Carolina

This 17th Day of August, 2015.

[25] *See:* Affidavits of Robert A. Gossett, Jr., Ned E. Gilleland, Sr., Richard T. Sonberg and Charles A. Scarminach.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,	)	
Plaintiffs,	)	NOTICE OF MOTION AND MOTION TO ALTER OR AMEND UNDER RULE 59, SCRCP
vs.	)	
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

Please take notice that Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot, LLC; Vacation Inn, LLC; SBM, LLC; and, South Beach Swimming Pool, Inc. (hereinafter, the "Plaintiffs"), by and through their undersigned counsel, shall move before the Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Judge for Beaufort County, South Carolina, at the Beaufort County Court House, 102 Ribaut Road, Beaufort, South Carolina, on the 10th day following the service hereof, at 10:00 o'clock, A. M., or at such other time and place as the Court determines, for an Order Altering or Amending the Order Granting Summary Judgment to the Sea Pines South Beach Property Owners' Association, Inc.

The Order was signed and filed on January 22, 2016, and was served on January 27, 2016. The Motion is made under the authority of Rule 59, SCRCP, on the grounds set forth below.

SUMMARY JUDGMENT SHOULD BE GRANTED TO THE PLAINTIFFS

The Plaintiffs' Motion for Summary Judgment should have been granted for the following reasons:

S. C. CODE ANN. § 15-3-380 (SUPP. 2015), IS AN ABSOLUTE BAR TO ANY CLAIM ASSERTING AN INTEREST IN REAL PROPERTY AFTER A LAPSE OF 40 YEARS

In the January 22, 2016, Order, the Court ruled that S. C. Code Ann, § 15-3-380 (Supp. 2015), ". . . is the limitations period for an action for possession of property." The Court ruled that the Plaintiffs' claim under S. C. Code Ann. § 15-3-380 (Supp. 2015), failed because the Association did not assert a claim for possession of the Plaintiffs' property.[1] S. C. Code Ann. § 15-3-380 (Supp. 2015), reads:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

The Court's conclusion that S. C. Code Ann. § 15-3-380 (Supp. 2015), is limited to actions for possession of real property is contrary to the plain language of the statute. The plain language of the statute addresses not only recovery of real property, but also "for any interest therein." The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.[2] In the January 22, 2016, Order, the Court's interpretation limits the operation of S. C. Code Ann. § 15-3-380 (Supp. 2015), in a way that is contrary to the plain language of the statute.

In this case, the Association has asserted a claim that the "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina" recorded

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[1] *See:* January 22, 2016, Order, page 8.

[2] *Jones v. SC Department of Health & Environmental Control*, 384 S.C. 295, 682 S.E.2d 282 (Ct. App. 2009); *Carolina Mfg. Co. v. City of Greenville*, 260 S.C. 580, 197 S.E.2d 665 (SC 1973).

on or about August 18, 1970 (referred to in the January 22, 2016, Order, and hereinafter as the "1970 Covenants"), encumber the Plaintiffs' commercial property. The Association now claims interests in Plaintiffs' commercial property arising under the 1970 Covenants.[3]

Under the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015), the failure to claim an interest in real property for a period of more than 40 years operates as an absolute bar to the Association's claim. Under the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015), because the Association failed to assert its claim of an interest in the Plaintiffs' commercial property for a period of more than 40 years, the possession thereof by the Plaintiffs is "deemed valid against the world after the lapse of such a period," and the Association's claim is barred.

THE ONLY EVIDENCE IN THE RECORD IS THAT THE ASSOCIATION DID NOT MAKE ANY CLAIM THAT THE 1970 COVENANTS ENCUMBERED THE PLAINTIFFS' COMMERCIAL PROPERTY FOR A PERIOD OF MORE THAN 40 YEARS, AND DID NOT ENFORCE OR ATTEMPT TO ENFORCE ITS CLAIMED RIGHTS UNDER THE 1970 COVENANTS FOR A PERIOD OF MORE THAN 40 YEARS.

In the January 22, 2016, Order, the Court makes no mention of the undisputed evidence that the Association did not take any action to enforce its claimed rights under the 1970 Covenants with respect to the Plaintiffs' commercial property for more than 40 years, and that neither the Plaintiffs nor their predecessors in title ever paid any assessments, attended Association meetings or claimed or exercised any rights arising under the 1970 Covenants with respect to the Plaintiffs' commercial properties.[4]

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3 *See:* August 25, 2014, Answer and Counterclaim, paragraphs 31 - 47.

4 The Plaintiff Vacation Inn, LLC, also owns a property known as Apartment 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, which is a residential property that is encumbered by the 1970 Covenants. This property is not one of the Plaintiffs' commercial properties described in the Complaint for this case. The fact that Vacation Inn, LLC, has sent a representative to meetings of the Association and paid its annual fees to the Association for the Bluff Villa property does not create any issue

The only evidence in the record is that between August 18, 1970, and July of 2013, the Association did not seek to enforce its claimed rights under the 1970 Covenants against the Plaintiffs or their predecessors in title with respect to any of the Plaintiffs' commercial properties described in the Complaint. The only evidence in the record is that for a period of more than 40 years:

> (a) the Association never made any claim that any of the commercial properties owned by the Plaintiffs or their predecessors in title in South Beach Marina Village were encumbered by the 1970 Covenants, that the Plaintiffs or their predecessors in title were obligated to pay assessments to the Association arising under the 1970 Covenants, that the Plaintiffs or their predecessors in title were members of the Association by virtue of their ownership of real property in South Beach Marina Village or that the Plaintiffs or their predecessors in title had any rights or obligations arising from the 1970 Covenants.[5]
>
> (b) neither the Plaintiffs nor their predecessors in title have ever paid a regular or special assessment to the Association related to any of the commercial properties owned by them in South Beach Marina Village.[6]
>
> (c) neither the Plaintiffs nor their predecessors in title to the commercial properties in South Beach Marina Village ever attended any regular or special meeting of the Association in their capacity as an owner of any of the commercial properties owned by them within the confines of South Beach Marina Village.[7]
>
> (d) neither the Plaintiffs nor their predecessors in title to the commercial properties in South Beach Marina Village have ever made any use of Common Property owned by the Association, in any way that is related to

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of fact related to the Plaintiffs' claims in this case. *See:* Supplemental Affidavit of Robert A. Gossett, Jr., dated September 15, 2015.

[5] *See:* Affidavit of Charles A. Scarminach, Paragraph 11; Affidavit of Ned E. Gilleland, Sr., Paragraph, 6, 7 and 8.; Affidavit of Richard T. Sonberg, Paragraphs 4, 8 and 9; Affidavit of Robert A. Gossett, Jr., Paragraphs 10, 11 and 12.

[6] *See:* Affidavit of Charles A. Scarminach, Paragraph 12; Affidavit of Ned E. Gilleland, Sr., Paragraph 9; Affidavit of Richard T. Sonberg, Paragraph 9; Affidavit of Robert A. Gossett, Jr., Paragraph 13.

[7] *See*: Affidavit of Ned E. Gilleland, Sr., Paragraph 10; Affidavit of Richard T. Sonberg, Paragraph 10; Affidavit of Robert A. Gossett, Jr., Paragraph 14.

their ownership of commercial property in South Beach Marina Village.[8]

Because the only evidence in the record is that the Association failed to assert its claimed rights under the 1970 Covenants against the Plaintiffs' commercial properties between August 18, 1970, and July of 2013, the Association is barred from doing so by the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015).[9]

THE 1970 COVENANTS DO NOT ENCUMBER THE PLAINTIFFS' COMMERCIAL PROPERTY

In the January 22, 2016, Order, the Court finds as matters of undisputed fact that the 1970 Covenants encumbered the Plaintiff's commercial property.[10] These are not undisputed facts, as the Plaintiffs have produced evidence detailed herein and in the other filings in this case to show that the 1970 Covenants do not encumber the Plaintiffs' commercial property.

In the January 22, 2016, Order, the Trial Court found that the intention of the Lighthouse Beach Company was that the Plaintiffs' commercial property was encumbered by both the 1970 Covenants and the "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., which Constitute Covenants Running with certain Commercial Lands of Lighthouse Beach Company" recorded on or about February 15, 1973 (referred to in the January 22, 2016, Order, and hereinafter as the "Commercial Covenants").

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8 *See:* Affidavit of Ned E. Gilleland, Sr., Paragraph 12; Affidavit of Richard T. Sonberg, Paragraph 12; Affidavit of Robert A. Gossett, Jr., Paragraph 16.

9 The Association's Counterclaim was not filed until on or about August 25, 2014. July of 2013 is the first time there is any evidence that the Association claimed the 1970 Covenants encumbered the Plaintiffs' commercial property. *See:* August 7, 2015, Affidavit of George E. Williams, Jr., paragraph 7. Either date is more than forty years from the date of the recording of the 1970 Covenants.

10 *See:* January 22, 2016, Order, p. 3, paragraphs 3 - 4.

The Court reached this conclusion in the face of following language from the Commercial Covenants:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[11]

In South Carolina, one of the cardinal rules relating to the construction of contracts is:

> When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.[12]

The language of the Commercial Covenants is plain and unequivocal that as of the date of the recording of the Commercial Covenants, the Commercial Covenants were the "sole applicable covenants restricting Commercial Property" subsequently conveyed by

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[11] *See:* January 22, 2016, Order, p. 8. The text of the January 22, 2016, Order attempts to minimize the effect of this language by describing it as "one sentence" in the document. Aside from the fact that the finding is factually incorrect, because the language appears twice in the Commercial Covenants, the number of words that make up the language has no relevance at all and does not lessen or undo the plain language. *See*: Complaint, Paragraph 23; Answer and Counterclaim, Paragraph 7; Exhibit "B" to Affidavit of Charles A. Scarminach, Jr., p. 17 (recorded page 1159).

[12] *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 777 S.E.2d 425 (Ct. App. 2015).

Lighthouse Beach Company or its successors.[13] In the face of this language, however, the Court found that the Commercial Covenants compliment" the 1970 Covenants, and that both encumber the Plaintiffs' commercial property."[14]

The Court's finding is contrary to the undisputed plain language of the Commercial Covenants and the established law of South Carolina.[15]

THE SEA PINES PLANTATION COMPANY DID NOT ADD THE 1970 COVENANTS AS AN ENCUMBRANCE TO THE PLAINTIFFS' COMMERCIAL PROPERTY BY ITS EXECUTION OF THE 1984 DEED TO SOUTH BEACH MARINA VILLAGE

In the January 22, 2016, Order, the Court finds as matters of undisputed fact that the Plaintiff's commercial property was conveyed subject to the 1970 Covenants.[16] These are not undisputed facts, as the Plaintiffs have produced evidence detailed herein and in the other filings in this case to the contrary.

The Court's interpretation that the January 3, 1984, deed from the Sea Pines Plantation Company to South Beach Marina Village, A Partnership (hereinafter, the 1984 Deed), added the 1970 Covenants as an encumbrance to the Plaintiffs' commercial property is incorrect, as a matter of law, and is inconsistent with the plain language of both the 1970

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[13] There is no dispute that the Plaintiffs' properties are "commercial property" as described in the Commercial Covenants. There is a finding to that effect in the January 22, 2016, Order. *See:* January 22, 2016, Order, pp. 3-4.

[14] *See:* January 22, 2016, Order, p. 8.

[15] The text of the January 22, 2016, Order also suggests that because the Commercial Covenants include language authorizing Lighthouse Beach Company to add additional covenants, that the 1970 Covenants encumber the Plaintiffs' commercial property. This construction of the language is untenable. The language gives the ability to add covenants in the future, but states that existing covenants do not apply. If that had been the intent, there would been no reason to include the language stating that the Commercial Covenants are the "sole applicable covenants" encumbering Commercial Property. Further, the construction adopted by the Court renders the "sole applicable covenants" language meaningless.

[16] *See:* January 22, 2016, Order, p. 4, paragraphs 8, 10

Covenants and the Commercial Covenants.[17]

The 1984 Deed, in both the granting and the habendum clauses, conveys a fee simple absolute, using the following language:

In the Granting Clause:

> ". . . has granted, sold and released, and by the presents does grant, bargain, sell and release unto the said South Beach Marina Village, a partnership, its Successors and Assigns forever, the following described property . . ."

In the Habendum Clause:

> "To Have and to Hold, all and singular, the said premises before mentioned unto the said South Beach Marina Village, a partnership, its Successors and Assigns forever."

In South Carolina, when a fee simple absolute is conveyed, that title may not be cut down by subsequent words in the same instrument. Thus, the listing of the recording data of various covenants and restrictions in the legal description is ineffective to burden the property conveyed in the deed with the items.[18]

In the case of *Hunt v. Forestry Commission*, 358 S.C. 564, 595 S.E.2d 846 (Ct. App. 2004, the Court of Appeals stated this rule as follows:

In a "long and unbroken line of decisions," South Carolina courts have

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[17] *See:* January 10, 2016, Order, p. 6. The January 22, 2016, Order, also includes this finding: "Plaintiffs acquired their property in 1984, and in each instance the 1970 Covenants and the 1973 Covenants were added to the Deeds of Conveyance . . . ." Other than the copy of the 1984 Deed from the Sea Pines Company to South Beach Marina Village, a Partnership, the Association put no other deeds into evidence related to the properties described in the 1984 Deed, and this finding is thus without any support in the record. The Association did attach copies of title insurance polices issued to the Plaintiffs or their predecessors. The title insurance policies do not create any genuine issue of material fact, because the title insurance policies do not, on their face, purport to subject real property to an encumbrance, and as a matter of law, a title insurance policy cannot do so.

[18] Further, with respect to the Court's findings concerning the 1984 Deed, or any other deed that makes reference to the 1970 Covenants and the Commercial Covenants, one must still read the documents to determine their import. In this case, the plain language of the Commercial Covenants allows only one conclusion. If the Commercial Covenants are referred to in any conveyance that post dates the recording of the Commercial Covenants, then the Commercial Covenants are the sole applicable covenants that apply.

> approved the rule that where the granting clause in a deed purports to convey title in fee simple absolute, that estate may not be cut down by subsequent words in the same instrument.[19] This court "will not undertake to overthrow a rule of property so long established."[20]

This rule of construction must be adhered to even if it runs contrary to the express intentions of the grantor.[21] The South Carolina Supreme Court has held:

> It is equally clear (and no citation of authorities is necessary) that an attempt to convey an estate in fee simple and deprive the purchaser of the incident of ownership is not effective in law.[22]

Thus, the listing of the recording data for various covenants in the legal description of the 1984 Deed from Sea Pines to South Beach Marina Village, a Partnership, or any other similarly worded deed, in no way adds the 1970 Covenants as an encumbrance to the title of the lands conveyed, because the language that appears after the grant of fee simple absolute title in the granting clause is ineffective to do so.

In addition, the only evidence in the record is that the Sea Pines Plantation Company considered the Plaintiffs' properties to be commercial, and the Plaintiffs' properties have only been assessed as commercial property.[23] Thus, to the extent that the Court believes that the intention of Sea Pines Plantation Company with respect to the 1984 Deed is relevant, the only evidence in the record is that the Sea Pines Plantation Company

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19 *See also: Shealy v. South Carolina Elec. & Gas Co.*, 278 S.C. 132, 293 S.E.2d 306 (SC 1982); *County of Abbeville v. Knox*, 267 S.C. 38, 40, 225 S.E.2d 863, 864 (1976); *Stylecraft, Inc. v. Thomas*, 250 S.C. 495, 159 S.E.2d 46 (SC 1968).

20 *Purvis v. McElveen*, 234 S.C. 94, 102, 106 S.E.2d 913, 917 (SC 1959).

21 *Stylecraft, Inc. V. Thomas, supra.*

22 *Sandford v. Sandford*, 106 S.C. 304, 91 S.E. 294 (SC 1917).

23 In addition, the Association did not claim otherwise for a period of more than forty years.

considered the Plaintiffs' property to be commercial property.[24]

In its motion for Summary Judgment, the Association bore the burden of proof of demonstrating the absence of any genuine issue of material fact. Relevant to the Association's claim is the law of South Carolina related to restrictive covenants, which is: a restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property."[25]

The Court's finding on page 8 of the January 22, 2016, Order, that the Commercial Covenants ". . . provide that Lighthouse Beach Company may add additional covenants to Deeds of Conveyance . . ." is quoted out of context and is incomplete. The complete text from the Commercial Covenants reads:

> The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application to the uniform covenants contained herein. Notice of such additional covenants will, in all cases, be set forth in the contract of sale relating to such property.

There is no evidence in the record to show that the contract of sale between the Sea Pines Company and South Beach Marina Village, a Partnership, or any other contract of sale related to any of the Plaintiffs' commercial properties, included any notice that the 1970

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[24] *See:* Affidavit of Charles A. Scarminach, Jr.; August 17, 2015, Supplemental Affidavit of Robert A. Gossett, Jr. In addition, in the January 22, 2016, Order, the Court has overlooked the fact that one would still have to read the documents referred to in the legal description to understand their import. Listing the documents in a legal description does not change what the documents actually do. What the Commercial Covenants did was to replace the 1970 Covenants with respect to any commercial property subsequent to the date of recording of the Commercial Covenants. The notion that the Sea Pines Plantation Company intended to undo that is without evidentiary support. Rather, the only evidence as to the intent of the Sea Pines Plantation Company is in the Affidavit of Charles A. Scarminach, Jr., and that evidence is contrary to the Court's conclusion.

[25] *See: Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (SC 1980); *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (SC 2006).

Covenants would be added as an encumbrance to the property.

There is an additional reason that the text of the 1984 Deed or any other deed in the Plaintiffs' chain of title fails to add the 1970 Covenants as an encumbrance to the Plaintiffs' commercial property. The relevant text of the 1970 Covenants reads:

> The Company, it successors, and assigns shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development.
>
> The additions authorized under this and the succeeding sub-section shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions to such additional property.[26]

The is no evidence that any Supplementary Declaration of Covenants bringing the Plaintiffs' commercial properties back under the encumbrance of the 1970 Covenants was ever filed of record by Lighthouse Beach Company, or any of its successors. Since the plain language of the 1970 Covenants requires such in order to add the 1970 Covenants as an encumbrance to any other property, the mere listing of the recording data for the 1970 Covenants in the legal description of a subsequent deed does not meet the requirements of the plain language of the 1970 Covenants.

The Association failed to show that the requirements of either the 1970 Covenants or the Commercial Covenants have been met with respect to the addition of the 1970 Covenants as an encumbrance to the Plaintiffs' commercial properties following the recording of the Commercial Covenants.

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[26] See: Affidavit of Charles A. Scarminach, Jr., Exhibit "A", p. 3.

SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED TO THE ASSOCIATION

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.[27] In a case such as this where the "preponderance of the evidence" burden of proof is applicable, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.[28]

In addition to the legal and factual arguments presented above, the undisputed facts in the record are as follows:

(a) The Association failed to enforce its claimed rights under the 1970 Covenants against the Plaintiffs' commercial property for a period of more than forty years following the recording of the 1970 Covenants.

(b) The Association never sought to collect any regular or special assessment imposed by it from the Plaintiffs or from any of their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(c) Neither the Plaintiffs, nor any of their predecessors in title, have ever attended any regular or special meeting of the Association, paid any regular or special assessment to the Association, claimed to be members of the Association, claimed any rights under the 1970 Covenants, made use of any of the common property of the Association or participated in

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27 *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 443 S.E.2d 392 (SC 1994).

28 *Hancock v. Mid-South Management. Company*, 381 S.C. 326, 673 S.E.2d 801 (SC 2009).

the affairs of the Association with respect to any of the Plaintiffs' commercial properties.

(d) The requirements of the 1970 Covenants and the Commercial Covenants related to the addition of additional covenants to any property were never complied with at any time by any party.

(e) The declarant of both the 1970 Covenants and the Commercial Covenants considered the Plaintiffs' properties to be commercial, and assessed the Plaintiffs' commercial properties in that fashion.

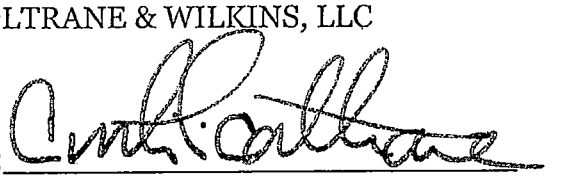
These facts, alone or in combination qualify as a "mere scintilla" of evidence sufficient to overcome the Association's Motion for Summary Judgment.

CONCLUSION

The evidence and law demonstrate that the Plaintiffs' are entitled to summary judgment in their favor on their claim that the 1970 Covenants do not encumber their commercial property. In the alternative, the facts and law are sufficient to overcome the Association's motion for summary judgment.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By: 

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South Carolina Bar Number 1344
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(843) 785-5551
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Hilton Head Island, South Carolina

This 1st day of February, 2016.

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
CATWALK, LLC, MOONDOG, LLC, LET, LLC, LOST PARROT, LLC, VACATION INN, LLC, SBM, LLC, AND SOUTH BEACH SWIMMING POOL, INC., Plaintiffs, vs. SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., Defendant.	Case No. 2014-CP-07-1435 **DEFEENDANT'S RESPONSE TO PLAINTIFFS' RULE 59 (e) MOTION TO ALTER OR AMEND**

Defendant Sea Pines South Beach Owners' Association, Inc. ("the Association") respectfully files its Response to Plaintiffs' Rule 59 (e) Motion to Alter or Amend the January 22, 2016 Order of this Court ('the Order").

PLAINTIFFS' MOTION STATES NO BASIS FOR RELIEF

Plaintiffs argue that the Court should reverse the Order to either (a) grant Plaintiffs' Motion for Summary Judgment or (b) deny Defendant's Cross-Motion for Summary Judgment. In support of their Motion, Plaintiffs argue facts and issues briefed in the earlier motions and addresses in the Order. Plaintiffs do not contend that (i) the Court failed to address specific issues raised in the summary judgment motions, (ii) the law has changed, or (iii) new evidence exists, as required for relief under Rule 59(e) of the South Carolina Rules of Civil Procedure.

Before entering its judgment, the Court received and considered the motions and briefs of the parties, affidavits, documents of record relevant to the case, and letter briefs following oral argument. In addition, the Court heard arguments by the parties on two occasions. A proposed

order was presented for comment before it was signed and entered. Plaintiffs offered no comment or objection to the proposed order. There is nothing new in Plaintiffs' Motion. The Motion is a simply a restatement of various arguments presented by Plaintiffs in the underlying cross-motions for summary judgment.

THE QUESTIONS RAISED WERE CORRECTLY DECIDED IN THE ORDER

Plaintiffs raise five (5) issues in their Rule 59 motion. Each was before the Court and addressed in the Order.

1. S. C. Code Ann §15-3-380 (SUPP. 2015) is a bar to the claim.

That issue was raised and denied by the Court. An action based on a restrictive covenant is not an action for possession of land. §15-3-380 is inapplicable. See Order, page 8. As recently as March 2, 2016, the Court of Appeals of South Carolina held: "Restrictive covenants are construed like contracts and may give rise to actions for breach of contract." *Snow v. Smith*, Appellate Case no. 2013-002727, filed March 2, 2016.

2. The evidence in the record is that the Association failed to enforce the 1970 Covenants against Plaintiffs' properties for more than 40 years.

That issue was raised and decided by the Court. It is, as conceded in Plaintiffs' Motion at 5, an argument based upon §15-3-380 and resolved in the Order, page 8.

3. The 1970 Covenants do not encumber Plaintiffs' property.

The ultimate finding in the Order is that the 1970 Covenants do encumber Plaintiffs' properties. The properties lie within the confines of the South Beach parcel subject to the 1970 Covenants and Plaintiffs' title documents state the properties are subject to the 1970 Covenants. See Undisputed Facts, Order at 3, 4 and Order at 7, 8.

As stated in the Order:

By its plain meaning, the 1970 Covenants create a planned unit development community and give authority to the Association to maintain and administer the community. The 1973 Commercial Covenants set forth design, environmental and other standards and requirements to assure that commercial property is in keeping with stated environmental and aesthetic goals.

To the extent a property in South Beach is commercial in nature, the 1973 Commercial Covenants complement rather than conflict with other community restrictions. The Court finds that as a matter of law Plaintiffs' properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants.

Order at 8.

4. Sea Pines Company did not add the 1970 Covenants in the 1984 Deed.

The 1984 Deed states that the properties are subject to the 1970 Covenants and the 1973 Commercial Covenants. This is an undisputed fact in the Order. See Order, page 4, referring to the 1984 Deed recorded in Deed Book 385 at Page 1224. (The 1984 Deed is Exhibit 4 to Defendant's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment. The property is made subject to the 1970 Covenants and the 1973 Commercial Covenants (which Plaintiffs argue do apply) in the same sentence by paragraph 1 of the "restrictions, covenants, encumbrances and limitations of use", recited in the second page (1225) of the deed, which precedes the habendum clause.)

Plaintiffs' argument that notice of the Covenants was not in any contract of sale between Sea Pines Plantation Company and South Beach Marina Village, assuming such existed, is irrelevant. Neither entity is a party to this dispute. Whether or not South Beach Marina Village did its due diligence prior to accepting the deed in 1984 has nothing to do with this case. The

undisputed fact is the 1984 Deed gives notice that the property is encumbered by the Covenants, as shown above. As to Plaintiffs' contention that there is no evidence the properties were ever "brought back' under the Covenants, it suffices to state that Plaintiffs' properties have always been within the South Beach parcel.

5. Summary Judgment should not have been granted to the Association.

The relief sought by the Association was a finding that Plaintiffs' properties are encumbered by the 1970 Covenants. The Order found Plaintiffs' properties are encumbered by the 1970 Covenants. Summary Judgment was granted Defendant for the reasons stated in 3 above, among others. See Order 3, 4, 7, and 8.

Each and every argument raised by plaintiffs in their Rule 59 Motion was before and properly ruled upon by the Court in the Order.

THERE IS NO CLEAR ERROR IN THE JUDGMENT BECAUSE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT

The Court correctly determined that there are no genuine issues of material fact and noted the following Undisputed Facts upon which the Order is based:

1. South Beach is a 102.63 acre planned unit development community in Sea Pines Plantation, Hilton Head Island, South Carolina.
2. Two covenants are at issue: (1) the *Covenants and Restrictions for South Beach and Provisions for the South Beach Owners' Association, Inc.* dated June 25, 1970 recorded by Lighthouse Beach Company in Book 176 at Page 203 in the Office of the Register of Deeds for Beaufort County, as amended from time to time ("the 1970 Covenants') and (2) the *Commercial Use Covenants* dated January 25, 1973 recorded by Lighthouse Beach Company in Book 206 at Page 1143 in the aforesaid Office (the

1973 Commercial Covenants').

3. The real property subject to the 1970 Covenants is that 102.63 acre parcel or property described in Exhibit A to the 1970 Covenants as the parcel of land shown as South Beach on a Plat Recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 18 at Page 126.
4. Plaintiffs' properties are within the 102.63 acre South Beach parcel.
5. The Commercial Use Covenants recorded in 1973 apply to all property owned by Lighthouse Beach Company on Hilton Head Island designated for commercial use. This includes commercial property in the South Beach parcel.
6. Plaintiffs' properties are subject to the 1973 Commercial Covenants.
7. Plaintiffs' titles, with the exception of Plaintiff South Beach Swimming Pool, Inc., trace back to a Deed between the Sea Pines Plantation Company and South Beach Marina Village, a Partnership, dated January 3, 1984 and recorded in Deed Book 385 at Page 1224. Between 1984 and 2008 Plaintiffs or their predecessors acquired title to properties originally conveyed in the January 3, 1984 deed
8. The January 3, 1984 deed states that the properties are conveyed subject to the 1970 Covenants recorded in Book 176 at Page 203 and the 1973 Commercial Covenants recorded in Book 206 at Page 1143.
9. The title to the property now owned by Plaintiff South Beach Swimming Pool, Inc. arose from a 1987 Deed of the Trustee of the Hilton Head Liquidation Company. The Trustee conveyed this property as part of the plan of reorganization of Sea Pines Plantation and other properties approved by the United States Bankruptcy Court.
10. The property now owned by South Beach Swimming Pool, Inc. was also conveyed

subject to the 1970 Covenants and 1973 Commercial Covenants. Deed Book 1198 at Page 450.

11. The 1970 Covenants contain a non-waiver provision: "...failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter."

Order at 3, 4.

Plaintiffs' Rule 59(e) Motion does not dispute these facts, nor does it offer any new, material facts.

S. C. CODE ANN. §15-3-380

An action to enforce a restrictive covenant is a contract action. *Smith v. Snow, supra.* §15-3-380 is the limitation period for "...a case for the recovery of real property or any interest therein". An action for breach of contract is not "a case for the recovery of real property". Defendant has never claimed to be "actually in possession of the [property] or any part thereof" as required by the statute.

Plaintiffs' argue that S. C. Code Ann. § 15-3-380 bars the Association from enforcing the Covenants. Plaintiffs present no rationale for relief under Rule 59(e): no change in law is cited. It is settled law that covenants, restrictions, and easements are contractual, not possessory interests. *Snow v. Smith, supra*; *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E. 2nd 862 (1998); *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S. C. 342, 628 S. E. 2nd 902 (Ct. App. 2006). Covenants do not limit the fee nor give rise to any right of possession. (See, e.g. *Douglas v. Medical Investors, Inc.* 256 S.C. 440, 182 S.E. 2nd 720 (1971); *Cedar Cove Homeowners Association, Inc. v. DiPietro*, 368 S. C. 254, 628 S. E. 2nd 284 (Ct.

App. 2006).

The cases cited by Plaintiffs, starting with *Sandford v. Sandford*, 106 S.C. 304, 91 S.E. 294 (1917), are instances in which the deeds purported to convey a fee simple interest but contained a limitation of the fee which was contrary to a grant of full title: *Sandford v. Sandford*, 106 S.C. 304, 91 S.E. 294 (1917) the grantee "is not to mortgage or in any wise dispose of said land"; *Stylecraft v. Thomas*, 250 S.C. 495, 159 S.E. 2nd 46 (1968), if the property is "...used for other purposes the said property shall revert..."; *Shealy v. South Carolina Electric & Gas Co.*, 278 S.C. 132, 293 S.E. 2nd 306 (1982) "...grantor...shall retain possession"; and *Hunt v. S.C. Forestry Commission*, 358 S.C. 564, 595 S.E. 2nd 846 (2004)"...and should the grantee for a period of two years cease to use the property aforesaid for said purpose the title thereto shall revert to the grantor..." These cases are correct but not relevant to this Motion.

Plaintiffs' legal theory has been rejected by the South Carolina Supreme Court. In *Douglas v. Medical Investors, Inc. supra*, respondent owned a parcel of land subject to an easement for a joint driveway. Respondent argued that the easement cut down his fee simple estate, citing the *Stylecraft* case relied upon by Plaintiffs among others. The Court stated: "[t]he easement in this case did not create an estate in the lands affected" and "was not repugnant to the fee simple title conveyed in the granting clause" At 445.

It is established law in South Carolina that easements and restrictive covenants do not diminish title. *Douglas; Cedar Cove Homeowners Association, Inc. supra.* Restrictive covenants are contractual rights, not possessory rights. Since restrictive covenants are not possessory interests, an action to enforce a covenant is an action for the enforcement of or for a breach of an agreement: a contract action. It is not an action for the possession of real estate. Section 15-3-380 is irrelevant.

PLAINTFFS ARGUMENTS WERE PROPERLY REJECTED BY THE COURT

Finally, Plaintiffs again present favorable facts and ignore unfavorable facts in an effort to either obtain summary judgment for themselves, or at least create a triable issue, based on waiver, estoppel, or abandonment.

The waiver issue was decided in the Order. At 8.

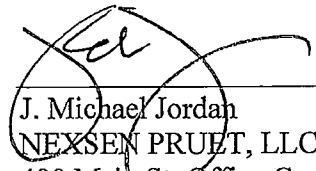
The 1970 Covenants contain a non-waiver provision:

> **"... failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter."** (Emphasis added.)

See 1970 Covenants, Article VIII, Section 3.

The Court found there was no dispute about the language of the 1970 Covenants. When a covenant is clear and unambiguous, it is given its plain meaning. *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E. 2nd 862 (1998): *RV Resort and Yacht Club Owners Ass'n* v. *BillyBob's* 386 S.C. 313, 688 S.E.2nd 555 (2010). The undisputed, unambiguous 1970 Covenants contain a non-waiver provision. Plaintiffs do not argue that the non-waiver provision is ambiguous, indefinite, or contravenes public policy. *Queens Grant II, supra.* In these circumstances the non-waiver provision is enforceable by its plain meaning as a matter of law. This is a legal, not factual, conclusion.

WHEREFORE, Defendant respectfully asks the Court to deny Plaintiffs' Motion.



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Hilton Head Island, SC 29925-3526
843.689.6277

Attorneys for Defendant
SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC.

March 11, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF CHARLES A. SCARMINACH

2015 JUN 15 PM 2:11
LINDA ANN REILLY CLERK
BEAUFORT COUNTY, S.C.
CLERK OF COURT

1. My name is Charles A. Scarminach, and I have been a member of the South Carolina Bar since 1973.

2. I was employed as General Counsel to Sea Pines Company from 1973 to 1976, and continued to represent the Sea Pines Company from 1976 to 1986 as a private practice attorney.

3. As counsel for Sea Pines Company and its affiliated entities, I was regularly required to review and seek enforcement of various recorded restrictive covenants and, in fact, authored many of the Sea Pines Plantation Covenants.

4. I am familiar with the various declarations of covenants and restrictions recorded by the Sea Pines Company and its affiliate, the Lighthouse Beach Company, a South Carolina limited partnership.

5. The Lighthouse Beach Company recorded the Declaration of Covenants dated June 25, 1970 in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203. A copy of the Declaration of

Covenants is attached hereto as Exhibit "A".

6. Thereafter, on February 15, 1973, the Lighthouse Beach Company recorded a "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., which Constitute Covenants Running with certain Commercial Lands of Lighthouse Beach Company", in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 206 at Page 1143 (hereafter, the "Commercial Covenants). A copy of the Commercial Covenants is attached hereto as Exhibit "B".

7. The Commercial Covenants apply to Commercial Properties within properties then owned by Lighthouse Beach Company. Commercial properties are described as follows in Article 2 of the Commercial Covenants:

> Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.

8. The Commercial Covenants include the following language:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.

9. Sea Pines Plantation Company, a wholly owned subsidiary of Sea Pines Company, owned all or a majority of the property in the South Beach Marina Village until January 10, 1984, at which time the majority of the property was sold to the South Beach Marina Village Partnership in a transaction in which I was the closing attorney on behalf of Sea Pines Plantation Company.

10. At the time of said conveyance, all of the property in the area of Sea Pines known as "South Beach Marina Village" was Commercial Property as the same is described in the Commercial Covenants.

11. Prior to January 10, 1984, when the Sea Pines Plantation Company conveyed the majority of the property that it owned in South Beach Marina Village, the undersigned, as attorney for Sea Pines Company, never received information of or was otherwise advised of any of the following:

(a) An assertion by the Sea Pines South Beach Owners Association, Inc., that any of the properties owned by the Sea Pines Plantation Company in South Beach Marina Village were encumbered or otherwise affected by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

(b) That the Sea Pines Plantation Company was a member of the Sea Pines South Beach Owners Association, Inc., or that they had any rights or obligations arising from the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort

County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties located in the South Beach Marina Village.

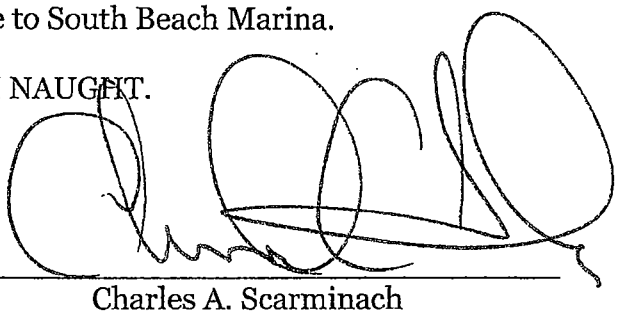
(c) That the Sea Pines South Beach Owners Association, Inc. never assessed or attempted to collect any regular or special assessment from the Sea Pines Plantation Company based on the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the property located within the South Beach Marina Village.

12. To the best of my knowledge during the time I was legal counsel for Sea Pines Company and its affiliated entities, neither Sea Pines Company nor Sea Pines Plantation Company paid any regular or special assessment to the Sea Pines South Beach Owners Association, Inc., related to any of the properties located within the South Beach Marina Village.

13. Although the Sea Pines Plantation Company, as declarant and developer of South Beach, did possess certain rights under the terms and conditions of the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, I am not aware of any instance when Sea Pines Company or Sea Pines Plantation Company asserted any rights of any nature arising under the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, related to any of the properties located within the South Beach

Marina Village while I was in-house counsel or while I represented the Sea Pines Company as its attorney, prior to the sale to South Beach Marina.

THE AFFIANT FURTHER SAITH NAUGHT.



Charles A. Scarminach

Sworn to and Subscribed before me
on this 21st Day of May, 2015.

Notary Public for South Carolina
My Commission Expires: 6/1/2021

ANGELA D. HUSER NOTARY PUBLIC SOUTH CAROLINA COMMISSION EXPIRES JUNE 01, 2021

EXHIBIT "A" TO AFFIDAVIT OF
CHARLES A. SCARMINACH

176p203

[illegible]

WHEREAS, Company is the owner of the real property described in Article II of this Declaration and desires to create thereon a planned unit development community known as South Beach with recreational parks, playgrounds, open spaces, lakes, boat docks, boat channels, fishing docks, swimming pools, roadways, bike trails, common parks within townhouse areas, and other common properties for the benefit of the said community, and

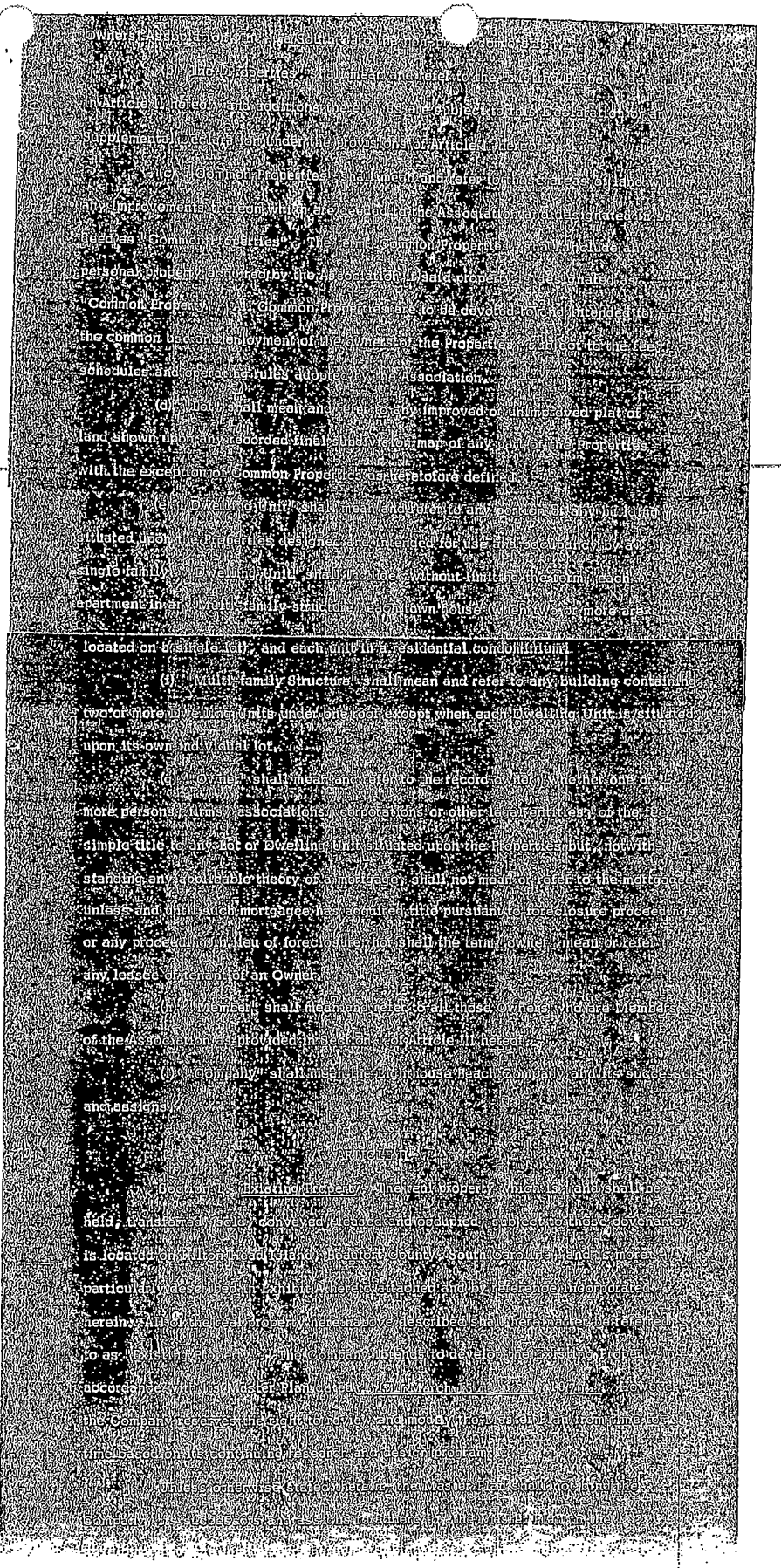
WHEREAS, Company desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces, lakes, boat docks, boat channels, fishing docks, swimming pools, roadways, bike trails, common parks within townhouse areas, and other common properties; and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made, as provided in Article II, to the covenants, restrictions, easements, affirmative obligations, charges, and liens hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, Company has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Company has caused to be incorporated under the laws of the State of South Carolina, as a non-profit corporation, SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

NOW, THEREFORE, the Company declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (sometimes referred to as "the covenants") hereinafter set forth.

[illegible]



development of the lands shown thereon. Subject only to the right to modify the Master Plan as stated herein, the Company will convey the Common Properties shown on the Master Plan to the Association as provided in Article IV, Section 2. It also shall be understood that the Company shall be free to develop such portions or sections of the lands depicted in the Master Plan, as, in the reasonable exercise of its discretion, it deems in the best interest of the entire development, without regard to the relative location of such portions or sections within the overall plan, that it shall not be required to follow any predetermined sequence or order of improvements and development, and that it may bring within the plan of these covenants additional lands, and develop the same before completing the development of the existing property.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

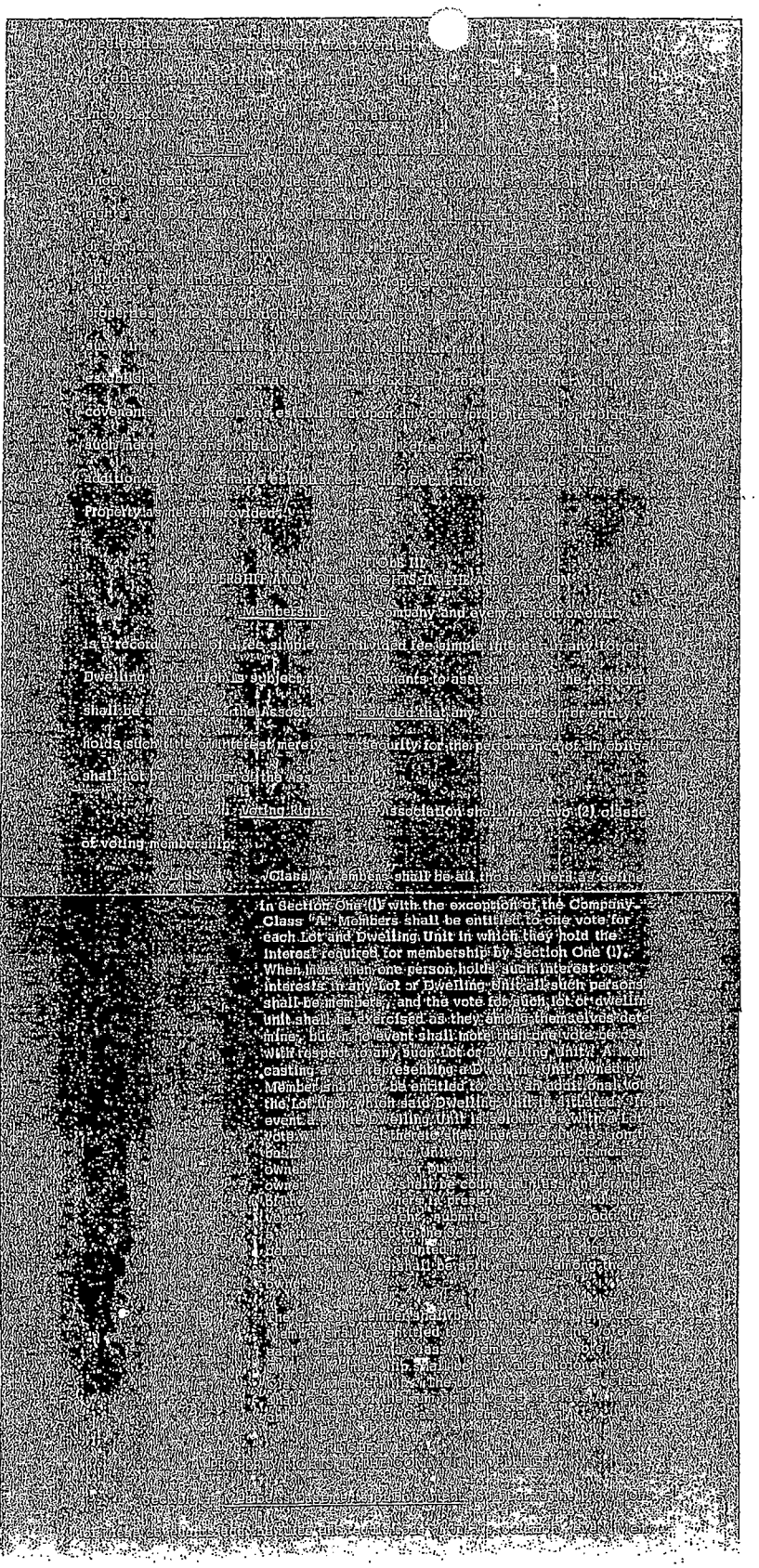
(a) Additions. The Company, its successors, and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development.

The additions authorized under this and the succeeding sub-section, shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(b) Other Additions. Upon approval in writing of the Association pursuant to three-fourths of the vote at a duly called meeting, the owner of any property other than the Company who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this



in Section One (1) with the exception of the Company. Class "A" Members shall be entitled to one vote for each Lot and Dwelling Unit in which they hold the interest required for membership by Section One (1). When more than one person holds such interest or interests in any Lot or Dwelling Unit all such persons shall be members, and the vote for such Lot or dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Dwelling Unit. Fractional casting of votes representing a Dwelling Unit owned by Members shall not be entitled to cast an additional vote for the Lot in which said Dwelling Unit is situated. In the event a Dwelling Unit is owned by more than

whatsoever, and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit.

Section 2. Title to Common Properties. The Company may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Company, the Association is able to maintain the same, but notwithstanding any provision herein, the Company hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties to the Association within one hundred and eighty (180) days of the time they are completed. Said Common Properties may be conveyed subject to all restrictive covenants of record.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Company and of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

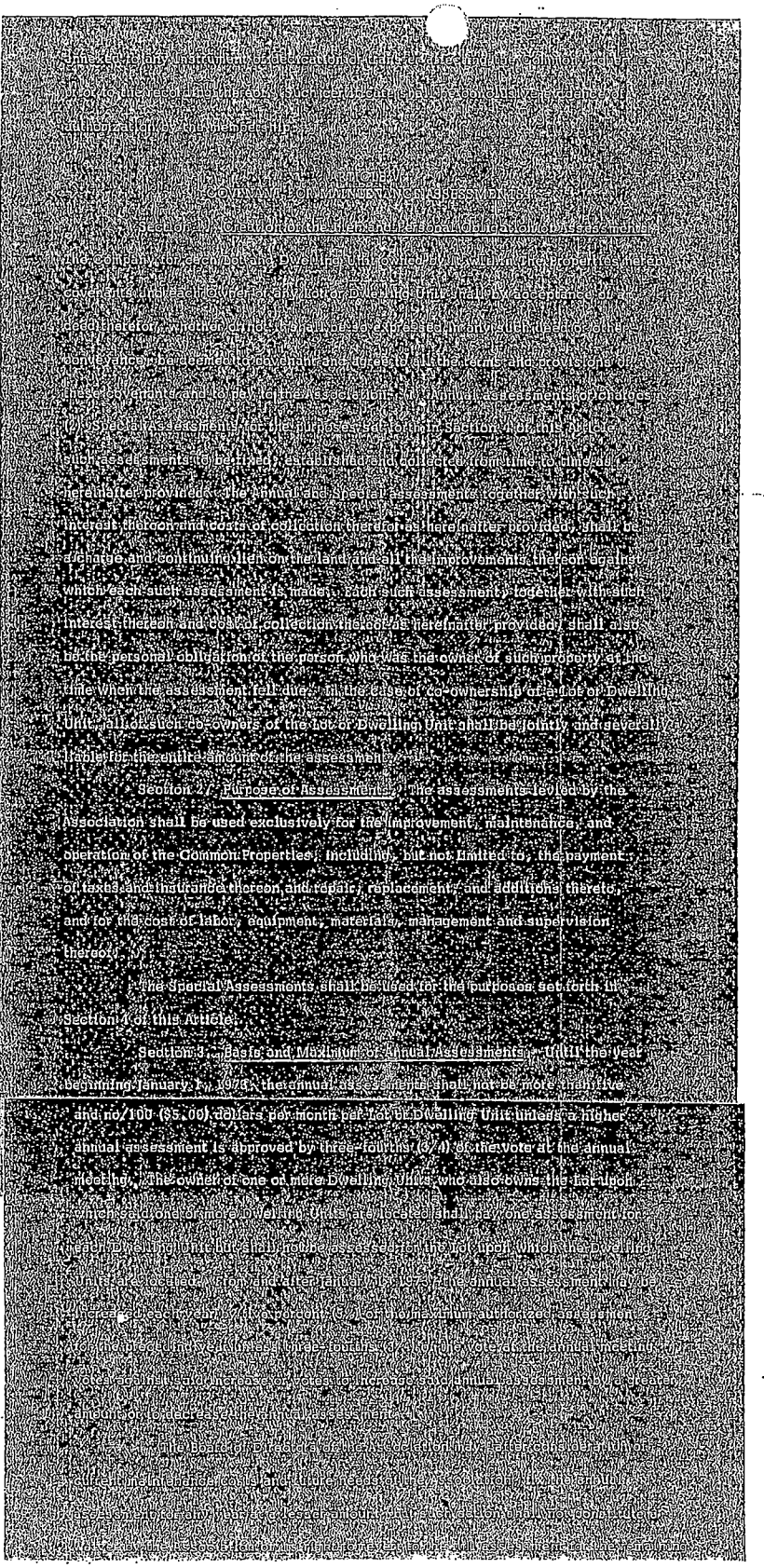
(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; it being understood that any suspension for either non-payment or any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and

(e) The right of the Company to dedicate or transfer to any public or private utility, utility easements on any part of the Common Properties.

(f) The right of the Association to give or sell all or any part of the Common Properties including leasehold interest to any public agency, authority or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedications, transfer and determination as to purpose and conditions shall be authorized by the vote of three-fourths (3/4) of the vote at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Further, a copy of such resolution together with a certificate of the result of the vote taken thereon shall be made and executed by the President and Secretary or Assistant Secretary of the Association and duly acknowledged



of years at the then current period fixed [illegible] provided in Article 2, Section 2, paragraph [illegible].

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or addition to the Common Properties, provided that any such assessment shall have the assent of three-fourths (3/4) of the vote at a duly called meeting, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger of Consolidation. The limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under Article 2, Section 2, hereof, and under the By-Laws of the Association.

Section 6. Quorum for any Action Authorized. The presence at the meeting of Members or of proxies, entitled to cast sixty (60%) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called, subject to the notice requirement set forth in Section 4.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same rule shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment, at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or dwelling unit for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. The personal obligation

of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon at the rate of eight (8%) percent per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

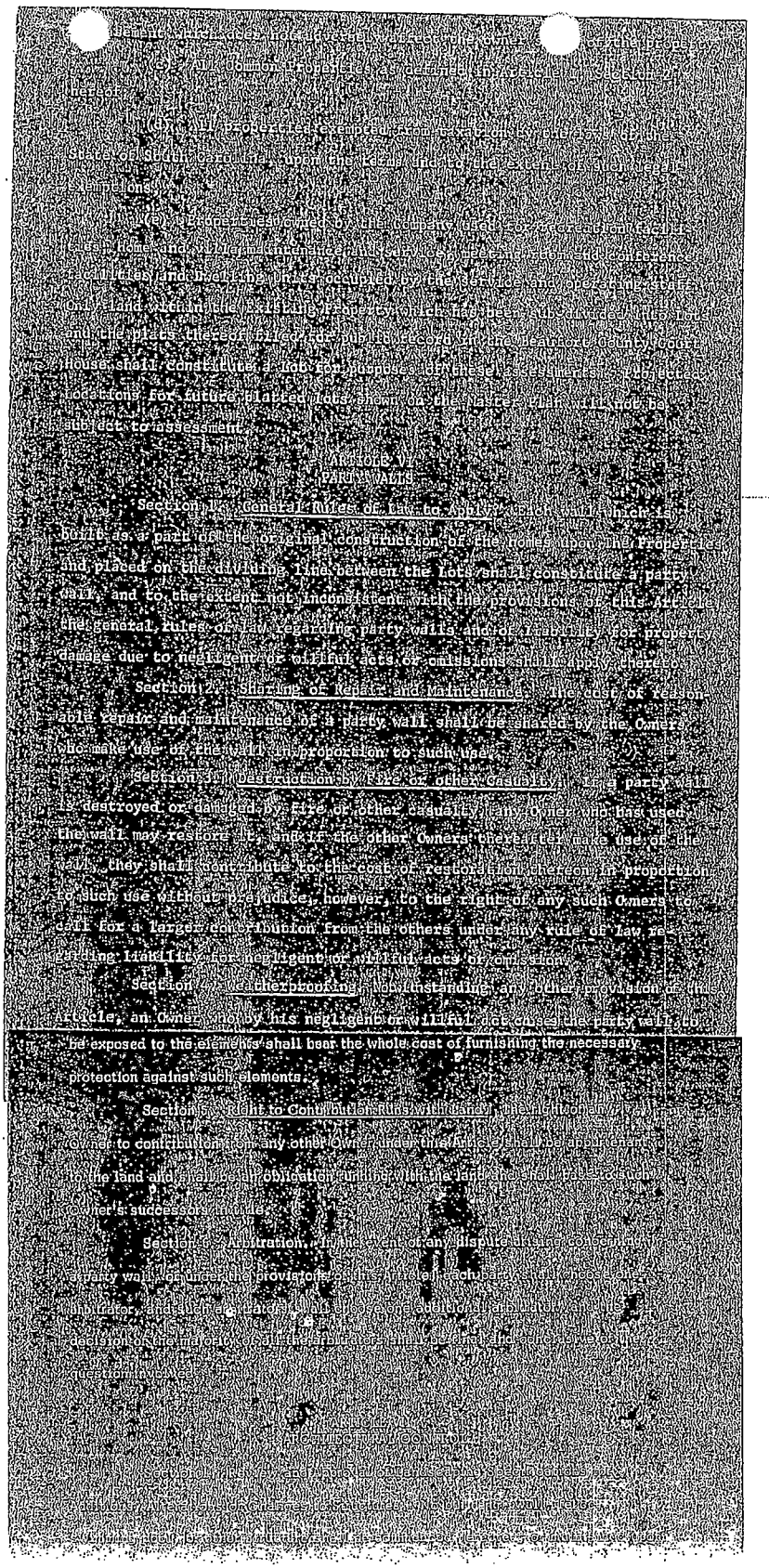
If the assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

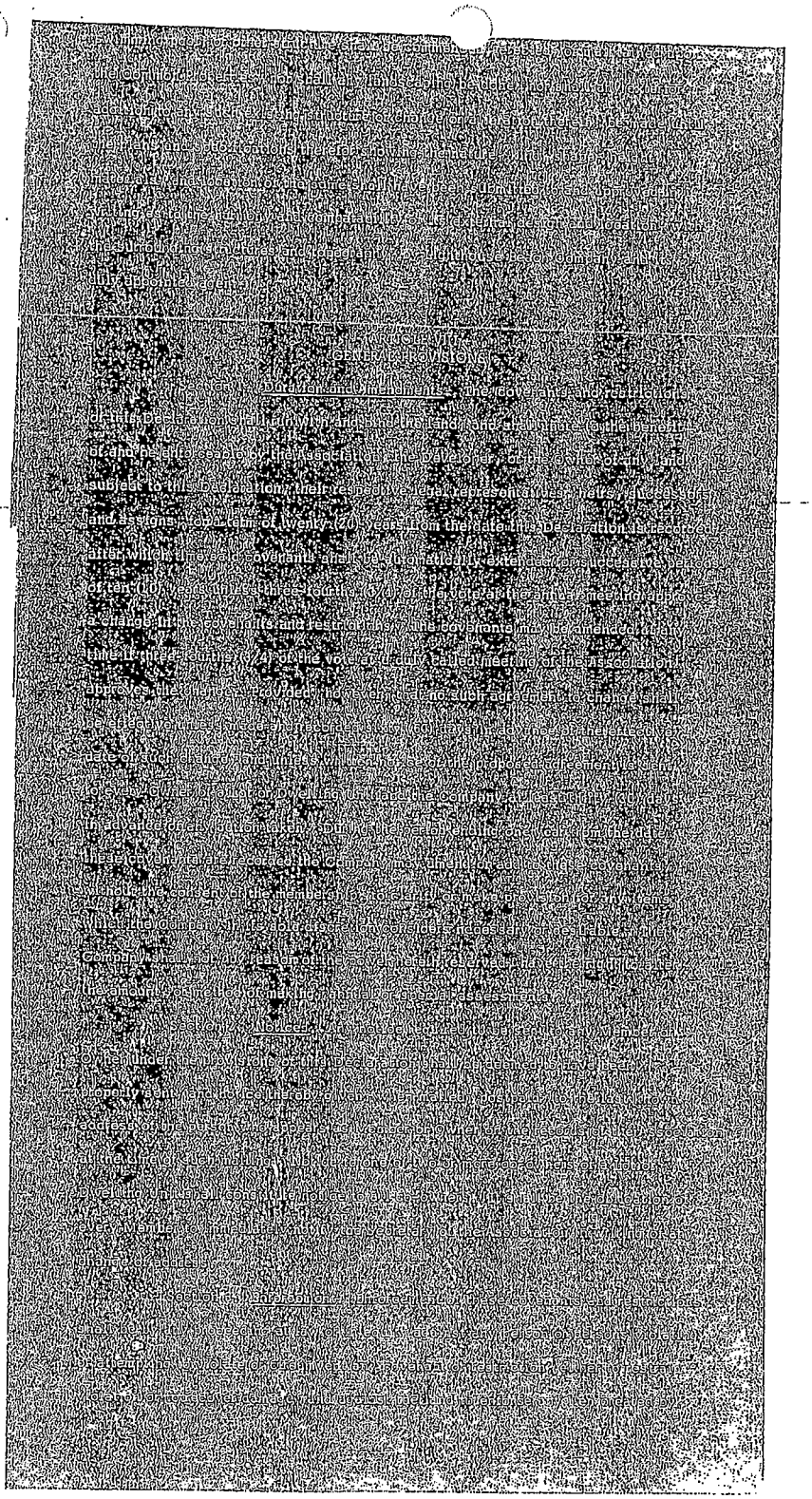
Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

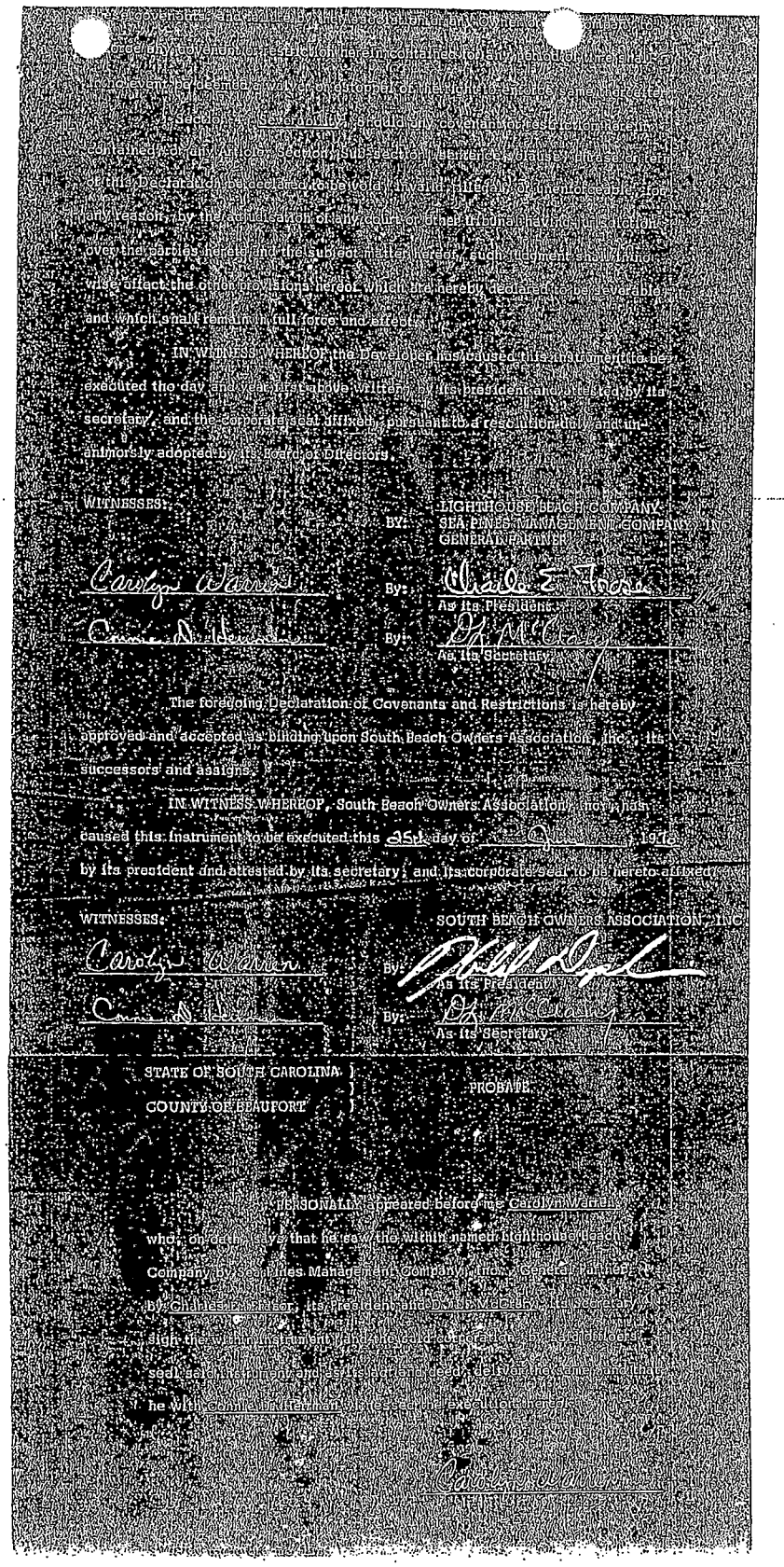
Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

(a) The grantee of property over which said grantee holds a utility easement;

(b) All properties to the extent of any easement therein other than a







IN WITNESS WHEREOF the Developer has caused this instrument to be executed the day and year first above written, by its president and attested by its secretary, and the corporate seal affixed, pursuant to a resolution duly and unanimously adopted by its board of directors.

WITNESSES:

LIGHTHOUSE BEACH COMPANY
SEA PINES MANAGEMENT COMPANY, INC.
GENERAL PARTNER

By: _____
As its President

By: _____
As its Secretary

The foregoing Declaration of Covenants and Restrictions is hereby approved and accepted as binding upon South Beach Owners Association, Inc., its successors and assigns.

IN WITNESS WHEREOF, South Beach Owners Association, Inc. has caused this instrument to be executed this 25th day of _____, 1978 by its president and attested by its secretary, and its corporate seal hereto affixed.

WITNESSES:

SOUTH BEACH OWNERS ASSOCIATION, INC.

By: _____
As its President

By: _____
As its Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

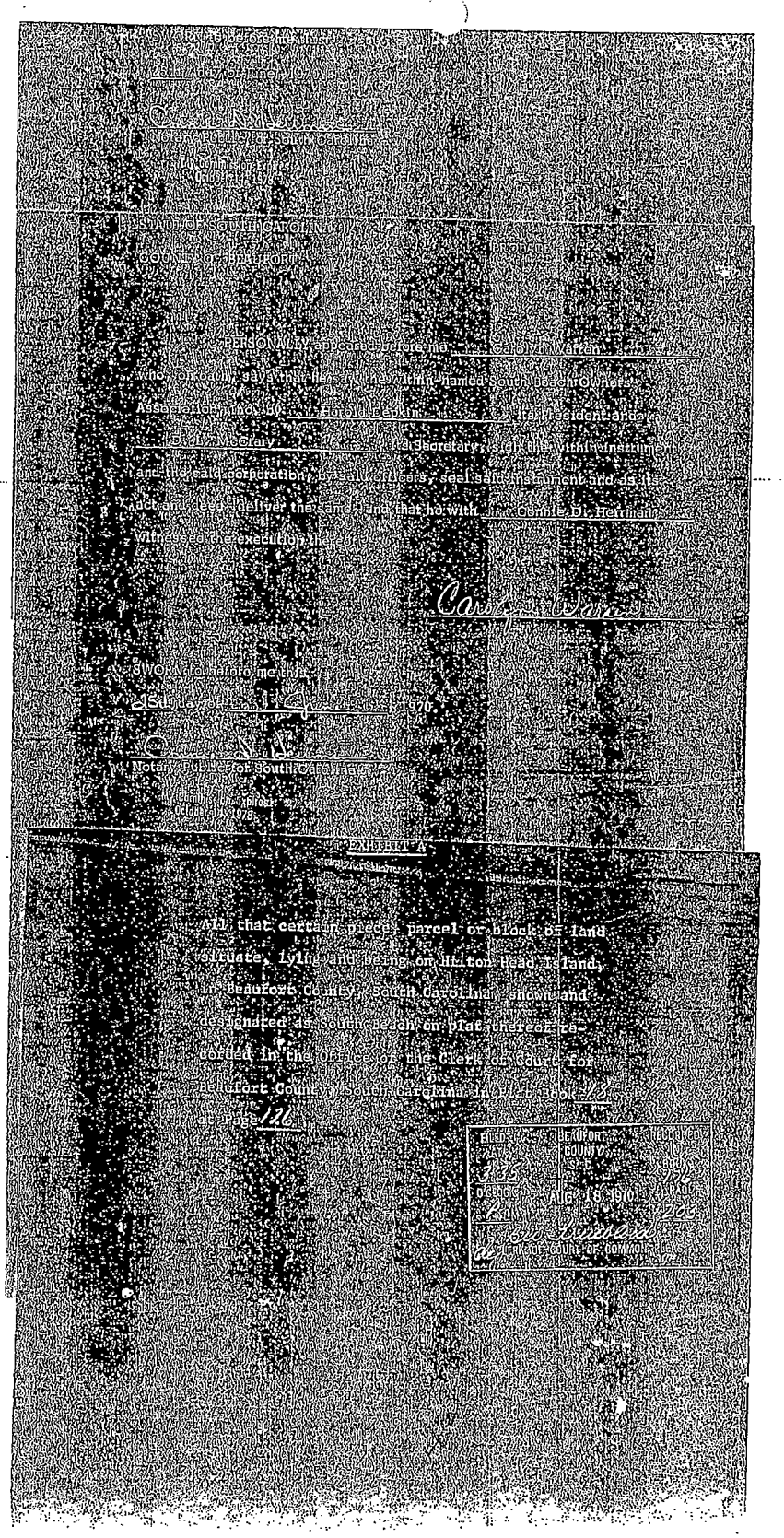
PROBATE

PERSONALLY appeared before me Carolyn Warren and made oath that he saw the within named Lighthouse Beach Company by Sea Pines Management Company, Inc., General Partner, by Charles E. Fraser, its President, and David McCord, its Secretary, sign, seal and as their act and deed deliver the within written instrument for the uses and purposes therein mentioned, and that he with _____ witnessed the execution thereof.

_____

SWORN to before me this _____ day of _____, 1978.

_____



All that certain piece, parcel or block of land
situate, lying and being on Hilton Head Island,
in Beaufort County, South Carolina, shown and
designated as South Beach on plat thereof re-
corded in the Office of the Clerk of Court for
Beaufort County, South Carolina, in Plat Book 2
at Page 126.

Filed
Beaufort County
Aug 18 9 01 AM '72
Clerk of Court

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EXHIBIT "B" TO AFFIDAVIT OF
CHARLES A. SCARMINACH

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS, CONDITIONS, ETC., which constitute covenants running with certain commercial lands of Lighthouse Beach Company.

COMMERCIAL USE COVENANTS
January 25, 1973

WHEREAS, LIGHTHOUSE BEACH COMPANY, a Limited Partnership organized and existing under the laws of the State of South Carolina, is the owner of certain lands located on Hilton Head Island, Beaufort County, South Carolina; and

WHEREAS, LIGHTHOUSE BEACH COMPANY desires to make, publish and record a declaration of restrictive covenants affecting certain properties designated for commercial use and desires to have said restrictive covenants filed in the Office of the Clerk of Court for Beaufort County, South Carolina, reserving the right in each instance to add additional restrictive covenants in respect to said properties; and

WHEREAS, LIGHTHOUSE BEACH COMPANY recognizes that said properties are situate in an environmentally sensitive area and that any development of said property is a matter of concern to both the developing party and the Community-at-large; and

WHEREAS, LIGHTHOUSE BEACH COMPANY desires to insure that all properties now, or hereafter, owned by it are developed pursuant to an orderly plan which contemplates among other things the environmental impact on the Community-at-large of any proposed developmental scheme for such properties;

NOW THEREFORE, LIGHTHOUSE BEACH COMPANY does hereby declare that the provisions contained herein are rights, restrictions, conditions and affirmative obligations all constituting covenants running with the land which is conveyed by LIGHTHOUSE BEACH COMPANY by deed or other written instrument in which reference is

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specifically made to these covenants. The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application of the uniform covenants contained herein. Notice of such additional covenants will, in all cases, be set forth in the contract of sale relating to such property. 1144

IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY, subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY, that to the extent that there is conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant Declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.

DEFINITIONS

1. Whenever used herein, the term "the Company" shall refer to LIGHTHOUSE BEACH COMPANY, its successors and assigns.

2. Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.

3. The term "Owner" when used in these covenants and restrictions shall refer to both the original owner, builder and developer of any tract, subdivision or lot of land as well as any subsequent owner of a parcel of land upon which commercial uses are to be or have been made, and shall specifically include the owner of a condominium dwelling within a structure located on such property.

4. The term "Class "B" Multi-Family Residence Areas" shall refer to any original tract, subdivision or lot of land, as well as any subsequently subdivided portion thereof, intended for multi-family residential use and which has been subjected to the provisions of these restrictions and covenants by reference in deeds to property issued by the Company.

The Covenants and Restrictions below will be referred to as the Commercial Use Restrictions of January 25, 1973, and will be recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, and will be incorporated by reference in deeds to commercial property issued by LIGHTHOUSE BEACH COMPANY by reference to the Book and Page of recording in the realty records in the Office of the Clerk of Court for Beaufort County, South Carolina.

PART I

COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO COMMERCIAL PROPERTY OWNED BY LIGHTHOUSE BEACH COMPANY.

1. No building, fence or other structure shall be erected, placed or altered on any lot in such Commercial Property until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), and construction schedule

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shall have been approved in writing by the Company, its successors or assigns. Refusal of approval of plans, location or specifications may be based by the Company upon any ground, including purely aesthetic conditions, which, in its sole and uncontrolled discretion, the Company shall deem sufficient, provided, however, that such approval by the Company shall not be unreasonably withheld. Elements that will be considered by the Company before plans or specifications are approved include, but are not limited to, the following: (a) the ratio of hard surface to natural tree or landscaped surface as reflected in the Master Plan; (b) location of utility lines; (c) the ratio of parking spaces to building capacity; the adequacy of recreational facilities when viewed against the number of persons such facilities are projected to serve; (d) an acceptable plan to provide for the capture and disposition of any surface water run-off on the property; (e) adequacy of proposed restaurant facilities, convention facilities, meeting areas, or auditoriums when viewed against the number of persons such facilities are projected to serve and the desirability of each commercial venture being reasonably self-sufficient; and (f) whether any of the proposed improvements to be constructed on the Property exceed the maximum allowable height for such improvements which, without the written consent of the Company, may not exceed five (5) floors or sixty-two (62) feet above mean sea level. In no event will the Company approve plans and specifications that do not meet, at least, the minimum standards for construction as established by the "Southern Standard Building Code" in effect at the time such approval is requested. No alterations in the exterior appearance of any building or structure shall be made after initial construction without like approval by the Company. Approval shall not be unreasonably withheld and permission shall not be refused to make any addition or modification to any structure on the property so long as the proposed addition

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or modification is constructed of materials of comparable quality with the existing structures on the property and the design and site plan of said addition or modification is compatible with the existing structures on the property. One (1) copy of all plans and related data, as approved by the Company, shall be furnished the Company for its records and all improvements constructed on the property must be constructed pursuant to such plans and specifications with no material variations therefrom unless approved, in writin, by the Company. A variation will be deemed "material" in any case where such variation would not meet minimum standards for construction as established by the "Southern Standard Building Code" in effect at the time a request for approval of plans, as provided for hereinabove, was made.

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2. The exterior of any structure on Commercial Property must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or building due to strikes, fires, national emergency or natural calamities.

3. It shall be the responsibility of the owner of land subject to these covenants to prevent the development of any unclean, unsightly or unkept conditions at any buildings or on the grounds of said tract of land which conditions would tend to substantially decrease the beauty of Hilton Head Island as a whole or of the specific tract of land subject to these covenants. If said lot owner does not maintain said land and any improvements thereon according to the standards which LIGHTHOUSE BEACH COMPANY has established, after ten (10) days' written notice to the lot

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owner and failure of the land owner to correct the defective conditions, LIGHTHOUSE BEACH COMPANY, at the land owner's expense, may enter upon the premises and correct the defective conditions.

4. No noxious or offensive activity shall be carried on upon any Commercial Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activities or existence 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 owners thereof.

5. The Company reserves the right to restrict the size, color and content of any signs to be erected on such Commercial Property. Property identification and like signs exceeding a combined total of more than ten (10) square feet may not be erected without the written permission of the Company. The Company will use, as criteria for approval of signs to be erected on Commerical Property, the manual "Street Graphics", published in 1972 by the American Institute of Landscape Architects Foundation under grants from the Department of Housing and Urban Development. The size of all such signs shall be that appropriate for twenty-five (25) miles per hour traffic as set forth in said manual. In no event will the Company approve the erection of signs which do not conform to the criteria set forth in said manual.

6. Each Commercial Property owner shall provide adequate space for off-street parking for use by customers of the commercial venture.

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7. Each Commercial Property owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Company.

8. Prior to the construction and use of a commercial structure on any Commercial Property, proper and suitable provision shall be made for the disposal of sewage by connection with the sewer mains of the Forest Beach Public Service District. No sewage shall be emptied or discharged into the ocean, any creek, marsh, river, sound or beach or shorelines thereof, nor shall disposal of sewage by means of septic tank or tanks be permitted on any Commercial Property except as approved as a temporary measure by the county sanitary engineer.

9. The Company reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain and use the electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in or over the rear ten (10) feet of each lot and ten (10) feet along one (1) side of all Commercial Property sites and such other areas as are shown on the applicable plat; provided further, that the Company may cut drainways for surface water whenever and wherever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation, and to maintain reasonable standards of health, safety and appearance. It further reserves the right

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to locate wells, pumping stations and tanks within any Commercial Property designated for such use on the applicable plat of a subdivision or to locate same upon any lot with the permission of the owner of such Commercial Property. Such rights may be exercised by any licensee of the Company but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

10. The Company reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement on, over and under the ground to construct a paved bicycle path to interconnect to any other such paved bicycle paths which are now or will be constructed along those roads now known as South Forest Beach Drive, Pope Avenue, and Cordillo Parkway on, in, or over the first ten (10) feet of each lot or tract on each side thereof which is bounded by the right-of-way of the aforesaid roads, provided, however, that in any case where the Company has reserved easements pursuant to paragraph 9 hereinabove and this paragraph 10, the Company will use its best efforts to make the area of said easements coincide one with the other wherever reasonably possible. Such rights may be exercised by any licensee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such paved bicycle path.

11. No structure of a temporary character shall be placed upon any Commercial Property at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of any permanent structure, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or for any commercial uses or permitted to remain on the lot after completion of construction.

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12. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any Commercial Property at any time, either temporarily or permanently, without written approval by the Company.

13. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within a permanent structure within a screened area as required in paragraph 14 herein, or buried underground.

14. Each Commercial Property owner must construct a screening fence to shield and hide from view any service yards or areas. Plans for such fence delineating the size, design, texture, appearance and location must be approved by the Company prior to construction.

15. No private water wells may be drilled or maintained on any Commercial Property so long as Forest Beach Public Service Commission, their agents, successors or assigns, plans a water distribution line within fifty (50) feet of such lot with an average daily water pressure in such line adequate for normal business use by such distribution lines; provided further that such water distribution line must be completed within five (5) days from the date of completion of any permanent structure or a private well may be drilled by the Commerical Property owner.

16. No large trees measuring six (6) inches or more in diameter at a point four (4) feet above ground level may be removed without the written approval of the Company, unless located within ten (10) feet of any permanent structure, driveway, or parking area, or within ten (10) feet of the approved site for such building,

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driveway, or parking area. The objective of this provision is to insure that all Commercial Property has an adequate tree border on each side of such property abutting on a road or street, and, further, to insure that no trees are removed from any Commercial Property except in those specific instances where failure to remove a tree or trees would substantially impair or prohibit the use of the property for the purpose approved by the Company. An owner of Commercial Property affected by these covenants and restrictions shall be deemed in violation of this provision in each instance of the removal proscribed hereinabove, whether such removal be deliberate or the result of negligence on the part of such owner or his agent or agents.

17. No Commercial Property site shall be subdivided, or its boundaries changed, except with the written consent of the Company, which consent will not be unreasonably withheld. However, the Company hereby expressly reserves to itself, its successors or assigns, the right to replat any two (2) or more lots shown on a plat of Commercial Property sites in order to create a modified site or sites and to take such other steps as are reasonably necessary to make such replatted lots suitable and fit as Commercial Property sites including, but not limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of said replatted lots, provided that no lot originally shown on a recorded plat is reduced by more than twenty (20) per cent from its original size but further provided, that any such lot may be reduced in size to a minimum of one (1) acre whether or not such reduction in size is more than twenty (20) per cent of the area of the lot as originally platted. The restrictions and covenants herein apply to each Commercial Property site so created.

18. No improvements may be made on any Commercial Property

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which exceed a height of five floors or sixty-two (62) feet above mean sea level unless approved, in writing, by the Company. The Company reserves the right to establish maximum height restrictions which are less than sixty-two (62) feet in any Contract of Sale for commercial property, and to allow an additional measure of height over and above sixty-two (62) feet, up to a maximum amount of eight (8) feet for use as a roof wall for the purpose of concealing roof-mounted equipment essential to the operation of any commercial buildings constructed on the property.

19. In the event the owner desires to sell a Commercial Property site on Hilton Head Island together with its improvements, if any, then said property shall be offered for sale to the Company at the same price at which the highest bona fide offer has been made for the property, and the said Company shall have thirty (30) days within which to exercise its option to purchase said property at this price; and should the Company fail or refuse, within thirty(30) days after receipt of written notice of the price and terms, to exercise its options to purchase said property at the offered price, then the owner of said property shall have the right to sell said property, subject, however, to all covenants and limitations herein contained, at a price not lower than that at which it was offered to the Company. For the purpose of this paragraph 19, a "sale" by the owner of a Commercial Property site shall include, but not be limited to, a sale of such site by an individual owner, partnership, or other such unincorporated entity and, in the case of a corporate owner, a consolidation or merger into another corporation where the corporate owner is not the resulting or surviving corporation, or the consolidation or merger of another corporation into it, where the corporate owner is not the resulting or surviving corporation, or the sale or transfer to another corporation of all or substantially all of its business and assets, or the sale or transfer of all or substantially all of its stock.

20. In addition to the foregoing, the following additional covenants and restrictions shall apply to all Commercial Property which is designated, approved for use, or used for the operation of a hotel, motel, motor hotel, or motor lodge.

(a) All Commercial Property designated for such use shall be used solely for the operation of a hotel, motel, motor hotel, or motor lodge, including the rental of rooms to overnight guests, the rental of banquet and convention facilities, the operation of retail food and refreshment facilities including the sale of alcoholic beverages for consumption on the premises, if permitted by law, and the rental of retail shop or office space provided, however, that such retail shop or office space may not be used for "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area, unless approved, in writing, by the Company. The term "operation of retail food and refreshment facilities" as used in these covenants is limited to those establishments which offer food and beverage services to the general public at seated tables and booths or bars limited on the interior of an all-weather building, within employ of the operators providing table service to customers, or counter service in the case of bars, unless LIGHTHOUSE BEACH COMPANY approves, in writing, the operation of the facility without table service, and specifically does not include, unless approved, in writing, by the Company, the operation of a "fast food" or "Take-out food" facility on the premises.

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21. In addition to the foregoing, the following additional covenants and restrictions shall apply to all Commercial Property which is designated, approved for use, or used as a Class "B" Multi-Family Residence Area, including common-wall townhouse structures, apartments, villas, and all other types of multi-family residential buildings:

(a) No plans will be approved unless the proposed house or structure will have the minimum required square footage of enclosed dwelling area, and not exceed the maximum square footage of dwelling or maximum number of dwelling units, or maximum height above the ground, or maximum number of residential dwelling floors. Such minimum and maximum requirements for each lot will normally be specified in each sales contract and expressly stipulated in each deed. The term "enclosed dwelling area" as used in these minimum size requirements does not include garages, boat sheds, terraces, decks, open porches, and the like areas. The term does include, however, screened porches, if the roof of such porches forms an integral part of the roof line of the main dwelling or if they are on the ground floor of a two story structure.

(b) Since the establishment of standard inflexible building set back lines for locating houses or other structures on lots tends to force construction of buildings both directly behind and directly to the side of other homes or buildings with detrimental effect on privacy,

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view, preservation of important trees, etc., no specific set back lines are established by these covenants. In order to assure, however, that location of villas, townhouses, or other structures will be staggered, so that the maximum amount of view and breeze will be available to each dwelling unit, and that the structures will be located with regard to the topography of each individual lot, taking into consideration the height of dunes, the location of large trees, and similar considerations, the Company reserves unto itself, its successors, and assigns, the right to control absolutely and to decide the precise site of any villa, townhouse, dwelling or other structure or structures, and to cluster or otherwise arrange any structures or complex of structures on any lot or subdivision of lots within the Class "B" Multi-Family Residence Areas for reasons which may in the sole and uncontrolled discretion and judgment of the Company seem sufficient PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the lot or tract owner to recommend a specific site, and PROVIDED FURTHER, that in the event an agreed location is stipulated in writing in the contract of purchase the Company shall approve automatically such location for a residence, or group of residential units.

(c) All lots in said residence areas shall be used for residential purposes exclusively. The facilities included on the site may include common meeting rooms, housekeeping supply rooms, and social rooms. No structure or structures shall be erected, altered, placed

SLP

or permitted to remain on any lot or subdivision of lots except as provided for in these covenants and restrictions. The Company expressly reserves the right to: (a) determine and limit the number of villas, townhouses, or other residential units or group of such units to be placed on a given tract, area or lot of land; (b) determine and limit the maximum height of any and all such structures; and (c) determine and limit the total maximum occupancy or density of all units combined within a given subdivision or complex.

(d) Notwithstanding the provisions of paragraph 2 of Part I hereof, the exterior of all villas, townhouses and other structures must be completed within two (2) years after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities.

PART II

ADDITIONS, LIMITATIONS, DURATION AND VIOLATION OF COVENANTS, TOGETHER WITH AFTERWORD.

All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of the Company for a period of twenty-five (25) years from the execution date of this Declaration after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of Commercial Property substantially affected by such change in covenants has been recorded, agreeing to change said covenants in whole or in part.

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Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement.

Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

In addition to the foregoing, LIGHTHOUSE BEACH COMPANY, its successors or assigns, shall have the right, whenever there shall have been built on any Commercial Property any structure which is in violation of these restrictions, to enter upon such property where such violation(s) exist(s), and summarily abate or remove the same at the expense of the owner if, within thirty (30) days after receipt of written notice of such violation(s) it(they) shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass.

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The Company reserves in each instance the right to add in any contract or deed hereafter made, modifications and/or additions to the restrictive covenants as contained in this Declaration of Covenants, with such modified covenants being made applicable by reference to conveyances of land made subsequent to such modifications.

It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting and affecting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific reference in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to, covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.

IN WITNESS WHEREOF, LIGHTHOUSE BEACH COMPANY has executed these presents acting by and through its duly authorized officers as of the 25th day of January, 1973.

WINESSES:

Louise B. Williams

Donna S. Boswell

LIGHTHOUSE BEACH COMPANY

BY SEA PINES MANAGEMENT CO., INC.
(General Partner)

By Charles E. Fraser SLP
Its President

Attest Z Barry Phillips
Its Assistant Secretary

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

1160

PERSONALLY appeared before me Donna S. Boswell and made oath that he saw the within named LIGHTHOUSE BEACH COMPANY by Sea Pines Management Company, Inc., General Partner, by Charles E. Fraser, its President, and S. Lacy Phillips, its Assistant Secretary, sign, seal and as its act and deed, deliver the within written Declaration of Covenants and Restrictions for Commercial Property for the uses and purposes therein mentioned and that he with Louise P. Williams witnessed the execution thereof.

Donna S. Boswell

SWORN TO before me this 25th day of January, 1973.

Louise P. Williams (SEAL)
Notary Public for South Carolina
My Commission expires: Feb. 24, 1981

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CLERK OF COURT OF COMMON PLEAS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF RICHARD T. SONBERG

2015 JUN 15 PM 2:1[illegible]

Personally appeared before me, Richard T. Sonberg, who, being duly sworn, states as follows:

1. He was a principal in South Beach Marina Village Corporation, which was a General Partner of South Beach Marina Limited Partnership (hereinafter collectively "SB Marina Village LP").

2. SB Marina Village LP, owned property within the commercial development in the South Beach area of Sea Pines on Hilton Head Island, known as"South Beach Marina Village".

3. The parcels owned by SB Marina Village LP, and the dates of acquisition and subsequent conveyance, are as follows:

Parcel	Acquisition date/ Recording info	Conveyance date
R550-017-000-1208-0002, 0003 & 0004 Units B, C & D Lands End	January 3, 1994 675/984	December 2, 1997
NO TMS for this Property- Personalty and Fixtures comprising Boat Slips and Docks comprising the South Beach Marina	January 3, 1994 675/998	February 16, 2000

4. The Sea Pines South Beach Owners Association, Inc., never asserted that any of the properties owned by the SB Marina Village LP were encumbered or otherwise affected by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

7. The Sea Pines South Beach Owners Association, Inc., never asserted to SB Marina Village LP that they were a member of the Sea Pines South Beach Owners Association, Inc., or that they had any rights or obligations arising from the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

8. The Sea Pines South Beach Owners Association, Inc., never sought to collect any regular or special assessment from SB Marina Village LP based on the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

9. Neither the undersigned, nor any authorized officer or member SB Marina Village LP has ever paid any regular or special assessment to the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above.

10. Neither the undersigned, nor any authorized officer or member of SB Marina Village, LP has ever attended any regular or special meeting of the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above, other than to review and discuss plans to dredge Braddock Creek and South Beach Marina, and that was on behalf

of the South Island Dredging Association, of which the undersigned was President.

11. Neither the undersigned, nor any authorized officer or member of SB Marina Village LP ever asserted that they had any rights of any nature arising under the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, related to any of the properties described above.

12. Neither the undersigned, nor any authorized officer or member of SB Marina Village LP has ever made any use of the common property owned by the Sea Pines South Beach Owners Association, Inc., South Carolina, in any way that is related to any of the properties described above.

THE AFFIANT FURTHER SAITH NAUGHT.

Richard T. Sonberg

Sworn to and Subscribed before me
on this 29 Day of April, 2015.

Notary Public for South Carolina
My Commission Expires:

NOTARY PUBLIC SOUTH CAROLINA
A DuBose
My Commission Exp:
05-12-2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC:
LOST PARROT LLC; VACATION INN, LLC;
SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF NED E. GILLELAND, SR.

2015 JUN 15 PM 2:10

Personally appeared before me, Ned E. Gilleland, Sr., who, being duly sworn, states as follows:

1. He was a principal in South Beach Marina Village, a Partnership and Gilleland Family Limited Partnership.

2. South Beach Marina Village, a Partnership, Gilleland Family Limited Partnership and Ned E. Gilleland, Sr, individually, owned property within the commercial development in the South Beach area of Sea Pines on Hilton Head Island, known as"South Beach Marina Village".

3. The parcels owned by South Beach Marina Village, a Partnership, and the dates of acquisition and subsequent conveyance, are as follows:

Parcel	Acquisition date/ Recording info	Conveyance date
R550-017-000-1213-0000 Parcel II Gazebo	January 10, 1984 385/1224	October 24, 1994
R550-017-000-1213-0001 Unit 2 Lands End	January 10, 1984 385/1224	October 24, 1994

R550-017-000-1089-0000 Parcel III Restaurant	January 10, 1984 385/1224	October 24, 1994
R550-017-000-1089-0001 Unit 3 Lands End	January 10, 1984 385/1224	October 24, 1994
R550-017-000-1139-0000 Parcel I SB General Store	January 10, 1984 385/1224	October 24, 1994
R550-017-000-1139-0001 Unit 1 Lands End	January 10, 1984 385/1224	October 24, 1994
R550-017-000-1212-0300 Unit 300 SB Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1128-0000 & 1240 Common Area	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0101 Unit 101 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0102 Unit 102 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0103 Unit 103 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0104 Unit 104 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0105 Unit 105 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0106 Unit 106 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0107 Unit 107 South Beach Marina Village	January 10, 1984 385/1224	January 2, 1991
R550-017-000-1212-0108 Unit 108 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0109 Unit 109 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0110 Unit 110 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0111 Unit 111 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998

R550-017-000-1212-0112 Unit 112 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0113 Unit 113 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0114 Units 114 & 115 South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0201 Unit 201A South Beach Marina Village	January 10, 1984 385/1224	January 26, 1990
R550-017-000-1212-0201 Unit 201B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0202 Unit 202A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0203 Units 203A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0204 Unit 204A South Beach Marina Village	January 10, 1984 385/1224	July 27, 1989
R550-017-000-1212-0204 Unit 204 B South Beach Marina Village	January 10, 1984 385/1224	August 9, 1990
R550-017-000-1212-0204 Unit 204C South Beach Marina Village	January 10, 1984 385/1224	April 8, 1999
R550-017-000-1212-0204 Unit 204D South Beach Marina Village	January 10, 1984 385/1224	August 9, 1990
R550-017-000-1212-0205 Unit 205A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0206 Unit 206A South Beach Marina Village	January 10, 1984 385/1224	December 19, 1989; July 23, 1998
R550-017-000-1212-0206 Units 206B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0207 Units 207A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0208 Units 208A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0209 Units 209A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998

R550-017-000-1212-0210 Units 210A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0211 Units 211A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0212 Units 212A South Beach Marina Village	January 10, 1984 385/1224	December 19, 1989
R550-017-000-1212-0212 Units 212B South Beach Marina Village	January 10, 1984 385/1224	September 26, 1989
R550-017-000-1212-0212 Units 212C South Beach Marina Village	January 10, 1984 385/1224	November 10, 1989
R550-017-000-1212-0212 Units 212D South Beach Marina Village	January 10, 1984 385/1224	December 6, 1989
R550-017-000-1212-0213 Units 213A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0214 Unit 214A South Beach Marina Village	January 10, 1984 385/1224	April 5, 1990
R550-017-000-1212-0214 Unit 214B South Beach Marina Village	January 10, 1984 385/1224	February 28, 1990; January 14, 1993
R550-017-000-1212-0214 Unit 214C South Beach Marina Village	January 10, 1984 385/1224	February 28, 1990
R550-017-000-1212-0214 Unit 214D South Beach Marina Village	January 10, 1984 385/1224	June 7, 1990; January 14, 1993
R550-017-000-1212-0215 Unit 215A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0216 Unit 216A, B, C & D South Beach Marina Village	January 10, 1984 385/1224	July 23, 1998
R550-017-000-1212-0217 Unit 217A South Beach Marina Village	January 10, 1984 385/1224	March 19, 1999
R550-017-000-1212-0217 Unit 217B South Beach Marina Village	January 10, 1984 385/1224	April 3, 1990
R550-017-000-1212-0217 Unit 217C South Beach Marina Village	January 10, 1984 385/1224	March 1, 1990
R550-017-000-1208-0001 Unit A Lands End	January 10, 1984 385/1224	June 8, 1988

R550-017-000-1208-0002, 0003 & 0004 Units B, C & D Lands End	January 10, 1984 385/1224	March 24, 1988
NO TMS for this Property- Personalty and Fixtures comprising Boat Slips and Docks comprising the South Beach Marina	January 10, 1984 385/1224	March 22, 1988

4. The Parcels owned by, myself, Ned. E. Gilleland, Sr., individually, and the dates of acquisition and subsequent conveyance are as follows:

R550-017-000-1212-0101 Unit 101 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0102 Unit 102 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0103 Unit 103 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0104 Unit 104 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0105 Unit 105 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0106 Unit 106 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0108 Unit 108 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0109 Unit 109 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0110 Unit 110 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0111 Unit 111 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0112 Unit 112 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0113 Unit 113 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0114 Units 114 & 115 South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998

R550-017-000-1212-0201 Unit 201A South Beach Marina Village	July 23, 1998 1068/977	January 26, 1990
R550-017-000-1212-0201 Unit 201B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0202 Unit 202A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0203 Units 203A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0205 Unit 205A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0206 Unit 206A South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0206 Units 206B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0207 Units 207A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0208 Units 208A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0209 Units 209A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0210 Units 210A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0211 Units 211A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0214 Unit 214B South Beach Marina Village	January 14, 1993 616/2097	February 19, 1999
R550-017-000-1212-0214 Unit 214D South Beach Marina Village	January 10, 1984 385/1224	June 7, 1990; January 14, 1993
R550-017-000-1212-0215 Unit 215A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0216 Unit 216A, B, C & D South Beach Marina Village	July 23, 1998 1068/970	July 23, 1998
R550-017-000-1212-0217 Unit 217A South Beach Marina Village	March 19, 1999 1149/345	March 19, 1999

R550-017-000-1212-0300 Unit 300 SB Marina Village	July 23, 1998 1068/970	December 23, 1999
R550-017-000-1128-0000 & 1240 Common Area	June 7, 1990 554/2170	January 14, 1993

5. The Parcels owned by Gilleland Family Limited Partnership, and the dates of acquisition and subsequent conveyance are as follows:

R550-017-000-1212-0300 Unit 300 SB Marina Village	December 23, 1999 1244/2289	January 29, 2001

6. The Sea Pines South Beach Owners Association, Inc., never asserted that any of the properties owned by the undersigned or South Beach Marina Village, a Partnership or Gilleland Family Partnership were encumbered or otherwise affected by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

7. The Sea Pines South Beach Owners Association, Inc., never asserted to the undersigned or to South Beach Marina Village, a Partnership or Gilleland Family Partnership that they were a member of the Sea Pines South Beach Owners Association, Inc., or that any of them had any rights or obligations arising from the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

8. The Sea Pines South Beach Owners Association, Inc., never sought to collect any regular or special assessment from any the undersigned, or from South Beach Marina

Village, a Partnership or Gilleland Family Partnership based on the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

9. Neither the undersigned, nor any authorized officer or member of South Beach Marina Village, a Partnership or Gilleland Family Partnership has ever paid any regular or special assessment to the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above.

10. Neither the undersigned, nor any authorized officer or member of South Beach Marina Village, a Partnership or Gilleland Family Partnership has ever attended any regular or special meeting of the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above.

11. Neither the undersigned, nor any authorized officer or member of South Beach Marina Village, a Partnership or Gilleland Family Partnership has ever asserted that they had any rights of any nature arising under the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, related to any of the properties described above.

12. Neither the undersigned, nor any authorized officer or member of South Beach Marina Village, a Partnership or Gilleland Family Partnership has ever made any use of the common property owned by the Sea Pines South Beach Owners Association, Inc., South Carolina, in any way that is related to any of the properties described above.

THE AFFIANT FURTHER SAITH NAUGHT.

Ned E. Gilleland, Sr.

Sworn to and Subscribed before me
on this 8 Day of April, 2015.

Tami G. Horstman
Notary Public for South Carolina
My Commission Expires: Aug. 21, 2016

NOTARY PUBLIC
State of South Carolina
TAMI S. HORSTMAN
My appointment expires Aug. 21, 2016

NOTARY PUBLIC
State of South Carolina
TAMI S. HORSTMAN
My appointment expires Aug. 21, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,

Plaintiffs,

vs.

SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,

Defendant.

AFFIDAVIT OF ROBERT A. GOSSETT, JR

2015 JUN 15 PM 2:11
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Personally appeared before me, Robert A. Gossett, Jr., who, being duly sworn, states as follows:

1. He is a principal in each of the following South Carolina business organizations: Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc.

2. The South Carolina business organizations described above collectively own all of the property within the commercial development in the South Beach area of Sea Pines on Hilton Head Island, known as"South Beach Marina Village", with the exception of one quarter share of a Parcel described as R550-017-000-1212-0217 (D).

3. The parcels owned by Catwalk, LLC, and the dates of acquisition, are as follows:

Common Area South Beach Marina Village	R550-017-000-1128-0000 R550-017-000-1240-0000	7/23/1998
2.706 ac. Portion Parcel B	R550-017-000-1229-0000	1/10/2000

The Parcel described as R550-017-000-1229-0000 was conveyed to Catwalk, LLC, by Robert A. Gossett, Jr., by deeds on or about June 6, 2002, and January 21, 2010, and was conveyed to Robert A. Gossett, Jr., by deed of the Sea Pines Company, Inc., or about September 13, 1999, and by deed of the Sea Pines South Beach Owners Association, Inc., on or about January 10, 2000. The Deed to Robert A. Gossett, Jr., from the Sea Pines South Beach Property Owners Association, Inc., does not include any language purporting to make the conveyance subject to the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203. The Parcels described as R550-017-000-1128-0000 andR550-017-000-1240-0000 were conveyed to Catwalk, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and were conveyed to Robert A. Gossett, Jr., by Ned E. Gilleland, Sr., on or about July 23, 1998.

4. The parcel owned by LET, LLC, and its date of acquisition, is as follows:

Unit A Lands End Tavern	R550-017-000-1208-0001	5/31/2005

The Parcel described as R550-017-000-1208-0001 was conveyed to LET, LLC, by Moondog, LLC, on or about July 8, 2005, and was conveyed to Moondog, LLC, by D & E Enterprises, Inc., on or about May 31, 2005.

5. The parcel owned by Lost Parrot, LLC, and its date of acquisition, is as follows:

Unit 300 South Beach Marina Village	R550-017-000-1212-0300	1/29/2001

The Parcel described as R550-017-000-1212-0300 was conveyed to Lost Parrot, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by Gilleland Family Limited Partnership, a South Carolina Limited Partnership, on or about January 29, 2001.

6. The Parcels owned by Moondog, LLC, and the dates of acquisition, are as follows:

1.279 ac. South Beach Sales Office	R550-019-000 0245-0000	3/12/1997
Parcel II Gazebo South Beach Marina Village	R550-017-000-1213-0000	10/24/1994
Parcel III South Beach Marina Restaurant	R550-017-000-1089-0000	1/10/1984
Unit 2 Lands End Tavern	R550-017-000-1213-0001	10/24/1994
Unit 3 Lands End Tavern	R550-017-000-1089-0001	10/24/1994

The Parcel described as R550-017-000-1213-0001 was conveyed to Moondog, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by South Beach Marina Village, A Partnership, on or about April 25, 1988. The Parcel described as R550-017-000-1089-0000 was conveyed to Moondog, LLC, by Robert A. Gossett, Jr., on or about October 24, 1994, and was conveyed to Robert A. Gossett, Jr., by South Beach Marina Village, A Partnership, on or about January 10, 1984. The Parcel described as R550-019-000 0245-0000 was conveyed to Moondog, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by the Sea Pines Company, Inc., on or about March 12, 1997. The Parcel described as R550-017-000-1213-0001 was conveyed to Moondog, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by South Beach Marina Village, A Partnership, on or about April 25, 1988. The Parcel described as R550-017-000-1089-0001 was conveyed to Moondog, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by South Beach Marina Village, A Partnership, on or about April 25, 1988.

7. The Parcels owned by SBM, LLC, and the dates of acquisition, are as follows:

Units B, C & D Lands End Tavern & Boat Ramp	R550-017-000-1208-0002 R550-017-000-1208-0003 R550-017-000-1208-0004	3/2/2005
Personalty and Fixtures comprising Boat Slips and Docks comprising the South Beach Marina	NO TMS for this Property	7/8/2005

The Parcels described as R550-017-000-1208-0002, R550-017-000-1208-0003 and R550-017-000-1208-0004, were conveyed to SBM, LLC, by Catwalk, LLC, on or about July 8, 2005, and were conveyed to Catwalk, LLC, by South Beach Marina of Hilton Head, LLC, on or about December 2, 1997.

The Boat Slips and Docks in the South Beach Marina were conveyed to SBM, LLC, by Catwalk, LLC, on or about July 8, 2005, and to Catwalk, LLC, by South Beach Marina Of Hilton Head, LLC, on ro about June 10, 2005.

8. The parcel owned by South Beach Swimming Pool, Inc., and the date of acquisition is as follows:

Swimming Pool Parcel	R550-017-000-1231	8/4/2000

This parcel was acquired by deed from Robert A. Gossett. Robert A. Gossett acquired this parcel by deed from the Sea Pines Company dated July 28, 1999.

9. The parcels owed by Vacation Inn, LLC, and the dates of acquisition are as follows:

Parcel I South Beach General Store	R550-017-000-1139-0000	10/24/1994
Unit 1 Lands End Tavern	R550-017-000-1139-0001	10/24/1994
Unit 101 South Beach Marina Village	R550-017-000-1212-0101	7/23/1998
Unit 102 South Beach Marina Village	R550-017-000-1212-0102	7/23/1997
Unit 103 South Beach Marina Village	R550-017-000-1212-0103	7/23/1998

Unit 104 South Beach Marina Village	R550-017-000-1212-0104	7/23/1998
Unit 105 South Beach Marina Village	R550-017-000-1212-0105	7/23/1998
Unit 106 South Beach Marina Village	R550-017-000-1212-0106	7/23/1998
Unit 107 South Beach Marina Village	R550-017-000-1212-0107	1/4/2000
Unit 108 South Beach Marina Village	R550-017-000-1212-0108	7/23/1998
Unit 109 South Beach Marina Village	R550-017-000-1212-0109	7/23/1998
Unit 110 South Beach Marina Village	R550-017-000-1212-0110	7/23/1998
Unit 111 South Beach Marina Village	R550-017-000-1212-0111	7/23/1998
Unit 112 South Beach Marina Village	R550-017-000-1212-0112	7/23/1998
Unit 113 South Beach Marina Village	R550-017-000-1212-0113	7/23/1998
Units 114 & 115 South Beach Marina Village	R550-017-000-1212-0114	7/23/1998
Unit 201A South Beach Marina Village	R550-017-000-1212-0201	7/23/1998
Units 201B, C & D South Beach Marina Village	R550-017-000-1212-0201	7/23/1998
Units 201A, B, C & D South Beach Marina Village	R550-017-000-1212-0202	7/23/1998
Units 203A, B, C & D South Beach Marina Village	R550-017-000-1212-0203	7/23/1998
Unit 204A South Beach Marina Village	R550-017-000-1212-0204	10/5/1989
Unit 204B South Beach Marina Village	R550-017-000-1212-0204	4/9/1999
Unit 204C South Beach Marina Village	R550-017-000-1212-0204	4/8/1999
Unit 204D South Beach Marina Village	R550-017-000-1212-0204	3/2/1999
Units 205A, B, C & D South Beach Marina Village	R550-017-000-1212-0205	7/23/1998
Unit 206A South Beach Marina Village	R550-017-000-1212-0206	7/23/1998
Units 206B, C & D South Beach Marina Village	R550-017-000-1212-0206	7/23/1998
Units 207A, B, C & D South Beach Marina Village	R550-017-000-1212-0207	7/23/1998
Units 208A, B, C & D South Beach Marina Village	R550-017-000-1212-0208	7/23/1998
Units 209A, B, C & D South Beach Marina Village	R550-017-000-1212-0209	7/23/1998
Units 210A, B, C & D South Beach Marina Village	R550-017-000-1212-0210	7/23/1998
Units 211A, B, C & D South Beach Marina Village	R550-017-000-1212-0211	7/23/1998
Unit 212A South Beach Marina Village	R550-017-000-1212-0212	12/8/1999
Unit 212B South Beach Marina Village	R550-017-000-1212-0212	9/15/2005
Unit 212C South Beach Marina Village	R550-017-000-1212-0212	2/25/2009
Unit 212D South Beach Marina Village	R550-017-000-1212-0212	2/22/1999
Units 213A, B, C & D South Beach Marina Village	R550-017-000-1212-0213	7/23/1998
Unit 214A South Beach Marina Village	R550-017-000-1212-0214	2/23/1999
Unit 214B South Beach Marina Village	R550-017-000-1212-0214	3/19/1999
Unit 214C South Beach Marina Village	R550-017-000-1212-0214	2/3/2003
Unit 214D South Beach Marina Village	R550-017-000-1212-0214	3/26/1999
Units 215A, B, C & D South Beach Marina Village	R550-017-000-1212-0215	7/23/1998
Units 216A, B, C & D South Beach Marina Village	R550-017-000-1212-0216	7/23/1998

Unit 217A South Beach Marina Village	R550-017-000-1212-0217	3/19/1999
Unit 217B South Beach Marina Village	R550-017-000-1212-0217	3/5/1999
Unit 217C South Beach Marina Village	R550-017-000-1212-0217	3/28/2008

The Parcels described as R550-017-000-1139-0000 and R550-017-000-1139-0001 were conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and were conveyed to Robert A. Gossett, Jr., by South Beach Marina Village, A Partnership, on or about October 24, 1994.

The Parcels described as R550-017-000-1212-0101, R550-017-000-1212-0102, R550-017-000-1212-0103, R550-017-000-1212-0104, R550-017-000-1212-0105, R550-017-000-1212-0106, R550-017-000-1212-0108, R550-017-000-1212-0109, R550-017-000-1212-0110, R550-017-000-1212-0111, R550-017-000-1212-0112, R550-017-000-1212-0113, R550-017-000-1212-0114, R550-017-000-1212-0115, R550-017-000-1212-0201, R550-017-000-1212-0202, R550-017-000-1212-0203, R550-017-000-1212-0205, R550-017-000-1212-0206, R550-017-000-1212-0207, R550-017-000-1212-0208, R550-017-000-1212-0209, R550-017-000-1212-0210, R550-017-000-1212-0211, R550-017-000-1212-0213, R550-017-000-1212-0214 (B), R550-017-000-1212-0215, R550-017-000-1212-0216, and R550-017-000-1212-0217 (A), were conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and were conveyed to Robert A. Gossett, Jr., by Ned E. Gilleland, by deeds recorded on or about July 23, 1998, and March 19, 1999.

The Parcel described as R550-017-000-1212-0107, was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett by 107 Partnership on or about January 4, 2000; the Parcel described as R550-017-000-1212-0204(A) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6,2001, and was conveyed to Robert A. Gossett, Jr., by William E. and

Janet Addington on or about July 27, 1989; the Parcel described as R550-017-000-1212-0204(B) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by Daniel J. and Eleanor G. Simon on or about April 9, 1999; the Parcel described as R550-017-000-1212-0204(C) was conveyed to Vacation Inn, LLC, Robert A. Gossett, Jr., on or about November 6,2001, and was conveyed to Robert A. Gossett, Jr., by Garth James Heffernan on or about April 8, 1999; the Parcel described as R550-017-000-1212-0204(D) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by Sandra Lee Tanner on or about March 2, 1999; the Parcel described as R550-017-000-1212-0212(A) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and to Robert A. Gossett, Jr., by KeyBank, NA, on or about December 8, 1999; the Parcel described as R550-017-000-1212-0212(B) was conveyed to Vacation Inn, LLC, by Margaret Griffin on or about September 15, 2005; the Parcel described as R550-017-000-1212-0212(C) was conveyed to Vacation Inn, LLC, by Raymond Mifsud on or about February 25, 2009; the Parcel described as R550-017-000-1212-0212(D) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and to Robert A. Gossett, Jr., by Waldo D. Apgar on or about February 22, 1999; the Parcel described as R550-017-000-1212-0214 (A) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about February 23, 1999, and to Robert A. Gossett, Jr., by Lawrence L and Betty A. Weier on or about February 23, 1999; ; the Parcel described as R550-017-000-1212-0214 (C) was conveyed to Vacation Inn, LLC, by John C. Hall on or about February 3, 2003; the Parcel described as R550-017-000-1212-0214 (D) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6,

2001, and was conveyed to Robert A. Gossett, Jr., by Patricia A. Losco on or about March 26, 1999; the Parcel described as R550-017-000-1212-0217 (B) was conveyed to Vacation Inn, LLC, by Robert A. Gossett, Jr., on or about November 6, 2001, and was conveyed to Robert A. Gossett, Jr., by Lawrence L. and Betty A. Weier on or about March 5, 1999, and the Parcel described as R550-017-000-1212-0217 (C) was conveyed to Vacation Inn, LLC, by Joseph Capalbo, Thomas R. Capalbo and Amy M. Carlucci on or about March 28, 2008.

10. Prior to July of 2013, the Sea Pines South Beach Owners Association, Inc., never asserted that any of the properties owned by the undersigned, or by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., were encumbered or otherwise affected by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

11. Prior to July of 2013, the Sea Pines South Beach Owners Association, Inc., never asserted to the undersigned, or to Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., that any of them were members of the Sea Pines South Beach Owners Association, Inc., or that any of them had any rights or obligations arising from the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

12. Prior to July of 2013, the Sea Pines South Beach Owners Association, Inc., never sought to collect any regular or special assessment from any the undersigned, or from Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC;

and South Beach Swimming Pool, Inc., based on the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to any of the properties described above.

13. Neither the undersigned, nor any authorized officer or member Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., has ever paid any regular or special assessment to the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above.

14. Neither the undersigned, nor any authorized officer or member Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., has ever attended any regular or special meeting of the Sea Pines South Beach Owners Association, Inc., related to any of the properties described above.

15. Neither the undersigned, nor any authorized officer or member Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., has ever asserted that they had any rights of any nature arising under the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, related to any of the properties described above.

16. Neither the undersigned, nor any authorized officer or member Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., has ever made any use of the common property owned by the

Sea Pines South Beach Owners Association, Inc., South Carolina, in any way that is related to any of the properties described above.

17. On or about October 22, 2013, the South Island Dredging Association, Inc., The Harbour Town Yacht Club Boat Slip Owners Association, Inc., the Gull Point Property Owners Association, Inc., South Beach Marina, Inc., and the Sea Pines South Beach Property Owners Association, Inc., entered into an Agreement for the purpose, among other things, of providing funding to pay for the dredging of waterways described as the Harbour Town Marina and Braddock Cove Creek. A true and accurate copy of the October 22, 2013, Agreement is attached hereto as Exhibit "A".

18. South Beach Marina, Inc., is a corporation organized and existing under the laws fo the State of South Carolina, with its principal place of business in Beaufort County, South Carolina. Robert A. Gossett, Jr., is a principal in South Beach Marina, Inc. South Beach Marina, Inc., is the corporate entity through which Robert A. Gossett, Jr., as principal of Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., contributed to the funding of the dredging of Braddock Cove Creek.

19. The terms and conditions of the October 22, 2013, Agreement, include the following:

> 3. **Liability for Allocated Costs.** Each Participating Party is solely and only responsible for payment of the Project allocated to each under the Agreement. Each Participating Party will promptly pay to Project Administrator its required contributions to pay any allocation to its account, and as necessary thereafter to balance the accounts of the parties following completion of the Project with the Agreement.

20. In connection with the dredging of Braddock Cove Creek as described in the October 23, 2013, Contract, South Beach Marina, Inc., contributed the sum of Seven Hundred

Eighty Seven Thousand and no/100 ($787,000.00) Dollars, or approximately 40% of the cost of the dredging of Braddock Cove Creek.

THE AFFIANT FURTHER SAITH NAUGHT.

Robert A. Gossett, Jr.

Sworn to and Subscribed before me
on this 31st Day of March, 2015.

Notary Public for South Carolina
My Commission Expires:

CURTIS L. COLTRANE
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 2/17/2022

EXHIBIT "A" TO AFFIDAVIT OF ROBERT A. GOSSETT, JR.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

SIDA AGREEMENT

THIS SIDA AGREEMENT (the "Agreement") is made and entered into as of this 22nd day of October, 2013, by and between South Island Dredging Association, Inc., Baynard Park Property Owners Association, Inc.; Harbour Town Yacht Club Boat Slip Owners Association, Inc.; Gull Point Property Owners Association, Inc.; South Beach Marina, Inc.; and Sea Pines South Beach Property Owners Association, Inc.

Definitions

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

"**Baynard**" means Baynard Property Owners Association, Inc.
"**Concealed Unknown Conditions**" means (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Dredge Agreement; or (ii) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Dredge Agreement.
"**De-Mobilization Costs**" means the costs associated with removing and disassembling all dredge equipment, pipeline and personnel from the Project.
"**Direct Costs**" means direct costs associated with the removal of sand and silt from each Venue calculated on a per cubic yard basis.
"**Dredge Agreement**" means the agreement between SIDA and Orion, which defines the types and categories of costs and their allocation among the Parties.
"**Dredged Material**" means sand and silt actually removed from each Venue.
"**Escrow Account**" means the escrow account established by the Escrow Agent from the contributions made in accordance with this Agreement from which all Project costs will be paid as provided by this Agreement. The account to, the extent practical, shall be interest bearing, in a federally insured bank and designated as the SIDA Escrow Dredging Account.
"**Escrow Agent**" means the President of SIDA.
"**Escrow Agreement**" means the agreement between the Escrow Agent, the Project Administrator and the Participating Parties concerning the funding requirements and administration of the Escrow Account.
"**Estimated Project Costs**" means projected total costs of the Project estimated and allocated for each of the Parties.
"**Financially Responsible Party**" means the party or parties responsible for payment of specific costs for the Project for each of the Venues.
"**Gull Point**" means Gull Point Property Owners Association, Inc.
"**Indirect Costs**" means permitting, monitoring, inspection, surveys, project management, project supervision, bid specifications, contractor selection and other costs reasonably associated with the Project other than Direct Costs.

"**Mobilization Costs**" means the costs for mobilizing and assembling all dredge equipment, pipeline and personnel for the Project.
"**Orion**" means Orion Marine Construction, Inc.
"**Participating Parties**" means, collectively, Slip Owners and SB Participants.
"**Parties**" means collectively, Baynard, Slip Owners, Gull Point, SB Marina, SPSBOA and SIDA.
"**Permit Costs**" are those costs and expenses charged to and paid by SIDA to apply for and obtain the Permits.
"**Permits**" means, collectively, the permits issued by the South Carolina Department of Health and Environmental Control and the U.S. Department of the Army which authorizes dredging of the Venues.
"**Project Administrator**" means Gel Engineering, LLC.
"**SB Marina**" means South Beach Marina, Inc.
"**SB Participants**" means Gull Point, SB Marina and SPSBOA.
"**SIDA**" means South Island Dredging Association, Inc.
"**Slip Owners**" means Harbour Town Yacht Club Boat Slip Owners Association, Inc.
"**SPSBOA**" means Sea Pines South Beach Owners Association, Inc.
"**The Project**" means the dredging of certain navigable waterways in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina.
"**Venues**" means Harbour Town Yacht Basin and its entrance channel and Braddock Creek (including Gull Point Marina and South Beach Marina) and its entrance channel.

List of Exhibits to Agreement

Exhibit "A" – Orion Contract
Exhibit "B" – Spreadsheet reflecting Allocation of Costs

RECITALS

1. SIDA has obtained permits to dredge the Project. The Participating Parties through this Agreement have agreed to provide SIDA with the funds to pay the costs and expenses of the Project. Baynard is a member of SIDA but is not participating in and is not responsible for the payment of any costs related to the Project. SB Marina is not a member of SIDA but desires to enter into the Agreement for the purposes of participating in and paying for certain of the costs of the Project. The two Venues that are represented by the Participating Members are Harbour Town Yacht Basin and its entrance channel and Braddock Creek and its entrance channel which includes Gull Point Marina and South Beach Marina.

2. SIDA has applied and received the Permits to accomplish dredging the Venues.

3. A dredging permit has been issued to SIDA by the South Carolina Department of Health and Environmental Control ("DHEC") DHEC Permit #212-00926-21R. The DHEC permit authorizes the dredging of the Venues. Detailed drawings of the individual Venues are attached to the DHEC permit. By executing the Agreement, the Parties acknowledge receipt of a copy of the DHEC permit.

4. A dredging permit has been issued to SIDA by the U.S. Department of the Army (the "Corps") Corps Permit #SAC-2012-926-21R. The Corps permit authorizes dredging for the Venues. By executing the Agreement, the Parties acknowledge receipt of a copy of the Corp permit.

5. The Participating Parties wish to set forth herein their agreement with respect to the funding and management of the Project (the "Agreement").

6. The above Recitals are incorporated into the substantive body of the Agreement as though they were again recited in full.

NOW, THEREFORE, for and in the consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree that:

1. Identification of Costs.

1.1 SIDA has negotiated and entered into a Dredging Agreement with Orion. The purpose of the Agreement is to establish the types and categories of costs to be incurred in the Project and to provide for the allocation of the costs among the Participating Parties with respect to the Venues for which the Participating Parties are financially responsible.

1.2 The Dredge Agreement is predicated on the proposed written bid submitted to SIDA, which provides the basis for charges by Orion for performing the Project. A copy of the Orion Contract is attached hereto as **Exhibit "A"**.

2. Allocation of Costs.

2.1 **Exhibit "B"** is a spreadsheet that sets forth the agreed upon allocation of Costs between the Participating Parties assuming a final cost for the Project of Three Million Seven Hundred One Thousand Eight Hundred Dollars ($3,701,800). Based on that assumption each of the Participating Parties have agreed to pay the applicable allocated share of costs as follows:

	Cost Commitment	Percentage
Slip Owners	$1,719,100	46.441%
SB Marina	$ 787,100	21.263%
Gull Point	$ 570,500	15.410%
SPSBOA	$ 625,100	16.886%
Total	$3,701,800	

2.2 The allocation of Project Costs are based on certain assumptions including the total volume of dredge materials that will be removed from the Venues and that there are no "Concealed or Unknown Conditions". Should there be a Direct Cost increase in the Project as a result in an increase in dredge material that must be removed from a Venue or due to a Concealed or Unknown Condition, the Participating Parties shall be responsible for such costs as follows:

2.2.1 The Slip Owners shall be responsible for such increased costs in the Venue known as Harbour Town Basin and its entrance channel;

2.2.2 Gull Point shall be responsible for such increased costs for: (i) the Gull Point Marina; and (ii) one-third (1/3) of any such costs from the seaward side of the entrance to Braddock Creek to the landward side of the channel adjacent to the Gull Point Marina;

2.2.3 SB Marina shall be responsible for such increased costs for: (i) the South Beach Marina; (ii) one-third (1/3) of any such costs from the seaward side of the entrance to Braddock Creek to the landward side of the channel adjacent to the Gull Point Marina; and (iii) one-half (1/2) of such costs for the remainder of Braddock Creek; and

2.2.4 SPSBOA shall be responsible for such increased costs for: (i) one-third (1/3) of any such costs from the seaward side of the entrance to Braddock Creek to the landward side of the channel adjacent to the Gull Point Marina; and (ii) one-half (1/2) of such costs for the remainder of Braddock Creek.

2.3 Indirect Costs may increase or decrease during the pendency of the Project. If in the event of such increases or decreases, each Participating Party shall be responsible for the payment of increases based on the participating percentages described in Section 2.1 above. Likewise, any decreases shall be shared based on the same percentages.

3. Liability for Allocated Costs. Each Participating Party is solely and only responsible for the payment of the costs of the Project allocated to each under the Agreement. Each Participating Party will promptly pay to Project Administrator its required contributions to pay any allocation to its account, and as necessary thereafter to balance the accounts of the parties following the completion of the Project in accordance with the Agreement.

4. Funding The Project Costs.

4.1 Within seven (7) days after the execution of the Agreement by the last of the Participating Parties, each party shall execute the Escrow Agreement and deposit with the Escrow Agent its estimated share of the Mobilization Costs as follows:

Slip Owners	$335,472
SB Marina	$153,999
Gull Point	$111,342
SPSBOA	$122,187
Total	$723,000

4.2 The Escrow Agreement shall provide that: (i) the Escrow Agent is appointed as escrow agent; (ii) the Escrow Agent shall deposit all funds to the Escrow Account as received and shall pay all bills directed to SIDA when approved by SIDA; (iii) the Escrow Agent shall cause the Project Administrator to notify Orion of all deposits within five (5) business days of such deposits; (iv) the Escrow Agent shall maintain accurate, current, and cumulative records, so that the share of each Participating Party's Escrow Account can be readily determined; (v) all charges against a Participating Party's share of the Escrow Account shall be only for the expenses allocated to that Participating Party under this Agreement, **Exhibit "B"** and Section 2.2 herein; (vi) the Escrow Agent shall cause the Project Administrator to provide each Participating Party and SIDA a monthly report by the fifteenth (15th) day of each month reflecting the balance of each Participating Party's share of Escrow Account, a list of expenditures, and an allocation of

each Participating Party's share of the expenditures; and (vii) each Participating Party shall pay to Escrow Agent within five (5) business days of the receipt of the monthly report the Participating Party's allocation of the monthly Indirect Costs set forth on **Exhibit "B"**. Additionally, the Dredging Agreement will require deposits for Direct Costs to be made into the Escrow Account by the applicable Participating Party or Participating Parties.

4.3 Upon completion of the Project and receipt of all invoices and charges applicable to the performance of the Project, the Participating Parties shall adjust and reallocate the accounts of each party to establish a final accounting for all costs of the Project. This final allocation of the costs among the Participating Parties shall be consistent with this Agreement.

4.4 After the Project has been completed and all costs paid, any remaining funds in any Escrow Account shall be disbursed (i) first as to any unused funds paid in accordance with Section 2.2 to the Participating Party that paid such funds; and (ii) then to the Participating Parties based on the percentage set forth in Section 2.1.

4.5 All funds collected will be returned to the Participating Parties if the Project cannot begin by December 1, 2013, so as to be completed no later than April 30, 2014.

5. Baynard. Baynard has agreed to execute the Agreement to acknowledge: (i) that it is a member of SIDA; (ii) it approves of SIDA undertaking the Project; and (iii) it has declined to be a Participating Party.

6. Relationship of the Parties.

6.1 Nothing contained in the Agreement shall be construed or implied as creating a partnership or joint venture of the Project. The relationship of the Parties under this Agreement, as well as all other agreements contemplated by this Agreement, is not that of a partnership or joint venture. None of the Parties shall have any obligation except as specifically provided herein. A party's share of the Escrow Account shall be considered a separate account that only may be used to pay the costs allocated under this Agreement to that party.

6.2 The Parties specifically disclaim any joint venture relationship of any kind including, but not limited to, partnership, limited partnership, limited liability company, or joint venture. Each party is participating in the Project for its own separate account and without duty or obligation to pay any costs not allocated to it under this Agreement.

6.3 Upon completion of the Project and payment of all costs, the Parties will be relieved of any further obligations to one another or any obligation to participate in any future dredging event.

6.4 A vote of the majority of the Participating Parties shall be required to approve all actions of SIDA. For the purpose of this Agreement, each Participating Party is entitled to one vote each.

7. Other Provisions.

7.1 No modifications of this Agreement will be effective or binding on the Participating Parties unless adopted by a unanimous vote of the Participating Parties. Any meeting called by any party or the Project Administrator to act upon any matter under this Agreement shall require three (3) days' advance written notice to each Party. Such notice may be by hand delivery, facsimile transmission, or e-mail to the address of record for that Party. A Participating Party may vote at any meeting by written proxy, in person, or by voice over a telephonic conference call. A Party may change its designated representative for such meetings at any time. A Party who attends any meeting waives any deficiency in notice for the meeting. The contact person and address for each Party is:

South Island Dredging Association, Inc.
c/o John Brinkley
46 Gull Point Road
Hilton Head Island, SC 29928

Harbour Town Yacht Club Boat Slip Owners Association, Inc.
c/o The Club Group, Ltd.
Managing Agent
Mark H. King, President
P. O. Box 6989
Hilton Head Island, SC 29938

Gull Point Property Owners Association, Inc.
Michael R. Agresta, President
26 Gull Point Road
Hilton Head Island, SC 29928

South Beach Marina, Inc.
Robert A. Gossett, President
224 South Sea Pines Drive
Hilton Head Island, SC 29928

Sea Pines South Beach Owners Association, Inc.
George Williams, President
8 Braddock Cove
Hilton Head Island, SC 29928

7.2 The Agreement is entered into in the State of South Carolina. It shall be construed, interpreted under, and governed by the laws of that state.

7.3 The Agreement is binding upon and inures to the benefit of the Parties, and their respective successors and assigns.

7.4 Time is of the essence in the performance of all matters herein.

7.5 All exhibits attached to this Agreement are by reference incorporated into and made a part of this Agreement. If there is any conflict between this Agreement and the provisions of any exhibit, then the terms of the Agreement shall prevail in the interpretation of such provisions.

7.6 This Agreement amends and supersedes any and all prior agreements between the Parties, and with SIDA, that relate to the Project, including the By-Laws of SIDA, to the extent that any such prior agreements or By-Laws are in conflict with the provisions of this Agreement.

7.7 The headings of the paragraphs in this Agreement are for convenience only, and they shall not be used to construe or interpret the meaning of any provisions in this Agreement.

7.8 In the event of arbitration or litigation of a dispute under this Agreement, the prevailing party or parties shall be entitled to all cost of the arbitration or litigation, including attorney fees, in addition to any award allowed by the hearing authority.

7.9 Any signatory to this Agreement shall be entitled to the use of any State or Federal Permits obtained by SIDA.

8. Arbitration of Disputes.

8.1 Any and all controversy, claim or dispute arising out of or relating to this Agreement or the breach thereof shall be settled by binding arbitration. The arbitration shall take place on Hilton Head Island, South Carolina. The arbitration shall be administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("the Commercial Rules") in effect as of the date the arbitration is commenced, except to the extent such rules are modified by the specific provisions of this clause.

8.2 The arbitration shall be initiated by either party to the Agreement giving to the other party written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested. The party initiating the arbitration shall file at any office of the AAA two copies of the demand and two copies of the arbitration provisions of this Agreement, together with the appropriate filing fee as provided in the schedule included with the Commercial Rules.

8.3 Unless the parties otherwise agree, the arbitration shall be conducted by one arbitrator, who shall be impartial and independent and shall be a person with at least ten (10) years' recent professional experience in the general subject matter of the dispute. The parties shall mutually agree upon the appointment of the arbitrator within thirty (30) days of the initiation of the arbitration, and, upon the agreement and consent of the arbitrator to act, the parties shall jointly file with the AAA a notice of appointment, with the name and address of the arbitrator. If the parties fail, within the said time period, to agree upon the selection and appointment of an arbitrator, or the arbitrator's consent to act is not given, the arbitrator shall be appointed in accordance with the Commercial Rules.

8.4 The arbitrator shall render the award promptly and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator. The award shall be binding on the parties, except as otherwise provided by law. Judgment on any award rendered by the arbitrator may be entered in any court of competent jurisdiction. The fees of the arbitrator shall be shared equally among the parties to the arbitration.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement at Hilton Head Island, South Carolina, as of the day and year first above stated, for the uses and purposes set forth herein.

South Island Dredging Association, Inc.

By: _____
Its: _____

Harbour Yacht Club Boat Slip Owners Association, Inc.

By: The Club Group, Ltd.
Its: Managing Agent

By: _____
Its: _____

Gull Point Property Owners Association, Inc.

By: _____
Its: _____

South Beach Marina, Inc.

By: _____
Its: _____

Sea Pines South Beach Owners Association, Inc.

By: _____
Its: President

EXHIBIT "A"

AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 4TH day of October
in the year Two Thousand Thirteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)
South Island Dredging Association (SIDA)
c/o Jack Brinkley
46 Gull Point Road
Hilton Head Island, South Carolina 29928

and the Contractor:
(Name, legal status, address and other information)
Orion Marine Construction, Inc. (Orion)
5440 W. Tyson Avenue
Tampa, Florida 33611

for the following Project:
(Name, location and detailed description)
SIDA / Hilton Head Island Dredging Project
Calibogue Sound
Hilton Head Island, South Carolina

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SECTION 15-48-10 OF THE SOUTH CAROLINA CODE

The Architect:
(Name, legal status, address and other information)
GEL Engineering, LLC (GEL)
Post Office Box 30712
Charleston, South Carolina 29417

The Owner and Contractor agree as follows.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

A formal Notice to Proceed will be issued by the owner.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

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EXHIBIT "A"

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than
( ) days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion Date
Commencement of construction may begin upon execution of a contract; Dredging may begin November 1, 2013 and must be complete by April 30, 2014; Departure from the site at contractor's discretion. If the work is not completed by April 330, 2014, or within any additional time granted by the permitting agencies, the contractor shall re-mobilize at his own expense in October 2014 and complete the work during the environmental dredging window.	

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM
§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be
($ 3,014,475.31), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)
Copy of revised bid form attached; Exhibit "A"		

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Last day of the Same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (10 %);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

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§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

§ 8.3 The Owner's representative:
(Name, address and other information)

Larry Setzler
GEGEL Engineering, LLC
Post Office Box 30712
Charleston, South Carolina 29417

§ 8.4 The Contractor's representative:
(Name, address and other information)

Prasong Buranakitipinyo
Orion Marine Construction, Inc.
5440 W. Tyson Avenue
Tampa, Florida 33611

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Supplemental conditions to Standard Form of Agreement Between Owner and Contractor (AIA) Document A101-2007 (1 page) & General Conditions of the Contract for Construction (AIA) Document A201-2007 (1 page). Comprehensive Dredging and Disposal Operations, Monitoring and Management Plan.			

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EXHIBIT "A"

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Project Specifications	SIDA/Hilton Head Island Dredging Project Calibogue Sound Hilton Head Island, SC	July 1, 2013	

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
1	July 24, 2013	1

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

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ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)
Certificate of Insurance	As Specified
Performance Bond	100%
Labor and Material Payment Bond	100%

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

J.F. Brinkley, President S.D.A.
(Printed name and title)

CONTRACTOR *(Signature)*

Curtis Huggins V.P.
(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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SIDA/Hilton Head Island Dredging Project
Calibogue Sound **EXHIBIT A**
Hilton Head Island, South Carolina

Bid Item	Description	Quantity	Unit Price		Extension
1	Mobilization	LS		$	723,000.00
2	Demobilization	LS		$	463,444.00
3	Bonds	LS		$	22,794.00
4	Harbour Town Marina	91,075 CY	$9.33/CY	$	849,729.75
5	Braddock Cove Creek	153,372 CY	$6.23/CY	$	955,507.56
	TOTAL			$	**3,014,475.31**

Standby Charges will be invoiced at $670.37/HR

SUPPLEMENTAL CONDITIONS TO STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR (AIA Document A101-2007)

These Supplemental Conditions supplement, modify, change, delete from or add to the Standard Form of Agreement Between Owner and Contractor (AIA Document A101-2007). In the event of any conflict between these Supplemental Conditions and any other contract documents, the provisions of these Supplemental Conditions shall govern.

1. All references in the Agreements to "Architect" shall be deemed to refer to the "Design Professional" which is defined as GEL Engineering, LLC (GEL).

2. Escrow Agreement

Notwithstanding any provision to the contrary in the Contract Documents or otherwise, Owner and Contractor mutually agree to the following terms and conditions which shall take precedence in the event of a conflict with any term or condition of the Contract documents:

a. Prior to the Agreement being executed, Owner shall establish an escrow account ("Escrow Account") with an initial balance of not less than the Contractor's mobilization and bonds cost of $745,794.00.
b. Thereafter, concurrently with the payment of the First Milestone upon Contractor's completion of Mobilization to the Work Site, Owner shall fund and maintain without delay or reduction for any reason whatsoever, that certain amount equal to the lesser of $500,000 or total remaining unpaid balance of the Contract Sum, as adjusted from time to time in accordance with the Contract Documents (the "Minimum Balance");
c. The terms and conditions of the Escrow Account shall be as set forth in the attached fully signed and mutually agreed form of Escrow Agreement (See Note 1);
d. The terms and conditions of progress payments as detailed in the Contract Documents remain unchanged except to the extent that any term or condition is in conflict with this Escrow Agreement, in which case the Escrow Agreement shall govern;
e. A deficiency in the Escrow Account (a "Deficiency") shall be deemed to occur whenever the Escrow Account balance drops below the Minimum Balance;
f. In the event of a Deficiency, the agent in charge of the Escrow Account shall be obligated to immediately notify the Contractor and Owner in writing;
g. If the Owner does not remedy the Deficiency within five (5) working days of the agent's issuance of such notice, the Contractor shall have the option, in its sole and absolute discretion, to immediately terminate the Agreement and demobilize from the Work Site;
h. In the event of termination in accordance with this provision 2 of the Supplemental Conditions to the Agreement, Contractor shall be entitled to compensation for all unpaid services and materials provided through the date of termination and reimbursement of all costs associated with or attributable to the termination including but not limited to the cost of demobilization; and
i. The failure of the Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Escrow Agreement, or to exercise any rights herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

• Explanatory Footnote:

Note 1: The Parties are obligated to attach and fully sign a form of Escrow Agreement (the initial draft of which is to be provided by the agent), which includes the name of the mutually agreed to agent and is consistent with this provision 2 of the Supplemental Conditions to the Agreement and is otherwise mutually agreeable to the agent, Contractor and Owner in writing.

EXHIBIT "A"

SUPPLEMENTAL CONDITIONS TO GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION (AIA Document A201-2007)

These Supplemental Conditions supplement, modify, change, delete from or add to the General Conditions of the Contract for Construction (AIA Document A201-2007). In the event of any conflict between these Supplemental Conditions and any other contract documents, the provisions of these Supplemental Conditions shall govern.

1. The following is added as Paragraph 15.4.4.4

   In the event that either party institutes arbitration proceedings as set forth in Paragraph 15.4, the prevailing party in that arbitration shall be entitled to recover all const and attorney's fees associated with the arbitration. The prevailing party will be determined in a manner consistent with the procedures set forth in the South Carolina Mechanic's Lien Laws, Section 29-5-10 of the Code of Laws of South Carolina.

Illustration of Dredging Cost Allocation - Full Participation

EXHIBIT "B"

(000's - $)

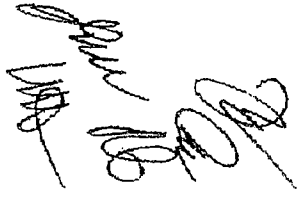
9/18/13

	MOB/DEMOB	Indirect	Direct Cost	Total	Percentage
Harbour Town	593.2	276.8	849.0	1,719.1	46.4%
SB Marina	197.7	193.4	396.0	787.1	21.3%
Gull Point	197.7	122.3	250.5	570.5	15.4%
SB POA	197.7	139.9	287.5	625.1	16.9%
	1,186.4	732.4	1,783.0	3,701.8	100.0%

	Cu Yds (000's)	Cost / Cu Yd	Direct Cost	Total Cost / Cu Yd
Harbour Town	91.0	$9.33	849.0	18.9
SB Marina	63.6	$6.23	396.0	12.4
Gull Point	40.2	$6.23	250.5	14.2
SB POA	46.2	$6.23	287.5	13.5
	240.9		1,783.0	15.4

Note:

Indirect costs are to be adjusted to exclude costs incurred prior to Sept 1st which are being billed separately



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF DONALD E. SIGMON
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

2015 AUG 18 PM 1:48

Personally appeared before me, Donald E. Sigmon, who being duly sworn, states as follows:

1. My name is Donald E. Sigmon, and I am the owner of the South Beach Racquet Club, Inc.

2. The South Beach Racquet Club, Inc., was formed on July 1, 1986. The South Beach Racquet Club, Inc., acquired three parcels of real property that it conducts its business on from Charles E. Fraser in July of 1987. The property owned by the South Beach Racquet Club, Inc., is adjacent to the South Beach Marina Village property, and is commercial property and not residential property.

3. From July of 1987 to July of 2013, a period of more than 25 years, the Sea Pines South Beach Owners Association, Inc., never asserted that the properties owned by the South Beach Racquet Club, Inc., was encumbered or otherwise affected by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

4. From July of 1987 to July of 2013, a period of more than 25 years, the Sea Pines South Beach Owners Association, Inc., never asserted to the South Beach Racquet Club, Inc., that it was a member of the Sea Pines South Beach Owners Association, Inc., or that the South Beach Racquet Club, Inc., had any rights or obligations arising from the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203.

5. From July of 1987 to July of 2013, a period of more than 25 years, the Sea Pines South Beach Owners Association, Inc., never sought to collect any regular or special assessment from the South Beach Racquet Club, Inc., based on the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, with respect to its property.

6. From July of 1987 to July of 2013, a period of more than 25 years, the South Beach Racquet Club, Inc., did not pay any regular or special assessment to the Sea Pines South Beach Owners Association, Inc., related to its property.

7. From the time that South Beach Racquet Club, Inc., purchased the three lots in 1987 to today, the South Beach Racquet Club, Inc., has paid commercial assessments to Community Services Associates, Inc., with respect to the property.

8. Neither the undersigned, nor any authorized officer or member of the South Beach Racquet Club, Inc., has ever attended any regular or special meeting of the Sea Pines South Beach Owners Association, Inc., for any reason.

9. The South Beach Racquet Club, Inc., has never asserted that it had any rights of any nature arising under the Declaration of Covenants dated June 25, 1970, and recorded in the

Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, related to its property, or any other property.

10. Beginning in July of 2013, representatives of the Sea Pines South Beach Owners Association, Inc., began to assert that the property of the South Beach Racquet Club, Inc., is encumbered by the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203, and asserted that the South Beach Racquet Club, Inc., was obligated to pay a special assessment relating to the dredging of Braddock's Cove, and regular assessments.

11. In March of 2014, the South Beach Racquet Club, Inc., made a business decision to pay the special assessment under protest, and to reserve it rights to contest its liability for the assessment, to seek a refund of the payment, and to challenge the claim that the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203 encumbered its property, rather than engage in litigation with the Sea Pines South Beach Owners Association, Inc., at that time.

12. The protest and reservation of rights was in writing and was delivered to George W. Williams, Jr. A copy of my correspondence to George W. Williams, Jr., is attached hereto as Exhibit "A".

13. In April of 2014, the South Beach Racquet Club, Inc., made a business decision to pay the 2014 regular assessment under protest, and to reserve it rights to contest its liability for the assessment, to seek a refund of the payment, and to challenge the claim that the Declaration of Covenants dated June 25, 1970, and recorded in the Office of The Register of Deeds for Beaufort County, South Carolina, in Official Record Book 176 at Page 203

encumbered its property, rather than engage in litigation with the Sea Pines South Beach Owners Association, Inc., at that time. The payment of the 2014 regular assessment was also paid under protest and was accompanied by a similar letter to the one attached as Exhibit "A". Due to a computer problem I experienced in 2014 that resulted in some lost records, I cannot locate a copy of the correspondence that accompanied the payment of the 2014 regular assessment.

14. Other than the 2014 notice of the regular assessment, which I paid under protest, there have been no other notices of any regular or special assessments delivered to me by the Sea Pines South Beach Owners Association, Inc.

15. In October of 2014, George W. Williams, Jr., sent the undersigned a copy of a notice of a meeting of the Sea Pines South Beach Owners Association, Inc. I responded to George W. Williams, Jr., in writing, again advising him the South Beach Racquet Club, Inc., is not and never has been a member of the Sea Pines South Beach Owners Association, Inc. A copy of my correspondence to George W. Williams, Jr., is attached hereto as Exhibit "B". Neither I, nor any authorized representative of the South Beach Racquet Club, Inc., attended the meeting.

THE AFFIANT FURTHER SAITH NAUGHT.

Donald E. Sigmon

Sworn to Before Me this
13th Day of August, 2015.

Notary Public for South Carolina
My Commission Expires: CURTIS L. COLTRANE NOTARY PUBLIC, STATE OF SOUTH CAROLINA My Commission Expires 2/17/2022

EXHIBIT "A" TO AFFIDAVIT OF DON SIGMON

South Beach Racquet Club, Inc.
PO Box 5994
Hilton Head Island, SC 29938
843-671-2215

Mr. George W. Williams, Jr.
Sea Pines South Beach Owners Association, Inc.
Post Office Box 7366
Hilton Head Island, SC 29938

Dear George:

Enclosed, you will find my check in the amount of Three Thousand Three Hundred and 00/100 ($3,300.00) Dollars. I am making this payment under protest and with a full reservation of my rights to challenge your claim that I, or any entity controlled by me, is, or ever was, a member of the Sea Pines South Beach Owner's Association, Inc., that commercial properties in South Beach were ever intended to be part of Sea Pines South Beach Owner's Association, Inc., my liability for any assessments imposed by the Sea Pines South Beach Owner's Association, Inc., and whether or not I am entitled to have this payment refunded.

Sincerely,

Don Sigmon, President
South Beach Racquet Club, Inc.
843-298-1479

EXHIBIT "B" TO AFFIDAVIT OF DON SIGMON

From: desigmon <desigmon@aol.com>
To: wrighton <wrighton@roadrunner.com>; bob <bob@saltydog.com>; sbirdwell <sbirdwell@seapines.com>
Subject: Re: SPSBOA October Meeting Package
Date: Wed, Oct 8, 2014 11:46 am

George,

Since South Beach Racquet Club, Inc. has never been a part of SPSBOA or been invited to any SPSBOA meetings since our incorporation in 1986, we will not be attending this meeting. We continue to challenge your claim that South Beach Racquet Club, Inc. or any other commercial properties in South Beach were ever intended to be part of Sea Pines South Beach Owner's Association, Inc.

Thank you,

Don Sigmon
843-298-1479

-----Original Message-----
From: George Williams <wrighton@roadrunner.com>
To: Bob Gossett <bob@saltydog.com>; Don <desigmon@aol.com>; Steve Birdwell <sbirdwell@seapines.com>
Sent: Fri, Oct 3, 2014 2:12 pm
Subject: SPSBOA October Meeting Package

Attached is the package for our upcoming meeting. Hope to see you there.- George

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,	)	
Plaintiffs,	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT OF ROBERT A. GOSSETT, JR.
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

2015 AUG 18 PM 4:48

Personally appeared before me, Robert A. Gossett, Jr., who, being duly sworn, states as follows:

1. He is a principal in each of the following South Carolina business organizations: Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc.

2. Since the time of the execution of the affidavit signed by me on March 31, 2015, Vacation Inn, LLC, has acquired the remaining quarter share of a Parcel described as R550-017-000-1212-0217 (D).

3. Each of the properties owned by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., has been assessed as commercial property by Community Services Associates, Inc., from the time of the acquisition of the property by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., or Robert A. Gossett, Jr., through the present.

4. From the time of the acquisition of the property by Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc., or Robert A. Gossett, Jr., through the present, they have paid commercial assessments for all of the properties.

THE AFFIANT FURTHER SAITH NAUGHT.

Robert A. Gossett, Jr.

Sworn to and Subscribed before me
on this 17th Day of August, 2015.

Notary Public for South Carolina
My Commission Expires:

CURTIS L. COLTRANE
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 2/17/2022

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS
CATWALK, LLC et al., Plaintiffs, vs. SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC., Defendant and Cross Claimant.	Case No. 2014-CP-07-01435

SUPPLEMENTAL AFFIDAVIT OF GEORGE W. WILLIAMS, JR.

J. Michael Jordan
NEXSEN PRUET, LLC
400 Main St. Office Campus, Suite 100A (29926)
Hilton Head Island, SC 29925-3526
843.689.6277

Attorneys for Defendant and Cross Claimant
SEA PINES SOUTH BEACH OWNERS' ASSOCIATION, INC.

August 18, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SUPPLEMENTAL AFFIDAVIT OF GEORGE W. WILLIAMS, JR.

Affiant George W. Williams, Jr., being duly sworn, deposes and states;

1. I am a resident and citizen of Beaufort County, South Carolina, am over the age of 21, and have no legal impediments preventing me from giving my affidavit. All facts stated herein are based upon my personal knowledge.

2. I am President of Sea Pines South Beach Property Owners' Association, Inc., defendant in the lawsuit styled Case No. 2014-CP-07- 01435, *Catwalk, LLC et al. v. Sea Pines South Beach Owners' Association, Inc.*

3. As President of Sea Pines South Beach Owners Association, Inc., I am familiar with and have access to the records of the Association.

4. This Supplemental Affidavit is in response to the numerous statements in Plaintiffs' Return and the Supplemental Affidavit of Robert A. Gossett, Jr. which are demonstrably false:
   a. "...Plaintiffs have never paid any assessments to the Association" Return at 5.
      1. Attached as A are documents previously produced to Plaintiffs in response to Plaintiffs requests for documents showing assessment payments by The Salty Dog, a commercial entity operating on Plaintiffs' property in South Beach. Included as examples are 2007 ledger entries and a 2005 check, all for annual assessments. Association records show assessments were paid from 2000 to 2008.
      2. Association records show Plaintiff Vacation Inn paid assessments from 2000 through 2012.

   b. Referring to the Affidavit of Charles A. Scarminach, Plaintiffs state "the Association never made any assertion...that properties were encumbered by the Sea Pines South Beach Covenants." Return to Motion at 3, 4.

1. Attached as B is a 1999 Proxy and Specific Limited Power of Attorney, previously produced to Plaintiffs, in which Sea Pines Company grants Robert A. Gossett (the owner of all Plaintiffs) its proxy to act in its place and stead as a Class B Member of the Association.
2. Also attached as C is a recorded Amendment to Covenants, dated October 25, 1999, previously produced to Plaintiffs, wherein Sea Pines Company, Inc. and the Association agree that the Company will terminate its Class B voting rights in the Association and maintain Class A voting rights.
3. Mr. Scarminach, as Secretary of Sea Pines Company, **signed the 1984 Deed** (Exhibit 4 to Defendant's Motion) that is the basis of Plaintiffs' title. The deed states: "The property described herein is conveyed **subject to**...restrictions, covenants...including...Deed Book 176 at Page 203."

c. No dues statements, meeting notices, and proxies have been produced and therefore Mr. Williams' affidavit cannot be true. Return to Motion 6-7.
   1. Attached as D as an example, in a document previously produced to Plaintiffs, is the last sheet of the tally of electronic voting showing ballots were sent to Mr. Gossett for his property as well as Sea Pines Real Estate.
   2. Attached as E, as another example, in documents previously produced, is the October 2008 notice of the Association annual meeting, with an excerpt from the mailing list showing The Salty Dog c/o Mr. Gossett and Plaintiff Vacation Inn.

d. "The Plaintiffs never... participated in the affairs of the Association." Return to Motion at 5.
   Attached as F, a document previously produced, is a sign in sheet for the Association's 2009 Annual Meeting showing attendance by the South Beach Inn (Vacation Inn, LLC).

e. "The only evidence in the record is that the plaintiffs' properties are subject to the Commercial Covenants and not the Sea Pines South Beach Covenants." Return to Motion at 10.
   Attached as G is a request from the office of Plaintiffs' counsel to George Williams, president of the Sea Pines South Beach Owners' Association, asking the Association if the assessments due for Unit

217-D, South Beach Marina Village, to be purchased by Plaintiff Vacation Inn, LLC, have been paid. As shown in the attachment to my original affidavit, Plaintiffs own 31 similar units Quarter Share units. This request was sent on August 10, 2015, after Plaintiffs filed their motion saying the properties are not subject to assessments.

George W. Williams, Jr.

Sworn to before me this 18th
Day of August, 2015

Notary Public for South Carolina
My commission expires: 1/7/2021

JOY E. STANTON NOTARY PUBLIC SOUTH CAROLINA

EXHIBIT

Quicken 2007 File Edit Lists Activities Online Window Help

Mon Apr 6 1:59 PM

Banking Investing Planning Property & Loans Services

Insights Find Replace Reports Graphs QkReport Categories Classes Support UserGuide

Desktop

2010
2011

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moneymgr 123112.QIF
moneymgr2_26_13.QIF
SBHOA 2006
SpSboa 9/12.qdfm
SPSBOA 2012.qdfm
SPSBOA- 3/10/11.qdfm
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Date	Number	Payee/Category/Memo	Payment	Clr	Deposit	Balance
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		split				
5/14/07	DEP	abrams		R	51.00	11,944.70
		split				
5/14/07	DEP	lowrey		R	51.00	11,995.70
		split				
5/14/07	DEP	Frankl		R	51.00	12,046.70
		split				
5/14/07	DEP	48 lands		R	51.00	12,097.70
		split				
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		split				
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		split				
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5/14/07	DEP	smith george		R	51.00	12,505.70
		split				
5/14/07	DEP	dout		R	51.00	12,556.70
		split				
5/14/07	DEP	tramm		R	51.00	12,607.70
		split				
5/14/07	DEP	selty		R	51.00	12,658.70

Close Split

Category	Memo	Amount
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Reserve 07		30.00

Close Split | Clear Split | Adjust Total

Record Restore

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Macintosh HD ▸ Sea Pines So. Beach HOA ▸ spsboa ckt book ▸ SPSBOA-Q-06.qdfm

Quicken 2007 File Edit Lists Activities Online Window Help

Mon Apr 6 2:02 PM George Williams

Banking | Investing | Planning | Reporting | Property & Loans | Services

Insights | Registers | Checks | Reconcile | Calendar | One Step | Download | Bills | ePayment | Outbox | UserGuide

Checking | Money Market | CD

Checking: Register

Date	Number	Payee/Category/Memo	Payment	Clr	Deposit	Balance
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8/4/08	7/5/08	Carolina First		R	1.83	11,098.16
		Interest Inc				
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		split				
8/5/08	7/8/08	DEP glen eden		R	144.00	11,314.16
		split				
8/31/08	7/8/08	DEP songer		R	21.00	11,335.16
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4/6/15	7/8/08	DEP barley		R	21.00	11,482.16
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	7/8/08	DEP hughes d		R	21.00	11,503.16
		split				
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	7/8/08	DEP chisman		R	21.00	11,545.16
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	7/8/08	DEP memory		R	21.00	11,566.16
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		split				
	7/8/08	DEP jolly		R	21.00	11,608.16

Close Split

Category	Memo	Amount
Dues		21.00
Reserve		

Close Split | Clear Split | Adjust Total

-Record- Restore

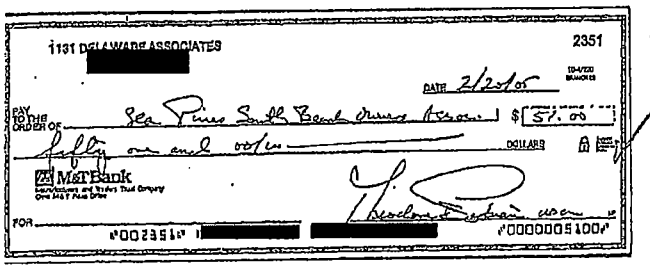
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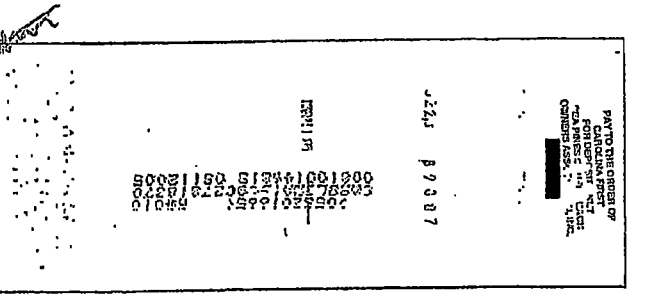
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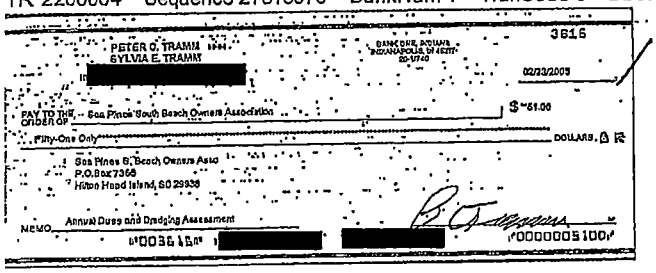
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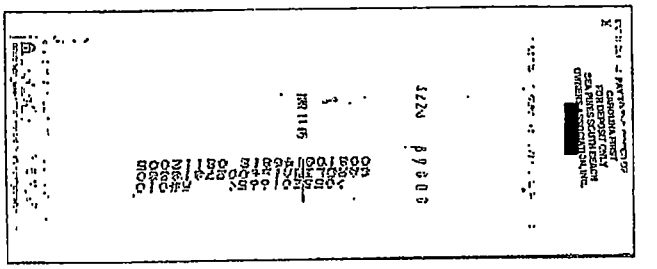
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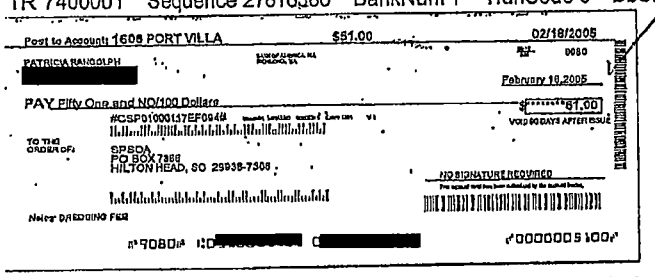


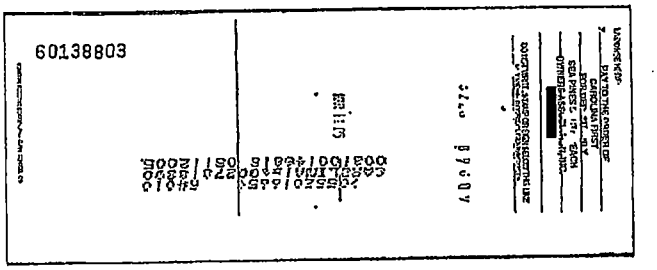
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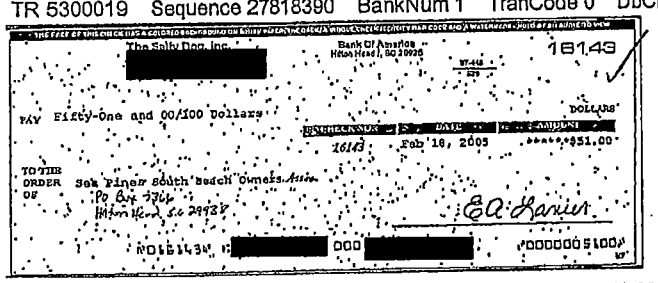


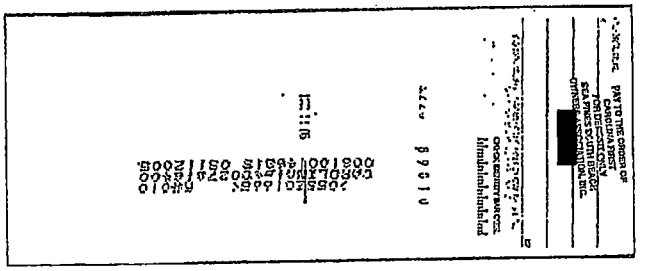
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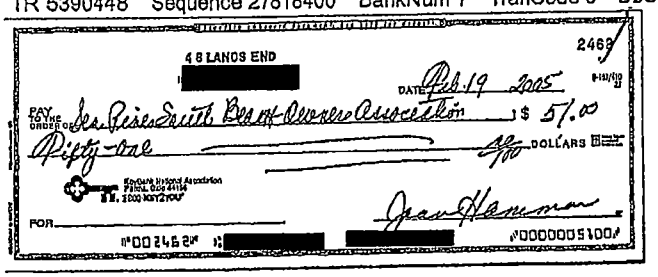


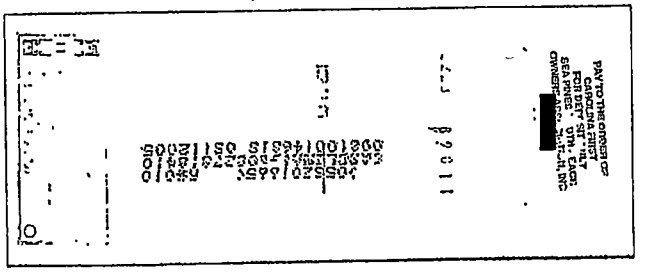
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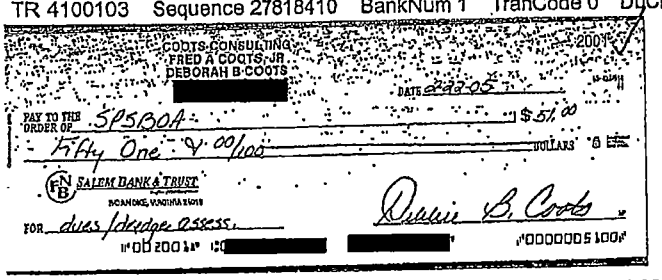


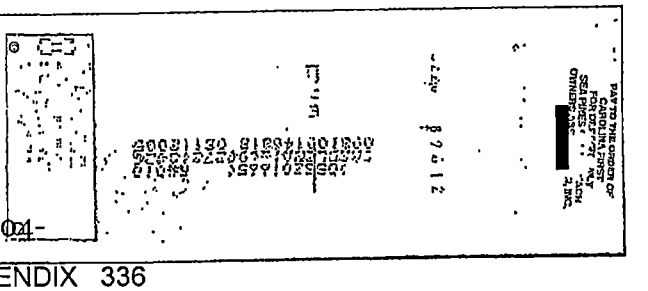
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TR 4100103 Sequence 27818410 BankNum 1 TranCode 0 DbCr D





STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROXY AND SPECIFIC LIMITED POWER OF ATTORNEY

WHEREAS, heretofore on or about August 18, 1970, Lighthouse Beach Company, A South Carolina Limited Partnership, recorded a "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina, and Provisions for The Sea Pines South Beach Owner's Association, Inc. (hereinafter, the "Covenants"); and,

WHEREAS, the Covenants are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 176 at Page 203; and,

WHEREAS, the terms and conditions of the Covenants provide that Lighthouse Beach Company, A South Carolina Limited Partnership, has certain voting rights as the "Class B Member" of the Sea Pines South Beach Owner's Association, Inc., all of which are set forth in Section 2, Article 3 of the Covenants; and,

WHEREAS, the Sea Pines Company, Inc., is the successor in interest to the rights of Lighthouse Beach Company, A South Carolina Limited Partnership, under the Covenants; and,

WHEREAS, the Sea Pines Company, Inc., wishes to grant to Robert A. Gossett a proxy to vote as the Class B Member of the Sea Pines South Beach Owner's Association, Inc.

NOW, THEREFORE, for an in consideration of the sum of ten and no/100 ($10.00) Dollars, the receipt and sufficiency whereof is acknowledged, Sea Pines Company, Inc., does hereby make, constitute and appoint Robert A. Gossett, 224 S. Sea Pines Drive, Hilton Head Island, SC, 29928, as its proxy and attorney in fact for the specific and limited purpose of acting in the place and stead of Sea Pines Company, Inc., to vote as the "Class B" member of the Sea Pines South Beach Owner's Association, Inc.

EXHIBIT B

By this Proxy and Specific Limited Power of Attorney, Sea Pines Company, Inc., gives and grants unto Robert A. Gossett full power and authority to vote as the "Class B" member as fully and effectively as Sea Pines Company, Inc., might or could do if present and acting in its own stead. Upon presentation of this Proxy and Specific Limited Power of Attorney to the Secretary of the Sea Pines South Beach Owner's Association, Inc., Robert A. Gossett shall be entitled to receive all notices of meetings and any privileges of the Class B member.

This proxy shall be valid for a period of three (3) years from the date of the execution hereof, after which time this proxy shall be automatically extended for successive periods of three (3) years, unless thereafter revoked by the Sea Pines Company, Inc., in any manner provided by law.

In witness whereof, Sea Pines Company, Inc., by and through its duly authorized officer, has set its hand and seal on this 28 Day of July, 1999.

WITNESSES:

SEA PINES COMPANY, INC.

By: Michael C. Lawrence

Its: President

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Michael E. Lawrence, the duly authorized officer of The Sea Pines Company, Inc., personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of the Sea Pines Company, Inc.

Sworn to and Subscribed before me
on this 15 Day of July, 1999.

Notary Public for South Carolina
My Commission Expires: 01/11/2011

STATE OF SOUTH CAROLINA)
) AMENDMENT TO COVENANTS
COUNTY OF BEAUFORT)

WHEREAS, on or about June 25th, 1970, Lighthouse Beach Company, A South Carolina Limited Partnership, declared certain covenants and restrictions encumbering property located within the South Beach section of Sea Pines Plantation, in Beaufort County, South Carolina, which covenants are entitled "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina, and Provisions for the Sea Pines South Beach Owners' Association, Inc." (Hereinafter, the Covenants); and,

WHEREAS, the Covenants were recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 176 at Page 203; and,

WHEREAS, the Covenants, in Article III, thereof, created a "Class B" member that consisted only of Lighthouse Beach Company, A South Carolina Limited Partnership; and,

WHEREAS, the Covenants further provided that the "Class B" member with one vote, plus one vote for each of the "Class A" members; and,

WHEREAS, The Sea Pines Company, Inc., is the successors in interest to Lighthouse Beach Company, A South Carolina Limited Partnership; and,

WHEREAS, The Sea Pines Company, Inc., wishes to terminate its voting rights under the Covenants.

NOW, THEREFORE, for and in consideration of the sum of One Dollar, to it in hand paid, at and before the execution and delivery of these presents by the Sea Pines South Beach Owners' Association, Inc., the Sea Pines Company, Inc., for itself and for its successors and assigns, hereby terminates its voting rights as a Class "B" member which it has under and by virtue of the Covenants. Sea Pines retains its rights as a Class "A" member.

All other terms and conditions of the Covenants shall remain unchanged, except as is expressly

EXHIBIT C

set forth herein.

In witness whereof the Sea Pines Company, Inc., by and through its duly authorized officer, has caused the execution and delivery of the foregoing instrument.

WITNESSES:

SEA PINES COMPANY, INC.

By: Michael E. Lawrence
MICHAEL E. LAWRENCE

Its: President

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Michael E. Lawrence, a duly authorized officer of the Sea Pines Company, Inc., personally appeared before me on this day and acknowledged the execution of the foregoing instrument on behalf of the Sea Pines Company, Inc.

Sworn to and Subscribed before me
on this 25th Day of October, 1999.

Notary Public for South Carolina
My Commission Expires: My Commission Expires March 9, 2004

Coltrane 9404

FILED
JOHN A SULLIVAN, JR
R.M.C.
BEAUFORT COUNTY, S.C.

CO JAN 10 AM 11:00

BK 1249 PG 1905

FOLDER #

Green= Yes Vote

Blue= Vote at Meeting or noticed

Final

EXHIBIT A

	Electronic Notices/Voting	Dreding Assessment	Waive Oct. Meeting
Yes	298	287	291
No	28	40	19
?	7	6	23
	333	333	333

Last name	First name	Additional name	Legal	Electronic Notices/Voting	Dredging Assessment	Waive Oct. Meeting
Fulk	Charles S	Martha A Fulk	0001 Beachside			
Johns	David L & Julia A		0001 Lands End	Yes	Yes	Yes
Cooper	Stephen M.		0001 Portside	Yes	Yes	Yes
Siegel	Marvin	Arleen Siegel	0001 So Bch Townhouse	Yes	Yes	Yes
Jones	Harry F	Cyndy Jones	0002 Beachside	Yes	Yes	Yes
Sherman	Steven S. J.	Pamela J. Sherman	0002 Lands End	Yes	Yes	Yes
McCready	Richard G	Marilyn R McCready	0002 Portside	Yes	Yes	Yes
Toy	David & Martha		0002 So Bch Townhouse	Yes	Yes	Yes
Hodson	Thomas E.	Constance Hodson	0003 Beachside	Yes	Yes	Yes
Cutter	Thomas A	Margaret S Cutter	0003 Lands End	Yes	Yes	Yes
Baker	Billy J	Norma H Baker	0003 Portside	Yes	Yes	Yes
Bleeker	Marilyn J	c/o Heidi Herman	0003 So Bch Townhouse	Yes	Yes	Yes
Deluzio Trust	Vincent		0004 Beachside	Yes	Yes	Yes
Burrirain, LLC		David Burre	0004 Lands End	Yes	Yes	Yes
Engle Jr	Edward J	Jennifer L Engle	0004 Portside			
Rider	Greg		0004 So Bch Townhouse	Yes	Yes	?
South Beach Rentals LLC		Bernard Bacevich	0005 Beachside	Yes	Yes	Yes
McGinity	James W.	Rachel K McGinity	0005 Lands End	Yes	Yes	Yes
Williams	Karen A	Kenneth Williams	0005 Portside	Yes	Yes	Yes
Markstein	Peggy Ann		0005 So Bch Townhouse	Yes	Yes	Yes
Mathes	Barbara DaAdeline P.		0006 Beachside	Yes	Yes	Yes
McGinity	James and Rachel		0006 Lands End	Yes	Yes	Yes
Pond	Elizabeth		0006 Portside	Yes	Yes	Yes
Keane	Kevin	Elizabeth A. Keane	0006 So Bch Townhouse	Yes	Yes	Yes
Parker Properties, Inc		Joe Parker	0007 Beachside	Yes	Yes	Yes
Keiths	Charles L.	Susan R.	0007 Lands End	Yes	Yes	Yes
Brummitt	John D.	Marlene C. Richardson	0007 So Bch Townhouse	Yes	Yes	Yes
McConnell	Williams F.	Barbara L. McConnell	0008 Beachside	Yes	Yes	Yes
Keith	Charles L.	Susan R.	0008 Lands End	Yes	Yes	Yes
Williams, Jr	George W	Caroll S Williams	0008 So Bch Townhouse	Yes	Yes	Yes
Songer	Paul J.	Shelley W. Songer	0009 Beachside			
Diagonale	Trude F	Anthony N Diagonale	0009 Lands End	Yes	Yes	Yes
Gromel, Jr	George H	Nancy M Gromel	0009 So Bch Townhouse	Yes	Yes	Yes
Sander	Mark	Valerie	0010 Beachside	Yes	Yes	?
Wolf, Trustee	Carol		0010 Lands End	Yes	Yes	?
Rosser	John T	Joni M Rosser	0010 So Bch Townhouse	Yes	Yes	Yes
Diliberto	Joseph	Section 1031 Services, Inc	0011 Beachside			
Woodbridge MJT LLC			0011 Lands End	Yes	Yes	Yes
Klippel	Joan M		0011 So Bch Townhouse	Yes	Yes	Yes
O'Malley	Robert M	Elizabeth A O'Malley	0012 Beachside	Yes	Yes	Yes
Abrams	Stuart R		0012 Lands End	Yes	Yes	Yes
Johnson	James	Catherine	0012 So Bch Townhouse	Yes	Yes	Yes
Friday	Robert	Loretta	0013 Beachside	[redacted]	Yes	Yes
Marren	Bernard	Seane	0013 Lands End	Yes	Yes	?
Nemec	James J.	Kathleen	0013 So Bch Townhouse	Yes	Yes	Yes

APPENDIX 343

Richard, Trustee	Maureen		2 Pintail Ct./ 9 Pintail			
Langley	Marvin		3 Pintail Ct./ 11 Pintail			
Jarratt	Carol S.		4 Pintail Ct./ 10 Pintail	Yes	Yes	Yes
JKK Holdings, LLC			5 Scaup Rd./ 17 Scaup			
Atkinson	Marjorie & Bruce		7 Scaup Rd./ 6 Scaup	Yes	Yes	Yes
Brown	Barbara		9 Scaup Rd./ 5 Scaup			
The Salty Dog, Inc	Robert A Gossett		Salty Dog			
Sea Pines Real Estate	Steve Birdwell		Sea Pines Real Estate	Yes	Yes	Yes
Brown	Melissa & Gary					

SEA PINES SOUTH BEACH
OWNERS ASSOCIATION

P.O. Box 7366 - Hilton Head, SC 29938
SPSBOA@yahoo.com

October 17, 2008

Dear South Beach Homeowner-

The 2008 annual meeting has been rescheduled for November 22 at 9:30 a.m. at the Sea Pines Community Center in Sea Pines Center. This rescheduling is a result of the Board attempting to obtain the latest information on the proposed 2008 dredging project in hopes of having a special assessment vote at the annual meeting. At this time there is not enough information for your Board to make a recommendation to the membership. SIDA has completed the environmental testing and is awaiting an EPA permit. Cost estimates and bids for the actual dredging are also lacking at this time. In addition, SIDA is planning to make a presentation to the town in an effort to obtain their assistance in project management and funding. When there is more concrete information a special meeting of the association will be called. This should occur within the next couple months. Enclosed you will find a self-addressed, postage paid envelope and proxy statement which we ask you to fill out and return immediately. The board is unable to conduct business without 60% of the proxies in hand.

If you own more than one property your vote will be counted for that number of properties unless you indicate otherwise. If there is no statement enclosed, it is because your voting privileges have been suspended until your dues/assessments are current.

If you'd like to nominate someone for the Board, please do so in the space provided on the proxy card. You may nominate yourself.

The candidates for the Board are as follows:

Arnold Windman*, South Beach Club
George Williams*, Braddock Cove
Whiting Chisman, Sound Villas
Don Hughes*, Lands End
Billy Baker*, Portside *Current board members

If you designate someone other than a board member to vote your proxy, please be sure that person will be able to attend the meeting.

The meeting agenda will include the financial status of the association, a review of the previous year's activities, the status of the upgrade to the Land's End groin and the proposed 2008/2009 dredging project. In the meantime, if you have any questions please contact George Williams at 843-363-6601 or e-mail at the above address.

In an effort to make it as easy as possible for you to respond, we've included a stamped envelope. Please mail as soon as possible so that we will receive the proxy statement no later than November 19. We appreciate your effort to return your ballot promptly.

Arnold Windman, President

EXHIBIT
E

SEA PINES SOUTH BEACH
OWNERS ASSOCIATION

SPECIAL MEETING • 9/28/2013

MEETING AGENDA

1. Establishment of Quorum
2. Questions and Discussions Prior to Vote
3. Results of Special Meeting Voting
4. Financial Report/Bank Financing-Establish Terms
5. Dredging Status
6. Additional Questions and Discussions

	South Beach Rentals LLC	Bernard Bacevich	[redacted]
Robert H.	Southard	Patricia Greco-Southard	
Russell	Southwick Family Partners	Lois Southwick	
Bill L.	Spargur	Thomas E. Spargur	
Richard L	Spencer	Jo Ann Wilson	
Ann	Spurr		
Stephen H.	Stahlman	Martha M. Stahlman	
Joseph L.	Staneck	Linda M. Staneck	
Roger F	Stebbing	Joyce P Stebbing	
Barry N	Stedman	Deborah S Adams	
Juliana M	Stender	Charles A Stender	
Kristin A.	Stephens		
Kristin A	Stephens		
Jack P	Stidham	Polly L Stidham	
Jack Patrick	Stidman	Polly Leeper Stidman	
Jeffery & Donna	Stone	Frank & Maureen Lyons	
Joseph	Stras	Frances Stras	
Thomas J.	Streck	Darlene Adonizio	
Shirley	Strickland		
Roger L	Stroud	Joanna R Stroud	
Stanley S.	Stroup	Sylvia D. Stroup	
Russell	Sweetman		
Gerald	Swimmer	Dorothy	
Catherine	Tarallo		
Mary Knox	Tatnall		
William	Tatum	Ann-Michelle Tatum	
	TGM Group	Margaret Traver Madden	
	The 7480 Associates	Doolin, Murphy & Fox	
	The Little Gull Trust	Contance Moore	
Villashares	The Resale Company		
	The Resale Company		
	The Resale Company		
Robert A Gossett	The Salty Dog, Inc		
William B	Thorsen	Lorraine Thorsen	
Thomas J	Tobin		
Kathleen A	Toombs		
Peter S	Trager	Carolyn M Trager	
Mr & Mrs Peter C	Tramm		
Lucian & Anne	Trent	M A & B Gibson, M & R Hil	
Robert L	Turknett	Carolyn N Turknett	
Catherine C.	Turner		
Alvin A	Underwood	Linda P Underwood	
	Vacation Inn, LLC	Bob Gossett	
David	Valz		
Karen Anne	Van Huezen		
Dennis	Vaughan	Diane Vaughan	
Dennis T.	Vaughan	Diane T.	
Charles H	Veurink	Mary Veurink	
David G. & Carolyn K	Vietmeier		
Omi G	Walden		
Diane E	Webster	John S Thomas III	
Glen L	Weckbacher	Cheryl L Powers	

SEA PINES SOUTH BEACH
OWNERS ASSOCIATION

ANNUAL MEETING • 10/10/2009

PROPERTY OWNER'S NAME	LOCAL ADDRESS	PHONE NO.	E-MAIL
Carol B Isaacs	[redacted]		
GERRY BIASIOLLI	[redacted]		
Andrew Wintman	[redacted]		
BERNARD BACHMAN	[redacted]		
Robert Leonard	[redacted]		
Audrey F. Leonard	[redacted]		
Dori Hoffman	[redacted]		
Tom Orr	[redacted]		
Joe Stein	[redacted]		
Jack Bauer	[redacted]		

EXHIBIT
F

Coltrane & Wilkins, LLC

2 Park Ave., Suite 200
Hilton Head Island, SC 29928
(physical address)Post Office Box 6808
Hilton Head Island, SC 299238
(mailing address)
(843) 785-5551
(843) 785-5552 (fax)

REQUEST FOR CLOSING INFORMATION

TO:	George Williams Boil.peanut@icloud.com
PROPERTY:	Unit Quarter 217-D South Beach Marina Village
Purchasers:	Vacation Inn, LLC
Sellers:	Ed and Jan Bilthouse
Price:	$75,000.00
Closing:	August 18, 2015
From:	Arlene Coleman, Paralegal (arlene@coltraneandwilkins.com)
Fax:	843-785-5552

PLEASE COMPLETE THE FOLLOWING INFORMATION FOR THE ABOVE REFERENCED CLOSING AND RETURN THE INFORMATION VIA FACSIMILE. THANK YOU.

According to our records as of 8-11-15, the following charges are due and payable on the above-referenced property:

1. If Regime/POA fee has been paid, how much has been paid? NONE
2. Total amount due: $ $10 *
3. Monthly/Quarterly/(Yearly) regime/poa fee: $ $20 PER UNIT @ 1/4 = $5/yr.
4. N/A - Regime/POA fee include sewer and water? Yes _____ No _____
5. N/A - Regime/POA Fee include Hazard and Flood Insurance? Yes _____ No _____
6. N/A - Hazard and Flood Insurance is not included on the monthly regime fee, and an assessment in the amount of $_____ was levied for the insurance. The assessment has _____ has not _____ been paid. The effective dates for Hazard and Flood Insurance are _____.

* 2014 - $5
2015 - $5

EXHIBIT G

7. The regime's/POA's insurance is carried with the following agency: BB&T the number is 0250607333 -D40
8. Any outstanding special assessments, regime expenses or legal fees? Yes X No __. If Yes, please describe: SEE Below
9. Any pending litigation on behalf of, or against the regime/association? Yes ✓ No __. If Yes, please describe. SEE 8
10. In your opinion, are any special assessments **for** capital improvements or repairs (such as painting, roof repairs, termite damage, water damage, etc.) likely or contemplated in the near future? If yes, please describe: possible dredging & Reserve fund if Approved.
11. In your opinion, will there be any substantial increases in the regular assessments for capital improvements or repairs contemplated or likely in the near future? If yes, please explain: NOT @ this time for SPSBOA
12. Are there any other chares this office should be aware of? NOT AS FAR AS SPSBOA
13. This information was provided by: George Williams
Telephone: 843-363-6601 Fax: _____

8. Catwalk LLC et al, filed by Coltrane + Wilkins, LLC

Jordan, J. Michael

From:	George Williams <boil.peanut@icloud.com>
Sent:	Tuesday, August 11, 2015 4:52 PM
To:	Arlene Coleman
Cc:	Jim O'Brien; Jordan, J. Michael
Subject:	Re: Pls Disregard --- Assessment Request / Unit Quarter 217-D South Beach Marina Village
Attachments:	Quarter Unit Closing.pdf

Arlene,

I can not disregard your request. It is my duty as President of our association to process and collect all monies owed per our covenants much like it is the responsibility of the closing attorney to collect and distribute any and all moneys generally due at closing. As such I have attached our response to your request. At closing the check for the dues and arrears can be sent to SPSBOA, Box 7366, Hilton Head Island, SC 29938. . Any questions please let me know.— George

On Aug 11, 2015, at 12:34 PM, Arlene Coleman <arlene@coltraneandwilkins.com> wrote:

George:
Please disregard the below request. It was sent in error. Thank you.

Sincerely,
Arlene Coleman, Paralegal

Coltrane & Wilkins, LLC
2 Park Lane, Suite 200
Hilton Head Island, 29928
Phone (843) 785-5551
Fax (843) 785-5552
Arlene@coltraneandwilkins.com

****** PLEASE NOTE - ALL FUNDS FOR CLOSINGS MUST BE IN THE FORM OF A WIRE. IF YOU SHOULD NEED OUR WIRING INSTRUCTIONS, PLEASE ADVISE AND WE WILL SEND THEM TO YOU.******

From: Arlene Coleman [mailto:arlene@coltraneandwilkins.com]
Sent: Monday, August 10, 2015 3:20 PM
To: 'boil.peanut@Icloud.com'
Subject: FW: Assessment Request / Unit Quarter 217-D South Beach Marina Village

Hello George,
Please find attached request for Assessments in connection with Unit Quarter 217-D South Beach Marina Village. The transaction is scheduled to close August 18, 2015. I'm thinking I also should contact Santonia w/CSA for annual dues and Danny Dennison for a Sea Pines Waiver of Repurchase Option. Thank you – I appreciate your assistance.

Sincerely,
Arlene Coleman, Paralegal

Coltrane & Wilkins, LLC
2 Park Lane, Suite 200
Hilton Head Island, 29928
Phone (843) 785-5551
Fax (843) 785-5552
Arlene@coltraneandwilkins.com

**** PLEASE NOTE - ALL FUNDS FOR CLOSINGS MUST BE IN THE FORM OF A WIRE. IF YOU SHOULD NEED OUR WIRING INSTRUCTIONS, PLEASE ADVISE AND WE WILL SEND THEM TO YOU.****

From: Coltrane & Wilkins [mailto:arlene@coltraneandwilkins.com]
Sent: Monday, August 10, 2015 2:18 PM
To: arlene
Subject: Attached Image

<4879_001.pdf>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

2015 AUG 19 AM 9:55
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC; VACATIONJINN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,	)
Plaintiffs,	) RETURN TO DEFENDANT'S COMBINED RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT
vs.	)
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)
Defendant.	)

The Plaintiffs object to the affidavit of George W. Williams, Jr., because the same includes inadmissible evidence which is prohibited by Rule 56(e), SCRCP. Under Rule 56, SCRCP, affidavits submitted in support of, or in opposition to, a motion for summary judgment must include only evidence that is admissible under the South Carolina Rules of Evidence and the law of South Carolina.

ARGUMENT

Paragraph 5 of the George W. Williams, Jr., affidavit is a statement that George W. Williams, Jr., is not qualified to make.[1] George W. Williams, Jr.'s affidavit includes no statement of his qualifications to make the statement, or any basis at all upon which the statement is made.

[1] There are two exhibits attached to the affidavit upon which Mr. Williams' testimony is based. The first is a plat of survey, and there is nothing in the affidavit to show that Mr. Williams is qualified to state what property is encompassed by the plat of survey. The second is an aerial photograph purporting to have the boundary of the plat overlaid on it. There is nothing in the Williams affidavit to show who prepared this exhibit, or the qualifications of the person who prepared it. There is no foundation in the affidavit to show that the exhibits or the testimony is admissible.

Paragraph 6 of the George W. Williams, Jr., affidavit is an inadmissible legal conclusion.

Paragraph 7 includes inadmissible hearsay. Mr. Williams purports to offer "information received from Mr. Qualey" which is hearsay.[2] There is no affidavit from Mr. Qualey advising as to what he may or may not have actually said. Further, the "list of owners" is stated to have been "compiled by Jack Qualey", but there is no affidavit from Jack Qualey attesting to the same, and the statement, and the exhibit "list of owners" are both inadmissible hearsay.[3]

Paragraph 8 is inadmissible speculation by George W. Williams, Jr.[4] George W. Williams, Jr.'s affidavit states only that he was president of the Defendant Association in 2013. He does not speak to the preceding 43 years of inaction by the Defendant Association, and the affidavit includes no statement of facts from which shows that he has any knowledge of what the Association's intent was with respect to its failure to act with respect to the rights it now claims. Further, paragraph 8includes statements that are directly contradicted by the statements in paragraph 7.[5]

---

[2] *See:* Rule 802, SCRE. Mr. Willam's testimony purports to offer what Jack Qualey may have told him to establish the truth of the fact.

[3] *See:* Rule 802, SCRE. Mr. Willam's testimony purports to offer a list of properties purportedly compiled by Jack Qualey to establish the truth of the fact.

[4] *See:* Rule 602, SCRE; *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (SCApp. 2002). The testimony as to what anyone other than Mr. Williams may or may not have intended could only be based on hearsay and is inadmissible. *See:* Rule 802, SCRE.

[5] The affidavit of George W. Williams, Jr., or at least that portion of it containing the statement that the records of the Association reflect that it sent any meeting notices, assessment notices or anything else to the Plaintiffs prior to July of 2013, should be disregarded as a sham affidavit. The purported testimony is contradictory to the previous sworn testimony in the same affidavit which is that the Association "learned" that the Plaintiffs' properties were in the membership area in 2013. See also the May 27, 2014, letter of George W. Williams, Jr., attached to his affidavit as an exhibit, in which he again states that the

Paragraph 9 of the George W. Williams, Jr., affidavit is an inadmissible legal conclusion.

Paragraph 10 of the George W. Williams, Jr., affidavit is an inadmissible legal conclusion.

Paragraph 11 of the George W. Williams, Jr., affidavit is an inadmissible legal conclusion. Further, the text in paragraph 11 related to "Sea Pines Real Estate" is contradicted by the Exhibit list of commercial properties upon which the George W. Williams, Jr., affidavit is based.[6]

CONCLUSION

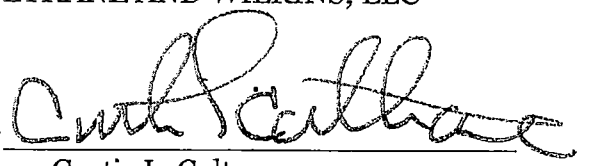
Because the above stated paragraphs in the George W. Williams, Jr., affidavit are not admissible as evidence, the same are barred by Rule 56(e), SCRCP. The Plaintiffs object to any consideration of the inadmissible evidence.

Association "discovered" the commercial properties were members of the Association in 2013. Both statements cannot be true and the statement that the Association did anything prior to 2013 appears to made for the sole purpose of attempting to create some issue of fact. *See: McMaster v. DeWitt*, 411 SC 138, 767 S.E.2d 451 (SCApp. 2014); *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (SC 2004).

6 *See:* Note 2 above.

Respectfully Submitted:

COLTRANE AND WILKINS, LLC

By: 

Curtis L. Coltrane
South Carolina Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (Fax)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 17 Day of August, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER 2014-CP-07-1435

2015 SEP 21 PM 3:10
JEANNE AMY ROSENEAU
REGISTER OF COURT
BEAUFORT COUNTY, S.C.

CATWALK, LLC; MOONDOG, LLC; LET, LLC: LOST PARROT LLC; VACATION INN, LLC; SBM, LLC; SOUTH BEACH SWIMMING POOL, INC.,	)	
Plaintiffs,	)	SUPPLEMENTAL AFFIDAVIT OF ROBERT A. GOSSETT, JR.
vs.	)	
SEA PINES SOUTH BEACH PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

Personally appeared before me, Robert A. Gossett, Jr., who, being duly sworn, states as follows:

1. I am the principal in the entity known as Vacation Inn, LLC.

2. The entity known as Vacation Inn, LLC, is the owner of a condominium unit known as Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, which is a residential condominium located in the South Beach area of Sea Pines Plantation. Solely by virtue of its ownership of Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, Vacation Inn, LLC, is a member of the Sea Pines South Beach Property Owners' Association, Inc.

3. In connection with the ownership of Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, I have caused to be paid the annual and special assessments to the Sea Pines South Beach Property Owner's Association, Inc. The payments to the Sea Pines South Beach Property Owners' Association, Inc., were made

from accounts controlled by me. The 2005 check drawn on the account of "The Salty Dog, Inc.", in the amount of Fifty One and no/100 ($51.00) Dollars, was the payment for the annual assessment due to the Sea Pines South Beach Property Owners' Association, Inc., for Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56. No real property in the South Beach area of Sea Pines Plantation, or in the South Beach Marina Village has ever been titled in the name of "The Salty Dog, Inc."

4. In connection with Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, I have caused employees of Vacation Inn, LLC, to attend annual and special meetings of the Sea Pines South Beach Property Owner's Association, Inc. In 2009, Tami Horstman was the employee of Vacation Inn, LLC, who I directed to attend the Annual Meeting of the Sea Pines South Beach Owners' Association, Inc.

5. Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, is not within the commercial development in the South Beach area of Sea Pines on Hilton Head Island, known as "South Beach Marina Village".

6. Apartment Number 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, is the only property for which Vacation Inn, LLC, has ever paid any assessments to the Sea Pines South Beach Property Owners' Association, Inc., or for which Vacation Inn, LLC, has ever attended any regular or special meeting of the Sea Pines South Beach Property Owners' Association, Inc.

THE AFFIANT FURTHER SAITH NAUGHT.

Robert A. Gossett, Jr.

Sworn to and Subscribed before me
on this 15th Day of September, 2015.

Notary Public for South Carolina
My Commission Expires:

CURTIS L. COLTRANE
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires 2/17/2022

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case Number 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

REPLY BRIEF OF THE APPELLANTS

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REPLY ARGUMENT NUMBER 1

THE TRIAL JUDGE ERRED BY DENYING THE SUMMARY JUDGMENT MOTION OF CATWALK, *ET AL.*, AND BY GRANTING THE SUMMARY JUDGMENT MOTION OF THE ASSOCIATION FOR THE FOLLOWING REASONS:

(A) IT WAS ERROR FOR THE TRIAL JUDGE TO RULE THAT THE 1973 COMMERCIAL COVENANTS ARE NOT THE ONLY APPLICABLE COVENANTS ENCUMBERING THE COMMERCIAL PROPERTY OF CATWALK, *ET AL.*, BECAUSE THE PLAIN LANGUAGE OF THE 1973 COMMERCIAL COVENANTS STATES THEY ARE THE "SOLE APPLICABLE" COVENANTS ENCUMBERING COMMERCIAL PROPERTY.

(B) IT WAS ERROR FOR THE TRIAL JUDGE TO RULE THAT THE 1970 COVENANTS WERE ADDED AS AN ENCUMBRANCE TO THE COMMERCIAL PROPERTY OF CATWALK, *ET AL.*

The Association's Arguments Number 1 and 2 are founded on the premise that the following language in the 1973 Commercial Covenants is meaningless:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.[1]

And also:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable

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[1] *See*: Affidavit of Charles A. Scarminach, Exhibit B, p. 2, R. 226.

> to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[2]

By their plain language, the 1973 Commercial Covenants govern property subjected to them in a deed, to the exclusion of ". . . those covenants and restrictions previously recorded. . . ."[3] When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.[4]

In the face of this language, and applicable law governing the construction of contracts, the Trial Judge ruled and the Association argues that the intent of the declarant was that the 1973 Commercial Covenants were supplemental to the 1970 Covenants, which ruling and argument are unsupported by the unambiguous language quoted above and by the law of South Carolina governing the interpretation of contracts.

In its Argument 1(B), the Association argues that no one disputes that the property of Catwalk, *et al.*, is within the area described in the plat referenced in the 1970 Covenants. Given, however, that the 1973 Commercial Covenants are the "sole applicable covenants,"

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[2] *See*: Complaint, paragraph 23, p. 7, R. 22; Answer and Counterclaim, paragraph 7, p. 2, R. 30; Affidavit of Charles A. Scarminach, Exhibit B, p. 17, R. 241.

[3] The only evidence in the record is that the 1970 Covenants were "previously recorded" with respect to the 1973 Commercial Covenants.

[4] *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 777 S.E.2d 425 (Ct.App. 2015).

to the exclusion of ". . . those covenants and restrictions previously recorded. . .," the point the Association attempts to make is of no consequence.

The argument of the Association is also founded on the premise that its failure to make any effort to enforce its claimed rights for a period of more than 40 years is also meaningless. To the contrary, the action of the Association is perfectly consistent with the notion that the Commercial Covenants were the "sole applicable covenants" encumbering the property of Catwalk, *et al.*

In its Argument 1(C), the Association asserts an issue preservation argument. The premise of the Association's argument is incorrect.[5] In addition, the Association misses the point that it made the affirmative argument that the 1970 and 1984 Deeds added the encumbrance of the 1970 Covenants to the property of Catwalk, *et al.*, and thus it bore the burden of proof on the issue.

As was shown in Argument 2(B) in the Brief of Appellants, the language of the 1970 Covenants detailed what had to be done to subject property to the encumbrance of the Covenants, and the Association failed to offer any evidence that those things were done. Thus, it failed to meet is burden of proof on this issue.[6]

REPLY ARGUMENT NUMBER 2

THE TRIAL JUDGE ERRED BY FAILING TO HOLD THAT THE ASSOCIATION'S

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[5] Clearly it was argued as the Trial Judge ruled on the issue. *See:* January 22, 2016, Order, p. 4, R. 8.

[6] In its footnote 4, the Association continues to advance the argument that an exception to title in a title insurance policy somehow subjects the insured to the exception. The express language of the title policies states only that the insurer will not defend or indemnify claims made with respect to the exceptions. The language of the title policies neither validates the exceptions or binds the insured to them.

FAILURE TO ASSERT ITS CLAIM BASED ON THE 1970 COVENANTS FOR A PERIOD OF MORE THAN FORTY (40) YEARS WAS BARRED BY S. C. CODE ANN. § 15-3-380 (SUPP. 2015).

The Association's reliance on the "non-waiver" language in the 1970 Covenants set out in its Argument Number 3 is misplaced. Catwalk, *et al.*, argue that the statute of limitations set out in S. C. Code Ann. § 15-3-380 (Supp. 2016), bars the claims of the Association. The language from the 1970 Covenants that is relied on by the Association does not include a waiver of the right to assert the statute of limitations.

In its Argument Number 4, the Association ignores the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2016), which reads:

> No action shall be commenced in any case for the recovery of real property *or for any interest therein* against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period. (Our emphasis.)

The Association's argument is that the 1970 Covenants do not create a possessory interest in the property of Catwalk, *et al.*, and as a result, S. C. Code Ann. § 15-3-380 (Supp. 2016), is inapplicable.

However, the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2016), directs itself not only to possessory interests in real property ('. . . for the recovery of real property . . .), but also ". . . any interest therein . . . ."

In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. The statute must be read as a whole and sections which are a part of the same general

statutory law must be construed together and each one given effect.[7] The Trial Judge's ruling that S. C. Code Ann. § 15-3-380 (Supp. 2016), does not bar the Association's claim limits the application of the statute, and is contrary to the express, unambiguous language of the statute.

The 40 year lapse applies whether measured from the date of recording of the 1970 Covenants or the 1973 Commercial Covenants. The 1970 Covenants were recorded on August 18, 1970.[8] The 1973 Commercial Covenants were recorded on February 15, 1973.[9] The only evidence in the record is that the first time the Association's claim that the 1970 Covenants encumbered the real property of Catwalk, *et al.*, was by correspondence in July of 2013.[10]

Under the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2016), the Association's failure to assert its claim for a period of more than 40 years operates as an absolute bar to the Association's claim. The Trial Judge should have granted the Motion of Catwalk, *et al.*, and denied the Motion of the Association because of it.

At a minimum, the failure of the Association to assert its claim under the 1970

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[7] *See: Centex International, Inc. v. S. Carolina Department of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013)(internal citations omitted).

[8] *See:* Complaint, Paragraph 18, p. 6, R. 21; Answer and Counterclaim, Paragraph 5, p. 1, R. 29; Affidavit of Charles A. Scarminach, Paragraph 5, pp. 1-2, R. 207-207.

[9] *See:* Complaint, Paragraph 19, p. 6, R. 21; Answer and Counterclaim, Paragraph 5, p. 1, R. 29; Affidavit of Charles A. Scarminach, Paragraph 6, p. 2, R. 207.

[10] *See:* Complaint, paragraph 33, p. 9, R. 24; Answer and Counterclaim, paragraph 12, p. 2, R. 30. The Association does not allege that it claimed that the 1970 Covenants encumbered the Catwalk, *et al.*, property prior to July of 2013. *See also:* Affidavit of Robert A. Gossett, paragraphs 10-12, pp. 8-9, R. 262-263.

Covenants for a period of more than 40 years creates a genuine issue of material fact sufficient to bar the granting of summary judgment to the Association under Rule 56, SCRCP.[11]

REPLY ARGUMENT 3

THE TRIAL JUDGE ERRED IN GRANTING SUMMARY JUDGMENT TO THE ASSOCIATION BY DISREGARDING EVIDENCE OR WEIGHING CONFLICTING EVIDENCE AND INFERENCES IN FAVOR OF THE ASSOCIATION AND WHEN CATWALK, *ET AL.*, SUBMITTED MORE THAN A SCINTILLA OF EVIDENCE IN OPPOSITION TO THE ASSOCIATION'S MOTION.

In its Brief of Respondent, the Association fails to address the existence of evidence in the record sufficient to create a genuine issue of material fact sufficient to bar the summary judgment granted to it.

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. The evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.[12] In a case such as this where the "preponderance of the evidence" burden of proof is applicable, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion

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[11] The Association's argument in its footnote 7 that 40 years has not elapsed is contrary to the evidence that is in the record, and is not supported by any evidence in the record. The Association's arguments based on deeds making reference to plats recorded in 1980 and 1987, which are not of record, doesn't prove or infer anything at all, other than those deeds referred to those plats. The Association appears to be arguing that an inference is created by the 1984 and 1987 deeds, however, under Rule 56, SCRCP, all inferences are in favor of the party resisting the motion.

[12] *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 443 S.E.2d 392 (1994).

for summary judgment.[13]

As was shown in Argument 4 of the Brief of Appellants, the undisputed facts in the record are as follows:

(a) The Association failed to enforce its claimed rights under the 1970 Covenants against the commercial property of Catwalk, *et al.*, and their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(b) The Association never sought to collect any regular or special assessment imposed by it from Catwalk, *et al.*, or their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(c) Neither Catwalk, *et al.*, nor any of their predecessors in title, have ever attended any regular or special meeting of the Association, paid any regular or special assessment to the Association, claimed to be members of the Association, claimed any rights under the 1970 Covenants, made use of any of the common property of the Association or participated in the affairs of the Association with respect to any of the commercial properties within the South Beach Marina Village.

(d) The declarant of both the 1970 Covenants and the 1973 Commercial Covenants considered the properties of Catwalk, *et al.*, to be commercial, and assessed the Catwalk, *et al.*, properties in that fashion.

(e) The plain language of the 1973 Commercial Covenants is that the 1973 Commercial Covenants are the "sole applicable" covenants governing commercial property, to the

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[13] *Hancock v. Mid-South Management Company*, 381 S.C. 326, 673 S.E.2d 801 (2009).

exclusion of any previously recorded covenants, namely the 1970 Covenants.

(f) The Association took advantage of the 2013 Agreement concerning the dredging of Braddock Creek, whereby Catwalk, *et al.*, contributed forty (40%) of the total cost, and the Association contributed only 31% per cent of the total cost. If the property of Catwalk, *et al.*, was, indeed, encumbered by the 1970 Covenants, then the entire Association would have been responsible for the costs of the dredging that was assumed solely by Catwalk, *et al.*, and the Association, combined. This would have been a significant benefit to Catwalk, *et al.*, and a significant detriment to the Association.[14]

These facts, alone or in combination, qualify as a "mere scintilla" of evidence sufficient to overcome the Association's Motion for Summary Judgment. In light of these undisputed facts, it was error for the Trial Judge to grant summary judgment in favor of the Association.

CONCLUSION

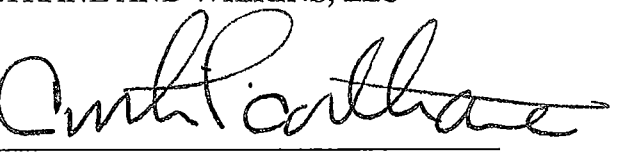
For the reasons stated in the foregoing arguments, and in the arguments set out in its Brief of Appellants, Catwalk, *et al.*, urge the Court to reverse the January 22, 2016, and March 18, 2016, Orders of the Trial Judge, and to grant Summary Judgment in favor of Catwalk, *et al.*, finding that the 1970 Covenants do not encumber the commercial property of Catwalk, *et al.*

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[14] In its footnote 3, the Association argues that the agreement related to the agreement for the dredging of Braddock Creek is irrelevant. It is not irrelevant because it shows that the Association, when its own financial contribution could be lessened, chose to treat Catwalk, *et al.*, not as a part of the Association, but rather as separate entities.

Respectfully Submitted:

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Hilton Head Island, South Carolina

This 3rd Day of August, 2016.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case No. 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Reply Brief complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court relating to personal data identifiers.

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COUNTER-STATEMENT OF ISSUE ON APPEAL

In 1970, Lighthouse Beach Company ("Lighthouse") recorded restrictive covenants encumbering all real property within the 103-acre South Beach parcel in Sea Pines, Hilton Head Island. In 1973, Lighthouse recorded additional covenants ("the 1973 Commercial Covenants") encumbering any property owned by Lighthouse, wherever located on Hilton Head Island, intended for commercial use. Appellants' properties that are the subject of this litigation (the "Properties") lie within the 103-acre South Beach parcel and are designated for commercial use. The deeds conveying the Properties to Appellants or their predecessors recite the 1970 Covenants and the 1973 Commercial Covenants as encumbrances on the Properties. Under these circumstances, did the Master in Equity correctly conclude that Appellants' properties are governed by both sets of covenants?

STATEMENT OF THE CASE

Respondent Association adopts by reference the Statement of the Case set forth in Appellants' Initial Brief. (Appellants' Initial Br. at 2-4.)

STATEMENT OF FACTS

This litigation concerns South Beach, a 103-acre parcel of land located within Sea Pines Plantation. South Beach is a mixed use area with residential, recreational, and commercial properties.

A. The 1970 Covenants

In 1970 the entire South Beach parcel was owned by Lighthouse Beach Company ("Lighthouse"). Lighthouse developed a master plan for the development of South Beach and recorded a set of restrictive covenants in August 1970 ("the 1970 Covenants") with the Register of Deeds for Beaufort County, South Carolina. (R. pp. 67-77, 1970 Covenants.)

The 1970 Covenants provide that all property within the South Beach parcel "shall be held, transferred, sold, conveyed, leased, occupied, and used subject to" the 1970 Covenants. (R. p. 68, *id.* at Recitals; R. pp. 68-69, *id.* at Art. II, § 1.) The 1970 Covenants recognize Lighthouse's right to develop the South Beach parcel as it deemed most suitable. The 1970 Covenants provide for the addition of "*complementary* additions and modifications" to the covenants, either in conjunction with the addition of properties to the parcel or through amendment of the 1970 Covenants. (R. pp.74-75, *id.* at Art. VIII, § 1.)

The 1970 Covenants also established Respondent Sea Pines South Beach Owners' Association, Inc. ("the Association") as the entity responsible for, *inter alia*, "administering and enforcing the covenants and restrictions" governing the South Beach parcel and "collecting and disbursing assessments." (R. pp. 67-68, *id.* at

Recitals.) The fee simple owner of a property subject to the 1970 Covenants for which there is a recorded final subdivision map is subject to annual and special assessments (R. p. 71, *id.* at Art. V, § 1), and shall be a "Member" of the Association. (R. p. 70, *id.* at Art. III, § 1.)

The 1970 Covenants contain a non-waiver provision: "failure by the Association or any Owner or [Lighthouse] to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter." (R. p. 75, *id.* at Art. VIII, § 3.)

B. The 1973 Commercial Covenants

In January 1973 Lighthouse recorded an additional set of covenants ("the 1973 Commercial Covenants") that restrict land designated for commercial use. (R. p. 142.) The 1973 Commercial Covenants provide that they "shall be the sole applicable covenants restricting and affecting commercial properties conveyed by" Lighthouse. (R. p. 143, *id.* at 2.) However, the 1973 Commercial Covenants also recognize the existence and continuing enforceability of the 1970 Covenants.

Two provisions of the 1973 Commercial Covenants make clear that the 1970 Covenants remain applicable to commercial-use properties located within the South Beach parcel. First, the Recitals of the 1973 Commercial Covenants reserve to Lighthouse "the right to add, in Deeds of Conveyance, additional covenants in respect to properties so conveyed by such deed." (R. p. 143, *id.* at 2.) Second, the 1973 Commercial Covenants provide:

> [I]t is the true intent and purpose of [Lighthouse], that ***to the extent that there is a conflict between those restrictions previously recorded***, as set forth above, ***and those of the instant Declaration***, the provisions of the instant Declaration shall govern ...

(R. p. 143, *id.* at 2 (emphasis added).)

C. Appellants' Properties

Appellants own several commercial properties located in the South Beach Marina Village. Appellants admit that their properties are located within the original 103-acre parcel described in, and burdened by, the 1970 Covenants. (R. p. 80, Resp. to Def's. Request to Admit No. 1.)

There is also no dispute that the titles to Appellants' properties trace back to deeds stating that the properties are conveyed subject to both the 1970 Covenants and the 1973 Commercial Covenants.[1] In 1984, Lighthouse (then known as The Sea Pines Company) conveyed all but one of Appellants' properties to South Beach Marina Village, a Partnership. The warranty deed ("the 1984 Deed") conveying the properties to South Beach Marina Village provides in relevant part:

> The property described herein is conveyed subject to the following restrictions, covenants, encumbrances and limitations of use:
>
> 1. Easements, restrictions, covenants, rights-of-way and non-monetary encumbrances of record, ***including, but not limited to,*** those recorded in ... Deed Book 173 at Page 203 [the 1970 Covenants], ... and in Deed Book 206 at Page 1143 [the 1973 Commercial Covenants] [.]

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[1] The various conveyances underlying Appellants' present ownership of the properties are recounted in affidavits submitted in connection with the parties' cross motions for summary judgment. (R. pp. 243-265, Affidavits.)

(R. pp. 85-88, 1984 Deed at 1-3 (emphasis added).)[2] The remaining property involved in this litigation was conveyed to Robert A. Gossett, Jr., in 1987 as part of a bankruptcy proceeding. (R. p. 160-165.) The limited warranty deed ("the 1987 Deed") conveying this piece of property provides that the property is conveyed subject to, *inter alia*, the 1970 Covenants. (R. p. 165 , 1987 Deed at 500.). Gossett subsequently conveyed the property to Appellant South Beach Swimming Pool, Inc.

D. The Litigation

Appellants own commercial property ("the Properties") located within the 103-acre South Beach parcel. They commenced this action in June 2014 seeking a declaratory judgment that: (i) the Properties are not encumbered by the 1970 Covenants, (ii) Appellants are not subject to assessments imposed by the Association, and (iii) Appellants are not members of the Association.[3] The matter was

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[2] Similarly, the title insurance policies for Appellants' Properties indicate that the properties are subject to both the 1970 Covenants and the 1973 Covenants. (R. pp. 89-141, Title Insurance Policies.)

[3] Appellants' Properties lie within the South Beach Marina Tract of South Beach, Sea Pines. The 1984 Deed that first conveyed the properties and the Plat referenced in the Deed show that the Properties are bounded on the north and east by Braddock Cove, a navigable body of water. (R. p. 85-88, 1984 Deed at 1.) Braddock Cove and other navigable waters in Sea Pines require dredging from time to time. On October 4, 2013, the South Island Dredging Association, Inc. ("SIDA") entered into a contract with Orion Marine Construction, Inc.to dredge Harbour Town, Gull Point, and Braddock Cove. (R. pp. 267-287, SIDA Agreement.). Subsequently, on October 22, 2013, the owners and owner representatives of the beneficiaries of the dredging entered into the SIDA Agreement, which set forth the agreed-upon contributions for the dredging costs of the various stakeholders, including: Baynard Park Property Owners Association, Inc.; Harbour Town Yacht Club Boat Slip Owners Association, Inc.; Gull Point Property Owners Association, Inc.; South Beach Marina, Inc.; and Sea Pines South Beach Property Owners Association, Inc. (R. pp. 269-270, *id.* at § 2).

referred to a Master in Equity and the parties cross-moved for summary judgment. Following extensive briefing, oral argument, and post-argument briefing, the Master in Equity issued a written decision granting the Association's motion and denying Appellants'. Based on the undisputed facts, the Master in Equity determined that:

- "[T]he 1970 Covenants create a planned unit development community and give authority to the Association to maintain and administer the community";
- "The 1973 Commercial Covenants set forth design, environmental and other standards and requirements to assure that commercial property is in keeping with stated environmental and aesthetic goals"; and
- "To the extent a property in South Beach is commercial in nature, ***the 1973 Commercial Covenants complement rather than conflict with other community restrictions.***"

Seven months later, on May 27, 2014, Respondent mailed a letter to Robert A. Gossett, Jr., the principal of Appellant corporations. The letter states that the Association, in reviewing its records and outstanding dredge issues, determined that Mr. Gossett and/or his corporations owned 43 properties in South Beach which were assessable for annual dues. The letter asked that Mr. Gossett remit payment of $860, the total of the $20 annual assessment for the 43 properties. (*See* R. pp. 166-167, Williams Aff. ¶ 7.)

The property owners, whether Mr. Gossett or the Appellants, did not pay the assessments. Rather, two weeks later Appellants filed this lawsuit seeking a declaration that their properties were not encumbered by the 1970 Covenants, that Appellants were not Association members, and that Appellants were not obligated to pay the $20 assessments per property.

The respective payments by the stakeholders for the 2013 dredging are not at issue in this case. Those contributions were agreed upon and paid. The SIDA dredging contract and the SIDA Agreement for funding were fully performed. There is no dispute about the SIDA Agreement. Appellants' reference to the amounts paid by some of the parties to the SIDA Agreement, therefore, are irrelevant.

(R. p. 12, Order at 8 (emphasis added).) Based on these determinations, the Master in Equity concluded that "as a matter of law [Appellants'] properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants. Accordingly, [Appellants] are members of the Association, with all rights and obligations of membership." (R. p. 12, Order at 8.)

This appeal followed.

SUMMARY OF ARGUMENT

Appellants admit that the Properties are part of the 103-acre South Beach parcel governed by the 1970 Covenants. In arguing that those covenants no longer apply to their properties, Appellants focus myopically on a single phrase from the 1973 Commercial Covenants, stating that the 1973 covenants "shall be the sole applicable covenants restricting and affecting commercial properties." But the law is clear: restrictive covenants are contractual in nature and, like contracts, must be construed as a whole. Therefore, Appellants err in encouraging the Court to consider a single phrase in isolation from the remainder of the 1973 Commercial Covenants.

When construed as a whole, as the law requires, the 1973 Commercial Covenants clearly recognize the continued existence and enforceability of the 1970 Covenants. Moreover, Appellants' properties were conveyed pursuant to deeds that explicitly incorporated the 1970 Covenants *and* the 1973 Commercial Covenants—a circumstance contemplated, and authorized, by the 1973 Commercial Covenants. Finally, the 1970 Covenants recognize that development of the South Beach parcel

might necessitate future supplementation or amendment of the covenants and made clear that any such supplementation or amendment should not be construed as a revocation or rescission of the 1970 Covenants.

In light of the undisputed facts and the unambiguous language of the covenants, the lower court correctly held (1) that Appellants' properties remain subject to the 1970 Covenants to the extent those covenants are not directly contradicted by the 1973 Commercial Covenants, and (2) that pursuant to the 1970 Covenants, uncontradicted by anything in the 1973 Commercial Covenants, Appellants are members of the Association and their properties are subject to annual and special assessments. Accordingly, this Court should affirm.

ARGUMENT

I. THE MASTER IN EQUITY CORRECTLY RULED THAT APPELLANTS' PROPERTIES ARE ENCUMBERED BY BOTH THE 1970 COVENANTS AND THE 1973 COMMERCIAL COVENANTS.

A. Applicable Law

1. *Standard of Review*

When reviewing an order granting or denying summary judgment, the appellate court applies the same standard as that which governed the [master-in-equity] under Rule 56(c), SCRCP. *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) (citing *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)). Pursuant to Rule 56(c), SCRCP, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any

material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill*, 387 S.C. at 235, 692 S.E.2d at 505. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

2. *Construction of Restrictive Covenants*

Restrictive covenants, like the covenants at issue in this case, "are contractual in nature and bind the parties thereto in the same manner as any other contract." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006) (internal quotation marks omitted). The words of a restrictive covenant will be construed according to the plain and ordinary meaning attributed to them at the time of their execution. *See Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4, 498 S.E.2d at 863–64 . (internal quotation marks omitted). When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning." *Shipyard Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992). "A restriction on the use of property must be created in express

terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Taylor*, 332 S.C. at 5, 498 S.E.2d at 864 (citation and quotation marks omitted). However, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument.'" *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting *Taylor*, 332 S.C. at 4–5, 498 S.E.2d at 863–64).

B. The 1970 Covenants encumber all land within the 103-acre South Beach parcel, including Appellants' Properties.

Under the legal premises described above, the plain language of the 1970 Covenants makes clear that all property in South Beach "shall be ... subject" to the covenants, and that the owner of any lot for which there is a recorded final subdivision map is subject to assessments and "*shall be a member of the Association.*" (R. pp. 68-69, 1970 Covenants, at Art. II, §1; R. p. 70, *id.* at Art. III, § 1 (emphasis added).) Further, the 1970 Covenants unambiguously apply to the entirety of the 103-acre South Beach parcel.

Appellants *admit* that their Properties lie within the South Beach parcel. (R. p. 80, Pls.' Resp. to Def.'s Request to Admit No. 1.) Moreover, the deeds conveying the Properties to Appellants or their predecessors specifically list the 1970 Covenants (as well as the 1973 Commercial Covenants) as encumbrances. (R. p. 86, 1984 Deed at 2; R. p. 165, 1987 Deed at 500.) The 1984 Deed, which conferred title to all but one of the Properties, provides:

> The property described herein is conveyed subject to the following restrictions, covenants, encumbrances and limitations of use:
>
> 1. Easements, restrictions, covenants, rights-of-way and non-monetary encumbrances of record, ***including, but not limited to,*** those recorded in ... Deed Book 176 at Page 203 [the 1970 Covenants], ... and in Deed Book 206 at Page 1143 [the 1973 Commercial Covenants] [.]

(R. p. 86 1984 Deed at 2 (emphasis added).) Similarly, the 1987 Deed, which conveyed the other of the Properties, provides:

> d) Declaration of Rights, Restrictions, Easements, set back lines, rights-of-way, options, conditions, etc. as recorded in Office of the Register of Mesne Conveyance in Beaufort County, South Carolina in Deed Book 176 at Page 203 [the 1970 Covenants] ... .

(R. p. 165, 1987 Deed at 500.). Under South Carolina law, a restrictive covenant recited in a deed conveying property is binding and enforceable against the grantee. *See, e.g.*, 26A C.J.S. *Deeds* § 445 ("A grantee of land subject to restrictive covenants may be bound by the restrictions where he or she has at least constructive notice thereof, by reason of the deed containing a covenant putting him or her on inquiry. A grantee who accepts the deed and records it, with knowledge of restrictions therein, is deemed to have consented thereto." (footnotes omitted)).

Thus both the unambiguous text of the 1970 Covenants and applicable South Carolina law establish that Appellants' Properties are encumbered by the 1970 Covenants.[4]

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[4] Additionally, the title insurance policies for Appellants' Properties, which identify exceptions to coverage including covenants, conditions, easements, and affirmative obligations as shown on recorded instruments applicable to the insured

C. Appellants' arguments against application of the 1970 Covenants are without merit.

Attempting to avoid the unavoidable, Appellants maintain that the 1970 Covenants do not apply to the Properties for two reasons: (1) because the record contains no evidence that the sales contracts for the Properties "included any notice that the 1970 Covenants would be added as an encumbrance to the property" as contemplated in the 1973 Commercial Covenants; and (2) because the 1970 Covenants were not made applicable to Appellants' Properties through a Supplementary Declaration of Covenants, as contemplated in the 1970 Covenants. Appellants' Initial Br. at 20. The Court must reject these arguments because Appellants failed to preserve them for appellate review.

It is a settled rule of South Carolina law that "an appellate court cannot address an issue unless it was raised to and ruled upon by the [lower] court." *Chastain v. Hiltabidle*, 381 S.C. 508, 514–15, 673 S.E.2d 826, 829 (Ct. App. 2009). Appellants first raised the arguments recited above in their motion to alter or amend the judgment under Rule 59, SCRCP. (R. pp. 192-193, Notice of Motion and Motion to Alter or Amend Under Rule 59, SCRCP, at 10-11.) This was too late. "[A] party may not raise an issue in a motion to reconsider, alter or amend a judgment

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property, state that Appellants' Properties are subject to the 1970 Covenants. (R. pp. 89-141, Title Insurance Policies.) Each policy: (1) relates to property in South Beach owned by Appellants; (2) identifies the covenants, conditions, easements, and affirmative obligations for that property; (3) identifies the 1970 Covenants and the 1973 Commercial Covenants as encumbrances on the property; and (4) was prepared by the same counsel or firm representing Appellants in this appeal. (*Id.*)

that could have been presented prior to the judgment." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004).

In any event, these arguments are without merit. Appellants' first assertion, that the 1970 Covenants do not apply because they were not listed in the contracts of sale, rests on a provision of the 1973 Commercial Covenants stating, "[Light-house] reserves in each instance the right to add, in Deeds of Conveyance, additional covenants with respect to said properties so conveyed by such Deed ... Notice of such additional covenants, will, in all cases, be set forth in the contract of sale relating to such property." (R. p. 143, 1973 Commercial Covenants at 2). This argument fails because South Carolina recognizes the merger-by-deed doctrine, under which "a deed made in in full execution of a contract of sale of land merges the provisions of the contract therein." *Charleston & W. Carolina Ry. Co. v. Joyce*, 231 S.C. 493, 504, 99 S.E.2d 187, 193 (1957); *see also Wilson v. Landstrom*, 281 S.C. 260, 264, 315 S.E.2d 130, 133 (Ct. App. 1984) ("A deed executed subsequent to the making of an executory contract for the sale of land supersedes that contract ..." (internal quotation marks omitted)). Thus, regardless of whether the contract of sale referenced the 1970 Covenants, that contract merged into the 1984 Deed which does incorporate the 1970 Covenants.

Appellant's second assertion, that a Supplementary Declaration of Covenants was necessary to subject the Properties to the 1970 Covenants, relies on a misreading of those covenants. Under the 1970 Covenants, if Lighthouses sought to encumber additional properties—beyond the 103-acre parcel that included

Appellants' Properties—in future stages of the development, any such additions would have to be filed as a Supplementary Declaration of Covenants. (R. p. 69, 1970 Covenants at Art. II, § 2.) This argument is nonsensical. Appellants admit that their Properties lie within the original, 103-acre South Beach parcel governed by the 1970 Covenants. Necessarily, then, Appellants' Properties are not "additional property" necessitating a Supplemental Declaration of Covenants.

II. THE 1973 COMMERCIAL COVENANTS DO NOT ABROGATE THE 1970 COVENANTS WITH RESPECT TO APPELLANTS' PROPERTIES.

The 1973 Commercial Covenants provide "that to the extent that there is a conflict between those covenants and constrictions previously recorded ... and those of the instant Declaration, the provisions of the instant Declaration shall govern." (R. p. 143, 1973 Commercial Covenants at 2.) The Master in Equity correctly determined that the 1973 Commercial Covenants complement, rather than conflict with, the 1970 Covenants. When construing restrictive covenants, "the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Taylor*, 323 S.C. at 4, 498 S.E.2d at 863-64. Moreover, although doubts regarding covenants should be resolved in favor of the free use of property, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." *Id.* at 4-5, 498 S.E.2d at 863-64. Additionally, "[e]very term contained in a contract must be considered and given effect if possible." *Valley Pub. Serv. Auth. v. Beech Island Rural Cmty. Water Dist.*, 319 S.C. 488, 494, 462 S.E.2d 296, 299 (Ct. App. 1995).

Appellants ask the Court to ignore these principles and construe the 1973 Commercial Covenants in a manner that ignores the purpose of the covenants as gleaned from the whole instrument. Appellants argue that the terms "sole applicable covenants" in the Recitals of the 1973 Commercial Covenants preempt or exclude all others covenants. (Appellants' Initial Br. at 13-17.) This argument, taken to its logical conclusion, means that any commercial entity whose title may be traced back to Lighthouse Beach Company is not subject to any other covenants, not just those relating to South Beach and the Association, but in the case of Appellants, all other applicable Sea Pines covenants.[5]

"It is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952). As set forth in its recitals, the 1973 Commercial Covenants encumber all retail commercial property on Hilton Head Island, wherever located, owned at the time of recording by Lighthouse Beach Company. (R. 142, 1973 Commercial Covenants at 1) (stating that the Company desires to "make, publish and record a declaration of restrictive covenants affecting certain properties designated for commercial use.") Moreover, as acknowledged by the Master in Equity, the recitals demonstrate that the purpose of the 1973 Commercial Covenants was to address the "environmentally sensitive

[5] In addition to the 1970 Covenants and the 1973 Commercial Covenants, the 1984 Deed lists six additional sets of covenants which encumber the properties. The 1987 Deed lists eleven additional encumbrances.

nature" of Hilton Head Island by ensuring that commercial properties are "developed pursuant to an orderly plan which contemplates among other things the environmental impact." (R. p. 142, *id.* at 1.) In this vein, the 1973 Commercial Covenants set forth, as examples, limitations on building size (R. pp. 144-145, *id.* at 3-4), conditions for signage (R. p. 147, *id.* at 6), parking (R. p. 147, *id.*), and sewerage requirements (R. p. 148, *id.* at 7).

The 1970 Covenants established a planned unit development community and authorized the Association to maintain and administer the community. The 1973 Commercial Covenants set forth design, environmental and other standards and requirements to assure that commercial property is in keeping with stated environmental and aesthetic goals. Thus, the owner of commercial property in South Beach is also encumbered by the 1973 Commercial Covenants which complement rather than conflict with other community restrictions. To interpret the 1973 Commercial Covenants otherwise would contravene the intended purpose of the covenants which was to primarily address the environmentally sensitive nature of Hilton Head Island.

Moreover, the errors of Appellants' arguments are shown by the terms of the 1973 Commercial Covenants. First, the language immediately before the "sole applicable covenants" provision upon which Appellants rely, provides that "[Light-house] reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application of the uniform covenants contained herein."

Lighthouse recorded the 1970 Covenants for South Beach and recorded its Commercial Covenants in 1973. In 1984, 11 years later, Lighthouse (at that point known as Sea Pines Plantation Company) sold for the first time the properties that would later be owned by Appellant. And the 1984 deed identified the 1970 Covenants and the 1973 Commercial Covenants as encumbrances on the properties.

Appellants' second fallacy is found in the Recitals as well: "[I]t is the true intent and purpose of Lighthouse Beach Company, that to the extent that there is a conflict between those restrictions and covenants previously recorded ... the provisions of the instant Declaration shall govern and restrict commercial properties." (R. p. 143, 1973 Commercial Covenants at 2.) If, as Appellants claim, the 1973 Commercial Covenants are the only covenants applicable to the Properties, no conflict with other covenants and restrictions is possible. Thus, the text of the 1973 Commercial Covenants acknowledges that other covenants and restrictions exist and apply. Therefore, the 1973 Commercial Covenants do not negate or override the 1970 Covenants. *See Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958) ("Contracts should be liberally construed so as to give them effect and carry out the intention of the parties.").

III. THE 1970 COVENANTS CONTAIN A NON-WAIVER PROVISION THAT APPELLANTS DO NOT DISPUTE.

The 1970 Covenants include an enforceable non-waiver provision which precludes Appellants from claiming that the Association waived its right to enforce the 1970 Covenants. South Carolina courts have long held that non-waiver pro-

visions are recognized and enforceable. *See Cobb & Seal Shoe Store v. Aetna Ins. Co.*78 S.C. 388, 397 58 S.E. 1099, 1101 (1907) ("The non-waiver agreement should be given full effect as the contract of the parties."); *see also Crotts v. Fletcher Motor Co.*, 219 S.C. 210, 64 S.E.2d 540 (1951); *Tilley v. Pacesetter Corp.*, 333 S.C. 508, 508 S.E.2d 16 (1998). The non-waiver provision in 1970 Covenants states:

> Article VIII, Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, and *failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter.*

(R. p. 75, 1970 Covenants at Art. VIII, § 3 (emphasis added).)

In this case, Appellants do not challenge the terms of the 1970 Covenants, including the non-waiver provision, nor do Appellants argue that the 1970 Covenants are ambiguous. When a covenant is clear and unambiguous, it is given its plain meaning. *See Taylor v. Lindsey*, 332 S.C. 1, 4,498 S.E.2d 862, 864 (1998): *RV Resort and Yacht Club Owners Ass'n* v. *BillyBob's*, 386 S.C. 313, 321, 688 S.E.2d 555, 559 (2010). Appellants do not assert that the 1970 Covenants are indefinite or contravene public policy. *Queens Grant II*, 368 S.C. at 362, 628 S.E.2d at 913. As a matter of law, under these circumstances the non-waiver provision is enforceable by

its plain meaning and therefore Appellants' Properties are subject to the 1970 Covenants.[6]

IV. SECTION 15-3-380 OF THE SOUTH CAROLINA CODE DOES NOT APPLY BECAUSE RESTRICTIVE COVENANTS DO NOT CREATE POSSESSORY INTERESTS IN PROPERTY.

Appellants' argument that S.C. Code Ann. § 15-3-380 shields them from the 1970 Covenants, Appellants' Br. at 21-22, is simply wrong. Section 15-3-380 provides:

> No action shall be commenced in any case for the recovery of real property or for any interest therein against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period.

It is well settled law that covenants, restrictions, and easements are contractual, not possessory interests. *See Taylor*, 332 S.C. at 4, 498 S.E. 2d at 863-64 (noting that restrictive covenants are contractual in nature); *Queen's Grant II*, 368 S.C. at 361, 628 S. E. 2d at 913 (holding that restrictive covenants are construed like contracts); 20 Am. Jur. 2d *Covenants, Conditions, and Restrictions* § 149 (2016) (stating that restrictive covenants are contractual in nature creating rights that run with the land and affecting rights and obligations upon the property's transfer or

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[6] Furthermore, while Appellants asserted claims for waiver, estoppel and abandonment, they made no suggestion that they could demonstrate any prejudice or reliance, or that the Association intended to relinquish a known right. *See e.g., Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). The lower court correctly dismissed Appellants' alternative causes of action for waiver, estoppel, and abandonment. (R. p. 12, Order at 8.)

sale). Covenants neither limit the fee nor give rise to any right of possession. *See, e.g., Douglas v. Med. Investors, Inc.* 256 S.C. 440, 446, 182 S.E.2d 720, 724 (1971) (stating that an easement created by a reservation in a deed did not create an estate in the lands affected but only reserved a joint right to use the driveway); *Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 266-67, 628 S.E.2d 284, 290 (Ct. App. 2006) (stating that the rights as defined by the restrictive covenant only extended to common use and enjoyment of the area and did not create a right of possession). Because a restrictive covenant is not a possessory interest in property, § 15-3-380 is irrelevant to this litigation.[7]

CONCLUSION

The Master in Equity correctly concluded that (1) the plain and clear language of the 1970 Covenants, the 1973 Commercial Covenants, the 1984 Deed, and the 1987 Deed demonstrate that Appellants' Properties are encumbered by the 1970 Covenants and the 1973 Commercial Covenants; (2)

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[7] Alternatively, even if § 15-3-380 applied it would not help Appellants. The only restriction on the Properties that could even remotely be considered an "interest therein" is the obligation to pay assessments, and it has been less than forty years since the Properties became subject to assessments under the 1970 Covenants. *See Dreher v. SCDHEC*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (holding that "an appellate court may affirm the lower court's decision for any reason appearing in the record"). The 1970 Covenants provide that the "Owner" of a "Lot" is subject to assessments and define "Lot" as any "any improved or unimproved plat of land shown on any recorded final subdivision map." (R. p. 68, 1970 Covenants at Art. I, § 1(d).) The 1984 Deed refers to a plat recorded in 1980, and the 1987 Deed refers to a plat recorded in 1987. (R. p. 85, 1984 Deed at 1; R. pp. 164-165, 1987 Deed at 479 and 500.) Thus the earliest that anyone owning any of the Properties could be obliged to pay assessments was 1980, only 36 years ago.

the 1970 Covenants contain a non-waiver provision, which Appellants did not challenge the presence or propriety of this provision, and it is given effect as a matter of law; and (3) S.C. Code Ann. § 15-3-380 is inapplicable because a restrictive covenant is not a possessory interest in property.

Wherefore, the Association respectfully asks the Court to affirm the decision of the lower court.

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September 2, 2016
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Marvin H. Dukes, III, Master in Equity

Case No. 2014-CP-07-1435
Ct. App. No. 2016-000637

Catwalk, LLC, Moondog, LLC, LET, LLC,
Lost Parrot, LLC, Vacation Inn, LLC, SBM, LLC,
and South Beach Swimming Pool, Inc., ... Appellants,

v.

Sea Pines South Beach Owners' Association, Inc. ..... Respondent.

CERTIFICATION OF COMPLIANCE

The undersigned certifies that the foregoing Final Brief of Respondent complies with Rule 211(b), SCACR.

Kirsten E. Small, Esquire

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

IN THE COURT OF COMMON PLEAS

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case Number 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

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Rule 56(c), SCRCP 12, 24

OTHER AUTHORITIES

17 S.C. Juris. *Covenants* § 69 (1993) 13

American Heritage Dictionary of the English Language, 3rd Ed., 1992. 16

STATEMENT OF ISSUES ON APPEAL

1. Was it error for the Trial Judge to rule that a "Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., which Constitute Covenants Running with certain Commercial Lands of Lighthouse Beach Company" (hereinafter, the "1973 Commercial Covenants"), is not the only applicable declaration of covenants encumbering the Appellants' real property, when the plain language of the 1973 Commercial Covenants states that it is the "sole applicable" declaration of covenants?

2. Was it error for the Trial Judge to rule that the "Declaration of Covenants and Restrictions for Sea Pines South Beach, Hilton Head Island, South Carolina" (hereinafter, the "1970 Covenants")" encumbered the Appellants' real property?

3. Was it error for the Trial Judge to rule that the Respondent is not barred by S. C. Code Ann. § 15-3-380 (Supp. 2015), from enforcing its claimed rights under the 1970 Covenants, when the only evidence in the record is that the Respondent failed to enforce, claim or assert any claimed rights and interests in the Appellants' real property founded on the 1970 Covenants for a period of more than 40 years?

4. Was it error for the Trial Judge to grant summary judgment to the Respondent by disregarding the evidence or weighing conflicting evidence and inferences in favor of the Respondent when the Appellants submitted more than a scintilla of evidence in opposition to the Respondent's motion?

STATEMENT OF THE CASE

Catwalk, LLC; Moondog, LLC; LET, LLC; Lost Parrot LLC; Vacation Inn, LLC; SBM, LLC; and South Beach Swimming Pool, Inc. (hereinafter, collectively referred to as "Catwalk, *et al.*"), began this action against the Sea Pines South Beach Owners Association, Inc. (hereinafter, the "Association"), by the filing and service of a Summons and Complaint on or about June 17, 2014, seeking a declaratory judgment that the 1970 Covenants are not enforceable against their real property.[1]

The Association filed its Answer and Counterclaim on or about August 25, 2014. In its Answer and Counterclaim, the Association denied the material allegations of the Catwalk, *et al.*, Complaint, and counterclaimed that the 1970 Covenants do encumber the real property owned by Catwalk, *et al.*, and demanded a Jury Trial.[2]

Catwalk, *et al.*, filed their Reply to the Counterclaims of the Association on August 27, 2014. In their Reply to Counterclaims, Catwalk, *et al.*, denied the material allegations of the Association's Answer and Counterclaims.[3]

By an Order dated February 18, 2015, the case was referred to the Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Judge for Beaufort County, South Carolina.[4]

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1 *See:* Complaint, pp. 1-13, R. 16-28.

2 *See:* Answer and Counterclaim, pp. 1-6, R. 29-35.

3 *See:* Reply to Counterclaims, pp. 1-8, R. 36-43.

4 *See:* February 18, 2015, Order of Hon. Perry M. Buckner, pp. 1-2, R 3-4.

On June 15, 2015, Catwalk, *et al.*, filed their Motion for Summary Judgment.[5] The June 15, 2015, Motion for Summary Judgment was supported by the Affidavits of Charles A. Scarminach[6], Richard T. Sonberg[7], Ned E. Gilleland, Sr.[8], and Robert A. Gossett, Jr.[9]

The Association filed its Combined Response to Catwalk, *et al.'s*, Motion for Summary Judgment and Cross Motion for Summary Judgment on or about August 7, 2015.[10] The Association's Motion for Summary Judgment was supported by copies of various documents as attachments to it and also by the Affidavit of George W. Williams, Jr.[11]

Catwalk, *et al.*, filed their Return to the Association's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment.[12] The Return was supported by the Supplemental Affidavit Robert A. Gossett, Jr.[13], and the affidavit of Donald E. Sigmon.[14]

On August 18, 2015, the Association filed the Supplemental Affidavit of George W.

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5 *See:* Motion for Summary Judgment, pp. 1-14, R. 44-57.

6 *See:* Affidavit of Charles A. Scarminach, pp. 1-5, Exhibits A and B, R. 206-242.

7 *See:* Affidavit of Richard T. Sonberg, pp. 1-3, R. 243-245.

8 *See:* Affidavit of Ned E. Gilleland, Sr., pp. 1-9, R. 246-254.

9 *See:* Affidavit of Robert A. Gossett, Jr., pp. 1-11, Exhibit "A", R. 255-287.

10 *See:* Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment, pp. 1-9, Exhibits 1-8, R. 58-172.

11 *See:* Affidavit of George W. Williams, Jr., pp. 1-3, Exhibits 1-2, R. 166-172.

12 *See:* Return to Defendant's Combined Response to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment, pp. 1-10, R. 173-182.

13 *See:* August 18, 2015, Supplemental Affidavit of Robert A. Gossett, Jr., pp. 1-2, R. 296-297.

14 *See:* Affidavit of Donald E. Sigmon, pp. 1-4, Exhibits "A" and "B," R. 288-295.

Williams, Jr.[15] On August 19, 2015, Catwalk, et al., filed their objection to the Supplemental Affidavit of George W. Williams, Jr.[16]

The motions were heard by the Hon. Marvin H. Dukes, III, on August 19, 2015. The motions were taken under advisement, and Catwalk, *et al.*, were granted leave to file an additional affidavit, which was done on September 21, 2015.[17]

On January 22, 2016, the Hon. Marvin H. Dukes, III, filed his Order denying the motion of Catwalk, *et al.*, and granting the Association's motion.[18] Catwalk, *et al.*, filed their Motion to Alter or Amend under Rule 59, SCRCP, on February 1, 2016.[19] The Association filed its Response to the motion of Catwalk, *et al.*, on March 11, 2016.[20]

The Rule 59, SCRCP, motion was heard by the Hon. Marvin H. Dukes, III, on March 16, 2016. The Hon. Marvin H. Dukes, III, filed his Order denying the Rule 59, SCRCP, Motion of Catwalk, *et al.*, on March 18, 2016.[21]

Catwalk, *et al.*, timely filed and served their Notice of Appeal on March 23, 2016.

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[15] *See:* Supplemental Affidavit of George W. Williams, Jr., pp. 1-4, Exhibits "A." "B," "C," "D," "E," "F" and "G," R. 298-320.

[16] *See:* Objection to Affidavit of George W. Williams, Jr., mis-styled as Return to Defendant's Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment, pp. 1-4, R. 321-324.

[17] *See:* September 21, 2015, Supplemental Affidavit of Robert A. Gossett, Jr., pp. 1-3, R. 325-327.

[18] *See:* January 22, 2016, Order of Hon. Marvin H. Dukes, III, pp. 1-9, R. 5-13.

[19] *See:* Motion to Alter or Amend under Rule 59, SCRCP, pp. 1-14, R. 183-196.

[20] *See:* Defendant's Response to Plaintiffs' Rule 59(e) Motion to Alter or Amend, pp. 1-9, R. 197-205.

[21] *See:* March 18, 2016, Order of Hon. Marvin H. Dukes, III, pp.1-2, R. 14-15.

STATEMENT OF FACTS

The following facts in the record are undisputed:

1. Catwalk, *et al.*, are the owners of multiple parcels of real property situate in a commercial tract in Sea Pines on Hilton Head Island that is known as the "South Beach Marina Village."[22]

2. The Association is a residential home owners' association that was established by Lighthouse Beach Company, A South Carolina Limited Partnership, in the 1970 Covenants.[23]

3. The 1970 Covenants were recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on August 18, 1970, in Official Record Book 176 at Page 203.[24]

4. The 1970 Covenants refer to a recorded plat which includes the land that was developed into the commercial tract known as South Beach Marina Village.

5. On February 15, 1973, Lighthouse Beach Company, A South Carolina Limited Partnership, recorded the 1973 Commercial Covenants.[25]

6. The 1973 Commercial Covenants were recorded in the Office of The Register of

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[22] *See:* Complaint, Paragraphs 10-16, pp. 2-6, R. 17-21; Affidavit of Robert A. Gossett, paragraphs 3-9, pp. 1-8, R. 255-262; Affidavit of Charles A. Scarminach, paragraphs 9-10, p. 5, R. 208.

[23] *See:* Complaint, paragraph 17, p. 6, R. 21; Answer and Counterclaim, paragraph 5, p. 1, R. 29.

[24] *See:* Complaint, Paragraph 18, p. 6, R. 21; Answer and Counterclaim, Paragraph 5, p. 1, R. 29; Affidavit of Charles A. Scarminach, Paragraph 5, pp. 1-2, R. 206-207.

[25] *See:* Complaint, Paragraph 19, p. 6, R. 21; Answer and Counterclaim, Paragraph 5, p. 1, R. 29; Affidavit of Charles A. Scarminach, Paragraph 6, p. 2, R. 207.

Deeds for Beaufort County, South Carolina, in Official Record Book 206 at Page 1143.[26]

7. The 1973 Commercial Covenants apply to commercial property, which is described in Article 2 of the 1973 Commercial Covenants as follows:

> Whenever used herein, the term "Commercial Property" shall apply to property used or to be used for all retail commercial uses except "package stores" for the sale and take-out of alcoholic beverages and real estate sales offices which accept listings, and offer for sale, real property outside the Forest Beach area. Permissible retail commercial uses shall include, but not be limited to, retail shops, hotel, motel, motor hotel, or motor lodge sites or operation, and all other Class "B" multi-family residence areas such as condominiums or apartments.[27]

8. The 1973 Commercial Covenants read as follows, in relevant part:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.[28]

And also:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that

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[26] *See*: Complaint, Paragraph 20, p. 7, R. 22; Answer and Counterclaim, Paragraph 5, p. 1, R. 29; Affidavit of Charles A. Scarminach, Paragraph 6, p. 2, R. 207.

[27] *See*: Complaint, Paragraph 22, p. 7, R. 22; Answer and Counterclaim, Paragraph 7, p. 2, R. 30; Affidavit of Charles A. Scarminach, Paragraph 7, p. 2, R. 207. The record reflects a subsequent "Declaration of Covenants and Restrictions by Sea Pines Plantation Company, Inc.," that is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Record Book 224 at Page 1036, that includes terms related to commercial properties in Sea Pines. The Trial Judge found that neither this subsequent declaration nor any other affects the issues present in this case, however. *See:* January 22, 2016, Order, paragraph 2, p. 3, R. 7.

[28] *See*: Affidavit of Charles A. Scarminach, Exhibit B, p. 2, R. 226.

> the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[29]

9. The real properties owned by Catwalk, *et al.*, that lie within South Beach Marina Village are "commercial properties" as the same are described in the 1973 Commercial Covenants.[30] The title to the Catwalk, *et al.*, properties reflects the following:

(a) At various times prior to January 3, 1984, Lighthouse Beach Company, and its successor, the Sea Pines Plantation Company, owned all or substantially all of the real property lying within the confines of the South Beach Marina Village.[31]

(b) On or about January 3, 1984, the Sea Pines Plantation Company conveyed all of the real property that it owned within the confines of South Beach Marina Village to South Beach Marina Village, A Partnership.[32]

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[29] *See*: Complaint, paragraph 23, p. 7, R. 22; Answer and Counterclaim, paragraph 7, p. 2, R. 30; Affidavit of Charles A. Scarminach, Exhibit B, p. 17, R. 241.

[30] *See:* Complaint, paragraph 24, p. 7, R. 22; Answer and Counterclaim paragraph 8, p. 2, R. 30; Affidavit of Charles A. Scarminach, Paragraph 10, p. 3, R. 208; Affidavit of Robert A. Gossett, Jr., Paragraph 2, p. 1, R. 255. The Trial Judge found that the Catwalk, *et al.*, properties are commercial properties. *See:* January 22, 2016, Order, paragraph 6, p. 4, R. 8.

[31] *See:* Affidavit of Charles A. Scarminach, Paragraph 9, p. 3, R. 208.

[32] *See:* Affidavit of Charles A. Scarminach, Paragraph 9, p. 3, R. 208; Affidavit of Ned E. Gilleland, Sr., Paragraph 3, pp. 1-7, R. 246-250.

(c) Between 1988 and 1998, South Beach Marina Village, A Partnership, subsequently conveyed all of the property it owned within the confines of South Beach Marina Village to various entities and individuals, including Ned E. Gilleland, Sr.; the Gilleland Family Partnership; South Beach Marina Limited Partnership; and Robert A. Gossett, Jr.[33]

10. All of the properties described in the foregoing paragraph are now owned by Catwalk, *et al.*, and lie within the confines of South Beach Marina Village.[34]

11. In July of 2013, the Association claimed for the first time since the recording date of the 1970 Covenants, that the real property owned by Catwalk, *et al.*, was encumbered by the 1970 Covenants.[35]

12. Between August 18, 1970, and July of 2013, the Association never:

(a) claimed that any of the properties owned by Catwalk, *et al.*, or any of their predecessors in title to the property in South Beach Marina Village were encumbered by the 1970 Covenants;[36]

(b) claimed that Catwalk, *et al.*, or any of their predecessors in title to the commercial property in South Beach Marina Village were obliged to pay

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[33] *See:* Affidavit of Ned E. Gilleland, Jr., paragraphs 3, 4 and 5, pp. 1-7, R. 246-252; Affidavit of Richard T. Sonberg, paragraph 3, p. 1, R. 243; Affidavit of Robert A. Gossett, Jr., paragraphs 3-9, pp. 1-8, 9, R. 255-262.

[34] *See:* Affidavit of Robert A. Gossett, Jr., paragraphs 3-9, pp. 1-8, R. 255-262.

[35] *See:* Complaint, paragraph 33, p. 9, R. 24; Answer and Counterclaim, paragraph 12, p. 2, R. 30. The Association does not allege that it claimed that the 1970 Covenants encumbered the Catwalk, *et al.*, property prior to July of 2013. *See also:* Affidavit of Robert A. Gossett, paragraphs 10-12, pp. 8-9, R. 262-263.

[36] *See:* Affidavit of Charles A. Scarminach, Jr., paragraph 11, pp. 3-4, R. 208-209; Affidavit of Ned E. Gilleland, Sr., paragraph 6, p. 7, R. 252; Affidavit of Richard T. Sonberg, paragraph 4, p. 2, R. 244; Affidavit of Robert A. Gossett, Jr., paragraph 10, p. 8, R. 262.

assessments to the Association arising under the 1970 Covenants;[37]

(c) claimed that Catwalk, *et al.*, or their predecessors in title to the commercial property in South Beach Marina Village were members of the Association or had any rights or obligations arising under the 1970 Covenants.[38]

13. Between August 18, 1970, and July of 2013, or thereafter:

(a) neither Catwalk, *et al.*, nor any of their predecessors in title to the commercial property in South Beach Marina Village ever paid a regular or special assessment to the Association related to any of the commercial properties owned by them in South Beach Marina Village.[39]

(b) neither Catwalk, *et al.*, nor any of their predecessors in title to the commercial property in South Beach Marina Village ever attended any regular or special meeting of the Association in relation to any of the commercial properties owned by them in South Beach Marina Village.[40]

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[37] *See:* Affidavit of Charles A. Scarminach, Jr., paragraph 11, pp. 3-4, R. 208-209; Affidavit of Ned E. Gilleland, Sr., paragraphs 8-9, pp. 7-8, R.252-253; Affidavit of Richard T. Sonberg, paragraph 8-9, p. 2, R. 244; Affidavit of Robert A. Gossett, Jr., paragraphs 12-13, pp. 8-9, R. 262-263.

[38] *See:* Affidavit of Charles A. Scarminach, Jr., paragraph 11(b), pp. 3-4, R. 208-209; Affidavit of Ned E. Gilleland, Sr., paragraph 7, p. 7, R. 252; Affidavit of Richard T. Sonberg, paragraph 7, p. 2, R. 244; Affidavit of Robert A. Gossett, Jr., paragraph 11, p. 8, R. 262.

[39] *See:* Affidavit of Charles A. Scarminach, paragraph 12, p. 4, R. 209; Affidavit of Ned E. Gilleland, Sr., paragraph 9, p. 8, R. 253; Affidavit of Richard T. Sonberg, paragraph 9, p. 2, R. 244; Affidavit of Robert A. Gossett, Jr., Paragraph 13, p. 9, R. 263.

[40] *See:* Affidavit of Ned E. Gilleland, Sr., Paragraph 10, p. 8, R. 253; Affidavit of Richard T. Sonberg, Paragraph 10, pp. 2-3, R. 244-255; Affidavit of Robert A. Gossett, Jr., Paragraph 14, p. 9, R. 263. The Appellant Vacation Inn, LLC, also owns a property known as Apartment 1732, South Beach Village Bluff Apartments Horizontal Property Regime 56, which is a residential condominium property that is encumbered by the 1970

(c) neither Catwalk, *et al.*, nor any of their predecessors in title to the commercial property in South Beach Marina Village ever asserted that they had any rights of any nature arising under the 1970 Covenants, related to any of the commercial properties owned by them in South Beach Marina Village.[41]

(d) neither Catwalk, *et al.*, nor any of their predecessors in title to the commercial property in South Beach Marina Village ever made any use of Common Property owned by the Association in any way that is related to their ownership of commercial property in South Beach Marina Village.[42]

14. On or about October 22, 2013, the South Island Dredging Association, Inc., The Harbour Town Yacht Club Boat Slip Owners Association, Inc., the Gull Point Property Owners Association, Inc., South Beach Marina, Inc., and the Association, entered into an Agreement for the purpose, among other things, of providing funding to pay for the dredging of waterways described as the Harbour Town Marina and Braddock Cove Creek.[43]

15. South Beach Marina, Inc., is a corporation organized and existing under the laws of of South Carolina, with its principal place of business in Beaufort County, South Carolina.

Covenants. The South Beach Bluff Apartments condominium is not one of the commercial properties owned by Catwalk, *et al.*, at issue in this case. Vacation Inn, LLC, has sent a representative to meetings of the Association and paid its annual fees to the Association related to its ownership of the South Beach Bluff Apartments condominium. This does not create any genuine issue of material fact in this case. *See:* Supplemental Affidavit of Robert A. Gossett, Jr., dated September 15, 2015, R. 325-327.

[41] *See:* Affidavit of Charles A. Scarminach, paragraph 13, pp. 4-5, R. 209-210; Affidavit of Ned E. Gilleland, Sr., paragraph 11, p. 8, R. 253; Affidavit of Richard T. Sonberg, paragraph 11, p. 3, R. 245; Affidavit of Robert A. Gossett, Jr., Paragraph 15, p. 9, R. 263.

[42] *See:* Affidavit of Ned E. Gilleland, Sr., paragraph 12, p. 8, R. 253; Affidavit of Richard T. Sonberg, paragraph 12, p. 3, R. 245; Affidavit of Robert A. Gossett, Jr., paragraph 16, pp. 9-10, R. 263-264.

[43] Braddock Cove Creek is the same body of water described in the Answer and Counterclaim of the Association as Braddock Cove.

Robert A. Gossett, Jr., is a principal in South Beach Marina, Inc. South Beach Marina, Inc., is the entity through which Catwalk, *et al.*, contributed to the funding of the dredging of Braddock Cove Creek.[44]

16. The terms and conditions of the October 22, 2013, Agreement, include the following:

> 3. **Liability for Allocated Costs.** Each Participating Party is solely and only responsible for payment of the Project allocated to each under the Agreement. Each Participating Party will promptly pay to Project Administrator its required contributions to pay any allocation to its account, and as necessary thereafter to balance the accounts of the parties following completion of the Project with the Agreement.[45]

17. Catwalk, *et al.*, through South Beach Marina, Inc., contributed the sum of Seven Hundred Eighty Seven Thousand and no/100 ($787,000.00) Dollars, or approximately 40% of the total cost of the dredging of Braddock Cove Creek.[46]

18. The Association contributed the sum of Six Hundred Twenty Five Thousand One Hundred and no/100 ($625,100.00) Dollars, or approximately 31% of the total cost of the dredging of Braddock Cove Creek.[47]

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[44] *See:* Affidavit of Robert A. Gossett, Jr., paragraph 18, p. 10, R. 264.

[45] *See:* Affidavit of Robert A. Gossett, Jr., paragraph 19, p. 10, R. 264.

[46] *See:* Affidavit of Robert A. Gossett, Jr., paragraph 20, pp. 10-11, R. 264-265.

[47] *See*: Exhibit "A" to Affidavit of Robert A. Gossett, Jr., p. 3, R. 269.

STANDARD OF REVIEW

Under Rule 56, SCRCP, Summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[48] In determining whether any material issues of fact exist, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the party resisting the motion.[49] An issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.[50] If the moving party demonstrates that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact.[51] At the summary judgment stage, the court does not weigh conflicting evidence with respect to a disputed material fact.[52] Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.[53] On review, the appellate court applies the same standard applied by the trial court.[54]

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[48] *Café Associates Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

[49] *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (Ct.App. 2003).

[50] *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct.App. 1988).

[51] *Hoard ex rel. Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010).

[52] *South Carolina Property & Casualty Guaranty Association v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (Ct.App. 2001).

[53] *Evening Post Publishing Co. v. Berkeley County School District*, 392 S.C. 76, 708 S.E.2d 745 (2011).

[54] *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 650 S.E.2d 68 (2007).

ARGUMENT NUMBER 1
(Issues 1 and 2)

THE TRIAL JUDGE ERRED BY DENYING THE SUMMARY JUDGMENT MOTION OF CATWALK, *ET AL.*, AND BY GRANTING THE SUMMARY JUDGMENT MOTION OF THE ASSOCIATION FOR THE FOLLOWING REASONS:

> (A) IT WAS ERROR FOR THE TRIAL JUDGE TO RULE THAT THE 1973 COMMERCIAL COVENANTS ARE NOT THE ONLY APPLICABLE COVENANTS ENCUMBERING THE COMMERCIAL PROPERTY OF CATWALK, *ET AL.*, BECAUSE THE PLAIN LANGUAGE OF THE 1973 COMMERCIAL COVENANTS STATES THEY ARE THE "SOLE APPLICABLE" COVENANTS ENCUMBERING COMMERCIAL PROPERTY.
>
> (B) IT WAS ERROR FOR THE TRIAL JUDGE TO RULE THAT THE 1970 COVENANTS WERE ADDED AS AN ENCUMBRANCE TO THE COMMERCIAL PROPERTY OF CATWALK, *ET AL.*

(A) THE PLAIN LANGUAGE OF THE 1973 COMMERCIAL COVENANTS IS THAT THE 1973 COMMERCIAL COVENANTS ARE THE "SOLE APPLICABLE" COVENANTS ENCUMBERING COMMERCIAL PROPERTY.

In the January 22, 2016, and the March 18, 2016, Orders, the Trial Judge found that the 1970 Covenants encumbered the commercial property of Catwalk, *et al.*[55]

In the January 22, 2016, Order, the Trial Judge found that the intention of the Lighthouse Beach Company was that the commercial property of Catwalk, *et al.*, was encumbered by both the 1970 Covenants and the 1973 Commercial Covenants.[56]

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[55] *See:* January 22, 2016, Order, p. 3, R. 7.

[56] There is no finding by the Trial Judge that the 1973 Commercial Covenants are ambiguous, and Catwalk, *et al.*, do not argue such. But, the Trial Judge's comments regarding the intention of Lighthouse Beach Company implies an ambiguity, and to the extent that such exists, any ambiguity must be resolved against the Association. The rules applicable to the construction of contracts are applicable to the construction of covenants in deeds. 17 S.C. Juris. *Covenants* § 69 (1993). Covenants that restrict the free use of property must be strictly construed against limitations upon the property's free use. Where there is doubt, the doubt must be resolved in favor of the property's free use. *Hyer v. McRee,* 306 S.C. 210, 410 S.E.2d 604 (Ct.App. 1991). Thus, to the extent the Trial Judge's order implies any ambiguity related to the meaning of the 1973 Commercial Covenants, as a matter of law, the ambiguity is resolved against the Association.

The Trial Judge reached this conclusion in the face of following language from the 1973 Commercial Covenants:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.[57]

And also:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[58]

The text of the 1973 Commercial Covenants is plain and unequivocal that as of the date of the recording, the 1973 Commercial Covenants were the "sole applicable covenants restricting and affecting Commercial Property" subsequently conveyed by Lighthouse

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[57] *See*: Affidavit of Charles A. Scarminach, Exhibit B, p. 2, R. 226.

[58] *See*: Complaint, paragraph 23, p. 7, R. 22; Answer and Counterclaim, paragraph 7, p. 2, R. 30; Affidavit of Charles A. Scarminach, Exhibit B, p. 17, R. 241.

Beach Company.[59] Further, the text of the 1973 Commercial Covenants is plain and unequivocal that the 1973 Commercial Covenants govern commercial property irrespective of the existence of any previously recorded declaration of covenants.

In the face of the quoted language from the 1973 Commercial Covenants, the Trial Judge made findings in both the January 22, 2016, and the March 18, 2016, Orders, that the 1970 Covenants also encumber the commercial property of Catwalk, *et al.*

(a) In the January 22, 2016, Order, the Trial Judge found that the 1973 Commercial Covenants overlay or compliment the 1970 Covenants.[60] There is no text in the 1973 Commercial Covenants suggesting such a result. The language in the 1973 Commercial Covenants is that they are the sole applicable covenants encumbering commercial property subsequently conveyed by Lighthouse Beach Company.

(b) In the March 18, 2016, Order, the Trial Judge found: "The word 'applicable' (which in this context means relevant) refers to any part of the 1970 Covenants which would have dealt specifically with commercial properties. If the 1973 Covenants were intended to completely replace the 1970 Covenants, the word 'applicable' would be unnecessary, and the word 'sole' could have stood alone."[61]

(c) In the March 18, 2016, Order, the Trial Judge found: "Likewise, the

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[59] There is no dispute that the commercial properties of Catwalk, *et al.*, are "commercial property" as described in the 1973 Commercial Covenants, and were conveyed subsequent to the date of recording of the 1973 Commercial Covenants. The Association did not dispute these facts, and the Trial Judge found such to be facts in the January 22, 2016, Order. *See:* January 22, 2016, Order, paragraphs 5-6, pp. 3-4, R. 7-8.

[60] *See:* January 22, 2016, Order, pp. 6, 8, R. 10, 12.

[61] *See:* March 18, 2016, Order, p. 1, R. 14.

phrase 'to the extent there is a conflict . . .' implies that the 1973 covenants were intended as a commercial covenant overlay to act in conjunction with the 1970 Covenants."[62]

These findings are contrary to the plain language of the 1973 Commercial Covenants, and the law of South Carolina regarding the construction of a contract. In South Carolina, the rules relating to the construction of contracts include: When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense.[63] The contract and the language used must be considered as a whole.[64] Words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.[65] Every term contained in a contract must be considered and given effect if possible.[66]

The text is that the 1973 Commercial Covenants are the "sole applicable" covenants governing commercial property conveyed by Lighthouse Beach Company subsequent to the recording of the 1973 Commercial Covenants.

The word "sole" means "the only one."[67] The finding that the "sole applicable"

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62 *See:* March 18, 2016, Order, p. 1, R. 14.

63 *Sifonios v. Town of Surfside Beach*, 414 S.C. 269, 777 S.E.2d 425 (Ct.App. 2015).

64 *Madden v. Bent Palm Investments, LLC*, 386 S.C. 459, 688 S.E.2d 597 (Ct. App. 2010).

65 *State Accident Fund v. South Carolina Second Injury Fund*, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010).

66 *Valley Public Service Authority v. Beech Island Rural Community Water District*, 319 S.C. 488, 494, 462 S.E.2d 296, 299 (Ct. App. 1995).

67 *See: American Heritage Dictionary of the English Language*, 3rd Ed., 1992.

covenants are anything other than the "only applicable" covenants is contrary to the plain language of the document and reads words into the document that is wholly unexpressed in the language of it.

The Trial Judge's ruling in the March 18, 2016, Order concerning the word "applicable" is, to this author, hard to follow. The word "applicable," suggests only "that which applies," without regard to how many such things there might be. More importantly, in the 1973 Commercial Covenants, the word "applicable" does not stand alone, it is modified by the word "sole." The phrase "sole applicable" means "only applicable." There is no other way to read it.

The Trial Court's lifting of a phrase relating to conflict with other covenants from one of the paragraphs describing the 1973 Commercial Covenants as the "sole applicable covenants," is taken out of context. The text of both paragraphs appears above on pp. 6-7 and 14. The plain language shows that the intent was that commercial properties subsequently conveyed by Lighthouse Beach Company would be governed only by the 1973 Commercial Covenants, irrespective of the existence of any previously recorded covenants. Again, there is no other way to read it.

If evidence other than the plain language of the 1973 Covenants is relevant as to the intent of Lighthouse Beach Company with respect the declaration that the 1973 Commercial Covenants are the "sole applicable covenants" affecting commercial property, the only evidence in the record on that point is the Affidavit of Charles A. Scarminach, Jr. His testimony is that Lighthouse Beach Company and its successor the Sea Pines Plantation Company considered the property of Catwalk, et al., to be commercial property.[68] Further,

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[68] *See:* Affidavit of Charles A. Scarminach, paragraphs 10-12, pp. 3-4, R. 208-209.

the only evidence in the record is that the Association, for a period exceeding 40 years, did not claim or act on any claim that the 1970 Covenants encumbered the commercial property of Catwalk, *et al.*[69]

The Court's findings and interpretation of the 1973 Commercial Covenants are contrary to the plain language of the 1973 Commercial Covenants and the established law of South Carolina.[70]

(B) THE 1970 COVENANTS WERE NOT ADDED AS AN ENCUMBRANCE TO THE COMMERCIAL PROPERTY OF CATWALK, *ET AL.*

The Trial Judge found that the commercial property of Catwalk, et al., were conveyed subject to the 1970 Covenants.[71] This finding is founded on a deed from the Sea Pines Company and a deed from a Trustee in Bankruptcy which include a list of covenants and restrictions in the legal description that includes the recording data for 1970 Covenants and the 1973 Commercial Covenants.[72] While the text of the deeds reads as it does, the mere listing of the documents does not undo the language contained in them. One must still read the documents to determine the effect of them, if any.

As was shown in Argument 1(A) above, the text of the 1973 Commercial Covenants

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[69] *See:* Statement of Facts, *supra.*,paragraphs 11-13.

[70] The text of the January 22, 2016, and March 18, 2016, Orders also suggests that because the Commercial Covenants include language authorizing Lighthouse Beach Company to add additional covenants, that the 1970 Covenants encumber the commercial property of Catwalk, *et al.* This construction of the language is untenable. The language gives the ability to add covenants in the future, but states that covenants recorded prior to the 1973 Commercial Covenants do not apply. If such had been the intent, there would been no reason to include the language stating that the 1973 Commercial Covenants are the "sole applicable covenants" encumbering commercial property. Further, the construction adopted by the Trial Judge renders the "sole applicable covenants" language meaningless.

[71] *See*: January 22, 2016, Order, p. 8, R. 12.

[72] *See:* January 22, 2016, Order, p. 4, R. 8.

reads, in relevant part:

> IT BEING THE TRUE INTENT AND PURPOSE of this Declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by LIGHTHOUSE BEACH COMPANY subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by specific reference in individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that to the extent that there is a conflict between those restrictions and covenants previously recorded, as set forth above, and those of the instant Declaration, the provisions of the instant declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.[73]

And also:

> It is the true intent and purpose of LIGHTHOUSE BEACH COMPANY that the covenants and restrictions contained herein shall be the sole applicable covenants restricting Commercial Property conveyed by LIGHTHOUSE BEACH COMPANY to grantees of the Company subsequent to the date of the Declaration adopting these covenants and restrictions being made applicable to such conveyances by specific references in individual deeds, or by subsequent declaration to the extent that there is variation from and addition to covenants herein recorded; however, those properties conveyed by LIGHTHOUSE BEACH COMPANY prior to the effective date of this instrument are not governed by or otherwise restricted by the consolidated uniform provisions of this Declaration, but are so governed and restricted by any covenants and restrictions previously recorded as set forth above and to which specific reference was made in the particular and appropriate deed of conveyance.[74]

By its plain language, the 1973 Commercial Covenants govern property subjected to them in a deed, to the exclusion of ". . . those covenants and restrictions previously recorded. . . ." When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain,

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[73] *See*: Affidavit of Charles A. Scarminach, Exhibit B, p. 2, R. 226.

[74] *See*: Complaint, paragraph 23, p. 7, R.; Answer and Counterclaim, paragraph 7, p. 2, R. 30; Affidavit of Charles A. Scarminach, Exhibit B, p. 17, R. 241.

ordinary, and popular sense.[75]

The Trial Judge's finding in the January 22, 2016, Order, that the 1973 Commercial Covenants "... provide that Lighthouse Beach Company may add additional covenants to Deeds of Conveyance ..." is quoted out of context and is incomplete. The complete text from the 1973 Commercial Covenants reads:

> The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed, or to limit therein the application to the uniform covenants contained herein. Notice of such additional covenants will, in all cases, be set forth in the contract of sale relating to such property.[76]

There is no evidence in the record to show that the contracts of sale between the Sea Pines Company or the Bankruptcy Trustee and the purchasers from them and South Beach Marina Village, a Partnership, included any notice that the 1970 Covenants would be added as an encumbrance to the property.

There is an additional reason that the text of the 1984 Deed or any other deed in the chains of title of Catwalk, *et al.*, fails to add the 1970 Covenants as an encumbrance to the commercial property of Catwalk, *et al.* The relevant text of the 1970 Covenants reads:

> The Company, it successors, and assigns shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development. The additions authorized under this and the succeeding sub-section shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions to such additional property.[77]

There is no evidence that any Supplementary Declaration of Covenants subjecting

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75 *Sifonios v. Town of Surfside Beach, supra.*

76 *See:* Affidavit of Charles A. Scarminach, Exhibit B, p. 17. R. 241.

77 See: Exhibit 1 to Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgement, p. 3, R. 69.

the commercial properties of Catwalk, *et al.*, to the encumbrance of the 1970 Covenants was ever filed of record by Lighthouse Beach Company, or any of its successors. Since the plain language of the 1970 Covenants requires such in order to subject property to the 1970 Covenants, the mere listing of the recording data for the 1970 Covenants in the legal description of a subsequent deed does not meet the requirements of the plain language of the 1970 Covenants.

Finally, the only evidence in the record as to the intentions of various parties, including the Association, is that none of them, for a period exceeding 40 years, claimed or acted on any claim that the 1970 Covenants encumbered the commercial property of Catwalk, *et al.*

ARGUMENT NUMBER 2
(Issue 3)

THE TRIAL JUDGE ERRED BY FAILING TO HOLD THAT THE ASSOCIATION'S FAILURE TO ASSERT ITS CLAIM BASED ON THE 1970 COVENANTS FOR A PERIOD OF MORE THAN FORTY (40) YEARS WAS BARRED BY S. C. CODE ANN. § 15-3-380 (SUPP. 2015).

The only evidence in the record is that the Association did not claim that the 1970 Covenants encumbered the commercial property of Catwalk, *et al.*, or any of its predecessors in title for more than 40 years.[78] The only evidence in the record is that the first time that the Association raised this claim in any fashion was when it corresponded with the principal of Catwalk, *et al.*, in July of 2013.[79] In its Counterclaim in this case, the Association claims interests in the commercial property of Catwalk, *et al.*, arising under the

[78] The possession of Catwalk, *et al.*, and their predecessors in title can be tacked to achieve the 40 year period. *See: Sutton v. Clark,* 59 S.C. 440, 38 S.E. 150 (1901).

[79] *See:* Affidavit of Robert A. Gossett, Jr., paragraphs 10-12, pp. 8-9, R. 262-263. The Association did not assert the claim in any legal action until it filed its Answer and Counterclaim on August 25, 2014. Both events occurred more than 40 years following the recording of 1970 Covenants.

1970 Covenants.[80]

In their Motion for Summary Judgment, Catwalk, *et al.*, sought summary judgment based on these undisputed facts, and the application of S. C. Code Ann, § 15-3-380 (Supp. 2015), to these facts.

In his January 22, 2016, Order, the Trial Judge ruled that S. C. Code Ann, § 15-3-380 (Supp. 2015), did not bar the Association's claim because it ". . . is the limitations period for an action for possession of property." The Trial Judge ruled that the claim and defense of Catwalk, *et al.*, under S. C. Code Ann. § 15-3-380 (Supp. 2015), failed because the Association did not assert a claim for possession of the property of Catwalk, *et al.*[81]

The Trial Judge's ruling conflicts with the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015), which reads:

> No action shall be commenced in any case for the recovery of real property *or for any interest therein* against a person in possession under claim of title by virtue of a written instrument unless the person claiming, his ancestor or grantor, was actually in the possession of the same or a part thereof within forty years from the commencement of such action. And the possession of a defendant, sole or connected, pursuant to the provisions of this section shall be deemed valid against the world after the lapse of such a period. (Our emphasis.)

The Trial Judge's ruling that S. C. Code Ann. § 15-3-380 (Supp. 2015), is limited to actions for possession of real property is contrary to the plain language of the statute. The plain language of the statute bars any action for the recovery of real property, and also any action for the recovery of "any interest therein."

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. When a statute's terms are clear and unambiguous on their

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[80] *See:* Answer and Counterclaim, paragraphs 38-45, pp. 5-6, R. 33-34.

[81] *See:* January 22, 2016, Order, page 8. R. 12; March 18, 2016, Order, p. 1, R. 14.

face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.[82] The Trial Judge's ruling limits the effect of S. C. Code Ann. § 15-3-380 (Supp. 2015), in a way that is contrary to the plain language of the statute.

In this case, the Association asserts a claim that the 1970 Covenants encumber the commercial property of Catwalk, *et al.* The Association's claim fails because under the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015), the Association's failure to assert its claim of any interest in the commercial property of Catwalk, *et al.*, for a period of more than 40 years, means Catwalk, *et al.'s*, title is "deemed valid against the world." Under the plain language of S. C. Code Ann. § 15-3-380 (Supp. 2015), the Association's failure to claim any interest in Catwalk's real property for a period of more than 40 years operates as an absolute bar to the Association's claim, and the Trial Judge should have granted the Motion for Summary Judgment of Catwalk, et al., and denied the Motion for Summary Judgment of the Association because of it.

ARGUMENT NUMBER 3
(Issue 4)

THE TRIAL JUDGE ERRED IN GRANTING SUMMARY JUDGMENT TO THE ASSOCIATION BY DISREGARDING EVIDENCE OR WEIGHING CONFLICTING EVIDENCE AND INFERENCES IN FAVOR OF THE ASSOCIATION AND WHEN CATWALK, *ET AL.*, SUBMITTED MORE THAN A SCINTILLA OF EVIDENCE IN

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[82] *See: Centex International, Inc. v. S. Carolina Department of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013)(internal citations omitted).

OPPOSITION TO THE ASSOCIATION'S MOTION.

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. The evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.[83] In a case such as this where the "preponderance of the evidence" burden of proof is applicable, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.[84]

The undisputed facts in the record, as shown above, are as follows:

(a) The Association failed to enforce its claimed rights under the 1970 Covenants against the commercial property of Catwalk, *et al.*, and their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(b) The Association never sought to collect any regular or special assessment imposed by it from Catwalk, *et al.*, or their predecessors in title for a period of more than forty years following the recording of the 1970 Covenants.

(c) Neither Catwalk, *et al.*, nor any of their predecessors in title, have ever attended any regular or special meeting of the Association, paid any regular or special assessment to the Association, claimed to be members of the Association, claimed any rights under the 1970 Covenants, made use of any of the common property of the Association or participated in the affairs of the Association with respect to any of the commercial properties within the

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[83] *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 443 S.E.2d 392 (1994).

[84] *Hancock v. Mid-South Management. Company*, 381 S.C. 326, 673 S.E.2d 801 (2009).

South Beach Marina Village.

(d) The declarant of both the 1970 Covenants and the 1973 Commercial Covenants considered the properties of Catwalk, *et al.*, to be commercial, and assessed the Catwalk, *et al.*, properties in that fashion.

(e) The plain language of the 1973 Commercial Covenants is that the 1973 Commercial Covenants are the "sole applicable" covenants governing commercial property, to the exclusion of any previously recorded covenants, namely the 1970 Covenants.

(f) The Association took advantage of the 2013 Agreement concerning the dredging of Braddock Creek, whereby Catwalk, *et al.*, contributed forty (40%) of the total cost, and the Association contributed only 31% per cent of the total cost. If the property of Catwalk, *et al.*, was, indeed, encumbered by the 1970 Covenants, then the entire Association would have been responsible for the costs of the dredging that was assumed solely by Catwalk, *et al.*, and the Association, combined. This would have been a significant benefit to Catwalk, *et al.*, and a significant detriment to the Association.[85]

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[85] In the January 22, 2016, Order, the Trial Judge found that Catwalk, *et al.*'s, claims based on estoppel failed on three grounds: (a) the non-waiver language in the 1970 Covenants; (b) there was no showing of prejudice or reliance; and, (c) no evidence that the Association intended to relinquish a known right. With respect to the first point, the non-waiver language in the 1970 Covenants simply does not address the estoppel claim. With respect to the second point, the only evidence is that the Association took advantage of the dredging agreement that treated the Association and Catwalk, *et al.*, as wholly separate entities and thus avoided participating at all in the cost of the dredging that was carried wholly by Catwalk, *et al.* As to the third point, it relates to waiver, and does not address the estoppel claim. The elements of an estoppel claim are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). The undisputed facts in the record show all three, or at a minimum, show a scintilla of evidence sufficient to defeat the Associations's motion for summary judgment.

These facts, alone or in combination, qualify as a "mere scintilla" of evidence sufficient to overcome the Association's Motion for Summary Judgment. In light of these undisputed facts, it was error for the Trial Judge to grant summary judgment in favor of the Association.

CONCLUSION

For the reasons stated in the foregoing arguments, Catwalk, *et al.*, urge the Court to reverse the January 22, 2016, and March 18, 2016, Orders of the Trial Judge, and to grant Summary Judgment in favor of Catwalk, *et al.*, finding that the 1970 Covenants do not encumber the commercial property of Catwalk, *et al.*

Respectfully Submitted:

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Hilton Head Island, South Carolina

This 29 Day of August, 2016.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

HON. MARVIN H. DUKES, III
MASTER IN EQUITY AND SPECIAL CIRCUIT JUDGE

Case No. 2014-CP-07-1435

CATWALK, LLC; MOONDOG, LLC; LET, LLC; LOST PARROT LLC;
VACATION INN, LLC; SBM, LLC; and
SOUTH BEACH SWIMMING POOL, INC., ... Appellants,

v.

SEA PINES SOUTH BEACH OWNERS
ASSOCIATION, INC., ... Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court relating to personal data identifiers.

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Hilton Head Island, South Carolina
This 30 Day of August, 2016