

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2016-CP-07-02579

Colleton River Plantation Club, Inc. Appellant,

v.

Jennifer L. Holmes Respondent.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
COLLETON RIVER)	CIVIL ACTION NO: 2016-CP-07-02579
PLANTATION CLUB, INC.,)	
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING DEFENDANT'S
)	MOTION TO DISMISS
JENNIFER L. HOLMES,)	
)	
Defendant.)	

This matter came before me for a hearing on the Defendant's Motion to Dismiss on May 30, 2017. Present on behalf of the Plaintiff was Barry L. Johnson, Esquire. Present on behalf of the Defendant was Terry A. Finger, Esquire.

After reviewing the pleadings, Motion to Dismiss, and hearing the arguments of counsel, I find that:

FINDINGS OF FACT

1. The Defendant is not a resident or citizen of Beaufort County, South Carolina or the State of South Carolina.
2. Charles B. Holmes and Jennifer L. Holmes, then husband and wife, acquired title to the real estate that is the subject of this litigation.
3. Jennifer L. Holmes was divorced from Charles B. Holmes in August of 2012 in the State of Indiana.
4. Pursuant to the Dissolution Settlement Agreement and Divorce Decree, Charles B. Holmes was to have all right and title in the Colleton River property which is the subject of this lawsuit.
5. Charles B. Holmes paid all dues and taxes until the time of his death on May 26, 2016.
6. No Deed was recorded transferring the property to Charles B. Holmes which was mandated by the parties' Divorce Decree.

7. The Plaintiff did not sue Charles B. Holmes or the Estate of Charles B. Holmes.

Based upon these Findings of Fact, I make the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Defendant, Jennifer L. Holmes, is not subject to the personal jurisdiction or in rem jurisdiction concerning the subject property in that the Defendant lost all legal and equitable rights to the subject property upon the divorce of the parties.

NOW, THEREFORE, IT IS ORDERED that the Motion to Dismiss previously filed by the Defendant is hereby granted.

AND IT IS SO ORDERED.



Beaufort Common Pleas

Case Caption: Colleton River Plantation Club, Inc. VS Jennifer L Holmes
Case Number: 2016CP0702579
Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
COLLETON RIVER)
PLANTATION CLUB, INC.,)
)
Plaintiff,)
)
vs.)
)
JENNIFER L. HOLMES,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-07-02579

**ORDER DENYING MOTION FOR
RECONSIDERATION**

This matter came before me pursuant to the Plaintiff's Motion for Reconsideration filed July 19, 2017, and an Amended and Restated Motion for Reconsideration filed on July 20, 2017. Plaintiff is represented by Barry L. Johnson, Esquire and Defendant is represented by Terry A. Finger, Esquire.

After a review of the pleadings, my prior Order granting Defendant's Motion to Dismiss, said Order being filed on July 10, 2017, and after due deliberation of the record, motion, and memorandum of counsel, the Motion for Reconsideration is denied for the reason that there are no materially new arguments warranting reconsideration, amendment, or rehearing of my prior Order granting Defendant's Motion to Dismiss.

Accordingly, IT IS THEREFORE ORDERED that the Plaintiff's Motion for Reconsideration and Plaintiff's Amended and Restated Motion for Reconsideration are hereby denied.

AND IT IS SO ORDERED.

April ____, 2018
Beaufort, South Carolina

Edgar W. Dickson
Presiding Judge, Fourteenth Judicial Circuit



Beaufort Common Pleas

Case Caption: Colleton River Plantation Club, Inc. VS Jennifer L Holmes
Case Number: 2016CP0702579
Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2016-CP-07-0
)	
COLLETON RIVER PLANTATION CLUB, INC.,)	NOTICE UNDER THE FAIR DEBT COLLECTION PRACTICES ACT
)	
Plaintiff,)	
)	
vs.)	
)	
JENNIFER L. HOLMES,)	
)	
Defendant.)	
)	

TO: THE DEFENDANT ABOVE-NAMED:

1. The amount of the debt is stated in the Complaint in this matter.
2. The Plaintiff, Colleton River Plantation Club, Inc., as named in the Summons and Verified Complaint is the Creditor to whom the debt is owed, is attempting to collect the debt, and any information obtained will be used for that purpose.
3. The debt is described in the Complaint, and will be assumed to be valid by the Creditor's law firm, unless you, the Debtor, within thirty (30) days after the receipt of this Notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this Notice, that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.
5. Colleton River Plantation Club, Inc., the Creditor named as Plaintiff in the Summons and Verified Complaint is not the original Creditor.

6. Written requests should be addressed to Barry L. Johnson, JOHNSON & DAVIS, PA, The Victoria Building, Suite 200, 10 Pinckney Colony Road, Bluffton, SC 29909.

7. **THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

JOHNSON & DAVIS, PA

/s/Barry L. Johnson

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Bluffton, South Carolina
December 9, 2016

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
COLLETON RIVER)
PLANTATION CLUB, INC.)
)
Plaintiff,)
)
vs.)
)
JENNIFER L. HOLMES,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-07-_____

VERIFIED COMPLAINT
(A Non-Jury Matter)

The Plaintiff, Colleton River Plantation Club, Inc., complaining of and against the Defendant, Jennifer L. Holmes would allege and show unto this Honorable Court as follows:

1. The parties, subject matter, and all things alleged herein are within the jurisdiction of this Court.
2. Plaintiff, Colleton River Plantation Club, Inc. ("Colleton"), is a South Carolina Non-Profit Corporation whose members are the owners of property within Colleton River Plantation, Bluffton, Beaufort County, South Carolina.
3. Defendant, Jennifer L. Holmes, was, at all times material hereto, the owner of certain real property within Colleton River Plantation described as follows:

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina and being shown and described as **Lot 173, Block "C" of Phase 2-A, Colleton River Plantation**, on a plat thereof entitled "A Subdivision Plat of Lots 89- 93 and 163-176, Being a Portion of Block "C" of Phase 2-A, Colleton River Plantation Single Family Homesites, Beaufort County, South Carolina", which plat is dated February 23, 2000, prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, SCRLS No. 11079, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 73 at Page 111. For a more detailed description as to the courses and distances, metes and bounds of the above mentioned lots, reference is had to said plat of record.

SAID PROPERTY is further conveyed subject to all other applicable rights, obligations, easements, restrictions and reservations as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

This is the same property conveyed to Charles B. Holmes and Jennifer L. Homes by Deed from Edward K. Elanjian, recorded in the Register of Deeds Office for Beaufort County, South Carolina on August 2, 2010 in Book 2978 at Page 0072.

Beaufort County Tax Map Reference: R600 017 000 0039 0000.

4. On and after April 26, 2007, Colleton possessed those rights, powers and duties as set forth in the "Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc." ("Covenants"), dated March 1, 2007, and recorded on April 26, 2007, and any amendments thereto, as recorded in the Office of the Register of Deeds for Beaufort County.

5. Colleton also possesses those rights, powers and duties as set forth in the Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc. ("By-Laws"), and any amendments thereto.

6. Pursuant to the Covenants and/or By-Laws, and any amendments thereto, Colleton imposes assessments and other authorized charges (collectively "Assessments"), for the purposes specified in the Covenants and/or By-Laws, and any amendments thereto.

7. Section 12.6 of the Covenants provides in pertinent part: "By accepting a deed or entering into a recorded contract to purchase any Lot, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents¹, together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount... Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full."

¹ Section 1 of the Covenants lists the By-Laws and Covenants as "Governing Documents" in its definition of said term.

8. Section 12.7(b) of the Covenants provides in pertinent part: "The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien."

9. Section 8.4 of the Covenants provides in pertinent part: "In any action to enforce the Governing Documents, if the Club prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action."

10. Despite demand, the Defendant has failed and/or refused to pay the amount owed for past-due assessments, authorized charges, accrued interest, and attorney's fees and/or costs.

11. There is due to Colleton, as of October 25, 2016, the total amount of \$9,034.47, in assessments, authorized charges, interest, attorney's fees and costs, plus such assessments, authorized charges, prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and costs of collection as continue to accrue.

12. In addition, Colleton is informed and believes that it is entitled to collect such additional assessments, authorized charges, interest at the rate of 18% per annum, costs of collection, and/or reasonable attorneys' fees as continue to accrue after October 25, 2016.

13. Colleton specifically demands judgment against the Defendant for the full amount found to be due to Colleton.

WHEREFORE, having fully set forth its Complaint against the Defendant, Jennifer L. Holmes, the Plaintiff, Colleton River Plantation Club, Inc., prays that this Honorable Court inquire into the matters set forth herein and:

- a. Determine the amounts due Plaintiff, Colleton River Plantation Club, Inc., including prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and the costs of this action; and
- b. Grant Plaintiff, Colleton River Plantation Club, Inc., a personal judgment against the Defendant, Jennifer L. Holmes, for the amount found to be due Colleton River Plantation Club, Inc.; and
- c. Grant the Plaintiff, Colleton River Plantation Club, Inc., its attorney's fees and the costs of this action; and
- d. Retain jurisdiction to award such additional attorneys' fees and costs as may be incurred by the Plaintiff, Colleton River Plantation Club, Inc. until final disposition of the matter, including those fees and expenses incurred in the collection of any judgment rendered; and
- e. For such other and further relief as may be just and proper.

Respectfully submitted,

JOHNSON & DAVIS, PA

/s/Barry L. Johnson

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The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121- telephone
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Attorneys for Plaintiff

Bluffton, South Carolina
December 9, 2016

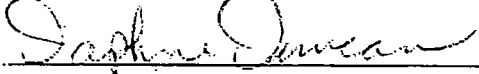
STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	C/A NO.: 2016-CP-07-_____
)	
COLLETON RIVER)	
PLANTATION CLUB, INC.)	
)	VERIFICATION OF COMPLAINT
Plaintiff,)	
)	
vs.)	
)	
JENNIFER L. HOLMES,)	
)	
Defendant.)	
_____)	

PERSONALLY APPEARED before me, Stephanie Kerr, as Chief Financial Officer of Colleton River Plantation Club, Inc., who after first being duly sworn, deposes and says that she has read the foregoing Verified Complaint and the statements contained therein are true, except those made on information and belief, and as to those she believes them to be true.

COLLETON RIVER PLANTATION CLUB, INC.

By: 
Stephanie Kerr, Chief Financial Officer

SWORN to and subscribed before me this 3 day of Dec, 2016.



Notary Public for South Carolina
 My Commission Expires: **DAPHNE DUNCAN**
NOTARY PUBLIC
SOUTH CAROLINA
 MY COMM. EXPIRES: AUG 6, 2018

10/1/16

MAIL ROOM
NORTH CAROLINA
COUNTY OF WAKE
RTP, NC 27601

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
COLLETON RIVER)
PLANTATION CLUB, INC.,)
)
Plaintiff,)
)
vs.)
)
JENNIFER L. HOLMES,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-07-02579

NOTICE OF MOTION
AND
MOTION TO DISMISS

TO: BARRY L. JOHNSON, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that, on the tenth (10th) day after service hereof, or as soon thereafter as is convenient for Court and Counsel, the Defendant, Jennifer L. Holmes, through her undersigned attorney, will move before the Presiding Judge or the Beaufort County Master-in-Equity of the Beaufort County Court of Common Pleas, in the Beaufort County Courthouse, Beaufort, South Carolina, for an Order dismissing the within action pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure. This Motion is based upon the following:

1. Jennifer L. Holmes is not a resident or citizen of Beaufort County, South Carolina or the State of South Carolina.
2. Jennifer L. Holmes was divorced from Charles B. Holmes in August 2012 in the State of Indiana.
3. Pursuant to the Dissolution Settlement Agreement and Divorce Decree, Charles B. Holmes was to have all right and title to the Colleton River property which is the subject of this lawsuit.
4. Charles B. Holmes assumed full ownership and control of the property and paid all dues and taxes until the time of his death on May 26, 2016.
5. Charles B. Holmes apparently refused to record the Deed which was mandated by the parties' Divorce Decree.

6. Pursuant to the Divorce Decree, Jennifer L. Holmes does not have any legal or equitable interest in the subject property.

7. The undersigned attorney for Defendant, Jennifer L. Holmes, hereby certifies that consultation between the parties would serve no useful purpose and he has not contacted the Plaintiff's attorney to resolve this Motion other than offering to have Jennifer L. Holmes quit claim to the Plaintiff any interest she may have in the property.

FINGER, MELNICK & BROOKS, P.A.

s/Terry A. Finger

Terry A. Finger

S.C. Bar No. 2012

Attorney for the Defendant

35 Hospital Center Common, Suite 200

P. O. Box 24005

Hilton Head Island, SC 29925-4005

(843) 681-7000

Email: tfinger@fingerlaw.com

Hilton Head Island, South Carolina

January 17, 2017

Owner covenants and agrees to pay all assessments authorized in the Governing Documents (which are defined in the referenced Covenants), together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount. Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full.”

5. Section 12.7(b) of the Covenants (as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina) provides in pertinent part, “The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.”

6. There is no basis in fact or law upon which Defendant has been excused from her responsibilities and liabilities to the Plaintiff. If Plaintiff has relief against the estate of her ex-husband, that is an issue before the court handling that estate, only.

WHEREFORE, Plaintiff, Colleton River Plantation Club, Inc., prays this Honorable deny Defendant’s Motion to Dismiss.

JOHNSON & DAVIS, PA

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Attorneys for Plaintiff

Bluffton, South Carolina
January 24, 2017

property in that the Defendant lost all legal and equitable rights to the subject property upon the divorce of the parties.” (Order, p. 2)

4. The information – not evidence -- proffered to the Court by Defendant’s counsel consisted only of (A) a copy of the Defendant’s Dissolution Settlement Agreement dated July 25, 2012 between the Petitioner and her now-former spouse, Charles B. Holmes, and (B) a copy of a Deed (Title to Real Estate) by the Defendant, as grantor, purporting to transfer the subject property to The Estate of Charles B. Holmes, as grantor, which Deed was dated February 21, 2017, and filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina on February 22, 2017 in Book 3553 at Pages 3387-3389. In addition, Defendant’s counsel informed the Court that Mr. Holmes had died, but no evidence was offered as to the date of his death.

5. A reading of the Defendant’s Dissolution Settlement Agreement leads to this pertinent language:

5.3 South Carolina Property. Husband shall have all rights and title to the following properties located in South Carolina, and more fully described herein, free and clear of any claim of Wife. Wife shall execute a quit claim deed for each property in favor of Husband and in exchange for same, Husband shall set over to Wife Thirty Thousand Seven Hundred Fifty Dollars (\$30,750) as property settlement payment, which payment shall come from his share of the balance of the Merrill Lynch account #3753 as set forth above. Husband shall be responsible for all mortgage debt, expenses and taxes associated with the (*sic*) these South Carolina properties and shall hold Wife harmless there from. Husband shall individually be responsible for the payment of the Homeowner Association Facilities Fees for the Colleton River Property from his personal funds until such time as there is a transfer of title. The parties have an agreement for an exchange of the use of a vacation home for the use of the facilities at the Colleton River property. Husband shall be entitled to full use of the vacation home under that agreement.

....

7.1 Total Settlement. Husband and Wife, in consideration of the execution of this mutual agreement, after full payment of this settlement, shall require nothing whatsoever of the other. It is understood that the Husband and the Wife release each other from all claims except those embodied in this Agreement.

....

7.5 Additional Documents. The parties each agree to execute any additional documents as may be necessary to carry out the terms and intent of this Agreement.

6. Under the Defendant's Dissolution Settlement Agreement, which specifically contemplated a later "transfer of title" she was required as at July 25, 2012 to "execute a quit claim deed for each (of the two South Carolina) propert(-ies) and in exchange for same, Husband shall set over to Wife (Defendant) Thirty Thousand Seven Hundred Fifty Dollars (\$30,750) as property settlement payment" (Dissolution Settlement Agreement, 5.3) One of the two South Carolina properties subject to this provision is the subject property in the instant litigation, to wit: Colleton River Plantation, 112 Inverness, Bluffton, South Carolina. (Dissolution Settlement Agreement, 5.3.a)

7. There is no evidence, or information, before the Court that the portion of the Dissolution Settlement Agreement pertaining to the subject property, including the payment of the \$30,750 as consideration, and including the 2012 quit claim deed to transfer title, have ever been complied with. The only other document submitted to the Court is of the Deed recorded February 22, 2017.

8. However, this Deed purports to convey title only to The Estate of Charles B. Holmes, and not to his personal representative, trustee or devisee(s). This purported conveyance failed, as a matter of black-letter law, because the Deed clearly did not convey title to a natural person or legal entity; "The Estate of Charles B. Holmes" is incapable under the law of South Carolina of taking title to real estate. Also, there is no information, documentation or

evidence that the Deed was every delivered to the grantee, or that delivery was accepted by the grantee (see, Walker v. Frazier, 19 S.C. Eq. 99, 2 Rich. Eq. 99 (S.C.App.Eq. 1845)), or that on February 21, 2017 The Estate of Charles B. Holmes was still active. Therefore, title to the subject property remains vested in the Defendant.

9. Even if the Deed did successfully convey title to The Estate of Charles B. Holmes, it did not do so until February 22, 2017.

10. The Dissolution Settlement Agreement is an agreement that is universally accepted in the United States as a contract. For example, in South Carolina, this determination has been made in several cases, holding, *inter alia*, that the intentions of parties to a marital settlement agreement must be determined as far as possible from the terms of the contract and once determined they must be given effect by the court (Mattox v. Cassady, 289 S.C. 57, 344 S.E.2d 620 (S.C. App. 1986)); and as with any other contract, where the language of a marital agreement is susceptible of more than one interpretation, it is the duty of the family court judge to ascertain the intent of the parties (Marshall v. Marshall, 282 S.C. 336, 318 S.E.2d 133 (S.C. App. 1984)).

11. The Holmes' Dissolution Settlement Agreement, a contract, had certain executory provisions, notably as quoted above in its Sections 5.3 and 7.5. Because of those executory provisions, the Defendant retains legal title to the subject property until she successfully conveys legal title to a natural person or a legal entity.

12. There are elementary distinctions between legal title and equitable title. Black's Law Dictionary defines legal title as "one cognizable or enforceable in a court of law, or one which is complete and perfect so far as regards the apparent right of ownership and possession, but which carries no beneficial interest in the property, another person being equitably entitled

thereto . . . the antithesis of equitable title.” (Black’s Law Dictionary, Revised Fourth Ed., West Pub. Co., 1968, p. 1042.) Black’s Law Dictionary defines equitable title as “a right in the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another.” (*Id.*, p. 1656)

13. Before there is an actual conveyance of title, where there is an executory contract, the vendor has the legal title in the land, and the vendee has the equitable title in the land, even if partial payment has been made. Singleton v. Cuttino, 107 S.C. 465, 468, 92 S.E.2d 1046, 1049 (1917). That is the precise scenario here, under the Holmes’ Dissolution Settlement Agreement, which was an executory contract. Even if partial payment is made in such a circumstance, the rights of the holder of the equitable estate are conditioned upon his compliance with the terms laid out in the contract. Harley v. City of Spartanburg, 230 S.C. 478, 584, 96 S.E.2d 828, 834 (1957).

14. Thus, the Defendant, at best for her position, can argue only that she retained legal title to the subject property until February 21, 2017. Therefore, she did not lose legal title to the subject property at the time in 2012 of the Dissolution Settlement Agreement. Therefore, the Order draws a critical conclusion that is not supported by law or fact.

15. Plaintiff had no notice of the purported transfer of title out of the Defendant, by way of the 2017 Deed, until after February 22, 2017.

16. Plaintiff’s rights of collection are related to the record holder of title – in this case, that includes the Defendant -- at least up through February 21, 2017, because of the Declaration of Covenants, Etc., referenced and partially quoted in the Complaint herein, which are publicly

recorded and were so recorded when Defendant, with Mr. Holmes, took title to the subject property on or about August 2, 2010 (see derivation clause in the Deed).

17. The Declaration of Covenants, Etc., ("Covenants") as referenced from the public records of Beaufort County, South Carolina, and described in the Complaint, are here fully incorporated in this Motion as among its grounds, points and authorities.

18. The Covenants mandate a process for record holders of title to a Lot in Colleton River Plantation, with which they must comply in order to transfer title on the books of the Plaintiff (which is a property owner's association), and in order to transfer liability for the community's assessments, dues, and other charges. There is no evidence that the Defendant and Mr. Holmes complied, or even made any effort to comply, with those requirements; in fact they did not do so. These Covenants direct that, until that process is complied with, the existing Lot Owners (here, the Defendant and the now-deceased Mr. Holmes) remain jointly and severally liable to the Plaintiff and, as a matter of law, Plaintiff is free to pursue collection from either or both of them.

19. Inasmuch as the Defendant did not lose legal title to the subject property when she was divorced in August 2012, and did not comply with the executory provisions of the Dissolution Settlement Agreement, and did not comply with the notice and title transfer provisions of the Colleton Covenants, she remains liable to Colleton, jointly and severally, with her deceased ex-husband.

20. As Plaintiff is lately informed, the Defendant filed a contingent claim against the estate of her deceased ex-husband, from which she may well recoup any sums she may be required to pay Plaintiff.

21. It being clear that the Order was improvidently issued, without proper foundation in facts established by evidence, or in law, Plaintiff, as part of its duty to its members, who are other property owners in the community of Colleton River Plantation, is required, respectfully, to move this Court to reconsider the Order and, now, to deny the Motion to Dismiss.

WHEREFORE, Plaintiff, Colleton River Plantation Club, Inc., prays that this Honorable Court, upon having fully considered and inquired into this matter, shall:

- (1) Grant this Motion for Reconsideration and thereby reconsider its Order Granting Motion To Dismiss, dated July 10, 2017, and filed July 10, 2017;
- (2) in such reconsideration, reverse the Order and, now, deny the Motion to Dismiss; and
- (3) send this matter on for resolution in the normal course of litigation and mediation, instead of to the appellate realm at this time.

JOHNSON & DAVIS, PA

/s/Barry L. Johnson

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Bluffton, South Carolina
July 19, 2017

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CIVIL ACTION NO.: 2016-CP-07-02579
)	
COLLETON RIVER PLANTATION CLUB, INC.,)	
)	
Plaintiff,)	PLAINTIFF'S AMENDED AND RESTATED MOTION FOR RECONSIDERATION
)	(Incorporating Points and Authorities)
vs.)	
)	
JENNIFER L. HOLMES,)	
)	
Defendant.)	
_____)	

TO: TERRY A. FINGER, ESQUIRE AND FINGER, MELNICK & BROOKS, P.A., ATTORNEYS FOR THE DEFENDANT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Colleton River Plantation Company, Inc., by and through its undersigned counsel, by and through the within Plaintiff's Amended and Restated Motion for Reconsideration, will and does hereby respectfully move ("Motion") this Honorable Court to reconsider its Order Granting Motion To Dismiss, dated July 10, 2017, and filed July 10, 2017 ("Order"), such hearing to be had on or after ten days from the date hereof, or at such other time as the Court may direct, and at such location as the Court may direct, based on the authority of Rule 59(e), *South Carolina Rules of Civil Procedure* ("SCRCP"), and upon the following grounds, points and authorities:

1. The Order was e-filed and e-served on July 10, 2017 and the within Motion is timely e-filed and e-served within the ten days permitted by Rule 59(e), *SCRCP*.
2. The Order was based on factual findings for which, in part, there was no evidence and the Order reflected Conclusions of Law not based on the law.

3. The Order states only one Conclusion of Law, that the “Defendant, Jennifer L. Holmes, is not subject to the personal jurisdiction or in rem jurisdiction concerning the subject property in that the Defendant lost all legal and equitable rights to the subject property upon the divorce of the parties.” (Order, p. 2)

4. The information – not evidence -- proffered to the Court by Defendant’s counsel consisted only of (A) an uncertified copy of the Defendant’s Dissolution Settlement Agreement dated July 25, 2012 between the Petitioner and her now-former spouse, Charles B. Holmes, and (B) a copy of a Deed (Title to Real Estate) by the Defendant, as grantor, purporting to transfer the subject property to The Estate of Charles B. Holmes, as grantor, which Deed was dated February 21, 2017, and filed of record in the Office of the Register of Deeds for Beaufort County, South Carolina on February 22, 2017 in Book 3553 at Pages 3387-3389. In addition, Defendant’s counsel informed the Court that Mr. Holmes had died, but no evidence was offered as to the date of his death.

5. A reading of the Defendant’s Dissolution Settlement Agreement leads to this pertinent language:

5.3 South Carolina Property. Husband shall have all rights and title to the following properties located in South Carolina, and more fully described herein, free and clear of any claim of Wife. Wife shall execute a quit claim deed for each property in favor of Husband and in exchange for same, Husband shall set over to Wife Thirty Thousand Seven Hundred Fifty Dollars (\$30,750) as property settlement payment, which payment shall come from his share of the balance of the Merrill Lynch account #3753 as set forth above. Husband shall be responsible for all mortgage debt, expenses and taxes associated with the (*sic*) these South Carolina properties and shall hold Wife harmless there from. Husband shall individually be responsible for the payment of the Homeowner Association Facilities Fees for the Colleton River Property from his personal funds until such time as there is a transfer of title. The parties have an agreement for an exchange of the use of a vacation home for the use of the facilities at the Colleton River property. Husband shall be entitled to full use of the vacation home under that agreement.

....

7.1 Total Settlement. Husband and Wife, in consideration of the execution of this mutual agreement, after full payment of this settlement, shall require nothing whatsoever of the other. It is understood that the Husband and the Wife release each other from all claims except those embodied in this Agreement.

....

7.5 Additional Documents. The parties each agree to execute any additional documents as may be necessary to carry out the terms and intent of this Agreement.

6. Under the Defendant’s Dissolution Settlement Agreement, which specifically contemplated a later “transfer of title” she was required as at July 25, 2012 to “execute a quit claim deed for each (of the two South Carolina) propert(-ies) and in exchange for same, Husband shall set over to Wife (Defendant) Thirty Thousand Seven Hundred Fifty Dollars (\$30,750) as property settlement payment” (Dissolution Settlement Agreement, 5.3) One of the two South Carolina properties subject to this provision is the subject property in the instant litigation, to wit: Colleton River Plantation, 112 Inverness, Bluffton, South Carolina. (Dissolution Settlement Agreement, 5.3.a)

7. There is no evidence, or information, before the Court that the portion of the Dissolution Settlement Agreement pertaining to the subject property, including the payment of the \$30,750 as consideration, and including the 2012 required quit claim deed to transfer title, have ever been complied with. The only other document submitted to the Court is of the Deed recorded February 22, 2017.

8. However, this Deed purports to convey title only to The Estate of Charles B. Holmes, and not to his personal representative, trustee or devisee(s). This purported conveyance failed, as a matter of black-letter law, because the Deed clearly did not convey title

to a natural person or legal entity: "The Estate of Charles B. Holmes", not being a natural person or a legal entity, is incapable under the law of South Carolina of taking title to real estate. Also, there is no information, documentation or evidence that the Deed was ever delivered to the grantee, or that delivery was accepted by the grantee (see, Walker v. Frazier, 19 S.C. Eq. 99, 2 Rich. Eq. 99 (S.C.App.Eq. 1845)), or that on February 22, 2017 The Estate of Charles B. Holmes was still open and active. Therefore, title to the subject property remains vested in the Defendant.

9. Even if the Deed did successfully convey title to The Estate of Charles B. Holmes, it did not do so until February 22, 2017 and Defendant's obligations to Plaintiff did not cease before February 22, 2017.

10. The Dissolution Settlement Agreement is a type of an agreement that is universally accepted in the United States as a contract. For example, in South Carolina, this determination has been made in several cases, holding, *inter alia*, that the intentions of parties to a marital settlement agreement must be determined as far as possible from the terms of the contract and once determined they must be given effect by the court (Mattox v. Cassady, 289 S.C. 57, 344 S.E.2d 620 (S.C. App. 1986)); and as with any other contract, where the language of a marital agreement is susceptible of more than one interpretation, it is the duty of the family court judge to ascertain the intent of the parties (Marshall v. Marshall, 282 S.C. 336, 318 S.E.2d 133 (S.C. App. 1984)).

11. The Holmes' Dissolution Settlement Agreement, a contract, had certain executory provisions, notably as quoted above in its Sections 5.3 and 7.5. Because of those executory provisions, then as a matter of law the Defendant retains legal title to the subject property until she successfully conveys legal title to a natural person or a legal entity.

12. There are elementary distinctions between legal title and equitable title. Black's Law Dictionary defines legal title as "one cognizable or enforceable in a court of law, or one which is complete and perfect so far as regards the apparent right of ownership and possession, but which carries no beneficial interest in the property, another person being equitably entitled thereto . . . the antithesis of equitable title." (Black's Law Dictionary, Revised Fourth Ed., West Pub. Co., 1968, p. 1042.) Black's Law Dictionary defines equitable title as "a right in the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another." (*Id.*, p. 1656)

13. Before there is an actual conveyance of title, where there is an executory contract, as here with the Dissolution Settlement Agreement, the vendor has the legal title in the land, and the vendee has the equitable title in the land, even if partial payment has been made. Singleton v. Cuttino, 107 S.C. 465, 468, 92 S.E.2d 1046, 1049 (1917). That is the precise scenario here, under the Holmes' Dissolution Settlement Agreement, which was an executory contract. Even if partial payment is made in such a circumstance, the rights of the holder of the equitable estate are conditioned upon his compliance with the terms laid out in the contract. Harley v. City of Spartanburg, 230 S.C. 478, 584, 96 S.E.2d 828, 834 (1957).

14. Thus, the Defendant, at best for her position, can argue only that she retained legal title to the subject property until February 22, 2017. Therefore, despite the conclusion reached in the Order, the Defendant did not lose legal title to the subject property at the time in 2012 of the Dissolution Settlement Agreement. Therefore, the Order draws a critical conclusion that is not supported by law or fact.

15. Plaintiff had no notice of the purported transfer of title out of the Defendant, by way of the 2017 Deed, until after February 22, 2017.

16. Plaintiff's rights of collection are related to the record holder of title – in this case, that includes the Defendant -- , and to notices from the record holder of title, at least up through February 22, 2017, because of the Declaration of Covenants, Etc., referenced and partially quoted in the Complaint herein, which are publicly recorded and were so recorded when Defendant, with Mr. Holmes, took title to the subject property on or about August 2, 2010 (see derivation clause in the Deed).

17. The Declaration of Covenants, Etc., (“Covenants”) as referenced from the public records of Beaufort County, South Carolina, and described in the Verified Complaint, are here, along with the Verified Complaint, fully incorporated in this Motion as among its grounds, points and authorities.

18. The Covenants mandate a process for record holders of title to a Lot in Colleton River Plantation, with which they must comply in order to transfer title on the books of the Plaintiff (which is a property owner's association), and in order to transfer liability for the community's assessments, dues, and other charges. There is no evidence that the Defendant and Mr. Holmes complied, or even made any effort to comply, with those requirements; in fact they did not do so. These Covenants direct that, until that process is complied with, the existing Lot Owners (here, the Defendant and the now-deceased Mr. Holmes) remain jointly and severally liable to the Plaintiff and, as a matter of contract (the Covenants) and law, the Plaintiff is free to pursue collection from either or both of them.

19. Inasmuch as the Defendant did not lose legal title to the subject property when she was divorced from Mr. Holmes in August 2012, and did not comply with the executory

provisions of the Dissolution Settlement Agreement, and did not comply with the notice and title transfer provisions of the Colleton Covenants, she remains liable to Colleton, jointly and severally, with her deceased ex-husband.

20. As Plaintiff is lately informed, the Defendant filed a contingent claim against the estate of her deceased ex-husband, from which she may well recoup any sums she may be required to pay Plaintiff.

21. Plaintiff also relies upon, and here fully incorporates by reference, the grounds stated in Plaintiff's Return To Defendant's Motion To Dismiss, dated and filed January 24, 2017.

22. Plaintiff also relies upon, and here summarizes, the grounds, points and authorities orally argued to this Court at its initial hearing upon the Defendant's Motion to Dismiss, to wit:

- A. This Court has personal jurisdiction over the Defendant under S.C. Code Ann. § 36-2-803(A)(1) (1976), in that Plaintiff's cause of action against the Defendant arose from the Plaintiff transacting business in South Carolina by buying real estate here and incurring the contractual obligations to Plaintiff under the Covenants. (A portion of the South Carolina long-arm statute.)
- B. This Court has personal jurisdiction over the Defendant under S.C. Code Ann. § 36-2-803(A)(5) (1976), in that Plaintiff's cause of action against the Defendant arose from the Defendant having an interest in, using, or possessing real property in South Carolina, to wit, 112 Inverness, Colleton River Plantation, Bluffton, Beaufort County, South Carolina. (A portion of the South Carolina long-arm statute.)

- C. This Court has personal jurisdiction over the Defendant under S.C. Code Ann. § 36-2-803(A)(7) (1976), in that Plaintiff's cause of action against the Defendant arose from the Defendant and the Plaintiff having entered into a contract, the Covenants, to be performed in whole or in part by either or both parties in South Carolina. (A portion of the South Carolina long-arm statute.)
- D. "The party invoking personal jurisdiction over a nonresident bears the burden of proving the existence of personal jurisdiction. (citation omitted) At the pretrial stage, this burden is met by a *prima facie* showing of jurisdiction either in the complaint or in the affidavits. (citations omitted) 'It is only when the complaint does not demonstrate jurisdiction that the plaintiff must supply other evidence of jurisdiction'. (citation omitted) 'The determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis. First, the trial judge must determine that the South Carolina long-arm statute applies. Second, the trial judge must determine that the nonresident's contact with South Carolina was sufficient to satisfy due process requirements.' (citation omitted). International Mariculture Resources v. Grant, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (S.C. App. 1999); see, Cribb v. Spatholt, 382 S.C. 490, 676 S.E.2d 714 (S.C. App. 2009). Despite the allegations in Plaintiff's Verified Complaint, and the arguments presented, including the above-cited statute and case laws, the Court did not make the determinations required by law in issuing the Order.

23. It being clear that the Order was improvidently issued, without proper foundation in facts established by evidence, or in law, Plaintiff, as part of its duty to its members, who are

other property owners in the community of Colleton River Plantation, is required, respectfully, to move this Court to reconsider the Order and, now, to deny the Motion to Dismiss.

WHEREFORE, Plaintiff, Colleton River Plantation Club, Inc., prays that this Honorable Court, upon having fully considered and inquired into this matter, shall:

- (1) Grant this Motion for Reconsideration and thereby reconsider its Order Granting Motion To Dismiss, dated July 10, 2017, and filed July 10, 2017;
- (2) in such reconsideration, reverse the Order and, now, deny the Motion to Dismiss; and
- (3) send this matter on for resolution in the normal course of litigation and mediation, instead of to the appellate realm at this time.

JOHNSON & DAVIS, PA

/s/Barry L. Johnson

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Attorneys for Plaintiff

Bluffton, South Carolina
July 20, 2017

5/12/92
SMOUT
6712

Upon recording, please return to:
Wayne S. Hyatt
Hyatt & Stubblefield, P.C.
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

Please cross-reference to: Book 579, Page 1796
and Book 1585, Page 1072

BEAUFORT COUNTY SC- ROD
BK 02559 PGS 2357-2442
DATE: 04/26/2007 10:30:43 AM
INST # 2007032335 RCPT# 485209

ABOVE SPACE FOR RECORDER'S USE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

**AMENDMENT TO THE THIRD AMENDED AND RESTATED
COLLETON RIVER PLANTATION DECLARATION OF COVENANTS AND PROVISIONS FOR
MEMBERSHIP IN COLLETON RIVER PLANTATION CLUB, INC.**

THIS AMENDMENT is made by Colleton River Plantation Club, Inc., a South Carolina non-profit corporation ("Club").

WITNESSETH:

WHEREAS, on or about June 11, 1991, Colleton River Company, L.P. ("CRC, L.P.") made its Declaration of Covenants, and Provisions for Membership in Colleton River Plantation Club, Inc. ("Original Declaration") encumbering certain real property located in Beaufort County, South Carolina, as more particularly described therein; and

WHEREAS, the Original Declaration was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 579 at Page 1796; and

WHEREAS, the Original Declaration, as it has been amended from time to time (collectively, the "Declaration"), provides that the terms thereof may be amended by a vote of two-thirds (2/3) of the membership of the Club present in person or by proxy at a duly called meeting of the Club at which a quorum is present; and

WHEREAS, the Club desires to amend and restate the Declaration as applied to all property made subject to the Declaration; and

WHEREAS, the amendments to and restatements of the Declaration involve such an extensive change to and substantial rewording of the Declaration that specifically identifying each change to the Declaration would hinder, rather than assist, an understanding of the amendments; and

WHEREAS, pursuant to a vote of more than two-thirds (2/3) of the membership of the Club by written ballot without a meeting, the Club approved, ratified, and made this Amended and Restated Declaration of Covenants for Colleton River Plantation to supersede and replace the existing Declaration and all prior versions of such Declaration;

NOW THEREFORE, the Declaration is hereby amended, restated, replaced, and superseded in its entirety, and the following Amended and Restated Declaration of Covenants for Colleton River Plantation is substituted in its place such that all property subject to the Declaration shall hereafter be subject to this Amended and Restated Declaration of Covenants for Colleton River Plantation.

**AMENDED AND RESTATED
DECLARATION OF COVENANTS**

FOR

COLLETON RIVER PLANTATION

HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS
FOR
COLLETON RIVER PLANTATION**

PREAMBLE

This Amended and Restated Declaration of Covenants for Colleton River Plantation ("**Declaration**") establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of Colleton River Plantation as a master planned community. An integral part of the development plan is Colleton River Plantation Club, Inc., a South Carolina nonprofit corporation (the "**Club**"), created to own, operate and/or maintain various "Common Property" and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

Colleton River Development Company, LLC, a South Carolina limited liability company, its successors, and assigns (the "**CRDC**"), is the developer of the property within Colleton River Plantation identified on Exhibit "A" attached hereto as the "**Phase II Property**" and as such has retained various approval rights as set forth in the Colleton River Plantation Annexation Agreement, dated November 18, 1997, executed by and between the Club and CRDC (as amended, the "**Annexation Agreement**").

The master plan for Colleton River Plantation approved by the County of Beaufort, South Carolina, as it may be supplemented and amended (the "**Master Plan**") contemplates residential and recreational uses and this Declaration is intended to establish a process for achieving the goals set out in the Master Plan and establishes relationships and obligations between and among owners, users, and the various parcels within Colleton River Plantation.

DECLARATION OF COVENANT

The property described in Exhibit "A" and any additional property which has been or is in the future made subject to this Declaration by amendment or supplement, shall constitute the "**Community**" or "**Colleton River Plantation**" referred to in this Declaration. This Declaration shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Declaration shall also be binding upon the Club, its successors and assigns.

PART ONE: INTRODUCTION TO THE COMMUNITY

Chapter 1

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

1.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Declaration as the "**Governing Documents**," include this Declaration and

GOVERNING DOCUMENTS	
Amended and Restated Declaration of Covenants: (recorded)	this Amended and Restated Declaration of Covenants for Colleton River Plantation, which creates obligations that are binding upon the Club and all present and future owners of property in Colleton River Plantation
Supplement: (recorded)	a recorded Supplement to this Declaration, which may submit additional property to this Declaration, create easements over the property described in the Supplement, impose additional obligations or restrictions on such property, or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Colleton River Plantation Club, Inc., as they may be amended (the " Articles "), which establish the Club as a nonprofit corporation under South Carolina law
By-Laws: (recorded and attached as Exhibit "B")	the By-Laws of Colleton River Plantation Club, Inc., adopted by its members, as they may be amended (the " By-Laws "), which govern the Club's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines:	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to Lots, including structures, landscaping, and other items on Lots
Rules:	the rules of the Club adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Colleton River Plantation
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Club activities and to regulate the operation and use of property which the Club owns or controls

Table 1.1 - Governing Documents

Governing Documents

the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

1.2. Additional Covenants

There are certain recorded covenants and restrictions for property within Colleton River Plantation, such as those pertaining to riverfront lots and cottages, in addition to the covenants and restrictions set forth in this Declaration. The Club shall have the standing and power, but not the obligation, to enforce such additional covenants.

1.3. Conflicts

If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control. If there are conflicts between or among any of the Governing Documents, then the Declaration, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use tables and keynotes (text set apart in boxes with "key" icons) to illustrate concepts and assist the reader. If there is a conflict between any table or keynote and the text of the Governing Documents, the text shall control.

Space has been set aside throughout this Declaration to allow the reader to make notes. Any such notes are not part of this Declaration and have no legal or binding effect.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not

affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the end of the Table of Contents. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

1.5. Interpretation of Certain References

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Declaration, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the ARB (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing and may evolve as development progresses and as Colleton River Plantation matures.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise ex-

Governing Documents

pressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Maintenance. All references in this Declaration to "**maintenance**" shall refer to maintenance, repair, and replacement.

Person. References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "**recorded**" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the Office of the Register of Deeds for Beaufort County, or such other place designated as the official location for filing documents affecting title to real estate in Beaufort County in order to make them a matter of public record.

NOTES

Chapter 2

Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the Community. The Club, the Owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.

2.1. The Club

The Club is the entity responsible for administering Colleton River Plantation in accordance with the Governing Documents. The Club may exercise all rights and powers which the Governing Documents and South Carolina law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.2. The Board

On most matters, the Club acts through its board of directors ("**Board**"). However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Club's members. Unless the Governing Documents or South Carolina law specifically provide otherwise, the Board may exercise the Club's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Club in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Property, as defined in Section 3.1, enforcement of the Governing Documents, or any other civil or criminal claim or action. However, the Board has no legal duty to institute

litigation or any other proceeding on behalf of or in the name of the Club or its members.

In exercising the Club's rights and powers, making decisions on the Club's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Club's affairs, Board members and the Club's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

2.3. The Owners

Each Person that holds record title to a Lot, as defined in Chapter 3, is referred to in the Governing Documents as an "**Owner**." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Lot is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Lot has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Club and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

2.4. Mortgagees

If a Lot is made subject to a mortgage or other form of security instrument affecting title to a Lot ("**Mortgage**"), then the holder or benefici-

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ary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

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Chapter 3

Community Structure and Organization

The Community consists of parcels of property, referred to as Lots, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use.

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Lots. The Governing Documents refer to the "Dwellings" (defined in Section 5.8) and Dwelling sites in Colleton River Plantation as "**Lots.**" A Lot is a portion of Colleton River Plantation depicted as a separately identified lot or parcel on a recorded subdivision plat or survey which may be independently owned and conveyed. The term "Lot" refers to the land that is part of the Lot, as well as to any structures or other "Improvements" (defined in Section 5.1) on the Lot. The term does not include Common Property, as defined below, or property dedicated to the public.

Common Property. The land and any improvements thereon that the Club owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Lot is referred to as "**Common Property.**" The Common Property also includes any property that the Club holds under a lease, any easements in favor of the Club, and any personal property acquired by the Club.

All Common Property is devoted to and intended for the common use and enjoyment of Owners and their families and guests. The Common Property includes all property designated as "Common Property" or "Common Area" on the plats referred to in Exhibit "A" or any other approved plat or master plan for the Community, whether or not such property has been conveyed to the Club. Notwithstanding the foregoing, CRDC may, in its sole discretion, modify any plat or master plan to modify any Common Property designation prior to any conveyance of such property to the Club.

Chapter 4

Club Membership and Voting Rights

The Club is an entity through which each Owner can participate in the governance and administration of Colleton River Plantation. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

If there is more than one Owner of a Lot, the vote for such Lot shall be exercised by the Owner holding a majority of the ownership interest in the Lot, or, in the event no majority Owner exists, by the "Designated User" (defined in Chapter 14).

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4.1. Membership

There shall be one membership in the Club per Lot. If a Lot has more than one Owner, all co-Owners of the Lot shall designate one Owner to exercise the privileges of membership in the Club, subject to Chapter 14 and reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may, subject to Chapter 14, be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Club's Secretary.

4.2. Voting

Each Lot is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents.

No vote shall be exercised for any property exempt from assessment under Section 12.8.

An Owner of a Lot may personally cast the vote allocated to such Owner's Lot on any issue requiring a vote of the Owners under the Governing Documents. Voting privileges may be exercised by an Owner, his or her spouse, or an Owner's child under the age of 25 who lives with the Owner.

PART TWO: COMMUNITY STANDARDS

Chapter 5

Architecture, Landscaping, Aesthetic, and Environmental Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on lots.

5.1. General

All site work, including topographic, vegetation and location characteristics, landscaping, structures, including docks, piers, fences, gazebos, retaining walls, pools, mailboxes, improvements, and other items placed on a Lot in a manner or location visible from outside of any existing structures on the Lot ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

References in the Governing Documents to a "**dock**" shall refer to that structure, if any, which may be constructed and maintained over the waters adjacent to Colleton River Plantation pursuant to governmental regulations and any applicable permit. The term "**dock**," as used in this Declaration, shall include any corresponding dock constructed for the same purposes.

Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Approval under this chapter is not a substitute for any approvals or reviews required by Beaufort County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

5.2. Design Review Authority

(a) **Architectural Review Board.** An Architectural Review Board ("**Architectural Review Board**" or "**ARB**") has been appointed to assume jurisdiction over matters within the scope of the delegated authority of this chapter, respectively. The ARB shall consist of at least three, but not more than nine, persons, who shall serve and may be removed and replaced in the Board's discretion. ARB members need not be Owners or representatives of Owners. The ARB may, but need not, include architects, engineers, or similar professionals.

(b) **Fees; Assistance.** The ARB may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Club's annual operating budget.

5.3. Guidelines and Procedures

(a) **Design Guidelines.** The Design Guidelines may contain general provisions applicable to all of Colleton River Plantation as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the ARB. The Design Guidelines are not the exclusive basis for the ARB's decisions, and compliance with the Design Guidelines does not guarantee approval.

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The ARB may amend the Design Guidelines with the Board's consent. Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners and their contractors upon request.

(b) Procedures. Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any property within the Community until a written application is submitted to and approved by the ARB. The application must be accompanied by two copies of all plans and specifications and any such other information as the ARB or the Design Guidelines require.

In reviewing each application, the ARB may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to judicial review so long as they are made in good faith and in accordance with required procedures.

The ARB shall make a determination on each application after receipt of a completed application with all required information. The ARB may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The ARB may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The ARB shall notify the applicant in writing of the final determination on any application no later than 45 days after its receipt of a completed application and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the ARB fails to respond within such 45 days, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines or this Declaration unless a written variance has been granted pursuant to Section 5.5.

Construction must commence within six months after any approval is granted. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 15 months of commencement unless otherwise specified in the notice of approval or unless the ARB, in its discretion, grants an extension in writing.

The ARB may exempt certain activities from the application and approval requirements of this

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chapter if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

(c) *Appeals Process.* An applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Club's Secretary no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the ARB's decision, (ii) affirm a portion and overturn a portion of the ARB's decision, or (iii) overturn the ARB's entire decision. The Board shall notify the applicant and the ARB in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the ARB's decision. During the appeal process, the Owner shall not commence any work requiring approval hereunder.

5.4. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the ARB may elect not to require changes to objectionable features. However, the ARB may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances

 When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the ARB to be excused from complying with such requirement. The ARB has the discretion to determine when a variance is appropriate.

The ARB may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance, however, the ARB shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances.

5.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The ARB is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all Dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Club, its officers, the Board, any committee, and member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any

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contractor or its subcontractors, employees, or agents; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot.

5.7. Certificate of Compliance

Any Owner may request in writing that the ARB issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Club shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Club from taking enforcement action against an Owner for any condition known to the Club on the date of such certificate.

5.8. Dwelling Requirements

Any single family dwelling or cottage ("Dwelling") constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect. Each Dwelling's design and construction plans shall include a drainage plan, subject to architectural review. Drainage systems shall be designed so that there is no direct discharge or runoff into any body of water adjoining or within Colleton River Plantation without proper filtration. If the Lot has a drainage system, the design of the drainage and filtration system shall be subject to review and approval by the ARB.

No approval will be granted for any plans for a Dwelling unless the proposed Dwelling meets the following minimum square footage requirements: (i) 2,400 square feet of enclosed dwelling area for a single story Dwelling; or (ii) 3,000 square feet of enclosed dwelling area for a 1½ or two story Dwelling. Any plans for a 1½ story Dwelling shall also contain a minimum of 1,800 square feet on the first floor. As used herein, the term "enclosed dwelling area" refers to the total enclosed area of a Dwelling which is air conditioned and heated, exclusive of any garage

space. Further, no plans for any Dwelling shall have a height greater than 40 feet above the elevation of the finished surface of the first floor living space of such Dwelling. All Dwellings shall have a minimum first floor elevation equal to the 100-year flood level, as designated by the Beaufort County flood plain maps.

The Club has made arrangements for a central sewage disposal system and a central water supply system. No Dwelling may be constructed on a Lot unless suitable provisions have been made for water supply and sewage disposal and the ARB has approved such provisions. No potable water wells may be drilled or maintained on a Lot by anyone other than the Club; provided, this prohibition is not intended to prevent the ARB from approving shallow wells for irrigation or heating and cooling systems which include geothermal heat transfer systems.

5.9. Siting of Improvements

To assure that Improvements on Lots will be located so that reasonable view, privacy, and breeze will be available to the largest practical number of structures built within the Community and to assure that Improvements will be located with regard to the topography of each Lot, taking into consideration the location of large trees, other Improvements previously built or approved pursuant to this Chapter for adjacent Lots, and other aesthetic and environmental considerations, the ARB shall have the right to approve (subject to the provisions of the pertinent law) the precise site and location of any Improvement within the Community. The location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site.

In submitting site development plans to the ARB for review, each Owner shall include calculations verified by an engineer or landscape architect regarding setbacks, total pervious and impervious surface coverage, open space, gross building square footage, and any other data that

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may reasonably be requested by the ARB. Once site development plans have been approved, construction of Improvements must conform to such plans and calculations.

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5.10. Waterfront Requirements

A Lot and/or the Common Property may contain waterfront structures, including fixed piers, boatslips or floats, docks, boat ramps, decking or seating areas attached to piers, boardwalks, walkways, and similar structures constructed by the Club and/or a predecessor or successor in title. Each Owner acknowledges that policies, laws, and regulations regarding the ability to construct, alter, enlarge, or install such waterfront structures may change from time to time, and the Club makes no representation as to any Owner or the Club's ability to construct or install such structures now or in the future.

No Improvement may be erected by anyone other than the Club within the setback requirements established by the ARB. However, Improvements such as pools, decks, hot tubs, spas, or cook-out areas may be built within such setback if prior approval is granted under the terms of this Chapter 5. Reasonable variances to these setback requirements may be approved by the ARB in accordance with Section 5.5, if the ARB determines that adjacent property would not be harmed by any such variance.

5.11. Conservation Activities

It is the intent and purpose of this Declaration to protect all bodies of water within and adjoining Colleton River Plantation and to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wetlands, wildlife, game and migratory birds, and to afford and enhance recreational opportunities, preserve historical sites and generally implement the Master Plan for development.

Chapter 6

Maintenance, Repair, and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Lots and for insuring their Lots against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance by Owners

Each Owner shall maintain his or her Lot, including all Improvements and landscaping comprising the Lot, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Club pursuant to this Declaration, any Supplement, or by law. Docks must be maintained in good repair and kept safe, clean and orderly in appearance at all times.

The ARB shall determine in its sole discretion whether Lots are maintained and the docks are safe, clean, orderly in appearance, and properly painted or preserved in accordance with reasonable standards. In the event the ARB notifies an Owner in writing that his or her Lot or dock fails to meet acceptable standards, such Owner shall remedy such condition within 30 days after receipt of such notice.

If the Owner fails to cure such violation to the satisfaction of the ARB, the Club may, but shall not be obligated to, make necessary repairs or take such other actions to bring the property up to acceptable standards. In the event the Club enters a Lot or dock to conduct such maintenance, such action shall not be deemed a trespass and the Club may levy a charge against such Owner to collect all expenses associated with such corrective action. The Club shall not be

liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

6.2. Maintenance by the Club

The Club shall maintain the Common Property, as more particularly described in Section 9.2. The Club may also maintain property it does not own, including, without limitation, Lots, or property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

6.3. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Within 90 days after any damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Lot of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Chapter 7

Use and Conduct

In order to maintain an environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Lots. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Lots

(a) Residential and Related Uses. Lots may be used only for residential and related purposes. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Dwelling and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve recurring visitation of the Lot by employees who do not reside in the Dwelling, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the Community's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves provid-

ing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. Leasing a Lot for residential purposes shall not be considered a "business" within the meaning of this subsection.

(b) Leasing. For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Dwelling other than a cottage by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any Dwelling that is leased shall be leased only in its entirety; separate rooms, floors, guest houses or other areas within a Dwelling or Lot may not be separately leased. Notwithstanding the foregoing, the occupancy of a room within a Dwelling or guest house on a Lot by a housekeeper, caretaker, child care giver, or personal care giver providing services to the occupants of the Dwelling shall not be considered a "lease" in violation of this subsection (b).

No Dwelling shall be leased for a term of less than six months. All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

The Board may require that Owners use Board-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

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Within 10 days of a lease being signed and prior to the commencement of any such lease term, the Owner of the leased Lot shall notify the Board or the Club's managing agent of the lease and provide a copy of the lease to the Board and any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Club or the Board may adopt additional Rules governing leasing.

(c) Transfer of Title. Subject to Section 19.2, any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 30 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice and all amounts outstanding prior to transfer are paid in full, notwithstanding the transfer of title.

(d) Subdivision and Combination of Lots. Once a Lot has been conveyed to an Owner, no Person shall subdivide or change the boundary lines of any Lot or combine Lots.

(e) Timesharing. No Lot shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years.

(f) Environmental Restrictions. To secure the natural beauty of the Community, the Club, its successors or assigns may promulgate and amend from time to time rules and regulations which shall govern activities which may, in its judgment, be environmentally hazardous, such as the application of fertilizers and pesticides and other chemicals. Failure of any Owner or ten-

ant to comply with the requirements of such additional rules and regulations shall constitute a breach of the Declaration.

(g) Parking and Vehicle Use Restrictions. No vehicle may be parked on private streets or thoroughfares. The parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles is prohibited in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during normal business hours for such periods of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Property.

Motorbikes and motorcycles are expressly prohibited within Colleton River Plantation. No camper, trailer, motor home, boat (including without limitation, any boat docked adjacent to the Community), recreational vehicle, or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to any Lot as a place of residence.

(h) Unsightly or Unkempt Conditions. Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair are prohibited from being maintained on any Lot.

(i) Quiet Enjoyment; Noise. No Person may conduct or keep within the Community any noxious or offensive activity, plant, animal, device, or other thing of any sort which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Property or to the occupants of other Lots or that emits foul or obnoxious odors outside the Lot. The use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots is expressly

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prohibited, except for alarm devices used exclusively for security purposes.

(j) *Animals and Pets.* No animals may be raised, bred, or kept on a Lot, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted; provided, the following breeds are specifically prohibited in Colleton River Plantation: all "pit bulldog" breeds, including but not limited to, Staffordshire Bull Terriers, Bull Terriers, Pit Terriers, and American Pit Bull Terriers.

Pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon the Board's request. If the pet owner fails to honor such request within a reasonable time, the Board may remove the pet.

Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Dwelling. Pets shall be registered, licensed, and inoculated as required by law.

7.2. Rulemaking Authority and Procedures

 Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Owners have the authority to adopt and modify Rules, as set forth herein, to address new or changing circumstances.

(a) *Board Authority.* Subject to the Board's duty to exercise judgment and reasonableness on behalf of the Club and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

(b) *Membership Authority.* The Owners may adopt new Rules and modify or rescind ex-

isting Rules at any meeting of the Club duly called for such purpose, regardless of the manner in which the original Rule was adopted.

(c) *Effective Date.* A Rules change adopted by the Board shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(d) *Conflicts.* No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration, the Declaration shall control.

7.3. Protection of Owners and Others

Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Lots shall be treated similarly; however, the Rules may vary by housing type (e.g., Dwellings and cottages).

(b) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Club may impose and enforce reasonable occupancy limitations and conditions based on Lot size and facilities and its fair share use of the Common Property.

(c) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a Dwelling, except that the Club may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Club or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions

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visible from outside the dwelling, or that are an unreasonable source of annoyance.

(d) Allocation of Burdens and Benefits.

No Rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Property to the detriment of any Owner over that Owner's objection expressed in writing to the Club. Nothing in this provision shall prevent the Club from changing the Common Property available, from adopting generally applicable rules for use of Common Property, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Property, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

(e) Leasing of Lots. No Rule shall prohibit leasing any Dwelling or require approval prior to leasing a Dwelling, except as provided in Section 7.1.

(f) Abridging Existing Rights. No Rule shall require that an Owner dispose of personal property kept in or on a Lot in compliance with the Declaration and Rules in effect at the time such personal property was brought onto the Lot. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the Rule.



This provision protects the existing personal property of Owners. It is intended to prevent a situation in which an Owner is forced to get rid of an item that was allowed prior to a change in the Rules. For example, if basketball hoops are allowed in driveways and then a Rule is passed prohibiting basketball hoops, the Board cannot force the Owners who have basketball hoops at that time to remove them. However, they can enforce this Rule against any other Owner desiring to install one, or against any Owner who takes title to a Lot after the effective date of the new Rule.

(g) Reasonable Rights of CRDC. No Rule may unreasonably interfere with CRDC's ability to develop, market, and sell any Phase II Property and to generally conduct its businesses in Colleton River Plantation.

(h) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement.

7.4. Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the Rules, which may change from time to time. A copy of the current Rules are available from the Club upon request. The Club may charge a reasonable fee to cover its reproduction cost.


NOTES

Chapter 8

Compliance and Enforcement

The covenants, standards, and restrictions set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Club for noncompliance.

8.1. Compliance

 All Owners and occupants of Lots, as well as their tenants, guests, and other visitors, must abide by the Governing Documents. If any of them fail or refuse to comply with the Governing Documents, they may be subject to various penalties, including fines and the loss of the right to use the Common Property.

Every Owner, occupant, and visitor to a Lot must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Lots, and for any damage to the Common Property that such Persons may cause.

8.2. Remedies for Non-Compliance

The Club and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an oppor-

tunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall be levied and shall constitute an equitable charge and a lien upon the Owner's Lot. An Owner shall be subject to the sanctions set forth herein in the event of such violation by such Owner, his or her co-Owners, family, guests, tenants, or invitees;

(ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 30 days delinquent in paying any assessment due to the Club);

(iii) suspend any Person's right to use any Common Property or common facilities, including the golf courses, tennis courts, and community dock (A) for any period during which any charge against any Lot owned by such Owner remains delinquent for more than 30 days, and (B) for a period not to exceed 60 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed the Club); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iv) suspend services the Club provides (except that no hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Club);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, em-

Compliance and Enforcement

ployee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5, including the Design Guidelines, from continuing or performing any further activities in Colleton River Plantation;

(vii) levy charges to cover costs the Club incurs in bringing a Lot into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation with respect to any Lot on which a violation exists.

(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Lot in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Property under any circumstances;

(iii) require an Owner, at his own expense, to perform maintenance or to remove any structure or improvement on such Owner's Lot that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Club's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Club's resources; or

(d) that it is not in the Club's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Club from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, if the Club prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

Compliance and Enforcement

8.5. Enforcement of Ordinances

The Club, by contract or other agreement, may enforce applicable city and county ordinances. In addition, Beaufort County or the City of Bluffton may enforce ordinances within Colleton River Plantation.

NOTES

PART THREE: CLUB OPERATIONS

Chapter 9

Property Management

This chapter establishes the Club's obligation to maintain, operate, and insure Common Property for the benefit of Colleton River Plantation.

9.1. Acceptance and Control of Property

(a) Transfers and Conveyances by CRDC. CRDC and its designees may transfer or convey to the Club interests in real or personal property in accordance with the Annexation Agreement.

(b) Management and Control. The Club is responsible for management, operation, and control of the Common Property, subject to any covenants set forth in the deed or other instrument transferring the property to the Club. The Club may permit use of Common Property facilities by guests of Owners and may charge use fees, in such amount as the Board may establish, for such use. The Club may also permit occasional use of the Common Property facilities by others when, in the judgment of the Board, such use would be beneficial to the Club's reputation and financial position.

9.2. Maintenance of Common Property

The Club shall maintain the Common Property in accordance with the Community-Wide Standard. The Common Property includes the Recreational Amenities.

The Club shall also be responsible for proper functioning of the stormwater drainage system serving the Community, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no responsibility for landscaping or other maintenance of Lots burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

The Club shall have the right, but not the obligation, to protect all Common Property from erosion, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Club.

9.3. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Common Property for which the Club has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Club in a neat and attractive condition consistent with the Community-Wide Standard.

The Club shall retain and place in a capital improvements account for the benefit of all Owners, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

Chapter 10

Provision of Services

In addition to its property management role, the Club is a vehicle for providing a variety of services for the benefit of the Community at large and individual Lots. This chapter describes some of the services the Club may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Lots

The Club may arrange for or provide services to Owners and their Lots, directly or through contracts with third parties. The Club may enter into bulk service agreements by which a particular service is provided to all Lots, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services and technology services.

Any Club contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Lot, may result in termination of services provided to such Lot. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Lot.

In its discretion, the Board may discontinue offering particular services, and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Club to provide such services.

10.2. Opportunities for Community Interaction

The Club may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Club activities. For example, the Club may create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Club-sponsored activities. To the extent South Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Club may send notices by electronic means, hold Board or Club meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

NOTES

Chapter 11

Club Insurance

The Club is responsible for evaluating and insuring against various types of risks, including property damage, personal injury, and liability, and for developing an insurance program that provides adequate protection for the Club's assets. This chapter describes the minimum types and amounts of coverage that the Club must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages

The Club shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Property. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Club property insurance policies shall be sufficient to cover the full cost of repair or replacement of the insured improvements under current building ordinances and codes based on an appraisal of the covered property which is updated annually.

(b) Commercial general liability insurance on the Common Property, insuring the Club and its Members (with respect to their status as Members of the Club) for damage or injury caused by the negligence of the Club or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a

limit of at least \$5,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Club shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Commercial crime insurance, including fidelity insurance covering all employees and other Persons responsible for handling Club assets in an amount determined in the Board's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;


(f) Automobile (hired and non-owned) liability and physical damage insurance; and

(g) Any other insurance coverage deemed necessary by the Board (e.g., loss of income, flood insurance, etc.).

The Club shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons and, in connection with such review, shall inform such Person(s) of the insurance requirements set forth in this chapter. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

Club Insurance

11.2. Deductibles

 The Board may hold any Persons who cause damage to insured improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Club's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots.

11.3. Policy Requirements

All Club policies shall provide for a certificate of insurance or the original policy to be furnished to the Club, and all insurance certificates or policies shall be made available for inspection by Owners upon request.

To the extent available at reasonable cost and terms, all Club insurance shall:

(a) be written with a company authorized to do business in South Carolina;

(b) satisfy the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(c) be written in the name of the Club as trustee for the benefited parties. All policies shall be for the benefit of the Club and its members and their Mortgagees, as their interests may appear;

(d) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;


(e) recognize the effect of inflation on property replacement costs, either through the use of property appraisals updated annually or by the inclusion of an inflation guard endorsement;

(f) include an agreed amount endorsement;

(g) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Club;

(h) provide a waiver of subrogation against any Owner or household member of an Owner for, at a minimum, damages or claims arising out of acts performed on behalf of the Club; and

(i) include an endorsement precluding cancellation, invalidation, or suspension by the insurer on account of any act or omission of one or more Owners, unless acting on the Club's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Club and allowance of a reasonable time to cure the defect or violation.

 Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue anyone that the insured party could have sued.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(a) a waiver of subrogation as to any claims against the Club's directors, officers, employees, and manager;

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

Club Insurance

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Club of any cancellation, substantial modification, or non-renewal;

(e) construction code endorsements, including demolition costs endorsements, contingent liability from operation of building laws endorsements and increased cost of construction endorsements,

(f) a cross liability provision;

(g) that each Owner is an additional insured; and

(h) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums

Premiums for all Club insurance shall be a "Common Expense" (as defined in Section 12.1), unless the Board reasonably determines that other treatment of the premiums is more appropriate.

NOTES

Chapter 12

Club Finances

This chapter provides for various types of funding to cover expenses and capital expenditures that the Club incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Club to levy against the Lots and collect from the Owner of each Lot. Assessments are secured by a lien on each Lot as described in this chapter.

12.1. Budgeting Annual Assessments

At least 30 days before the beginning of each fiscal year, the Board shall adopt an operating budget for the "Common Expenses" of the Club for the coming year and a capital budget. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Club incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Common Property, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**"

The operating budget shall include an "**Annual Operating Assessment**" to be allocated equally among all Lots subject to assessment under Section 12.5. The Annual Operating Assessment shall not be increased by more than the greater of 10% above the previous year's Annual Operating Assessment or to an amount equal to the 1997 Annual Operating Assessment compounded annually at 7.5%, unless such increase shall be approved at a special meeting by two-thirds (2/3) of the votes cast by the Owners. Until the time of "Turnover" (defined in Section 17.2), the Annual Operating Assessments paid by Phase II Lot Owners shall accrue to CRDC; however, the Club shall bill and collect all assessments paid by the Phase II Owners.

The capital budget shall include an annual "**Replacement Reserve Assessment**" to be

allocated equally among all Lots subject to assessment under Section 12.5. The annual Replacement Reserve Assessment shall not be increased by more than the greater of 10% above the previous year's Replacement Reserve Assessment or to an amount equal to the fiscal 2003 Replacement Reserve Assessment compounded annually at 7.5%, unless such increase shall be approved at a special meeting by two-thirds (2/3) of the votes cast by the Owners.

The Board shall send a notice of the amount of the Annual Operating Assessment and the Replacement Reserve Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the date on which such new assessments are first due.

There shall be no obligation to call a meeting for the purpose of considering any assessments within the limits stated above except on petition of the Owners as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the notice of any assessment.

The Board may revise the budget and adjust the Annual Operating Assessment and Replacement Reserve Assessment anytime during the year, subject to the same annual limitations as set forth above. Notice of any revision of the assessments shall be sent to each Owner at least 30 days prior to the effective date of such revised assessments.

12.2. Replacement Reserve

The Club shall establish and maintain an adequate Replacement Reserve fund from the Replacement Reserve Assessments collected from Owners for the following uses: (i) extraordinary repairs to or replacement of improvements to the Common Property which the Club is obli-

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gated to maintain; (ii) repayment of interest and principal of borrowings by the Club for these allowed purposes; or (iii) to the extent that there is any, tax liability related to the Replacement Reserve fund or any income derived therefrom. Said Replacement Reserve Fund shall be maintained in a segregated account established by the Club.

12.3. Special Assessments

The Club may levy "Special Assessments" to finance the cost of any substantial construction or reconstruction, expected repair or replacement of Common Property, including the necessary fixtures and personal property related thereto, or additions to the Common Property. Any such Special Assessment shall require the affirmative vote of Owners representing more than two-thirds (2/3) of the Owners voting and shall be allocated equally among all Lots subject to assessment under Section 12.5

12.4. Specific Assessments

The Club may levy "Specific Assessments" against a particular Lot:

(a) to cover the costs of providing services to the Lot upon request of the Owner (which might include the items identified in Section 10.1); and


(b) to cover fines for violations of the Governing Documents or costs incurred in bringing the Lot into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

12.5. Authority to Assess Owners; Time of Payment

The Club is authorized to levy assessments as provided herein. The obligation to pay assessments shall commence as to each Lot on the date on which the Lot is made subject to this Declara-

tion. Annual Operating and Replacement Reserve Assessments shall be paid in such manner and on such date as the Board may establish. The due date of any special assessment shall be fixed and set forth in the resolution authorizing such special assessment. The Board may impose special requirements for Owners with a history of delinquent payment.

12.6. Obligation for Assessments

 By buying a Lot in Colleton River Plantation each Owner agrees to pay all assessments levied against his or her Lot. If the Owner does not pay on time, that Owner will be charged late fees or charges on all amounts due. Owners may not claim a reduction in their assessments due to action or inaction by the Club.

By accepting a deed or entering into a recorded contract to purchase any Lot, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents, together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount (not to exceed the maximum charges allowed by law). Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board shall deliver or mail each Owner an assessment notice based on the last address known to the Club, and failure of an Owner to receive such notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Property, abandonment of his or her Lot, or non-use of services provided to all Lots. The obligation to pay assessments is a separate and independent covenant on the part of each

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Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Club or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Club shall furnish to any Owner liable for any type of assessment a certificate signed by a Club officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Club may require the advance payment of a reasonable processing fee for the issuance of such certificate.

12.7. Lien for Assessments and Other Charges

(a) *Existence of Lien.* The Club's lien against each Lot to secure payment of assessments and other charges shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Lot.

Although no further action is required to create or perfect the lien, the Club may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot the amount of the delinquent sums due the Club at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Club to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) *Enforcement of Lien.* The Club may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Club following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on

it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Club. The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any assessments applicable to periods prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot applicable to periods prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 12.5, including such acquirer, its successors and assigns.



If an Owner does not pay his or her assessments on time, the Club may foreclose its lien on the Owner's Lot, causing it to be sold to pay the past due assessments. The Club may also sue an Owner in court to recover past due assessments.

12.8. Exempt Property

The Owner of each Lot is responsible for all assessments established pursuant to the provisions of this chapter except that the following property shall be exempt from payment of assessments:

(a) All Common Property whether or not title to such Common Property has been transferred to the Club;

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(b) Until Turnover, any Lots within the Phase II Property that are owned by CRDC; and

(c) Any property dedicated to and accepted by any governmental authority or public utility.

12.9. Capitalization of the Club

(a) *Capital Contribution.* Any Person purchasing a Lot within Colleton River Plantation shall make a "Capital Contribution" to the capital of the Club in an amount equal to \$15,000.00 per Lot. This amount shall be in addition to, not in lieu of, the Annual Assessment, Replacement Reserve Assessment and any Special Assessment levied on the Lot and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Club immediately upon transfer of title. As used herein, the term "Capital Contribution" shall include initiation fees collected under the terms of any prior version of the Declaration in effect at the time such fees were collected.

(b) *Use of Capital Contributions.* The Capital Contributions shall be maintained by the Club in a separate account not to be commingled with the general operating funds. The Capital Contributions shall only be used for capital expenditures and/or repayment of debt incurred in connection with said capital expenditures and/or the refund of capital fees paid by Owners pursuant to Section 12.11. Further, to the extent that there is tax liability related to the Capital Contributions or any income derived therefrom, the payment of said tax liability shall be an allowed use.

(c) *Approval of Use of Capital Contributions.* Funds generated by the Capital Contributions shall only be used pursuant to the approval of Owners as indicated below. Approval of any expenditure for a capital project over \$250,000 shall have the assent of a simple majority of the vote at a duly called meeting of Owners, written notice of which shall be sent to all

owners at least 30 days in advance, and shall set forth the purpose of the meeting. All other uses of funds generated by Capital Contributions shall be approved by the Board. All Capital Contributions paid by purchasers of Lots owned by CRDC in Phase II prior to Turnover shall be paid to CRDC. All other Capital Contributions, including those paid on Lots owned by CRDC post-Turnover, shall be paid to the Club.

(d) *Refund of Capital Contributions.* A portion of the Capital Contribution shall be used to refund the capital fee, if any, initially paid by the selling Owner. Within 30 days after the Closing, the Club shall pay the selling Owner the balance of the refundable portion of the capital fee as required by Section 12.11. Notwithstanding the above, no refund shall occur if the transaction is exempt under Section 12.9(f)(ii) - (vi).

(e) *Effect of Non-Payment of Capital Contribution, Personal Obligation of Owner, Lien Remedies of the Club.* If the Capital Contribution as described herein is not paid on or before the date due, then such Capital Contribution shall become delinquent and shall together with interest thereon at the rate of 18% per annum (or the maximum interest rate allowable by law) from the due date, and the cost of collection as hereinafter provided, become a charge and continuing lien on the land and on improvements thereon against which such Capital Contribution is made. The obligation of the Owner to pay the Capital Contribution, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the Capital Contribution is not paid within 30 days after the due date, the Club may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against his Lot, and there shall be added to the amount of that Capital Contribution the cost of preparing and filing a complaint in such action as well as any other costs and expenses incurred,

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and in the event a judgment is obtained, such judgment shall include interest on the Capital Contribution, as provided, and reasonable attorneys fees and costs of action.

(f) **Exemptions.** The following shall be exempt from payment of a Capital Contribution as set forth in this Section 12.9:

(i) An Owner in good standing of at least a majority interest in a Lot that purchases an additional Lot or Lots;

(ii) Any purchase of a Lot by trade of another Lot, whether or not involving additional consideration;

(iii) In the case of a Lot owned by co-Owners, whether persons or legal entities, the sale of less than all of the ownership interests in the Lot shall be exempt unless such sale changes the majority ownership interest in the Lot, as measured by the cumulative effect of transactions from the later of the last change in majority ownership interest or the effective date of this Declaration, in which case, such transaction shall not be exempt under this Section 12.9(f);

(iv) Any transfer of ownership to a corporation, partnership, or other legal entity, provided there is no change in the effective majority ownership interest;

(v) Any first mortgagee foreclosing on a Lot or taking back a deed in lieu of foreclosure; and

(vi) Any transfer of ownership by inheritance or through conveyance for reasons of estate planning.

12.10. Use and Consumption Fees

The Board may charge use, consumption, and activity fees to any Person using Club services or facilities or participating in Club-sponsored activities. The Board may determine the amount and method of determining such fees. Different

fees may be charged to different classes of users (e.g., Designated Users and guests).

12.11. Capital Fees

Pursuant to the terms of the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc., recorded May 24, 2002 in Book 1585, Page 1072, et seq., Beaufort County, South Carolina records (as amended by recorded amendments, collectively, the "**Third Amended and Restated Declaration**"), certain Owners were required to pay a "capital fee" to the Club that was subject to refund as set forth in such Third Amended and Restated Declaration. Lots within Colleton River Plantation are no longer subject to payment of this capital fee, but certain Owners remain eligible for a refund of the capital fee previously paid by them. This Declaration and Section 12.9(d) set forth the conditions under which such refunds will be made.

NOTES

**PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE
COMMUNITY**

Chapter 13

Easements

The easements created in this chapter establish the rights of Owners to use the Common Property and create various rights for the benefit of Owners, CRDC, the Club, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Club to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1. Easements in Common Property



An easement is one person's right to go onto the property of another.

The Club grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Property, subject to:

- (a) The Governing Documents and any other applicable covenants; and
- (b) Any restrictions or limitations contained in any deed conveying such property to the Club;
- (c) The Board's right to:
 - (i) adopt rules regulating Common Property use and enjoyment, including rules limiting the number of guests who may use the Common Property, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Property facilities;
 - (iii) dedicate or transfer all or any part of the Common Property, subject to such approval requirements as may be set forth in this Declaration;

- (iv) rent any portion of any clubhouse or other Common Property recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

- (v) permit use of any Common Property facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and

- (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

13.2. Easements for Utilities and Other Infrastructure

(a) Installation and Maintenance. The Club reserves for itself and grants to all utility providers, for perpetual duration, non-exclusive easements throughout Colleton River Plantation (but not through a structure) to the extent reasonably necessary to:

- (i) install utilities and infrastructure to serve Colleton River Plantation, security and similar systems, and drainage systems;
- (ii) install walkways, pathways and trails, street lights, and signage on property CRDC or the Club owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;
- (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and
- (iv) access and read utility meters.

Easements


Notwithstanding the above, the Club reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grades 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.

(b) Specific Easements. The Club also reserves the non-exclusive right and power to grant and record such specific easements consistent with Section 13.2(a) as it deems necessary to develop the Common Property.

(c) Assignment. The Club expressly reserves the right to transfer, license, or lease the utilities and utility easements and cellular telephone sites set forth herein, in whole or in part, to another entity, whether public or private, which undertakes to provide such utility service.


13.3. Easements for Maintenance, Emergency, and Enforcement

 The Club may come onto the exterior portions of a Lot to do maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property before notice can be given.

The Club reserves for itself easements over Colleton River Plantation as necessary to enable the Club to fulfill its maintenance responsibilities under Section 6.1 and its enforcement rights under Section 8.2. The Club shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and

assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.4. Easements for River and Pond Maintenance and Flood Water

 The Club has the right to access property adjacent to rivers, streams, marshland, and other water bodies to perform maintenance and for irrigation purposes. They also have the right to cause water levels in ponds in Colleton River Plantation to rise above or fall below normal. They will be responsible for repairing any damage they cause in so doing.

The Club reserves for itself, its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Property to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Property; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Club and its successors, assigns, and designees shall have an access easement over and across any portion of Colleton River Plantation which abuts or contains bodies of water or wetlands, to the extent reasonably necessary to exercise their rights under this section.

The Club further reserves for itself, its respective successors, assigns, and designees, in accordance with government regulations, a perpetual, nonexclusive right and easement of access and encroachment over the Common Property and Lots (but not the Dwellings thereon) near bodies of water and wetlands within Colleton River Plantation, in order to (a) temporarily flood and back water upon and maintain water over such property; (b) alter in any manner and

Easements

generally maintain the bodies of water and wetlands within the Common Property; and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Club or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.


13.5. Pedestrian Easements Over Lots

(a) *Easement of Access to and Use of Waterfront Areas.* Portions of the Colleton River waterfront within Colleton River Plantation are intended as a community amenity for the use and enjoyment of all Owners and their guests and invitees. The Club hereby grants to itself, CRDC, and their successors and assigns, each Owner, and their guests and invitees, a non-exclusive right and easement over and across trails and other pedestrian pathways, as determined by the Club, adjacent to Colleton River Plantation for access, ingress, and egress to and from, and for the use and enjoyment of, the Colleton River waterfront.

The right and easement over any Lot to access the waterfront shall be subject to reasonable regulation by the Club, and any governmental authority having jurisdiction over such use.

(b) *Location of Easements.* Those areas within the Lots subject to the easement rights described in this section shall be shown on a recorded plat or otherwise specifically described in a recorded instrument. The Club's consent is required to relocate such easement areas, which consent shall not be unreasonably withheld, conditioned, or delayed.

13.6. Easements for Golf Course

 If the golf course is close to your Lot, you can expect that golf balls and people will come near your Lot. This section puts Owners on notice that activities relating to the golf course will affect Lots next to the golf course.

The Community is burdened with an easement permitting golf balls unintentionally to come upon areas adjacent to or in the vicinity of a golf course, and for golfers at reasonable times and in a reasonable manner to come upon the Common Property or the exterior portions of a Lot to retrieve errant golf balls. However, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve the golfers of liability for damage caused by errant golf balls.

Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: CRDC; the Club or its members (in their capacities as such); any Builder or contractor (in their capacities as such); any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

The Club, its agents, successors, and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Property reasonably necessary to the operation, maintenance, repair, and replacement of its golf course.

Any portion of the Community immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. **Under no circumstances shall the Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.**

Easements

The Club, its successors and assigns, shall have a perpetual, exclusive easement of access over Colleton River Plantation for the purpose of retrieving golf balls from bodies of water within the Common Property lying reasonably within range of golf balls hit from its golf course.

13.7. Easements Regarding Pesticides

The Club reserves unto itself, its successors, assigns and licensees, a perpetual, alienable and releasable easement and right on, over, and under the Community to dispense pesticides and take other actions which in the opinion of the Club are necessary or desirable to control insects and pests, cut fire breaks and or otherwise control fires within the Community.

13.8. Cram Easements

Henry C. Cram, Jr., his heirs and assigns, his family, guests, invitees, and employees shall have access over the roads located within the "Phase I Property" described in Exhibit "A" for the purpose of accessing his property at Victoria Bluff, which is adjacent to Colleton River Plantation, for the development of up to 11 single family Lots to be located on the Victoria Bluff property.

In addition, Peter C. Cram and Claire C. Vidich, their heirs and assigns, their families, guests, invitees, and employees shall have access over the roads located in the Phase I Property for the purpose of accessing their property on Bear Island, which is adjacent to Colleton River Plantation, for the development of up to 30 single family Lots to be located on the Bear Island property.

13.9. Easements for Access and Parking

There is hereby established for the benefit of the Recreational Amenities (defined in Section 14.1) and its Designated Users (defined in Chapter 14), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways lo-

cated within Colleton River Plantation reasonably necessary to travel between the entrance to Colleton River Plantation and any Recreational Amenity and over those portions of Colleton River Plantation (whether Common Property or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of any Recreational Amenity.

13.10. Minimal Interference

Any Person exercising any right or easement described in this chapter shall minimize interference with the use and enjoyment of the property burdened by the easement. Persons exercising such easement rights shall be responsible for any damage caused to the Common Property or any Lot as a result of their actions in connection with the exercise of such easement rights. Upon completion of any work pursuant to an easement right, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. All work performed pursuant to an easement right shall be performed in a good and workmanlike manner in accordance with all applicable laws.

The exercise of easements under this chapter shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

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Chapter 14

Recreational Amenities and Designated Users

Various recreational and other facilities and amenities are located within the Community that are part of the Common Property of the Community and ownership of property in the Community grants certain individuals the right to use them. This chapter explains the use rights of those individuals who are entitled to use the "Recreational Amenities" (as defined below).



Those individuals who are entitled to use and enjoy the Recreational Amenities are known as "Designated Users." Every Lot within the Community has one Designated User but every Owner is not necessarily a Designated User, as explained and set forth in this Chapter 14.

14.1. Recreational Amenities

(a) *Amenities.* The "Recreational Amenities" of Colleton River Plantation include two 18-hole golf courses, a nine hole par 3 course, golf driving ranges, putting greens, tennis courts, swimming pools, golf/tennis pro shops, locker room facilities, clubhouses, food and beverage facilities, lagoons, jogging trails, bike paths, golf cart paths, community docks, a fitness center, and any other amenities which are located or may from time to time be located in the Common Property.

(b) *Fees for Use of Recreational Amenities.* A Designated User shall not be charged user fees or similar charges with respect to the use of the Recreational Amenities. These rights shall also extend to a Designated User's spouse, if any, and children, if any, so long as any such children (i) are under the age of 25, and (ii) reside in the Designated User's household, are away at school, or are in the United States military. A Designated User's guest, or child who does not meet the conditions set forth above, shall be subject to use, consumption, and activity fees, as established by the Board from time to time.

Although Designated Users are not required to pay use fees, they shall be responsible for any fees associated with golf cart, locker, and meeting room rentals, food and beverage charges, golf and tennis lessons, pro shop purchases, masseur and physical therapy services, and any other fees and charges which are customarily charged directly to members of private clubs.

14.2. Designated Users

(a) *Determining Designated Users.* Subject to the terms and provisions of this Declaration and other rules and regulations established by the Board, each Lot that is not exempt from assessments under Section 12.8 shall have a person who shall be the Designated User of such Lot. Each Lot may assign only one Designated User for the Lot.

(i) *Ownership by an Individual.* In the event a Lot is owned by a single Owner, which includes ownership by husband and wife, the Designated User of such Lot shall be the Owner of such Lot, and use rights of the Recreational Amenities shall be granted to such Owner and spouse, if any, and eligible children, if any, as set forth in Section 14.1(b) above, unless such Owner assigns his or her Designated User privileges to another person, as described in Section 14.2(b) below.

(ii) *Joint Ownership and Ownership by a Legal Entity.* In the event any Lot is owned by more than one Owner or a legal entity, the collective Owners of such Lot shall unanimously designate one of the Owners of at least a 25% interest in the Lot or entity as the Designated User, who shall have the right, privilege, easement of access to, and use and enjoyment of, the Recreational Facilities, for a minimum of 12 months.

Recreational Amenities and Designated Users

Notice of this designation shall be delivered to the Board and is subject to Board approval as provided in Section 14.2(e) below. If approved by the Board, such individual shall be deemed the Designated User of such Lot and shall be entitled to the use privileges set forth herein.

(b) Assignment of Designated User Privileges. The Owner of a Lot may designate another individual, subject to the requirements set forth in this section, to be the Designated User for the respective Lot. However, if a Dwelling has been built on the Lot, the Owner may not reside in the Dwelling and designate another individual to be the Designated User; provided, if the Owner of such Dwelling enters into a lease pursuant to Chapter 7, the lessee, and only the lessee, may be proposed as the Designated User subject to approval under Section 14.2(e).

Assignment of Designated User rights to another person shall result in a forfeiture of the Owner's rights to use the Recreational Amenities for the period in which such assignment is effective; provided, such Owner may continue to use the Recreational Amenities as a "guest" subject to guest rules and regulations.

(c) Limitations on Non-Owner Designated Users. No more than 5% of the Lots within Colleton River Plantation may have non-Owner Designated Users at any given time. Such cap may be changed only by the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of the total votes cast. No person may be a non-Owner Designated User for a cumulative period of more than three years.

(d) Restrictions on Naming Designated Users. The following restrictions shall apply to naming Designated Users within the properties:

(i) In no event shall any Owner advertise for a Designated User in any newspaper or other printed publication, broadcast media, or website. Any Owner so advertising shall forfeit

the right to name another person as a Designated User for a period of at least 12 months; and

(ii) Any Designated User who is so designated by virtue of any provision of this Chapter 14 other than Section 14.2(a)(1), shall be subject to approval of the Board on an annual basis, as set forth in Section 14.2(e) below.

(e) Board Approval of Designated Users. The Board shall establish reasonable criteria for approval of Designated Users, including, but not limited to, standards relating to conduct and credit worthiness. The name of the proposed Designated User of each Lot other than a Designated User under the terms of Section 14.2(a)(i), shall be provided to the Board by the Owner of such Lot for prior approval and annually reviewed by the Board. No Owner may change the Designated User more than once per year, except upon the death or incapacity of the Designated User. The Board shall keep appropriate records of the Designated User of each Lot.

(f) Payment of Operating Assessments. Every Designated User shall be entitled to use privileges as set forth in this Chapter 14 and shall be responsible for the payment of the annual operating assessments for such Lot. In the event any non-Owner or co-Owner Designated User does not pay his or her operating assessment, the Owner of such Lot, or, in the case of co-Owners, the remaining co-Owner(s), shall be responsible for such payments.

(g) Reinstatement of Owner's Use Rights. The Board may upon petition by the Owner reinstate the Owner's rights to use the Recreational Amenities upon termination of the assignment under Section 14.2(b) of user rights to another person.

14.3 Founder and Honorary Members

CRC, L.P. and CRDC have designated certain individuals as "**Founder and Honorary Members**" entitled to use the Recreational

Recreational Amenities and Designated Users

Amenities without payment of annual operating and replacement reserve assessments or fees. Founder and Honorary Members shall not be required to pay greens fees, golf cart fees, or guest greens fees, up to a maximum of two four-somes per month but shall be responsible for any food and beverage charges, or any other services requested or charges incurred. Founder and Honorary Memberships are not transferable, and are non-revocable during the lifetime of such Founder and Honorary Member and his or her spouse. Family members of any Founder and Honorary Member shall have the same benefits as the family of any Designated User.

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Chapter 15

Disclosures and Waivers

This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.

15.1. Safety and Security

Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Colleton River Plantation. The Club may, but shall not be obligated to, maintain or support certain activities within Colleton River Plantation designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Club shall not in any way be considered an insurer or guarantor of safety or security within Colleton River Plantation, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Colleton River Plantation, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Lot, that the Club and its Board and committees are not insurers or guarantors of security or safety and that each Person within Colleton River Plantation assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots and Dwellings, resulting from acts of third parties.

15.2. View Impairment

The Club does not guarantee or represent that any view over and across the Lots, Recreational Amenities, any open space within the Community, or any golf course will be preserved without impairment. The Club shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Club has the right to add trees and other landscaping from time to time, subject to applicable law.

In addition, the Club may, in its sole and absolute discretion, but shall not be obligated to, change the location, size, configuration, landscaping, topography, hydrology, and elevation of the tees, bunkers, fairways, greens, buildings, improvements, landscaping, and water features on any golf course. Any such additions or changes to such golf course may diminish or obstruct the view from the Lots. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.3. Limited Liability for Golf Courses

Neither CRC, L.P., its partners, nor the Club or CRDC, or any of its their appointees, directors or officers, or its assignees, nominees, or agents, including, *e.g.*, Jack Nicklaus, Jack Nicklaus Design, Inc., Golden Bear International, Inc., Pete Dye, or Dye Designs, shall in any manner be held liable or responsible, either directly or indirectly, for any damage to a Lot, or to any Improvement thereon or personal property, or for any injury to any person due to any golf ball, whether in motion or at rest, which has been driven from the golf course property or its environs, and each Owner, for themselves and their guests and invitees acknowledge that risks

Disclosures and Waivers

of injury to persons or property are inherent to persons or property located upon or in close proximity to a golf course, and agree that they assume all risks resulting there from, including but not limited to, claims of negligent design of the golf course property or the Lots, negligent construction of Improvements or location of Improvements.

Further, each Lot Owner, by accepting a deed to his Lot, agrees to indemnify and hold CRC, L.P., CRDC, and the Club, their partners, and its and their directors, officers, agents and employees harmless from and against all damages, including reasonable attorneys fees and costs, arising out of any injury to person or property which occurs to any person or property (real or personal) proximately caused by any golf ball, or the negligence of the Club, CRDC, CRC, L.P., their partners, or their directors, officers, agents or employees. This paragraph may not be amended without the written approval of the Club and CRDC.

15.4. Existence of River in Community and Right to Use the River

The Club makes no promises, covenants, warranties or guarantees relative to the following matters, and shall have no liability with respect to: (i) the purity or any other characteristic of the water in any river or other body of water on or near Colleton River Plantation; (ii) the maintenance of any particular water level at any time or season in any river, stream or other body of water on or near Colleton River Plantation; (iii) any right to use for any purpose or any right to access the water of any river, stream, or other body of water on or near Colleton River Plantation; (iv) any right to construct piers, docks, boathouses, or any other improvements on any river, stream, or other body of water on or near Colleton River Plantation, except in accordance with the restrictions, easements, conditions, reservations, rules, regulations, and laws affecting any such river or body of water and Colleton River Plantation. The Club and every Owner

further acknowledge that the right to use or access the water of any river, stream, or other body of water on or near Colleton River Plantation and the right to construct piers, docks, boat-houses, or other improvements of any sort on Colleton River Plantation is regulated and governed by the rules, regulations, laws, and ordinances of all applicable authorities.

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Chapter 16

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Lot, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in Colleton River Plantation. The provisions of this chapter apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Club (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Colleton River Plantation or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Club; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2. No Priority

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

16.3. Notice to Club

Upon request, each Owner shall be obligated to furnish to the Club the name and address of the holder of any Mortgage encumbering such Owner's Lot.

16.4. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Club does not receive a written response from the Mortgagee within 60 days of the date of the Club's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

16.5. Construction of Chapter 16

Nothing contained in this chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the By-Laws, or South Carolina law for any of the acts set out in this chapter.

PART FIVE: COMMUNITY DEVELOPMENT

Chapter 17

Turnover and CRDC

This Chapter describes the process by which CRDC will "turnover" and convey the Common Property within the Phase II Property to the Club.

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17.1. CRDC

Pursuant to the terms of the Annexation Agreement, CRDC has certain rights with respect to Colleton River Plantation, the Club, and the Phase II Property. The provisions contained in this Declaration shall in no way amend or revoke any privileges accorded CRDC in the Annexation Agreement, and the Annexation Agreement shall continue to govern the entities and property subject to such agreement.

This Declaration does not seek to articulate those terms and conditions set forth in the Annexation Agreement which address the Phase II Property and CRDC, and all parties and Owners subject to this Declaration are hereby on notice that the terms and conditions set forth in the Annexation Agreement shall continue to be of full force and effect until terminated as set forth therein.

17.2. Turnover Schedule

Pursuant to the terms of the Annexation Agreement, CRDC will convey to the Club certain amenities and common areas. The date on which CRDC shall convey such property to the Club and the date on which the Club shall assume certain rights and obligations as set forth in the Annexation Agreement is known as the "**Turnover**." The timing of the Turnover shall be as set forth in the Annexation Agreement.

Chapter 18

Expansion of the Community

The Club may expand the initial property submitted to the Declaration as set forth in this chapter.

18.1. Expansion by the Club

From time to time, any property which is contiguous to the Community or located nearby may be voluntarily submitted to this Declaration by the owner(s) of such property with the consent of the Club. Any such property may be submitted by recording a Supplement describing the additional property to be submitted. Any Supplement that the Club records must be approved by a vote of 2/3 of the Owners voting in person or by proxy at a duly called meeting of the Club at which a quorum was present. The Club's President and Secretary and the owner of the property being submitted shall sign the Supplement.

Notwithstanding the above, in no event shall there be more than 395 Lots contained in the Phase I Property, inclusive of eight golf cottages, and 310 Lots contained in the Phase II Property, inclusive of no more than 10 golf cottages.

18.2. Additional Covenants and Easements

Any Supplement that the Club records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Club to maintain and insure such property. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

18.3. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Club and assessment liability in accordance with the provisions of this Declaration.

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Chapter 19

Additional Rights Reserved to the Club

This chapter reserves various rights to the Club, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the development and sale of property in the Community, to enable the Club to respond to Owners' concerns, and to protect various property rights and other interests of the Club.

19.1. Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, the Club and its designees or assigns may construct, use, and maintain upon portions of the Common Property and other property it owns, such facilities and activities as may reasonably be required, convenient, or incidental to the construction of Dwellings or sale of Lots. If reasonably required, convenient, or incidental to construction or sales activities, the Club and its employees, agents, and designees may park vehicles in designated parking areas.

19.2. Right of Repurchase

The Club shall have the exclusive option to purchase any Lot offered for sale in the Community at the price and on the terms and conditions of any bona fide offer for such Lot. Evidence of any such bona fide offer shall be in writing and shall be submitted to the Club by the selling Owner for verification.

Each Owner shall notify the Club of its intent to sell his or her Lot with notice setting forth the certified terms and conditions of the sale, the full name and primary address of the prospective bona fide purchaser (as distinguished from agents and intermediaries). The Club shall have 30 days after receipt of such notice to exercise its option to purchase under this Section 19.2. If the Club does not execute a sales contract with Owner during the specified time period, the sell-

ing Owner may proceed with the conveyance of his or her Lot to the prospective bona fide purchaser. If any such sale is not consummated within six months after the date the offer is submitted to the Club, or if such sale is not made on the terms and price disclosed to the Club, the terms and limitations of this section shall again be imposed upon any sale by the Owner.

In the event the Club elects to purchase any such Lot, the transaction shall be consummated on the terms offered; provided, the Club shall have a minimum of 30 days after the delivery of notice to consummate the transaction.

19.3. Additional Covenants and Restrictions

The Club may record additional covenants or restrictions affecting any portion of the Community as set forth in Section 21.2; provided the Club shall obtain CRDC's written consent for any additional covenants and restrictions imposed on any Phase II Property. Any instrument recorded without the required consent shall be void and of no force and effect.

19.4. Exclusive Rights to Use Name of Development

No Person shall use the name "Colleton River Plantation," "Colleton River Plantation Club," or any derivative of such names or any logo or depiction associated with Colleton River Plantation in any printed or promotional material without the Club's prior written consent. However, Owners may use the name "Colleton River Plantation" or "Colleton River Plantation Club" in printed or promotional matter where such term is used solely to specify that particular property is located within Colleton River Plantation.

Additional Rights Reserved to CRDC

Each Owner, by acceptance of a deed to any property within the Community hereby acknowledges that "Colleton River Plantation," "Colleton River Plantation Club" and designs are service marks and trademarks of the Club. Each Owner agrees to refrain from misappropriating or infringing these service marks or trademarks.

19.5. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Colleton River Plantation in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Club and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

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**PART SIX: PROCEDURES FOR AND LIMITATIONS ON
CERTAIN ACTIONS**

Chapter 20

Changes in the Common Property

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Property. This chapter explains the procedures for dealing with matters such as changing use rights in Common Property, partition of the Common Property, and condemnation

20.1. Condemnation


If any part of the Common Property is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Club in lieu of and under threat of condemnation with such approval as may be required under Section 20.3, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Club to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Property on which improvements have been constructed, the Club shall restore or replace such improvements on the remaining land included in the Common Property, to the extent available, unless within 60 days after such taking Owners representing at least two-thirds (2/3) of the voting members in the Club shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply; or

(b) If the taking or conveyance does not involve any improvements on the Common Property, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same

manner as proceeds from the sale of Common Property under Section 20.3.

20.2. Partition

 Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Declaration, the Common Property shall remain undivided, and no Person shall bring any action to partition any portion of the Common Property without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 20.3.

20.3. Transfer or Dedication of Common Property

The Club may dedicate portions of the Common Property to Beaufort County, the City of Bluffton, the State of South Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Property to a security interest, or may transfer or convey Common Property upon the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of the total votes cast.


The proceeds from the sale or mortgaging of Common Property shall be an asset of the Club to be used as the Board determines. No conveyance or encumbrance of Common Property may deprive any Lot of rights of access or support.

Chapter 21

Termination and Amendment of Declaration

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which this Declaration may be amended to address such changes.

21.1. Term and Termination



There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Declaration shall be effective for a minimum of 40 years from the date it is recorded. After the initial 40-year period, this Declaration shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of President George W. Bush.

This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

21.2. Amendment

(a) *By the Club.* In addition to specific amendment rights granted elsewhere in this Declaration, the Club may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

(b) *By Owners.* Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of Owners representing two-thirds (2/3) of the total votes cast.

(c) *Validity and Effective Date.* No amendment may remove, revoke, or modify any right or privilege of CRDC or any Founder or Honorary Member without the written consent of CRDC or such Founder and Honorary Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 16 shall be met, if applicable.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the au-

Termination and Amendment of Declaration

thority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) *Exhibits.* Exhibit "A" is incorporated by this reference, and this chapter shall govern amendment of this exhibit. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits.

NOTES

EXHIBIT "A"

PHASE I PROPERTY

ALL that certain piece, parcel or tract of land situate, lying and being above mean high water, located in Bluffton Township, Beaufort County, State of South Carolina, containing approximately Six Hundred Thirty Five and Three-Tenths (635.3) acres as is more fully shown on a plat prepared for Chicago Bridge and Iron Company by R. D. Trogdon, Jr., S.C.R.L.S. #2712, said plat being dated January 11, 1973 and revised June 9, 1977, which plat was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 20 at Page 169 as revised in Plat Book 26 at Page 39. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plats of record.

ALL that certain piece, parcel or tract of land situate, lying and being above mean high water, located in Bluffton Township, Beaufort County, State of South Carolina, containing approximately 0.409 acres, as is more fully shown on a plat prepared for Colleton River Plantation by Boyce L. Young, S.C.R.L.S. #11079, dated January 9, 1991, which plat was recorded on May 6, 1992 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 43 at Page 102. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

ALL that certain piece, parcel or tract of land situate, lying and being above mean high water, located in Bluffton Township, Beaufort County, State of South Carolina, containing approximately 3.15 acres and shown as Parcel A, Parcel B and Parcel C on a Plat entitled "A Plat of Parcel A, Parcel B, and Parcel C, A Portion of Bluffton Township Parcel 1A" dated March 8, 1993, prepared by Boyce L. Young, S.C.R.L.S. #11079, which Plat was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on March 17, 1993 in Plat Book 45 at Page 192. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

ALL that certain piece, parcel or tract of land situate, lying and being in Bluffton Township, Beaufort County, State of South Carolina, containing approximately 55.432 acres, more or less, being shown and depicted as "BLOCK M" on a plat entitled "Boundary Plat of Block M, A Section of Colleton River Plantation," said plat being prepared by Surveying Consultants, Hilton Head Island, South Carolina, Terry G. Hatchell, S.C.R.L.S. #11059, said plat being dated November 13, 1995, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 54 at Page 122. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

ALL that certain piece, parcel or tract of land situate, lying and being in Bluffton Township, Beaufort County, State of South Carolina, containing approximately 10.989 acres, being shown and depicted on a plat entitled "A Plat of Parcel A, Parcel B, and Parcel C, A Section of Victoria Bluff, Beaufort County, South Carolina" said plat being dated March 17, 1993 and revised September 22, 1993, prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.R.L.S. #11079, said plat having been recorded on September 28, 1993 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 47 at Page 105.

PHASE II PROPERTY

ALL that certain piece, parcel or tract of land situate, lying and being in Bluffton Township, Beaufort County, State of South Carolina, containing 502.727 acres, more or less, being known as Foot Point and being more particularly shown and described as Area "A", Area "B", Area "C", Area "D", Area "E", and Area "F", on that plat entitled "A Boundary Plat of 502.727 Ac. Tract Being a Portion of the Cram Tract," prepared by Thomas & Hutton Engineering Co., Inc., dated April 30, 1997, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 63 at Page 86. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

ALL that certain piece, parcel or tract of land situate, lying and being in Bluffton Township, Beaufort County, State of South Carolina, shown and designated as 3.00 acres on a plat entitled "A Plat of 3.00 Ac., a Portion of the Cram Tract, Beaufort County, South Carolina" prepared by Thomas and Hutton Engineering Co., dated October 1, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 69 at Page 72. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

ALL that certain piece, parcel or tract of land situate, lying and being in Bluffton Township, Beaufort County, State of South Carolina, shown and designated as 2.02 acres and 75' buffer, 0.86 acres on a plat entitled "A Plat of 4.37 Ac., A Portion of the Cram Tract / Colleton River Plantation, Beaufort County, South Carolina," prepared by Thomas & Hutton Engineering Co., dated October 1, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 69 at Page 73. For a more detailed description as to courses, metes, bounds and distances of said parcel, reference is made to said plat of record.

Upon recording, please return to:
Wayne S. Hyatt
Hyatt & Stubblefield, P.C.
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1100
Atlanta, Georgia 30303

EXHIBIT "B"

Please cross-reference to:
Book 02324, Page 227

**BEAUFORT COUNTY SC- ROD
BK 02487 PGS 1036-1056
DATE: 12/08/2006 09:37:32 AM
INST # 2006097756 RCPT# 459335**

ABOVE SPACE FOR RECORDER'S USE

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

**THIRD AMENDED AND RESTATED
BY-LAWS OF
COLLETON RIVER PLANTATION CLUB, INC.**

This Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc. is made on the date set forth below by Colleton River Plantation Club, Inc., a South Carolina non-profit corporation (the "Club").

WITNESSETH:

WHEREAS, the By-Laws of Colleton River Plantation Club, Inc. (as amended, the "By-Laws") were recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as Exhibit "B" to the Declaration of Covenants, Conditions and Restrictions for Colleton River Plantation and Provisions for Colleton River Plantation Club, Inc. (as amended, the "Declaration") in Book 579 at Page 1850, *et seq.*; and

WHEREAS, the By-Laws have been amended several times, and most recently were amended by that certain Second Amended and Restated By-Laws of Colleton River Plantation Club, Inc. recorded on February 22, 2006 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 02324 at Pages 227 to 238; and

WHEREAS, the Club desires to amend and restate the By-Laws in their entirety; and

WHEREAS, pursuant to Article XIII, Section 1 of the By-Laws, the By-Laws may be amended at a regular or special meeting of the Club at which a quorum is present by a vote of a majority of the Owners (as such term is defined in the Declaration) voting in person or by proxy; and

WHEREAS, a majority of the Owners voted to approve the attached Third Amended and Restated By-Laws of Colleton River Plantation, Inc. at a meeting of the Club on September 30, 2006;

NOW THEREFORE, the By-Laws are hereby amended, restated, replaced, and superseded in their entirety by the following Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc.

THIS THIRD AMENDED AND RESTATED BY-LAWS OF COLLETON RIVER PLANTATION CLUB, INC. is made this 6th day of December, 2006, by Colleton River Plantation Club, Inc., by and through its President and Secretary, who hereby certify that the Third Amended and Restated By-Laws were approved by the required majority of Owners voting at a meeting of the membership held on September 30, 2006 following proper notice.

CLUB: COLLETON RIVER PLANTATION CLUB, INC., a South Carolina non-profit corporation

By: C Douglas Miller
Name: C Douglas Miller
Its: President
Attest: JAMES E. STORY
Name: JAMES E. STORY
Its: Secretary

IN THE PRESENCE OF

Sharon Boulware

Witness

Rosmarie Dodson

Witness

STATE OF SOUTH CAROLINA)

ACKNOWLEDGEMENT

COUNTY OF BEAUFORT)

Personally appeared before me Sharon Boulware, who, being duly sworn, says that (s)he saw C. Douglas Miller, President, and James E. Story, Secretary, of said Colleton River Plantation Club, Inc., sign and attest the same, and that (s)he, together with Rosmarie Dodson witnessed the execution and delivery thereof as the act and deed of the said corporation.

Sworn to me this 6th day of December, 2006

[Seal]

Rosmarie Dodson
Notary Public for South Carolina
My commission expires: 09.22.2011

**THIRD AMENDED AND RESTATED
BY-LAWS
OF
COLLETON RIVER PLANTATION CLUB, INC.**

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**THIRD AMENDED AND RESTATED
BY-LAWS
OF
COLLETON RIVER PLANTATION CLUB, INC.**

**Article 1
Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is Colleton River Plantation Club, Inc. (the "Club").

1.2. Principal Office.

The Club's principal office shall be located in Beaufort County, South Carolina. The Club may have such other offices, either within or outside of South Carolina, as the Board of Directors may determine or as the Club's affairs may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Amended and Restated Declaration for Colleton River Plantation, recorded in the public records of Beaufort County, South Carolina, as it may be amended (the "Declaration")

**Article 2
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

Membership provisions are more fully set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Club shall hold meetings at the Club's principal office or at such other suitable place the Board may designate.

2.3. Club Meetings.

(a) *Annual Meetings.* The Board shall schedule regular annual meetings of the Owners to occur within the last quarter of each calendar year, on such date and at such time and place as the Board shall determine. Annual meetings may be conducted electronically (*i.e.*, via the Internet, intranet, or teleconference) if, and to the extent, permitted by law.

(b) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a written petition of Owners representing at least 25% of the total votes in the Club describing the purpose or purposes for which the special meeting is to be held.

2.4. *Notice of Meetings.*

The President, the Secretary, or the officers or other persons calling a meeting of the Club shall deliver or cause to be delivered to each Owner entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Declaration, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. In addition, the Club shall give notice of a matter an Owner intends to raise at any annual, regular, or special meeting if: (i) requested to do so in writing by the Owner, and (ii) the request is received by the President or Secretary at least 10 days before the meeting notices are sent to the Owners.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 30 but not more than 60 days before the date of such meeting.

2.5. *Waiver of Notice.*

Waiver of notice of a Club meeting shall be deemed the equivalent of proper notice. Any Owner may waive, in writing, notice of any Club meeting, either before or after such meeting. Attendance at a meeting by an Owner or the Owner's appointed proxy shall be deemed a waiver by such Owner of notice of the time, date, and place thereof, unless the Owner or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6. *Adjournment of Meetings.*

If any Club meeting cannot be held because a quorum is not present, Owners representing a majority of the votes present at such meeting may adjourn the meeting to a time at least 10 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted that might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Owners of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Owners or their proxies to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.7. Proxies.

Owners may vote in person or by proxy, subject to the limitations of South Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing, shall identify the Lot for which it is given, shall be signed by the Owner or the Owner's duly authorized attorney-in-fact, and shall be dated and filed with the Club's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provided otherwise, a proxy shall be presumed to cover all votes which the Owner giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

A proxy is effective only for the specific meeting for which it was originally given, as such meeting lawfully may be adjourned and reconvened, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy is revocable at any time at the pleasure of the Owner who executes the proxy.

2.8. Quorum.

Except as these By-Laws or the Declaration otherwise provide, the presence of Owners, in person or by proxy, representing 33% of the total votes in the Club shall constitute a quorum at all Club meetings, and the vote of Owners representing a majority of the total eligible votes cast at such meetings shall constitute the action of the Owners. If the Owners cannot hold a meeting because a quorum is not present, the meeting shall be adjourned to a time not less than 10 nor more than 30 days from the date of the original meeting. At the reconvened meeting, the presence of 25% of the total votes in the Club shall constitute a quorum and the Owners at such meeting may transact, without further notice, any business they might have transacted at the original meeting.

2.9. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Club meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Club's books.

2.10. Action Without a Meeting.

Any action that may be taken by the Owners at any annual, regular, or special meeting may be taken without a meeting if the Club delivers a written ballot to every Owner entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Club in order to be counted. Approval by written ballot pursuant to this subsection is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present if a meeting authorizing the action were held and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Once delivered to the Club, a written ballot may not be revoked.

Article 3
Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Club's affairs. Each director shall have one vote. Directors shall be Owners or spouses of Owners, and members in good standing throughout their term.

3.2. Number of Directors.

The Board shall consist of seven to nine directors, as determined in the discretion of the Board. In the event the Board proposes, and the members approve, under Section 3.4(b) an additional one year term for a sitting President, the number of directors shall be increased by one for the year of the special term only.

3.3. Selection of Directors; Term of Office.

At each annual meeting, the Owners shall elect directors for a term of three years. No director shall serve more than two consecutive full terms. In the event a director is selected to fill a vacancy under Section 3.5, such director shall not serve more than seven consecutive years. Any such director shall be removed after serving seven years, and a successor shall be selected in accordance with Section 3.5.

Notwithstanding the foregoing, at any election which would implement a Board resolution to increase or decrease the size of the Board, the Board may designate one or more positions to be filled at such election to be elected for terms of less than three years when necessary to maintain the ratio of newly elected directors to directors then in office.

3.4. Nomination and Election Procedures.

(a) *Nomination of Candidates.* Within 90 days after each annual meeting, the Board of Directors shall appoint and announce a Nominating Committee consisting of a chairman, who shall be the immediate past President, and four or more eligible Owners. In case the immediate past President is unavailable, an outgoing Board member who is willing and available shall chair the Nominating Committee. The members of the Nominating Committee shall generally serve a term of two years, with terms staggered to provide approximately the same number of new members each year.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owners at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates having significant experience in Club affairs and governance, and familiarity with a large cross-section of possible candidates. The Nominating Committee shall submit its nominations for election to the Board no later than 60 days prior to the annual meeting and the Board shall advise the membership of those individuals nominated within 50 days prior to the annual meeting. Nominations may also be made by written petition signed by not less than 25 members in good standing. Such

nominations shall be submitted to the Board no later than 35 days prior to the annual meeting to enable the Board to consider all nominations and advise the membership of the nominations on one ballot. The Board shall send an official ballot to the membership within five days after the deadline for submission of petitions as set forth herein. All candidates shall have a reasonable opportunity to communicate their qualifications to the Owners and to solicit votes.

(b) *Additional One-Year Term Authorization.* In the event that the Board of Directors and the sitting President determine that such President should serve a second year as President, but such President's three-year term on the Board will expire before a second year as President may be served, there is hereby authorized a special one-year term as director to run concurrently with the second year as President. The Board may nominate the President for election by the members to this specially authorized one-year term. The special one-year term may be held only by a sitting President.

(c) *Election Procedures.* Each Owner, as provided in the Declaration, may cast all votes assigned to such Owner's Lots for each position to be filled. Elections to the Board shall be by written secret ballot. In the event of a tie vote, the Board shall call for a runoff election among the candidates receiving the same number of votes. Such election shall be held by mail, with ballots to be sent by first class mail to each Owner entitled to vote within 10 days after the meeting at which the original election was held. Cumulative voting is not permitted.

3.5. Removal of Directors and Vacancies.

Any director may be removed, with or without cause, at a meeting of the Owners called for the purpose of removing the director, and the meeting notice must state that the purpose or one of the purposes of the meeting is removal of the director. The director may be removed at such meeting by a majority vote of the members.

At any meeting at which a quorum is present, a majority of the directors may remove any director who has three consecutive unexcused absences from Board meetings, is more than 30 days delinquent in the payment of any assessment or other charge due the Club, or whose membership rights have been suspended.

In the event of the death, disability, or resignation of a director or removal of a director by the Board, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to fill such directorship shall elect a successor for the remainder of the term.

B. Meetings.

3.6. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.7. Special Meetings.

Special Board meetings shall be held when called by the President or Vice President or by any two directors.

3.8. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Club's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) The Board shall notify the Owners of each Board meeting by either: (i) posting notice of the meeting in a conspicuous place in Colleton River Plantation at least 48 hours in advance of the meeting; (ii) publication of a schedule of the Board meetings in a newspaper, newsletter, on a community intranet or website, or by similar means at least seven days prior to the meeting; or (iii) mailing notice of the meeting to each Owner.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.9. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.10. Quorum of Board.

At all Board meetings, the presence of two-thirds (2/3) of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the total number of directors shall constitute the Board's decision, unless South Carolina law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the total number of directors approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the origi-

nal meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.11. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Club's records.

3.12. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign a written consent, setting forth the action so taken in lieu of a meeting. Such consent shall have the same force and effect as a unanimous vote at a Board meeting.

C. Powers and Duties.

3.13. Powers.

The Board shall have the power to administer the Club's affairs, perform the Club's responsibilities, and exercise the Club's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Club's behalf all acts and things except those which the Governing Documents or South Carolina law require to be done and exercised exclusively by the membership generally.

3.14. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Annual Assessment;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Property in accordance with the Declaration or these By-Laws;
- (d) designating and hiring a General Manager to carry out the Club's rights;
- (e) opening bank accounts on the Club's behalf and designating the signatories required;
- (f) depositing all funds received on the Club's behalf in a bank depository which it shall approve and using such funds to operate the Club; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Property in accordance with the Governing Documents;

(h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Club; however, the Club's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Club;

(k) keeping a detailed accounting of the Club's receipts and expenditures;

(l) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, books, records, and financial statements of the Club as provided in Article 9, and current copies of the Governing Documents; and

(m) indemnifying a director, officer or committee member, or former director, officer or committee member of the Club to the extent such indemnity is required by South Carolina law, the Articles, or these By-Laws.

3.15. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Director may transact business with the Club or any Club contractor during his or her term as director or within two years after the term expires, except they may transact business with any supplier in the same manner and to the same extent as any other member in the ordinary course of business. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Article 4 Officers

4.1. Officers.

The Club's officers shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, and Treasurer shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President, Secretary, and Treasurer. The General Manager may serve as the Club's Secretary.

4.2. Election and Term of Office.

The Board shall elect the Club's officers at the first Board meeting following each annual meeting of the Club, to serve until their successors are elected. Any President may serve only two consecutive one-year terms.

4.3. Removal and Vacancies

The Board may remove any officer whenever in its judgment the Club's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties

The Club's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Club's chief executive officer. The Treasurer shall have primary responsibility for preparing the Club's budgets as provided for in the Declaration, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 5 Committees

The Board may appoint committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Except as otherwise provided by Board resolution or the Governing Documents, members of a committee may act by unanimous written consent in lieu of a meeting.

Article 6 Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under South Carolina law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under South Carolina law.

6.2. Liability.

(a) A director or officer shall not be personally liable to the Club, any Owner, or any other Person for any action taken or not taken as a director or officer if he or she has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not ultra vires;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Club's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Lot); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Club's affairs.

(c) The Club's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Club's behalf (except to the extent that such officers or directors may be acting solely as Owners).

6.3. Indemnification.

Except as required under the laws of the State of South Carolina, the Board shall be indemnified pursuant to Section 33-31-850, et seq. of the South Carolina Nonprofit Corporation Act, as the same may be amended, if the director conducted himself in good faith and reasonably believed, in the case of conduct in his official capacity with the corporation, that his conduct was in the best interests of the Club. In all other cases, a director will be indemnified if his conduct was at least not opposed to the best interests of the Club. In the case of a criminal proceeding, the director will be indemnified if he had no reasonable cause to believe his conduct was unlawful. Directors shall not be liable to the Owners or the Club for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith.

Subject to the limitations of South Carolina law, the Club shall indemnify every officer and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or committee member, except that the Club shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Club, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under South Carolina law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Club;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Club shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

It is intended that members of the Board and any General Manager, or managing agent or management firm, shall have no personal liability with respect to any contract made by them on behalf of the Club. It is understood and permissible and shall not be deemed to be self-dealing for the Club to contract with corporations owned or controlled, or affiliated with members of the Board. The indemnification of members of the Board by the Club shall be limited to assessments and other charges received from the Owners.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in South Carolina law, the Board may authorize the Club to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Club.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable South Carolina corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. The seminar may be live, video or audiotape, or in other format. The cost of any such seminar shall be a Common Expense.

The Board also may provide, or provide for, Owner and resident education designed to foster a better understanding of the Club's governance and operations, and leadership training classes designed to

educate Owners the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

Article 7 Management and Accounting

7.1. Compensation of Directors and Officers.

The Club shall not compensate directors and officers for acting as such. Nothing herein shall prohibit the Club from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Club in a capacity other than as a director or officer pursuant to a contract or agreement with the Club. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. General Manager.

The Board may employ for the Club a professional General Manager or other management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.14.

The General Manager or managing agent shall promptly disclose to the Board any financial or other interest that it may have in any firm providing goods or services to the Club.

7.3. Accounts and Reports.

(a) The Board shall maintain appropriate accounting records in accordance with Section 33-31-1601 of the South Carolina Nonprofit Corporation Act.

(b) An annual report consisting of at least the following shall be made available for Owners' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of cash flow for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

7.4. Borrowing.

The Club shall have the power to borrow money for any legal purpose, subject to the restrictions on capital projects and borrowing as set forth in the Declaration.

7.5. Right to Contract.

The Club shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, cooperatives, and other owners or residents within and outside Colleton River Plantation.

7.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Club agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

**Article 8
Enforcement Procedures**

The Club shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, and (c) the alleged violator shall have five days to cure such alleged violation. If the alleged violator does not cure such alleged violation within the five-day time period, or if the same violation occurs more than once in a twelve-month period, the Board or its delegate shall serve the alleged violator with another written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, and (c) the time and place of the hearing which shall be at least 10 days after receipt of the notice.

The alleged violator shall attend the hearing, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing before the scheduled date of the hearing, the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing

Any hearing under this Article 8 shall be held in executive session of the Board. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing (i.e., the Board's decision) and the sanction, if any, to be imposed.

8.3. Election of Remedies

All rights, remedies, and privileges granted to the Club and the Board, or any Owner, pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, or these By-Laws shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such

other and additional rights, remedies or privileges as may be granted to such other party by the Declaration, Articles of Incorporation, or these By-Laws or at law or in equity.

8.4. Statement of Charges.

The Board shall, for a reasonable fee, promptly provide any purchaser of any property or institutional lender (or any Owner) so requesting the same in writing, with a written statement of all unpaid charges due from such Owner and any bona fide third party purchaser's liability therefore with respect to a continuing lien on the Lot shall be limited to the amount set forth in the statement. The personal obligation of such Owner shall in no way be affected by the amount stated in any written statement to such third party purchaser or institutional lender.

**Article 9
Miscellaneous**

9.1. Fiscal Year.

The Club's fiscal year shall end on June 30 of each year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Club proceedings when not in conflict with South Carolina law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) *Inspection by Owners and Mortgagees.* The Board shall make available for inspection and copying, subject to the limitations set forth in S.C. Code Ann. Section 33-31-1602, by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Owner, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, the minutes of meetings of the Club, the Board, and committees, and any other records as required by South Carolina law. The Board shall provide for such inspection to take place within five business days after receipt of a written request for access at the Club's office or at such other place within Colleton River Plantation as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

- (i) the frequency and manner of inspection;
- (ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Club books, records, and documents and the physical properties owned or controlled by the Club. A director's right of inspection includes the right to make a copy of relevant documents at the Club's expense.

9.5. Notices.

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided in the Declaration or these By-Laws or by South Carolina law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) *Delivery Address.* Notices shall be delivered or sent to the intended recipient as follows:

(i) if to an Owner, at the address, telephone facsimile number, or e-mail address which the Owner has designated with the Secretary or, if no such address has been designated, at the address of the Lot of such Owner; or

(ii) if to the Club, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Club or its managing agent, or at such other address as the Club shall designate by notice in writing to the Owners pursuant to this Section.

(c) *Effective Date.* Notice sent in accordance with Sections 9.5 (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States first class mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if sent by United States registered or certified mail, return receipt requested, correctly addressed, on the date shown on the return receipt signed by or on behalf of the addressee; or

(iii) if delivered personally or by private carrier, or sent by telephone facsimile or electronic mail, when received.

9.6. Amendment.

(a) *By Owners.* These By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of those voting at a regular or special meeting of Owners at which a quorum is present. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) *Validity and Effective Date of Amendments.* Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be pre-

sumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

561701 / New Charter/Bylaws-Amended & Restated-110906-jlb

WITNESS Grantor's Hands and Seals this 23rd day of July,

2010.

SIGNED, SEALED and DELIVERED
in the Presence of:

(2) *Audrey Perich*
(first witness)

(1) *[Signature]*
Edward K. Elanjian

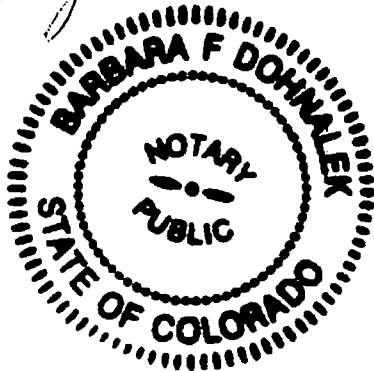
(3) *Barbara F. Dohrnalek*
(second witness/Notary)

~~STATE OF COLORADO~~
~~SOUTH CAROLINA~~)
~~DOUGLAS~~)
COUNTY OF ~~BEAUFORT~~)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the individual(s) executing the within document personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

(4) Witness my hand and (where an official seal is required by law) official seal this 23 day of July, 2010.



(5) *Barbara F. Dohrnalek*
Notary Public for ~~South Carolina~~

My commission expires: 11/7/2012

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina and being shown and described as **Lot 173, Block "C" of Phase 2-A, Colleton River Plantation**, on a plat thereof entitled "A Subdivision Plat of Lots 89-93 and 163-176, Being a Portion of Block "C" of Phase 2-A, Colleton River Plantation Single Family Homesites, Beaufort County, South Carolina", which plat is dated February 23, 2000, prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, SCRLS No. 11079, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 73 at Page 111. For a more detailed description as to the courses and distances, metes and bounds of the above mentioned lots, reference is had to said plat of record.

SAID PROPERTY is further conveyed subject to all other applicable rights, obligations, easements, restrictions and reservations as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

This is the same property conveyed to Grantor herein by Deed from Two Rivers Development Company, LLC, recorded in the Register Of Deeds Office for Beaufort County, South Carolina on April 25, 2000 in Book 1283 at Page 2338.

The within Deed Was prepared by William M. Foiles, Esquire, P. O Drawer 23797, Hilton Head Island, SC. 29925.

Beaufort County TMS: R600 017 000 0039 0000

IN THE HAMILTON COUNTY SUPERIOR III COURT
STATE OF INDIANA

FILED

AUG - 2 2012

Debra R. ...
CLERK OF THE
HAMILTON SUPERIOR COURT

IN RE THE MARRIAGE OF:)
)
JENNIFER L. HOLMES,)
Petitioner,)
)
and)
)
CHARLES B. HOLMES,)
Respondent.)

CAUSE NO. 29D03-1106-DR-6140

DISSOLUTION SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 25th day of July, 2012, by and between Petitioner, Jennifer L. Holmes ("Wife"), and Respondent, Charles B. Holmes ("Husband").

WITNESSETH THAT:

WHEREAS, the parties hereto are Husband and Wife; and

WHEREAS, there is pending in the Superior III Court of Hamilton County, Indiana, a Verified Petition for Dissolution of Marriage filed by the Husband and denominated as Cause Number 29D03-1106-DR-6140; and

WHEREAS, the parties, in order to arrive at an amicable settlement and understanding have agreed as to their respective property rights in connection with any and all issues whatsoever and any and all rights and claims which either of them may have against the other, in the event a Decree of Dissolution is entered in the above proceedings, said mutual settlement agreement being subject to the approval of the Court which shall hear the action for dissolution; and

WHEREAS, the parties are the parents of one (1) child, namely Benjamin M. Holmes ("Ben"), born 12/22/98, and

WHEREAS, Wife is not pregnant, and

WHEREAS, Husband and Wife were married on the 4th day of December 1993, and Husband and Wife having been residents of Marion County, Indiana, for more than six (6) months prior to the filing of the Petition herein and the parties having agreed to waive the matter of venue in order to file their action in Hamilton County; and

WHEREAS, Husband and Wife separated on or about the 24th day of June 2011, and ceased living together as Husband and Wife; and

WHEREAS, certain irreconcilable differences have arisen between Husband and Wife.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed as follows:

ARTICLE I

Preliminary Matters

I.I. EFFECTIVE DATE. This Agreement shall be binding upon the parties and their respective legal representatives, successors and assigns immediately following the granting of the Decree in the dissolution proceeding above stated, provided the provisions of this Agreement are approved by the Court in which such proceeding is pending. In the absence of the granting of the decree or the approval of the Court, the provisions of this Agreement shall have no effect.

1.2. JURISDICTION AND VENUE. The parties agree that the Superior Court III of Hamilton County, Indiana is the Court of proper Jurisdiction and is the Court of proper venue to hear their cause by virtue of the parties' waiver of venue.

1.3. ISSUES SETTLED. The subject matter of this Agreement is the settlement of the respective rights of the Husband and Wife to the marital property, both real and personal now in the name or possession of either or both of them, and the consideration to be paid by the parties in complete discharge and settlement of the property rights of the parties, and to provide for the custody, visitation, maintenance, education, and medical care of the parties' unemancipated children.

ARTICLE II

Unemancipated Children

2.1. CUSTODY. Husband and Wife shall have joint legal custody of the minor child, Ben, and Wife shall have primary physical custody subject to Husband's right to reasonable Parenting Time. Joint legal custody shall be defined as the right of both parents to participate in parental decision-making to the extent reasonably possible except for routine and emergency decisions and the right of each parent, acting alone, to make routine and emergency decisions when the children are with that parent. The parties acknowledge, however, that the custody, parenting time and child support agreements set forth herein are subject to change in the event either party relocates.

2.2. PARENTING TIME. Reasonable parenting time shall be defined as any upon which the parties agree. In the event they do not agree, Husband shall be entitled to alternating weekends, one overnight visit during each week, and Holidays as set forth in the Indiana Parenting Time Guidelines ("IPTG"). Further, acknowledging that Ben has activities and trips scheduled during the summer outside of Indianapolis that would prevent either parent from exercising parenting time with him, Father shall be entitled to one-half of Ben's available time in Indianapolis during the summer and shall arrange such parenting time directly with Ben. Further, the parties shall comply with the General Rules applicable to Parenting Time as set forth in the IPTG.

2.3. CHILD SUPPORT. As referenced by the Child Support Obligation Worksheet attached hereto as Exhibit A, the support amount recommended by the Indiana Child Support Rules and Guidelines is not adequate for the support of the parties' minor child. Therefore, in lieu of either parent paying support to the other, Husband and Wife shall share Ben's school and clothing expenses on a pro-rata basis, with Mother paying 64% and Father 36%. However, the parties agree that Father's share of such expenses shall not exceed \$3,000.00 per year.

2.4. MEDICAL. Wife shall maintain the existing level of health and dental insurance on Ben. For the same reasons specified Article 2.3 above, the parties shall not comply with the 6% Rule as set forth in the Indiana Child Support Rules and Guidelines. Rather, they shall equally share Ben's uninsured medical expenses, after application of any applicable funds for uninsured medical expenses that are available to Mother as a benefit of her employment with Eli

Lilly and Co.. "Medical expenses" shall be defined as any expense related to medical, dental, orthodontic, optical, psychological or pharmaceutical care but not over-the-counter remedies. Further, the parties agree that, except for Ben's current psychiatrist and in the absence of an emergency or a written agreement to the contrary, the parties shall use "in network" providers. The uninsured costs for a medical provider outside the network, except as set forth herein, shall be the sole responsibility of the person choosing to use such provider

2.5. EXTRACURRICULAR AND EXTRAORDINARY EXPENSES.

Husband and Wife shall share equally all agreed-upon extracurricular and extraordinary expenses incurred on Ben's behalf.

2.6. COLLEGE EXPENSES. After Ben first applies his UTMA funds, available scholarships or grants, the maximum amount of student loans available to him, and all available earned income or gifts, Husband and Wife shall contribute on a pro-rata basis to Ben's college expenses, which shall be limited to the cost of attending a state-sponsored school (tuition, room and board, required fees and books). The parties' responsibilities to contribute as set forth herein shall not extend beyond four (4) years after Ben graduates from high school, and only under the following circumstances:

- a. Ben must be a full-time student.
- b. Ben must maintain a "C" average per semester.
- c. Ben must reside in a campus dorm unless his parents consent to other living arrangements and expenses.

2.7. LIFE INSURANCE. For as long as a support obligation exists pursuant to this Agreement, Husband shall maintain a life insurance policy with a face value of \$500,000.00, with Ben, or a Trustee named on his behalf, listed as the sole beneficiary thereof. For as long as a support obligation exists pursuant to this Agreement, Wife shall maintain a life insurance policy with a face value of \$500,000.00, with Ben, or a Trust named on his behalf, listed as the sole beneficiary thereof. Husband and Wife shall show proof that the insurance required herein is in full force and effect each year on February 15.

2.8. TAX EXEMPTIONS. For as long as Husband's financial obligations pursuant to this Agreement are 95% current on December 31 of the taxable year, he shall claim Ben as a tax exemption in even numbered years. Wife shall provide Husband an executed Tax Form 8332 by February 15 of each subsequent year in which Husband qualifies to claim Ben as a tax exemption. Wife shall claim the exemption in any year in which Husband does not qualify to take the exemption pursuant to this provision. However, in the event either party will not benefit from taking the exemption for Ben in a particular year, that party shall release the right to claim him in that year. Wife shall inform Husband by January 15 if she believes his support obligation was not current on December 31 of the previous year. Husband shall thereafter have ten (10) days in which to either cure the arrearage or prove that none exists.

2.9. CHILD'S PROPERTY. Ben shall be the sole beneficiary of the funds located in UTMA Account #3749, UTMA Account #4731, and UTMA Account #5601. Wife shall be the custodian of such accounts and on a quarterly basis

shall provide Husband with evidence of the status of each. The parties further agree that no funds will be withdrawn from Ben's accounts without the agreement of both parties.

ARTICLE III

Personal Property

3.I. UNTITLED PERSONAL PROPERTY. Husband and Wife shall each retain their personal property including clothing and personal items, and any other untitled tangible property currently in his or her possession with the exception of their jewelry. Husband shall keep his Rolex watches, which he values at Seven Thousand Dollars (\$7,000.00). Wife shall keep her individual jewelry that has a fair market value of up to Seven Thousand Dollars (\$7,000.00). Wife's jewelry that is valued at more than \$7,000.00 shall be sold at fair market value and the proceeds applied to the Huntington LOC #2200. In the event the parties cannot agree on values of the jewelry, Husband and Wife shall have their jewelry appraised and each shall keep an equivalent amount. Any jewelry that cannot be offset with jewelry of an equivalent amount shall be sold and the proceeds applied to the Huntington LOC #2200.

Husband and Wife shall share household goods and furnishings on an approximate equal basis. In the event they are unable to agree on the division of property, Wife shall select the first item, Husband shall select the second item of an approximate equal value, Wife shall select the third item, Husband shall select the fourth item of an approximate equal value and so on until all property has

been assigned and divided. Husband shall remove any property assigned to him within thirty (30) days of the date of the Decree.

3.2. WIFE'S TITLED PERSONAL PROPERTY. Wife shall become the sole owner of the 2005 Lexus, which is free and clear of any debt. Wife shall be responsible for all expenses, insurance, taxes and repairs for said vehicle.

3.3. HUSBAND'S TITLED PERSONAL PROPERTY. Husband shall become the sole owner of the 1996 Jaguar, which is free and clear of any debt, and shall have sole possession of the leased 2010 Lexus 250, subject to the lease thereon, from which he shall indemnify and hold Wife harmless. Husband shall be responsible for all expenses, insurance, taxes and repairs for said vehicle.

ARTICLE IV

4.1. HUSBAND'S INTANGIBLE PERSONAL PROPERTY. Husband shall retain as his sole and separate property any savings or checking accounts, life insurance policies, or other accounts standing in his own name and not otherwise assigned herein, including but not limited to his term life insurance policy, his Huntington Checking Account #8461, his Huntington Savings Account #0192, his Merrill Lynch IRA #3750, and his Merrill Lynch Roth IRA #3751.

Further, Husband shall receive 52.7% of the jointly held Merrill Lynch BBA Account #3753 as of June 24, 2011, plus or minus any gains or losses thereon through the date of distribution. Husband shall receive such funds within ten (10)

days of the date of the Decree and shall simultaneously cause his name to be removed from the account.

Further, Husband shall receive 50% of Wife's Lilly Pension as of June 24, 2011, and 45.5% of the value of Wife's Lilly 401(k) as of June 24, 2011, plus or minus any gains or losses thereon through the date of distribution. Husband's share of Wife's pension and 401(k) shall be transferred to him pursuant to Qualified Domestic Relations Orders, which shall be drafted by Husband's attorney. Husband and Wife shall share equally any administrative costs associated with the transfer of funds from Wife's Pension and 401(k) to Husband. The Hamilton County Superior Court III shall retain jurisdiction over these assets until they have been transferred pursuant to this provision.

The funds in Wife's Huntington #2066 Account shall be used to pay all attorney fees for both parties. The balance of the funds in the account, if any, after the payment of attorneys' fees and expenses will be equally divided by the parties. In the event that the amount of the combined attorneys fees exceeds the amount of funds available, then both parties shall be equally responsible for the balance of both parties attorneys fees.

The intent here is that the total amount of attorneys fees and expenses in this matter incurred by either party will be shared equally by both parties. The parties shall first use the funds in this Huntington Account #2066 to pay these attorneys fees and then shall pay and remaining balance from individual funds.

4.2. WIFE'S INTANGIBLE PERSONAL PROPERTY. Wife shall

retain as her sole and separate property any savings or checking accounts, life insurance policies, or other accounts standing in her own name and not otherwise assigned herein, including but not limited to her term life insurance, her Huntington Account #8285, her Huntington Account #3335, her Huntington Checking Account #4036, her Merrill Lynch #7151 Portfolio, and her Merrill Lynch Roth IRA #3748.

Further, Wife shall receive 47.3% of the jointly-held Merrill Lynch BBA Account #3753 as of June 24, 2011, plus or minus any gains or losses thereon through the date of distribution, which shall occur not later than ten (10) days after the date of the Decree. Wife shall become the sole owner of this account once the transfer of funds has occurred.

Further, Wife shall receive 50% of her Lilly Pension as of June 24, 2011, and 54.5% of the value of her Lilly 401(k) as of June 24, 2011, plus or minus any gains or losses thereon through the date of distribution.

Further, Wife shall receive 50% of her Huntington #2066 Account after all attorney fees for both parties have been paid plus one-half of the funds Husband received as an advance distribution that were not used for his attorney fees.

ARTICLE V

Real Estate

5.1. MARITAL RESIDENCE. Husband and Wife are owners of real estate located at 4145 East 71st Street, Indianapolis, Indiana (the "Marital Residence").

Wife may have sole possession of the Marital Residence, including the garage, until such time as the Marital Residence is sold, until the Fall after Ben graduates from high school, or until she wishes to vacate the home, whichever is first to occur. If the home has not been sold by the time Wife vacates the marital residence, Husband shall have the option of residing therein. In the event neither party resides in the home, they shall share all expenses thereon equally.

Until the Marital Residence is sold, the parties agree as follows:

- a. Whichever party occupies the home (the "Occupant") shall be solely responsible for and shall indemnify and hold the other (the "Non-occupant") harmless from the monthly loan payments on the Huntington Line of Credit ("LOC"). The current monthly loan payment is \$1400. Further, in the event the monthly loan payment decreases over time, the Occupant shall continue to pay \$1400.00 per month towards the LOC and the principal balance.
- b. Neither party shall increase the debt on the LOC.
- c. The Occupant shall be solely responsible for the utilities associated with the marital residence.
- d. The Occupant shall pay the first \$500.00 of any agreed-upon repair to the Marital Residence; the parties shall share equally any agreed-upon repair cost over and above the first \$500.00.
- e. The Occupant shall pay the real estate property taxes and the homeowner's insurance, and shall be entitled to claim any tax credits, deductions or benefits associated with same. The parties shall equally share the expense of the American Home Shield Warranty.
- f. The parties shall list the Marital Residence for sale as soon as the principal balance on the LOC has been reduced enough to make a sale possible without the eventual sale causing either party to owe any additional funds at closing.
- g. Upon sale of the Marital Residence, all net proceeds from the sale shall be shared equally by the parties.

5.2 RENTAL PROPERTIES. Husband and Wife own various rental properties, which are individually described herein, and all of which shall be listed for sale as set forth herein..

Until the properties are sold, Husband and Wife shall retain an equal ownership interest in each property. Husband shall continue to manage the rental properties (collecting rents, renting the properties, managing repairs, etc.). Husband shall apply monthly rental income to pay mortgage debt associated with the properties and other costs associated therewith (rental expenses, property taxes, insurance, association fees, repairs and management fees and a reserve fund for unanticipated expenses).

The parties shall agree upon any extraordinary expenses for the rental properties before the payment of those expenses. . Excess monthly net profits shall be shared equally by the parties. In the event that there are insufficient funds in the reserve account to be applied to an expense, then the parties shall be responsible for and shall equally share that expense. Husband shall provide Wife with an accounting of the income and expenses and appropriate receipts and records of deposit upon her request. Husband and Wife shall be entitled to equally claim one half of the income and one half of the expenses for each property on their individual income tax returns until such time as the each property is sold. If there are any capital gains when a property is sold, each party shall claim one half of the capital gains on their individual income tax returns for the year in which the property is sold. If there is a loss on the sale of the property, each party shall be entitled to claim one half of the loss in the year in which the property is sold.

Wife shall manage the sale of the properties to the extent it does not require her to perform such duties during normal work hours.

The parties shall select a mutually agreed-upon Realtor. The parties agree that they will make their best efforts to make all reasonable repairs and improvements to the rental property as recommended by their realtor in order to maximize a sales price and a more expedient sale of the property, The parties shall use cash flow from the rental properties to fund these improvements or repairs to the extent that it is available

In the event the parties cannot agree upon a listing price, they shall obtain recommendations from three agreed-upon realtors and shall use the middle price. The parties shall agree on a final sales price and neither party shall unreasonably withhold such agreement. Net proceeds from sale of each rental property shall be applied to the LOC associated with the Marital Residence. If net proceeds exceed the balance on the LOC, such proceeds shall be shared equally by Husband and Wife. Husband and Wife shall share equally any capital gains taxes that may result from sale of the rental properties.

The individual rental properties subject to the above and the debt obligation on each rental property is as follows:

- a. The Breckenridge Property located at 43 Snowflake Drive E 22, Breckenridge, CO 80424, which is secured by a mortgage with GMAC..
- b. The Grand Timber Lodge Timeshare located at Grand Timber Lodge, Breckenridge Colorado 80424, which is free and clear of any debt.
- c. The Prairie Hollow Property, located at Woods Drive, Ingalls, Indiana, which is secured by a mortgage with Huntington Bank.
- d. The Alamosa Property, located at 7922 Alamosa, Indianapolis, Indiana, which is free and clear of any debt.

5.3 South Carolina Property. Husband shall have all rights and title to the following properties located in South Carolina, and more fully described herein, free and clear of any claim of Wife. Wife shall execute a quit claim deed for each property in favor of Husband and in exchange for same, Husband shall set over to Wife Thirty Thousand Seven Hundred Fifty Dollars (\$30,750) as property settlement payment, which payment shall come from his share of the balance of the Merrill Lynch account #3753 as set forth above. Husband shall be responsible for all mortgage debt, expenses and taxes associated with the these South Carolina properties and shall hold Wife harmless there from. Husband shall individually be responsible for the payment of the Homeowner Association Facilities Fees for the Colleton River Property from his personal funds until such time as there is a transfer of title. The parties have an agreement for an exchange of the use of a vacation home for the use of the facilities at the Colleton River property. Husband shall be entitled to full use of the vacation home under that agreement.

a.. The Colleton River Property located at 112 Inverness, Bluffton, South Carolina, which is free and clear of any debt, and

b. The Old South Property located at Unit G, 32 Old South, Bluffton, South Carolina,, which is secured by a mortgage with Atlantic Community Bank.

ARTICLE VI

Business Enterprises

6.1. HUSBAND'S BUSINESS. Husband shall become the sole owner of any interest he may have in his sole proprietorship, such business being that of

giving tennis lessons to private individuals. Further, Husband shall be solely responsible for and shall indemnify and hold Wife harmless from any debt or liability associated with the business described herein

ARTICLE VI

Debt

6.1. INDIVIDUAL DEBT OBLIGATIONS. The parties represent that no marital debt exists that has not been assigned in this Agreement. In the event a marital debt exists that is not referenced in this Agreement, the party responsible for creating the debt shall be solely responsible for and shall indemnify and hold the other party harmless therefrom. Further, each party shall be responsible for and shall indemnify and hold the other harmless on any obligation created by him or her after the filing of the Petition.

6.4. ATTORNEY FEES. Husband and Wife will be equally responsible for the total combined attorneys fees and expenses incurred in this matter. However, the parties acknowledge that they have paid some or all of their attorney fees from marital assets that existed on the date of filing. Husband and Wife shall continue to use such funds from the Huntington Account for the payment of attorneys fees until they are depleted. In the event that the funds from this Huntington Account #2006 are depleted, the parties will then reconcile the outstanding attorney fees and each will reimburse the other for his or her share of attorney fees within 10 days of receiving proof that the other party has paid such fees (or owes them, in which case the check would be made out to the

attorney) so that each party will have paid an equal share of the combined attorneys fees and expenses.

ARTICLE VII

Miscellaneous Matters

7.1. TOTAL SETTLEMENT. Husband and Wife, in consideration of the execution of this mutual agreement, after full payment of this settlement, shall require nothing whatsoever of the other. It is understood that the Husband and the Wife release each other from all claims except those embodied in this Agreement.

7.2. DISCLOSURE. Wife and Husband acknowledge that they have reached this Agreement through negotiation with each party represented by counsel. Husband and Wife acknowledge they are aware of the presumption in favor of a 50/50 division of the marital estate and the parties believe this to be fair and equitable agreement and not obtained under duress.

7.3. MODIFICATION AND WAIVER. A modification or waiver of any of the provisions of this Settlement Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. Failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

7.4. INDEMNIFICATION. In the event either party fails to comply with the provisions of this agreement, each agrees to indemnify and hold the other

harmless from any and all costs resulting from such failure to comply, including but not limited to attorney fees and court costs.

7.5. ADDITIONAL DOCUMENTS. The parties each agree to execute any additional documents as may be necessary to carry out the terms and intent of this Agreement.

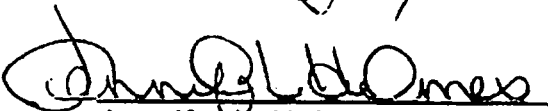
7.6. ENTIRE AGREEMENT. Each party acknowledges that no representation of any kind has been made to him or her as an inducement to enter into this Settlement Agreement, other than the representations set forth herein, and that this Agreement constitutes all of the terms of the agreement between the parties.

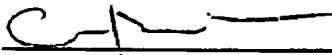
7.7. BINDING. The provisions of this Agreement shall be binding upon the respective heirs, next of kin, executors and administrators of the parties.

7.8 INCAPACITY OF SPOUSE. Neither Husband nor Wife is physically or mentally incapacitated.

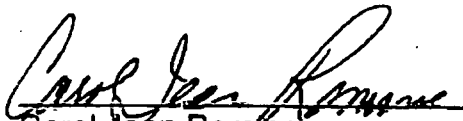
IN WITNESS WHEREOF, the parties have hereunto set their names this


25th day of July, 2012.


Jennifer L. Holmes,
Petitioner/Wife

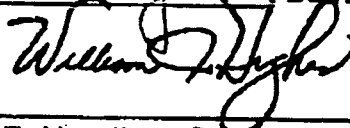

Charles B. Holmes,
Respondent/Husband

Respectfully Submitted by:


Carol Jean Romine
HOLT FLECK & ROMINE LLP
Attorney for Wife


Jan K. Keefer
BINGHAM GREENEBAUM DOLL LLP
Attorney for Husband

SO APPROVED this 1 day of Aug, 2012:



JUDGE, Hamilton Superior III Court

DISTRIBUTION:

Carol Jean Romine
HOLT FLECK & ROMINE LLP
By Courthouse Mail

Jan K. Keefer
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46240

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE
(Limited Warranty)

KNOW ALL MEN BY THESE PRESENTS, THAT Jennifer L. Holmes ("Grantor") in the State aforesaid transferred pursuant to the Divorce and Dissolution Settlement Agreement approved by the Judge of the Hamilton County Superior III Court, in the State of Indiana on August 1, 2012, to the said Grantor in hand paid at and before the sealing of these presents by **The Estate of Charles B. Holmes ("Grantee")** in the state aforesaid, the receipt of whereof is hereby acknowledged, has granted, bargained, sold and released subject to the easements, restrictions, reservations and conditions set forth in the legal description below, and by these presents does grant, bargain, sell and release subject to the easements, restrictions, reservations and conditions set forth in the legal description below unto the said Grantee, his successors and assigns, the real estate (the "Premises") described as follows, to wit:

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina, and being shown and described as Lot 173, Block C, of Phase 2-A, Colleton River Plantation, on a plat thereof entitled "A Subdivision Plat of Lots 89-93 and 163-176, being a portion of Block "C" of Phase 2-1, Colleton River Plantation, Single Family Homesites, Beaufort County, South Carolina", said plat being dated February 23, 2000, prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, SCRLS #11079, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 73 at Page 111. For a more detailed description as to the courses and distances, metes and bounds of the above mentioned lot, reference is had to said plat of record.

Said property is conveyed subject to all other applicable rights, obligations, easements, restrictions and reservations of record.

This being the same property conveyed to Charles B. Holmes and Jennifer L. Holmes by Deed of Edward K. Etanjian, said Deed recorded August 2, 2010, in said Register's Office, in Book 2978 at Page 72.

The within Title to Real Estate was prepared in the Law Office of Finger, Melnick & Brooks, P.A., 35 Hospital Center Common, Suite 200, Hilton Head Island, South Carolina 29926.

Tax Map Reference: R600-017-000-0039-0000

Grantee's Address: c/o Anne Poindexter, Esq.
Altman, Poindexter & Wyatt, LLC
75 Executive Drive, Suite G
Carmel, IN 46032

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging, or in anywise incident or appertaining, including, but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant to the Premises.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto the said Grantee, his successors and assigns, forever.

AND, SUBJECT TO the matters set forth above, Grantor does hereby bind Grantor and Grantor's successors, assigns, executors, administrators and other lawful representatives, to warrant and forever defend all and singular, the Premises unto Grantee, and Grantee's successors and assigns, against Grantor and Grantor's successors and assigns, and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, Grantor has caused this Title to Real Estate to be executed under seal this 21 day of February 2017.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**

(1) Sara Keedy
(Signature of First Witness)

(1) Jennifer L. Holmes J.S.
Jennifer L. Holmes

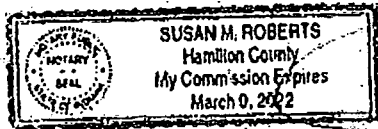
(1) [Signature]
(Signature of Second Witness or Notary Public)

STATE OF WV)
COUNTY OF Marion)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do certify that the within named Grantor personally appeared before me, and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 21 day of February 2017.



(1) [Signature]
(Signature of Notary Public and Seal)

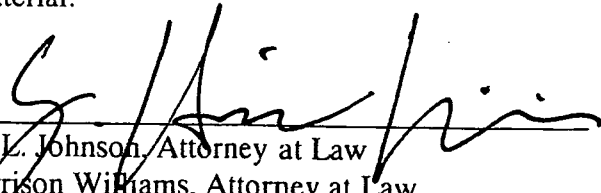
SUSAN M. ROBERTS
(Print or Type Name of Notary Public)

Notary Public for Hamilton Co WV
My Commission Expires 03-01-2022

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

October 2, 2018



Barry L. Johnson, Attorney at Law
S. Harrison Williams, Attorney at Law
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(843) 815-7121
Barry@jd-pa.com
Harrison@jd-pa.com

*Attorneys for Appellant Colleton River
Plantation Club, Inc.*

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

Edgar W. Dickson, Circuit Court Judge

Case No. 2018-000826

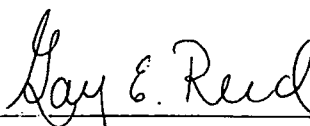
Colleton River Plantation Club, Inc.....Appellant,

v.

Jennifer L. Holmes.....Respondent.

PROOF OF SERVICE

I certify that I have served the RECORD ON APPEAL on Jennifer L. Holmes, by depositing a copy of it in the United States Mail, postage prepaid, on October 3, 2018, addressed to her attorney of record, Terry A. Finger, Post Office Box 24005, Hilton Head Island, South Carolina 29225. No other parties have filed a brief, besides Appellant.



Gay E. Reed, Legal Assistant
JOHNSON & DAVIS, PA
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10 Pinckney Colony Road
Bluffton, SC 29909
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barry@jd-pa.com

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OCT 22 2018
SC Court of Appeals