

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Court of Common Pleas
Fourteenth Judicial Circuit

Edgar W. Dickson, Circuit Court Judge
Case No. 2018-000-707

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SC Court of Appeals

Marc Haas, Susan Haas, Rob Star and Melissa Starr, Appellants,

v,

TI Oldfield Operations, LLC, SF Operations, LLC, Oldfield Club, Oldfield Community Association, Oldfield Club Board of Directors and John Does 1-10, Respondents,

And

TI Oldfield Operations, LLC and SF Operations, LLC, Third Party Plaintiffs,

v,

Oldfield, LLC and Crescent Communities, LLC f/k/a/ Crescent Resources, LLC, Third Party Defendants.

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State of South Carolina)
County of Beaufort)

In The Court of Common Pleas
Fourteenth Judicial Circuit
2016-CP-07-0602

Marc Haas, Susan Haas, Rob Star,)
and Melissa Star,)

Plaintiffs,)

vs.)

TI Oldfield Operations, LLC; SF)
Operations, LLC; Oldfield Club;)
Oldfield Community Association;)
Oldfield Club Board of Directors)
and John Does 1-10,)

Defendants.)

Transcript of Record

TI Oldfield Operations, LLC, and)
SF Operations, LLC,)

Third-Party Plaintiffs,)

vs.)

Oldfield, LLC; Crescent)
Communities, LLC; Resources,)
LLC, f/k/a Crescent Resources,)

Third-Party Defendants.)

September 19, 2017
Beaufort, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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No exhibits introduced.

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THE COURT: This is *Haas vs. Oldfield*?

MR. FORD: Yes, Your Honor.

THE COURT: And this is a number of motions for summary judgment?

MR. FORD: Yes, Your Honor.

THE COURT: Okay. Who filed first?

MR. FORD: Mr. Abney did. Of the various defendants, we've kind of agreed to divide up the issues just to kind of keep it lively. Rather than me going through them all and then them repeating it, I'm going to take a couple.

THE COURT: Okay.

MR. FORD: Ms. Deters's going, too. So, I'm -- I think we agree, and I'm sure Ms. Savage agrees, that they apply to all of us equally. So, we're just going to argue them in that method if that's all right.

THE COURT: Is it okay to do it that way?

MS. SAVAGE: Well, I have a preliminary request for relief. We were -- while the original motions, as they call them, summary judgement motions were served back in July and filed in July, they were two-page documents basically with just conclusory legal bases for summary judgment. There was no supporting memorandum of law or affidavits or any other documents filed at that time. I filed my client's objections on Wednesday evening, and on Thursday I got hit with all of these memos of law, the

1 supporting documents and affidavits, et cetera, from, from
2 the movants on the summary judgment motion. So, we've not
3 had an opportunity reply to what basically is the
4 substantive aspect of their -- of the papers filed.

5 Now, under Federal Rule of Procedure 15 -- federal.
6 South Carolina, sorry. I'm in federal court a lot. South
7 Carolina Rule of Civil Procedure 15, the rule provides that
8 a -- an opposing party on a summary judgment motion -- or,
9 Rule 56, rather, I'm sorry. We also have a motion to amend
10 here today. South Carolina Rule 56 specifically states
11 that an opposing party is supposed to get ten days notice,
12 of the motion for summary judgment, and only the opposing
13 party is allowed, is permitted to file papers within
14 forty-eight hours of the hearing. So, we ask this court to
15 reject their filings that were filed on Thursday.

16 MR. FORD: With all due respect, Ms. Savage is new to
17 South Carolina. In fact, is relatively new. I can respond
18 if Your Honor wants me to, but I think Your Honor knows the
19 lay of the land here.

20 THE COURT: You know -- and you're Ms. Savage?

21 MS. SAVAGE: I am.

22 THE COURT: Okay. Hey, Ms. Savage. Ms. Savage, in
23 state court, I get stuff like this all the time.

24 MS. SAVAGE: That doesn't mean it complies with the
25 prevailing rules, and it doesn't mean they provided us with

1 the mandated notice.

2 THE COURT: Ma'am, I do this. This is the way we do
3 it all the time. If you want to file a memo afterwards,
4 you can do that. I accept that. I, I -- you know, okay,
5 and then I would allow them to respond, okay? How long
6 do ---

7 MS. SAVAGE: They've already responded to my objection
8 in their papers that they filed. So, now they're going to
9 be able to file that first paper. Now they're going to be
10 able to file a response to ---

11 THE COURT: Ms. Savage, let me let kind of, kind of go
12 over the way this is.

13 MS. SAVAGE: Okay.

14 THE COURT: Just so, just so you understand.

15 MS. SAVAGE: So, you're saying this is custom, not
16 law.

17 THE COURT: Well, no. I'm saying this is, this is
18 what I've been doing forever.

19 MS. SAVAGE: Okay.

20 THE COURT: Okay? They filed -- the motion that they
21 filed is a simple motion. I mean, they don't file -- when
22 you file your motion to dismiss or something like, it
23 doesn't have to be pages and pages. Then before you go to
24 court, they send a -- they'll send a memo to me or -- and
25 to the other side, which they've done. Normally you would

1 then file your response to it, okay, and then if you have
2 something new in it, they file a brief response to that,
3 and then I read all of it.

4 MS. SAVAGE: Well, how could I have filed a response
5 to it when I am mandated to file a response to motion for
6 summary judgment forty-eight hours -- in fact, the notice
7 that this court sends out specifically says that papers
8 must be filed forty-eight hours prior to the hearing date.
9 There's no way I could have satisfied that because I was
10 served within the forty-eight hour period by their -- by
11 the moving party.

12 THE COURT: Hold on a second. I don't know what the
13 clerk says.

14 CLERK: That's -- your binder is prepared.

15 THE COURT: Okay.

16 CLERK: Because if they sent it an hour before the
17 hearing, I can't put it in your binder, and you don't have
18 time to read it.

19 THE COURT: Okay.

20 CLERK: That's what that notice is.

21 THE COURT: Okay. They just -- they're just doing
22 that for the clerk's perspective. That doesn't have
23 anything to do with what I get or what the rules are, okay?
24 So.

25 MS. SAVAGE: But the -- but Rule 56 specifically

1 provides that only the opposing party has the right to file
2 opposing papers -- the adversary party they call it in the
3 rule -- within forty-eight hours of the hearing.

4 MR. FORD: It only says affidavits, Your Honor.
5 Affidavits have to be filed within two days, as everyone
6 here knows.

7 THE COURT: Right. I mean, do you have an affidavit
8 that you, that you want to submit?

9 MS. SAVAGE: No. We've not had an opportunity to
10 respond to these papers; I got served with them on Thursday
11 night.

12 THE COURT: Well, okay.

13 MS. SAVAGE: Don't -- I didn't think we had, that we
14 had the right to file additional responsive papers
15 according to the rule.

16 THE COURT: Well, if -- okay.

17 MS. SAVAGE: And according to the court's notification
18 that everything had to be filed forty-eight hours in
19 advance ---

20 THE COURT: That's just so, that is so the clerk can
21 put it -- e-file it and put it in this thing for me, but if
22 you'll notice, if you've been sitting out here, people hand
23 me stuff, okay, that's, that's what I'm going to get today.

24 MS. SAVAGE: Well, we, because we were not provided
25 with the entire memoranda of law with all the underlying

1 cases and the factual allegations, plus their exhibits to
2 their memoranda of law which were served on Thursday
3 evening ---

4 THE COURT: Y'all have been taking -- have y'all been
5 taking depositions in this?

6 MR. FORD: Yes, Your Honor.

7 MS. SAVAGE: We started. Yes, we've been taking
8 depositions; there's actually another deposition that is
9 supposed to go forward.

10 THE COURT: Okay.

11 MS. SAVAGE: As in between the third-party defendant
12 and third-party plaintiffs.

13 THE COURT: And, Ms. Savage, you should have had some
14 idea of what they were getting at.

15 MS. SAVAGE: And I filed responsive papers. What the
16 problem is -- and, and I feel as a matter of law I
17 responded to what their legal allegations were. What the
18 problem is we need to respond to the context and
19 allegations that they have created with the exhibits they
20 filed because these are the things that raise genuine
21 issues of fact in dispute, which is what summary judgment

22 ---

23 THE COURT: Well, if ---

24 MS. SAVAGE: --- rises or falls upon.

25 THE COURT: If they hand me up affidavits or any

1 evidence that creates an issue of fact, then they're not
2 going to get summary judgment, okay?

3 MS. SAVAGE: Agreed.

4 THE COURT: Okay, but if there are facts that are not
5 contested and the law is clear, then they could possibly
6 get summary judgment.

7 MS. SAVAGE: Right. We haven't had a chance to
8 contest the facts that they allege are not in dispute
9 because we didn't know what exhibits they were going to
10 append or what their factual underpinnings were going to be
11 for the relief in this motion.

12 THE COURT: All right. Well.

13 MS. SAVAGE: If Your Honor allows us to argue but
14 allows us to submit a further memorandum of law and
15 affidavit, et cetera, afterwards ---

16 THE COURT: Well.

17 MS. SAVAGE: --- and reserve decision, we're fine with
18 that.

19 THE COURT: Well, first of all, I'm going to hear from
20 them. Then I'll hear from you, and then I'll decide what
21 I'm going to do about that, okay?

22 MS. SAVAGE: Thank you so much.

23 THE COURT: Okay. Thank you, ma'am.

24 All right. So, to keep it ---

25 MR. FORD: Yes, Judge.

1 THE COURT: --- more lively than my dog bite case.

2 MR. FORD: Yes, Your Honor, that was pretty lively,
3 but we don't have the gripping facts that Your Honor did.

4 I'll introduce the people. Your Honor, I'm Ian Ford.
5 I'm for the Oldfield Club.

6 MS. DETERS: Your Honor, I'm Suzanne Deters. I'm here
7 on behalf of the Oldfield Community Association, and you'll
8 see in the memo, in different filings we refer to the
9 Oldfield Community Association as the OCA. So, you'll hear
10 us say the OCA. That's who I represent.

11 THE COURT: You're OCA, Ms. Deters. Is that correct?

12 MS. DETERS: Yes, Your Honor. Thank you.

13 THE COURT: And?

14 MR. ABNEY: Your Honor, I'm Merritt Abney. I
15 represent TI Oldfield Development. We were the second
16 developer out at Oldfield, the successor developer.

17 THE COURT: Okay.

18 MR. OGIBA: Your Honor, my name is Chris Ogiba. I
19 represent Oldfield, LLC, and Crescent Communities. The
20 papers refer to these parties as Crescent or the Crescent
21 defendants.

22 THE COURT: Crescent.

23 MR. OGIBA: And we were the first developer.

24 THE COURT: Okay, and ---

25 MR. OGIBA: We have not filed a motion for summary

1 judgement. We're a third-party defendant, but we are the
2 subject Ms. Savage's motion to amend.

3 THE COURT: Okay. Okay.

4 MR. FORD: If I, if I could hand up a copy of our
5 brief if you want it? We did file it on Thursday online.
6 It's got a file stamp, and just for ---

7 THE COURT: And you knew how to do this?

8 MR. FORD: Every first, every first-year associate in
9 South Carolina knows how to do this.

10 THE COURT: Well, okay.

11 MR. FORD: And I'm also going to -- for the record,
12 there is a termination or release agreement in dispute
13 that's subject to a confidentiality order, so no one has
14 filed it online, but I do have a copy or copies for you and
15 your law clerk.

16 THE COURT: Okay.

17 MR. FORD: And I apologize. Did not bring copies for
18 everyone. Everyone does have a copy; that's no in dispute.

19 MS. SAVAGE: Well, speaking of the non -- or the
20 confidentiality nature of that agreement, we do have a
21 courtroom full of people, and if we're going to discuss the
22 agreement, do they have to leave?

23 THE COURT: No.

24 MS. SAVAGE: Okay. So ---

25 THE COURT: I feel sure most of them are trying to

1 look at their cell phones and to figure out whatever else
2 they got to do and why this case isn't getting over so we
3 can move on to their case.

4 MS. SAVAGE: But doesn't that constitute a breach of
5 the confidential provisions because the public -- it's
6 aired to the public?

7 THE COURT: Well, you know, I'm not going to make them
8 go stand in the hall. You know, you're concerned about
9 them. Turn around. You think any of these people care?

10 MS. SAVAGE: No. It's not about people who care.
11 It's how you determine whether or not something remains
12 confidential, and once there's a public airing of it, there
13 is no confidentiality anymore. But putting that aside,
14 we've been accused -- not me, but my -- the former counsel
15 to plaintiffs has been accused of violating the agreement
16 because he took one paragraph and put it in the complaint,
17 and that's ---

18 THE COURT: Let me ask you something.

19 MS. SAVAGE: Yes.

20 THE COURT: So, this is their confidentiality
21 agreement?

22 MS. SAVAGE: Correct.

23 THE COURT: Do y'all want me to clear the courtroom?

24 MR. FORD: We don't care. We would ask this. People
25 -- I don't think anyone here cares. I would ask this.

1 One, that by discussing it today, it's not considered a
2 waiver of the confidentiality for technical purposes. And
3 second, that the transcript notate that this is subject to
4 a confidentiality order and we're not waving it.

5 THE COURT: Okay.

6 MR. FORD: We're just trying to be cooperative.

7 THE COURT: And this is not -- this is just -- give me
8 something to read so that I'll know what y'all are
9 referring to.

10 MR. FORD: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. SAVAGE: And of course ---

13 THE COURT: It's not a waiver.

14 MS. SAVAGE: I'm sorry.

15 THE COURT: Okay.

16 MS. SAVAGE: We take exception to that position
17 because the public is the public. It doesn't matter who
18 else hears it. It undoes the entire confidentiality of it.
19 I'm just ---

20 THE COURT: Ms. Savage.

21 MS. SAVAGE: --- stating that for the record.

22 THE COURT: I'm just kind of curious. Where are you
23 from?

24 MS. SAVAGE: New York.

25 THE COURT: Okay. Okay.

1 MS. SAVAGE: But I've been down here for three years.

2 THE COURT: Okay.

3 MS. SAVAGE: Passed the ---

4 THE COURT: We're glad to have you here.

5 MS. SAVAGE: Thanks. I appreciate it.

6 THE COURT: All right.

7 MR. FORD: All right, to the motion. You ready,
8 Judge?

9 THE COURT: Yes, sir, Mr. Ford.

10 MR. FORD: Yes, sir, Your Honor. Let me give you a
11 little bit of background that will tee up the whole
12 situation. This involves Oldfield and Oldfield.

13 THE COURT: Oh, yeah. Okay.

14 MR. FORD: It's a community. It's in Bluffton. It's
15 lovely. It's private community and it's got a homeowners
16 association. That's Ms. Deters.

17 THE COURT: Can I ask you a question, and I'm ---

18 MR. FORD: Yeah.

19 THE COURT: Is this for retired people?

20 MR. FORD: No, this is not.

21 THE COURT: Okay. It's just so appropriately named.
22 That's all.

23 MR. FORD: Well, Mr. Star has told me there's Oldfield
24 and Youngfield, which I thought was clever.

25 THE COURT: Okay. All right, sir.

1 MR. FORD: But Mr. Star clearly is pre-retirement age,
2 so it's a mixed community.

3 THE COURT: Okay.

4 MR. FORD: And Oldfield has a homeowners association,
5 the association. It has an amenities club which is the
6 Club Me, and it's got some developers, some of whom have
7 exited and some who have not. Mr. Star, the plaintiff,
8 lives there. He's a member of the association and the
9 club. Then you see the number of plaintiffs, the Haases
10 and the Stars. The Haases are the Stars' inlaws and Ms.
11 Star is obviously his wife, and they essentially said in
12 deposition they defer to Mr. Star. So, I'm going to refer
13 to Mr. Star just colloquially on behalf of all the
14 plaintiffs. He's the, you know, the head of the spear, so
15 to speak, for the four of them.

16 THE COURT: This is Mr. Star?

17 MR. STAR: yes.

18 THE COURT: Hey, Mr. Star.

19 MR. STAR: Hi.

20 MR. FORD: We're happy to have him there.

21 THE COURT: Glad to have you here.

22 MR. FORD: He's also from, from New York or ---

23 MS. SAVAGE: He's from New York as well.

24 MR. FORD: Yeah.

25 THE COURT: Where?

1 MR. STAR: Lived in Manhattan.

2 THE COURT: Okay.

3 MR. STAR: And been here for eleven years now.

4 THE COURT: Okay. You came here to get away from
5 hurricanes?

6 MR. STAR: Yes, sir. It didn't work out.

7 THE COURT: Well, you know, those things are going up
8 towards New York, so I think it was a wise move.

9 MR. FORD: It's their turn.

10 MR. STAR: Wise move on a variety of issues.

11 MS. SAVAGE: Except Maria is coming from behind.

12 THE COURT: All right.

13 MR. FORD: Okay. What this dispute is about is
14 essentially an internal budgeting issue. That's why we're
15 trying to keep it lively, an internal budgeting issue,
16 budgeting within Oldfield, and Oldfield has a number of
17 amenities. It's got a swimming pool. It's got tennis
18 courts. It's got a clubhouse. It's got kayaking
19 facilities, the kind of things you expect in a nice private
20 community. It's got a golf course and so on, and there are
21 at least two categories of members at Oldfield. There are
22 community members and there are golf members, and to tee it
23 up, the community members get to use some of the amenities:
24 the swimming pool, the tennis courts, kayaking facilities,
25 and so on. But if you want to use others such as the golf

1 course full time and so on, you have to pay extra and
2 you're a golf member. So, that's the breakdown we're going
3 to be discussing today, community members versus golf
4 members.

5 And there is a overlap between what those two types of
6 members can use. The golf course, for example, golf
7 members can use it, I think, unlimited. Community members
8 can use a certain amount of the time. They get ten free
9 rounds, okay, and I'm just teeing it up. And where the
10 dispute comes from is when they share. Apparently sharing
11 is a problem.

12 And what Mr. Star's concern is, he does not believe
13 the community -- his dues as a community member should go
14 towards golf facilities in any regard. He doesn't think it
15 should go towards the golf course. He doesn't think it
16 should go in any regard to the golf club. He doesn't --
17 and certain other amenities. That's, that's his -- the
18 crux of his complaint.

19 The governing documents are very clear on this, and
20 what -- we've submitted them. Essentially for internal
21 budgeting purposes, the boards can budget according to who
22 has access to what and in what degree, and that kind of
23 makes sense. You know, if community members are using the
24 golf course for ten rounds a year, which they, they are
25 entitled to, a certain percentage of their fees go to that

1 and so on. The golf clubhouse, everyone uses the
2 restaurant. The administrative offices are in the
3 clubhouse. A certain amount of fund allocation goes
4 towards that proportion, and the governing documents allow
5 that.

6 Mr. Star alleges -- and we passed up a -- the
7 agreement that in 2009 he and certain others entered into a
8 contract, a settlement agreement, regard to a bankruptcy in
9 Texas. He was not represented by a South Carolina lawyer
10 in there; he did not have advice as to whether it complied
11 with South Carolina law. That's all in our brief. And
12 what he says that document says, and that it's on page 2.
13 I've highlighted it. He says that means that none of his
14 dues can ever go towards golf facilities. That's what this
15 is about, and Your Honor can read the highlighted portion
16 at your leisure. There's no credible dispute. It does not
17 say that, but we'll, we'll get to that in a second.

18 He has alleged, alleged two causes of action: breach
19 of contract, breached that agreement you have in your hand;
20 and negligence, and the negligence is kind of the same
21 argument. There -- it, it doesn't seem to be distinguished
22 in any ways. This has been going on for essentially
23 eighteen months, a year and a half. We've taken
24 depositions. We're moving on the trial roster, jury trial
25 roster in late September, and it's time for summary

1 judgment, and there are essentially four main arguments,
2 and I'm going to make the first two, and then my learned
3 cocounsel are going to make the other ones.

4 The first is statute of limitations, Judge, and the
5 dispositive date is this was filed March 10, 2016. So,
6 the ---

7 THE COURT: March 10th?

8 MR. FORD: 2016 was the filing date of this lawsuit.
9 So, that means it's three years as everyone knows for
10 breach of contract and, and negligence. So, March 10,
11 2013, is the operative date, and there's no serious dispute
12 that Mr. Star knew about this allocation issue before that
13 date in March 2013. And I'll, I'll make two argue -- two
14 points on that, Your Honor. There are more in our brief
15 but I won't, won't go into all of them.

16 First, this is published every year in the budgets.
17 There is no secret about it. There's no secret about how
18 much money comes in. There is no secret about how much
19 goes out and what it's used for, okay, and Mr. Star and I
20 had a fascinating, long discussion about that in his
21 deposition, and I'll read part of the transcript, just the
22 relevant part. It says: When did you first learn about
23 this? He says he doesn't know. Three years, five years,
24 and I say: So, do you have any evidence it's been hidden in
25 any way from members? Answer: I'm not accusing them of

1 hiding it, no. Question: I understand. I'm just trying to
2 understand what is in mind. Answer from Mr. Star: It's
3 right there on the page. That's the budget.

4 MS. SAVAGE: Objection. We don't know what it is.

5 MR. FORD: Question: For everyone to see, it's
6 publicly available, at least within Oldfield, correct?

7 Answer: Yes.

8 So, there -- on the evidence that we've submitted
9 that's attached to our brief -- there's a lot more evidence
10 there -- but there is no dispute that this was in the
11 budget every year. It was known to everyone, and Mr. Star
12 himself admitted in his deposition they're not hiding it.
13 It's there for everyone to see. That's our first argument,
14 and he, he also said has always been going on. That's his,
15 his quote, always. So, he's on constructive notice at the
16 very least, and he's a smart guy. I have a feeling he read
17 the budgets. He could have read them at the very least.

18 He's been concerned about this for a while, and we
19 know he was concerned about it because he testified that he
20 met with the developer in 2012 about this issue, and we
21 have submitted that, that in the brief, the testimony. The
22 question is: You, Phillip, Galbraith, and Mr. Wilson had a
23 meeting in 2012 regarding the allocation of administrative
24 costs toward the golf course and the clubhouse. Answer:
25 That's right. So, there's no dispute that he's been

1 concerned about this for a long time, well before 2014, and
2 it's been available to people to know for a long time from
3 constructive notice. Statute of limitations precludes his
4 claims with regard to this, Your Honor.

5 Second point, governing documents, and the gist of
6 this is that his concern about sharing costs. First of
7 all, his agreement which we passed up -- you can read the
8 parts -- in no way precludes what he says. It doesn't say
9 what he says it says. At best, it can be interpreted as
10 making him from a golf member to a community member. He --
11 it's pretty clear on that. It doesn't say that his fees
12 can't be used like all other community fees; it doesn't
13 adjust the budgeting process within Oldfield, and the
14 governing documents are clear on that.

15 And we put that out, our brief, page 9 and 10. I
16 won't will read it, but if you look at page 9 and 10 of our
17 brief, it sets out how dues for community members can be
18 used:

19 For maintaining, repairing, replacing, ensuring
20 operating providing facilities, activities, and
21 events available for the use and enjoyment of
22 community members, and a reasonable share of
23 overhead expenses associated with general
24 operation, administration of the club.

25 It goes on to say, and these are the covenants:

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The total estimated costs, as reflected in the budget, shall be allocated among the members of all classes and categories to whom facilities, services, and/or programs covered by such budget are made available.

And, and that's in our brief. I won't read the rest of it.

There's no serious dispute that the board had authority to budget this the way it's been done. They've always done it this way. Mr. Star admits they've always done it this way. The agreement I passed up in no way prevents that from happening, and we think summary judgement should be granted on, on those grounds.

I'm going to sit down. I may have one more, one more thing to it. I think what you're going to hear -- and you've already heard -- is a lot of words from Mr. Star's table. We ask Your Honor to look past that and look at the evidence submitted because there is no evidence that should allow this case to go on. It's been going on for over a year and a half. It's time, and we think summary judgment should be granted.

I'm going to defer to Mr. Abney.

THE COURT: And just before you sit down, let me just make sure. When you were talking about the two types of members.

1 MR. FORD: Yes.

2 THE COURT: You said that the community members can
3 use the golf court ten -- golf course ten. ---

4 MR. FORD: Absolutely, and we're got that in our
5 brief. There's a covenant that allows -- first they were
6 allowed to use it four times and then it was increased ten
7 times. And there's no dispute Mr. Star and his family have
8 used the golf course. They use the clubhouse. They use
9 the dining facilities. There is no dispute, and we're
10 attached evidence they have used those facilities. They
11 just don't think they should have to pay for it or, or
12 their dues should be allocated to that like other community
13 members. It's not that they're having to pay for it any
14 more than anyone else who lives in the community.

15 THE COURT: Okay. All right.

16 MR. FORD: Thank you, Judge.

17 THE COURT: Thank you, Mr. Ford.

18 All right, and Mr.?

19 MR. ABNEY: Abney.

20 THE COURT: Mr. Abney, yes, sir.

21 MR. ABNEY: As I said, Your Honor, I represent the
22 successor developer. My client came on the scene in ---

23 THE COURT: TI.

24 MR. ABNEY: TI. We came on the scene in 2010, and you
25 will notice that that is after that agreement that you're

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holding that Mr. Star's claims are based upon was executed in 2009.

My clients never signed that thing. My clients had never seen that agreement until this lawsuit was filed. So, the first basis that I am arguing is unique to my situation. My clients cannot be held liable on a contract that they did not agree to. There is no evidence in the record that my clients assumed those liabilities. As I've said, there is absolutely no evidence in the record that my client ever even knew about that agreement until this lawsuit was filed. So, we would argue that my client should be granted summary judgment clearly on that basis.

The second cause that I'm going to argue is the voluntary payment rule, and that applies to all defendants. Your Honor, in South Carolina when an individual makes a payment voluntarily with knowledge of the facts, absent fraud or duress, he cannot recover a refund of that payment, and the basis for that rule, the policy underlying it is obvious: it would disrupt the finality of transactions.

An association, a homeowners association which has to budget year to year would not be able to spend the revenue that it gets from assessments in confidence that it's not going to have return them if the law were to the contrary.

THE COURT: Can I interrupt you?

1 MR. ABNEY: Yeah. Sure.

2 THE COURT: Just a couple of questions. When you say
3 voluntary payments, they were required to pay, right?

4 MR. ABNEY: That's correct. Everybody's -- in, in the
5 documents ---

6 THE COURT: Right.

7 MR. ABNEY: --- you are required to pay.

8 THE COURT: Right. I mean, the documents itself
9 require it. They don't say it's voluntary payments.

10 MR. ABNEY: Sure. It's not by, by -- you know, out of
11 the goodness of their heart that they're making the
12 payment, and that's not what the rule means. It means that
13 you are paying it without duress or in the absence of
14 fraud.

15 THE COURT: Right.

16 MR. ABNEY: And that is what we don't have here. The
17 point is that Mr. Star knew he had questions about whether
18 or not the allocation was proper, but he made the payment
19 anyway.

20 THE COURT: And it ---

21 MR. ABNEY: And that's when the rule applies.

22 THE COURT: Okay, and of course, Mr. Abney, that
23 brings me back to the other question. Now, since -- did
24 your client have conversations with him about these
25 payments back in 2012? Mr. Ford indicated he had

1 conversations with someone about that.

2 MR. ABNEY: That is correct. That was with my client.

3 THE COURT: Okay.

4 MR. ABNEY: With a representative of my client in 2012
5 regarding the allocation of the payment, but of course Mr.
6 Star did not disclose the agreement on which this claim is
7 based. At his, at his deposition I asked him was he aware
8 of any evidence that my client was -- knew about this
9 agreement on which the claims are based, and he said no.

10 THE COURT: Okay.

11 MR. ABNEY: And so my client has never seen this thing
12 until we were served with the lawsuit. So, the basis, as I
13 said, of the voluntary payment rule is to allow these -- an
14 entity like a homeowners association to spend the revenue
15 that it obtains in confidence that it's not going to have
16 to return the funds.

17 And the Court of Appeals has applied this rule in the
18 *Seabrook Island vs. Pelzer* case that was discussed in our
19 brief where in that case, Your Honor, the homeowners
20 association had actually sued a homeowner to recover, to
21 obtain fees the homeowner was -- had, had not paid, and the
22 court said this assessment, the manner in which this
23 assessment was made, was invalid. But as to the
24 homeowner's claim to recover payments that he had made in
25 the past, the court said you can't do that. That would not

1 be fair to the association which has spent the money
2 already in confidence that it could rely on the fact that
3 it was paid voluntarily and a refund would not have to be
4 issued.

5 This is exactly the same situation, Your Honor. You
6 have a nonprofit board here, a nonprofit entity, the
7 Oldfield Club that these dues were paid to. That club has
8 to be able to spend that assessment income in confidence
9 that it's not going to have to return the funds. The only
10 evidence of duress that they point to in the affidavit that
11 was submitted is Mr. Star's concern that if he didn't pay,
12 his children would not be allowed to use the amenities at
13 the club. That is not duress as a matter of law, Your
14 Honor.

15 If you look at all the cases that we cited in our
16 brief which discuss what duress is, it takes an awful lot
17 more than that. A specific threat that caused the
18 plaintiff to make the payment, none of that is alleged
19 here. The simple fact that the payment -- he was aware.
20 He had questions regarding the allocation of the payment,
21 and he made it anyway. He cannot now recover it.

22 THE COURT: All right, Mr. Abney, let me ask you a
23 question. The homeowners association requires everybody to
24 pay into either community or golf membership?

25 MR. ABNEY: Just like every other homeowners

1 association, Your Honor. Yes, they have, they have to --
2 when they become a member, they're obligated to make
3 payments.

4 THE COURT: When you buy in, you've got to be a member
5 of the homeowners association?

6 MR. ABNEY: Oh, I see what you're asking.

7 THE COURT: Yeah.

8 MR. ABNEY: In, in Oldfield, yes, every homeowner, by
9 virtue of the buying a home site in Oldfield, becomes a
10 community member.

11 THE COURT: Okay.

12 MR. ABNEY: They have the option to become an equity
13 golf member.

14 THE COURT: Right.

15 MR. ABNEY: By payment of additional funds.

16 THE COURT: And once you buy in and if you don't make
17 your community fees, the homeowners association can sue you
18 and make you pay them, right?

19 MR. ABNEY: That's correct.

20 THE COURT: Okay. All right. Okay.

21 MR. ABNEY: And that's just exactly what happened in
22 the Pelzer case.

23 THE COURT: Right. Anything else?

24 MR. ABNEY: That's it for me.

25 THE COURT: Okay. All right. All right. Let's see,

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Ms. Deters.

MS. DETERS: Yes, Your Honor, Suzanne Deters on behalf of the OCA, which is the Oldfield Community Association. If it please the court, Your Honor, if I could approach? I have a copy of our motion and the memo that we filed in support.

THE COURT: Okay.

MS. DETERS: Your Honor, the OCA, as Mr. Ford alluded to earlier, is the entity that's been created to collect these community member dues for each of the property owners within Oldfield. So, we're at the kind of front line, if you will, of this transaction wherein the community member dues are collected, and then a certain percentage of those dues are then transferred from the OCA to the club in order to pay for some of the shared amenities between the club and the OCA. We promised to keep it lively, so I'll switch up the order that Mr. Abney followed. I'll speak first to the argument in favor of summary judgment on behalf of all the defendants and then speak briefly more specifically about the arguments just in favor of summary judgment for the OCA.

THE COURT: Okay.

MS. DETERS: So first, Your Honor, summary judgment here is proper because there has been no evidence presented in support of plaintiffs' claim for damages, and it's kind

1 of a two-part argument here, Your Honor. The first is that
2 the plaintiffs have failed to show that they've been
3 damaged at all. And second, plaintiffs have alleged that
4 they've suffered \$1500 per year per property since 2009,
5 which comes out to roughly \$48,000. They've alleged that
6 those are their damages, and yet no evidence has been
7 supported -- has been offered to support those allegations
8 for damages. There's been no offer of evidence as to even
9 how that amount of money was calculated.

10 But backing up, Your Honor, plaintiffs have failed to
11 show they've been damaged at all. As Mr. Ford and Mr.
12 Abney have already explained to Your Honor, the plaintiffs
13 are community members by virtue of this 2009 settlement
14 agreement. Mr. Star admitted to as much during his
15 deposition. We know that as property owners and community
16 members, the plaintiffs have to pay community dues.
17 There's no dispute about that; the plaintiffs admit that.
18 The plaintiffs admit that they paid the same dues as all
19 other committee members, and importantly they admit that as
20 a result of paying those community dues, they are allowed
21 to access the same shared assets of the club and the OCA as
22 all the other community members. And that includes, as Mr.
23 Ford earlier explained, access to the golf course
24 facilities and the clubhouse.

25 Now, I don't know that we've gone into a lot of detail

1 about this, but I do know it's briefed in the, in the
2 memos. The governing documents for Oldfield allow for this
3 allocation to happen between the OCA and the club. The
4 plaintiffs admit that that allocation is proper. The
5 dispute is just to what the allocation should be. But
6 there is no genuine dispute that the plaintiffs have access
7 to these shared amenities and that pursuant to the
8 governing documents, some of the community member dues must
9 be allocated from the OCA to the club in order to pay for
10 those shared assets.

11 THE COURT: Ms. Deters, do you mind if I interrupt
12 you?

13 MS. DETERS: No. Please, Your Honor.

14 THE COURT: Okay. You said the dispute is as to what
15 the distribution should be. That's what we're arguing
16 about.

17 MS. DETERS: Correct, Your Honor.

18 THE COURT: Okay.

19 MS. DETERS: It's my understanding that the crux of
20 the problem, if you will, is that the plaintiffs are
21 uncertain what amount of money is being allocated from the
22 OCA to the club, and that goes into the arguments that the
23 OCA has for summary judgment, Your Honor, because it's
24 important to note the plaintiffs do not contend that there
25 should be no allocation at all. And if you look at the

1 memo that we submitted to you, on page 7 you can see where
2 the plaintiffs admit, and I can pull it out.

3 THE COURT: I'm on page 7.

4 MS. DETERS: All right. You beat me to it; I'm not
5 there yet.

6 THE COURT: Okay.

7 MS. DETERS: If you look at 7, right in the middle of
8 the page I asked the Mr. Star: You're not taking the
9 position that there should never be an allocation from the
10 OCA to the club, right? And he says yes. And I said:
11 You're just taking the position that it's unclear what
12 amount of money is going from the OCA to the club and for
13 what purpose. And he says yes.

14 And that's important, Your Honor, because the
15 allegation is not that they know this specific amount of
16 money is being allocated and that they believe that is
17 improper. The allegation is that they don't know what
18 amount of money is being allocated, and they are concerned
19 or they speculate that the amount of money that's is being
20 allocated could be improper. And yet in the eighteen
21 months since this lawsuit has been filed, there has been no
22 evidence that the amount of money that's being allocated
23 from the OCA to the club is, in fact, improper.

24 THE COURT: Did they give you -- in the deposition of
25 Mr. Star, did he give you any idea of what he felt was the

1 proper distribution or allocation?

2 MS. DETERS: No, Your Honor, and if you look at the
3 top of page 8, I asked him specifically:

4 It's not your contention that the percentage that
5 the OCA is paying right now is improper. It's
6 just that you don't know if it's improper because
7 you don't know what the money is going toward.

8 Is that right.

9 And he responds yes, and I say:

10 Other than that, is there anything that you
11 believe the OCA is currently doing that
12 terminates -- that violates the termination
13 agreement?

14 And he responds:

15 Other than the inner company allocation, is that
16 what you're asking me? No. I think the OCA's
17 responsibilities are very straightforward.

18 So again, Your Honor, the crux of the problem is, as
19 Mr. Ford said, that allocation between the OCA and the
20 club. The reason why summary judgment is proper is because
21 there's been no evidence that the allocation is improper or
22 even that the plaintiffs think that the allocation that's
23 currently happening is improper. There is no evidence of
24 any of that.

25 THE COURT: Well, Ms. Deters, let me just ask you

1 another question. If I don't have an idea about
2 percentage, the annual budget is printed every year?

3 MS. DETERS: That's correct, Your Honor, and made
4 available to all the homeowners.

5 THE COURT: And I'm assuming the budget has actually
6 numbers in it?

7 MS. DETERS: It does, in fact, have numbers in it.

8 THE COURT: Okay. Do those numbers indicate how much
9 money went to the club?

10 MS. DETERS: Yes, it does.

11 THE COURT: Out of the entire amount that was paid?

12 MS. DETERS: Yes, and I'll also point out to Your
13 Honor that as part of discovery, we have produced to the
14 plaintiffs not just the budget that shows what amount of
15 money is being transferred from the OCA to the club, but
16 the specific line items that the OCA uses to calculate the
17 amount of money that will be transferred from the OCA to
18 the club.

19 Now, the plaintiffs take the position that there might
20 be something wrong with those calculations and, therefore,
21 they need additional discovery in order to figure if the
22 OCA has done something wrong. However, if we look at just
23 at the evidence that's been presented, there has been none
24 that the amount of money that's been calculated and
25 allocated to -- from the OCA to the club is improper.

1 THE COURT: Okay. So if I've got the budget, I can
2 sit down and see how much money came to the club, I can see
3 how much money was collected by the community members, I
4 can see how much money was collected by the golf members,
5 and I can figure out the percentage that went, right?

6 MS. DETERS: Yes, Your Honor.

7 THE COURT: You can do the math.

8 MS. DETERS: The only correction that I would make is
9 just that the money comes first to OCA and then it's
10 allocated to the club. And I think what you just said made
11 it seem as though the money comes to the club and is then
12 allocated, but for all intents and purposes, yes, what
13 you're saying is correct. You can look at the budget, see
14 what amount of money has been collected, what amount of
15 money goes from the OCA to the club, and beyond that we've
16 produced the information that shows how the OCA calculates
17 the amount of money that will be allocated from the OCA to
18 the club.

19 THE COURT: Okay.

20 MS. DETERS: Thank you, Your Honor.

21 THE COURT: That's it?

22 MS. DETERS: That's it.

23 THE COURT: Okay. Thank you, ma'am.

24 All right. Now Mr. Ogiba.

25 MR. OGIBA: Yes, Your Honor. I actually don't have a

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direct dog in this fight. I'm waiting, biding my time until the motion to amend is argued.

THE COURT: Okay. Okay.

MR. OGIBA: Thank you.

THE COURT: All right.

All right, Ms. Savage, you can take them in whatever order you want to take them.

MS. SAVAGE: Okay. Thank you, Your Honor.

THE COURT: Thank you, ma'am.

MS. SAVAGE: So, I guess the question that has to come to mind is if it is so obvious what the transfer from the OCA to the OC of social member dues is each year and the application of those transferred funds to the OC are being only used for social member facilities as opposed to what are considered golf facilities, they could have just attached their financial statements from since 2009, which is when this termination agreement was signed as between the plaintiffs and Crescent, the third-party defendant, and just said see, Your Honor, he's wrong. We show this allocation, but it's not what the allocation is, Your Honor. It's now that allocation is being utilized.

In the property report that was filed by TI pursuant to Housing and Urban Development requirements, federal law, they represent that the golf facilities are an eighteen-hole golf course, and this is Exhibit A to our

1 papers, an eighteen-hole golf course, putting green and
2 driving range, a golf shop, a cart barn, and a golf house.
3 The social facilities are the activities center with
4 swimming pool, tennis courts and fitness center, the river
5 house, outfitters center, and a community dock. Underneath
6 -- and I'm on page 19 of this property report -- underneath
7 where it lays out and demarcates how these facilities are
8 demarcated for purposes of member dues, it specifically
9 says that golf membership is a completely separate fee
10 structure. It represents that.

11 So, you pay -- annual dues are assessed to community
12 members for access to the social facilities for 2013, the
13 annual dues, and I'm just reading from this property report
14 and this is an asterisk on page 19: For a community member
15 paid on a quarterly basis are \$4560 for a resident, 4000
16 for a nonresident. And then the next paragraph says:
17 Restricted to use by golf members for golf membership. And
18 it doesn't matter if social members are entitled to play
19 these four rounds a year, that they're being offered that.

20 THE COURT: Or ten.

21 MS. SAVAGE: Or the ten rounds a year. It doesn't
22 matter because -- and again, this brings up one of the
23 genuine issues of fact. It was represented that the offer
24 of the four rounds and then the ten rounds which was by --
25 via a purported amendment to the bylaws in 2013 by the ---

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THE COURT: When you say purported, is it amended or not?

MS. SAVAGE: It's an amendment, but it was not disclosed in 2013, so we don't know if it was actually done retroactively by the board.

THE COURT: Okay. All right.

MS. SAVAGE: The board discloses and puts all amendments on a website that all members in the community can see, and of course members are entitled to also vote on these pursuant to the provisions of the governing documents.

THE COURT: Okay.

MS. SAVAGE: This 2013 amendment didn't exist, wasn't around, and wasn't even disclosed until 2016.

THE COURT: Okay.

MS. SAVAGE: But putting that aside, this, when it says restricted to use by golf members, they mean golf -- people who become golf members as opposed to the social or community members. And it says in the property report for golf membership:

There is currently a golf membership contribution of 15,000 due at the time of the application. In addition, the club may establish minimum usage fees to ensure a minimum level of revenues from operation.

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Golf membership is a completely separate fee structure.

THE COURT: Is that, is that true?

MS. SAVAGE: Well, that -- no, that's the problem.

So ---

THE COURT: Okay. Why isn't it true?

MS. SAVAGE: Because -- no, it's true that it should be. It says it in the property report.

THE COURT: No, no. That's not my question.

MS. SAVAGE: Whether in practice ---

THE COURT: Do they have a separate fee structure for golf? That's a yes or no.

MS. SAVAGE: They have a separate fee structure, and all those funds that are paid by golf members are to go to what were the golf facilities. The golf course.

THE COURT: Right.

MS. SAVAGE: The cart barn, the whatever.

THE COURT: Right.

MS. SAVAGE: The issue here isn't, again, the amount of annual dues that is being allocated by the OCA to Oldfield Club. It's how they are using it.

THE COURT: Okay.

MS. SAVAGE: And we believe that those fees -- I'm sorry, Your Honor.

THE COURT: No. Go ahead.

1 MS. SAVAGE: We believe that those fees are being used
2 to maintain the golf course, to maintain the cart barn, and
3 what has been -- what is comprised of the golf facilities
4 as set forth in the property report I was just reading
5 about.

6 Now, initially the \$96,000 that's referenced in -- I
7 forget which one of the briefs -- which was the allocation
8 by the OCA to Oldfield Club was represented in the line
9 item as marketing. It wasn't disclosed that it was going
10 to Oldfield Club for use in maintaining golf facilities.

11 THE COURT: Okay.

12 MS. SAVAGE: And that's what transpired.

13 THE COURT: So, what...

14 (A PAUSE.)

15 THE COURT: You through?

16 MS. SAVAGE: Yeah.

17 UNIDENTIFIED SPEAKER: Sorry.

18 THE COURT: That's okay. I just wanted to make sure
19 you got -- you gave her the information she needs.

20 MS. SAVAGE: Well, he was saying I, I misspoke for a
21 second. The OC who gets the allocation from the OCA, the
22 OC then claimed that \$96,000. They put a line item it was
23 for marketing, but it wasn't. They utilized it for
24 maintenance for the golf facilities.

25 THE COURT: Okay. So, let me make sure I understand

1 what we're complaining about, okay? Had the line item of
2 read \$96,000 to maintain the golf course, we wouldn't be
3 here. Is that correct?

4 MS. SAVAGE: No, we would be here because that money
5 is not supposed to be used for the golf course. It's only
6 that -- those funds are only allowed to be used for social
7 facilities.

8 THE COURT: Okay, you're saying that the community
9 funds are only to be used -- can be used for everything
10 except the golf course?

11 MS. SAVAGE: Correct.

12 THE COURT: Even though the people that pay community
13 funds can use the golf course?

14 MS. SAVAGE: They are authorized to do initially four
15 rounds a year, and then it was upped pursuant to this 2013
16 amendment to ten rounds a year.

17 THE COURT: Okay.

18 MS. SAVAGE: But they were not -- that was, that was
19 not something that was asked for. We don't even know who
20 even attempts to avail themselves of that.

21 THE COURT: Well, let me ask you something. If --
22 let's just stay with the, let's just stay with the four.
23 If the community members are allowed to use it four times a
24 year, let's just say four times a year, none of the money
25 that they collect should be paid to maintain it is what

1 you're arguing?

2 MS. SAVAGE: I'm saying that's what the governing
3 documents say. It didn't say because you get four rounds a
4 year or what it's now, ten rounds a years that, therefore,
5 we're amending the governing documents to say that your
6 social dues and community dues may be or will be used to
7 maintain the golf facilities.

8 THE COURT: Okay.

9 MS. SAVAGE: The governing documents make very clear
10 that those fees are not supposed to be used for golf
11 facilities.

12 THE COURT: Okay. So, if governing docs...

13 MS. SAVAGE: And I would add now -- we keep talking
14 about the governing documents, but let's talk about this
15 termination agreement, if we may.

16 THE COURT: Well, I want to ---

17 MS. SAVAGE: Okay. Go ahead.

18 THE COURT: --- make sure. The governing documents do
19 not give the board the authority to distribute the money
20 how they want to?

21 MS. SAVAGE: No.

22 THE COURT: Okay.

23 MS. SAVAGE: Absolutely not.

24 THE COURT: All right. So, when Mr. Ford was reading
25 me something in here.

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MR. FORD: Page 10 of my brief, Your Honor.

THE COURT: Page 10.

MR. FORD: Pages 9 and 10.

THE COURT: Page 9 and 10 of the brief.

MR. FORD: Those are cut and paste from the actual --
the governing documents.

THE COURT: Okay. So, page -- have you got a copy of
that?

MS. SAVAGE: Yeah. I'm looking for it right now.

THE COURT: Would you just look at it for me, please?

MS. SAVAGE: Yeah. Okay.

THE COURT: Okay. So, is it -- is that an accurate
copy of those covenants, of 3.1? Is that what it says?

MS. SAVAGE: Are you asking me if this is an actual
covenant?

THE COURT: Yeah.

MS. SAVAGE: The covenant, the governing documents?

THE COURT: Yes. Is that, is that ---

MS. SAVAGE: I don't know. I don't -- they don't
attach -- did they attach a document in there?

MR. FORD: We do attach it. It's Exhibit 4, Your
Honor.

MS. SAVAGE: Okay. Let me see.

MR. FORD: And it's been filed with the Berkeley
court, the registrar of deeds and so on. We have thirty

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days ---

THE COURT: You mean Beaufort?

MR. FORD: Hmm?

THE COURT: Beaufort?

MR. FORD: Yes.

THE COURT: Okay. I thought you said Berkeley.

MR. FORD: I misspoke.

THE COURT: That's okay. I just wanted to make sure we're in the right place.

All right, I've got in Exhibit 4, it looks like that's page 2 of ---

MS. SAVAGE: All right, and ---

THE COURT: --- of a book that's filed.

MS. SAVAGE: That's all good and well, but if Your Honor actually looks at the document, this document is the first amendment to the declaration of the recreational covenant for Oldfield club, all right?

THE COURT: Okay.

MS. SAVAGE: There are two different declarations. One governs the golf facilities and one governs, governs the recreational facilities. The recreational facilities exclude the golf club.

MR. FORD: My client's telling me that's not right.

THE COURT: Okay. All right, what I have ---

MS. SAVAGE: The, the -- I'm sorry. Go ahead, Your

1 Honor.

2 THE COURT: It looks like Exhibit 4 says to me that
3 it's the first amendment to the declaration of recreational
4 covenant for Oldfield Club.

5 MS. SAVAGE: Right. There are two separate aspects of
6 the Oldfield Club, though. The Oldfield Club operates the
7 recreational facilities.

8 THE COURT: Okay.

9 MS. SAVAGE: And then operated the golf facilities.

10 THE COURT: No, I understand that. What I'm asking
11 you, is this -- this is an accurate copy of that. Is that
12 correct?

13 MS. SAVAGE: I, I would assume so.

14 THE COURT: Okay. I mean, you're not contesting this.

15 MS. SAVAGE: No.

16 THE COURT: Okay.

17 MS. SAVAGE: Okay.

18 THE COURT: That's all I wanted to know.

19 MS. SAVAGE: I'm contesting its relevance. I'm not
20 necessarily contesting its authenticity.

21 THE COURT: Okay. So long as you're not contesting
22 its authenticity, that's okay. All right. Thank you,
23 ma'am. You can keep on.

24 MS. SAVAGE: Okay. Thank you. The point is, though,
25 is that the governing documents are really ultimately not

1 relevant to this discussion because the termination
2 agreement specifically provides in section 2, I believe it
3 is, notwithstanding the governing documents, my clients'
4 dues are not to be allocated in any manner to support the
5 golf facilities.

6 THE COURT: Do you mind reading me that section where
7 it says that?

8 MR. FORD: And for the record, we ask this on the, on
9 the transcript it be marked confidential under the, under
10 the confidentiality order.

11 THE COURT: Yeah. That's what we're reading from.
12 Thank you, Mr. Ford. Yeah, just for purposes of the
13 record. Thank you, sir.

14 Okay, if you'd just read to me the section that says
15 he's not supposed to pay for it.

16 *(WHEREUPON, THE FOLLOWING PORTION IS CONFIDENTIAL.)*

17 MS. SAVAGE: So:

18 The parties hereto agree that notwithstanding
19 anything to the contrary contained in the
20 membership agreement ---

21 THE COURT: Okay, now, you're on page 2?

22 MS. SAVAGE: Yep.

23 THE COURT: You're at Termination of Membership
24 Agreement?

25 MS. SAVAGE: Yep.

1 THE COURT: And you're at ---

2 MS. SAVAGE: The first ---

3 THE COURT: --- paragraph A?

4 MS. SAVAGE: Paragraph A.

5 THE COURT: Okay.

6 MS. SAVAGE:

7 Withstanding anything to the contrary contained
8 in the membership agreement, the amended bylaws
9 of the club, any operating or governance
10 documents of the club or sponsor on one hand, and
11 the Crescent entities on the other hand, as of
12 the effective date, the terms and provisions of
13 the membership agreement that relate to or are
14 attributable to the member's use, access, rights,
15 duties, liabilities, and obligations concerning
16 the golf course attributable solely to being a
17 member of the club, including the member's
18 obligation to pay its full membership
19 contribution, shall automatically be terminated,
20 canceled, and extinguished, and shall no longer
21 be in force and effect. (B) For purposes of
22 clarity, the termination and extinguishment of
23 certain terms and provisions in the membership
24 agreement contained in section 2(A) above shall
25 in no way affect or impact on member's right to

1 use and have access to club facilities other than
2 the golf course pursuant to all applicable
3 provisions of the club documents.

4 (END OF CONFIDENTIAL PORTION.)

5 THE COURT: Okay. Now for purposes of clarity, what
6 did that tell me?

7 MS. SAVAGE: What do you mean what did THAT tell you?

8 THE COURT: What did it tell me? Does it say he
9 doesn't pay?

10 MS. SAVAGE: Does it say what?

11 THE COURT: Does it say he doesn't pay something?

12 MS. SAVAGE: No. He's not saying he shouldn't pay
13 anything.

14 THE COURT: Okay.

15 MS. SAVAGE: See, that's what we keep getting back to.
16 They're -- the, the moving parties are, i.e. the defendants
17 in this case, are making the argument he's saying he
18 shouldn't pay. He's fine with paying his dues.

19 THE COURT: Okay.

20 MS. SAVAGE: He just doesn't -- the plaintiffs just
21 don't want it allocated to the golf facilities, and it
22 shouldn't be pursuant to not only this agreement but all
23 the governing documents as well. The golf facilities are
24 to be maintained by and have a separate fee structure by
25 equity and non-equity golf memberships.

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THE COURT: Okay. So, let me make sure I got his argument. His argument and the reason I'm here, the reason we're in court is that the golf members, all their, all of their funds should go to golf?

MS. SAVAGE: The equity golf members -- all right, let's talk about the classes of membership again just so we're clear.

THE COURT: There are only two.

MS. SAVAGE: You have your community/social members.

THE COURT: Right.

MS. SAVAGE: And then you have your golf members.

THE COURT: Right.

MS. SAVAGE: But within the ---

THE COURT: And he's -- go ahead.

MS. SAVAGE: Within the golf members you have two classes.

THE COURT: Okay.

MS. SAVAGE: You have equity golf and non-equity golf.

THE COURT: Equity golf means you live there; non equity means you just want to play on the golf course.

MS. SAVAGE: Correct, but they pay different dues and whatever, but all those dues collectively ---

THE COURT: Right.

MS. SAVAGE: --- are to be -- and the initial initiation fee, et cetera, are to be utilized for the golf

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facilities.

THE COURT: Right.

MS. SAVAGE: None of the community and social dues are to be utilized for that.

THE COURT: Okay.

MS. SAVAGE: Okay. What ---

THE COURT: And that's, and that's his argument.

MS. SAVAGE: Correct.

THE COURT: Okay. All right. Just want to make sure that's why we're here.

MS. SAVAGE: Uh-huh. Well, it dovetails with some larger issues that are now being litigated in federal court as well, so ---

THE COURT: What larger issues?

MS. SAVAGE: Well, larger issues, at least for relevance to this case, are when TI turned over the club facilities to OC in 2016, there was a huge maintenance deficit of the golf, on the golf facilities, and this was true for even previous years. And TI as the sponsor was supposed to pay for these deficits every single year and make sure that any deficits were paid prior to turnover. That did not happen. We're litigating that in federal court, but what has happened is because TI wasn't paying the deficits as the sponsor, that's why the community members' dues were being gorged to -- and appropriated to

1 support the golf facilities.

2 THE COURT: Okay.

3 MS. SAVAGE: Okay. So, there's a much bigger picture
4 here than that which we could have, you know, addressed if
5 we had gotten these papers and all these ---

6 THE COURT: No. I was just kind of curious. Okay.

7 MS. SAVAGE: So, yeah, I know it sounds like a
8 negligible sum of money, but these -- the OC and the OCA
9 are separates nonprofits. They serve two separate
10 purposes. The allocation from the OCA social dues to the
11 OC is only for use of what are the demarcated social
12 facilities set forth in the property report.

13 THE COURT: Okay.

14 MS. SAVAGE: The other golf facilities have to be
15 supported by the golf members, and in the event there's a
16 deficit by the sponsor -- at least until up to 2016 where
17 turnover took place. So, I know it seems petty and
18 negligent in the context of just this one little hearing,
19 but part of, like, a bigger scheme that's been going.

20 THE COURT: Okay. Let me ask you a question. Going
21 back to the Exhibit A.

22 MS. SAVAGE: Oh, and one other thing, Your Honor, if
23 it's...

24 THE COURT: Yeah. Go ahead.

25 MS. SAVAGE: You have four, you have four plaintiffs

1 here, but the reality is is that if the court finds that
2 there has been an improper allocation just for these four
3 plaintiffs, whether pursuant -- if it's just pursuant to
4 the termination agreement, then that's specific to that
5 contract. If the court says, well, even according to the
6 governing documents that those funds should not be utilized
7 for the golf facilities, that has incredible ramification
8 for all social members within the community. So, \$1500 for
9 four people becomes 1500 for 530 or whatever people live in
10 that community times, you know, whatever number of years.

11 THE COURT: But I don't have a ---

12 MS. SAVAGE: So, it has big financial ramifications.

13 THE COURT: Right. I don't have a class action suit.

14 MS. SAVAGE: No. I'm just saying ---

15 THE COURT: I already got one ---

16 MS. SAVAGE: I ---

17 THE COURT: --- in Beaufort.

18 MS. SAVAGE: I agree, but what I'm saying is that by
19 you -- now, understand. TI has controlled the board.
20 Again, the sponsor of the community has basically
21 controlled the board until turnover in 2016.

22 Now, Mr. Ford is shaking his head, but it says it very
23 clearly in the governing documents that TI chooses the
24 board. TI can void any decision by other board members,
25 and it basically has super veto power. Since turnover, it

1 still has super veto power.

2 And so it was in TI's interest to take OCA's social
3 dues, transfer -- that was transferred solely for
4 recreational facilities to the OC, and take that money and
5 put it into the golf course coffers because that would
6 reduce the deficit that TI had to pay in, in every single
7 year before turnover. So, it's an improper allocation to
8 basically protect TI's interest and their obligation to
9 make up deficits in the -- in each year until turnover.

10 And that's again a bigger issue that we're also
11 litigating in the federal courts. So, I don't want, I just
12 don't -- I hope the court wouldn't be dismissive of this
13 issue because it does seem financially negligible for just
14 these four people who are here, but it really has bigger
15 ramifications.

16 THE COURT: You know, nothing that comes before this
17 court -- I know when I have, I have jury trials and they
18 only last a day, I tell the jury it's still important to
19 the people, okay?

20 MS. SAVAGE: I'm sorry, you had a question about
21 Exhibit A and I interrupted you.

22 THE COURT: Well, Exhibit A, when I'm looking, the
23 covenant to pay, it says that:

24 A reasonable share of the overhead expenses
25 associated with the general operation and

1 administration of the club.

2 And club means the golf club, right?

3 MS. SAVAGE: No.

4 THE COURT: It doesn't? What does the club made?

5 MS. SAVAGE: There's a definition of club facilities
6 and recreational facilities.

7 THE COURT: Okay.

8 MS. SAVAGE: And now people, people have access to a
9 clubhouse for dinner and things of that nature. There is,
10 like, a minimum requirement to spend, I think, a certain
11 amount of money for food during the year or whatever for
12 golf members, but that's not attributable to ---

13 THE COURT: So, what does club mean?

14 MS. SAVAGE: Well, let's look.

15 THE COURT: According to the thing, it says Oldfield
16 Club.

17 MS. SAVAGE: Right.

18 THE COURT: Is that the clubhouse? Is that the golf
19 course?

20 MS. SAVAGE: Oldfield Club, again, is comprised of two
21 separate things. They have their recreational facility and
22 their golf facilities, and then if you look, it
23 specifically says that the golf facilities have its own
24 separate fee structure.

25 THE COURT: Okay. All right. Okay. I'm with you.

1 MS. SAVAGE: Okay. I know it's confusing, but -- so
2 just calling Oldfield Club by shorthand the club doesn't
3 mean that there's a right to an allocation of social member
4 dues to the golf facilities.

5 THE COURT: Okay.

6 MS. SAVAGE: And it makes sense. Why would people
7 move into a golf -- you know, into a community but not want
8 to become golf members and then be charged for the golf
9 facilities. I mean, that was the whole purpose of creating
10 two separate entities and two separate, two separate
11 categories within the OC, which is again the recreational
12 facilities and the golf club and the facilities..

13 THE COURT: Okay.

14 MS. SAVAGE: In the meantime -- do you have any other
15 questions, by the way, Your Honor? I don't want to...

16 THE COURT: No, ma'am.

17 MS. SAVAGE: Okay. I'd like to talk about the statute
18 of limitations issue, if I may now.

19 THE COURT: Sure.

20 MS. SAVAGE: So, the argument is that Mr. Star and/or
21 the other plaintiffs knew about this allocation, which they
22 -- again, it's not the allocation that the OC is making of
23 -- from the plaintiffs' total dues. It's the allocation
24 that the OC is making with that dues and then applying it
25 to the golf facilities, which it's not supposed to. So,

1 the question is not whether the plaintiffs knew what
2 portion of their funds were being transferred to Oldfield
3 Club to support the recreational facilities -- which are
4 fine because they have access to them and they use them
5 continuously -- but how much money was then being utilized
6 to maintain the golf facilities, which it's not supposed to
7 be utilized for that.

8 Mr. Star had no notice, and it sets forth -- we set
9 that forth in his affidavit filed with the court -- of how
10 the funds that were given by the OCA to the OC were being
11 utilized at the facility. He suspected, because of all the
12 deficits over the years in maintaining the golf facilities,
13 that funds, that funds were being transferred from the OCA
14 to the OC for recreational facilities were, in fact, being
15 utilized for the golf facilities.

16 He did meet with TI, and he sent a letter in 2012.
17 Mr. Abney actually responded to that letter, and we'd love
18 to be able to put that in our responsive memorandum because
19 they deny in that letter all the allegations that Mr. Star
20 makes in his letter and further allege they don't have a
21 fiduciary duty as a sponsor to him, which of course we know
22 is not true under applicable state law.

23 So, he was -- Mr. Star was continually misled by the
24 board. We have a number of emails that will demonstrate
25 that by the board for years, and he, when he got on to the

1 finance committee in 2013, he ---

2 THE COURT: Mr. Star got on the finance committee?

3 MS. SAVAGE: He was put on the finance committee in
4 2013, but the first set of financials that the finance
5 committee saw and analyzed were not provided until 2014,
6 which is set forth in Mr. Star's affidavit.

7 Now, in order -- I mean, that, that -- Ms. Deters
8 says, oh, every year these financials came out. Yeah,
9 could read them and there were numbers on them, but let me
10 tell you the problem. Even the people on the finance
11 committee had to be given -- and this is, again, in Mr.
12 Star's instruction manual -- instruction manual.
13 Affidavit. The members of the finance committee were
14 actually given an instruction manual on how to read the
15 financials because that's how convoluted they were. In
16 addition to that, a number of years of financials have had
17 to have been restated because auditors determined that were
18 inappropriate allocations as in between OCA and OC or OC in
19 connection with the recreational and golf facilities. And
20 we attach an auditor's letter from 2015 as Exhibit B
21 because 2015 statements had to be audited. So, actually we
22 are not in possession of -- because, just because this suit
23 was started in 2014 doesn't mean there's not a continuing
24 obligation to provide the financial statements because we
25 believe that this is a continuing conduct.

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We, yes, we, the plaintiffs, received the 2015 financial statements on December 26th from the OC -- or from, yeah, the OC December 26, 2016. Mr. Star, whose deposition is being bandied about here, was deposed on January 25th. It wasn't until March 2nd that the rest of the documents that were, that were requested in his affidavit for line-item information for all the general and administrative expenses was actually produced. So, to rely on the affidavit in the absence of a multitude of documents that weren't produced until March is totally erroneous.

Not only that. The deposition doesn't even have the context of the beginning of the argument or the beginning of the section. So, Mr. Ford reads and, and were they hiding anything and were they -- well, I'm sorry. So, where is the previous page that actually tells you what they're talking about? That wasn't included.

Okay, so it's all great to take this all out of context, and it's all great to try to look at a January 25th deposition when the majority of documents that even attempted to explain the financials, assuming they're honest and accurate, were produced March 2nd.

Well, in January, on January 17th a few days before Mr. Star's deposition, the auditors came out with a letter, which is Exhibit 2 to our motion, basically saying there's incompetence, there's misappropriation. So, now the 2015

1 financials that were turned over to us are actually wrong,
2 and we have not received restated 2015 financials, and we
3 haven't gotten the 2016 financials because we know this is
4 a continuing event, and that it not only violates this
5 agreement, but it does violate the governing documents.
6 So, I would ask that the court disregard any reference to
7 the deposition in as much as it was not entirely produced
8 to the court so the court can get context as to what the
9 testimony was about.

10 Now, going ---

11 MS. DETERS: Your Honor, I do have a copy of the
12 deposition, if you'd like me to approach the court with
13 one.

14 THE COURT: I'll let you do that.

15 MR. FORD: And it was taken two days, one in January
16 and then in March it was resumed.

17 MS. DETERS: I just have the first ---

18 MS. SAVAGE: But that's the January one that you're
19 reading from.

20 MR. FORD: And in the March one he said I agree with

21 ---

22 MS. SAVAGE: Objection.

23 MR. FORD: --- everything I said before.

24 MS. SAVAGE: Excuse me. You can't ---

25 THE COURT: Okay.

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MS. SAVAGE: Really?

THE COURT: Ms. Savage, okay, you get to make your argument. Keep on with your argument.

MS. SAVAGE: Okay.

THE COURT: Thank you, ma'am.

MS. SAVAGE: I'm sorry, Your Honor. I mean, really, for a lawyer, a lawyer to extemporaneously represent and espouse what testimony took place in a, in a deposition where the transcript isn't even present in court, I'm sorry, that's just improper.

Putting that aside.

THE COURT: Yes, ma'am.

MS. SAVAGE: Statute of limitations. So, as set forth in Mr. Star's affidavit, he did not have knowledge. And, in fact, he was affirmatively misled by the parties, by the defendants as to the allocation of OC dues that were being utilized for the golf facilities. When he got on the finance committee again and he first saw this set of financials in 2014 and he was given this instruction manual by Mr. Richard Price, who at the time was a board member, and, and we have an email regarding this. Mr. Price said, oh, here's your instruction manual in order to interpret the financials. That's when Mr. Star was able to intuit what he understood to be the misallocation of social fees, dues to the golf facility, and then he commenced this

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action.

Okay, so it's -- he didn't have constructive notice of anything because the earlier financials were opaque. You needed an instruction manual which was only given to the finance committee to understand them. And furthermore, he, he was misled in the fact of the financials when he asked questions and was told that what he thought was taking place wasn't taking place. So, when he got on the finance committee, he now felt he had a meritorious basis for his claim, and he filed the action. So, he didn't discover what was going on and was misled about it until 2014, and thus the statute of limitations started in 2014 when he discovered in September 2014, I believe it was. So that's number one.

But even if you go with this argument of, oh, he knew this in 2012 and, and so the statute of limitations expires, well, the statute of limitations restarts every year that the board puts out their annual finances because he -- don't -- how is he to know, how are the plaintiffs to know that this is a continuing process? It's one act when they do it for one year and disclose it. It's another act for the next year, and the statute of limitations starts in each separate year. This isn't like a malpractice case, medical malpractice case where, you know, the surgeon leaves a sponge in someone's stomach and that's the only

1 act and then the time starts running. These are all
2 separate acts.

3 Now, one of the things that the auditor has said in
4 the letter that we, again, attached as Exhibit B is that
5 the boards must start producing monthly financials. They
6 weren't doing that. They were only producing annual
7 financials. So, unless and until those financials were
8 released, and assuming they were accurate, which we know a
9 number of them weren't. 2011 had to be restated; 2015 is
10 now being restated. How are we to know what's going on?

11 But the reality is that if, if the defendants really
12 felt that Mr. -- that the plaintiffs' allegations here were
13 false, all they had to do, Your Honor, was attach an
14 affidavit of their accountant or their auditor or a general
15 manager or board member who could authenticate the relevant
16 financial documents, who could say okay, this is what we're
17 doing and we represent that this is not an allocation to
18 golf. And if it's that black and white on the financial
19 statements, that's all they had to do, and they could have
20 dismissed this case. They didn't have to deal with
21 voluntary payment doctrine. They didn't have to deal with
22 statute of limitations arguments. They don't have to deal
23 with all these extraneous arguments because all they had to
24 do was put the financials on their motion for summary
25 judgment with an affidavit from somebody saying no. He's

1 wrong.

2 But they didn't do that, and at this point we're still
3 waiting for restated 2015 financials, for 2016, and we
4 believe it's appropriate that we gather that information
5 and have an opportunity to talk with the auditors and the
6 accountants involved and get an explanation of exactly
7 what's going on.

8 As to the voluntary payment doctrine, voluntary
9 payment doctrine does not apply to legally enforceable
10 contracts because legally enforceable contracts have their
11 own obligations. And Mr. Star and the others complied with
12 the obligations under the termination and release
13 agreement, which is, of course, a contract. So, we don't
14 believe that this voluntary payment argument even applies
15 in this situation.

16 But assuming the court thinks it does, if, if this --
17 and this is, again in Mr. Star's affidavit to the -- or our
18 objection. If Mr. Star had not paid those dues, he was at
19 risk of having his name put on a list because they're doing
20 that now with respect to a new assessment made at the club
21 against golf members, \$5000 separate assessment to start to
22 do maintenance on golf facilities because as we allege, TI
23 should have paid for all that but they didn't, and that's a
24 federal court case. But they -- the, the boards have
25 threatened to put people's names on papers, tack them to

1 the wall of facilities so everybody knows who's not paying.

2 Now, this is an intimate, closed facility. Everyone
3 knows everybody in this community. If you don't think
4 there's some duress in knowing you're going to be demonized
5 in that manner and that your kids could potentially -- I
6 mean, he's got young children -- could potentially be --
7 overhear things or not have access to recreational
8 facilities that all their friends are using, I don't know
9 what duress is then.

10 THE COURT: Well, he's under an obligation to make
11 payments, right?

12 MS. SAVAGE: Pardon me?

13 THE COURT: He is under an obligation to make
14 payments, right?

15 MS. SAVAGE: Yes, he is.

16 THE COURT: Okay.

17 MS. SAVAGE: And just -- and by the way, the governing
18 documents are contracts as well. So, I mean, whether it's
19 via the termination agreement or it's under the governing
20 documents, of course he's got an obligation to pay, and the
21 voluntary payment doctrine is not applicable.

22 THE COURT: Okay.

23 MS. SAVAGE: Just look at my notes if I may, Your
24 Honor. I know it's ---

25 THE COURT: Take your time.

1 MS. SAVAGE: The hour is getting late.

2 THE COURT: Oh, yeah.

3 (A PAUSE.)

4 MS. SAVAGE: Now, in terms of TI having knowledge of
5 the agreement, so one of the plaintiffs here is Mr. Haas,
6 and Mr. Haas is Mr. Star's father-in-law, as Mr. Ford
7 stated. Mr. Haas owns a cottage house on -- within the
8 community. There are a number of home sites where it is
9 mandatory that you become a golf member; the cottage sites,
10 home sites are one of those groups. Mr. Haas owns that,
11 and he became an equity golf member, but then he was --
12 then pursuant to the termination and release agreement, he
13 was able to terminate his golf equity membership even
14 though under the governing documents it says because he
15 owns a cottage house, he is mandated to be an equity golf
16 member.

17 From then on, from 2009 when this equity agreement was
18 executed and then of course TI bought the properties in
19 2010, I believe, there has been no equity golf funds
20 collected from Mr. Haas. He is the only cottage home --
21 cottage home site homeowner who is not charged for this.
22 How can TI claim that it could not know about this when
23 didn't they say, hey, why aren't we getting our equity golf
24 payments and dues from this cottage owner because he's
25 mandated? So, our position is they had to know about it,

1 or at least they were on constructive notice about it
2 because they saw there was no collection going on in
3 connection with that, that house.

4 And I think I'll just close this by saying at a
5 minimum, Your Honor, I think there are genuine issues of
6 fact in dispute. And under South Carolina Rule 56
7 governing summary judgment and the cases decided
8 thereunder, this court must take all allegations by the
9 opposing party, which is plaintiffs here, as true. And
10 those claims then are supposed to be rebutted in the
11 movant's papers, and they are supposed to demonstrate why
12 there is no genuine issue of fact in dispute, and they
13 haven't done that. They could have, as I said. They could
14 have just put all so-called really clear financials as an
15 exhibit with an affidavit from somebody, and that would
16 have just put this whole thing to bed, but they didn't do
17 that. So, I do believe, Your Honor, that they have failed
18 to satisfy their burden of proof for summary judgment as a
19 matter of law, but also because of the very serious genuine
20 issues of dispute in this matter.

21 THE COURT: Okay. Thank you, Ms. Savage.

22 MS. SAVAGE: And thank you for accommodating my long
23 discussion.

24 THE COURT: Yes, ma'am. Thank you, Ms. Savage.

25 MR. FORD: I'm going to be brief, Your Honor.

1 THE COURT: Okay.

2 MR. FORD: I said at the close of my opening that
3 you're going to hear a lot of words, and that turned out to
4 be true, and I ask Your Honor look past all the words to
5 the evidence, and the evidence is Mr. Star's testimony:
6 I'm not accusing them of hiding it, no. It's right there
7 on the page for everyone to see. It's publicly available,
8 at least within Oldfield, correct.

9 We took his deposition in January. We waited three
10 months. Took a second day of it, and he agreed with
11 everything. Signed ---

12 MS. SAVAGE: Object.

13 MR. FORD: --- on to his first day. So, there was a
14 long space in there, Your Honor.

15 Mr. Star's own words are the most compelling argument
16 we have, as are the governing documents themselves which
17 say that:

18 The total estimated cost as reflected in the
19 budget shall be allocated among the members of
20 all classes and categories to whom the
21 facilities, services, and/or programs covered by
22 such budget are made available.

23 There is no dispute these things are available to Mr.
24 Star. We've cited that in our brief. We've attached
25 numerous exhibits that we're relying on. We thank you for

1 your patience.

2 THE COURT: Thank you.

3 All right, anything from anybody else?

4 MR. ABNEY: Nothing more, Your Honor.

5 THE COURT: All right, I'll go back and I'll read over
6 stuff. I'll get back with you. I know there's the motion
7 to amend the complaint.

8 MS. SAVAGE: May we have permission to file a
9 responsive memorandum, Your Honor, on the summary judgment
10 with supporting affidavit and documents?

11 THE COURT: How long do you want, Ms. Savage?

12 MS. SAVAGE: Could I get two weeks?

13 THE COURT: Sure.

14 MS. SAVAGE: Thank you, Your Honor.

15 THE COURT: Okay.

16 Okay, now regarding the amendment, it is a quarter of
17 1. I'm going to eat lunch, okay, so ---

18 MS. SAVAGE: Quick argument.

19 THE COURT: Well, no. It's going to be a quick
20 argument because if you want to send me something in
21 writing, you can do that about it.

22 MS. SAVAGE: On -- oh, I'm sorry, on which?

23 THE COURT: On the amendment.

24 MS. SAVAGE: I already filed the motion.

25 THE COURT: Okay. No, no. I'm saying if you want to

1 file a memo to go along with that ---

2 MS. SAVAGE: I did.

3 THE COURT: Okay. Well, then you ---

4 MS. SAVAGE: Do you ---

5 THE COURT: --- don't need to add your ---

6 MS. SAVAGE: And I didn't even ask for a hearing. I
7 said no hearing requested when I e-filed it.

8 THE COURT: Okay.

9 MS. SAVAGE: So, I'm happy to have you determine it on
10 the papers, Your Honor.

11 THE COURT: Okay. That's what I wanted to hear.

12 MS. SAVAGE: Okay.

13 THE COURT: Any objection to that, Mr. -- hold on.

14 MR. OGIBA: Ogiba.

15 THE COURT: Ogiba, Mr. Ogiba, what a great name.

16 Anyway, Mr. Ogiba, have you filed a memorandum in response?

17 MR. OGIBA: We have, Your Honor, and I don't ---

18 THE COURT: Any problem with me reading that?

19 MR. OGIBA: --- need to supplement anything.

20 THE COURT: Okay. If I've got any questions, I'll ask
21 y'all to supplement it, okay?

22 MR. OGIBA: Okay. Thank you.

23 THE COURT: Thank you, Mr. Ogiba.

24 MS. SAVAGE: Thank you very much, Your Honor.

25 THE COURT: All right.

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(A PAUSE.)

THE COURT: All right, the clerk just told me if you don't want a hearing on it, on these motions, you know, but you want it decided, send a proposal order along when you do the memos.

MS. SAVAGE: Okay. Thank you, Your Honor.

MR. OGIBA: Your Honor, I apologize. I'm, I'm retracting my, my previous comment. Just one quick point on the motion to amend. If Your Honor decides to grant that motion to amend, the Crescent defendants are requesting additional time to prepare their defenses for trial. This case is under a scheduling order that sets the trial not before date of, I think, September 29th, two days -- ten days from today.

THE COURT: Okay.

MR. OGIBA: If they're allowed to amend their complaint, obviously we'd like an opportunity to respond.

THE COURT: Well, if it's, if it's amended, I think you get 180 days anyway.

MR. FORD: They're not a new party.

THE COURT: Oh, they're not a new party?

MR. ABNEY: They're third-party defendant now.

MR. OGIBA: We're third-party defendant.

THE COURT: Okay. All right. Okay.

MS. SAVAGE: And if I may, Your Honor, I'm not sure I

1 can go to trial on September 29th when we have two weeks to
2 file the responsive memo on this summary judgment motion.
3 So, it sounds like to me like it's going to have to be
4 moved in any event.

5 THE COURT: Well, I'll let y'all talk that over with
6 the admin judge.

7 MS. SAVAGE: Okay.

8 THE COURT: Okay? I'm not the admin.

9 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON
THE 19TH DAY OF SEPTEMBER, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 2ND, 2018

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EXHIBIT A

ELECTRONICALLY FILED - 2017 Oct 09 3:41 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000416

Case: 17-cv-00001

ELECTRONICALLY FILED - 2017 Oct 09 3:41 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

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Upon recording, please return to:
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1200 Peachtree Center South Tower
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Atlanta, GA 30303

Please cross-reference to Residential Declaration at Record Book 1354
Page 1357

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DECLARATION OF RECREATIONAL COVENANT
FOR
OLDFIELD CLUB

THIS DECLARATION OF RECREATIONAL COVENANT ("Covenant") is made this 17 day of November, 2000, by OLDFIELD, LLC, a South Carolina limited liability company, on behalf of itself, its successors-in-title, and assigns (the "Declarant").

BACKGROUND STATEMENT

Declarant is the developer of the planned community located in Beaufort County, South Carolina and known as Oldfield. Declarant has executed and filed that Declaration of Covenants, Conditions and Restrictions for Oldfield recorded on November 17, 2000, in Deed Book 1354, Page 1357, *et seq.*, in the Office of the Register of Deeds for Beaufort County, South Carolina (such Declaration, as it may be amended or supplemented from time to time, is referred to in this Covenant as the "Residential Declaration").

Declarant is the owner of the real property described on Exhibit "A" to this Covenant (the "Residential Property"), which is all or a portion of the property submitted to the Residential Declaration.

Declarant is also the owner of the real property described on Exhibit "B" to this Covenant (the "Club Property"), which it intends to develop with recreational and social facilities to be operated as part of Oldfield Club (the "Club"). Portions of the Club Property are adjacent to the Residential Property.

Declarant's plan for development of the Residential Property is based upon Declarant's desire to establish a residential community with a significant social and recreational component that draws together the owners of homes and homesites within the Residential Property ("Residential Units") and creates a sense of belonging and inclusiveness within the Oldfield community. In furtherance of this goal, Declarant has organized Oldfield Community Association, a South Carolina nonprofit corporation (the "Association"), as a mandatory

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membership owners association to administer and enforce the Residential Declaration and to operate and maintain certain subdivision improvements and infrastructure for the benefit of the Residential Property, and has established the Club to administer this Declaration and to operate and maintain social and recreational facilities within Oldfield for the benefit of the owners of the Residential Property. By this Covenant, Declarant desires to provide for issuance of a Community Membership (as described below) in the Club for each home or homestead within the Residential Property ("Residential Unit") and to establish the obligation of the owner(s) of each Residential Unit to pay such periodic dues for Community Membership as the Club may establish from time to time in accordance with this Covenant.

Article I
Declaration of Intent and Binding Effect

Declarant, as the owner of Residential Property and the Club Property, hereby declares that all of the Residential Property and all of the Club Property shall be held, sold, and conveyed subject to the covenants, conditions, and easements contained herein, which shall run with the title to all the Residential Property and the Club Property. This Covenant shall be binding upon all Persons having any right, title, or interest in any portion of the Residential Property or the Club Property, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of the owners of each portion of the Residential Property and the Club Property, except as otherwise expressly provided or limited herein.

Article II
Community Membership

2.1. Issuance of Memberships. Declarant, the Club, or the owner or operator of the Club Property if other than Declarant or the Club ("Club Operator"), shall cause a membership ("Community Membership") to be issued to the owner(s) of each Residential Unit ("Owner") entitling the Owner to:

- (a) use such food and beverage and banquet facilities as the Club Operator may designate and the community dock, if any, operated by Club Operator on the Club Property;
- (b) use the boats, kayaks, and fishing gear provided at the Outfitters Center, if any, operated by Club Operator on the Club Property;
- (c) use the swimming pool, tennis courts and fitness center comprising the Activity Center, if any, operated by Club Operator on the Club Property;
- (d) participate in such social activities as the Club Operator may sponsor from time to time for holders of Community Memberships ("Community Members"); and
- (e) such additional privileges, if any, as the Club Operator may specify.

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Only one Community Membership shall be issued per Residential Unit. If more than one person holds title to the Residential Unit, the Community Membership will be issued to all co-owners jointly.

All privileges of Community Membership shall be limited to operating hours and subject to payment of such charges for food and beverage service as the Club Operator may establish. Such privileges shall also be subject to such membership policies and rules as the Club Operator may establish and modify from time to time.

Nothing herein shall obligate Club Operator or the owner of the Club Property to offer or maintain food and beverage service nor shall anything herein dictate the level of service or hours of operation of any food and beverage service provided.

2.2. Term of Memberships; Covenant to Maintain. The Owner(s) of each Residential Unit shall maintain the Community Membership issued for their Residential Unit pursuant to Section 2.1 in good standing as long as they hold title to the Residential Unit. Such Community Membership shall automatically terminate, as to the Owner of each Residential Unit, when such person ceases to be the owner of record title to the Residential Unit; however, a former Community Member shall remain obligated for all charges incurred on account of such membership prior to such termination. Upon transfer of title to a Residential Unit and termination of the Community Membership held by the previous Owner, the Club Operator shall issue a new Community Membership to the new Owner(s).

2.3. No Ownership Interest. No Owner, by virtue of ownership of a Residential Unit or by virtue of holding a Community Membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator, but only the privilege of using and enjoying the Club's facilities as a Community Member in accordance with the Club's Bylaws and the Club's rules, which are subject to change from time to time.

Article III
Obligation to Pay Membership Fees

3.1. Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

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- (a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;
- (b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and
- (c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;
- (d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate;
- (e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. In determining the level of dues to be charged for Community Memberships, the total estimated costs pursuant to such budget shall be divided by the number of memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. Club Operator shall provide a copy of such budget to the holders of each Community Membership at least 45 days prior to the effective date of such budget, along with notice of the amount of the dues payable for each Community Membership for such budget year.

Any usage fees charged to Community Members shall not exceed the amount charged to other classes of members with comparable use privileges.

The obligation to pay dues and usage fees for Community Memberships shall commence no earlier than the first day of the first month following the date on which a permanent social and dining facility is available for use by Community Members.

3.2. Payment. Each owner of a Residential Unit, by accepting a deed to such Residential Unit, is deemed to covenant and agree to pay the dues and minimum usage fees charged by Club Operator for Community Membership and any other charges incurred by such owner and the authorized users of the membership ("Membership Fees") in a timely manner. All such Membership Fees, together with interest (computed from its due date at a maximum rate of 18% per annum or such higher rate as Club Operator may establish, subject to the limitations of South Carolina law), late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of the owner of the Residential Unit. Upon a transfer of title to a Residential Unit, the grantee shall be jointly and severally liable with the grantor for any Membership Fees due at the time of conveyance.

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The Club Operator's failure to establish Membership Fees or to notify Owners of the Membership Fees shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Membership Fees.

3.3. Lien for Membership Fees. Subject to any limitations imposed by South Carolina law, the Membership Fees shall also constitute a lien on the Residential Unit against which they are levied from the time such Membership Fees become due until paid. The lien shall also secure payment of interest (subject to the limitations of South Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except any lien of the Association and the lien or charge of any Recorded first Mortgage (meaning a recorded first Mortgage with first priority over other Mortgages) made in good faith and for value, and those deemed by South Carolina law to be superior. Club Operator may enforce such lien, when any Membership Fee is delinquent, by suit, judgment, and foreclosure in the same manner as the lien of any recorded first Mortgage of record (including nonjudicial foreclosure, to the extent permitted by South Carolina law).

Club Operator may bid for the Residential Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Residential Unit. Club Operator may sue for unpaid Membership Fees and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Residential Unit shall not affect the above-described lien or relieve such Residential Unit from the lien for any subsequent Membership Fees, except that the sale or transfer of any Residential Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any Membership Fees due prior to the foreclosure.

3.4. Declarant's Residential Units Excluded. The granting of a Community Membership and the obligation for Membership Fees pursuant to this Covenant shall not apply to any Residential Unit owned by Declarant, while so owned.

3.5. Independent Covenant. The obligation to pay the amounts provided for herein shall be mandatory and shall be a separate and independent covenant on the part of the each owner of a Residential Unit. No Owner may exempt himself or herself from liability for Membership Fees by non-use of Club facilities, abandonment of his Residential Unit, or any other means. No diminution or abatement of Membership Fees or set-off shall be claimed or allowed for any alleged failure of the Club Operator 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.

3.6. Recordkeeping; Audit. Club Operator shall cause to be maintained full and accurate books of account with respect to the expenses described in Section 3.1. Such books and records shall be made available for inspection and copying by the owners and mortgagees of Residential Units upon reasonable request during normal business hours. The requesting party shall pay all copying charges for requested copies. If any owner of a Residential Unit desires to have the records audited, it may do so at its expense and Club Operator shall cooperate by

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making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question.

**Article IV
General**

4.1. **Notice.** Any notice provided for in this Covenant shall be served personally or shall be mailed by registered or certified mail to the addresses specified below unless the Club Operator or owner of a Residential Unit has specified, by written notice in accordance with this Section, a different address for delivery of notices, in which case the notice shall be addressed to such different address:

(a) if to the Club Operator:

Oldfield Club
PO Box 23499
Hilton Head Island, South Carolina 29910

(b) if to the owner of a Residential Unit, at the address of the Residential Unit.

All such notices shall, for all purposes, be deemed delivered and received (a) upon personal delivery to the addressee, or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

4.2. **Amendment.** So long as Declarant owns any portion of the property subject to the Residential Declaration, or has an option unilaterally to submit additional property to the Residential Declaration in accordance with its terms, Declarant may unilaterally amend this Covenant to withdraw from its coverage property described on Exhibits "A" or "B", to substitute a different parcel or parcels of property for that previously described on Exhibit "B", or to include additional property on Exhibits "A" or "B;" provided, if the Declarant is not the owner of the property withdrawn, substituted or added, the consent of the owner shall be required. Otherwise, this Covenant may be amended only by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina.

Amendments to this Covenant 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 presumed to have been validly adopted.

4.3. **Duration; Termination.** This Covenant may be terminated only by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina. Unless terminated as provided

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herein, this Covenant shall have perpetual duration. If South Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant shall run for a period of 20 years and shall automatically be extended at the expiration of such period for successive periods of 20 years each. If any provision of this Covenant is judicially determined to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.4. Transfer of Club Facilities. The transfer of the Club Property, and any of its facilities pursuant to the Transfer Agreement shall not affect the continued validity or enforceability of this Covenant, unless terminated in accordance with Section 4.3.

4.5. Construction; Severability. This Covenant shall be governed by and construed under South Carolina law. Invalidation of any provision of this Covenant, in whole or in part, by judgment or court order shall not affect other provisions.

4.6. Waiver. No failure of Declarant, the Club Operator, or the owner of any Residential Unit to exercise any right or power under this Covenant or to insist upon strict compliance with this Covenant and no custom or practice at variance with the terms of this Covenant shall constitute a waiver of the right thereafter to demand exact compliance with the terms of this Covenant.

4.7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

[continued on next page]

EXHIBIT "A"

Residential Property

ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Plat 1, Lots 1-16 and 23-60," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 162 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

ALSO, ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Way," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 163 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

ALSO, ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Plat 3, Lots 61-150," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 164 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

The above described property is a portion of the same property conveyed to Oldfield, LLC by deed from Cherry Point Limited Partnership, dated June 29, 2000, and recorded on June 29, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1307 at Page 1734.

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EXHIBIT "B"
Club Property

All those tracts or parcels of land located in Beaufort County, South Carolina and more particularly described as follows:

All those portions, to be hereafter specifically surveyed and delineated, lying within the area shown on that certain plat entitled "A Boundary Plat of 923.43 Acres Oldfield," dated September 13, 2000, prepared by Coastal Surveying Co., Inc., and certified by Michael Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 161 on November 17, 2000.

The above described property is a portion of the same property conveyed to Oldfield, LLC by deed from Cherry Point Limited Partnership, dated June 29, 2000, and recorded on June 29, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1307 at Page 1734.

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JOHN A. SULLIVAN, JR.
R.M.C.
BEAUFORT COUNTY, S.C.

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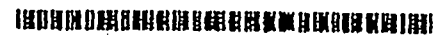
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NOTE TO CLERK: Please cross-reference to: Book 1354
Page 1455

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1200 Peachtree Center South Tower
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Atlanta, GA 30303



COUNTY Beaufort County
BK 01397 PG 1270
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**FIRST AMENDMENT TO THE
DECLARATION OF RECREATIONAL COVENANT FOR OLDFIELD CLUB**

THIS AMENDMENT is made this 19th day of March, 2001.

WITNESSETH

WHEREAS, Oldfield, LLC, a South Carolina limited liability company ("Declarant"), executed and filed that certain Declaration of Recreational Covenant for Oldfield Club, which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354, Page 1455, *et seq.* (the "Covenant"); and

WHEREAS, Section 4.2 of the Covenant provides that the Covenant may be amended by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant owns any portion of the property subject to that certain Declaration of Covenants, Conditions, and Restrictions for Oldfield which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354 at Page 1359, *et seq.* (the "Residential Declaration"), or has an option unilaterally to submit additional property to the Residential Declaration in accordance with its terms; and

WHEREAS, the Declarant desires to amend the Covenant for the purpose of creating two dues categories for Community Members, one category for Residents and one category for Non-residents; and

WHEREAS, the Declarant is the Club Operator; and

WHEREAS, the undersigned owners constitute the owners of a majority of the Residential Units; and

WHEREAS, the Declarant currently owns property subject to the Residential Declaration and has an unexpired option to submit additional property to the Residential Declaration;

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NOW, THEREFORE, the Covenant is hereby amended by deleting Section 3.1 in its entirety and replacing it with the following:

3.1. Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

(b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and

(c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;

(d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and

(e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. Dues for Non-resident

EXHIBIT A

Confidential
Submitted under separate cover

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Exhibit B

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HAAS ROA 000432

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Upon recording, please return to:
Jo Anne P. Stubblefield, Esq.
Ryatt & Stubblefield, P.C.
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30309

Please cross-reference to Residential Declaration at Record Book 1354
Page 1357

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

**DECLARATION OF RECREATIONAL COVENANT
FOR
OLDFIELD CLUB**

THIS DECLARATION OF RECREATIONAL COVENANT ("Covenant") is made this 17 day of November, 2000, by OLDFIELD, LLC, a South Carolina limited liability company, on behalf of itself, its successors-in-title, and assigns (the "Declarant").

BACKGROUND STATEMENT

Declarant is the developer of the planned community located in Beaufort County, South Carolina and known as Oldfield. Declarant has executed and filed that Declaration of Covenants, Conditions and Restrictions for Oldfield recorded on November 17, 2000, in Deed Book 1354, Page 1357, *et seq.*, in the Office of the Register of Deeds for Beaufort County, South Carolina (such Declaration, as it may be amended or supplemented from time to time, is referred to in this Covenant as the "Residential Declaration").

Declarant is the owner of the real property described on Exhibit "A" to this Covenant (the "Residential Property"), which is all or a portion of the property submitted to the Residential Declaration.

Declarant is also the owner of the real property described on Exhibit "B" to this Covenant (the "Club Property"), which it intends to develop with recreational and social facilities to be operated as part of Oldfield Club (the "Club"). Portions of the Club Property are adjacent to the Residential Property.

Declarant's plan for development of the Residential Property is based upon Declarant's desire to establish a residential community with a significant social and recreational component that draws together the owners of homes and homesites within the Residential Property ("Residential Units") and creates a sense of belonging and inclusiveness within the Oldfield community. In furtherance of this goal, Declarant has organized Oldfield Community Association, a South Carolina nonprofit corporation (the "Association"), as a mandatory

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membership owners association to administer and enforce the Residential Declaration and to operate and maintain certain subdivision improvements and infrastructure for the benefit of the Residential Property, and has established the Club to administer this Declaration and to operate and maintain social and recreational facilities within Oldfield for the benefit of the owners of the Residential Property. By this Covenant, Declarant desires to provide for issuance of a Community Membership (as described below) in the Club for each home or homesite within the Residential Property ("Residential Unit") and to establish the obligation of the owner(s) of each Residential Unit to pay such periodic dues for Community Membership as the Club may establish from time to time in accordance with this Covenant.

Article I
Declaration of Intent and Binding Effect

Declarant, as the owner of Residential Property and the Club Property, hereby declares that all of the Residential Property and all of the Club Property shall be held, sold, and conveyed subject to the covenants, conditions, and easements contained herein, which shall run with the title to all the Residential Property and the Club Property. This Covenant shall be binding upon all Persons having any right, title, or interest in any portion of the Residential Property or the Club Property, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of the owners of each portion of the Residential Property and the Club Property, except as otherwise expressly provided or limited herein.

Article II
Community Membership

2.1. Issuance of Memberships. Declarant, the Club, or the owner or operator of the Club Property if other than Declarant or the Club ("Club Operator"), shall cause a membership ("Community Membership") to be issued to the owner(s) of each Residential Unit ("Owner") entitling the Owner to:

- (a) use such food and beverage and banquet facilities as the Club Operator may designate and the community dock, if any, operated by Club Operator on the Club Property;
- (b) use the boats, kayaks, and fishing gear provided at the Outfitters Center, if any, operated by Club Operator on the Club Property;
- (c) use the swimming pool, tennis courts and fitness center comprising the Activity Center, if any, operated by Club Operator on the Club Property;
- (d) participate in such social activities as the Club Operator may sponsor from time to time for holders of Community Memberships ("Community Members"); and
- (e) such additional privileges, if any, as the Club Operator may specify.

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Only one Community Membership shall be issued per Residential Unit. If more than one person holds title to the Residential Unit, the Community Membership will be issued to all co-owners jointly.

All privileges of Community Membership shall be limited to operating hours and subject to payment of such charges for food and beverage service as the Club Operator may establish. Such privileges shall also be subject to such membership policies and rules as the Club Operator may establish and modify from time to time.

Nothing herein shall obligate Club Operator or the owner of the Club Property to offer or maintain food and beverage service nor shall anything herein dictate the level of service or hours of operation of any food and beverage service provided.

2.2. Term of Memberships; Covenant to Maintain. The Owner(s) of each Residential Unit shall maintain the Community Membership issued for their Residential Unit pursuant to Section 2.1 in good standing as long as they hold title to the Residential Unit. Such Community Membership shall automatically terminate, as to the Owner of each Residential Unit, when such person ceases to be the owner of record title to the Residential Unit; however, a former Community Member shall remain obligated for all charges incurred on account of such membership prior to such termination. Upon transfer of title to a Residential Unit and termination of the Community Membership held by the previous Owner, the Club Operator shall issue a new Community Membership to the new Owner(s).

2.3. No Ownership Interest. No Owner, by virtue of ownership of a Residential Unit or by virtue of holding a Community Membership in the Club, acquires any ownership interest, beneficial interest, or other vested interest whatsoever in the Club or the Club Operator, but only the privilege of using and enjoying the Club's facilities as a Community Member in accordance with the Club's Bylaws and the Club's rules, which are subject to change from time to time.

Article III

Obligation to Pay Membership Fees

3.1. Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

- (a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;
- (b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and
- (c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;
- (d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate;
- (e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. In determining the level of dues to be charged for Community Memberships, the total estimated costs pursuant to such budget shall be divided by the number of memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. Club Operator shall provide a copy of such budget to the holders of each Community Membership at least 45 days prior to the effective date of such budget, along with notice of the amount of the dues payable for each Community Membership for such budget year.

Any usage fees charged to Community Members shall not exceed the amount charged to other classes of members with comparable use privileges.

The obligation to pay dues and usage fees for Community Memberships shall commence no earlier than the first day of the first month following the date on which a permanent social and dining facility is available for use by Community Members.

3.2. Payment. Each owner of a Residential Unit, by accepting a deed to such Residential Unit, is deemed to covenant and agree to pay the dues and minimum usage fees charged by Club Operator for Community Membership and any other charges incurred by such owner and the authorized users of the membership ("Membership Fees") in a timely manner. All such Membership Fees, together with interest (computed from its due date at a maximum rate of 18% per annum or such higher rate as Club Operator may establish, subject to the limitations of South Carolina law), late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of the owner of the Residential Unit. Upon a transfer of title to a Residential Unit, the grantee shall be jointly and severally liable with the grantor for any Membership Fees due at the time of conveyance.

The Club Operator's failure to establish Membership Fees or to notify Owners of the Membership Fees shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Membership Fees.

3.3. Lien for Membership Fees. Subject to any limitations imposed by South Carolina law, the Membership Fees shall also constitute a lien on the Residential Unit against which they are levied from the time such Membership Fees become due until paid. The lien shall also secure payment of interest (subject to the limitations of South Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees, and administrative costs). Such lien shall be superior to all other liens, except any lien of the Association and the lien or charge of any Recorded First Mortgage (meaning a recorded first Mortgage with first priority over other Mortgages) made in good faith and for value, and those deemed by South Carolina law to be superior. Club Operator may enforce such lien, when any Membership Fee is delinquent, by suit, judgment, and foreclosure in the same manner as the lien of any recorded first Mortgage of record (including nonjudicial foreclosure, to the extent permitted by South Carolina law).

Club Operator may bid for the Residential Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Residential Unit. Club Operator may sue for unpaid Membership Fees and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Residential Unit shall not affect the above-described lien or relieve such Residential Unit from the lien for any subsequent Membership Fees, except that the sale or transfer of any Residential Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any Membership Fees due prior to the foreclosure.

3.4. Declarant's Residential Units Excluded. The granting of a Community Membership and the obligation for Membership Fees pursuant to this Covenant shall not apply to any Residential Unit owned by Declarant, while so owned.

3.5. Independent Covenant. The obligation to pay the amounts provided for herein shall be mandatory and shall be a separate and independent covenant on the part of the each owner of a Residential Unit. No Owner may exempt himself or herself from liability for Membership Fees by non-use of Club facilities, abandonment of his Residential Unit, or any other means. No diminution or abatement of Membership Fees or set-off shall be claimed or allowed for any alleged failure of the Club Operator 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.

3.6. Recordkeeping; Audit. Club Operator shall cause to be maintained full and accurate books of account with respect to the expenses described in Section 3.1. Such books and records shall be made available for inspection and copying by the owners and mortgagees of Residential Units upon reasonable request during normal business hours. The requesting party shall pay all copying charges for requested copies. If any owner of a Residential Unit desires to have the records audited, it may do so at its expense and Club Operator shall cooperate by

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making available to the auditors the records, including all supporting material (e.g., check copies, invoices, etc.), for the year in question.

Article IV
General

4.1. Notice. Any notice provided for in this Covenant shall be served personally or shall be mailed by registered or certified mail to the addresses specified below unless the Club Operator or owner of a Residential Unit has specified, by written notice in accordance with this Section, a different address for delivery of notices, in which case the notice shall be addressed to such different address:

(a) if to the Club Operator:

Oldfield Club
PO Box 23499
Hilton Head Island, South Carolina 29910

(b) if to the owner of a Residential Unit, at the address of the Residential Unit.

All such notices shall, for all purposes, be deemed delivered and received (a) upon personal delivery to the addressee, or (b) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

4.2. Amendment. So long as Declarant owns any portion of the property subject to the Residential Declaration, or has an option unilaterally to submit additional property to the Residential Declaration in accordance with its terms, Declarant may unilaterally amend this Covenant to withdraw from its coverage property described on Exhibits "A" or "B", to substitute a different parcel or parcels of property for that previously described on Exhibit "B", or to include additional property on Exhibits "A" or "B," provided, if the Declarant is not the owner of the property withdrawn, substituted or added, the consent of the owner shall be required. Otherwise, this Covenant may be amended only by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina.

Amendments to this Covenant 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 presumed to have been validly adopted.

4.3. Duration; Termination. This Covenant may be terminated only by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant has any rights under this Section, and recorded in the Office of the Register of Deeds of Beaufort County, South Carolina. Unless terminated as provided

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herein, this Covenant shall have perpetual duration. If South Carolina law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant shall run for a period of 20 years and shall automatically be extended at the expiration of such period for successive periods of 20 years each. If any provision of this Covenant is judicially determined to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.4. Transfer of Club Facilities. The transfer of the Club Property, and any of its facilities pursuant to the Transfer Agreement shall not affect the continued validity or enforceability of this Covenant, unless terminated in accordance with Section 4.3.

4.5. Construction; Severability. This Covenant shall be governed by and construed under South Carolina law. Invalidation of any provision of this Covenant, in whole or in part, by judgment or court order shall not affect other provisions.

4.6. Waiver. No failure of Declarant, the Club Operator, or the owner of any Residential Unit to exercise any right or power under this Covenant or to insist upon strict compliance with this Covenant and no custom or practice at variance with the terms of this Covenant shall constitute a waiver of the right thereafter to demand exact compliance with the terms of this Covenant.

4.7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

[continued on next page]

EXHIBIT "A"

Residential Property

ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Plat 1, Lots 1-16 and 23-60," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 162 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

ALSO, ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Way," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 163 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

ALSO, ALL those certain pieces, parcels or tracts of land, with improvements thereon, located in Oldfield in Beaufort County, South Carolina, as more particularly shown and described on a plat entitled "A Subdivision Plat of Oldfield Plat 3, Lots 61-150," dated October 27, 2000, and last revised November 15, 2000, prepared by Coastal Surveying Co., Inc, certified by Michael R. Dunigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 164 on November 17, 2000. For a more detailed description as to metes and bounds, reference may be had to the above-mentioned Plat of record.

The above described property is a portion of the same property conveyed to Oldfield, LLC by deed from Cherry Point Limited Partnership, dated June 29, 2000, and recorded on June 29, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1307 at Page 1734.

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EXHIBIT "B"

Club Property

All those tracts or parcels of land located in Beaufort County, South Carolina and more particularly described as follows:

All those portions, to be hereafter specifically surveyed and delineated, lying within the area shown on that certain plat entitled "A Boundary Plat of 923.43 Acres Oldfield," dated September 13, 2000, prepared by Coastal Surveying Co., Inc., and certified by Michael Dumigan, P.L.S. (S.C. #11905), and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 76 at Page 161 on November 17, 2000.

The above described property is a portion of the same property conveyed to Oldfield, LLC by deed from Cherry Point Limited Partnership, dated June 29, 2000, and recorded on June 29, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 1307 at Page 1734.

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JOHN A SULLIVAN, JR.
R.M.C.
BEAUFORT COUNTY, S.C.

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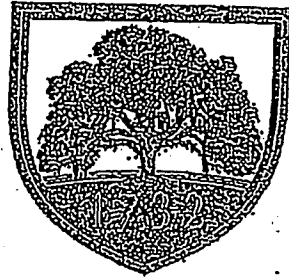
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Exhibit C

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OLDFIELD CLUB

AMENDED BYLAWS
Effective - October 2, 2002

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AMENDED BYLAWS

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Oldfield Club.

1.2. Principal Office.

The principal office of the Club shall be located at the Club Facilities. The Club may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may deem appropriate.

1.3. Definitions.

The words used in these Bylaws generally shall have their normal, commonly understood definitions. Capitalized terms shall have the meanings set forth below, unless the context indicates otherwise:

"Articles" means the Articles of Incorporation of the Club filed with the South Carolina Secretary of State, as they may be amended.

"Authorized Golf Memberships" means the maximum number of Memberships with golfing privileges that the Club is authorized to issue as provided in Section 2.4.

"Authorized User" means a person authorized to enjoy the use privileges of a particular Membership as provided in Section 2.3.

"Board" or "Board of Directors" means the board of directors of the Club, selected as provided in Article IV.

"Bylaws" means these Bylaws of Oldfield Club, as they may be amended.

"Candidate Profile" means the form that a prospective Member completes and submits to the Club pursuant to Section 2.5 in order to be considered for Membership.

"Club" means Oldfield Club, a South Carolina nonprofit corporation.

"Club Facilities" means all land, buildings, facilities and amenities owned or to be owned and operated by the Club for the use and benefit of its Members. The Club Facilities presently planned or under construction include the following: (i) an 18-hole golf course designed by Greg Norman and practice facilities; (ii) a Golf House with men's and ladies' locker rooms, a golf shop, and grill; (iii) the River House, a dining and banquet facility with a community dock; (iv) an Outfitters Center with boats, kayaks,

and fishing gear; (v) an Activity Center with a swimming pool, tennis courts, and fitness center; and (vi) maintenance and other supporting facilities. The number, size, scope, and nature of the Club Facilities are subject to change in the sole discretion of the Sponsor until the Turnover Date. The Sponsor intends to construct the Club Facilities in several phases.

"Club Manager" means a general manager employed by the Board of Directors to oversee the day-to-day operations and management of the Club and the Club Facilities.

"Club Rules" means such rules and regulations governing operation of the Club, use of the Club Facilities, and conduct of the Members, as the Board may adopt and amend pursuant to Section 4.16.

"Community" means the planned development located in Bluffton, South Carolina, and commonly known as Oldfield, which consists of all real property made subject to the Declaration of Covenants, Conditions, and Restrictions for Oldfield recorded in the Office of the Register of Deeds of Beaufort County, South Carolina, as it may be amended and supplemented from time to time.

"Community Developer" means Oldfield, LLC, a South Carolina limited liability company, its successors or assigns.

"Cottage" means a home or homesite in that portion of the Community that is subject to the Cottage Recreational Covenant.

"Cottage Recreational Covenant" means the Declaration of Recreational Covenant for Oldfield Cottage Lots, recorded by Oldfield, LLC in the Office of the Register of Deeds for Beaufort County, South Carolina, as it may be amended and supplemented from time to time.

"Designated Adult" means an adult permanently residing in the household of a Member, its Designee, or its assignee approved pursuant to Section 2.3(c), whom the Member, Designee, or assignee, respectively, designates in writing to the Club to enjoy the use privileges of the Membership pursuant to Section 2.3.

"Designee" means the individual designated pursuant to Section 2.2 by a Member that is a Legal Entity to exercise the privileges of the Membership.

"Eligible Purchaser" means a person who: (i) purchases a home site from the Sponsor and applies for Oldfield Equity Golf Membership prior to closing such purchase; or (ii) holds an Equity Golf Membership in good standing and purchases a second home site from the Sponsor, in which case the Member shall be eligible, for a period of two years from the date of closing such purchase, to apply for another Oldfield Equity Golf Membership for the second home site or assign such eligibility to the purchaser of one of the home sites, who must apply for such Membership prior to closing such purchase; or (iii) purchases a new home in the Community from a builder designated by the Sponsor, applies for Oldfield Equity Golf Membership prior to closing such purchase, and closes such purchase within two years from the date the Sponsor conveyed the home site to such builder, provided the builder purchased the home site from the Sponsor for purposes of constructing a home on the home site for resale in the ordinary course of its business.

"Equity Golf Membership" means an Oldfield Equity Golf Membership or an Invitational Equity Golf Membership, or either of them, as described in Section 2.1(a)(1)(B).

"Golf Commencement Date" means the date on which periodic dues first commence for all outstanding Golf Memberships, which shall be the first day of the first month in which the 18-hole golf course is open for regular play.

"Golf Facilities" means the golf course, golf practice facilities and the Golf House that are planned as part of the Club Facilities.

"Golf Membership" means an Equity Golf Membership, a Non-equity Golf Membership, a Corporate Golf Membership, a Cottage Golf Membership, or any of them.

"Legal Entity" means a corporation, a partnership, a limited liability company, a trust, or any other form of legal entity recognized by law, other than a natural person.

"Majority" means more than 50% of the total eligible number of votes, Members, or other group, as the context may indicate.

"Member" means an individual or legal entity holding a Membership in the Club and, unless otherwise specified, refers to any member, regardless of the category of Membership held.

"Membership" means such memberships in the Club as are authorized from time to time pursuant to Article II, and more specifically to the bundle of rights and privileges granted to each Member, which varies according to the classification of the Membership. Unless otherwise specifically provided in these Bylaws, when the term is used in its collective sense it shall refer to all Members of the Club in whose name Memberships are issued and outstanding at a particular time.

"Membership Agreement" means the membership agreement that a prospective Member executes and submits to the Club upon being invited to become a Member of the Club pursuant to Section 2.6.

"Membership Certificate" means a certificate issued by the Club for a particular Membership pursuant to Section 2.6 indicating the Membership classification and the name of the Member(s) to whom it is issued.

"Membership Contribution" means the purchase price paid by a Member for a specific Membership in the Club.

"Membership Fees" means the Membership Contribution as well as all dues, assessments and other charges payable to the Club by any Member.

"Offering Plan" means the Plan for Offering of Memberships in Oldfield Club and all exhibits thereto, as it may be amended.

"Property" means a home or home site located within the Community.

"Social Commencement Date" means the date on which periodic dues first commence for all Community Memberships, which shall be the first day of the first month following the date on which the River House is first available for use.

"Social Facilities" means the Activity Center, the Outfitters Center and the River House that are planned as part of the Club Facilities.

"Sponsor" or "Sponsor Member" means Oldfield, LLC, a South Carolina limited liability company, or any successor, assign or successor in interest that is specifically designated as the Sponsor hereunder in a written instrument executed by the person then holding the rights of the Sponsor.

"Transfer Agreement" means that certain Agreement for Transfer of Assets entered into between the Sponsor and the Club providing for construction and transfer of the Club Facilities to the Club.

"**Transfer Date**" means that date when the Sponsor transfers, by recorded deed, the ownership of particular Club Facilities to the Club pursuant to the terms of the Transfer Agreement.

"**Turnover Date**" means the date upon which the Sponsor's right to appoint the members of the Board of Directors terminates and the equity Members are entitled to elect the Board, which shall occur within 180 days after the earlier of the following:

(a) the initial sale of all Authorized Golf Memberships to persons other than the Sponsor or affiliates of the Sponsor; or until the Sponsor has sold all home sites planned for the Community, whichever shall last occur; or

(b) upon Sponsor's election at any time following the third anniversary of the Golf Commencement Date or the Social Commencement Date, provided that the Club has had a positive cash flow from operations for a minimum of 12 months; or

(c) the Members' election at any time after the tenth anniversary of the sale of the first Golf Membership, upon the affirmative vote of Community Members entitled to cast at least 51% of the votes of Community Members and the affirmative vote of Equity Golf Members, Corporate Golf Members, and Cottage Golf Members entitled to cast at least 51% of the total votes of held by Members holding such categories of Membership, provided that at least 51% of the Authorized Golf Memberships have been issued and are outstanding at the time of such vote.

"**Voting Power**" means the vote of the Sponsor Membership until the Turnover Date, and thereafter, it means the total votes of Community Members in good standing entitled to be cast on a matter requiring approval of the Community Membership and the total votes of Equity Golf, Cottage Golf, and Corporate Golf Members in good standing entitled to be cast on a matter requiring approval of the Equity Golf, Cottage Golf, and Corporate Golf Members.

Article II Membership

2.1. Membership Classifications.

(a) Equity and Non-equity Memberships. The Club is authorized to issue equity and non-equity Memberships, as follows:

(i) Equity Memberships. Equity Memberships are proprietary Memberships with voting rights and are assessable except as otherwise specifically provided in these Bylaws. There are currently four categories of equity Membership:

(A) Community Membership. Community Membership entitles the Member or its Designee and other Authorized Users of the Membership to use all of the Social Facilities during operating hours and subject to the Club Rules. Community Members have no right to use the Golf Facilities except that they may patronize the golf shop and enjoy the dining facilities in the Golf House. Every owner of a home site in the Community will automatically become a Community Member upon taking title to the home site and will remain a Community Member as long as he or she owns the home site. Community Members have no right to any payment upon termination of their memberships. After the Turnover Date, Community Members shall be entitled to one vote per Community Membership held with respect to any matter on which Community Members are entitled to vote pursuant to the Articles and these Bylaws. Community Members are subject to assessment after the Turnover Date in accordance with Article VII.

(B) Equity Golf Membership. Equity Golf Membership entitles the Member or its Designee and other Authorized Users of the Membership to use all of the Golf Facilities and all of the Social Facilities during operating hours and subject to the Club Rules. After the Turnover Date, Equity

Golf Members shall be entitled to one vote per Equity Golf Membership held with respect to any matter on which the Equity Golf Members are entitled to vote pursuant to the Articles and these Bylaws. Equity Golf Members are subject to assessment after the Turnover Date as provided in Article VII. Within 60 days of the Club's repurchase of a resigned Equity Golf Membership, the resigned Member is entitled to receive the amount specified in Section 2.8(d). Equity Golf Memberships may be issued in either of the following subclassifications:

(f) Oldfield Equity Golf Membership. Except as otherwise stated in these Bylaws, only owners of homes or home sites in the Community, or in such other eligible communities as the Sponsor may designate, are eligible for Oldfield Equity Golf Membership. In the case of a home or home site with multiple co-owners, each co-owner shall be eligible for Oldfield Equity Golf Membership, but the Club may limit the number of Oldfield Equity Golf Memberships that it issues to co-owners of any single home or home site. The Sponsor may change or waive such eligibility requirements as provided in Section 2.5. An Equity Golf Membership issued to the owner of a home or home site in the Community shall be considered an Oldfield Equity Golf Membership unless specifically designated as an Invitational Equity Golf Membership on the membership certificate.

(2) Invitational Equity Golf Membership. The Club may issue invitational Equity Golf Memberships without regard to whether the person to whom it is issued owns a home or home site in the Community or in other eligible communities that the Sponsor may designate.

(c) Corporate Golf Memberships. Corporate Golf Membership is issued only to Legal Entities that own a home or home site in the Community and are organized for a primary purpose other than holding title to the membership. Corporate Golf Membership entitles the Member to designate up to two individuals as Designees. Each Designee and its Authorized Users are entitled to use and enjoy all of the Social Facilities and Golf Facilities, during operating hours and subject to the Club Rules. After the Turnover Date, Corporate Golf Members shall be entitled to two votes per Corporate Golf Membership held with respect to any matter on which equity members are entitled to vote pursuant to the Articles and these Bylaws. Corporate Golf Members are subject to assessment after the Turnover Date as provided in Article VII. Within 60 days of the Club's repurchase of a resigned Corporate Golf Membership, the resigned Member is entitled to receive the amount specified in Section 2.8(d).

(D) Cottage Golf Membership. Only owners of Cottages are eligible for Cottage Golf Membership. Cottage Golf Membership entitles the Authorized Users of the Membership to use all of the Golf Facilities, subject to payment of guest fees for cottage guests as described in Section 2.3(b), and all of the Social Facilities during operating hours and subject to the Club Rules. After the Turnover Date, Cottage Golf Members shall be entitled to one vote per Cottage Golf Membership held with respect to any matter on which the Cottage Golf Members are entitled to vote pursuant to the Articles and these Bylaws. Cottage Golf Members are subject to assessment after the Turnover Date as provided in Article VII. Within 60 days of the Club's repurchase of a resigned Cottage Golf Membership, the resigned Member is entitled to receive the amount specified in Section 2.8(d).

(ii) Non-equity Memberships. Non-equity Memberships are non-proprertary, non-voting, non-assessable Memberships. There are currently two classifications of non-equity Memberships:

(A) Non-equity Golf Memberships. Non-equity Golf Membership entitles the Member or its Designee and other Authorized Users of the Membership to use and enjoy all of the Social Facilities and Golf Facilities, during operating hours and subject to the Club Rules. Non-equity Golf Membership is subject to recall by the Club on not less than 90 days' prior written notice to the Member and carries no voting privileges. Only persons who do not own a home or home site in the Community are eligible for a Non-equity Golf Membership. Upon the Club's recall or repurchase of a Non-equity Golf Membership, the Club shall refund to the resigned Member 100% of the Membership Contribution originally paid by the resigned Member.

(B) Honorary Memberships. The Club shall issue up to 20 Honorary Memberships to such individuals or entities, and with such privileges and obligations, as the Sponsor may

designate. The privileges and obligations of Honorary Members shall be as set forth in their respective Membership Agreements. The Club may not rescind, amend, or terminate the rights of an Honorary Member or its Designee without the Sponsor's consent. Until the Turnover Date, the Sponsor may recall and reissue any Honorary Membership in its sole discretion.

(b) Sponsor Membership. In addition to the equity and non-equity Memberships authorized above, the Sponsor, or any successor in interest to the Sponsor to whom the Sponsor assigns its Sponsor Membership, shall be the sole Sponsor Member. The Sponsor Membership entitles the Sponsor and its designees to use all of the Club Facilities in connection with the development, marketing and sale of homes and home sites in the Community and Memberships, on such terms and conditions as the Sponsor may determine. The Sponsor Membership entitles the Sponsor to exercise all of the rights and privileges specifically granted to the Sponsor pursuant to Article VIII and elsewhere in these Bylaws, and pursuant to the Transfer Agreement.

Prior to the Turnover Date, the Sponsor Member shall hold all of the Voting Power of the Club on all matters except as otherwise specifically provided in these Bylaws. After the Turnover Date, the Sponsor Member shall have only such voting rights and rights of approval as are specifically granted to the Sponsor in these Bylaws and the Transfer Agreement. The Sponsor Membership shall not be subject to payment of any Membership Contribution, nor shall it be subject to payment of any dues or assessments.

(c) Additional Classifications. Until all of the Authorized Golf Memberships have initially been sold, the Sponsor reserves the right to create additional categories of Membership, provided that the total number of Authorized Golf Memberships is not exceeded. Thereafter, the Board of Directors may create additional categories of Membership by amending these Bylaws in accordance with Section 9.10. Within a Membership Classification, the Board may establish different dues categories based on the Member's status as a Resident or Non-Resident, as defined in Section 7.2.

2.2. Issuance of Memberships.

The Club shall issue each Membership in the name of the candidate approved for Membership pursuant to Section 2.5, which may be (a) an individual, (b) two adults who are legally married and/or reside together in the same household; or (c) a Legal Entity that has been formed and exists for a primary business purpose other than holding the Membership. In the case of a Membership issued in joint names, both persons named on the Membership certificate shall be considered Members, but there shall be only one Membership and, if the Membership has voting privileges, only one vote may be exercised for such Membership.

If a home or home site in the Community is owned by more than one person, a Community Membership or Cottage Golf Membership issued for such home or home site may be issued in the names of all co-owners jointly, but such co-owners shall jointly designate one co-owner (or two co-owners who are legally married and/or reside together in the same household) as the primary Member for purposes of exercising all privileges of such Membership.

A Legal Entity which holds a Membership other than a Corporate Golf Membership must designate, in its Candidate Profile and Membership Agreement, one individual ("Designee") who shall have the right to exercise all use privileges of the Member under the Membership. Such designation shall remain in effect until the Membership is terminated, unless such Designee status is reassigned to a surviving spouse upon the death of the original Designee, as provided in Section 2.7(b). The Member and the Designee shall be jointly and severally liable for all Membership Fees incurred in connection with the Membership and the use of the Club Facilities by the Designee and the Designee's Authorized Users and guests.

A Legal Entity which holds a Corporate Golf Membership may designate, by written notice to the Club, two individual Designees, each of whom shall have the right to exercise the use privileges of the

Member as set forth in Section 2.1(a)(i)(C). Such individuals must hold at least a 20% ownership interest in the Legal Entity or be full-time employees of the Legal Entity, and shall be subject to approval of the Sponsor or the Club in the same manner as any individual candidate for Membership. The Member may change such designation from time to time upon written notice to the Club accompanied by payment of a change fee equal to 20% of the Membership Contribution which the Club is charging for Oldfield Equity Golf Membership on the date such change takes effect.

2.3. Exercise of Membership Privileges.

(a) The following persons shall be authorized to enjoy the use privileges of a Membership other than a Cottage Membership, subject to the right of the Board of Directors to restrict the time of access and impose age and ability qualifications for use of the Club Facilities by Authorized Users other than the Member or Designee:

(i) In the case of a Membership held by two individuals jointly, the named Members and their unmarried dependent children under the age of 23 who either reside with the Members or attend school on a full-time basis;

(ii) In the case of a Membership held by one individual, the Member, one Designated Adult, and their unmarried dependent children under the age of 23 who either reside with the Member or attend school on a full-time basis; and

(iii) In the case of a Membership held by a Legal Entity, the Designee, one Designated Adult, and their unmarried dependent children under the age of 23 who either reside with the Designee or attend school on a full-time basis; and

(iv) In the case of a Membership for which the use privileges have been assigned pursuant to Section 2.3(c), the individual assignee, one Designated Adult, and their unmarried dependent children under the age of 23 who either reside with the assignee and Designated Adult or attend school on a full-time basis.

A Member or Designee may not change the Designated Adult for a Membership more than once in any 12-month period. Only the Member, its Designee, or the Designated Adult for a Membership shall be eligible to exercise the voting rights of an equity Membership. The Member or its Designee and the Designated Adult for an equity Membership shall be eligible to serve on the Board of Directors and committees, but they shall not both serve on the Board or on the same committee at the same time.

(b) The Authorized Users of a Cottage Golf Membership shall be as follows:

(i) In the case of a Member whose Cottage is listed for rent pursuant to a written rental listing agreement between the Member and the rental agent designated by the Board of Directors, those individuals whom the Member or rental agent authorize to occupy the Cottage (which may include co-owners, family, friends, or rental guests), but only during the authorized period of occupancy and not to exceed four (4) persons over the age of 16 and their dependent children age 16 or under at any one time, provided, the Club may issue passes to permit use by additional persons in its discretion based on availability; or

(ii) In the case of any other Cottage Golf Member, those persons who would be Authorized Users of any other category of Membership under subsection (a) above.

Authorized Users under subsection (b)(i), other than the Member and such members of his or her household as would be Authorized Users under (b)(ii), shall pay guest fees for use of the Golf Facilities at the cottage rental guest rate established by the Board.

(c) Guests. All individual Members and Designees are entitled to limited guest privileges in accordance with the Club Rules, subject to payment of applicable guest fees and subject to the right of the Board to limit, deny, or revoke guest privileges of any Member (other than Sponsor) or Designee, or of all Members and Designees, at any time in its sole discretion. Unless the Club Rules otherwise permit, guests may only use the Golf Facilities when accompanied by the sponsoring Member or Designee. Guests shall only use the Club Facilities in accordance with the use privileges afforded to the sponsoring Member's Membership classification. Except as the Club Rules may otherwise provide, the sponsoring Member shall be responsible for all guest fees and charges, unless paid by the guest at the time such charges are incurred.

(d) Temporary Assignment of Use Privileges. An Oldfield Equity Golf Member who is eligible for non-resident dues status under Section 7.2(a) may temporarily assign all of the use privileges of the Membership for up to three one-year periods, subject to approval of the proposed assignee(s) by the Sponsor or the Club, as applicable. No Legal Entity, and no person who owns a home or home site in the Community, shall be eligible to accept any such temporary assignment of use privileges or be approved as the assignee for purposes of any temporary assignment hereunder. As a condition of approval of any proposed assignee hereunder, both the Member and the assignee shall execute an affidavit affirming that no consideration has been or will be received or paid for such assignment. Falsifying such affidavit shall be grounds for termination of the assignment and disciplinary action against the Member. During the period that any such assignment is in effect:

(i) the assignee shall be entitled to enjoy all of the use privileges of the Member's classification of Membership, including the right to participate in Member events, and shall pay to the Club the periodic dues and minimum usage fees for such Membership due pursuant to Section 7.2(a) plus all charges incurred by the assignee and its Authorized Users; and

(ii) the Member shall be entitled to enjoy the use privileges of a Community Membership only and shall pay to the Club periodic dues and minimum usage fees charged to Community Members plus all charges incurred by the Member and its Authorized Users.

2.4. Limitation on Number of Memberships.

The Club is currently authorized to issue a maximum of 375 Memberships with golfing privileges, including Equity Golf, Non-equity Golf, Cottage Golf, and Corporate Golf Memberships, but excluding Community Memberships and Honorary Memberships. A Corporate Golf Membership shall count as two Memberships with golfing privileges for purposes of determining the number of Authorized Golf Memberships that are issued and outstanding. If the Club Facilities are expanded to include more than 18 holes of golf, the number of Authorized Golf Memberships shall increase by 176 for each 9 holes of golf added; however, neither the Club nor the Sponsor shall have any obligation to expand the Club Facilities to include more than 18 holes of golf. The number of Community Memberships shall not exceed the number of home sites in the Community, as the Community may be expanded.

2.5. Selection and Admission of Members.

(a) Consideration for Membership. Any eligible individual or Legal Entity who desires to be considered for Golf Membership other than Cottage Golf Membership shall complete, execute, and submit to the Club a Candidate Profile in such form as the Club may specify. If the candidate is a Legal Entity, then the proposed Designee must complete, execute, and submit a Designee Profile in such form as the Club may specify before the candidate will be considered for Membership.

All candidates for Golf Membership other than Cottage Golf Membership are subject to approval and acceptance by the Sponsor until all Authorized Golf Memberships have initially been sold to persons other than the Sponsor or affiliates of the Sponsor, and thereafter by the Club's Board of Directors or any membership committee that the Board may appoint. As long as the Sponsor has approval authority, it may change, establish, or waive the eligibility and suitability requirements for any Membership

classification. Such approval may be granted or withheld in the sole discretion of the Sponsor or the Board, as applicable.

The Club or the Sponsor will conduct such inquiry, review and consideration of each candidate as it deems appropriate and may consider relevant information other than the information provided in the Candidate Profile, including without limitation, personal references, credit or character reports, and prior or other club references; however, candidates shall be considered without regard to race, religion, creed, color, gender, national origin or physical disability.

The provisions of this Section shall not apply to Cottage Golf Memberships, which shall be issued automatically to owners of Cottages in accordance with the Cottage Recreational Covenant.

(b) Notification. If a candidate is approved for Golf Membership and Membership in the desired classification is then available, the Club will notify the candidate in writing and extend an invitation to Membership. The candidate shall have not less than 15 days from the date of such notice to execute and submit a Membership Agreement, in such form as the Club may specify, along with a check for the Membership Contribution for the desired classification of Membership or such portion thereof as may be required under the terms of the Membership Agreement.

If a candidate is approved for Golf Membership but Golf Membership is not then available, the Club shall so notify the candidate and shall give the candidate an opportunity to request that he or she be placed on a waiting list pursuant to subsection (c) below. Such request shall be accompanied by a waiting list deposit in such amount as the Board may specify from time to time.

If a candidate's request for consideration for Membership is not acted upon favorably, the Club shall so notify the candidate. The Club shall not be required to provide any details or specify any reason for such decision.

(c) Waiting List to Acquire Golf Membership. Upon the issuance of all available Golf Memberships, the Board shall establish a waiting list. The waiting list shall be maintained according to the priorities set forth below and, within a category of priority, on a first come, first served basis (based on the date of the Club's written notice to the candidate of the candidate's approval for Membership). A candidate who qualifies for more than one category of priority shall be listed under the highest category of priority for which the candidate qualifies. At such time as a Golf Membership becomes available, the Club shall notify the candidate with the highest position on the waiting list of such availability.

The Club shall maintain the waiting list, if any, for Golf Membership in the following order of priority:

- (i) first, those persons who own a home or home site in the Community which they acquired directly from the Sponsor and who applied for Oldfield Equity Golf Membership prior to closing such purchase but were unable to acquire the Membership at such time due to lack of availability; then
- (ii) other Community Members in good standing who desire to upgrade their Community Membership to a Golf Membership; then
- (iii) other approved candidates, if any.

The Sponsor may, in its sole and absolute discretion, amend these Bylaws to modify any of the priorities set forth above until all Authorized Golfing Memberships have initially been sold.

A candidate on the waiting list shall have 15 days after receiving written notice that a Membership has become available to accept such Membership by submitting to the Club the difference between the waiting list deposit submitted pursuant to subsection (b) above and the full Membership Contribution.

required for Golf Membership in the available classification, as stated in the notice. If the candidate fails to submit such payment within the allotted time, the candidate shall be removed from the waiting list and the Club shall refund the waiting list deposit paid. However, the Board, upon consideration of the facts and circumstances relative to the candidate's failure to accept the Membership within the allotted time, may, in its sole discretion, extend the period during which the candidate may accept the Membership, or may permit the Member to pass on the opportunity to acquire such Membership at that time and go to the end of such waiting list. Any candidate on the waiting list may request that the Club remove the candidate's name from the waiting list at any time and, in such event, the Club shall refund the waiting list deposit paid by such candidate within 10 business days after receipt of such request.

2.6. Commencement of Membership Privileges; Evidence of Membership.

Except as may otherwise be provided in the Cottage Recreational Covenant with respect to owners of Cottages, a prospective Member who has been extended an invitation to become a Golf Member shall be entitled to the privileges of Golf Membership only after the Golf Commencement Date and only upon: (i) satisfaction of all eligibility requirements for such Membership, (ii) execution of a Membership Agreement for such Membership by the prospective Member and by the Club, (iii) payment in full of the required Membership Contribution, and (iv) release of any portion thereof held in escrow, if applicable. The Club and the Sponsor reserve the right to return any prospective Member's funds and withdraw an invitation to join the Club if the prospective Member fails to satisfy any such condition of Membership.

The Club may issue membership indicia, including Membership Certificates or Identification cards; however, they shall not evidence Membership in the Club until the satisfaction of the conditions for Membership and then only to the extent the Member thereafter remains in good standing with the Club.

(c) ~~Cancellation of Membership Certificates and Cards.~~ Upon termination of a Membership for any reason, the Secretary of the Club may cancel the former Member's Membership Certificate and all Membership cards issued in connection with such Membership.

2.7. Restrictions on Transfer of Memberships.

(a) General Rule of Nontransferability. No Membership other than the Sponsor Membership may be pledged, assigned, hypothecated, encumbered or otherwise transferred to anyone other than the Club, by sale, gift, or otherwise, voluntarily or involuntarily, except as provided in these Bylaws. The Club shall transfer all unsold Memberships to the Sponsor upon the Sponsor's request as provided in the Transfer Agreement, and the Sponsor shall be entitled to transfer such memberships initially.

An Equity Golf Member may pledge his or her Equity Golf Membership to secure purchase money financing through an institutional lender for the Equity Golf Membership in an amount not to exceed the Membership Contribution paid to the Club for the Equity Golf Membership or, if the purchase of the Equity Golf Membership and the Member's home site in the Community are financed through an institutional lender as part of a single loan package with both used as security for such loan, the Equity Golf Membership may be used as collateral to secure the entire purchase money loan amount.

In the event that the lender forecloses or acquires title to the Equity Golf Membership pursuant to its remedies under the loan documents, the Equity Golf Membership shall be deemed resigned pursuant to Section 2.8 and all use privileges and voting rights of such membership shall be suspended. Except as provided below, the membership shall be placed on the waiting list for repurchase under Section 2.8(c), and upon the Club's repurchase of the membership, the lender shall be entitled to the amount described in Section 2.8(c). The lender shall be responsible for all dues, fees and other charges accruing through the date of repurchase. If the lender also forecloses its interest in or takes title to the Member's home site, and the lender promptly pays all dues, fees and other charges for the membership as they become due, the lender shall have up to 180 days after the date of foreclosure or transfer of title to resell the home site and arrange for the Club to repurchase the resigned Equity Golf Membership and reissue it to the new

owner of the home site (i.e., the buyer at foreclosure or, if the lender takes title, the resale buyer who purchases the home site from the lender) without regard to any waiting list that may exist to acquire memberships, provided that the purchaser of the home site requests consideration for Equly Golf Membership within 30 days after such purchaser takes title to the home site, is approved and extended an invitation by the Club, and within 15 days after notice of such invitation, executes a Membership Agreement and pays to the Club the Membership Contribution in effect as of the date of executing such Membership Agreement. For purposes of this section, an "institutional lender" is limited to a bank or similar financial institution that regularly engages in lending money to the public for consumer purchases and purchases of residential property.

A Cottage Golf Member may pledge his or her Cottage Golf Membership to secure purchase money financing through an institutional lender for the Member's Cottage and Cottage Golf Membership, but only if the purchase of the Cottage Golf Membership and the Member's home site in the Community are financed through an institutional lender as part of a single loan package with both used as security for such loan, in which case the Cottage Golf Membership may be used as collateral to secure the entire purchase money loan amount.

In the event that the lender forecloses or acquires title to the Cottage and the Cottage Golf Membership pursuant to its remedies under the loan documents, the Club shall reissue the Cottage Golf Membership to the lender and the lender shall be responsible for all dues, fees and other charges accruing during its period of ownership of the Cottage. Upon title to the Cottage being transferred to a buyer at foreclosure or by the lender following the lender's acquisition of title, the Club shall repurchase the Cottage Golf Membership and reissue it to the new owner of the Cottage pursuant to the Cottage Recreational Covenant without regard to any waiting list that may exist to acquire memberships; however, the new owner of the Cottage shall be required to execute a Membership Agreement and pay the Membership Contribution in effect as of the date of such transfer of title. The lender shall have no right to acquire the Cottage Golf Membership independent of the Cottage, whether by foreclosure or other exercise of its remedies under the loan documents, and any attempt to do so shall result in the membership being deemed resigned pursuant to Section 2.8 and all use, privileges and voting rights of such membership being suspended. Except as provided below, the membership shall be placed on the waiting list for repurchase under Section 2.8(c) and upon the Club's repurchase of the membership, the lender shall be entitled to the amount described in Section 2.8(c).

Any other attempted transfer of a Membership by a Member, whether by sale, gift, or otherwise (except as may be expressly provided in the Bylaws upon the death of a Member), shall be of no force and effect and shall confer no Membership rights or other rights upon any transferee to use the Club Facilities. No Member, other than the Sponsor, may advertise for sale or otherwise offer to transfer or assign a Membership in the Club.

(b) Death of a Member or Designee. Upon the death of a Member whose Membership is held in joint names, all rights of the deceased Member shall automatically vest with the other Member named on the Membership Certificate. Upon the death of a Member or Designee under any other Membership, the surviving spouse, if any, of the Member or Designee shall have 60 days after the death of the Member or Designee to request in writing that the Club transfer the Membership or Designee status, as applicable, to the surviving spouse; provided that the surviving spouse is eligible for the Membership classification held by the deceased Member. If there is no eligible surviving spouse, or the surviving spouse does not request such transfer within 60 days after the Member's or Designee's death, the Club shall deem the Membership resigned. If the Membership is a Golf Membership other than a Cottage Golf Membership, the Club shall place such Membership on the waiting list for repurchase pursuant to Section 2.8. The Club shall repurchase a Cottage Golf Membership and reissue it to the new owner of the Cottage in accordance with the Cottage Recreational Covenant without regard to any waiting list in effect.

(c) Separation or Divorce. In the event that a husband and wife holding a Membership in their joint names are legally separated or divorced, the Membership shall automatically vest with the

spouse who receives title to the Membership pursuant to a court order or a written agreement between the parties; however, if the Membership is a Community Membership, an Oldfield Equity Golf Membership, or a Cottage Golf Membership and the spouse awarded the Membership no longer satisfies the eligibility requirements for such Membership, then such spouse shall be deemed to have resigned the Membership, subject to the rights and obligations of resigned Members under these Bylaws. Until such time as the Club receives notice of such a court order or agreement, or notice from either spouse relinquishing all rights under the Membership to the other, the spouse named on the Membership Certificate (or both, if both are so named) shall remain fully responsible for all Membership Fees payable on account of such Membership.

(d) Termination of Co-Habitation. If two unmarried persons who jointly hold a Membership cease to reside in the same residence, all rights under such Membership shall vest with the Member specified by written notice to the Club from both such persons; however, if the Membership is a Community Membership, an Oldfield Equity Golf Membership, or a Cottage Golf Membership, and the Member specified in such notice no longer satisfies the eligibility requirements for such Membership, then such Member shall be deemed to have resigned the Membership, subject to the rights and obligations of resigned Members under these Bylaws. Until the Club receives such notice or a court order designating the person entitled to such Membership, the Club may suspend all privileges of such Membership. If the Club does not receive such notice or a court order specifying the person entitled to the Membership within a reasonable time, as the Board, in its discretion, determines, the Club may deem the Membership resigned subject to the rights and obligations of resigned Members under these Bylaws.

(e) Dissolution of Legal Entity. If a Legal Entity holding a Membership is voluntarily or involuntarily dissolved, or for any other reason ceases to operate or exist, such Membership shall be deemed resigned. Until such time as the Board receives notice of such event, the Member shall remain fully responsible for all Membership Fees payable on account of such Membership. If the Membership resigned is a Golf Membership other than a Cottage Golf Membership, the Club shall place the Membership on the waiting list for repurchase pursuant to the provisions of Section 2.8. If the Membership is a Cottage Golf Membership, the Club shall repurchase it and reissue it to the new owner of the Cottage in accordance with the Cottage Recreational Covenant.

(f) Resale of Member's Home or Home Site in Community. Except as may otherwise be provided in these Bylaws or the Member's Membership Agreement, if an Oldfield Equity Golf Member, Cottage Golf Member, or Community Member ceases to own a home or home site in the Community, the Member shall be deemed to have resigned the Membership; however, upon request of the Oldfield Equity Golf Member, if there are no approved candidates on a waiting list to acquire an Equity Golf Membership, the Club may in its discretion postpone the effective date of resignation of such Member's Equity Golf Membership until 90 days after the date of notice from the Club that the Membership is needed for issuance to another approved candidate. Alternatively, if (i) an Oldfield Equity Golf Member sells or otherwise transfers his or her home site in the Community and resigns such Membership effective on the date of transfer of title, and (ii) the purchaser or transferee of the home site requests consideration for Oldfield Equity Golf Membership prior to taking title to the home site, is extended an invitation by the Club, and pays the Membership Contribution in effect as of the date of executing the Membership Agreement, the Member may arrange for the Club to repurchase the resigned Oldfield Equity Golf Membership and reissue it to the new owner of the home or home site without regard to any waiting list that may exist.

If a Membership is a Cottage Golf Membership, then upon transfer of the Member's Cottage the membership will be deemed resigned and the new owner of the cottage will be obligated to pay the then current membership contribution to the Club. The Club will then reissue the membership to the new owner in accordance with the Cottage Recreational Covenant. In the case of a Cottage owned by two or more persons as co-owners, the transfer of any co-owner's ownership interest to one or more other co-owners shall terminate the transferring co-owner's interest in the membership but shall not be considered a transfer of title to the Cottage resulting in resignation of the Membership. However, any transfer of a co-owner's ownership interest in the Cottage that singly or in combination with prior transfers would result in more than 50% of the ownership interest in the Cottage vesting in persons who were not co-owners at the

time the Membership was issued shall constitute a transfer of title resulting in resignation of the Membership hereunder.

2.8. Resignation and Repurchase of Memberships.

(a) **Resignation.** Any Member other than a Community Member or Cottage Golf Member may voluntarily resign the Membership by written notice to the Secretary of the Club of such intention and simultaneously endorsing and depositing with the Club the Member's Membership Certificate. The Club shall deem a Membership resigned upon the occurrence of any of the following events: (i) ceasing to meet the eligibility requirements of such Membership; (ii) the dissolution of a Member which is a Legal Entity; (iii) the death of the sole Member or, in the case of a Membership other than a Corporate Golf Membership held by a Legal Entity, upon the death of its Designee, unless the Membership or Designee status is reissued to a surviving spouse as provided in Section 2.7(b), or the death of both Members named on a Membership Certificate, if the Membership is held jointly; (iv) expulsion from the Club for cause; or (v) such other event(s) as may be specifically set forth in these Bylaws.

(b) **Effective Date of Resignation.** Equity Golf Members and Corporate Golf Members who resign their Golf Memberships shall retain all privileges of, and shall remain responsible for all dues, fees and other charges applicable to, the Membership being resigned until the resigned Membership is repurchased and reissued by the Club, except that a Member whose Membership is deemed resigned due to expulsion for cause shall have all-use privileges and voting rights suspended until the date of repurchase. If the Club has not repurchased a resigned Equity Golf Membership or Corporate Golf Membership within one year of receipt of notice of the Member's resignation, the Member may elect to pay dues at 50% of the rate charged other Members with the same classification of Membership and pay greens fees at the guest rate for each round of golf played by the Member or the Member's Authorized Users until such time as the Membership is repurchased.

Within 60 days after the Club's repurchase and reissuance of a resigned Cottage Golf Membership, the Club shall pay to the resigned Member an amount equal to 80% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase, except that if such percentage would be less than the Membership Contribution originally paid by the resigned Member, then the resigned Member shall be entitled to the lesser of 100% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase or 100% of the Membership Contribution originally paid by the resigned Member.

Non-equity Golf Members who resign their Memberships may elect to retain all privileges of, and continue paying all dues, fees and other charges applicable to, the Membership being resigned until the date of repurchase, or suspend all privileges and dues obligations as of the date of the Club's receipt of written notice of the Member's resignation.

A Member who has voluntarily resigned his or her Membership by written notice to the Club may not revoke such resignation and reinstate the Membership unless the Club approves such reinstatement, which approval it may grant or withhold in its sole discretion. In such event, the Secretary of the Club shall promptly issue the Member a duplicate Membership Certificate, and the Club shall remove such Member's name from the waiting list for repurchase.

(c) **Repurchase of Resigned Memberships.** Although Memberships are not transferable to third parties, an Equity Golf, Non-equity Golf, Cottage Golf, or Corporate Golf Member who resigns his or her Membership will be eligible to have the Membership repurchased and reissued by the Club, subject to certain conditions set forth in these Bylaws. Upon resignation of a Golf Membership other than a Cottage Golf Membership, the resigned Membership will be placed on a repurchase list. In the order that the Club receives notice of resignation, to be repurchased by the Club as provided below. Upon transfer of title to a Cottage Golf Member's Cottage, the Cottage Golf Membership shall be repurchased and reissued to the new owner of the Cottage in accordance with the Cottage Recreational Covenant.

The Club shall have no obligation to repurchase any resigned Equity or Non-Equity Golf Membership until such time as a candidate for Equity or Non-Equity Golf Membership is extended an invitation to join the Club, executes a Membership Agreement, and submits the required Membership Contribution, and then subject to all other conditions, priorities and repurchase list requirements set forth in these Bylaws. The Club shall have no obligation to repurchase any resigned Corporate Golf Membership until such time as a candidate for Corporate Golf Membership (or two candidates for Equity or Non-Equity Golf Membership), is extended an invitation to join the Club, executes a Membership Agreement, and submits the required Membership Contribution, and then subject to all other conditions, priorities and repurchase list requirements set forth in these Bylaws. The Club shall have no obligation to repurchase a resigned Cottage Golf Membership until the new owner of the Cottage has executed a Membership Agreement with the Club and has paid the required Membership Contribution in full.

Until all Authorized Golf Memberships have initially been sold (i.e., excluding resales) to persons other than the Sponsor or affiliates of the Sponsor, if there are Memberships on the repurchase list, every fourth Golf Membership (other than a Cottage Golf Membership) sold by the Club after receipt of notice of resignation of a Membership on such repurchase list shall be the Membership with the highest priority on such repurchase list, except that:

(i) Corporate Golf Memberships shall be treated as the equivalent of two Equity or Non-Equity Golf Memberships for purposes of sales and repurchases of Golf Memberships hereunder and, if the Membership with the highest priority is a Corporate Golf Membership, then the Club shall not be obligated to repurchase it until such time as it would otherwise have been obligated to repurchase two Equity or Non-Equity Golf Memberships from the repurchase list (i.e., in conjunction with the sale of the eighth Equity or Non-Equity Golf Membership); and

(ii) If an approved candidate for Equity Golf Membership is not an Eligible Purchaser and there are Equity Golf Memberships on the repurchase list, the Club shall repurchase and reissue to such candidate a resigned Equity Golf Membership from such repurchase list without regard to whether three Memberships have first been issued from the inventory of unsold Memberships.

In the Sponsor's discretion, Memberships may be repurchased from the repurchase list earlier or more frequently than required hereunder; however, any such repurchase shall not delay the repurchase of Memberships having higher priority on the repurchase list. If the Sponsor repurchases a Membership and there is no approved candidate on the waiting list to acquire such Membership, the Membership may be returned to the inventory of unsold Memberships and no dues, fees, or assessments shall be due for such Membership until it is resold.

(d) Repurchase Price. Within 60 days after the Club's repurchase and reissuance of a resigned Equity Golf Membership; the Club shall pay to the resigned Member an amount equal to 80% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase, except that if such percentage would be less than the Membership Contribution originally paid by the resigned Member, then the resigned Member shall be entitled to the lesser of 100% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase or 100% of the Membership Contribution originally paid by the resigned Member.

Within 60 days after the Club's repurchase of a Non-equity Golf Membership, the Club shall refund to the resigned Member 100% of the Membership Contribution originally paid by the Member whose Membership has been repurchased.

Within 60 days after the Club's repurchase and reissuance of a resigned Cottage Golf Membership, the Club shall pay to the resigned Member an amount equal to 80% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase, except that if such percentage would be less than the Membership Contribution originally paid by the

resigned Member, then the resigned Member shall be entitled to the lesser of 100% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase or 100% of the Membership Contribution originally paid by the resigned Member.

Within 60 days after the Club's repurchase and reissuance of a resigned Corporate Golf Membership, the Club shall pay to the resigned Member an amount equal to 80% of the Membership Contribution being charged by the Club for Corporate Golf Membership on the date of repurchase, except that if such percentage would be less than the Membership Contribution originally paid by the resigned Member, then the resigned Member shall be entitled to the lesser of 100% of the Membership Contribution being charged by the Club for Corporate Golf Membership on the date of repurchase or 100% of the Membership Contribution originally paid by the resigned Member. If the Club is no longer offering Corporate Golf Memberships, the Club shall pay to the resigned Member an amount equal to 160% of the Membership Contribution being charged by the Club for Oldfield Equity Golf Membership on the date of repurchase.

The Club shall be entitled to deduct from the amount otherwise payable upon recall or repurchase of any Membership (i) all outstanding Membership fees, dues, and other charges owed to the Club or the Sponsor on account of the resigned Membership at the time of repurchase, and (ii) an administrative transfer fee in such amount as the Club may establish from time to time, not to exceed 1% of the repurchase price paid by the Club.

There is no guarantee that a Membership will be repurchased and reissued by the Club, and the Membership Contribution being charged at the time of repurchase may be higher or lower than the Membership Contribution originally paid by the resigned Member. Members are not entitled to receive any amount from the repurchase of their resigned Memberships unless and until the Club is able to resell the resigned Membership. Therefore, the availability and timing of any payment is dependent on the Club's continued ability to attract new Members, and no assurances can be made that any terminated Membership will be resold, or upon what terms.

2.9. Repurchase of Recalled Membership.

Within 60 days after the Club's recall of a Non-equity Golf Membership, the recalled Member will be entitled to 100% of the Membership Contribution actually paid by the recalled Member. All amounts payable to a recalled Member shall be reduced by the amount of any outstanding Membership Fees owed to the Club or the Sponsor on account of the recalled Membership.

2.10. Upgrade in Membership Classification.

A Community Member may, subject to availability and subject to the Sponsor's rights pursuant to these Bylaws and the Transfer Agreement, apply to upgrade the Member's Community Membership to an Oldfield Equity Golf Membership. If and when an Oldfield Equity Golf Membership is available, the Club will notify the Member. The Member will have a limited period of time, as specified in the notice, to upgrade the Member's Community Membership to an Oldfield Equity Golf Membership by paying to the Club the Membership Contribution then being charged by the Club for Oldfield Equity Golf Memberships. Pursuant to the Transfer Agreement, the Sponsor may restrict the sale of Equity Golf Memberships to protect their availability for Eligible Purchasers of home sites. As a result, there is no guarantee that a Golf Membership will be available to a Community Member who desires to upgrade, even though all Golf Memberships authorized by the Bylaws may not have been issued at the time an application to convert is submitted.

2.11. Conversion of Memberships.

An Invitational Equity Golf Member or a Non-equity Golf Member who takes title to a home or home site in the Community may apply, prior to taking title, to convert the Member's existing Membership

to an Oldfield Equity Golf Membership upon taking title to the home or home site, subject to availability and approval by the Club or the Sponsor. Except as may otherwise be provided in the Member's Membership Agreement applicable to the existing Membership: (i) if the Membership Contribution for Oldfield Equity Golf Membership at the time of such conversion is more than the Membership Contribution that the Member paid for the existing Membership, the Member shall be required to pay the difference; and (ii) if the Membership Contribution for Oldfield Equity Golf Membership at the time of such conversion is less than the Membership Contribution that the Member paid for the existing Membership, the Club shall have no obligation to refund the difference. If a Non-equity Golf Member takes title to a home or home site in the Community and does not apply, prior to taking title, to convert to an Equity Golf Membership, the Member's existing Membership shall be deemed resigned upon taking title to the home or home site, subject to the rights and obligations of resigned Members under the Bylaws.

An Oldfield Equity Golf Member who transfers title to his or her home site in the Community and does not arrange for the resale buyer of such home or home site to acquire the Oldfield Equity Golf Membership pursuant to Section 2.7(f) may request that the Club convert such Oldfield Equity Golf Membership to an Invitational Equity Golf Membership. The Club may, but shall not be obligated to, grant such request. If such request is granted, the Member shall pay an additional Membership Contribution equal to the difference between the Membership Contribution then being charged by the Club for Invitational Equity Golf Membership and the Membership Contribution then being charged by the Club for Oldfield Equity Golf Membership. The Member shall tender his Oldfield Equity Golf Membership certificate and the Club shall issue a new Invitational Equity Golf Membership and the parties shall execute an amendment to the Member's Membership Agreement reflecting such conversion and the additional Membership Contribution paid.

2.12. Ownership of Multiple Home Sites.

A person who owns more than one home or home site in the Community shall hold and maintain a Community Membership for each.

An Equity Golf Member in good standing who purchases a second home site from the Sponsor shall be eligible, for a period of two years from the date of closing such purchase, to apply for another Oldfield Equity Golf Membership for the second home site or may assign such eligibility to the purchaser of one of the home sites, who must apply for such Membership prior to closing such purchase.

2.13. Rights of Members Upon Sale or Dissolution.

The Club has been formed as a nonprofit corporation under the law of the State of South Carolina and does not contemplate the distribution of gains, profits, or dividends to any of its Members. However, upon the sale or dissolution of the Club, after satisfaction of all obligations or after adequate provision for such satisfaction has been made, the remaining assets of the Club, if any, shall be distributed among the Equity Golf Members, Cottage Golf Members, Corporate Golf Members, and Community Members, in good standing at the time of dissolution as follows: that portion of the remaining assets which represents the value of the facilities available for use by Community Members at the time of dissolution relative to the value of all of the Club Facilities shall be distributed in shares with one share allocated to each Community Membership and each Oldfield Equity Golf Membership and each Cottage Golf Membership and two shares being allocated to each Corporate Golf Membership. The balance shall be distributed equally among the Equity Golf Members, Cottage Golf Members, and Corporate Golf Members in good standing, with each Corporate Golf Membership being treated as two Equity Golf Memberships. If the Club has elected to be tax-exempt and has received all applicable rulings or determinations from governmental agencies required for establishing such tax-exempt status, any such distribution shall be made only to the extent that it does not adversely affect the tax-exempt status of the Club.

2.14. No Discrimination.

Except as specifically authorized in these Bylaws or the Club Rules, the Club shall not discriminate among Members or candidates for Membership on the basis of race, religion, creed, national origin, age, gender, or physical disability.

Article III

Membership: Meetings, Quorum, Voting, Proxies

3.1. Place of Meetings.

Meetings of the Club shall be held at the principal office of the Club.

3.2. Annual Meetings.

The first meeting of the Club, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Club. Subsequent regular annual meetings shall be on a date and at a time set by the Board.

3.3. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Voting Power.

3.4. Notice of Meetings.

Written notice stating the place, day, and hour of any meeting of the Members shall be posted conspicuously in the clubhouse and shall be delivered to each Member entitled to vote at such meeting, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

3.5. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive notice of any meeting of the Members, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member 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 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.

3.6. Adjournment of Meetings.

If any meeting of the Membership cannot be held because a quorum is not present, a Majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of

the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. However, any matter put to a vote must be approved by the same number of votes as would have been required for action to be taken on the matter if a quorum were still present.

3.7. Voting.

Only those Members holding Memberships which are specifically granted voting rights pursuant to Section 2.2 shall be entitled to vote on any matter requiring a vote of such Membership. No votes shall be cast for unsold Memberships held by the Club. Except as otherwise specified in the Articles or these Bylaws, the votes of Members entitled to cast a Majority of the Voting Power represented in person, by proxy, or by ballot, assuming a quorum exists, shall decide matters put to a vote of the Membership. Until the Turnover Date, the entire Voting Power of the Membership shall be vested in the Sponsor Member, except as otherwise specifically provided in these Bylaws.

3.8. Proxies.

Members may vote by proxy, subject to the limitations of South Carolina law and subject to the requirements of this Section. Every proxy shall be in writing specifying the Membership for which it is given, signed by the Member (or either Member, in the case of a Membership held jointly) or the Member's duly authorized attorney-in-fact, dated, and filed with the Secretary of the Club prior to the meeting for which it is to be effective. 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, the Club shall deem both invalid.

Every proxy shall be revocable and shall automatically cease upon the effective date of the resignation of any Membership for which it was given; upon receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or 11 months from the date of the proxy, unless the proxy specifies a shorter period.

3.9. Quorum.

Except as otherwise provided in these Bylaws, a quorum shall be established by the presence of Members or their proxies, or written ballots signed by Members, or any combination of Members, proxies and ballots, representing 30% of the total Voting Power.

3.10. Conduct of Meetings.

The President shall preside over all meetings of the Club, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

3.11. Action by Written Ballot.

(a) Written Ballot Voting. Generally. Any action that may be taken by the vote of the Members at any regular or special meeting, including the election of directors, may be taken by written ballot without a meeting if done in compliance with this Section. The fact that a matter is submitted to the Members for approval by written ballot shall not preclude the Club from calling a meeting of the Members to coincide with the final date established for the return of written ballots.

(b) Procedures for Conducting a Member Vote by Written Ballot. If voting on any matter is to be conducted by written ballot, the Board of Directors shall mail a written ballot to every Member who is entitled to vote on the matter at the Member's mailing address as shown on the records of the Club. The Board shall deposit all ballots in the mail at least 10 but not more than 60 days before the deadline for filing of ballots, which deadline shall be stated on the face of the written ballot.

(i) Written Ballots for Matters Other Than Election of Directors. Written ballots soliciting Member votes on issues other than the election of directors shall set forth the proposed action, provide a space to specify approval or disapproval of the proposal(s), and provide a reasonable time within which to return the ballot to the Club in order to be counted, which voting period shall not be less than 16 days following the date that the ballots are mailed to the Members. If so stated on the face of the ballot and in accompanying solicitation materials, the Board may reserve the right to extend the stated voting period for an additional period, not to exceed 45 days, if the Board in its discretion determines that it is to the advantage and in the best interest of the Members to provide more time to cast ballots. The solicitation materials shall state the percentage of favorable votes necessary to pass the proposal.

(ii) Written Ballots for Election of Directors. The ballot for any election of directors to be conducted by written ballot shall list the names of those candidates who have been nominated as of the date that the ballots are produced, as well as a space for a write-in candidate. The Club shall mail such ballot to the Members entitled to vote with the notice of the annual Membership meeting and any accompanying solicitation materials. The time fixed for return of the ballots shall be on or before the time scheduled on the agenda of the annual meeting for the receipt and counting of ballots. If the annual meeting is adjourned for any reason without concluding the election of directors, the time for the return of written ballots may be extended to the date established for reconvening of the meeting.

(c) Minimum Requirements for Valid Action. In order to be counted, written ballots must be filed with the Secretary prior to the time that the Board solicits for closing of the balloting. For any action or election by written ballot to be valid, the quorum requirements of Section 3.9 must be met. The number or percentage of votes necessary to approve any proposal or elect any candidate shall be the same as would have been required at a meeting if the total number of votes cast at the meeting had been the same as the number of votes cast by written ballot.

In addition, all solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; and (2) state the percentage of approvals necessary to approve each matter other than election of directors. A written ballot may not be revoked.

3.12. Action Without a Meeting.

In addition to the above procedures, any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, in accordance with the following procedures. Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present shall sign, date and deliver to the Club written consents specifically authorizing the proposed action. Each such consent shall be signed within 60 days after receipt of the earliest dated consent. Such consents shall be filed with the minutes of the Club, and shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article IV
Board of Directors: Composition, Meetings, Powers

A. Composition and Selection.

4.1. Governing Body.

A Board of Directors, each of whom shall have one equal vote, shall govern the affairs of the Club.

4.2. Number and Qualifications of Directors.

(a) **Number.** The Board shall consist of three to seven directors, as provided below. The initial Board shall consist of three directors as identified in the Articles of Incorporation. Thereafter, Board of Directors shall consist of such number of persons as the Board of Directors shall from time to time fix by resolution.

(b) **Directors Appointed by Sponsor.** Until the Turnover Date, the Sponsor shall be entitled to appoint, remove and replace, all of the members of the Board of Directors in its sole discretion. Such directors may, but need not, be Members.

(c) **Directors Elected by Members.** Not later than 30 days after the Turnover Date, the Board shall call a meeting of the equity Members for the purpose of permitting the equity Members to elect new directors to the Board. Commencing with such election, the Board shall consist of seven directors, six of whom shall be elected by the equity Members in good standing, and the Sponsor, so long as the Sponsor owns property in the Community for development or sale or has the right to expand the Community, shall be entitled to appoint one member of the Board of Directors. At such meeting, Community Members shall be entitled to elect at least two members of the Board of Directors; and the remaining directors shall be elected by the Equity Golf Members, Cottage Golf Members, and Corporate Golf Members. The Board of Directors will annually elect all officers of the Club.

4.3. Nomination and Election Procedures.

(a) **Nominations and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by votes of Community Members or Equity Golf, Cottage Golf, and Corporate Golf Members. The Board shall establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

The Board also may appoint a Nominating Committee to nominate candidates for election to the Board. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board, and three or more equity Members, Designees or Designated Adults, representing at least one Community Membership and at least one Equity Golf or Cottage Golf Membership. The Board shall appoint any Nominating Committee at least 30 days prior to the annual meeting and the Board shall announce such appointment in the notice of each election.

The Nominating Committee may nominate as many candidates for election to the Board as it shall in its discretion determine. 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.

Each candidate shall be given a reasonable, uniform opportunity to communicate the candidate's qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Each Community Member may cast one vote for each position to be filled on the Board by Community Members. Each Equity Golf and Cottage Golf Member may cast one

vote and each Corporate Golf Member may cast two votes for each position to be filled on the Board by Equity Golf, Cottage Golf, and Corporate Golf Members. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

4.4. Election and Term of Office.

The first election of directors shall occur on the Turnover Date. Unless the Turnover Date coincides with the annual meeting of the Members, the directors elected on the Turnover Date shall be elected to serve until the first annual meeting of the Members following the Turnover Date, at which meeting at least two directors shall be elected by Community Members, four directors shall be elected by Equity Golf, Cottage Golf, and Corporate Golf Members, and one director shall be appointed by the Sponsor. The six directors elected by the equity Members shall allocate terms among themselves so that two directors shall serve for a term of one year, two directors shall serve for a term of two years and two directors shall serve for a term of three years.

At or coincident with (if by written ballot) each annual meeting thereafter, successors shall be elected, for a term of three years, to fill the positions being vacated by those directors whose terms are expiring. If any such annual meeting is not held, or the election does not take place at or coincident with the annual meeting, the directors may be elected by written ballot or at any special meeting of Members held for that purpose. The newly elected directors shall assume office at the close of the meeting (or election, if by written ballot without a meeting) at which the director is elected.

The Sponsor may, at any time and in its sole discretion, remove or replace any director that it has appointed. At the first annual meeting following termination of the Sponsor's right to appoint a director, the director appointed by the Sponsor shall resign and the Equity Golf, Cottage Golf, and Corporate Golf Members shall be entitled to elect a successor to serve a term of three years. Thereafter, the Community Members shall be entitled to elect two directors and Equity Golf, Cottage Golf, and Corporate Golf Members shall be entitled to elect five directors.

4.5. Removal of Directors and Vacancies.

Any director elected by the Community Members may be removed, with or without cause, by a Majority of the Voting Power, and any director elected by Equity Golf, Cottage Golf, and Corporate Golf Members may be removed, with or without cause, by a Majority of the votes cast by Equity Golf, Cottage Golf, and Corporate Golf Members. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Membership classification that elected the removed director to fill the vacancy for the remainder of the term of such director.

A director who ceases to be an equity Member of the Club shall be deemed to have resigned as a director on the effective date of the termination of such director's equity Membership. Any director elected by the equity Members who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent in the payment of any Membership Fees, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor director from the same Membership classification to fill the vacancy until the next annual meeting, at which time eligible equity Members may elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Sponsor. The Sponsor shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by the Sponsor.

B. Meetings.

4.6. Organizational Meetings

The first meeting of the Board following each annual meeting of the Membership shall be held within 10 days thereafter at such time as the Board shall fix. Such meetings shall be held at the Club Facilities.

4.7. Regular Meetings

Regular meetings of the Board may be held at such time as a Majority of the directors shall determine, but the Board shall meet at least once during each quarter of the fiscal year. Such meetings shall be held at the Club Facilities. The President or the Secretary shall give notice of the time and place of a regular meeting to each director at least four days prior to the meeting, except that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

4.8. Special Meetings

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) 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 (d) telephone facsimile, computer, electronic mail, fiberoptics or other reliable communication device. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the Club's records. Any notice sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices given by personal delivery, telephone, or other communication device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

4.9. Waiver of Notice

The transactions of any meeting of the Board, 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 (a) a quorum is present, and (b) either before or after the meeting each of the directors 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 shall be deemed waived by any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

4.10. Telephonic Participation in Meetings

Members of the Board or any committee that the Board may establish may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment, provided that all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

4.11. Quorum of Board of Directors.

At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business. The votes of a Majority of the directors present at a meeting at which a quorum is present shall be necessary to take any action, except as otherwise specifically provided in these Bylaws. The directors present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum. However, any matter put to a vote must be approved by the same number of votes as would have been required for action to be taken on the matter if a quorum were still present. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.12. Compensation.

Directors shall not receive any compensation from the Club for acting as such unless approved by Members representing a Majority of the total Voting Power in the Club at a regular or special meeting of the Club. Any director may be reimbursed for expenses incurred on behalf of the Club upon approval of a Majority of the other directors. Nothing in this Section shall prohibit the Club from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Club in a capacity other than as a director pursuant to a contract or agreement with the Club, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the other directors.

4.13. Conduct of Meetings.

The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

4.14. Notice to Members; Open Meetings.

Except in an emergency, the Board shall post notice of Board meetings at least 48 hours in advance of the meeting at a conspicuous place within the Club Facilities that the Board establishes for the posting of notices relating to the Club. Subject to the provisions of Section 4.16, all meetings of the Board shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be given permission to speak. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

4.15. Action Without a Formal Meeting.

Any action of the Board of Directors may be taken without a meeting if written consent, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote at a meeting.

C. Powers and Duties.

4.16. Powers.

The Board of Directors shall have all of the powers and duties necessary for the administration of the Club's affairs and for the performance of all responsibilities and the exercise of all rights of the Club as set forth in the Articles and these Bylaws, and as provided by law. In all cases, the Board may act without a vote of the Membership except as to those matters which the Articles, these Bylaws, or South Carolina law require to be approved by the equity Members or the Membership generally. Subject to the rights of the Sponsor under the Transfer Agreement and these Bylaws, the Board's powers shall include, without limitation, the power:

- (a) to select, retain, fix the compensation of, and remove or discharge the officers, agents and employees of the Club, including a Club Manager, to require from them such security or a fidelity bond as the Board deems appropriate, and to prescribe such powers and duties for them as are consistent with law, with the Articles of Incorporation and these Bylaws; and
- (b) to authorize the issuance of Memberships, to prescribe the procedures and terms under which Memberships shall be issued, and to amend the Offering Plan to reflect the same;
- (c) to borrow money and incur indebtedness for the purposes of the Club, including working capital, and to cause to be executed and delivered therefore, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor;
- (d) to acquire, sell, dispose, lease or pledge real or personal property;
- (e) to prescribe rules and regulations for the governance of the Club; for use of the Club Facilities by families, visitors, and guests; for the conduct of Members and their families and guests, for the admission of Members, and for such other matters as the Board of Directors may deem necessary or appropriate to the extent not inconsistent with applicable law, the Club's Articles of Incorporation, and these Bylaws;
- (f) to determine and enforce disciplinary measures for any violation of the Bylaws or the Club Rules; and
- (g) to fix the Membership Contribution and dues of each class of Membership and other charges and fees as authorized under the Bylaws, subject to the rights of the Sponsor pursuant to the Transfer Agreement.
- (h) to appoint various committees in connection with the management or operation of the Club;
- (i) to issue, suspend, cancel, and transfer Memberships, and the Membership Certificates and Membership cards, if any, evidencing the same;
- (j) to enter into contracts with any person or entity for goods or services or for other purposes; and
- (k) to take any other action and perform any other act which the Board deems necessary or appropriate consistent with the Club's purposes as stated in the Articles and the Bylaws.

4.17. Duties.

Subject to the rights of the Sponsor and other provisions of these Bylaws and the Transfer Agreement, the duties of the Board shall include, without limitation:

- (a) conducting, managing and controlling the affairs and business of the Club;
- (b) managing, controlling, operating, maintaining, repairing, replacing, and improving the Club Facilities;
- (c) preparing and adopting an annual budget and fixing and collecting Membership Fees pursuant thereto;
- (d) opening accounts on behalf of the Club with banks and similar financial institutions and designating the signatories for such accounts;
- (e) obtaining and carrying property, liability, and other insurance as required by law or as the Board deems appropriate and filing claims thereunder as appropriate;
- (f) paying the cost of all services rendered to the Club;
- (g) keeping books with detailed accounts of the receipts and expenditures of the Club;
- (h) making available to any equity Member current copies such books, records, and financial statements of the Club as provided in Section 9.4; and
- (i) indemnifying a director, officer or committee member, or former director, officer or committee member of the Club or the Sponsor to the extent South Carolina law, the Articles of Incorporation or these Bylaws require such indemnification.

4.18. Management

The Board of Directors may employ for the Club a Club Manager at such compensation as the Board may establish, to perform such duties and services as Board shall authorize. The Board may delegate such powers as are necessary to perform the Club Manager's assigned duties, but shall not delegate policymaking authority.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Club Manager, if any, which might arise between meetings of the Board.

4.19. Accounts and Reports

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accounting and controls shall conform to generally accepted accounting principles;
- (b) cash accounts of the Club shall not be commingled with any other accounts;
- (c) no person shall accept for himself any remuneration from vendors, independent contractors, or others providing goods or services to the Club, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Club;
- (d) any financial or other interest which the Club Manager may have in any firm providing goods or services to the Club shall be disclosed promptly to the Board of Directors;

(e) commencing at the end of the quarter in which the first Membership is sold, financial reports shall be prepared for the Club at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format on a quarterly basis;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Members who are delinquent in paying Membership Fees at the time of the report and describing the status of any action to collect such Membership Fees which remain delinquent (any Membership Fee or installment thereof shall be considered to be delinquent 30 days following the date of the statement unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all equity Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of cash flows for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

4.20. Borrowing.

The Club shall have the power to borrow money prior to the Turnover Date provided that, as of the Turnover Date, the outstanding balance of all loans secured by the Club Facilities shall be no more than the value of net realizable receivables, inventories and supplies on hand plus any prepayments under contracts or leases for the benefit of the Club. After the Turnover Date, the Club shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner as for assessments as provided in Section 7.3. If the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Club for that fiscal year.

4.21. Enforcement.

(a) Sanctions. The Club may levy such sanctions as it deems appropriate against any Member, Authorized User, or guest for cause. Such sanctions include, without limitation, reprimands, fines, reimbursement of expenses incurred and suspension or termination of Membership privileges, except as otherwise provided in this Section. "Cause" may include, without limitation (a) nonpayment of any sums due to the Club (including charges incurred by the Member, the Member's Authorized Users, or guests) for a period of 60 days or longer after such sums were billed to the Member, (b) conviction of a felony, (c) permitting the use of a Membership card by someone other than the person to whom it was issued, (d) conduct unbecoming a Member, or (e) acts (in or on the Club's facilities or within the Community) by a Member, an Authorized User, or guests which the Board determines to be detrimental to the best interests of the Club, including, without limitation, conduct violating the Club Rules or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its Members.

Notwithstanding the right of the Board to expel a Golf Member other than a Cottage Golf Member or other Authorized User for conduct described in this Section, Members who are delinquent in the payment of financial obligations to the Club shall first be suspended pursuant to Section 7.4. Suspension

does not terminate a Membership, and a suspended Member shall continue to be liable for Membership Fees accruing during the period of suspension.

(b) Notice and Hearing. Except as provided below, before the Club levies any sanction it shall provide the Member or Authorized User against whom the sanction is to be levied with written notice and an opportunity for a hearing before the Board or its designee in accordance with the procedures set forth in the Club Rules.

Suspension or expulsion of a Member shall automatically operate to suspend or terminate, respectively, the rights and privileges of the Member's Authorized Users, and guests. Suspension or expulsion of a Designee or a Member of the Member's Authorized User shall not affect the rights and privileges of the Member.

The expulsion of a Member shall be treated as a resignation of the Membership. However, expulsion of an Oldfield Equity Golf Member who owns Property in the Community shall operate to terminate the privileges of the Golf Membership only; the Member shall remain a Community Member as long as the Member owns Property in the Community, subject to the Board's right to suspend the privileges of such Community Membership in accordance with this Section. A Cottage Golf Member may not be expelled, but the Board may suspend the Member's privileges in accordance with this section. Any Member whose Membership privileges have been suspended shall remain responsible for all Membership Fees during the period of suspension.

(c) Appeal. Following a hearing before a designee of the Board, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, the Club must receive written notice of appeal within 10 days after the hearing date.

Article V Officers

5.1. Officers.

The officers of the Club shall be a President, Vice President, Secretary, and Treasurer. The Board of Directors shall elect the President and Secretary from among the Members of the Board; other officers may, but need not be, members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices, except the offices of President and Secretary.

5.2. Election and Term of Office.

The Board shall elect the officers of the Club at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

5.3. Removal and Vacancies.

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

5.4. Powers and Duties.

The officers of the Club shall each have such powers and duties as generally pertain to their respective offices, as well as such other powers and duties as the Board may specify. The President shall be the chief executive officer of the Club. The Treasurer shall have primary responsibility for the

preparation of the budget but may delegate all or part of the preparation and notification duties to a finance committee, the Club Manager, or both.

5.5. Resignation.

Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. An officer who ceases to be an equity Member of the Club shall be deemed to have resigned as an officer on the effective date of the termination of such officer's equity Membership.

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

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

5.7. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 4.12.

Article VI
Committees

6.1. General.

The Board may appoint such 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.

6.2. Membership Committee.

The Board may appoint a Membership Committee to act in an advisory capacity to the Board or the Sponsor regarding review, evaluation, approval, or rejection of any application for Membership and to serve such other Membership-related purposes and functions as the Board may determine from time to time.

6.3. Advisory Committee.

The Board may, but shall not be required to, appoint a committee to serve in an advisory capacity to the Board regarding matters of Club management and operations and to perform such duties as the Board may delegate to it from time to time. Such committee, if appointed, shall have no authority to bind the Board or the Club. The members of any advisory committee may, but need not be, Members of the Club. The Board may appoint, and may remove and replace, the members of any such committee in its sole and absolute discretion and may determine the number and term of office of members of such committee in its sole discretion.

Article VII
Membership Fees

7.1. Membership Contribution.

Sponsor has the right to set and change the Membership Contribution for each Membership classification and subclassification in its sole discretion until all Authorized Golf Memberships have initially been sold to persons other than the Sponsor or affiliates of the Sponsor. Thereafter, the Club's Board of Directors shall have such right. The Membership Contribution to be paid by a candidate for Membership shall be the Membership Contribution in effect on the date the candidate executes his or her Membership Agreement, provided that the candidate has been extended an invitation to join the Club, a Membership is available, and the candidate accepts such Membership within 15 days after receipt of Club's invitation to become a Member. Except as may otherwise be provided in the Member's Membership Agreement, the Membership Contribution for Membership is due in full at the time the Membership Agreement is executed. If a candidate for Oldfield Equity Golf Membership or Cottage Golf Membership does not consummate the purchase of a home or home site in the Community in accordance with their purchase contract, the Membership Agreement will be cancelled and the Membership Contribution will be refunded in full.

7.2. Periodic Dues and Fees.

(a) **Establishment of Dues and Fee Structure.** The Sponsor, prior to the Turnover Date, or the Board of Directors, after the Turnover Date, shall have the right to set and change the dues and other charges payable by the Members, subject to the limitations set forth in Section 2.1. The Sponsor and the Board of Directors, as applicable, may establish different levels of dues for each classification of Membership and within a classification based on the Member's status as a "Resident" or "Non-resident," as defined in this Section. No dues shall be payable for unsold Memberships which the Club holds in inventory.

A Member who does not own or rent a home within a 50-mile radius of the Club Facilities for more than three months out of any 12-month period, or otherwise reside within a 50-mile radius of the Club Facilities for more than three months out of any 12-month period, shall be eligible to elect Non-resident dues status; however, no Member shall be eligible for Non-resident dues status for more than three years from the date of issuance of the Member's Membership. Members who are eligible for and elect Non-resident dues status shall pay dues at the Non-resident dues rate and shall pay the rate for greens fees and cart fees established by the Sponsor or Board, except that until December 31, 2006, no greens fees shall be charged to a Member with Non-resident dues status for the first 15 rounds played on account of such membership in any calendar year. All Members who do not qualify for and elect Non-resident dues status by written notice to the Club shall pay dues at the Resident rate as established by the Sponsor or the Board pursuant to this section.

In addition, the Club may charge minimum usage fees on a semi-annual basis in arrears. Members will receive credit against such minimum usage fee for food and beverage purchases, golf cart rentals, equipment rentals, and services purchased from the Club during the preceding six-month period. The Club may charge other fees for specific items and services. Current charges for other items and services are set forth in a schedule available from the Club.

(b) **Commencement of Dues Payment.** Membership dues for all Golf Memberships commenced on the Golf Commencement Date. Membership dues for all Social Memberships commenced on the Social Commencement Date. All dues are annual dues, and shall be prorated for any partial year in which dues commence. The Board may permit dues to be paid in monthly, quarterly or semi-annual installments. The dues payable for each Membership classification shall be as set forth on a schedule available from the Club. Any Honorary Memberships that are not exempt from payment of dues

shall be charged the same dues as Oldfield Equity Golf Memberships. New Members shall pay prorated dues commencing on the first day of the month in which they become Members.

7.3. Assessments.

Prior to the Turnover Date, there shall be no assessment of the Members. After the Turnover Date, the Club may assess Equity Golf, Cottage Golf, Corporate Golf, and Community Members, subject to the following:

(a) Any assessment for capital improvements shall be subject to the approval of at least two-thirds of the Voting Power of Equity Golf, Cottage Golf, and Corporate Golf Members and two-thirds of the Voting Power of Community Members, except that Community Members shall have no right to vote on, and shall not be subject to, any assessment for capital improvements to the Golf Facilities or which benefit only Golf Members.

(b) Any assessment for operating deficits or unbudgeted repairs, maintenance or replacements shall require the approval of a majority of the Voting Power held by Equity Golf, Cottage Golf, and Corporate Golf Members and a majority of the Voting Power held by Community Members, except that Community Members shall have no right to vote on, and shall not be subject to, any assessment for operating deficits or unbudgeted repairs, maintenance or replacements relating solely to the Golf Facilities or golf operations.

The Club shall assess all Memberships subject to a particular assessment equally, except that Corporate Golf Memberships shall be assessed at twice the rate of Oldfield Equity Golf Memberships.

7.4. Delinquencies.

Unless the Board provides otherwise by resolution, the Club shall mail to each Member and to each assignee under Section 2.3(c), on a monthly basis, an itemized statement of the Membership Fees payable by the Member or assignee. Any Member or assignee failing to pay the full amount due within 30 days after the date of such statement shall be considered delinquent. The Club may impose a reasonable late charge on all delinquent accounts in such amount as the Board of Directors may determine.

The Club shall send written notice to any delinquent Member or assignee specifying the amount of any late charge imposed on the Member's or assignee's account. If the Club does not receive payment of the full amount due within 30 days after such notice, the Club may post, at a conspicuous place in the Club Facilities, the name of the Member or assignee and the amount due to the Club. In addition, the Club may suspend the delinquent Member's or assignee's credit privileges. If the Member or assignee does not pay such indebtedness in full within 60 days after such notice of delinquency, the Board of Directors may suspend the use privileges of the delinquent Member or assignee and the Member's or assignee's Authorized Users. The Board shall not reinstate a suspended Member's or assignee's privileges until the Member or assignee has paid all Membership Fees, including those accruing during the period of suspension, plus late charges, any attorneys' fees which the Club incurred with respect to the delinquency, and interest on the total amount due calculated at the lesser of 15% per annum, or the maximum rate permitted by law, from the date first due and payable.

If any Golf Member other than a Cottage Golf Member is suspended pursuant to this Section and fails to pay all Membership Fees and reinstate the Member's Membership within 30 days of such suspension, the Board may commence proceedings to terminate the Member's Golf Membership pursuant to Section 4.21 upon written notification sent by certified mail to the delinquent Member. The Club may sue any Member or assignee to recover a money judgment for unpaid Membership Fees, without waiving any other rights.

The Board of Directors may authorize the institution of legal action by the Club for the collection of Membership Fees owed by a Member or assignee. If the Board of Directors retains legal counsel to collect any such amount, the Club shall be entitled to recover from the Member or assignee, in addition to all delinquent sums, late charges and interest calculated as provided above, and its reasonable costs, expenses and attorneys' fees incurred in attempting to collect and in collecting such amount, whether or not legal action is in fact instituted.

Article VIII.

Rights of Sponsor; Restrictions on Club

8.1. Rights of Sponsor.

As more particularly described in the Transfer Agreement, the Sponsor has committed to fund all costs of constructing the Club Facilities and to convey the land upon which the Club Facilities are located, together with the Club Facilities, to the Club not later than the Turnover Date. Prior to the Turnover Date, the Sponsor has committed to fund all cumulative net operating deficits of the Club (as defined in the Transfer Agreement). As consideration for those commitments and undertakings, which will confer substantial benefit and financial stability to the Club and its operations in its formative years, the Sponsor has certain rights and privileges which are set forth in the Transfer Agreement. The rights of the Sponsor set forth in the Transfer Agreement are incorporated by this reference.

8.2. Restrictions on Club.

Neither the Club nor the Membership shall, without the prior written consent of the Sponsor, which consent may be withheld in the Sponsor's sole and absolute discretion:

- (a) modify any provision of the Bylaws, the Club Rules, the Offering Plan for Oldfield Club, the Candidate Profile, or the Membership Agreement in a manner which is inconsistent with the rights reserved to the Sponsor under the Transfer Agreement;
- (b) sell, transfer, or pledge the Club Facilities; or
- (c) take any other action which, in the Sponsor's sole and absolute opinion, adversely affects the ability to sell Memberships or homes or home sites in the Community.

Article IX

Miscellaneous

9.1. Fiscal Year.

The fiscal year of the Club shall be the calendar year, unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as the Board may otherwise provide by resolution, Robert's Rules of Order (current edition) shall govern the conduct of Club proceedings when not in conflict with South Carolina law, the Articles, or these Bylaws.

9.3. Conflicts.

If there are conflicts among the provisions of South Carolina law, the Articles, these Bylaws, the Transfer Agreement and the Offering Plan, the provisions of South Carolina law, the Articles, the Transfer Agreement and these Bylaws (in that order) shall prevail.

9.4. Books and Records.

(a) Inspection by Members. The Board shall make the following available for inspection and copying by any equity Member or the duly appointed representative of an equity Member at any reasonable time and for a purpose reasonably related to such person's interest in the Membership: Offering Plan, Bylaws, and Articles, including any amendments, the Club Rules, the Membership roster, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Club or at such other place in reasonable proximity to the Club Facilities as the Board shall designate.

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

- (i) notice to be given to the custodian of the records;
- (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 Officers and Directors. Every officer and director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Club and the physical properties owned or controlled by the Club for purposes related to such director's duties as a director. The right of inspection by a director includes the right to make a copy of relevant documents at the Club's expense.

9.5. Taxes.

The Club shall charge to each Member and each Member shall pay any tax or assessment which the United States Government, the State of South Carolina, or any political subdivision thereof, or any other governmental agency, may impose on any Membership Fee paid or payable by the Member to the Club.

9.6. Club's Remedies Nonexclusive.

The remedies that these Bylaws afford to the Club with respect to Members shall be cumulative and nonexclusive. The Club may, in addition to pursuing any internal remedies, pursue any legal remedies that it may have without making any election of remedies.

9.7. Severability.

Should any court having jurisdiction hold any clause, provision or part of these Bylaws to be void or voidable, the remaining provisions shall nevertheless remain in full force and effect.

9.8. Notices.

Except as these Bylaws may otherwise provide, all notices, demands, bills, statements, or other communications required hereunder shall be in writing and shall be deemed to have been duly given as of the date delivered, if personally delivered or, if mailed, on the third business day following the date of deposit with the United States Postal Service, first class postage prepaid:

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the residence of such Member; or

(b) If to the Club, the Board, or the Club Manager, at the principal office of the Club or the Club Manager or at such other address as the Club shall designate by notice to the Members in accordance with this Section.

9.9. Indemnification.

To the fullest extent permitted by South Carolina law, as amended from time to time, the Club shall indemnify each person to whom indemnification may be offered under such law. The Club may, in the discretion of the Board, but shall not be obligated to, advance expenses for the defense of any action to which a person is entitled to indemnification under this Section.

9.10. Amendment.

(a) Approval by Equity Members. Except as otherwise specifically provided in these Bylaws, these Bylaws may be amended:

(i) prior to the issuance of the first equity Membership, by the Sponsor Member in its sole and absolute discretion;

(ii) after the issuance of the first equity Membership but prior to the Turnover Date, upon a resolution duly adopted by the Board of Directors and the consent of the Sponsor; and

(iii) after the Turnover Date, upon a resolution duly adopted by the Board of Directors and the affirmative vote of not less than 50% of the Voting Power of the Equity Golf, Cottage Golf, and Corporate Golf Members and not less than 50% of the Voting Power of the Community Members, and the consent of the Sponsor, if required pursuant to Section 9.10(b).

(b) Approval by Sponsor. The Club shall not amend these Bylaws, nor make any change in the number, classes or categories of Membership without the prior written consent of the Sponsor until all homes and home sites planned for the Community have initially been sold to persons other than a developer or builder.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon adoption. Any procedural challenge to an amendment must be made within six months of its adoption or it shall be presumed that such amendment was validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

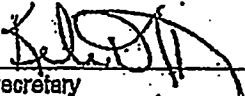
CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Oldfield Club, a South Carolina nonprofit corporation;

That the foregoing Amended Bylaws constitute the amended Bylaws of the corporation, as duly adopted by unanimous written consent in lieu of a meeting of the Board of Directors thereof on the 2nd day of October, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of October, 2002.


Secretary

8385.03/ Club/Amended Bylaws/100202/jps

Exhibit D

ELECTRONICALLY FILED - 2017 Sep 14 6:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000482

FIRST AMENDMENT TO
AMENDED PLAN FOR OFFERING OF MEMBERSHIPS

The AMENDED PLAN FOR OFFERING OF MEMBERSHIPS, which became effective October 2, 2002 (the "Offering Plan") is further amended as follows, effective as of May 16, 2005:

1. Community Membership. The subsection "Community Membership" of the Membership Classifications section is amended to state that each Community Membership is allotted four (4) rounds of golf per calendar year (including rounds played by a Community Member as a guest of another member and rounds used by a Community Member for his or her guests) at a rate determined by the Club. Reservations for tee times shall be at the discretion of the Head Golf Professional and shall be on a space-available basis, subject to the priority rights of other members and the Club Rules. Community Members shall not be entitled to participate in Club golf tournaments except as guests of Honorary Members or of Golf Members, and subject to the Club Rules. Participation in tournament play shall be governed by the Club Rules, and participation in any tournament shall count as one single round (regardless of the number of rounds played in the tournament) when computing the Community Member's allotted yearly rounds. Community Members shall have access to the Golf Course itself and the practice and putting facilities immediately prior to their four (4) rounds. Other than those four (4) rounds, Community Members have no right to use the Golf Facilities (including the practice and putting facilities), except that they may patronize the Golf Shop and enjoy the dining facilities in the Golf House. This allotment of four (4) rounds of golf per calendar year may be modified or discontinued by the Club at any time based on member use patterns or other factors in the discretion of the Club.

2. The subsection "Non-Equity Memberships" of the Membership Classifications section is amended as follows:

A. Golf and Hunt Club Membership. "Non-equity Golf Membership" has been renamed "Golf and Hunt Club Membership". All references in this Offering Plan to Non-equity Golf Membership shall be references to Golf and Hunt Club Membership.

B. Sports and Hunt Club Membership. A new subsection is inserted to add a new category of non-equity Golf Membership, "Sports and Hunt Club Membership", as follows:

Sports and Hunt Club Membership. Only persons who do not own a home or home site in the Community are eligible for a Sports and Hunt Club Membership. Sports and Hunt Club Membership entitles the member or its Designee and other Authorized Users to use the Social Facilities during operating hours, subject to the Club's Bylaws and Rules. Each Sports and Hunt Club Membership is allocated twelve (12) rounds of golf per calendar year (including rounds played by a Sports and Hunt Club Member as a guest of another Member) at a rate determined by the Club. Reservations for tee times shall be at the discretion of the Head Golf Professional and shall be on a space-available basis, subject to the priority rights of other members and the Club Rules. Participation in tournament play shall be governed by the Club Rules, and participation in any tournament shall count as one single round (regardless of the number of rounds played in the tournament) when computing the Sports and Hunt Club Member's allotted

yearly rounds. Sports and Hunt Club Members shall have access to the golf course itself and the practice and putting facilities immediately prior to their twelve (12) rounds. Other than those twelve (12) rounds, Sports and Hunt Club Members have no right to use the Golf Facilities (including the practice and putting facilities), except that they may patronize the Golf Shop and enjoy the dining facilities in the Golf House. This allotment of twelve (12) rounds of golf may be modified or discontinued by the Club at any time based on member use patterns or other factors in the discretion of the Club. Sports and Hunt Club Membership is subject to recall by the Club after three (3) years from the date of issuance on not less than ninety (90) days' prior written notice to the member. Sports and Hunt Club Membership carries no voting privileges.

C. Junior Golf and Hunt Club Membership. A new subsection is inserted to add a new category of non-equity Golf Membership, "Sports and Hunt Club Membership", as follows:

Junior Golf and Hunt Club Membership. Only adults over age twenty one (21) and under age thirty-five (35) are eligible for Junior Golf and Hunt Club Membership. Junior Golf and Hunt Club Membership entitles the Member or its Designee and other Authorized Users to use all of the Social Facilities and Golf Facilities, during operating hours and subject to the Club Rules. Each Junior Golf and Hunt Club Membership shall be recalled on the thirty-fifth (35th) birthday of the member and carries no voting privileges. Upon the Club's recall of a Junior Golf and Hunt Club Membership, the Club shall refund to the resigned or recalled member one hundred percent (100%) of the Membership Contribution originally paid by the member. A Junior Golf and Hunt Club Member who resigns before his or her thirty-fifth (35th) birthday shall not be entitled to a refund of any of his or her Membership Contribution.

3. Availability of Membership. The section entitled Availability of Membership is amended in part to state that the Club is currently authorized to issue a total number of Community Memberships equal to the number of home sites in the Community, as it may be expanded, and that the Club is currently authorized to issue a total of three hundred seventy-five (375) memberships with golfing privileges ("Golf Memberships"), including Equity Golf, Golf and Hunt Club, Sports and Hunt Club, Cottage Golf, Junior Golf and Hunt Club, and Corporate Golf Memberships ("Authorized Golf Memberships"), but excluding Community Memberships and Honorary Memberships.

4. Activity Center. The "Activity Center" has been re-named the "Sports Club", and all references to the "Activity Center" shall be references to the "Sports Club".

5. Construction and Acquisition of the Club Facilities. The section on Construction and Acquisition of the Club Facilities is amended in part to state that the construction of the Sports Club is complete, and the Sponsor plans to complete construction of the Golf House with men's and ladies' locker rooms and dining facilities in Spring 2006. Commencement and completion of construction are subject to many variables outside the Sponsor's control, including weather conditions, permitting and governmental approvals, and availability of materials and labor, among other things. Therefore, the Sponsor can give no assurances that construction will proceed or be completed on the proposed schedule.

6. Nontransferability of Memberships. The section on Nontransferability of Memberships is amended in part to include that an Oldfield Equity Golf Member shall have the following one-time right to transfer his or her membership on death:

Death of an Oldfield Equity Golf Member. Upon the death of the person who was first issued an Oldfield Equity Golf Membership by the Club (an "Original Oldfield Member") whose membership is held in joint names, all rights of the deceased Original Oldfield Member shall automatically vest with the other member named on the Membership Certificate.

An Original Oldfield Member holding the membership individually, or the spouse of a deceased Original Oldfield Member whose membership was initially held jointly may transfer the Oldfield Equity Golf Membership to his or her spouse (if the member has remarried), or child, age twenty-five (25) or older (each, a "Permitted Transferee") upon his or her death. The transfer may be separate from the transfer of the deceased member's home or home site in the Community. The Permitted Transferee must apply and be approved for membership. If the Permitted Transferee is not an owner of a home or home site in the Community, the Club may reclassify the membership as an Invitational Equity Golf Membership upon the Permitted Transferee's payment of the difference between the Membership Contribution required for Invitational Equity Golf Membership and the Membership Contribution then being charged for the Oldfield Equity Golf Membership (if applicable). If there is no reclassification of the membership, no additional Membership Contribution will be required. An administrative fee may be imposed at the discretion of the Club. Upon the transfer of the Oldfield Equity Golf Membership, all rights and obligations of the Oldfield Equity Golf Membership shall be transferred to the Permitted Transferee, including, but not limited to, the right to resign the membership and the Club's obligation to refund the Membership Contribution subject to the terms of the Membership Plan. Only Original Oldfield Members will have this one-time transfer right.

In the event an Oldfield Equity Golf Membership is transferred to a Permitted Transferee and the Permitted Transferee elects not to accept the membership, the membership will be placed at the top of the resale waiting list and accordingly will receive priority for a refund of the Membership Contribution. Such right to transfer may be exercised only by the Original Oldfield Member, only once per membership and only while the membership is in good standing. An Oldfield Equity Golf Membership that has been transferred to a Permitted Transferee will be deemed resigned upon the resignation or death of such Permitted Transferee.

7. Resignation of Memberships. The section on Resignation of Memberships is amended as follows:

a. The following paragraph is deleted:

"[Golf and Hunt Club Members] who resign their memberships may elect to retain all privileges of, and continue paying all dues, fees and other charges applicable to, the membership being resigned until the date of repurchase, or suspend all privileges and

dues obligations as of the date of the Club's receipt of written notice of the member's resignation."

b. The following paragraph is added:

"The use privileges of a Golf and Hunt Club Member, a Sports and Hunt Club Member or a Junior Golf and Hunt Club Member shall terminate on the effective date of resignation. No resignation will be effective until the total Membership Contribution is paid in full and all unpaid fees, club accounts, dues or other amounts owed to the Club are paid in full. Until all amounts are paid in full, the membership will not be deemed resigned and will not be eligible for any type of transfer or refund of any portion of the Membership Contribution."

8. Repurchase of Certain Memberships. The section on Repurchase of Certain Memberships is amended in part to state that:

a. The repurchase of memberships of deceased Oldfield Equity Golf Members shall take priority over the repurchase of other memberships.

b. The Club may recall Golf and Hunt Club Memberships and Sports and Hunt Club Memberships at any time after three (3) years from the date of issuance on not less than ninety (90) days' prior written notice to the member. Memberships will be recalled on a first-issued, first-recalled basis among those memberships eligible for recall, and the Club will refund fifty percent (50%) of the Membership Contribution actually paid by the recalled member within sixty (60) days after the recall if the member does not elect to upgrade his or her membership to an Invitational Equity Membership or convert to an Oldfield Equity Golf Membership, unless otherwise indicated in the Member's Membership Agreement.

c. There shall be no resigned waiting list for repurchase of resigned Golf and Hunt Club Memberships, Sports and Hunt Club Memberships or Junior Golf and Hunt Club Memberships. If a Golf and Hunt Club Member or a Sports and Hunt Club Member resigns within three (3) years of becoming a member, the resigned member shall forfeit his or her entire Membership Contribution. If a Golf and Hunt Club Member or a Sports and Hunt Club Member resigns after being a member for three (3) years, the Club shall refund to the resigned member fifty percent (50%) of the Membership Contribution originally paid by the resigned member within sixty (60) days after the effective date of resignation from the Club, unless otherwise indicated in the Member's Membership Agreement. If a Junior Golf and Hunt Club Member resigns at any time before age thirty-five (35), the resigned member shall forfeit his or her entire Membership Contribution.

The Club shall be entitled to deduct from the amount otherwise payable upon recall or repurchase of any membership under this section (i) all outstanding membership fees, dues, and other charges owed to the Club or the Sponsor on account of the resigned membership at the time of repayment, and (ii) an administrative fee in such amount as the Club may establish from time to time, not to exceed one percent (1%) of the Membership Contribution originally paid by the member.

9. Change in Membership Classification. The section governing Change in Membership Classification is amended in part as follows:

a. Upgrade. A Golf and Hunt Club Member or a Sports and Hunt Club Member or a Junior Golf and Hunt Club Member may, subject to availability and subject to the Sponsor's rights pursuant to the Bylaws and the Transfer Agreement, apply to upgrade his or her membership to an Invitational Equity Golf Membership at any time while the membership is in good standing or if the Club recalls his or her membership. If and when an Invitational Equity Golf Membership is available, the Club will notify the member who has applied. The member will have a limited period of time, as specified in the notice, to upgrade the membership to an Invitational Equity Golf Membership. If the member upgrades within the initial three (3) years of membership, the Member shall pay only the difference between the Membership Contribution for Invitational Equity Golf Membership in effect on the date the upgrading member was accepted into the Club and the Member's initial Membership Contribution. If the member upgrades following the initial three (3) years of membership, the member shall pay the Club the difference between the Membership Contribution then being charged by the Club for an Invitational Equity Golf Membership and the member's initial Membership Contribution.

b. Conversion. The provisions regarding conversion shall also apply to Sports and Hunt Club Members and Junior Golf and Hunt Club Members. Additionally, if an Invitational Equity Golf Member, a Golf and Hunt Club Member, a Junior Golf and Hunt Club Member or a Sports and Hunt Club Member converts his or her membership to an Oldfield Equity Golf Membership within the initial three (3) years of Membership, the member shall only pay the difference between the Membership Contribution for Oldfield Equity Golf Membership in effect on the original date of acceptance and the initial Membership Contribution actually paid by the member.

10. Selection for Membership. The section on Selection for Membership is amended in part to reflect that applicants for Sports and Hunt Club Membership and Junior Golf and Hunt Club Membership will be considered and notified on the same basis under the same procedures as applicants for Golf Membership other than Cottage Golf Membership, except that the Club shall maintain the waiting list, if any, for Sports and Hunt Club Membership on a first-come, first-served basis among approved candidates.

11. Payment for Memberships. The section on Payment for Memberships is amended in part to state that payment terms for a Member's Membership Contribution are stated in the Membership Agreements for each type of Membership, as listed in Exhibit "1" to this Amendment, as modified by the Club from time to time.

12. Membership Agreement. The Additional Terms and Conditions to the Membership Agreement, each of which is an Exhibit "A" to the Membership Agreement, are amended and restated in the form of Exhibit 1 to this document to conform to the revised structure for payment of Membership Contributions and to add the Additional Terms and Conditions for Sports and Hunt Club Membership.

Exhibit E

ELECTRONICALLY FILED - 2017 Sep 14 6:08 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602



OLDFIELD CLUB

Membership Agreement

THIS MEMBERSHIP AGREEMENT ("Agreement") is entered into by and between OLDFIELD CLUB, a South Carolina nonprofit corporation ("Club") and the undersigned member ("Member").

BACKGROUND STATEMENT

The Club has been organized to acquire, own, operate and manage certain social and recreational facilities (the "Club Facilities") known as Oldfield Club for the pleasure and recreation of its members and their guests. The Club Facilities include or are planned to include an 18-hole golf course designed by Greg Norman; golf practice facilities; a Golf House with men's and ladies' locker rooms, and grill; a Golf Shop and cart barn; the River House (a dining and banquet facility with a community dock); an Outfitters Center with boats, kayaks, and fishing gear; an Activity Center with a swimming pool, tennis courts, and fitness center; and maintenance and other supporting facilities. The Club has extended to Member an invitation to membership on the terms and conditions set forth in this Agreement and Member desires to accept such invitation.

In consideration of Member's payment of the Membership Fees described below, and in further consideration of the mutual covenants set forth in this Agreement, the Club hereby grants to Member, and Member hereby accepts from the Club; membership in Oldfield Club, on the following terms and conditions:

TERMS AND CONDITIONS

1. **Type of Membership.** Club hereby grants to Member a membership of the type and in the classification specified on Exhibit A attached to this Agreement. The membership shall afford to Member the rights and privileges of such membership classification as set forth in the Bylaws of Oldfield Club ("Bylaws").
2. **Term of Membership.** The membership shall commence on the date of execution of this Membership Agreement by Member and by the Club, payment in full of the Membership Contribution set forth on Exhibit A, and release of any portion thereof held in escrow pursuant to the terms of the Plan for Offering of Memberships in Oldfield Club ("Offering Plan"), if applicable. The Club and the Sponsor reserve the right to return Member's funds and cancel this Agreement if the prospective member fails to satisfy any such condition of membership. Membership shall continue in effect until resigned, recalled or terminated as provided in the Bylaws.
3. **Membership Fees.** Member acknowledges that the Membership Contribution shall be due and payable in full upon execution this Membership Agreement or as otherwise set forth on Exhibit A to this Membership Agreement.

Member acknowledges that membership is subject to payment of periodic dues and such other fees and charges as the Club may establish pursuant to the Bylaws (collectively, "Membership Fees"), all of which are subject to change from time to time. Member agrees to be responsible for all charges incurred by Member's authorized users and guests in their use of the Club Facilities.

Member agrees to pay all Membership Fees on or before the due date thereof. Member understands that delinquency in paying any amounts due may result in late charges, interest on the amount past due until paid at a rate determined by the Club (not to exceed 18% per annum), suspension or termination of membership privileges, and expulsion as a member. Member further agrees that if he or she is delinquent in paying any amounts due, the Club shall be entitled to recover from Member late charges, interest, and all costs and expenses which it reasonably incurs in attempting to collect the past due amounts, including attorneys' fees and court costs, whether or not suit is filed.

4. **Receipt of Club Documents:** By execution below, Member acknowledges receipt of the Offering Plan and the exhibits attached thereto, including the Bylaws and the Oldfield Club Rules currently in effect, and agrees to be bound by and comply fully with the terms and provisions of such documents, as they may be amended (the "Membership Documents"), and to be responsible for compliance by Member's authorized users and guests. Member acknowledges that he or she has had the opportunity to review the Membership Documents and to seek professional advice to assist in evaluating the merits and risks of acquiring a membership. Member has made the decision to acquire a membership without reliance upon any information or representations other than as set forth in the Membership Documents.

5. **Assumption of Risks and Indemnification.**

(a) In consideration of the membership and as a condition of the membership, Member agrees to all risks associated with the use of the Club Facilities and agrees to release the Club and Oldfield, LLC (the "Sponsor") from and indemnify the Club and the Sponsor against any and all losses, expenses, liens, claims, demands, and causes of action of every kind and character for death, personal injury, property damage or any other liability, damages, fines, or penalties, including costs, attorneys' fees and settlements, whether or not based on the acts or omissions of the Club or the Sponsor, resulting from, arising out of or in any way connected with the use of the Club Facilities by Member, Member's authorized users, and guests, or if Member is a legal entity, by its approved designee(s), their authorized users, and guests, except to the extent that the same are the direct result of the gross negligence or willful misconduct of the Club or the Sponsor or their employees. As used in this paragraph, "Club" shall include Oldfield Club and its members, and the heirs, successors, assigns, officers, directors and employees of Oldfield Club and its members, and all persons, corporations, partnerships, and other entities with which it is or may in the future become affiliated. Also, as used in this paragraph, "Sponsor" shall include Oldfield, LLC and the heirs, successors, assigns, officers, directors and employees of Oldfield, LLC and all persons, corporations, partnerships, and other entities with which it is or may in the future become affiliated. This paragraph shall survive the termination of this Agreement with respect to any property damage, personal injury, or death occurring prior to such termination.

(b) Member, as a condition of the membership, each of Member's designees, if Member is a legal entity, and their respective authorized users and guests, as a condition of invitation to use the Club Facilities, assume sole responsibility for their personal property. Member acknowledges and understands that the Club and the Sponsor shall not be responsible for any loss or damage to any personal property which Member or Member's approved designee(s), or their respective authorized users or guests, may use or store on the Club premises, whether in lockers or elsewhere. Member also acknowledges and understands that he or she shall be liable for any property damage or personal injury occurring on the Club premises, or at any activity or function which the Club operates, organizes, arranges, or sponsors, whether or not on the Club premises, which Member or Member's designee(s), or their respective authorized users or guests, may cause. If Member or Member's designee(s) arrange or sponsor any activity or function on the Club premises, Member shall be responsible for any such damage or injury even

If Member did not cause such damage or injury, Member agrees that the Club may charge the cost of any such damage to his or her club charge account or designated credit card.

6. Transfer and Assignment of Membership. Member acknowledges that the membership conferred hereunder may not be pledged or assigned and is not transferable, unless and except as otherwise specifically set forth in the Bylaws.

7. Additional Terms and Conditions. Additional terms and conditions applicable to Member and the membership issued hereunder are set forth on Exhibit A to this Membership Agreement and incorporated by this reference.

MEMBER ACKNOWLEDGES THAT HE OR SHE IS ACQUIRING A MEMBERSHIP FOR THE SOLE PURPOSE OF OBTAINING SOCIAL BENEFITS AND RECREATIONAL USE OF THE CLUB FACILITIES AND NOT AS AN INVESTMENT OR WITH ANY EXPECTATION OF MAKING A PROFIT FROM THE OWNERSHIP OR FUTURE TRANSFER OF THE MEMBERSHIP.

This Membership Agreement shall not be binding upon the Club unless and until the approved and accepted on behalf of the Club as evidenced by its signature below.

IN WITNESS WHEREOF, the Club and Member have caused this Agreement to be executed on their behalf as of the date of acceptance by the Club set forth below.

CLUB:

OLDFIELD CLUB,
a South Carolina nonprofit corporation

By: Jayde H. Halpern
Its: Membership Director
Date: 5-2-07

MEMBER:

Robert Star
(Printed Name)
[Signature]
(Signature)
Melissa R. Star
(Printed Name)
[Signature]
(Signature)
Address: _____
Date: 5-2-07

(If membership is to be issued in joint names, both members must sign this Membership Agreement.)

5385.03/Club/memb agmt -071602-wis/jps

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AGREEMENT TO PURCHASE OLDFIELD GOLF MEMBERSHIP

Rob + Melissa Stan (jointly "Purchaser") wish to acquire a Golf Membership in the Oldfield Golf Club. The total Golf Membership Contribution is \$60,000.00, of which a Golf Membership deposit of \$20,000.00 is due upon upgrading their membership to that of an Equity Golf Member and the remaining \$40,000 is due by June 1, 2009.

Purchaser must elect at closing to either:

1. Leave the Golf Membership inactive and delay payment of golf membership dues until June 1, 2009. Purchaser has the option to activate the Membership before June 1, 2009, but only upon payment of dues, after which the membership cannot be made inactive again ("Option 1"); or
2. Purchaser's golf membership account will be credited \$9,000.00 towards golf membership dues at closing. This credit cannot be used towards the Membership Contribution, payment of charges to the account, nor will any unused portion be paid to purchaser or another member ("Option 2").

These options cannot be combined or changed after the closing has occurred. If Purchaser has not communicated a selection in writing to Oldfield by the Closing Date, Option 1 will be effective.

Purchaser and Oldfield have executed this Agreement this 2 day of May, 2007.

PURCHASER:

[Signature]

[Signature]

OLDFIELD, LLC, a South Carolina limited liability company
By: Crescent Resources, LLC, its sole member

By: _____
James L. Page, Vice President

EXHIBIT "A"

Additional Terms and Conditions
(Oldfield Equity Golf Membership)

The following additional terms and conditions shall be added to and shall be a part of that Membership Agreement between Oldfield Club and the undersigned Member and shall control over any inconsistent provisions in such Agreement or in the Bylaws or Club Rules:

- 1. Membership Classification. The Membership granted hereunder shall be an Oldfield Equity Golf Membership.
- 2. Membership Contribution. The Membership Contribution payable for the membership pursuant to Paragraph 2 of the Membership Agreement is Sixty-Thousand Dollars (\$60,000).

The Membership Contribution has been paid in full pursuant with the execution of this Agreement. Club acknowledges receipt, but such receipt is subject to collection.

JH

Member has submitted \$20,000 as a deposit toward the total Membership Contribution as set forth above. The balance of \$40,000, representing the final payment, will come due on June 1, 2009.

3. Facilities Incomplete. By execution below, Member acknowledges that, as of this date, all or portions of the Club Facilities may not be constructed or complete. Member understands that the size, scope and nature of the Club Facilities may be determined in the sole discretion of the Sponsor, subject to the terms of the Offering Plan. Member further understands that the size, scope and nature of the Club Facilities upon completion, as well as the number of memberships outstanding, will affect the amount of dues and assessments which Member may be required to pay as a member of the Club, and that no representation is made that the current level of dues will be sufficient to operate the Club in the future.

CLUB:

OLDFIELD CLUB,
a South Carolina nonprofit corporation

By: Lynne D. Halpern

Its: Membership Director

Date: 5-2-09

MEMBER:

Robert Star
(Printed Name)

[Signature]
(Signature)

Melissa R. Star
(Printed Name)

[Signature]
(Signature)

Date: May 2, 2009

Exhibit F

ELECTRONICALLY FILED - 2017 Sep 14 6:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000495

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
 2 COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602
 3 MARC HAAS, SUSAN HAAS, ROB STAR)
 and MELISSA STAR,)
 4 Plaintiffs,)
 5 vs.)
 6 TI OLDFIELD OPERATIONS, LLC, SF)
 7 OPERATIONS, LLC, OLDFIELD CLUB,)
 OLDFIELD COMMUNITY ASSOCIATION,)
 8 OLDFIELD CLUB BOARD OF DIRECTORS)
 and JOHN DOES 1-10,)
 9 Defendants,)
 10 and)
 11 TI OLDFIELD OPERATIONS, LLC, and)
 12 SF OPERATIONS, LLC,)
 13 Third-Party Plaintiffs,)
 14 vs.)
 15 OLDFIELD, LLC, and CRESCENT)
 16 COMMUNITIES, LLC f/k/a CRESCENT)
 RESOURCES, LLC,)
 17 Third-Party Defendants.)

18 * * * * *
 19 DEPOSITION OF: ROBERT STAR
 20 DATE TAKEN: Wednesday, January 25, 2017
 21 TIME: 10:10 a.m.
 22 PLACE: Mullen Wylie
 200 Merchant Street
 23 Hilton Head Island, South Carolina
 24 REPORTED BY: EVE WILBANKS
 Registered Professional
 25 Reporter, Certified LiveNote

1 that you can use on the golf course?

2 A. Okay.

3 Q. Is that yes or no?

4 A. That I have the ten rounds?

5 Q. Yes.

6 A. Um, I have ten complimentary rounds a
7 year on the golf course.

8 Q. So the golf course benefits you,
9 correct?

10 A. Um, I would be just as happy not to have
11 those ten rounds of golf.

12 Q. Does the golf course benefit you since
13 you have access to ten rounds of golf per year?

14 A. I'm going to still say no.

15 Q. Tell a jury reading this where you're
16 coming from on that.

17 A. I would be just as happy not to have the
18 ten rounds of golf. But if someone were to give
19 me something for free, like a free meal at a bad
20 restaurant, I may eat there because it was free.

21 Q. Is the golf course made available to
22 you?

23 A. No.

24 Q. Even though you have ten rounds of golf?

25 A. I have ten rounds of golf.

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1 Q. Are the golf dining facilities made
2 available to you?
3 A. Yes.
4 Q. Do the golf dining facilities benefit
5 you?
6 A. Sure. Yes.
7 Q. How about the golf shop? Does that --
8 A. No.
9 Q. Let me get it on the record so we're
10 clear. Is the golf shop made available to you?
11 A. Yes.
12 Q. Does the golf shop benefit you?
13 A. No.
14 Q. Tell me why. Because you don't like it?
15 A. Yes.
16 Q. Go ahead.
17 A. Can you just define the word "benefit"?
18 Q. What do you understand the word
19 "benefit" to mean?
20 A. You're asking the question.
21 Q. I am. And my question is, what do you
22 understand the word "benefit" to mean?
23 A. Benefit is something that has an actual
24 value to me, that I actually appreciate that
25 value.

1 MR. ABNEY: Excuse me. Was there an
2 Exhibit 5?

3 MR. FORD: I do have an Exhibit 5; I
4 haven't gotten to it yet. We got sidetracked.

5 BY MR. FORD:

6 Q. Before we start, where was this document
7 obtained from, just for the record? On-line?

8 A. Yeah.

9 Q. And are the budgets that we're going to
10 be talking about available on-line from Oldfield
11 Club to members?

12 A. The non-golf budgets are.

13 Q. And is this a non-golf budget?

14 A. I believe it is.

15 Q. Okay. And this was obtained from the
16 website?

17 A. Yes.

18 Q. Please proceed.

19 A. So on the first page --

20 Q. The question that I've asked and that
21 you're about to graciously walk us through is,
22 walk us through the numbers that you're relying on
23 for your statement, or your position -- your
24 general position that money is being improperly
25 allocated, or however it is you want to phrase it,

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1 A. I'm going to say somewhere around the
2 three-year mark.

3 Q. And as far as you know, has it been
4 reflected in the budgets during that time?

5 A. As far as I know.

6 Q. So do you have any evidence it's been
7 hidden in any way from members?

8 A. I'm not accusing them of hiding it, no.

9 Q. I understand. I'm just trying to
10 understand what is in the mind --

11 A. It's right there on the page.

12 Q. For everyone to see, and it's publicly
13 available, at least within Oldfield, correct?

14 A. Yes.

15 Q. That \$96,000, does that come, as far as
16 you understand, from all community members?

17 A. As far as I understand.

18 Q. Are golf members also community members?

19 A. Yes.

20 Q. How many community members, including
21 the golf people, do you understand there to be?

22 A. Including the golf people, I think
23 there's 400 -- I'm going to say 380 community
24 members.

25 Q. Okay. So now we're hopefully -- you

1 nothing for me to go on other than a conversation,
2 then for me to put in a letter saying, Your
3 management is telling us this is going on. I
4 don't know what it means. I'm just telling you
5 that I've got a problem with it.

6 Q. Well, is it fair to say, by the time you
7 wrote this letter, March 27, 2013, you knew that
8 some of the overhead that is listed in the
9 administrative -- general and administrative line
10 item included expenses associated with the course?

11 A. As part of a conversation. But I hadn't
12 seen anything documented for me to say, ah, this
13 is actually happening.

14 Q. You're aware of the information that it
15 was happening; you just hadn't seen the data at
16 that point in time?

17 A. I was aware that it was happening, but I
18 did not see the data, and I didn't know to what
19 extent it was happening.

20 Q. Understood. Have you paid your
21 community membership dues in every year --

22 A. Yes.

23 Q. -- up to the present?

24 A. Yes.

25 Q. And you've paid them, despite the fact

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1 A. The letter you just showed me is me
2 being in protest of me paying my dues on a
3 go-forward basis.

4 Q. So you believe that Exhibit No. 9 is
5 what you consider to be your protest?

6 A. Yeah.

7 Q. Anything else?

8 A. I don't know. There may have been an
9 e-mail when I sent in my dues payment on the first
10 go-around, that this is in protest of me paying
11 for anything that shouldn't be paid for. I don't
12 have that on hand. I would have to look for that.

13 Q. Have you looked for all of your e-mails
14 related to this issue in this lawsuit?

15 A. So when I changed firms at the end of
16 2013, all of my e-mail stays with that old firm.
17 So it's very hard for me to gain access to some
18 things.

19 Q. Okay.

20 A. I'm in the securities industry. All my
21 e-mails are recorded, and I use a third-party
22 firm-related e-mail for that.

23 Q. So remind me, who is your employer that
24 you left in 2013?

25 A. EDI Financial.

1 Oldfield, did you not?

2 A. Yes.

3 Q. The letter doesn't make any reference to
4 the Settlement Agreement?

5 A. It does not.

6 Q. And when I'm reading this letter, it
7 appears that the arguments that you're asserting
8 in the letter are essentially the same exact
9 arguments that you're asserting in this
10 litigation, are you not?

11 A. I would say there's a fair bit of
12 overlap.

13 Q. I guess what I'm trying to get at, it
14 seems that your interpretation of the Settlement
15 Agreement is that it relieved you of your
16 obligations as an equity golf member, correct?

17 A. Yes.

18 Q. And, therefore, it -- having been
19 relieved of those obligations, you became just a
20 normal community member, correct?

21 A. With a Termination and Release
22 Agreement.

23 Q. Sure. But is there any provision in the
24 Settlement Agreement that you believe provides you
25 with additional benefits that you would not

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1 But we have to leave here in the next 10
2 minutes to pick up my children from school.

3 MR. FORD: Let's go off the record.

4 (The deposition went off the record.)

5 BY MR. ABNEY:

6 Q. We were looking at Exhibit No. 9, and I
7 was asking you what prompted this letter, and I
8 think you told me that you had gotten notice of a
9 dues increase.

10 A. Yes.

11 Q. And I asked you when that occurred, when
12 you received that notice, and you said sometime
13 around this time frame. If you look at the very
14 first sentence of the letter, it says, on February
15 7, 2013, the member received your e-mail regarding
16 the latest dues increase. Do you see that?

17 A. Yeah. There you go. So that's when the
18 e-mail came.

19 Q. That's when you received the information
20 that prompted you to write Exhibit No. 9?

21 A. Yes.

22 Q. And did you consult counsel in preparing
23 Exhibit No. 9?

24 A. No.

25 Q. Who drafted the letter?

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1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602
3 MARC HAAS, SUSAN HAAS, ROB STAR)
and MELISSA STAR,)
4 Plaintiffs,)
5 vs.)
6 TI OLDFIELD OPERATIONS, LLC, SF)
7 OPERATIONS, LLC, OLDFIELD CLUB,)
8 OLDFIELD COMMUNITY ASSOCIATION,)
9 OLDFIELD CLUB BOARD OF DIRECTORS)
and JOHN DOES 1-10,)
10 Defendants,)
11 and)
12 TI OLDFIELD OPERATIONS, LLC, and)
SF OPERATIONS, LLC,)
13 Third-Party Plaintiffs,)
14 vs.)
15 OLDFIELD, LLC, and CRESCENT)
16 COMMUNITIES, LLC f/k/a CRESCENT)
RESOURCES, LLC,)
17 Third-Party Defendants.)

18 * * * * *

19 VOLUME II

19 DEPOSITION OF: ROBERT STAR
20 DATE TAKEN: Wednesday, March 15, 2017
21 TIME: 10:00 a.m.
22 PLACE: Mullen Wylie
23 200 Merchant Street
Hilton Head Island, South Carolina
24 REPORTED BY: EVE WILBANKS
Registered Professional
25 Reporter, Certified LiveNote

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1 Q. I understand. If you turn the page,
2 it's underlined, at least on my copy, Mr. Wilson
3 says, among other things, "I remain skeptical that
4 community members aren't subsidizing the golf club
5 with this new dues increase, and I'd love to have
6 a discussion with you to help me better understand
7 the specifics," and it goes on. Here is my
8 question, Mr. Star: Did you at that time share
9 Rob Wilson's skepticism about the use of the
10 increase?

11 A. Yeah. That's why Rob and I both sent
12 that letter that you guys have referenced already.

13 Q. And on the next page -- this is page 3
14 of the e-mail -- it looks like this --

15 A. Okay.

16 Q. And for the record, we've gone down to
17 an e-mail -- this e-mail is pages 1, 2 and 3, and
18 we're now reading from Rob Wilson's e-mail sent
19 March 5th, 2013, at 11:31 a.m. to Jamie Selby and
20 Phillip Galbreath. It says towards the end -- it
21 talks about -- I'm going to quote it, and then I
22 want to ask you about it. "The 'message' that
23 golf is only losing about 80K, while the community
24 is running about a 240K deficit overlooks the
25 percentage of admin costs associated with golf

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1 that we talked about before when you, Phillip, Rob
2 Star and I met last year." And it goes on.

3 And my understanding is that that kind
4 of a concern -- or it is one of your primary
5 concerns in this lawsuit, how admin costs are
6 shared among golf versus non-golf. Is that
7 accurate?

8 A. Yeah. They booked the clubhouse in
9 admin.

10 Q. I get it. I'm saying, what you were
11 talking about here -- they were talking about, and
12 you apparently had been talking about during a
13 meeting the year before -- was essentially similar
14 to the issues that you're concerned about in this
15 lawsuit?

16 A. Correct.

17 Q. So you had been concerned about that for
18 a while?

19 A. As you can see, I wasn't getting any
20 straight answers. That's why I joined the finance
21 committee.

22 Q. Okay. For that one, that's all I've
23 got. I've got a series of questions; I'm going to
24 tell you where I'm going with them. Hopefully, it
25 will be easy, but it's your show. I want to hear

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1 room?

2 A. When I was a member.

3 Q. When you were a golf member?

4 A. Yes.

5 Q. When was the last time, would you
6 estimate, that you used the men's locker room?

7 A. Sometime in 2008, maybe.

8 MR. FORD: That's all I have. Thanks.

9 MR. ABNEY: I don't have any questions.

10 Thank you.

11 EXAMINATION

12 BY MR. OGIBA:

13 Q. Mr. Star, I just have a couple of
14 follow-up questions, specifically regarding the
15 timeline that you became aware of these issues
16 regarding allocation of funds to the golf course.
17 You went through an e-mail exchange in which there
18 is a representation that you, Phillip Galbreath
19 and Mr. Wilson had a meeting in 2012 regarding the
20 allocation of administrative costs towards the
21 golf course and the clubhouse.

22 A. That's right.

23 Q. And do you recall that meeting?

24 A. Not very well, no.

25 Q. Is that the first time -- do you

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1 remember if 2012 is the first time you became
2 aware of issues regarding allocations of social
3 member dues towards the clubhouse and golf course
4 expenses?

5 A. Um, yeah. I would say that -- to the
6 best of my recollection, that we were skeptical or
7 -- we were interested in learning more about what
8 was going on there. That's why those meetings
9 took place.

10 Q. You also testified that you -- that
11 these concerns that you first raised in 2012
12 became a reality when you served on the finance
13 committee and you had the meeting in late 2013, in
14 which the social members' funds were going to be
15 specifically allocated?

16 A. That was the middle of 2014 --

17 MR. FORD: Object to the form.

18 A. -- when that started to happened. I was
19 elected to the committee at the end of 2013. But
20 it wasn't until several months on the committee,
21 until we got into this particular issue, that it
22 became clear that that's what was going on.

23 Q. Did you have any confirmation prior to
24 that meeting in 2014 that this allocation was
25 occurring?

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Exhibit G

ELECTRONICALLY FILED - 2017 Sep 14 6:08 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000510

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Rob Wilson [mailto:rwilson@mycgroup.net]
Sent: Tuesday, March 05, 2013 11:31 AM
To: 'Jamie Selby'
Cc: 'Phillip Galbreath'
Subject: RE: 2013 Budget Explanation and Clarification

Thanks for the note Jamie

Perhaps the confusion stems from the initial letter sent by the Club Board that states the following...

The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Couple that statement with the new golf access / privileges granted to all community members and the announcement that the public "member for the day" program was being discontinued, and any rational reader can only come to the conclusion that the cost of the golf course is the reason for the increase in dues (...and that access to the golf course was being offered in return for the additional fees - almost a new form of membership)

And in reality, I think the numbers that are represented in the letter below are misleading at best. The "message" that golf is only losing about 80K while the Community is running about a 240K deficit overlooks the percentage of admin costs associated with golf that we talked about before when you, Phillip, Rob Star and I met last year. My recollection is that you suggested that a ballpark of about 20% (give or take) might in fact be the right amount in the \$1M admin line to carve out for golf. At even half that number, the amounts change pretty quickly with golf running a deficit of 180K and the Community running a deficit at 140K. And if the real number is closer to 20%, or higher, that's a huge swing.

Am I missing something here ???

Rob Wilson | MRC group Inc.
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(o) 703-748-1177

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[REDACTED]

[REDACTED]

Exhibit H

ELECTRONICALLY FILED - 2017 Sep 14 6:03 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

March 27, 2013

Re: Oldfield Community Dues Increase

To: TI Oldfield/SF Capital:

On February 7, 2013 the Club Members received your email regarding the latest dues increase. The undersigned Members hereby reject this arbitrary increase in our dues. Such action, if implemented, would be a violation of the Sponsor's fiduciary duty to the Members, which would require that we promptly take action to protect our rights as Members and our investment as property owners.

In your recent emails, justification for your proposed increase in dues is mostly to offset the cost of operating the Community Club "Club" and not the Golf Club and the golf course (together hereinafter referred to simply as the "COURSE"). In the financial analysis shared in the email you go to great efforts to show a modest loss for the Course and a more severe loss for the Club. In either case, as the developer, you have taken on the contractual obligation to fund the deficit while providing a private first class club.

After conversations with Management regarding the emails and the accounting for the individual departments, it is clear the accounting practice employed by the club masks overhead for the Course in the General and Administrative section of the Club. Furthermore, some of us have been told in person by Management that not one dollar of our Club dues go towards the Course. While we understand that the deficit for both Club and Course are supposedly funded by the Developer, it is not clear where the expenses occur. It is also clear from the by-laws and Equity Membership Agreement that this is not proper and the Club members will not be charged for the Operating shortfall of the Course.

According to the by-laws and the Equity Membership Agreement, the Equity Golf Members, together with the Sponsor, are responsible for the maintenance of the COURSE. The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general membership of the Club. Nor can the Sponsor look to the general membership to subsidize or offset any deficiency in the funding of the COURSE's operations.

It has always been clearly understood that the COURSE may not be sustainable without the additional support from the Sponsor and the Equity Golf Members. It was precisely because of this open ended liability that the majority of the Club's members chose not to participate in the COURSE as Equity Golf Members. The Equity Golf Members have always known that the financials of the club would only be successful with a subsidy from the Sponsor and their dues. As stated in their Equity Membership Agreement under Exhibit "A" Additional Terms and Conditions:

Facilities Incomplete: By execution below, Member acknowledges that, as of this date, all or portions of the Club Facilities may not be constructed or complete. Member understands that the size, scope and nature of the Club Facilities may be determined in the sole discretion of the Sponsor, subject to the terms of the Offering Plan. Member further understands that the size, scope and nature of the Club Facilities upon completion, as well as the number of memberships outstanding, will affect the amount of dues and assessments which Member may be required to pay as a Member of the Club, and that no representation is made that the current level of dues will be sufficient to operate the Club in the future.

There are four hundred owners in this community besides TI and only 112 or so have agreed to the equity membership. They were all informed in their Membership Agreement that:

MEMBER ACKNOWLEDGES THAT HE OR SHE IS ACQUIRING A MEMBERSHIP FOR THE SOLE PURPOSE OF OBTAINING SOCIAL BENEFITS, AND RECREATIONAL USE OF THE CLUB FACILITIES AND NOT AS AN INVESTMENT OR WITH ANY EXPECTATION OF MAKING A PROFIT FROM THE OWNERSHIP OF FUTURE TRANSFER OF THE MEMBERSHIP.

Furthermore, when faced with the bankruptcy of Crescent Resources the Equity Golf Members were offered the option to place the balance of their equity contribution into an escrow account without any penalties or interest assessed. The Equity Golf Members were advised by their own "working group", including Chic Frosch, Fred Nicoll, Nick Smilari, Bob Stinson, Bill Stephens, Buzz Vest, Leo Zabinsky and their legal counsel that, pursuant to the escrow arrangement, Oldfield LLC will have to accept and assume its obligations under the Transfer Agreement to receive the escrow funds.

Prior to making the decision to remain Equity Golf Members, the Equity Golf Members received the escrow agreement in a package that included a letter from Tony Hyde,

COO, Partner of East West Partners Club Management and a Question and Answer document relating to the Escrow Agreement. The final Q and A on the sheet was:

Q: If I don't pay my equity contribution, but I am current on my Community Membership dues payments, can I still use the other club facilities in Oldfield?

A: Yes, the revocation of privileges relates only to the possible revocation of Golf Club privileges, not all Member amenities. Other than the potential waiver of fines and penalties provided in the Escrow Agreement, the Club is contractually entitled to impose penalties on Members delinquent in their monetary obligations and, as a fiduciary to all Club Members, is obligated to do so in order to protect the Club and the Members that have properly complied with their responsibilities.

As you know, the Bylaws have provide in Article III:

3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay the Club Operator assessments, annual dues, and minimum usage fees in such amount as the Club Operator shall specify from time to time, except that Community Members shall not be subject to assessments for operating deficits or capital improvements to golf facilities or golf operations.

It is our understanding that you have chosen to ignore your contractual obligation to the Equity Golf Members and Club Members to collect the dues from delinquent Equity Golf Members or Members that have walked away from their obligations. As we are not Equity Golf Members we are not complaining herein on behalf of those Equity Golf Members who are honoring their obligations and are current on their dues. However, as general members, we reject your attempt to impose what amounts to a new class golf membership upon us. We are not so naïve to believe that you are being beneficent by allowing the general members "complimentary" use of the financially sound COURSE, because you need to increase the dues of the rest of the underfunded club.

Furthermore, we do not wish to have a financial relationship with the Sponsor that includes a gimmick that is given today, but which the Sponsor may, at it's sole discretion, take away tomorrow. Quite frankly, we understand your company's motivation in keeping its investment in the Oldfield Club to a minimum until the real estate market turns and you are able to sell units at a profit. It is precisely because of this inherent

conflict of our interests that we refuse to allow any arrangement that will diminish the quality of life for the general members in order to enhance the Sponsor's future profitability.

We request that you withdraw your proposed increase in the dues and seek to collect unpaid dues from delinquent Equity Golf Members. If there still remains a shortfall, then you may want to consider an increase in the dues paid by Equity Golf Members or through your recent Membership drive. Although we feel your offer to new golf members further cheapens the Course and the public perception of the Club we also reject the offer for outsiders to upgrade to full Club membership for \$1500. We ask that you remove this offer immediately as you do not need any further financial contribution to operate the Club. This is nothing more than another effort to decrease your deficit contribution which is dilutive to the value of the Club.

In conclusion, we will oppose any effort to unilaterally change the legal relationship between the Sponsor and the general membership. We will also oppose any attempt to unilaterally change the nature of the Oldfield Club from a private family oriented community to a semi-private or public facility for rent. This includes your recent advertising campaign to attract bachelor parties and "Guys Weekend" to the River club. This is a family oriented private community. Many of us have small children and we live here because we wish to enjoy a safe and private environment. We do not believe that this is compatible with raucous bachelor parties and all of the implications that go along with that (drinking, drugs and other illicit behavior that may be imported by individuals that have no ties to the community).

Of course we would prefer to keep these issues within our community and resolve them quickly and quietly. However, please accept this as formal notice of a claim as members of the Oldfield Club. We hope that you will promptly consider the issues raised herein. We would also be amenable to meeting with your representative when convenient to discuss the same.

Respectfully,

Robert Star

Robert Wilson

EXHIBIT 1

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000518

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602

MARC HAAS, SUSAN HAAS, ROB STAR)
and MELISSA STAR,)

Plaintiffs,)

vs.)

TI OLDFIELD OPERATIONS, LLC, SF)
OPERATIONS, LLC, OLDFIELD CLUB,)
OLDFIELD COMMUNITY ASSOCIATION,)
OLDFIELD CLUB BOARD OF DIRECTORS)
and JOHN DOES 1-10,)

Defendants,)

and)

TI OLDFIELD OPERATIONS, LLC, and)
SF OPERATIONS, LLC,)

Third-Party Plaintiffs,)

vs.)

OLDFIELD, LLC, and CRESCENT)
COMMUNITIES, LLC f/k/a CRESCENT)
RESOURCES, LLC,)

Third-Party Defendants.)

* * * * *

DEPOSITION OF: ROBERT STAR
DATE TAKEN: Wednesday, January 25, 2017
TIME: 10:10 a.m.
PLACE: Mullen Wylie
200 Merchant Street
Hilton Head Island, South Carolina
REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote

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1 attorney, the law firm Moster Wynne --

2 Q. In Texas?

3 A. -- in Texas to represent our interests.
4 And we filed in bankruptcy court in Austin, Texas,
5 our Complaint.

6 Q. Did you intervene in the ongoing
7 bankruptcy? Is that how it worked? Or did you
8 file your own lawsuit, if you know?

9 A. What do you mean "intervened"?

10 Q. Did you -- I've seen a motion that was
11 filed in the case by your lawyer. I think -- you
12 may not know the answer.

13 A. You're getting into some legalese here
14 that I don't get.

15 Q. Is the answer you don't know?

16 A. I don't know.

17 Q. That's fine. Please proceed.

18 A. We hired counsel to represent us.

19 Q. Did you have a South Carolina lawyer at
20 that time?

21 A. Did I have a South Carolina lawyer? No.

22 Q. Okay. Please proceed.

23 A. Um, one of the parties in our group was
24 an attorney in a former life.

25 Q. Who?

1 Termination and Release.

2 Q. At any time did any of the lawyers
3 representing you determine whether or not the
4 Termination and Release complied with South
5 Carolina law?

6 A. I don't know.

7 Q. At any time did any of the lawyers
8 representing you determine whether or not the
9 Termination and Release was consistent with the
10 governing documents of Oldfield Club or any of the
11 other entities involved?

12 A. I don't know.

13 Q. What is your understanding of what the
14 Termination and Release was accomplishing?

15 A. Our concern at the time was if you are
16 an equity golf member, you would be responsible,
17 as any equity club would be or any equity member,
18 for any shortfall, capital improvements, financial
19 liabilities as it relates to the golf assets. And
20 if you don't have a developer who is committed to
21 selling memberships and funding any deficits, we
22 did not want to be responsible. And if -- the
23 documents, as I recall, state, we're personally
24 responsible, our estate is responsible, unless we
25 sell our membership.

1 A. Daniel Junk.

2 Q. Mr. Junk?

3 A. Junk, J-U-N-K.

4 Q. Like it sounds?

5 A. Yeah.

6 Q. Good name. Was he a South Carolina
7 lawyer?

8 A. No. So he did not represent us in any
9 sort of legal capacity, other than obviously
10 having some experience with the process. So we
11 hired Moster Wynne. Moster Wynne did whatever
12 they needed to do. I believe you've seen the
13 motion, obviously; it included a demand, if you
14 will. I don't know if that's the right word.
15 Again --

16 Q. Just do your best.

17 A. That they needed to affirm their
18 obligations as it relates to being the club
19 sponsor, declarant, et cetera.

20 Q. You wanted them to adopt the transfer
21 agreement?

22 A. If that's what -- I haven't looked at
23 that motion in a long time.

24 Q. Whatever it says, it says?

25 A. Yeah. And it was settled with this

1 Q. From where did you get that
2 understanding?

3 A. It's in our bylaws and covenants
4 somewhere.

5 Q. Did you get any legal advice from a
6 South Carolina attorney as to whether your
7 understanding was correct?

8 A. We were given advice from Crescent. We
9 were given advice from other members of the
10 community. We were given advice -- when I say
11 "Crescent," rather -- let me clarify that --
12 management, who would represent Crescent; our
13 general manager at the time would have been East
14 West Associates, I believe. And it's in the
15 documents. I can't -- it's not in the Termination
16 and Release, but it's in our bylaws that states
17 what the obligations of an equity member are.

18 Q. Let's go through that in pieces, Mr.
19 Star. Did you receive advice from any South
20 Carolina lawyer advising you as to the
21 understanding that you just told me about the
22 governing documents -- a South Carolina lawyer?

23 A. I don't know if our lawyer in Texas is
24 licensed in South Carolina. I can't tell you
25 that.

Page 30

1 A. Yes.

2 Q. Now, tell me what you understood Exhibit

3 2 to accomplish.

4 A. It was a termination and release of our

5 duties and obligations as equity golf members.

6 Q. So, essentially, Exhibit 2 -- I want to

7 understand your full -- but essentially shed you

8 of your equity golf membership in Oldfield Club?

9 A. Say that in another way, please.

10 Q. Sure. The Exhibit 2, the Termination

11 and Release Agreement essentially ended your golf

12 equity membership in Oldfield Club; is that your

13 understanding?

14 A. Yes.

15 Q. And which part of that, is your

16 understanding of the agreement, does that? And

17 for context I'll refer you to section 2. But

18 you're free to look at as much as of this as you

19 want. Did you read this document before you

20 signed it?

21 A. Yes.

22 Q. Which part of this essentially ends your

23 equity membership?

24 A. Where it says "Termination of the

25 Membership Agreement."

Page 31

1 Q. And part 2-A and -B; is that what we're

2 talking about on page 2?

3 A. We're talking about the bold, underlined

4 "Termination of the Membership Agreement."

5 Q. I don't see bolding, but I'm not trying

6 to be --

7 A. 2.

8 Q. -- picky.

9 A. Yeah, 2.

10 Q. Section 2-A and -B there; that's what

11 we're talking about?

12 A. Yeah. I'm not going to interpret the

13 legalese of this document.

14 Q. I understand. I'm not asking you to,

15 because you're not qualified to, correct?

16 A. Correct. Where it says "Terminated,

17 cancelled and extinguished," I guess those are all

18 pretty significant words in what you're trying to

19 ask me.

20 Q. So at that point, your equity membership

21 had ended. What was your understanding of your

22 new status? Were you community members? Were you

23 something else? Tell me what you understood

24 happened.

25 A. Everybody is a community member at the

Page 32

1 club.

2 Q. All I care about is you. Were you now a

3 community member?

4 A. I was a community member with no

5 obligation to ever pay anything towards the golf

6 course.

7 Q. To ever pay anything?

8 A. Towards golf.

9 Q. Thank you. To never pay anything

10 towards golf, even if you used golf facilities?

11 A. Community members were permitted to be

12 charged whatever round -- whatever rate determined

13 by the pro for golf.

14 Q. I understand that. And what I'm trying

15 to figure out is --

16 A. And, yes. There was nothing that

17 prohibited me from using the golf course.

18 Q. If you used it, would you have to pay

19 for it?

20 A. If they charged me for it, I would.

21 Q. So you said -- and I'm trying to get a

22 meeting of the minds here. Because I haven't been

23 able to understand from the lawsuit you've filed,

24 so this is an education to me. If you used golf

25 facilities, you could be charged for those,

Page 33

1 correct, is your understanding?

2 A. Define "charged."

3 Q. Pay for what you use. Did you get to

4 use the golf facilities --

5 A. Do you play golf?

6 Q. I'm not here to answer questions.

7 A. No. I understand. Are you asking me do

8 I pay on a per round basis or just charge me for

9 golf in general?

10 Q. I see what you're -- thank you. If you

11 play a round of golf, would you have to pay for

12 that?

13 A. On a per round basis, I expected to be

14 charged.

15 Q. I see what you're saying. Okay.

16 Gotcha. So when you said earlier you would never

17 have to pay for golf, what I think you meant was

18 unless you actually used it?

19 A. Correct. From my dues structure.

20 Clarify.

21 Q. So is it your understanding that you

22 were essentially a normal community member after

23 the Termination and Release Agreement?

24 A. With the exception of that I would never

25 have to have my dues going towards golf in any

1 way, shape or form.

2 Q. That's what I'm interested in; that's
3 what I'm trying to understand. I'm asking what
4 your understanding is. I have my own. So were
5 you kind of -- could other community members'
6 dues, if you know, go towards certain golf
7 facilities?

8 A. I think there's a difference of opinion
9 on what the documents say people could be charged
10 for. I've read the letter from your clients, and
11 I have a difference of opinion on that. I'm
12 guessing the guy from Crescent has a difference of
13 opinion on that. So I'm not going to speculate on
14 other legal arguments.

15 Q. I don't want you to speculate on legal
16 arguments. You're not qualified to.

17 A. Right. But you're asking me to.

18 Q. No, I'm not. I'm asking you what your
19 understanding of your position is.

20 A. My understanding is golf is a separate
21 fee structure for all members of the club that
22 aren't golf members.

23 Q. Your understanding is after the
24 Termination Agreement, you're a community member?
25 Are we there together, at least at that point, a

1 Q. Does that mean you are no longer,
2 following the Termination and Release, an equity
3 golf member?

4 A. I'm sorry. I don't understand the
5 question.

6 Q. I don't understand the answer.
7 Following the Termination and Release, are you an
8 equity golf member or not?

9 A. Am I an equity golf member or not? I
10 have never signed any other membership agreement
11 than the membership agreement that's on file.
12 That's the only way I know to answer that
13 agreement -- that question.

14 Q. Are you a community member in your --

15 A. Yes. Everybody is a community member.

16 Q. I understand that. I don't want to talk
17 about everybody. I want to talk about you because
18 you're alleging this.

19 A. Do you have my membership agreement?

20 Q. Do you -- I'm still trying to understand
21 your answer about whether you're a -- do you not
22 know whether or not you're an equity golf member?

23 A. I don't believe I am an equity golf
24 member.

25 Q. In your mind, what is happening, is what

1 community member?

2 A. I'm not sure.

3 Q. Okay. Do you think that you are --

4 A. Like I said earlier, everybody is a
5 community member.

6 Q. Right.

7 A. And then everybody who becomes a golf
8 member elects to add golf to their community
9 membership. So, yes, as an equity golf member, I
10 am also a community member. My termination and
11 release, I can't tell you what status that made me
12 as a member in the community, other than I have a
13 termination and release of my membership
14 agreement. But I am -- if I'm an equity golf
15 member, I'm also a social member -- or a community
16 member, I should put it.

17 Q. Question: Are you an equity golf member
18 following the Termination and Release?

19 A. When I filed it?

20 Q. Following the signature of the
21 Termination and Release, are you an equity golf
22 member?

23 A. I would say that my obligations and
24 responsibility as an equity golf member have been
25 terminated, cancelled and extinguished.

1 I'm trying to figure out.

2 A. Right. But you're asking me about in my
3 mind versus what's legally bound to. And I'm
4 trying to tell you that I have a membership
5 agreement that's signed. That membership
6 agreement is a fully executed membership for
7 community and golf. I have never signed any other
8 membership agreement. This agreement, as far as I
9 understand, terminates, cancels and extinguishes
10 that portion of that agreement. What that
11 technically does to that agreement in terms of who
12 I am within the community, no one has ever made
13 that determination. So I can't tell you, other
14 than I have no obligations to pay for golf, golf
15 facilities in any way, shape or form, and that's
16 what I agreed to.

17 Q. I think, Mr. Star, this is where -- I'm
18 not asking for your understanding of the legality
19 of it. I'm trying to figure out, in your mind,
20 what your status is. In your mind, are you an
21 equity golf member or not?

22 THE WITNESS: Am I confused here by his
23 question?

24 MR. TONEY: If you don't understand it,
25 ask him to clarify it. But I think it's

1 or incorrect?

2 A. Again, I'll answer the question not in
3 the way that you probably want me to. But the
4 answer is, is that our dues currently that I'm
5 forced to pay -- if I don't pay, my children and
6 my wife and myself are removed from the facilities
7 access-wise; that those dues have migrated
8 recently over the years to include club -- club
9 facilities and golf facilities, not contemplated
10 by the documents, where the documents say that
11 golf is a separate fee structure and that social
12 members are not supposed to be paying for golf.
13 Your clients have decided to change that. So if
14 you're asking me whether I should be paying for
15 that, that's why we're here.

16 Q. I understand. And I understand you have
17 a broader view as to allocation and so on, and I
18 get that and I want to hear about that. But what
19 I want to hear about first, Mr. Star, is this
20 lawsuit. And you can talk to me all you want
21 about these concerns; I've read your document, and
22 I want to hear about it. But let's talk about
23 this lawsuit. Okay? And --

24 A. I can't tell you what the appropriate
25 level of dues are.

1 Q. And what I want to understand is your
2 understanding. Do you believe that, given the
3 Termination and Release Agreement that you've sued
4 under, you should be paying a different amount of
5 dues than other community members?

6 A. Can I answer the question with a
7 question, so you can clarify?

8 Q. I want to clarify it. Go ahead.

9 A. I want you to clarify that other
10 community members are currently paying for golf,
11 golf facilities, golf overhead, and that that is
12 what I'm paying -- should be I paying that?

13 Q. That is the second question that we'll
14 get to. I want to understand your understanding
15 of this agreement. Do you --

16 A. My understanding of this agreement is
17 that if my 4,560 -- whatever that number is that
18 we pay in club dues, if any of that money is going
19 toward the 18-hole golf course, the clubhouse, the
20 practice mngs, then, yes, I should be paying a
21 different rate than everybody else.

22 Q. Got it.

23 A. With the understanding that any of that
24 money is going towards that. If that money is not
25 going towards that, if it is going towards what is

1 defined as social facilities, the outfitter
2 center, activity center, swimming pool, tennis
3 court, fitness center, collectively the social
4 facilities, then I would pay the same rate as
5 everybody else.

6 Q. Got it. That's what I wanted to
7 understand. So is it fair to say that your
8 dispute may not necessarily be in the amount
9 you're paying so much as how it's allocated
10 internally?

11 A. If you're asking me is my dispute that
12 I'm paying the \$4,500 or 4,560 -- is that what our
13 dues are? I don't know what it costs to run a
14 first-class private club. I will tell you that
15 we're grossly underfunded. And that whatever it
16 is I'm paying is not enough to support a
17 first-class private club.

18 Q. We're bleeding into your broader policy
19 argument, and we'll get there. Let's talk about
20 the lawsuit. A question for you: You and your
21 wife -- your membership under the Termination
22 Agreement, how much money is in dispute in this
23 lawsuit? How much money do you think you have
24 mispaid --

25 A. You haven't produced financials.

1 Q. Okay. Question: Do you know how much
2 money you're claiming is in dispute regarding your
3 and your wife's membership?

4 A. I can tell you that we forgave a \$20,000
5 deposit as part of this consideration and this
6 agreement. And until I see financials and how
7 they're allocating overhead, I can't give you an
8 exact number. Because it's me just kind of going
9 off of some information I've received from people
10 who are either on the finance committee, who are
11 on the board; none of it makes any sense. Because
12 it doesn't add up to what it's supposed to be. So
13 there has been a history of me making claims for
14 amounts I have not had the financials to support,
15 other than what I was provided by members. So I
16 am still in wait of your financials.

17 Q. Okay. Let's take those in turn. There
18 are sort of a hodgepodge of points in there. Do
19 you have any estimate -- you're an accounting guy;
20 you deal with numbers all day every day. Do you
21 have any estimate as to the amount of money that
22 you are alleging is in dispute with regard to your
23 and your wife 's membership?

24 A. Are you asking me to date or on a
25 perpetuity standpoint?

1 Q. Give me whatever you've got.

2 A. My answer to date is not complete
3 because you haven't provided me with the
4 financials. But that number in perpetuity could
5 be any number. So there's - any number that I
6 give you is irrelevant because your clients have
7 shown that they're willing to move overhead to the
8 social members at-will.

9 Q. Do you have any estimate of what the
10 amount in dispute is to date, at this point,
11 sitting here today?

12 A. Until you show me financials and I can
13 see how things - let me give you an example to
14 answer your question.

15 Q. This is an example where you can say "I
16 don't know." If you know, I want to know. If you
17 don't know, you can tell me.

18 A. I don't know.

19 Q. Okay. Fair enough. You were going to
20 give me an example. Give me your example.

21 A. I don't know how they're allocating
22 landscaping, the superintendent, his salary, the
23 general manager's salary, marketing. I don't know
24 how any of that is being done. So you're asking
25 me about how much. I can tell you what is in the

1 Q. Please tell me your understanding. I'm
2 not here to testify. What do you think you need?

3 A. The audited financials are irrelevant
4 because the audited financials have a disclosure,
5 if you will, that everything is prepared by the
6 general manager. The general manager is giving
7 the auditors the data, and then they're spitting
8 out audited financials. So I don't have accurate
9 financials.

10 Q. You think the financials are inaccurate?

11 A. I don't have detailed financials to give
12 you -

13 Q. That's different.

14 A. Fair enough.

15 Q. I'm not arguing. I'm just trying to
16 understand.

17 A. Let me just comment to that question.

18 Q. Keep going. Keep going before you move
19 on to the next question. What accounts and sub
20 accounts do you think you need to establish what
21 you told me about so I understand?

22 A. I would need to see the entire financial
23 reporting from the community.

24 Q. Okay. Like a download of the entire
25 what - I know that - whatever program they use,

1 audited financials. I can just show you a number
2 and say, Clubhouse was X dollars in that year in
3 the audited financials. But I haven't seen any of
4 it. So the answer is, I don't know. And on a
5 go-forward basis, your clients have shown that
6 they are going to continue to shift overhead to
7 the social member at-will.

8 Q. Okay. What, in your mind, would you
9 need to establish your damages?

10 A. So we need full financials.

11 Q. Tell me in your mind what that means.

12 A. I need to see all the accounts, all the
13 sub accounts, et cetera. That establishes damages
14 as of to this point.

15 Q. All accounts and sub accounts. And what
16 have you gotten to date, in your understanding?

17 A. Have we gotten anything? We haven't
18 gotten any financials.

19 Q. We produced a huge amount of data.

20 A. I haven't seen any sub accounts. I've
21 seen the audited financials.

22 Q. And help me and the people reading this
23 transcript understand what more you think you need
24 in order to determine this.

25 A. Have you read the audited financials?

1 and then you would go through it and look at
2 landscaping, for example?

3 A. Let me answer that question this way:
4 Because you're asking me, like this ends at this
5 point.

6 Q. What I'm asking you is, I want to know
7 how much you're saying is in dispute.

8 A. It's in perpetuity in dispute.

9 Q. I understand. I get that concept.

10 A. So you're saying that every year I'm
11 supposed to go and meet with these guys and say,
12 every year, in the rest of my life living there,
13 I'm going to figure out that 22 percent of my dues
14 is going to golf, and that I'm going to project to
15 live there for 30 years, so that's what is in
16 dispute.

17 Q. Mr. Star, I kind of thought you would
18 have a more linear presentation of your case.
19 Let's take an example. 2015 - let's take that as
20 an example. And you've talked about in
21 perpetuity.

22 A. We just -

23 Q. Tell me what you would need to determine
24 your damages just for the year 2015.

25 A. Audited financials and all the sub

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1 accounts, all the entries.
 2 Q. You said you already had the audited
 3 financials, I thought.
 4 A. Yeah. But I don't know the data that
 5 went into the audited financials.
 6 Q. It's not the audited financials.
 7 A. I have that, yes.
 8 Q. You want the underlying data?
 9 A. Yes.
 10 Q. Tell me what that means. That means the
 11 download of the computer programs?
 12 A. I don't know what they have. I can't
 13 tell you what they have.
 14 Q. So you don't know what you need?
 15 A. I don't know if they do it by pencil.
 16 We were told in a meeting last night that the
 17 financials were such a mess that they're still
 18 trying to figure them out. We don't have budgets
 19 for 2017.
 20 Q. We're going a little far abroad. Other
 21 than what you've told me -- and I'm trying to
 22 understand your damages. I ask this of every
 23 plaintiff.
 24 A. I understand.
 25 Q. It sounds like you don't know what your

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1 damages are, correct --
 2 MR. TONEY: Object to the form.
 3 Q. -- sitting here today?
 4 A. Until I get -- right, yes. Yes.
 5 Q. Gotcha.
 6 A. They are yet to be determined until we
 7 see the full financials that we've asked for.
 8 Q. And you've seen what we've produced?
 9 A. Yes.
 10 Q. Why haven't you followed up, asking for
 11 more? I'm asking you.
 12 A. Um --
 13 Q. If you needed more in advance of this
 14 deposition, why didn't you ask?
 15 A. We just got those, what, two weeks ago?
 16 Three weeks ago? I just got them.
 17 I don't know how to answer for that
 18 question.
 19 Q. That's fine. Tell me about your
 20 consideration issue. You told me you wanted to
 21 tell me about that.
 22 A. We left a \$20,000 deposit.
 23 Q. 20,000. And that's a consideration in
 24 part for the Termination Agreement?
 25 A. Yes.

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1 Q. Got it. Who drafted the Termination
 2 Agreement?
 3 A. I don't know.
 4 Q. Did your lawyer draft it?
 5 A. I don't know.
 6 Q. This little thing at the bottom is often
 7 a law firm stamp. Do you have any idea who U.S.
 8 Active was?
 9 A. It's either Weil, Gotshal or Moster
 10 Wynne.
 11 Q. And Weil, Gotshal was the --
 12 A. Attorney representing Crescent.
 13 Q. When you all did this agreement, Exhibit
 14 2, were there back-and-forth drafts of it?
 15 A. Yes.
 16 Q. Who would have those drafts, if anyone?
 17 A. You just asked me who the attorneys
 18 were. They would have the drafts.
 19 Q. I'm asking if you have them. Do you
 20 have the drafts?
 21 A. No. I do not have the drafts.
 22 Q. Was there any negotiation of that
 23 section 2-A and -B that we've kind of talked about
 24 a bit?
 25 A. I don't recall.

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1 Q. Because what is odd to me -- and tell me
 2 the answer to this -- if it was just that you give
 3 up your golf membership, it doesn't seem to say
 4 that. There's an easy way to say that, and it
 5 doesn't say that. Why didn't you all just say,
 6 you give up your golf membership and you're a
 7 community member and you don't have to pay
 8 anything towards golf going forward? So tell me
 9 in your words why it doesn't spell out what you're
 10 saying it spells out.
 11 MR. TONEY: Object to the form.
 12 Q. You can answer.
 13 A. So at the time, you had 120 equity golf
 14 members. That's 2009. Fast-forward to 2017, you
 15 maybe have 120 equity golf members. There isn't a
 16 golf course that I know of, other than very
 17 exclusively private, very expensive golf courses,
 18 that can support itself on 120 members. Without
 19 knowing what the plan was, this document was, as
 20 far as I know, to protect us from what is
 21 currently happening, which is social members
 22 getting charged for golf.
 23 So your answer would be -- I guess your
 24 question -- let me just repeat it, if I can -- why
 25 didn't you just become a social member and restart

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1 your documents? That would have been real easy,
 2 wouldn't it? But that's not what this is.
 3 Q. This makes you a community member and
 4 exempts you from paying anything towards the golf
 5 facilities?
 6 A. Correct.
 7 Q. In perpetuity, in your mind?
 8 A. Correct.
 9 Q. So you all are kind of, in your mind,
 10 yet another category of membership, correct?
 11 A. You already asked me this question, and
 12 you don't want to hear my dissertation on --
 13 Q. Go ahead. Give me your dissertation. I
 14 mean, you and your wife are kind of -- and whoever
 15 else signed this agreement are kind of yet another
 16 class of member of the community but --
 17 A. You would have to ask Crescent, Jay
 18 Page, the club, the association, why they agreed
 19 to look at our governing documents, agree to this
 20 document and put this in place. Because this
 21 document is not so far off what the bylaws and
 22 covenants and everything else actually state.
 23 Q. Really?
 24 A. Which is golf is a separate fee
 25 structure; we can't be charged for operating

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1 think you actually get it back? What is your
 2 understanding of the remedies in this document?
 3 A. Um.
 4 Q. I'm not asking for a legal
 5 interpretation. I'm just asking for your
 6 understanding of what happens.
 7 A. I mean, like anything else, I paid for
 8 something that I shouldn't have paid for. So you
 9 decide -- determine how much that is. You include
 10 my legal fees, and then you figure out a method to
 11 insulate me on a go-forward basis.
 12 Q. What provides for payment of your legal
 13 fees?
 14 A. Have you read this document? I'm just
 15 kidding. Sorry. I'm being facetious.
 16 Q. I was counting on you to read it to me.
 17 A. The middle of paragraph 3-A -- let me
 18 see where this sentence starts because it's a
 19 pretty long sentence. It actually looks like the
 20 whole paragraph is one sentence. "The member and
 21 each Crescent entity" --
 22 Q. Go slow so she can -- if you want her to
 23 take it down, you need to go slower.
 24 A. Sorry. I was just kind of reading out
 25 loud.

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1 shortfalls; we don't have access to golf, et
 2 cetera, except for when we pay on a per round
 3 basis. So this document is not something that
 4 just came out of thin air. It actually, as far as
 5 I can recall, was built off of the governing
 6 documents. So what is happening today is what we
 7 wanted to insulate ourselves from, which is a
 8 community that is getting charged for things that
 9 they probably shouldn't get charged for.
 10 Q. Do you know how much you believe you're
 11 being charged for, that you don't think you should
 12 be charged for?
 13 A. You just asked me that question.
 14 Q. I know. And I'm asking you again. Do
 15 you know?
 16 A. I do not know.
 17 Q. Fair enough. Do you think you should be
 18 getting money back or it should just go towards
 19 the social --
 20 A. I am happy to discuss a settlement at a
 21 different time.
 22 Q. Now. We're talking about it now. If
 23 you win this lawsuit, do you think the remedy, in
 24 your mind, is that the money that went to golf
 25 goes back to the community member pot, or do you

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1 Q. That's fine.
 2 A. It says here --
 3 Q. Where are you?
 4 A. At 3-A. And I'm going to start -- I
 5 mean, I've got to read the whole thing. It's one
 6 huge run-on sentence. This thing doesn't have a
 7 period.
 8 Q. I didn't draft it.
 9 A. I am sure yours would have been a lot
 10 better. I'm going to start with, "The member and
 11 each Crescent entity" --
 12 Q. Where are you?
 13 A. We're in the middle of the paragraph --
 14 Q. Let me get there --
 15 A. -- where there's a parentheses.
 16 Q. -- before you start running on it.
 17 A. The parentheses says, "As well as their
 18 predecessors, successors and assigns," then
 19 parentheses again, "The member and each Crescent
 20 entity when being released by the other party" --
 21 Q. Okay. Go ahead.
 22 A. -- of all form (sic) and "manner of
 23 actions, causes of actions, claims, suits, bonds,
 24 bills, covenants, controversies, agreements" --
 25 Q. Slow down.

1 facilities and the golf shopping facilities as
2 well?

3 A. Yes. I included that in things that
4 social members are allowed to do.

5 Q. Gotcha. Okay. And in that regard, with
6 your membership that brings us here today, under
7 Exhibit 2, do those rules still apply to you and
8 your wife?

9 A. Yes.

10 Q. You can use the dining facilities of the
11 golf club, correct?

12 A. Yes.

13 Q. And you can use the shops as well?

14 A. Yes. And I'll pay the 18 percent.

15 Q. And you can golf as well?

16 A. Yes.

17 Q. Okay. But the difference is that an
18 allocation from your particular dues don't go to
19 underwrite any of that; is that right? That's
20 your understanding?

21 A. Yes.

22 Q. Now we're moving forward together.

23 A. You're asking better questions.

24 Q. You've educated me. All right. Other
25 social members -- not you all -- can some of their

1 not you all; I'm carving you all out -- can be
2 used to support the dining, shopping, or golf
3 course in any way? That's your understanding as
4 well?

5 A. Their dues cannot support the overhead
6 or shortage or loss, if that's what you're asking
7 me.

8 Q. I'm kind of not. I'm kind of asking it
9 a little bit of a broader way.

10 A. No, they are not subject to the golf
11 course 18-hole, practice facility, clubhouse,
12 mens', ladies' lockers rooms.

13 Q. In any way, shape or form?

14 A. Correct.

15 Q. Even though they have access to those to
16 a certain regard, which you've told me about:
17 Dining, shopping, playing certain golf?

18 A. Yes.

19 Q. Do you use the golf course?

20 A. I've played golf at the golf course,
21 yes.

22 Q. I'll tell you I got an Interrogatory
23 response from you all that said you do not recall
24 using the golf course. Question: Do you recall
25 using the golf course in 2016?

1 dues go toward the golf facilities, such as -- if
2 they can use the dining and so on, can it be used
3 to support some of that since they have access to
4 those?

5 A. Let me answer that question in a way
6 that I think will clear up this. Is that we are
7 guests permitted to eat and shop. It is not
8 anything more than something we are permitted to
9 go use.

10 Q. "We" in that sentence, is that all
11 community members or just the Stars?

12 A. I would say the Stars and then --

13 Q. I'm asking about community members.

14 A. -- the second level of community
15 members. I would say the community members, if I
16 were to speak on their behalf --

17 Q. How about this, you as community
18 members, so I --

19 A. Community members are permitted, just
20 like we are, to eat and shop and pay the 18
21 percent as a usage fee when they do do that in the
22 dining room to help contribute to that overhead,
23 and that's it.

24 Q. So it sounds like your understanding is
25 that none of the other community members' dues --

1 A. Yes.

2 Q. How many times?

3 A. I can't tell you.

4 Q. Is that because you don't know?

5 A. I don't know.

6 Q. Did you use it the year before, 2015?

7 A. I'm going to say yes.

8 Q. Do you have any estimate of how many
9 times?

10 A. No.

11 Q. If I told you, in 2016, you all used it
12 six times, could that be right?

13 A. That sounds high, but if that's what you
14 say.

15 Q. I'm asking. Would you disagree if the
16 club's records showed that you all used it six
17 times -- the golf course six times?

18 A. Um, I would have to say that the club's
19 records are subject, at best, to anything related
20 to that or other financial reporting.

21 Q. So you doubt all of the club's records?

22 A. No. I would say that I can't tell you
23 if it's six or five or two. So the answer is yes;
24 I just don't know the exact number.

25 Q. And throughout -- so years have gone by

1 Q. So is it your understanding that you do
2 not have use and enjoyment of the -- say the golf
3 course?

4 A. Correct.

5 Q. So you've played it?

6 A. Just like half of Beaufort County has
7 played it.

8 Q. When you go and play, do you have to
9 sign as a guest? How does it work?

10 A. I don't know what they do. They know
11 me.

12 Q. What do you do?

13 A. I say, Hey, Kevin. I'm going to go play
14 golf today.

15 Great, Mr. Star.

16 That's it.

17 Q. Got it. Is that how it works with
18 everyone? Say someone --

19 A. Who lives there.

20 Q. Say I go there and I don't live there?

21 A. Do you have an account at the club?

22 Q. I have nothing. Can I just walk in and
23 play it?

24 A. How are they going to bill you if you
25 don't have an account there?

1 allocated among the membership of all classes and
2 categories to whom the facilities, services and/or
3 programs covered by such budget are made
4 available."

5 Q. Question: Are -- let's talk about the
6 golf course. Is the golf course made available to
7 community members?

8 A. No.

9 Q. I thought you told me that you played it
10 and you could play?

11 A. I can.

12 Q. Does the golf course benefit community
13 members?

14 A. No.

15 Q. Tell me about that.

16 A. Ask me the question. I don't understand
17 "benefit."

18 Q. I'm reading the document. Does --
19 you've played it, right? You're allowed ten
20 rounds of golf per year, right, to the golf
21 course?

22 A. You're asking me personally?

23 Q. Yes.

24 A. I've played it, yes.

25 Q. And you have ten rounds of golf per year

1 Q. Got it. Okay. I think this is where
2 you're at. I'm still on page 2. It says, at the
3 bottom, the last paragraph, "Such budget shall not
4 include costs associated solely with facilities,
5 activities or events that do not benefit community
6 members." And that's kind of what you're talking
7 about, right? Are you with me?

8 A. Yes, I see that.

9 Q. Is that what you mean by community
10 member's or whatever's money can't go to the golf
11 course?

12 A. (Inaudible.)

13 THE COURT REPORTER: I'm sorry?

14 THE WITNESS: I'm sorry. I'm just
15 reading out loud. Off the record.

16 (The deposition went off the record.)

17 BY MR. FORD:

18 A. Yes. So can I read what I think --

19 Q. Back on the record. Give me your best
20 shot.

21 A. Back on the record. It says, "Such
22 budget shall not include costs associated solely
23 with facilities, activities or events that do not
24 benefit community members. The total estimated
25 costs as reflected in such budget shall be

1 that you can use on the golf course?

2 A. Okay.

3 Q. Is that yes or no?

4 A. That I have the ten rounds?

5 Q. Yes.

6 A. Um, I have ten complimentary rounds a
7 year on the golf course.

8 Q. So the golf course benefits you,
9 correct?

10 A. Um, I would be just as happy not to have
11 those ten rounds of golf.

12 Q. Does the golf course benefit you since
13 you have access to ten rounds of golf per year?

14 A. I'm going to still say no.

15 Q. Tell a jury reading this where you're
16 coming from on that.

17 A. I would be just as happy not to have the
18 ten rounds of golf. But if someone were to give
19 me something for free, like a free meal at a bad
20 restaurant, I may eat there because it was free.

21 Q. Is the golf course made available to
22 you?

23 A. No.

24 Q. Even though you have ten rounds of golf?

25 A. I have ten rounds of golf.

1 Q. Are the golf dining facilities made
2 available to you?
3 A. Yes.
4 Q. Do the golf dining facilities benefit
5 you?
6 A. Sure. Yes.
7 Q. How about the golf shop? Does that --
8 A. No.
9 Q. Let me get it on the record so we're
10 clear. Is the golf shop made available to you?
11 A. Yes.
12 Q. Does the golf shop benefit you?
13 A. No.
14 Q. Tell me why. Because you don't like it?
15 A. Yes.
16 Q. Go ahead.
17 A. Can you just define the word "benefit"?
18 Q. What do you understand the word
19 "benefit" to mean?
20 A. You're asking the question.
21 Q. I am. And my question is, what do you
22 understand the word "benefit" to mean?
23 A. Benefit is something that has an actual
24 value to me, that I actually appreciate that
25 value.

1 Q. What does that mean, you "actually
2 appreciate that value"?
3 A. The boat program at Oldfield is a
4 benefit to me.
5 Q. Because you like to boat?
6 A. It's not listed anywhere on here as
7 social facilities.
8 Q. So whether something benefits someone is
9 essentially whether they want it or not?
10 A. Whether it benefits them is whether they
11 want it or not?
12 Q. What I understood you to say is
13 something doesn't benefit you if you don't want
14 it. And --
15 A. Yes. If something is forced upon me,
16 then, yes, I don't think that's a benefit to me.
17 Q. Do you know anyone who shares your
18 understanding of that?
19 A. Have you looked at the amount of rounds
20 people have played at the community who get that,
21 quote-unquote, benefit that you're talking about?
22 Why don't you go through the list of homeowners
23 and see how many rounds everybody is playing and
24 see what that benefit really is? It's de minimis.
25 Q. I'm going to show you Exhibit 4.

1 (Deposition Exhibit No. 4, First
2 Amendment to Amended Plan for Offering of
3 Memberships, was marked for identification.)
4 Q. And I will represent to you that it is
5 the thingy that gives the rounds of golf. Have
6 you seen this document before?
7 A. Is this -- yes.
8 Q. Is it your understanding -- and you can
9 tell me whatever you want -- that this was the
10 First Amendment -- First Amendment to the Amended
11 Plan for Offering Memberships, that allowed the
12 community members four rounds of golf per calendar
13 year?
14 A. Yes.
15 Q. And it says, among many other things,
16 that golf -- sorry -- community members may
17 patronize the golf shop and enjoy the dining
18 facilities and the golf house, correct?
19 A. Yes.
20 Q. And this was increased at some point to
21 ten rounds, correct?
22 A. And we were told they were made
23 complimentary. So, yes, to your question of ten.
24 Q. Let's take it in turn. It was increased
25 to ten. Tell me about the complimentary part.

1 A. Well, there's -- there was an
2 announcement.
3 Q. By whom?
4 A. By -- I don't have it in front of me.
5 Do you have that?
6 Q. What is your recollection?
7 A. It was an e-mail from the association,
8 the club board, whoever -- probably the club
9 board; it wouldn't be the association -- that
10 they've increased it to ten rounds complimentary.
11 Q. And "complimentary" means what to you?
12 A. It means I don't pay for it.
13 Q. Could complimentary also mean you don't
14 pay additional amounts for it?
15 A. No.
16 Q. Why not?
17 A. How is that complimentary?
18 Q. Let me ask you this: You go to a hotel;
19 they give you a complimentary glass of wine. You
20 know that's in your bill, right?
21 A. The wine?
22 Q. Yes.
23 A. No.
24 Q. Fair enough.
25 A. If you call it complimentary, it's not

1 MR. ABNEY: Excuse me. Was there an
2 Exhibit 5?

3 MR. FORD: I do have an Exhibit 5; I
4 haven't gotten to it yet. We got sidetracked.

5 BY MR. FORD:

6 Q. Before we start, where was this document
7 obtained from, just for the record? On-line?

8 A. Yeah.

9 Q. And are the budgets that we're going to
10 be talking about available on-line from Oldfield
11 Club to members?

12 A. The non-golf budgets are.

13 Q. And is this a non-golf budget?

14 A. I believe it is.

15 Q. Okay. And this was obtained from the
16 website?

17 A. Yes.

18 Q. Please proceed.

19 A. So on the first page --

20 Q. The question that I've asked and that
21 you're about to graciously walk us through is,
22 walk us through the numbers that you're relying on
23 for your statement, or your position -- your
24 general position that money is being improperly
25 allocated, or however it is you want to phrase it,

1 Q. I'm just asking you what you know.

2 A. Yes.

3 Q. Have you ever asked what that means?

4 A. We have been told -- and you're going to
5 ask me by who, but there's so many people that
6 speak to the community -- that the \$96,000 is for
7 the ten rounds of complimentary golf.

8 Q. Who told you that and when?

9 A. I am going to have to go through e-mails
10 from Jay Barr and other presentations. But --

11 Q. So sitting here, you don't recall who
12 told you that, but your recollection is that it
13 was in an e-mail of some sort?

14 A. I have it in a variety of sorts, and I
15 don't think anybody is going to dispute it.

16 Q. Has anybody told you that verbally, or
17 have you primarily received that information --

18 A. No. I have e-mails from Rick Price from
19 the OCA; I have e-mails from Jay Barr that the
20 96,000 is hardwired.

21 Q. Do you know how that 96,000 is
22 calculated specifically?

23 A. No.

24 Q. Is that 96,000 essentially one of the
25 bases that you're basing your claims in this

1 from the social to golf side items. Go ahead.

2 A. In the "Comments" section you'll see the
3 first comment that says, "Includes \$96,000 golf
4 course access assessment. Offset below in
5 marketing and advertising expense." So they were
6 -- the \$96,000 is kind of bucketed into marketing.
7 And then again, if you go down further on the
8 page, it says, "Primarily an increase" -- that's
9 irrelevant; "Discontinue Hampton Golf services
10 after June," that's irrelevant; "Includes \$96,000
11 golf course access assessment. Offset above in
12 other golf revenue."

13 So this is an internal P and L of where
14 they are trying to make comments or notes to how
15 they are charging one and benefitting the other
16 from a revenue and expense standpoint.

17 Q. Okay. Are you completed for the moment?

18 A. Yes.

19 Q. So do you know what this --
20 specifically, what this \$96,000 is going towards,
21 other than what is written here?

22 A. Other golf revenue.

23 Q. Do you know what that means?

24 A. No. I'm not on the golf committee; I'm
25 not golf in financials; I'm not a golf member.

1 lawsuit on?

2 A. Yes.

3 Q. Are there any other numbers that you're
4 basing this lawsuit on as far as your allocation
5 concern?

6 A. So there is a -- it's not categorized
7 here -- well, maybe it is on the other -- there is
8 a large bucket of expenses that they call general
9 and administrative. And that's what we want to
10 see the detailed report on.

11 Q. Can you point me to it in this exhibit?

12 A. I can't tell you what their numbers --
13 let me tell you where I got them from. Where did
14 my other thing go?

15 THE WITNESS: Do you have copies of that
16 other?

17 MR. TONEY: It's right here. This one?

18 THE WITNESS: Yeah.

19 BY MR. FORD:

20 Q. Can we focus on this exhibit before we
21 start jumping to the new one? I'll give you a
22 chance.

23 A. I won't say anything. I just want to
24 see it for a second so I can tell you where it is
25 before I --

1 Q. Sure.
 2 A. Yeah. Okay. So what you have here --
 3 Q. Exhibit 6?
 4 A. -- 6 and the supporting documents, if
 5 you keep going through it, it looks like it's a
 6 printout of their books.
 7 Q. Who is "they" in that sentence?
 8 A. Club. It's got departments, you know,
 9 different overhead, line items, expenses, it's got
 10 revenue items. The problem is -- and this is
 11 where we're struggling to come up with the answer
 12 to your first question -- we don't know what
 13 expenses are falling into, for example -- well,
 14 that's straightforward -- contract services, for
 15 example.
 16 Q. Hold on before you start talking. Refer
 17 us to the page --
 18 A. Page 20 of 30.
 19 Q. And point us to the line.
 20 A. When I look at line -- well, 703830.
 21 I'm just giving you an example.
 22 Q. I know. But it doesn't make sense if
 23 we're not looking at what you're looking at.
 24 A. So 703820, 703830.
 25 Q. Got it. "Contract Services"?

1 don't know how they're doing all of this. We just
 2 found out yesterday by the new GM that he's
 3 actually going back -- and his words were, Our
 4 books and records are a mess. And they're having
 5 a hard time. We have not seen the 2017 budget
 6 yet. We're already a month into 2017.
 7 So let me just kind of clean this.
 8 Because this is kind of a hodgepodge of
 9 departments and entries, et cetera. Can we put a
 10 number on this thing?
 11 Q. No. We're going to move forward. We're
 12 going to finish Exhibit 6. What I heard -- let's
 13 just refer to page 20 -- is you don't know on page
 14 20 what those two lines, 820 and 830 are going to?
 15 A. That's an example.
 16 Q. I know. But that's what you gave me.
 17 So we're going to focus on it.
 18 A. I just want to make sure I'm not holding
 19 (sic) my hat on two lines.
 20 Q. I understand. Bear with me. What I
 21 heard is, you don't know how those are being
 22 allocated, at least those two lines?
 23 A. Correct.
 24 Q. Do you have any evidence it's being
 25 misallocated?

1 A. "Contract Services."
 2 Q. "Interior Plant - Maintenance." Please
 3 proceed.
 4 A. I have no idea what those services were
 5 for. But they fall into -- I'm going to talk to
 6 you about the audit -- the big general and
 7 administrative bucket, which is over a million
 8 dollars, that all of this falls into. Okay? They
 9 aggregate these different departments, and they
 10 call it general and administrative. So your
 11 general and administrative bucket is being charged
 12 100 percent to community members in their P and L.
 13 There's an intercompany allocation to the OCA, but
 14 there is no such intercompany allocation to golf.
 15 And we have no idea what portion of this G and A
 16 is going to cover golf expenses. So for example,
 17 if the interior paint (sic) maintenance for
 18 \$20,000 --
 19 Q. Interior plant maintenance.
 20 A. -- plant maintenance is for the
 21 clubhouse, I don't know where -- how you figure
 22 that out. You know, who -- what portion -- is it
 23 the clubhouse? Is it -- yeah, it's the clubhouse
 24 but it's also -- you know, we threw a plant in
 25 here over here, or it's the River Club too. I

1 A. Until I see the supporting documents, I
 2 can't tell you that.
 3 Q. Now, where I started this discussion was
 4 I asked -- and I'm going to give you a chance to
 5 get to the next one. But I want to stay linear --
 6 is on Exhibit 6. You told me about the \$96,000 on
 7 page 1.
 8 A. Yeah.
 9 Q. We used an example on page 30 (sic). Is
 10 there anything else in here that you can walk me
 11 through, so I understand where you're coming from,
 12 that you have evidence of some improper
 13 allocation?
 14 A. I think the \$96,000 on the first page
 15 speaks for itself.
 16 Q. Okay. So first question: When did that
 17 \$96,000 -- what should we call it? What would you
 18 like to call it so we don't bicker about it? Is
 19 it an allocation? What would you call it?
 20 A. Golf course access assessment.
 21 Q. When did that \$96,000 golf course access
 22 assessment start?
 23 A. I don't know the exact date.
 24 Q. Okay. Has it been three years, five
 25 years? Any estimate?

1 A. I'm going to say somewhere around the
2 three-year mark.

3 Q. And as far as you know, has it been
4 reflected in the budgets during that time?

5 A. As far as I know.

6 Q. So do you have any evidence it's been
7 hidden in any way from members?

8 A. I'm not accusing them of hiding it, no.

9 Q. I understand. I'm just trying to
10 understand what is in the mind --

11 A. It's right there on the page.

12 Q. For everyone to see, and it's publicly
13 available, at least within Oldfield, correct?

14 A. Yes.

15 Q. That \$96,000, does that come, as far as
16 you understand, from all community members?

17 A. As far as I understand.

18 Q. Are golf members also community members?

19 A. Yes.

20 Q. How many community members, including
21 the golf people, do you understand there to be?

22 A. Including the golf people, I think
23 there's 400 -- I'm going to say 380 community
24 members.

25 Q. Okay. So now we're hopefully -- you

1 Q. Because --

2 A. Everybody is a social member.

3 Q. Just staying on Exhibit 6, can you give
4 me any other examples of the problems you're
5 complaining of that give rise to the lawsuit?

6 A. As it relates to Exhibit 6, there's a
7 whole litany of information in here that falls
8 into the general and administrative bucket that's
9 in question.

10 Q. And you've walked me through one
11 example. So pretty much everything in here?

12 A. I don't know what falls into their
13 bucket of general administration. This is an
14 accounting software that they spit out. But they
15 don't show you how they categorize it as it falls
16 into the audit. So it's the audit that I'm trying
17 to tell you is the more relevant document to see
18 the next number.

19 Q. What audit? By whom?

20 A. This is the audit that I just gave you
21 guys.

22 Q. We're going to move on to that. You
23 brought the lawsuit. Let's close it out. Can you
24 point me to any other numbers in Exhibit 6 that
25 you claim support your complaints about allocation

1 tell me if we're not getting somewhere. If we
2 divide that \$96,000 by 380 members, that is
3 \$252.61 per year --

4 A. That sounds about right.

5 Q. -- that you're claiming is being
6 misallocated, for you, right? Because now --

7 A. For this particular expense.

8 Q. I understand. For this particular
9 expense. Do you and your wife pay separate, or do
10 you pay that jointly?

11 A. No. Jointly.

12 Q. Okay. Cool. So for you and your wife,
13 you're claiming \$252 is being misallocated under
14 Exhibit 2, which is the Termination and Release,
15 correct?

16 A. As is --

17 Q. For that number.

18 A. Currently, at the \$96,000 level, I would
19 say that's probably accurate.

20 Q. Do you believe that the golf members who
21 are also community members, they -- their \$252 can
22 go towards this 96K or no?

23 A. It does.

24 Q. And is that okay with you?

25 A. Yes. Yeah.

1 of money?

2 A. I'm going to say, for the record, any
3 category that falls into the general and
4 administrative bucket on the audit.

5 Q. It's all wrong?

6 A. I didn't say it's wrong. I just said
7 it's not complete in terms of how they book it to
8 the audit.

9 Q. Because you don't have information one
10 way or the other on it?

11 A. Correct.

12 Q. Is it possible they're doing it right
13 and you're just not aware?

14 A. Is it possible? Yes, I guess it's
15 possible.

16 Q. Okay. Let's move on to your next
17 exhibit, and I want you to walk us through that.

18 (Deposition Exhibit No. 7, Oldfield Club
19 123-137 -- CONFIDENTIAL, was marked for
20 identification.)

21 BY MR. FORD:

22 Q. I've got Exhibit 7. It looks like it's
23 Bates numbered -- it looks like by me -- Oldfield
24 Club 123 through 137. The first page says
25 "Oldfield Club Table of Contents."

1 for 2015 because you and your clients were trying
 2 to figure out how to deal with this particular
 3 issue, and you've removed it as a line item from
 4 the audit, that has been on every other audit
 5 until this year. So it's this most recent audited
 6 financials where you no longer see a clubhouse
 7 line because they don't break it out anymore.
 8 Q. We're kind of drifting a little afield.
 9 You tell me if this is right: You're pointing out
 10 that there is a loss of the clubhouse on this
 11 document we're looking at. And therefore, it must
 12 be coming -- the make-up for that must be coming
 13 from you and other community members?
 14 A. It is.
 15 Q. Okay. And that's your conclusion. How
 16 long has that been going on?
 17 A. As of Jay's recent letter, always.
 18 Q. Okay. And if you looked at the club
 19 financials, you would be able to tell that, going
 20 back as long as they've had the financials that
 21 you've had access to, correct?
 22 A. Um, again, you're asking me to tie sub
 23 account data to audited data to all this other
 24 data and tell you that that's what has been going
 25 on. That is not what triggered me to start

1 looking at this stuff. What triggered me was
 2 being in the finance committee. And then we
 3 started noticing that, Hey, there are problems
 4 here.
 5 Q. If you looked at the financials earlier,
 6 you could have told whether or not the clubhouse
 7 was losing money, correct?
 8 A. I don't know when these were provided to
 9 us. As I just told you, the 2015 we just got last
 10 month. Is there a date on this? I mean, these
 11 are restated 2013. So it's hard to -- go ahead.
 12 Q. You've pointed me to two specific
 13 examples. The 96,000, you've pointed me to this.
 14 But on Exhibit 7, you've referred me generally to
 15 some administrative costs in the last exhibit.
 16 Any other numbers you can point me to, so I
 17 understand where you're coming from and people
 18 reading this transcript know where you're coming
 19 from, of examples of what you're claiming is being
 20 done wrong by the Defendants?
 21 A. Back on page 127, you have a 1,180,438
 22 line in 2014 for general and administrative
 23 expenses. That's the category that I was
 24 referencing earlier when I said, what is inside of
 25 that? And then you have all these sub accounts

1 from the other thing. Well, we don't know what
 2 those really are because they're done by
 3 management, management that's currently suing the
 4 club. So we're going to have a hard time getting
 5 management, I guess, to come back in and tell me
 6 how this is going to happen.
 7 Q. Just so I understand the pronouns in
 8 that sentence, who is suing the club?
 9 A. Jamie Selby.
 10 Q. Go ahead.
 11 A. Now we're going to have to get Selby in
 12 here for him to walk us through how he's allocated
 13 all these overhead and line items to get to the
 14 1.18 million number.
 15 Now, the issue with this 1.180 number,
 16 that's the number that they use for the
 17 intercompany allocation for the association to pay
 18 their share or their fair share, as you put it, of
 19 general and administrative overhead. If any of
 20 that overhead is attributed to golf, we need to
 21 determine what portion of that 1.180 number
 22 includes things like salaries and benefits and the
 23 general manager's salary, things of that nature.
 24 Then we have no idea what should be and shouldn't
 25 be allocated to golf, and we need to get that

1 information.
 2 Q. Sitting here today, your deposition
 3 under oath, can you point me to any evidence that
 4 the general and administrative line item that
 5 you're talking about on page Oldfield Club 127 of
 6 this exhibit is being done incorrectly?
 7 A. Being done incorrectly? I'm going to
 8 say I don't know.
 9 Q. Any other numbers you can point me to in
 10 Exhibit 7 that support the claims you're making?
 11 I want to understand where you're coming from.
 12 A. So this is a -- let me see if I've got
 13 the right page here. Okay. Okay. So on page 131
 14 of the audited document, whatever -- what is that?
 15 Q. Exhibit 7.
 16 A. Exhibit 7.
 17 Q. "Notes to Financial Statements
 18 (continued)."
 19 A. Yes. On the bottom it starts with
 20 "Income Taxes." "Effective January 24, 2013, the
 21 club is generally exempt from federal income taxes
 22 under section 501(c)(7) of the Internal Revenue
 23 Code. A section 501(c)(7) organization is
 24 permitted to receive up to 35 percent of its gross
 25 receipts, including investment income, from"

1 A. Right around the time of this. There
2 was a dated e-mail where they sent it. I can't
3 tell you exactly what that was. But, again, we
4 didn't know where that money was going. So it was
5 very broad stroked, and we were looking for more
6 information.

7 Q. You say here, "It is clear the
8 accounting practice employed by the club masks
9 overhead for the course in the general and
10 administrative section of the club."

11 A. After conversations with management,
12 yes.

13 Q. So you were aware of information that
14 led you to believe that was indeed taking place,
15 correct?

16 A. I wasn't aware of anything more than the
17 manager telling me that this general and
18 administrative bucket includes a lot of things,
19 and if you want to learn about it, you should get
20 on the finance committee.

21 Q. But you say here -- you're more specific
22 than it "includes a lot of things." You say that
23 it includes overhead for the course, correct?

24 A. Which is what was told to me. But I
25 didn't know how much. I didn't know -- there was

1 that you believe that the dues are too high,
2 correct?

3 A. I don't have a choice.

4 Q. And what do you mean by that?

5 A. If you go delinquent, they cut off your
6 access to the amenities. So you cannot just
7 protest, if that's what you're saying.

8 Q. Well, I'm just asking why you've paid
9 them despite the fact that you don't agree with
10 the amount.

11 A. I mean, I have to have access to the
12 amenities. I've got children.

13 Q. And when you -- how do you pay your
14 dues?

15 A. It's usually by credit card.

16 Q. And when you pay them, do you send in
17 any sort of formal protest to the club at the time
18 of payment?

19 A. I may have on the first one, putting
20 them on notice, but I haven't done it on every one
21 since then.

22 Q. And do you have a copy of what you think
23 you sent in?

24 A. It's right there.

25 Q. Right there what?

1 nothing for me to go on other than a conversation,
2 then for me to put in a letter saying, Your
3 management is telling us this is going on. I
4 don't know what it means. I'm just telling you
5 that I've got a problem with it.

6 Q. Well, is it fair to say, by the time you
7 wrote this letter, March 27, 2013, you knew that
8 some of the overhead that is listed in the
9 administrative -- general and administrative line
10 item included expenses associated with the course?

11 A. As part of a conversation. But I hadn't
12 seen anything documented for me to say, ah, this
13 is actually happening.

14 Q. You're aware of the information that it
15 was happening; you just hadn't seen the data at
16 that point in time?

17 A. I was aware that it was happening, but I
18 did not see the data, and I didn't know to what
19 extent it was happening.

20 Q. Understood. Have you paid your
21 community membership dues in every year --

22 A. Yes.

23 Q. -- up to the present?

24 A. Yes.

25 Q. And you've paid them, despite the fact

1 A. The letter you just showed me is me
2 being in protest of me paying my dues on a
3 go-forward basis.

4 Q. So you believe that Exhibit No. 9 is
5 what you consider to be your protest?

6 A. Yeah.

7 Q. Anything else?

8 A. I don't know. There may have been an
9 e-mail when I sent in my dues payment on the first
10 go-around, that this is in protest of me paying
11 for anything that shouldn't be paid for. I don't
12 have that on hand. I would have to look for that.

13 Q. Have you looked for all of your e-mails
14 related to this issue in this lawsuit?

15 A. So when I changed firms at the end of
16 2013, all of my e-mail stays with that old firm.
17 So it's very hard for me to gain access to some
18 things.

19 Q. Okay.

20 A. I'm in the securities industry. All my
21 e-mails are recorded, and I use a third-party
22 firm-related e-mail for that.

23 Q. So remind me, who is your employer that
24 you left in 2013?

25 A. EDI Financial.

1 Oldfield, did you not?

2 A. Yes.

3 Q. The letter doesn't make any reference to
4 the Settlement Agreement?

5 A. It does not.

6 Q. And when I'm reading this letter, it
7 appears that the arguments that you're asserting
8 in the letter are essentially the same exact
9 arguments that you're asserting in this
10 litigation, are you not?

11 A. I would say there's a fair bit of
12 overlap.

13 Q. I guess what I'm trying to get at, it
14 seems that your interpretation of the Settlement
15 Agreement is that it relieved you of your
16 obligations as an equity golf member, correct?

17 A. Yes.

18 Q. And, therefore, it -- having been
19 relieved of those obligations, you became just a
20 normal community member, correct?

21 A. With a Termination and Release
22 Agreement.

23 Q. Sure. But is there any provision in the
24 Settlement Agreement that you believe provides you
25 with additional benefits that you would not

1 the two.

2 Q. I guess the question I have is: Do you
3 believe that you have separate claims, related to
4 potentially separate damages, as a result of your
5 status as a party to the Settlement Agreement,
6 that a regular community member may not have, as
7 it relates to the allocation of dues to the golf
8 course?

9 A. I believe that I do, because I have a
10 Termination and Release, that I would reference in
11 that claim, that the social member cannot
12 reference. That's why it was not referenced in
13 that letter.

14 Q. But in terms of the substance of those
15 claims?

16 A. I think the issues or the substance, as
17 you put them, there is some overlap.

18 Q. Okay. But where is -- I mean, as far as
19 reading this letter, it appears that there's
20 complete overlap. Where is --

21 A. No.

22 Q. Where is the gap that I'm missing?

23 A. There's nothing in this letter that says
24 you have released me from these obligations. I
25 think it's a little different, when I get released

1 otherwise get as a regular community member?

2 A. I think that the governing documents are
3 written in a way that there is some interpretation
4 regarding how social members can get charged for
5 different use of amenities within the community.
6 My Termination and Release defines that
7 interpretation for us.

8 Q. I think your earlier testimony was that
9 the governing documents specifically excluded the
10 golf course and golf facilities --

11 A. Yes.

12 Q. -- from the expenses that are to be paid
13 by community members, correct?

14 A. I would agree with that, as a social
15 members assessment, yes.

16 Q. And that's essentially what the
17 Settlement Agreement did as well, correct?

18 A. Um, so you're asking me, just so I
19 understand -- I have a Settlement Agreement that
20 defines the outcome for my settlement with
21 Crescent, and then I have a complaint or a notice
22 of claim, written with another social member,
23 letting them know that, as social members, what
24 you're doing is a problem, based on the documents.
25 So I don't know that there's a connection between

1 from obligations, than me asserting that you're
2 violating the documents and covenants as they are.

3 Q. And again, I'm going to jump around a
4 little bit. I apologize.

5 A. That's okay.

6 Q. You testified earlier you haven't talked
7 to any experts regarding any of your claims --

8 A. Attorney.

9 Q. -- to testify in this case, other than
10 the attorneys. You testified, as an element of
11 your consequential damages, you've incurred some
12 loss of reputation in the community, correct?

13 A. Yes.

14 Q. And that you may have lost business as a
15 result?

16 A. Yes.

17 Q. Have you -- I know you haven't talked to
18 any experts, but are you aware of whether any
19 experts have been retained?

20 A. By me?

21 Q. By you or by your attorney.

22 A. No. We haven't retained any experts.

23 Q. You also talked about an element of your
24 damages included the 2009 legal fees that you
25 incurred --

1 A. Yes.
 2 Q. -- in connection with the Settlement
 3 Agreement.
 4 A. Yes.
 5 Q. What was the amount of those fees?
 6 A. Somewhere around \$3,000.
 7 MR. MARC HAAS: Per.
 8 A. Per him and me. We each paid \$3,000.
 9 Q. \$3,000 for each family?
 10 A. Yes.
 11 Q. So total for all of the Plaintiffs is
 12 about \$6,000?
 13 A. No. There's seven of us. So it's about
 14 20 grand.
 15 Q. But in this case, the total of all the
 16 Plaintiffs together is 6,000?
 17 A. I understand. Yes.
 18 Q. Have you produced documentation showing
 19 those attorneys' fees that you've paid?
 20 A. Not yet, no.
 21 Q. And you -- and believe me, I have zero
 22 interest in having you go back and read through
 23 the Settlement Agreement again. But you did
 24 recite some provisions in the release paragraph
 25 that specified that you were releasing all claims

1 certain parties breached the terms of that
 2 Settlement Agreement.
 3 A. Right.
 4 Q. Are you separately alleging that you are
 5 not obligated to comply with certain provisions of
 6 that Settlement Agreement?
 7 A. I am.
 8 Q. Which provisions in particular are you
 9 not obligated to --
 10 A. No, no. I said that the wrong way. I
 11 am a signature party to that agreement, so, yes, I
 12 would have like the -- whatever it says my
 13 responsibilities are, yes.
 14 Q. So that agreement and all of the
 15 provisions are still binding on you?
 16 A. Yes.
 17 Q. You've testified a number of times that
 18 you pay \$4,560 per year for your fees?
 19 A. Club dues.
 20 Q. For club dues.
 21 A. And then another 2,200 for association
 22 fees. Don't quote me. The 2,200 might be off a
 23 couple of bucks. I don't know.
 24 Q. And is that for both properties you own?
 25 A. Yes.

1 related to attorneys' fees that you had incurred
 2 up until that time, did you not?
 3 A. I may have misunderstood that, so I'll
 4 have to look at that again.
 5 Q. So if the Settlement Agreement does in
 6 fact act as a release of any potential claims you
 7 may have had as to the attorneys' fees you
 8 incurred in the 2009 case, that would not be a
 9 proper element of your damages in this case,
 10 correct?
 11 MR. TONEY: Object to the form.
 12 A. I think that's up for interpretation for
 13 my counsel. I can't answer that.
 14 Q. Okay.
 15 A. I'm not -- the way these things are
 16 written -- I didn't spend the law school years
 17 that you guys did, so I do the best I can.
 18 Q. In any way are you abrogating any of
 19 your obligations under the Settlement Agreement?
 20 A. Define "abrogating."
 21 Q. Are you claiming in this case that you
 22 are not bound by any of the provisions of the
 23 Settlement Agreement?
 24 A. That I'm not bound? I don't get it.
 25 Q. You're claiming in this case that

1 Q. So that -- I'm sorry. I asked that
 2 poorly. The 4,560 --
 3 A. Times two.
 4 Q. -- times two?
 5 A. Yes.
 6 Q. So you're paying about 9 -- well,
 7 \$9,120?
 8 A. For club. And then another \$4,400 for
 9 association.
 10 Q. Do you know whether or not other social
 11 members are paying more or less than that amount?
 12 A. I don't believe social members pay any
 13 different than I pay.
 14 Q. Do you know if equity golf members pay a
 15 different amount than you pay?
 16 A. They pay an additional fee for their
 17 equity golf.
 18 Q. Do you know how much that is?
 19 A. I think it's \$5,500 a year.
 20 Q. In addition?
 21 A. In addition to the numbers I gave you,
 22 yes.
 23 Q. Do you know whether or not the equity
 24 golf members have received any demand or
 25 assessment from the club to pay for the short --

1 Q. Changing topics, with regard to outside
2 of this lawsuit -- and you told me today some
3 concerns you have about comments that have been
4 made about the lawsuit. Okay? Let's put these
5 aside for the moment. Do you believe you're being
6 treated differently from any other community
7 member as a general matter?

8 A. No. I mean, are you saying like I don't
9 have access to the gym or -- I mean, it's a vague
10 question.

11 Q. It is a vague question. Are you being
12 treated, as far as you know, like every other
13 community member?

14 A. Um, yeah. I would say that's fine.

15 Q. We've talked today a certain amount
16 about -- I will call them golf-related stuff
17 versus non-golf-related stuff. Do you understand
18 generally what I mean by that? That's kind of
19 your Complaint.

20 A. Sure.

21 Q. Who decides what is golf-related versus
22 non-golf-related?

23 A. In my mind?

24 Q. Who should decide?

25 A. In what context?

1 Q. I don't know. This. Where money goes.
2 So there's money. Some goes to golf-related, some
3 goes to non-golf. Who makes the decision as to
4 what is golf versus non-golf?

5 A. I guess you have a club board of
6 directors.

7 Q. And do they have a certain amount of
8 discretion to make that?

9 A. Yes, as far as I know.

10 Q. Earlier today we talked about the
11 \$96,000. Do you remember that generally?

12 A. Yes.

13 Q. And then we did some rough math, we
14 divided the number of members by the number of --
15 and we came up with something in the ballpark of
16 \$250ish?

17 A. Yes.

18 Q. Do you know whether or not your \$250ish
19 is being used to support golf side items?

20 A. It's mken in aggregate. So they don't
21 do it by -- member by member. So unless you're
22 telling me and I'm carved out somehow, I would say
23 that it's all in the bucket.

24 Q. But how would you do that? What if we
25 said, Hey, Mr. Star, we're going to use your money

1 for -- I don't know. What is something you're
2 cool with? What do you like over there? Give me
3 something. The equestrian center?

4 A. River house, outfitter center.

5 Q. You like the river house? Is that
6 something you think you should be contributing
7 towards?

8 A. Yes.

9 Q. Your \$252 is going to go towards the
10 river house. Does that satisfy you?

11 A. That's not how that works.

12 Q. Why wouldn't that satisfy you?

13 A. Because then I'm paying a
14 disproportionate amount of overhead to the river
15 house to everybody else.

16 Q. And that would be wrong? Then you would
17 sue the community members, right?

18 A. Would you be comfortable with that?

19 Q. What if we said, you know what, we're
20 just going to use your stuff for only things you
21 like?

22 A. I'm a social member. That includes the
23 outfitter center, boat -- that's what I signed up
24 for. That's what I like.

25 Q. Are there any facilities that the golf

1 side and the community members side share?

2 A. Define "share."

3 Q. Both use.

4 A. The dining area of -- let me -- clarify
5 the question. Are you asking me my interpretation
6 of what they share, or are you asking me what they
7 share currently based on current practice?

8 Q. Is there a difference between those two
9 things?

10 A. Yes.

11 Q. Give me both.

12 A. I am permitted to patronize the dining
13 facility at the clubhouse. So that means if I'm
14 sitting next to a guy who is a golf member, we are
15 sharing the dining facility of the golf house.

16 Q. Which does that fall into? Things that
17 are done or things you think should be done?

18 A. They are currently being done. We have
19 always been allowed to eat at the clubhouse. That
20 has never been an issue. The issue is that the
21 clubhouse -- the dining facility is open most of
22 the time during the day, during the week, during
23 golf hours. It closes at 3:00. It's open for
24 dinner twice a week. So unless you're someone who
25 is around playing golf during the week -- I can't

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602

MARC HAAS, SUSAN HAAS, ROB STAR
and MELISSA STAR,

Plaintiffs,

vs.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY ASSOCIATION,
OLDFIELD CLUB BOARD OF DIRECTORS
and JOHN DOES 1-10,

Defendants,

and

TI OLDFIELD OPERATIONS, LLC, and
SF OPERATIONS, LLC,

Third-Party Plaintiffs,

vs.

OLDFIELD, LLC, and CRESCENT
COMMUNITIES, LLC f/k/a CRESCENT
RESOURCES, LLC,

Third-Party Defendants.

* * * * *

VOLUME II

DEPOSITION OF: ROBERT STAR

DATE TAKEN: Wednesday, March 15, 2017

TIME: 10:00 a.m.

PLACE: Mullen Wylie
200 Merchant Street
Hilton Head Island, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

1 Q. I understand. If you turn the page,
2 it's underlined, at least on my copy, Mr. Wilson
3 says, among other things, "I remain skeptical that
4 community members aren't subsidizing the golf club
5 with this new dues increase, and I'd love to have
6 a discussion with you to help me better understand
7 the specifics," and it goes on. Here is my
8 question, Mr. Star: Did you at that time share
9 Rob Wilson's skepticism about the use of the
10 increase?

11 A. Yeah. That's why Rob and I both sent
12 that letter that you guys have referenced already.

13 Q. And on the next page -- this is page 3
14 of the e-mail -- it looks like this --

15 A. Okay.

16 Q. And for the record, we've gone down to
17 an e-mail -- this e-mail is pages 1, 2 and 3, and
18 we're now reading from Rob Wilson's e-mail sent
19 March 5th, 2013, at 11:31 a.m. to Jamie Selby and
20 Phillip Galbreath. It says towards the end -- it
21 talks about -- I'm going to quote it, and then I
22 want to ask you about it. "The 'message' that
23 golf is only losing about 80K, while the community
24 is running about a 240K deficit overlooks the
25 percentage of admin costs associated with golf

1 what you have to say. I went through your last
2 transcript and looked at the things where I asked
3 you, Give me all your bases for X, Y and Z, and
4 you told me. I just want to go back and see if
5 you have anything else to add to these points.
6 And if the answer is you don't, that's fine. If
7 you do, I want to hear about it. Okay?

8 A. Okay.

9 Q. At the last session of this deposition I
10 asked how much money you are claiming is in
11 dispute regarding you and your wife's membership.

12 Question: Do you have anything to add to your
13 previous testimony on that point?

14 A. How much is in dispute? No. Because we
15 have not had the opportunity to go through the
16 financials with the general manager and ask him
17 questions. So I can't tell you how much money is
18 in dispute.

19 Q. Okay. And what -- you have the
20 financials, correct?

21 A. Correct. But as you know, the
22 financials have been done in a way that are very
23 difficult to extract information, so we need to
24 talk to the general manager and talk about what
25 got allocated where and why.

1 that we talked about before when you, Phillip, Rob
2 Star and I met last year." And it goes on.

3 And my understanding is that that kind
4 of a concern -- or it is one of your primary
5 concerns in this lawsuit, how admin costs are
6 shared among golf versus non-golf. Is that
7 accurate?

8 A. Yeah. They booked the clubhouse in
9 admin.

10 Q. I get it. I'm saying, what you were
11 talking about here -- they were talking about, and
12 you apparently had been talking about during a
13 meeting the year before -- was essentially similar
14 to the issues that you're concerned about in this
15 lawsuit?

16 A. Correct.

17 Q. So you had been concerned about that for
18 a while?

19 A. As you can see, I wasn't getting any
20 straight answers. That's why I joined the finance
21 committee.

22 Q. Okay. For that one, that's all I've
23 got. I've got a series of questions; I'm going to
24 tell you where I'm going with them. Hopefully, it
25 will be easy, but it's your show. I want to hear

1 Q. And as I read the transcript, and I want
2 to hear your thoughts on this, it occurred to me
3 that this lawsuit is largely an accounting
4 lawsuit, meaning you have concerns and disputes
5 with the way the club and the association -- but
6 all I care about is the club for this moment --
7 about how the club internally allocates money to
8 different essentially pots. Is that a summary --
9 a fair summary?

10 A. Allocates and charges.

11 Q. That's what I'm wondering about. Do you
12 think people should be charged less for what --
13 you should be charged less for what you get?

14 A. I think what I get is defined, and I
15 should be charged an appropriate amount based on
16 the amount of memberships we have. That's how the
17 dues are supposed to be allocated, is a division
18 of the number of members or property owners, and
19 then I pay my pro rata share. It doesn't
20 contemplate what is in existence today.

21 Q. But as -- at least as I've come to think
22 of this lawsuit, a lot of it is your disputes with
23 how the club and the association does accounting.

24 A. "Accounting" is a very broad word. So
25 are you talking about what they're charging me for

1 questions.

2 A. Okay.

3 MR. ABNEY: I don't

4 (The deposition went off the record.)

5 (Deposition Exhibit No. 11, "Golf
6 Members Only" sign, was marked for
7 identification.)

8 BY MR. FORD:

9 Q. Mr. Star, your lawyer has graciously
10 provided something I've marked as Exhibit 11,
11 which I believe is the picture you referred to me.
12 And just for those of us who haven't seen this,
13 describe what this is, when this was taken.

14 A. When it was taken? I will have to pull
15 up the picture. This is a picture of the door to
16 the men's locker room that is in the golf
17 clubhouse. It was taken on -- let me get the date
18 from my phone here -- November 16th, 2016.

19 Q. Thank you. And it's since been changed,
20 I understand you have said?

21 A. As far as I know, it's been changed. I
22 have not gone back and taken a new picture or
23 checked, but we were told that all their signs
24 have been changed.

25 Q. Have you ever used the men's locker

1 remember if 2012 is the first time you became
2 aware of issues regarding allocations of social
3 member dues towards the clubhouse and golf course
4 expenses?

5 A. Um, yeah. I would say that -- to the
6 best of my recollection, that we were skeptical or
7 -- we were interested in learning more about what
8 was going on there. That's why those meetings
9 took place.

10 Q. You also testified that you -- that
11 these concerns that you first raised in 2012
12 became a reality when you served on the finance
13 committee and you had the meeting in late 2013, in
14 which the social members' funds were going to be
15 specifically allocated?

16 A. That was the middle of 2014 --

17 MR. FORD: Object to the form.

18 A. -- when that started to happened. I was
19 elected to the committee at the end of 2013. But
20 it wasn't until several months on the committee,
21 until we got into this particular issue, that it
22 became clear that that's what was going on.

23 Q. Did you have any confirmation prior to
24 that meeting in 2014 that this allocation was
25 occurring?

1 room?

2 A. When I was a member.

3 Q. When you were a golf member?

4 A. Yes.

5 Q. When was the last time, would you
6 estimate, that you used the men's locker room?

7 A. Sometime in 2008, maybe.

8 MR. FORD: That's all I have. Thanks.

9 MR. ABNEY: I don't have any questions.
10 Thank you.

11 EXAMINATION

12 BY MR. OGIBA:

13 Q. Mr. Star, I just have a couple of
14 follow-up questions, specifically regarding the
15 timeline that you became aware of these issues
16 regarding allocation of funds to the golf course.
17 You went through an e-mail exchange in which there
18 is a representation that you, Phillip Galbreath
19 and Mr. Wilson had a meeting in 2012 regarding the
20 allocation of administrative costs towards the
21 golf course and the clubhouse.

22 A. That's right.

23 Q. And do you recall that meeting?

24 A. Not very well, no.

25 Q. Is that the first time -- do you

1 MR. FORD: Object to the form. You can
2 answer.

3 A. Could you ask the question again? I'm
4 sorry.

5 Q. Sure. Do you have any -- prior to this
6 meeting on the finance committee in which these
7 concerns regarding social member dues being
8 applied to golf course and golf club facilities,
9 when that was confirmed for you, did you -- did
10 you have any other confirmation prior to that that
11 this was occurring?

12 A. No --

13 MR. FORD: Object to the form.

14 A. -- no confirmation.

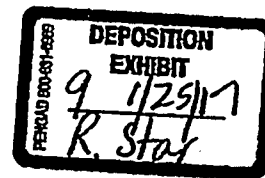
15 Q. What specifically gave rise to the
16 concerns that led to the meeting in 2012, with
17 you, Mr. Galbreath and Mr. Wilson?

18 A. The community was offering public access
19 to the golf course through golfnow.com, and that
20 was a big concern for us, as we believed we lived
21 in a private, gated community, where people were
22 not allowed to just come in off the street and
23 play golf.

24 Q. Okay. Even though you were a member of
25 the -- you were a social member, you're not a

EXHIBIT 2

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602



March 27, 2013

Re: Oldfield Community Dues Increase

To: TI Oldfield/SF Capital:

On February 7, 2013 the Club Members received your email regarding the latest dues increase. The undersigned Members hereby reject this arbitrary increase in our dues. Such action, if implemented, would be a violation of the Sponsor's fiduciary duty to the Members, which would require that we promptly take action to protect our rights as Members and our investment as property owners.

In your recent emails, justification for your proposed increase in dues is mostly to offset the cost of operating the Community Club "Club" and not the Golf Club and the golf course (together hereinafter referred to simply as the "COURSE"). In the financial analysis shared in the email you go to great efforts to show a modest loss for the Course and a more severe loss for the Club. In either case, as the developer, you have taken on the contractual obligation to fund the deficit while providing a private first class club.

After conversations with Management regarding the emails and the accounting for the individual departments, it is clear the accounting practice employed by the club masks overhead for the Course in the General and Administrative section of the Club. Furthermore, some of us have been told in person by Management that not one dollar of our Club dues go towards the Course. While we understand that the deficit for both Club and Course are supposedly funded by the Developer, it is not clear where the expenses occur. It is also clear from the by-laws and Equity Membership Agreement that this is not proper and the Club members will not be charged for the Operating shortfall of the Course.

According to the by-laws and the Equity Membership Agreement, the Equity Golf Members, together with the Sponsor, are responsible for the maintenance of the COURSE. The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general membership of the Club. Nor can the Sponsor look to the general membership to subsidize or offset any deficiency in the funding of the COURSE's operations.

It has always been clearly understood that the COURSE may not be sustainable without the additional support from the Sponsor and the Equity Golf Members. It was precisely because of this open ended liability that the majority of the Club's members chose not to participate in the COURSE as Equity Golf Members. The Equity Golf Members have always known that the financials of the club would only be successful with a subsidy from the Sponsor and their dues. As stated in their Equity Membership Agreement under Exhibit "A" Additional Terms and Conditions:

Facilities Incomplete: By execution below, Member acknowledges that, as of this date, all or portions of the Club Facilities may not be constructed or complete. Member understands that the size, scope and nature of the Club Facilities may be determined in the sole discretion of the Sponsor, subject to the terms of the Offering Plan. Member further understands that the size, scope and nature of the Club Facilities upon completion, as well as the number of memberships outstanding, will affect the amount of dues and assessments which Member may be required to pay as a Member of the Club, and that no representation is made that the current level of dues will be sufficient to operate the Club in the future.

There are four hundred owners in this community besides TI and only 112 or so have agreed to the equity membership. They were all informed in their Membership Agreement that:

MEMBER ACKNOWLEDGES THAT HE OR SHE IS ACQUIRING A MEMBERSHIP FOR THE SOLE PURPOSE OF OBTAINING SOCIAL BENEFITS, AND RECREATIONAL USE OF THE CLUB FACILITIES AND NOT AS AN INVESTMENT OR WITH ANY EXPECTATION OF MAKING A PROFIT FROM THE OWNERSHIP OF FUTURE TRANSFER OF THE MEMBERSHIP.

Furthermore, when faced with the bankruptcy of Crescent Resources the Equity Golf Members were offered the option to place the balance of their equity contribution into an escrow account without any penalties or interest assessed. The Equity Golf Members were advised by their own "working group", including Chic Frosch, Fred Nicoll, Nick Smilari, Bob Stinson, Bill Stephens, Buzz Vest, Leo Zabinsky and their legal counsel that, pursuant to the escrow arrangement, Oldfield LLC will have to accept and assume its obligations under the Transfer Agreement to receive the escrow funds.

Prior to making the decision to remain Equity Golf Members, the Equity Golf Members received the escrow agreement in a package that included a letter from Tony Hyde,

COO, Partner of East West Partners Club Management and a Question and Answerer document relating to the Escrow Agreement. The final Q and A on the sheet was:

Q: If I don't pay my equity contribution, but I am current on my Community Membership dues payments, can I still use the other club facilities in Oldfield?

A: Yes, the revocation of privileges relates only to the possible revocation of Golf Club privileges, not all Member amenities. Other than the potential waiver of fines and penalties provided in the Escrow Agreement, the Club is contractually entitled to impose penalties on Members delinquent in their monetary obligations and, as a fiduciary to all Club Members, is obligated to do so in order to protect the Club and the Members that have properly complied with their responsibilities.

As you know, the Bylaws have a provide in Article III:

3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay the Club Operator assessments, annual dues, and minimum usage fees in such amount as the Club Operator shall specify from time to time, except that Community Members shall not be subject to assessments for operating deficits or capital improvements to golf facilities or golf operations.

It is our understanding that you have chosen to ignore your contractual obligation to the Equity Golf Members and Club Members to collect the dues from delinquent Equity Golf Members or Members that have walked away from their obligations. As we are not Equity Golf Members we are not complaining herein on behalf of those Equity Golf Members who are honoring their obligations and are current on their dues. However, as general members, we reject your attempt to impose what amounts to a new class golf membership upon us. We are not so naïve to believe that you are being beneficent by allowing the general members "complimentary" use of the financially sound COURSE, because you need to increase the dues of the rest of the underfunded club.

Furthermore, we do not wish to have a financial relationship with the Sponsor that includes a gimmick that is given today, but which the Sponsor may, at it's sole discretion, take away tomorrow. Quite frankly, we understand your company's motivation in keeping its investment in the Oldfield Club to a minimum until the real estate market turns and you are able to sell units at a profit. It is precisely because of this inherent

conflict of our interests that we refuse to allow any arrangement that will diminish the quality of life for the general members in order to enhance the Sponsor's future profitability.

We request that you withdraw your proposed increase in the dues and seek to collect unpaid dues from delinquent Equity Golf Members. If there still remains a shortfall, then you may want to consider an increase in the dues paid by Equity Golf Members or through your recent Membership drive. Although we feel your offer to new golf members further cheapens the Course and the public perception of the Club we also reject the offer for outsiders to upgrade to full Club membership for \$1500. We ask that you remove this offer immediately as you do not need any further financial contribution to operate the Club. This is nothing more than another effort to decrease your deficit contribution which is dilutive to the value of the Club.

In conclusion, we will oppose any effort to unilaterally change the legal relationship between the Sponsor and the general membership. We will also oppose any attempt to unilaterally change the nature of the Oldfield Club from a private family oriented community to a semi-private or public facility for rent. This includes your recent advertising campaign to attract bachelor parties and "Guys Weekend" to the River club. This is a family oriented private community. Many of us have small children and we live here because we wish to enjoy a safe and private environment. We do not believe that this is compatible with raucous bachelor parties and all of the implications that go along with that (drinking, drugs and other illicit behavior that may be imported by individuals that have no ties to the community).

Of course we would prefer to keep these issues within our community and resolve them quickly and quietly. However, please accept this as formal notice of a claim as members of the Oldfield Club. We hope that you will promptly consider the issues raised herein. We would also be amenable to meeting with your representative when convenient to discuss the same.

Respectfully,

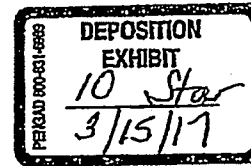
Robert Star

Robert Wilson

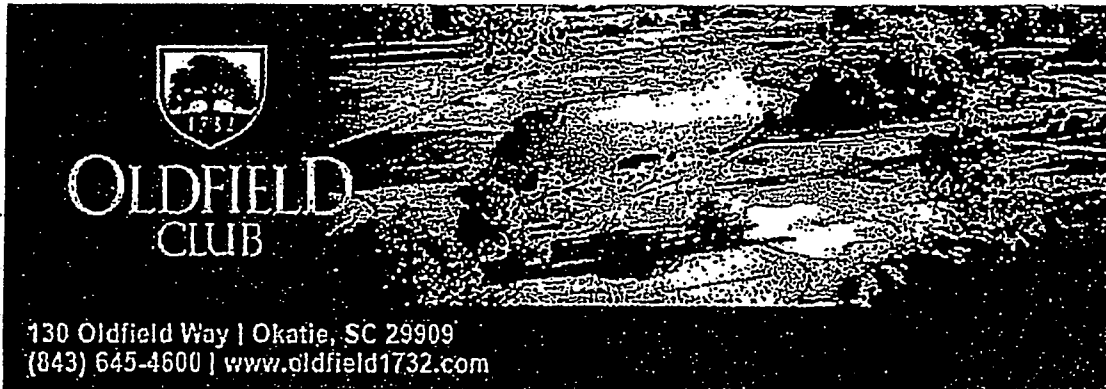
EXHIBIT 3

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

Subject: Club Dues Update
 From: Oldfield Club (oldfield@hamptongolfclubs.com)
 To: ringo52673@yahoo.com;
 Date: Thursday, February 7, 2013 1:04 PM



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Dear Oldfield Member,

Oldfield is a very unique community built on the foundation of a lifestyle offering that encompasses golf, boating, river access, social activities, equestrian, nature and fitness. Not only is the amenity package unparalleled but it is also coupled with a dues structure that is on average 58% lower than other comparable private communities. The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Therefore, effective April 1, 2013, we will increase Community Dues to the following annual structure:

- * Resident Dues - \$4,560
- * Non - Resident Dues - \$4,000
- * This increase will be pro rated for 2013. There will be no increase to POA or Golf Dues

With this increase we will amend the access privileges granted to community members to allow for limited golf access including 10 complimentary rounds per year (including cart fee) and use of the practice facilities. With this new access to the golf course our hope is that you connect with other members, enjoy lunch after a round of golf, and most importantly, invite your friends and family to join you.

Also effective April 1, we will discontinue the "Member for a Day" program. We will continue to use the golf course to promote Oldfield but with a limited

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offering of complimentary rounds only available to qualified prospects for either real estate or membership.

We remain committed to our efforts to develop and grow this Club and to maintain the lifestyle that defines Oldfield.

Regards,

Club Board of Directors
Oldfield Club

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Oldfield Finance Committee

Meeting Minutes for October 22, 2013 (Held at the Golf Clubhouse)

Present: Frank Roland: Chair, Fred Church: Secretary, Jay Barr, Robin Doorly, Rob Star

Absent:

Next meeting: Tuesday, November 5, 2013 @ 1:00 PM

1. The meeting was called to order by the Chair, Frank Roland at 1:00 PM.
2. The Minutes of the September 19, 2013 meeting were approved.
3. We welcomed Rob Star as a new member of the Finance Committee.
4. We reviewed and discussed the financial package that would be regularly circulated to the Committee and the OCC Board. Subject to a few additions it was approved.
5. We then began a discussion of modeling the OCA, Club and Golf numbers to be continued at our next meeting.

Next Meeting – Tuesday, November 5, 2013 @ 1:00 PM

The Meeting adjourned at 2:15 PM

Minutes prepared by Fred Church, Secretary

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Rob Star

From: Rob Wilson [rwilson@mrcgroup.net]
Sent: Monday, January 30, 2017 1:54 PM
To: Rob Star
Subject: FW: Club Dues Update Clarification

From: Oldfield Club [mailto:oldfieldupdates@oldfield.ccsend.com] On Behalf Of Oldfield Club
Sent: Thursday, February 14, 2013 11:10 AM
To: rwilson@mrcgroup.net
Subject: Club Dues Update Clarification

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Oldfield Members,

With the recent announcement of an increase to the Community dues component of the Club, we also announced that we were amending access to the golf course. We are amending the current offering for Community Membership, wherein it states Community Members are allotted four rounds at a rate determined by the club. That rate is now set at the current prevailing rate of \$109 before noon and \$79 after noon. That offering will be changed effective April 1, to allow for ten complimentary rounds (including cart fee) per year. Those rounds can be used by the member, accompanied guests and by unaccompanied family members upon proper notification of the golf shop staff.

By eliminating the Member for a Day program, we've unfortunately eliminated one of the more vital marketing components for Oldfield. Whether converted into buyers or not, we had positive traffic experiencing Oldfield as a result of the program and this was a great means of exposure for the Club. Our hope is that with this increased level of access our current homeowners will bring guests and family members to experience Oldfield and this will, to some degree, restore those promotional efforts to expose the Club. We also hope that it will lead to growth in memberships and soon we will be launching new membership programs and incentives to help drive this effort.

You may download the Revised 2013 Club Budget by [clicking here](#).

Best regards,
Club Board of Directors
Oldfield Club

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Oldfield Club | 130 Oldfield Way | Okatie | SC . 29909

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

Subject: 2013 Budget Explanation and Clarification
 From: Oldfield Club (oldfield@hamptongolfclubs.com)
 To: ringo52673@yahoo.com;
 Date: Monday, March 4, 2013 6:00 PM

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Dear Oldfield Members,

There appears to be increasing confusion regarding the allocation of dues income resulting from the dues increase that will go into effect April 1. The increase will be applied to the Community Membership Dues component of the Club. The increase will in no way subsidize the golf operation of the Club and is also not part of the POA Base Assessment. All Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of all Club Facilities, not the Golf Course, Golf Maintenance or Golf Shop.

2013 Budget for Golf Course & Golf Shop:

Golf Income - TOTAL:	\$449,220
Golf Dues - TOTAL:	\$620,172
TOTAL GOLF INCOME:	\$1,069,392
TOTAL GOLF EXPENSE:	\$1,149,260
(including Golf Maintenance)	
TOTAL GOLF NET:	(\$79,868)

Any remaining Golf Operations deficit for 2013 will be funded by the Sponsor, TI Oldfield Operations.

Dues for the Community Membership are applied only to the overhead costs and costs of operating, maintaining and repairing the amenities to which Community Members have access. Below is a list of the Operating Deficits for each Club amenity. These numbers are reflected in the new 2013 Budget that was just recently sent out.

Food & Beverage NET:	(\$238,130)
Sports Center NET:	(\$315,675)

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Outfitters Center NET:	(\$58,078)
Equestrian NET:	(\$65,673)
Greeter's Store NET:	(\$31,708)
Lodging NET:	(\$2,577)
Facility Maintenance NET:	(\$113,697)
Membership Department NET:	(\$27,627)
Administration Department NET:	\$614,495

Includes Total Dues Income(except Golf) of \$1,639,336

TOTAL CLUB FACILITIES NET: (\$238,670)

These numbers are based upon past performance of the Club. While past performance cannot guarantee future performance of the Club, the budgeted amounts are accurate enough to demonstrate that there are substantial deficits to support.

In funding these deficits, the Sponsor, TI Oldfield Operations, is also funding a contribution to the OCA Capital Reserve Fund. There are three capital funds that include the OCA Capital Reserve Fund, Club Capital Reserve Fund and Community Enhancement Reserve Fund. Currently those funds total just over \$1.6 million and over the past two years the Sponsor has funded \$100,000 to the OCA Capital Reserve and successfully collected \$62,545 in funding owed by Crescent Resources. Another critical source of funding for the OCA Capital Reserve comes from community enhancement fees collected on property sales, and over the past two years these fees totaled more than \$100,000. Total funding in 2011 and 2012 is in excess of \$260,000.

Continual funding is clearly needed and that is why your support throughout the community and Lowcountry is so vital. We now have a marketing campaign that is strategically targeted and is producing results. Property sales contribute to our dues line, to our capital reserve and ultimately supports our sustainability. Every membership sale not only contributes to the golf operation but connects more members to every component of the club resulting in greater utilization of our amenities. Our unified support and total commitment to growth in sales, membership and usage are essential to the success of Oldfield Club.

We remain devoted to these efforts and hope that by providing more information on the 2013 budget for the Club and the current state of the reserves we have alleviated some confusion and misconceptions throughout the community.

Best regards,
Jamie D. Selby
General Manager

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Rob Star

From: Rob Wilson [rwilson@mrcgroup.net]
Sent: Monday, January 30, 2017 2:01 PM
To: Rob Star
Subject: FW: 2013 Budget Explanation and Clarification

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-966-5710
(o) 703-748-1177

www.mrcgroup.net

TI representative

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Monday, March 11, 2013 11:18 AM
To: Rob Wilson <rwilson@mrcgroup.net>
Subject: Re: 2013 Budget Explanation and Clarification

Rob - sorry I thought I had responded. I am just not sure what else I can say or tell you. We laid out the exact budget items to the community, showing the golf deficit and overall deficit for the Club. I can tell you the numbers are the numbers, as you and I both know any time we produce anything it will be highly scrutinized and "checked out". So you are not subsidizing the golf course with this dues increase.

I am always happy to schedule a call with you, I am just afraid we are at an impasse and not sure what else there is to say, or what I can share that is going to change your opinion. That being said, I respect you and am more than happy to talk if you want.

I don't have another scheduled trip right now, but I am sure I will be down there in the next 6 weeks or so.

Thanks and again I apologize for not responding to your initial email. That was my oversight.

I had not heard about the ad regarding Buzz, but I must say that I stand by my hope that we get rid of him. The add is a little extreme but he needs to go.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Mar 11, 2013, at 11:03 AM, Rob Wilson <rwilson@mrcgroup.net>

wrote:

Phillip

I'm a little surprised that I haven't heard back from you on my note below as you're typically very responsive. I certainly hope everything is OK

In regards to my comments, I remain skeptical that Community members aren't subsidizing the golf club with this new dues increase and I'd love to have a discussion with you to help me better understand the specifics. Any chance another Oldfield trip is on the near term horizon? Sorry that I was totally booked up last week when you guys were here

If not, maybe we can schedule a call

On another note, I suspect that you saw that an ad was taken out in the OG+B to fire Buzz – USA Today actually had a small story about it. I think his road record over the last 4 years (including Colorado) is like 2-47....staggeringly bad. The 13-17 finish this year is frustrating because the team clearly had the potential to win 15 or 16 and didn't seem to make any improvement on the road. I continue to think that next year needs to be the last for Buzz if he doesn't have a very good season (at least 18 wins and an NIT trip)

Again, I hope that things are OK and will look forward to your feedback

Rob

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-888-5710
(o) 703-748-1177

www.mrcgroup.net

From: Rob Wilson [mailto:rwilson@mrcgroup.net]
Sent: Tuesday, March 05, 2013 11:31 AM
To: 'Jamie Selby'
Cc: 'Phillip Galbreath'
Subject: RE: 2013 Budget Explanation and Clarification

Thanks for the note Jamie

Perhaps the confusion stems from the initial letter sent by the Club Board that states the following...

The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Couple that statement with the new golf access / privileges granted to all community members and the announcement that the public "member for the day" program was being discontinued, and any rational reader can only come to the conclusion that the cost of the golf course is the reason for the increase in dues (...and that access to the golf course was being offered in return for the additional fees – almost a new form of membership)

And in reality, I think the numbers that are represented in the letter below are misleading at best. The "message" that golf is only losing about 80K while the Community is running about a 240K deficit overlooks the percentage of admin costs associated with golf that we talked about before when you, Phillip, Rob Star and I met last year. My recollection is that you suggested that a ballpark of about 20% (give or take) might in fact be the right amount in the \$1M admin line to carve out for golf. At even half that number, the amounts change pretty quickly with golf running a deficit of 180K and the Community running a deficit at 140K. And if the real number is closer to 20%, or higher, that's a huge swing.

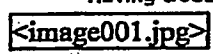
Am I missing something here ???

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-966-5710
(o) 703-748-1177

www.mrcgroup.net

From: Oldfield Club [<mailto:oldfieldupdates@oldfield.ccsend.com>] **On Behalf Of** Oldfield Club
Sent: Monday, March 04, 2013 6:01 PM
To: rwilson@mrcgroup.net
Subject: 2013 Budget Explanation and Clarification

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Dear Oldfield Members,

There appears to be increasing confusion regarding the allocation of dues income resulting from the dues increase that will go into effect April 1. The increase will be applied to the Community Membership Dues component of the Club. The increase will in no way subsidize the golf operation of the Club and is also not part of the POA Base Assessment. All Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of all Club Facilities, not the Golf Course, Golf Maintenance or Golf Shop.

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costs of operating, maintaining and repairing the amenities to which Community Members have access. Below is a list of the Operating Deficits for each Club amenity. These numbers are reflected in the new 2013 Budget that was just recently sent out.

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Administration Department NET:	\$614,495
<i>Includes Total Dues Income(except Golf) of \$1,639,336</i>	

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Continual funding is clearly needed and that is why your support throughout the community and Lowcountry is so vital. We now have a marketing campaign that is strategically targeted and is producing results. Property sales contribute to our dues line, to our capital reserve and ultimately supports our sustainability. Every membership sale not only contributes to the golf operation but connects more members to every component of the club resulting in greater utilization of our amenities. Our unified support and total commitment to growth in sales, membership and usage are essential to the success of Oldfield Club.

We remain devoted to these efforts and hope that by providing more information on the 2013 budget for the Club and the current state of the reserves we have alleviated some confusion and misconceptions throughout the community.

Best regards,
Jamie D. Selby

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General Manager

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Rob Star

From: Rob Wilson [rwilson@mrcgroup.net]
Sent: Monday, January 30, 2017 2:01 PM
To: Rob Star
Subject: FW: Pre-Designed Home

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 800, McLean, VA 22102
(c) 703-966-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Wednesday, February 20, 2013 11:47 AM
To: Rob Wilson <rwilson@mrcgroup.net>
Subject: Re: Pre-Designed Home

The dues increase was not linked to the Member for the Day, nor trying to make up for that revenue - so there is no correlation between the two. The timing just happened that we eliminated the program (which is what many of you were asking for) and announced when it would go into effect at the same time we announced the a Club dues increase.

The marketing campaign has been in effect for about 6 months - it takes time for certain programs to get launched, so not all initiatives have been active for 6 months - but when TMD began is when we started increasing the marketing efforts. So that is very much in effect. If it is being said that the marketing efforts are not occurring, that is not true.

Anyway, I am happy to sit down next time I am there - I should be there for board meetings on March 5th.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Feb 20, 2013, at 11:38 AM, Rob Wilson <rwilson@mrcgroup.net> wrote:

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So, if the golf course isn't the drain that many members seem to think it is, why the increase in dues cushioned with the following verbiage...

The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Non golf members are extremely upset that they're subsidizing the equity golf members with their dues and I've not heard a single golf member speak out and offer any solid argument that this isn't the case -- some equity members are actually promoting that we return the public play in order to keep dues down

And the dues increase appears to raise an additional 300K from community members -- an amount that far exceeds that loss of revenue budgeted for public play golf. What's up with that?

I thought TI was about to start a 600K+ marketing campaign and instead we get a 300K dues increase with the opportunity to market Oldfield to our guests via the complimentary rounds? Or perhaps not instead -- but at least in concert with this mktg launch...

Sorry for the short burst e-mails but my day is pretty full and I'm not sure when I'll have a chance to pick up the phone -- soon I hope

Still no near term plans to be down here? Would love to sit down in person

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(c) 703-866-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Wednesday, February 20, 2013 10:07 AM
To: Rob Wilson
Subject: Re: Pre-Designed Home

Rob - I think there is a misperception about the golf course and what the actual losses are on it. In fact, we are digging into that and might send something out as clarification on the actual figures (again we may or may not do this, but just letting you know it is something we are thinking about). It just doesn't lose the amount many think it does.

To me, the main rationale behind increasing the complimentary rounds was to allow people to bring friends to Oldfield to play. Clearly many will just use them personally, but our hope was that it would allow non-golfers to bring some of their golf friends to experience Oldfield and that would lead to either a real estate sale or a golf member down the line.

Again please keep all of our communication private. Thanks.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile

770-390-2555 - Office
phillip@sfcapitalgroup.com

On Feb 20, 2013, at 9:50 AM, Rob Wilson <rwilson@mrcgroup.net> wrote:

Thanks for the follow up Phillip and the clarification – your comments reflect what I thought to be the case – although again, some folks have voiced otherwise (inaccurately it seems)

Personally, I continue to struggle to understand why this dues increase is being shouldered by the entire community when the implied argument in the recent announcement is that the a la carte model at Oldfield (choice of golf) is not sustainable. If the cost of the golf course is a financial burden, that cost needs to be covered by the equity members and/or TI – not Community Members. One gentlemen recently commented that the “complimentary” golf rounds offered to him was akin to giving a vegan a lifetime supply of steak – it had no value...

I certainly understand that there are times when dues need to be adjusted (and typically the direction is up) but any increase needs to be justified – and I’m still having a very hard time with the fact that this increase was framed around the cost of golf

Rob Wilson | MRC group Inc.
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(c) 703-988-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [<mailto:phillip@sfcapitalgroup.com>]
Sent: Wednesday, February 20, 2013 9:04 AM
To: Rob Wilson
Subject: Re: Pre-Designed Home

Rob - we are aware of the talks going on down there. As for the equity members, they are NOT allowed to simply walk away. They have to put their membership on the resale list but are responsible for dues until it comes off the resale list. I will have to verify but I believe that 1 in every 4 membership sales comes from the resale list essentially. I believe there is a reduction but not an elimination of dues responsibility if they have been on the resale list for over a year. It never just goes away however.

I hope this is helpful. Again this is my understanding and would have to refer to the documents for further specifics.

Phillip Galbreath

SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Feb 19, 2013, at 3:06 PM, Rob Wilson <rwilson@mrcgroup.net> wrote:

Thanks for the follow up Phillip

As I'm sure you know, there's a lot of debate inside the gates at Oldfield about this most recent dues increase -- along with a variety of other topics (...including the public/private access issues, funding of the reserves, etc...)

In any case, one of the interesting points that I've heard mentioned a few times recently is that equity golf members are eligible to simply throw in the keys on their memberships and walk away without penalty. Does that sound accurate to you?

Rob Wilson ; MRC group Inc.
Aligning Leaders with Technology Companies
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(c) 703-966-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [<mailto:phillip@sfcapitalgroup.com>]
Sent: Thursday, February 14, 2013 2:11 PM
To: Rob Wilson
Subject: Re: Pre-Designed Home

Rob - I am happy to talk with you next week. Of course I hate to hear that people are planning to sell, but there is nothing we can do about that. For a long time, we have actually been told by many members that they thought dues should increase - their reasoning was that if someone could not afford the dues, it might not be the right community for them. I only state that because as we have discussed - their are many many differing views at Oldfield.

As with any discussion, there are people that will think the dues should be lower and there are people that still think the dues should go up. You will never get 100% agreement on any of major decisions within any community, it is simply too difficult due to all of the vantage points. Oldfield is still far lower in dues than its competitors, especially for all that Oldfield offers its residents in terms of amenities.

Anyway, enjoy your trip and let me know a few times that might work to talk towards the end of next week. Thanks Rob.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Feb 14, 2013, at 11:48 AM, Rob Wilson <rwilson@mrcgroup.net> wrote:

Well - Buzz and the boys failed on the road again - and this time they even teased us into thinking that they might pick up a W...I continue to move towards your line of thinking that Buzz needs to go but I'm not totally there yet - worried about how many more years it might take before we get back on the right track if we start over tomorrow

As for Oldfield, I'm hoping that I might soon be able to get you (and your team) to move towards my way of thinking on a few topics. This dues increase is a real concern and has quickly pitted the golfers against the non-golfers. The complimentary rounds have very little value to a wealth of folks that I know and they view this increase as a subsidy for the golf members that should be paying for their own club (...or at least sharing the cost burden with TI). I tend to agree that this dues increase is clearly to cover golf operations which, again, is the obligation of the equity members and TI - not Community Members that were given the choice to opt out of golf.

By the way - since the announcement I'm aware of 2 families in my peer group that will likely have their homes listed within the next 30 days. Their view of Oldfield as a "private, first class" community has continued to diminish while their cost of living here has taken a significant jump. This is the exact opposite of what I'd like to see happening - we need buyers, not sellers.

I also had a chance to speak in great detail with prospect considering Oldfield that expressed very specific concerns about the public access to Oldfield amenities and also about turnover (how well prepared the Members will be to take over the club from a financial perspective, and how good a job the developer is doing to ensure a sound financial model will be in place with strong reserves). Rest assured that I told them what I truly believe, Oldfield is an incredible community and like any community, we have our challenges but that the lifestyle here is fantastic and I'm optimistic that things will work out between Members and TI

I'm out for the weekend but I'm wondering what your schedule looks like mid to latter part of next week

Any chance you and Will might consider a trip down to the Low Country to see if we can find some common ground

Thanks Phillip

Rob

PS - Per the e-mail we just received a few minutes ago, if the elimination of the Member for a Day program is removing one of the vital marketing components for Oldfield, I say good riddance. The

Club is intended to be private. Privacy has value. The lack of sales via the program should make very clear to TI that it wasn't working...and if TI really believed in that model, TI should clearly should have been capturing data from prospects which admittedly wasn't happening.

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 800, McLean, VA 22102
(c) 703-986-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Friday, February 08, 2013 12:13 PM
To: Rob Wilson
Subject: Re: Pre-Designed Home

Rob - first, I agree with your last point the most - I look forward to the day when we are not at opposite sides of an argument. That being said, I respect you, I respect your approach and will always listen to your thoughts because you present your disagreements in a constructive manner. Also, one day I will not be involved in Oldfield real estate and I agree with you it will be nice to have a conversation about Deac basketball and nothing else.

I know we are going to full agree on this, and it is probably too much to put in an email but if you would like to discuss, I am happy to set up a time to talk next week. Let me know.

Have a great weekend.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Feb 7, 2013, at 2:23 PM, Rob Wilson <rwilson@mrcgroup.net>
wrote:

Have to be honest Phillip, I'm not sure what that has to do with anything although from what I'm hearing it sounds like it'll be a very attractive plan

The letter today clearly lays out that although Oldfield allows its members to choose whether or not they want to be a part of the golf course, all the members of the community will share equally in this 300K dues increase – no choice - even though many of the members have absolutely no interest in the golf club and moved here in part b/c the dues structure reflected that

I'll reserve judgment until after the community meeting next week (...with which I assume you're familiar...Wayne Lilley, Rick Price, Jay Barr....)

BTW – Dianne and I will be having dinner next week with an exceptionally promising Oldfield prospect – looking to buy a home in the area (or lot to build a home) asap – likely in the 750 to 1M range. I love Oldfield and have no problem selling the benefits of my community – but I have to say that I've got a bad taste in my mouth right now

And by the way, I look forward to the days downstream where I don't feel like we're sitting at opposite sides of the table

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-888-5710
(o) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Thursday, February 07, 2013 1:56 PM
To: Rob Wilson
Subject: Re: Pre-Designed Home

We are planning to roll out some golf membership programs as we discussed but they have not been finalized yet.

Sent from my iPhone

On Feb 7, 2013, at 1:34 PM, "Rob Wilson" <rwilson@mrcgroup.net> wrote:

Just got this.....

Therefore, effective April 1, 2013, we will increase Community Dues to the following annual structure:

- * Resident Dues - \$4,560
- * Non - Resident Dues - \$4,000
- * This increase will be pro rated for 2013. There will be no increase to POA or Golf Dues

Wow – not raising golf dues – really ??????

Rob Wilson | MRC group Inc.
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1420 Spring Hill Rd., Ste. 600, McLean, VA 22102

(c) 703-968-5710
(c) 703-748-1177

www.mrcgroup.net

From: Phillip Galbreath [<mailto:phillip@sfcapitalgroup.com>]
Sent: Thursday, February 07, 2013 10:56 AM
To: Rob Wilson
Cc: Jamie Selby
Subject: Pre-Designed Home

Rob -

I have copied Jamie on this email.

Jamie - I am not sure who Rob should contact but he would like to do a sign similar to the pre-designed program signs. We told him that it was fine to do that, but the sign needed to be the same and that he needed to at least have Grady look at the plans prior to starting.

Can you guide Rob in the proper steps to take on this. He is not going to list with TMD, which is fine, but that is why they are not involved in this process.

Thanks.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

EXHIBIT 4

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

101-1884

Re-recorded to add the attached individual Owner Consents

NOTE TO CLERK: Please cross-reference to: Book 1354
Page 1455

Upon recording, please return to:

Jo Anne P. Stubblefield, Esq.
Hyatt & Stubblefield, P.C.
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303

Beaufort County ROD
DATE: 06/05/2001 04:04:22 PM
FILE NUM 2001032534
BOOK/PAGE 01428/0517

COUNTY Beaufort County
BK 01397 PG 1270
FILE NUM 2001015941
RECORDING FEES 10.00
RECORDED BY W BOLLES
RECORDED 03/23/2001 03:35:21 PM

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BJG
5093

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

**FIRST AMENDMENT TO THE
DECLARATION OF RECREATIONAL COVENANT FOR OLDFIELD CLUB**

THIS AMENDMENT is made this 19th day of March, 2001.

WITNESSETH

WHEREAS, Oldfield, LLC, a South Carolina limited liability company ("Declarant"), executed and filed that certain Declaration of Recreational Covenant for Oldfield Club, which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354, Page 1455, *et seq.* (the "Covenant"); and

WHEREAS, Section 4.2 of the Covenant provides that the Covenant may be amended by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant owns any portion of the property subject to that certain Declaration of Covenants, Conditions, and Restrictions for Oldfield which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354 at Page 1359, *et seq.* (the "Residential Declaration"), or has an option unilaterally to submit additional property to the Residential Declaration in accordance with its terms; and

WHEREAS, the Declarant desires to amend the Covenant for the purpose of creating two dues categories for Community Members, one category for Residents and one category for Non-residents; and

WHEREAS, the Declarant is the Club Operator; and

WHEREAS, the undersigned owners constitute the owners of a majority of the Residential Units; and

WHEREAS, the Declarant currently owns property subject to the Residential Declaration and has an unexpired option to submit additional property to the Residential Declaration;

NOW, THEREFORE, the Covenant is hereby amended by deleting Section 3.1 in its entirety and replacing it with the following:

3.1. Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

(b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and

(c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;

(d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and

(e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. Dues for Non-resident

EXHIBIT 5

ELECTRONICALLY FILED - 2017 Sep 14 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000571

FIRST AMENDMENT TO
AMENDED PLAN FOR OFFERING OF MEMBERSHIPS

The AMENDED PLAN FOR OFFERING OF MEMBERSHIPS, which became effective October 2, 2002 (the "Offering Plan") is further amended as follows, effective as of May 16, 2005:

1. Community Membership. The subsection "Community Membership" of the Membership Classifications section is amended to state that each Community Membership is allotted four (4) rounds of golf per calendar year (including rounds played by a Community Member as a guest of another member and rounds used by a Community Member for his or her guests) at a rate determined by the Club. Reservations for tee times shall be at the discretion of the Head Golf Professional and shall be on a space-available basis, subject to the priority rights of other members and the Club Rules. Community Members shall not be entitled to participate in Club golf tournaments except as guests of Honorary Members or of Golf Members, and subject to the Club Rules. Participation in tournament play shall be governed by the Club Rules, and participation in any tournament shall count as one single round (regardless of the number of rounds played in the tournament) when computing the Community Member's allotted yearly rounds. Community Members shall have access to the Golf Course itself and the practice and putting facilities immediately prior to their four (4) rounds. Other than those four (4) rounds, Community Members have no right to use the Golf Facilities (including the practice and putting facilities), except that they may patronize the Golf Shop and enjoy the dining facilities in the Golf House. This allotment of four (4) rounds of golf per calendar year may be modified or discontinued by the Club at any time based on member use patterns or other factors in the discretion of the Club.

2. The subsection "Non-Equity Memberships" of the Membership Classifications section is amended as follows:

A. Golf and Hunt Club Membership. "Non-equity Golf Membership" has been renamed "Golf and Hunt Club Membership". All references in this Offering Plan to Non-equity Golf Membership shall be references to Golf and Hunt Club Membership.

B. Sports and Hunt Club Membership. A new subsection is inserted to add a new category of non-equity Golf Membership, "Sports and Hunt Club Membership", as follows:

Sports and Hunt Club Membership. Only persons who do not own a home or home site in the Community are eligible for a Sports and Hunt Club Membership. Sports and Hunt Club Membership entitles the member or its Designee and other Authorized Users to use the Social Facilities during operating hours, subject to the Club's Bylaws and Rules. Each Sports and Hunt Club Membership is allocated twelve (12) rounds of golf per calendar year (including rounds played by a Sports and Hunt Club Member as a guest of another Member) at a rate determined by the Club. Reservations for tee times shall be at the discretion of the Head Golf Professional and shall be on a space-available basis, subject to the priority rights of other members and the Club Rules. Participation in tournament play shall be governed by the Club Rules, and participation in any tournament shall count as one single round (regardless of the number of rounds played in the tournament) when computing the Sports and Hunt Club Member's allotted

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EXHIBIT A

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239
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Fax: 843.722.8700
merritt.abney@nelsonmullins.com

March 7, 2016

Via U.S. Mail

Andrew J. Toney, Esq.
Mullen Wylie, LLC
200 Merchant Street
PO Box 5969
Hilton Head Island, SC 29938

RE: Robert Star
109 Great Heron Way and 23 Oldfield Way, Oldfield, Okatie, SC 29909

Marc & Sue Haas
12 Rice Mill Rd. and 12 Oldfield Village Way, Oldfield, Okatie, SC 29909

Dear Drew:

This letter responds to your letter to me dated February 12, 2016, regarding the Community Member dues for Oldfield Club.

As an initial matter, please be aware that I represent TI Oldfield Operations, LLC ("TIOO"), and I am responding to you on its behalf. I do not represent the Oldfield Club (the "Club"), the Oldfield Community Association (the "OCA"), Oldfield, LLC or Crescent Resources, LLC (jointly, with Oldfield, LLC, the "Crescent Entities"), and I do not purport to respond on behalf of these entities.

In your letter, you claim that TIOO has charged your clients for the operation, maintenance, and improvement of the Golf Course and Golf Facilities and that these charges violate the Termination and Release Agreement dated September 17, 2009, entered into between your clients, the Crescent Entities, the Club and the OCA (the "2009 Settlement Agreement"). I disagree.

First, TIOO was not party to the 2009 Settlement Agreement, and the 2009 Settlement Agreement was not recorded or reflected in any amendment to the Club Governing Documents.¹

¹ The Club Governing Documents include the Declaration of Recreational Covenant for Oldfield Club dated November 17, 2000 (the "Recreational Covenant"), the Agreement for Transfer of Assets By and Between Oldfield, LLC and Oldfield Club dated December 8, 2000 (the "Transfer Agreement"), and the Amended By-Laws of Oldfield Club effective October 2, 2002 (the "By-

With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia

HAAS ROA 000574

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Andrew J. Toney, Esq.
March 7, 2016
Page 2

In fact, my client had never seen the 2009 Settlement Agreement until you sent it to me. Thus, the 2009 Settlement Agreement is not binding on TIOO.

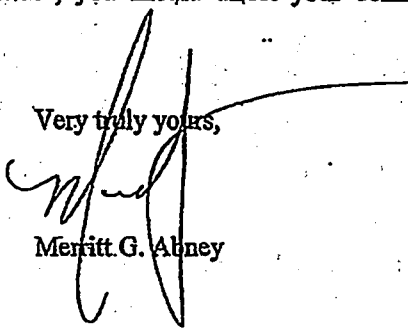
Next, the Community Member dues charged to your clients were established in accordance with the Club Governing Documents. Section 3.1 of the Recreational Covenant states that Community Member dues should be based upon the budgeted expenses associated with operating the facilities to which the Club Members have access, but not expenses associated solely with facilities, activities or events that do not benefit Community Members. The Club budget identifies each amenity that was included in the calculation of Club's operating expenses, and each one is an amenity to which Community Members have access. In short, consistent with the terms of the Governing Documents, the Community Members have been charged for amenities and services they have the right to enjoy and not for costs associated solely with amenities and services to which they have no access.

To the extent that your letter alleges that the Settlement Agreement imposes an additional limitation, beyond that contained in the Club Governing Documents, regarding the amount of Club dues charged to your clients, I disagree.

Redacted

Finally, as you may be aware, TIOO has recently turned over control of the Club's Board of Director to the Club membership, and elections of new Board members are scheduled to be held on March 15, 2016. Thus, to the extent that you seek to alter the manner in which Community Members dues are calculated going forward, you should direct your communication to the newly-elected Board.

Very truly yours,



Merritt G. Abney

Laws"), all as subsequently and from time to time amended (collectively, the "Club Governing Documents").

EXHIBIT B

Patton v. Miller

Supreme Court of South Carolina

December 14, 2016, Heard; July 26, 2017, Filed

Opinion No. 27730

Reporter

2017 S.C. LEXIS 114 *; 2017 WL 3161174

Angela Patton, as Next Friend of Alexia L., a minor, Petitioner, v. Gregory A. Miller, M.D., Rock Hill Gynecological & Obstetrical Associates, P.A. and Amisub of South Carolina, d/b/a Piedmont Medical Center, Respondents.

Notice: THIS DECISION IS NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Prior History: [*1] Appeal from York County. Appellate Case No. 2015-002135. S. Jackson Kimball III, Special Circuit Court Judge.

Patton v. Miller, 2015 S.C. App. Unpub. LEXIS 446 (S.C. Ct. App., July 22, 2015)

Disposition: REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.

Core Terms

real party in interest, medical expenses, circuit court, amend, damages, merits, expenses, representative capacity, partial summary judgment, provides, individual capacity, legal obligation, proper party, lawsuit, statute of limitations, medical bills, motion to amend, district court, amended claim, ratification, capacity—is, parties, court of appeals, next friend, substitution, defendants', bills, cases, amended complaint, original pleading

Case Summary

Overview

ISSUE: Whether a minor child was entitled to bring an action for her own medical expenses. **HOLDINGS:** [1]-The circuit court erred by dismissing a mother's claims

as next friend for her minor child's medical expenses under S.C. R. Civ. P. 56—summary judgment. Rather, the court should have resolved the dispute under S.C. R. Civ. P. 17(a)—the real party in interest, which provided three mechanisms to avoid forfeiture: ratification, joinder, or substitution; [2]-The health care providers were not prejudiced, under S.C. R. Civ. P. 15(a), by the mother's proposed amendment to her complaint to assert claims in her individual capacity. Furthermore, the mother's amendment to assert the same claim in a new capacity against certain of the providers for her child's medical expenses related back to the filing of her complaint, under S.C. R. Civ. P. 15(c), and complied with the statute of limitations.

Outcome

Partial summary judgment affirmed in part and reversed in part. Case remanded to circuit court for completion of discovery and trial.

LexisNexis® Headnotes

Civil Procedure > Parties > Real Party in Interest > Required Representation

HN1 [1] Real Party in Interest, Required Representation

If a minor does not have a duly appointed representative he may sue by his next friend. S.C. R. Civ. P. 17(c).

Civil Procedure > Parties > Real Party in Interest


HN2 [1] Parties, Real Party in Interest

The real party in interest requirement of S.C. R. Civ. P. 17(a) provides that every action shall be prosecuted in the name of the real party in interest. A real party in interest is the party who, by the substantive law, has the right sought to be enforced. It is ownership of the right sought to be enforced which qualifies one as a real party in interest.

Estate, Gift & Trust Law > Estate Administration > Conservators & Guardians > Guardians for Minors

HN6  Conservators & Guardians, Guardians for Minors

Civil Procedure > Parties > Real Party in Interest > Required Representation


HN3  Real Party in Interest, Required Representation

The amount paid for medical care and treatment by a parent is not an element of damage in a cause of action brought by a minor, but rather the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor. S.C. Code § 10-207 (1962). A father suing merely as guardian ad litem for injuries to his infant child cannot recover for the child's medical expenses because the father himself is personally liable to pay those expenses.

S.C. Code Ann. § 62-5-433(B)(3) (2009) requires payment of settlement funds to a conservator. S.C. Code Ann. § 62-5-401 (Supp. 2016) permits the appointment of a conservator for a minor who owns money or property that requires management or protection. The conservator must act as a fiduciary, and thus the funds must remain in the custody of the conservator until they are used for the minor's benefit, or until she turns eighteen. S.C. Code Ann. § 62-5-417 (2009). For medical expenses actually incurred while a person is a minor, the conservator has a legal obligation to pay them. S.C. Code Ann. § 62-5-428(a)(1) (Supp. 2016).

Civil Procedure > Parties > Real Party in Interest > Required Representation

Civil Procedure > Parties > Real Party in Interest > Required Representation


HN4  Real Party in Interest, Required Representation

Torts > ... > Damages > Collateral Source Rule > Government Benefits


Civil Procedure > Parties > Real Party in Interest > Subrogees

Torts > ... > Damages > Collateral Source Rule > Insurance Payments

The legal obligation to pay a medical bill renders the person who holds that obligation the proper party to bring a claim, or the real party in interest.

HN7  Real Party in Interest, Required Representation

Civil Procedure > Parties > Real Party in Interest > Required Representation

HN5  Real Party in Interest, Required Representation

Under South Carolina law, a parent's parental responsibilities include the legal obligation to pay her child's medical expenses. S.C. Code Ann. §§ 63-5-20 and 63-5-30 (2010).

The collateral source rule preserves a parent's right to recover damages, even though the parent did not pay their minor child's medical expenses. However, federal and state law provides Medicaid an automatic right of subrogation. 42 U.S.C.S. § 1395v(b)(2); 42 C.F.R. § 411.24 (2016); S.C. Code Ann. § 43-7-430 (2015). A similar right of subrogation often exists pursuant to the insurance contract when the medical expenses are paid by a private insurer. S.C. Code Ann. § 38-71-190 (2015) provides that any policy or contract of accident and health insurance issued in the State of South Carolina may include provision for subrogation by the insurer to

the insured's right of recovery against a liable third party. Therefore, a child's representative who seeks damages for a child's medical expenses that are paid by Medicaid or some other insurer is almost certainly under a legal duty to reimburse the actual payor for at least part of the recovery.

Torts > Remedies > Damages > Collateral Source Rule

HN8 Damages, Collateral Source Rule

The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the damages owed by the wrongdoer.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Legal Entitlement

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

HN9 Entitlement as Matter of Law, Appropriateness

S.C. R. Civ. P. 56(c) provides that summary judgment should be granted when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Parties > Real Party in Interest

HN10 Entitlement as Matter of Law, Appropriateness

The summary judgment procedure of S.C. R. Civ. P. 56 is not appropriate for resolving a dispute over the identity of the real party in interest. Motions that do not go to the merits are not appropriately classified as summary judgment.

Civil Procedure > Parties > Real Party in Interest

HN11 Parties, Real Party in Interest

Under S.C. R. Civ. P. 17(a), the definition of the proper party is the same as it has always been—the proper party is any real party in interest. The adoption of the South Carolina Rules of Civil Procedure has not changed the law. When the named plaintiff has suffered an actionable loss at the hand of the defendant, he is a real party in interest and the requirement of Rule 17(a) is met.

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

Governments > Courts > Rule Application & Interpretation

Civil Procedure > Parties > Real Party in Interest

HN12 Defenses, Demurrers & Objections, Motions to Dismiss

Under the South Carolina Rules of Civil Procedure, it is improper to immediately dismiss a lawsuit simply because it is not brought in the name of the real party in interest.

Civil Procedure > ... > Joinder of Parties > Compulsory Joinder > Indispensable Parties

Civil Procedure > Parties > Substitution > Motions for Substitution

Civil Procedure > ... > Joinder of

Parties > Compulsory Joinder > Necessary Parties

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

Civil Procedure > Parties > Joinder of Parties > Permissive Joinder

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

HN13 Compulsory Joinder, Indispensable Parties

HN16 Standards of Review, Abuse of Discretion

S.C. R. Civ. P. 17(a) provides three mechanisms to avoid forfeiture: ratification, joinder, or substitution.

While South Carolina has consistently held that a circuit court's ruling on a S.C. R. Civ. P. 15 motion to amend is within its discretion, a court's failure to exercise its discretion is itself an abuse of discretion.

Civil Procedure > Parties > Real Party in Interest

HN14 Parties, Real Party in Interest

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

Ratification under S.C. R. Civ. P. 17(a) is the formal approval by the proper party of another party bringing an action.

Evidence > Burdens of Proof > Allocation

HN17 Amendment of Pleadings, Leave of Court

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

The burden is on the party opposing a motion to amend to show how it is prejudiced.

HN15 Amendment of Pleadings, Leave of Court

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

S.C. R. Civ. P. 15(a) provides that when a party asks to amend his pleading, leave shall be freely given when justice so requires and does not prejudice any other party. This rule strongly favors amendments and a court is encouraged to freely grant leave to amend. Rule 15(a) is substantially the same as the Federal Rule, the Rule's "freely given" provision is a mandate that is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be freely given.

HN18 Amendment of Pleadings, Leave of Court

The prejudice contemplated in S.C. R. Civ. P. 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.

Governments > Courts > Rule Application & Interpretation

HN19 Courts, Rule Application & Interpretation

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

The purpose of the South Carolina Rules of Civil Procedure is to secure justice, and consequently, they reduce formalities and technicalities.

HN23 Parties, Real Party in Interest

Governments > Courts > Rule Application & Interpretation

HN20 Courts, Rule Application & Interpretation

It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of mere technicalities. The Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

S.C. R. Civ. P. 17(a) has changed the result when an amended pleading merely amplifies an old cause of action, provided that the defending party was originally placed on notice of the events involved. The real party in interest is no longer precluded from being named plaintiff, after the statute of limitations has run on a claim timely filed by one who lacked capacity to sue because he was not the real party in interest. Instead a reasonable time must be allowed after objection for ratification of commencement of the action and it has the same effect as if the action had been commenced in the name of the real party in interest. The current Rule 17(a) changes existing South Carolina law when an action is brought within the applicable limitations and the real party in interest joins and ratifies the action shortly thereafter in accordance with the requirements of Rule 17(a).

Governments > Courts > Judicial Precedent

Governments > Courts > Rule Application & Interpretation

HN21 Courts, Judicial Precedent

In construing the South Carolina Rules of Civil Procedure, South Carolina courts look for guidance to cases interpreting the federal rules.

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Relation Back

HN24 Amendment of Pleadings, Relation Back

S.C. R. Civ. P. 15 permits an amendment, and the amendment relates back to the original complaint under S.C. R. Civ. P. 15(c). The test under Rule 15(c) is whether the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, and then, Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.

Governments > Legislation > Statute of Limitations > Time Limitations

Healthcare Law > ... > Actions Against Facilities > Defenses > Statute of Limitations

Torts > ... > Healthcare Providers > Types of Liability > Negligence

HN22 Statute of Limitations, Time Limitations

S.C. Code Ann. § 15-3-545(A) (2005) sets the statute of limitations on a medical malpractice action at three years.

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

Civil Procedure > Parties > Real Party in Interest > Required Representation

Civil Procedure > Parties > Real Party in Interest

Governments > Legislation > Statute of Limitations > Pleadings & Proof

HN25 Amendment of Pleadings, Leave of Court

Pursuant to S.C. R. Civ. P. 17(c), whenever a minor has a representative, the representative may sue on behalf of the minor. If a dispute arises as to whether that representative is the real party in interest, S.C. R. Civ. P. 17(a) governs the dispute. If the representative seeks to amend the complaint, S.C. R. Civ. P. 15(a), 15(c), and 17(a) provide there should be no unnecessary dismissal, but rather the parties and the trial court should work to reach the merits.

Counsel: John Layton Ruffin, Edward L. Graham, and Diane M. Rodríguez, of Graham Law Firm, PA, all of Florence, for Petitioner.

Ashby W. Davis, of Davis, Snyder, Williford & Lehn, P.A., of Greenville; R. Hawthorne Barrett and Thomas C. Salane, both of Turner Padgett Graham & Laney, PA, of Columbia; William U. Gunn and Joshua Tate Thompson, both of Holcombe Bomar, PA, of Columbia, all for Respondents.

Judges: JUSTICE FEW, BEATTY, C.J., and KITTREDGE, J., concur. HEARN, J., concurring in a separate opinion. Acting Justice Costa M. Pleicones, dissenting in a separate opinion.

Opinion by: FEW

Opinion

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

JUSTICE FEW: The question posed in this appeal is whether a minor may bring an action for her own medical expenses. The answer depends on whether she is the "real party in interest," and any dispute over the answer is governed by Rule 17(a) of the South Carolina Rules of Civil Procedure.

I. Facts and Procedural History

Alexia L. was born on April 5, 2007, at Piedmont Medical Center in Rock Hill. Gregory A. Miller, M.D., was the obstetrician who delivered her. Alexia's mother—Angela Patton—filed [*2] a medical malpractice lawsuit in November 2009 against Dr. Miller and the professional association where he practiced, Rock Hill Gynecological & Obstetrical Associates, P.A. Patton filed the lawsuit only in her capacity as Alexia's

"next friend."¹ She sought damages from Dr. Miller and Rock Hill Obstetrical for Alexia's injuries and past and future medical expenses.

In March 2012, Patton filed a separate medical malpractice lawsuit against Amisub of South Carolina, which owns and does business as Piedmont Medical Center. She also filed the Amisub lawsuit only in her capacity as Alexia's next friend, and sought the same damages she sought in the first lawsuit. In July 2012, the parties consented to consolidate the two cases, and Patton—again acting only as Alexia's next friend—filed an amended complaint naming Dr. Miller, Rock Hill Obstetrical, and Amisub as defendants. In the amended complaint, as in the first two, Patton did not make any claim in her individual capacity. The only claims she made were Alexia's claims, which she made in her representative capacity as Alexia's next friend.

Patton's theory of liability was that the defendants—primarily Dr. Miller—"improperly managed the [*3] resolution of shoulder dystocia² . . . and that such mismanagement caused permanent injury to Alexia's left-sided brachial plexus³ nerves." Patton sought damages for Alexia's pain and suffering, disability, loss of earning capacity, and other harm she contends resulted from this injury. Patton also sought damages for Alexia's medical expenses.

The fact that Patton brought the claim for medical expenses only in her representative capacity as Alexia's next friend—and not in Patton's own capacity—is at the center of this appeal. Dr. Miller, Rock Hill Obstetrical, and Amisub moved for partial summary judgment on the basis of this fact. They argued the circuit court should dismiss the claim for medical expenses because only a parent—not the child—has the right to recover damages

¹ HN1 "If a minor . . . does not have a duly appointed representative he may sue by his next friend . . ." Rule 17(c), SCRPC.

² Dystocia is the "slow or painful birth of a child." *Dystocia*, BLACK'S MEDICAL DICTIONARY (42d ed. 2010). Shoulder dystocia is "a difficult childbirth marked by the inability to deliver the shoulders of the fetus after the head has emerged." J.E. Schmidt, 5 *Attorneys' Dictionary of Medicine* S-141 (Matthew Bender 2016).

³ Brachial means "belonging to the upper arm." The brachial plexus is the network of nerves that lies "along the outer side of the armpit" and contains all the nerves to the arm. *Brachial*, BLACK'S MEDICAL DICTIONARY (42d ed. 2010); *Plexus*, BLACK'S MEDICAL DICTIONARY (42d ed. 2010).

for a minors' medical expenses. The defendants argued, in other words, Patton could recover for Alexia's medical expenses if she sued in her own capacity, but she may not recover them in her capacity as Alexia's representative. The circuit court agreed and granted partial summary judgment [¶4] to all three defendants. The court found "the minor plaintiff may not maintain a cause of action for [her medical] expenses in her own right."

Patton filed two motions in response to the circuit court's order. First, she filed a motion to alter or amend the summary judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. She also filed a motion to amend her complaint pursuant to Rule 15 to "change [her] capacity . . . from Next Friend to her individual capacity." She asked that the amendment relate back to the date of her original complaint, as provided for in Rule 15(c). The circuit court denied both motions.

Patton appealed to the court of appeals, which affirmed in an unpublished opinion. Patton v. Miller, Op. No. 2015-UP-367, 2015 S.C. App. Unpub. LEXIS 446 (S.C. Ct. App. filed July 22, 2015). We granted Patton's petition for a writ of certiorari to review the court of appeals' decision. We reverse that portion of the circuit court's order that awards partial summary judgment to Dr. Miller and Rock Hill Obstetrical, affirm the award of partial summary judgment to Amisub, and remand to the circuit court.

II. Rule 17, SCRPC—The Proper Plaintiff

By claiming that only a parent—not the child—may bring a claim for the child's medical expenses, the defendants invoked HN2 [↑] the "real party in [¶5] interest" requirement of Rule 17(a) of the South Carolina Rules of Civil Procedure, which provides, "Every action shall be prosecuted in the name of the real party in interest." A real party in interest is "the party who, by the substantive law, has the right sought to be enforced. It is ownership of the right sought to be enforced which qualifies one as a real party in interest." Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Cl. App. 2013); see also 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* §1541 (3d ed. 2010) (stating Rule 17(a) provides "that the action should be brought in the name of the party who possesses the substantive right being asserted under the applicable law"); 6 *Cyclopedia of Federal Procedure* § 21.7 (3d ed., rev. 2017) ("The 'real party in interest' . . . is defined as the person

holding the substantive right to be enforced, and not necessarily the person who will ultimately benefit from the recovery.").

The requirement that an action must be brought by the real party in interest is not a new requirement. Section 134 of our 1867 Code provided, "Every action must be prosecuted in the name of the real party in interest" S.C. Code § 134 (1867). The "real party in interest" requirement can be found in all subsequent versions of the Code including the 1976 Code. S.C. Code Ann. § 15-5-70 (1976) [¶6] (repealed 1985). As the Reporter's Note to Rule 17(a) indicates, "The first sentence . . . [is] substantially the same as Code §§ 15-5-70 and 80."

The defendants and the circuit court rely primarily on two cases in which we applied the real party in interest requirement to a claim for a minor's medical expenses. In Hughey v. Ausborn, 249 S.C. 470, 154 S.E.2d 839 (1967), we stated HN3 [↑] "the amount paid for medical care and treatment by the parent is not an element of damage" in a cause of action brought by the minor, but rather "the parent has a cause of action for the recovery of the medical expenses which he has incurred for the care and treatment of such minor." 249 S.C. at 475, 154 S.E.2d at 841; see S.C. Code § 10-207 (1962) (stating the real party in interest requirement). In Tucker v. Buffalo Cotton Mills, 76 S.C. 539, 57 S.E. 626 (1907), we stated a "father suing merely as guardian ad litem for injuries to his infant child cannot recover for [the child's medical] expenses" because "the father himself is personally liable" to pay those expenses. 76 S.C. at 542, 57 S.E. at 627; see Code of Civil Procedure of South Carolina § 132 (1902) (stating the real party in interest requirement). See also Hughey, 249 S.C. at 476, 154 S.E.2d at 841 (explaining that the basis of the parent's right to recover the damages is the parent's obligation to pay the child's medical expenses); 67A C.J.S. *Parent and Child* § 352 (2013) ("The parental right to recover expenses [¶7] when a child is injured stems from the parents' legal obligation to support a child."). Applying the real party in interest requirement to the facts of those cases, we recognized that HN4 [↑] the legal obligation to pay a medical bill renders the person who holds that obligation the proper party to bring a claim, or the "real party in interest." This is the principle of law relied on by the defendants and the circuit court, and it is the same principle embodied in the definition of real party in interest set forth in Draper.

We must determine, therefore, whether Patton—in her capacity as Alexia's next friend and not in her own capacity—meets the real party in interest requirement

on her claim for Alexia's medical expenses. In particular, we must determine whether Patton's representative claim for Alexia's medical expenses is consistent with our application of the real party in interest requirement to similar claims in *Hughey* and *Tucker*. We begin our analysis with Patton's description in her briefs to the court of appeals and this Court of the medical expenses she sought to recover:

Following her injuries, Alexia has received necessary and proper treatment from a host of healthcare providers, [¶8] including a nerve resection surgery. Alexia will need additional surgeries and other treatment continuing until her eighteenth birthday, as well as continued treatment after she reaches the age of majority. Accordingly, she will incur future medical bills during her entire lifetime.

These medical expenses fall into three categories. First, Patton seeks to recover for medical expenses that will have been incurred at the time of trial. These include the cost of the nerve resection surgery that has already been performed. Second, Patton seeks to recover for expenses that will be incurred in the future, but before Alexia turns eighteen. Third, Patton seeks to recover for expenses Alexia will incur after she reaches the age of eighteen, which Patton contends Alexia will incur "during her entire lifetime."

Applying *Hughey*, *Tucker*, and *Draper* to the third category of medical expenses Patton seeks to recover—those Alexia will incur after turning eighteen—Alexia is clearly the real party in interest on a claim for those expenses. At that time she will be an adult, and the medical services provider may legally seek payment for the services from Alexia herself. Because Alexia will be obligated [¶9] to pay the bills for those services, she owns the right to recover them as damages. The circuit court apparently recognized this, and specifically granted summary judgment only on "Plaintiff's claims for her own medical or injury-related expenses incurred to date, and to be incurred during her minority." Thus, Patton—acting on behalf of Alexia and not in her individual capacity—is the real party in interest for future medical expenses Alexia will incur after she turns eighteen, and properly brought the claim.

Turning to the second category of expenses Patton seeks to recover—those incurred between the time of trial and Alexia's eighteenth birthday—*Hughey*, *Tucker*, and *Draper* require that we determine who has the legal obligation to pay those expenses, which in turn informs us who owns the right to recover them as damages, and

thus who meets the real party in interest requirement. Patton—in her individual capacity—is a real party in interest. *HN5*[↑] Under South Carolina law, Patton's parental responsibilities include the legal obligation to pay her child's medical expenses. *S.C. Code Ann. §§ 63-5-20 & -30* (2010). Because of that obligation, Patton owns a substantive right to recover damages for those expenses. Therefore, [¶10] Patton—in her individual capacity—satisfies the Rule 17(a) requirement that the claim be brought by the real party in interest. *Draper*, *405 S.C. at 220, 746 S.E.2d at 481*.

The question before us, however, is whether the circuit court correctly concluded that Patton—in her representative capacity—is not the real party in interest. As the following discussion demonstrates, the analysis of whether a representative qualifies as the real party in interest for future medical expenses is not as simple as the analysis for past medical expenses was in 1907 in *Tucker* and in 1967 in *Hughey*. In fact, none of the cases relied on by the defendants or the circuit court involved claims for future medical expenses. *Cf. Sox v. United States*, *187 F. Supp. 465, 469-70 (E.D.S.C. 1960)* (permitting a minor to recover her own future, pre-majority, medical expenses).

If Patton recovers Alexia's future medical expenses, for any recovery above a minimal amount, the funds paid by these defendants must be paid to a conservator, or some other adult fiduciary representative. *HN6*[↑] See *S.C. Code Ann. § 62-5-433(B)(3)* (2009) (requiring payment of settlement funds to a conservator); *S.C. Code Ann. § 62-5-401* (Supp. 2016) (permitting the appointment of a conservator for a "minor [who] owns money or property that requires management or protection").⁴ The "conservator [must] act as a fiduciary," [¶11] and thus the funds must remain in the custody of the conservator until they are used for Alexia's benefit, or until she turns eighteen. *S.C. Code Ann. § 62-5-417* (2009). For medical expenses actually incurred while Alexia is a minor, the conservator has a legal obligation to pay them. *S.C. Code Ann. § 62-5-428(a)(1)* (Supp. 2016).

If Patton is now or later becomes Alexia's conservator, then her fiduciary obligation to pay Alexia's medical expenses will make her the real party in interest—in her

⁴ See also *S.C. Code Ann. § 62-5-103* (2009) ("Facility of payment or delivery"); *S.C. Code Ann. § 62-5-409* (2009) ("Protective arrangements and single transactions authorized").

representative capacity. However, whether a particular plaintiff is a real party in interest must be determined at the time of filing, and the identity of the conservator is often not known until the time a recovery is made. It is clear, however, that Alexia's representative—or conservator—will have a legal obligation to pay future medical expenses before Alexia's eighteenth birthday. Under *Hughey*, *Tucker*, and *Draper*, therefore, the conservator's legal obligation to pay the expenses renders the representative who brought the action a real party in interest.

Turning to the first category of medical expenses—those already incurred at the time of trial—Patton is a real party in interest in her individual capacity because of her obligation to pay [*12] them. §§ 63-5-20 & -30. The circuit court correctly concluded, therefore, that Patton may sue in her individual capacity to recover medical expenses that have already been paid for the care and treatment of Alexia.

The circuit court's partial summary judgment order, however, was not based on that conclusion. Rather, the order was based on the circuit court's categorical determination that Patton may not sue for those expenses in any representative capacity. The circuit court stated, "Neither of her parents have sued individually to recover [Alexia's medical] expenses, and the minor plaintiff may not maintain a cause of action for [her medical] expenses in her own right." To determine whether the circuit court's statement was correct, and thus whether it correctly granted partial summary judgment based on it, *Hughey*, *Tucker*, and *Draper* require that we analyze whether Patton—in her representative capacity—has a legal obligation to pay the medical bills.

As we did with the second category of expenses, we question whether this analysis may be conducted in 2017 with the simplicity with which we analyzed it in *Tucker* and *Hughey*. To illustrate this point, we turn to Patton's representation to the circuit [*13] court that "Alexia is covered by Medicaid, which has paid vast sums on her behalf for medical care." To the extent Alexia's medical bills were paid by Medicaid, they were not paid by either of her parents. In both *Tucker* and *Hughey*, the injured child's father paid the medical bills.⁵

⁵ Medicaid did not exist before July 30, 1965. *Social Security Amendments of 1965*, Pub. L. No. 89-97, 79 Stat. 286 (enacted July 30, 1965). Therefore, it could not have been a factor in *Tucker*. In *Hughey*, the minor was injured on March

Tucker, 76 S.C. at 542, 57 S.E. at 627; *Hughey*, 249 S.C. at 475, 154 S.E.2d at 841. *HN7*[↑] The collateral source rule preserves the parent's right to recover the damages, even though the parent did not pay the medical expenses.⁶ However, federal and state law provides Medicaid an automatic right of subrogation. See generally 42 U.S.C. § 1395v(b)(2) (2012 & Supp. II 2014); 42 C.F.R. § 411.24(e) & (g) (2016); S.C. Code Ann. § 43-7-430 (2015) (collectively defining federal subrogation rights to third-party recovery of medical expenses paid by Medicaid, and the Medicaid recipient's legal obligation to repay). A similar right of subrogation often exists pursuant to the insurance contract when the medical expenses are paid by a private insurer. See S.C. Code Ann. § 38-71-190 (2015) ("Any policy or contract of accident and health insurance issued in this State may include provision for subrogation by the insurer to the insured's right of recovery against a liable third party . . ."). Therefore, a child's representative who seeks damages for a child's medical expenses that were paid by Medicaid or some [*14] other insurer is almost certainly under a legal duty to reimburse the actual payor for at least part of the recovery. In this scenario, the minor's representative has a legitimate claim that she is a real party in interest. In other scenarios, such as when there is no third-party payor and the medical expenses were actually paid by a parent, there may be no right of subrogation, and the representative has no obligation for reimbursement. In such a situation, the parent may be the only real party in interest.⁷

10, 1965 and the case was tried in May 1966. 249 S.C. at 474, 154 S.E.2d at 840. There is no indication any of her expenses were paid by Medicaid.

⁶ *HN8*[↑] "The collateral source rule provides that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the damages owed by the wrongdoer." *Covington v. George*, 359 S.C. 100, 103, 597 S.E.2d 142, 144 (2004).

⁷ Rule 17(a) refers to "the" real party in interest. It is possible, however, that there may be more than one proper party to bring a claim. To illustrate, consider that two divorced parents with joint legal custody seek to bring a claim for their minor child's medical expenses. If one parent paid all of a child's medical bills out of pocket, and the other parent paid none, the paying parent would appear to be the only proper party on a claim for the child's past medical bills. If each parent paid half, each parent would appear to be the proper party on that parent's claim to recover the bills that parent paid. However, if neither parent paid the bills, nor was there any insurance, then both parents would remain under a legal obligation to pay the

The circuit court analyzed the real party in interest question on a motion for partial summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure. HN9 [↑] Rule 56(c) provides that summary judgment should be granted when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The uncertainties discussed above cause us to doubt whether it is appropriate to enter summary judgment on the question of whether a particular plaintiff is a real party in interest. The circuit court did not consider any of this uncertainty. Rather, the circuit court applied what it considered to be a categorical principle of law that a minor may not recover [*15] her own medical expenses.

However, this Court has not applied Hughey and Tucker categorically, and we have not held that a minor may never recover her own medical bills. To the contrary, in Johnston v. Bagger, 151 S.C. 537, 149 S.E. 241 (1929), we permitted it. The plaintiff in Johnston was the father acting only as the child's guardian ad litem—not in his individual capacity. 151 S.C. at 539, 149 S.E. at 242. The evidence indicated the father "actually paid . . . \$45" toward the child's medical bills, which totaled "approximately \$1,000." 151 S.C. at 541, 149 S.E. at 243. As to the unpaid bills, the father testified he "had not been able to pay these bills, and . . . in all likelihood he never will be able to make the payments." *Id.* The appellant, citing Tucker, claimed the trial court erred in "that the jury were permitted to consider as an element of damages sums of money paid out by the father of the infant." *Id.* We permitted the bulk of the jury verdict in favor of the minor to stand, despite the fact the damages were for her own medical expenses. 151 S.C. at 542, 149 S.E. at 243.

Other courts have recognized that there is no categorical prohibition against a minor recovering her own medical bills. In McNeill v. United States, 519 F. Supp. 283 (D.S.C. 1981), the plaintiff filed suit only in his capacity as the legal representative of a minor. 519 F. Supp. at 284. "The parents . . . did not institute [*16] suit" and the statute of limitations "expired." *Id.* The court explained, "The issue of [the minor] being able to collect for his own medical expenses was hotly contested" because the parents "have not filed suit, and the time when suit could be filed is past." 519 F. Supp. at 290. Relying on South Carolina law, the district court

bills. §§ 63-5-20 & -30. In this scenario, under Hughey, Tucker, and Draper, both parents would separately meet the Rule 17(a) real party in interest requirement.

in McNeill stated, "Medical expenses on behalf of a child are usually included in a parent's cause of action." *Id.* (emphasis added) (citing Tucker, Hughey, and Kapuschinsky v. United States, 259 F. Supp. 1, 7 (D.S.C. 1966)). The district court went on to explain that "this general rule is not an absolute bar" to a child recovering his own medical expenses, and awarded damages for those expenses to the child through his legal representative. *Id.*

The district court also awarded a minor damages for his own medical expenses in Sox. 187 F. Supp. at 469-70. The court explained that the injured child's parents previously brought their own lawsuits for their own damages and settled those suits. 187 F. Supp. at 469. Subsequently, the district court heard the child's claim for "prenatal injuries," brought "by her guardian ad litem." 187 F. Supp. at 467. The child's damages claim included "compensation for the cost of care necessitated by the injury and impairment including the cost of probable future care." 187 F. Supp. at 469. The district court stated [*17] It is "settled law that the primary right of recovery . . . lies with the parents," but then found "it is equally well settled that this right may be waived in favor of a recovery by the infant." *Id.* The district court observed, "The underlying reason for these rules is to prevent double recoveries. It is not to excuse liability." *Id.* The court then held the parents' failure to assert the claim for medical expenses amounted to a waiver of the parents' claim, and awarded the child damages—through his representative—for the medical costs. 187 F. Supp. at 469-70.

Our analysis of Patton's three categories of claims, our holding in Johnston allowing a minor's claim for her own medical expenses to stand, and the district court's reasoning in McNeill and Sox demonstrate that HN10 [↑] the summary judgment procedure of Rule 56 is not appropriate for resolving a dispute over the identity of the real party in interest. As Professor Flanagan explained years ago, "motions that do not go to the merits are not appropriately classified as summary judgment." James F. Flanagan, South Carolina Civil Procedure 445 (2d ed. 1996). As we will explain, the circuit court should have analyzed the issue under the Rule the defendants invoked when they [*18] claimed Patton as representative was the wrong party to bring the claim for Alexia's medical expenses—Rule 17(a) of the South Carolina Rules of Civil Procedure. See Jaramillo v. Burkhart, 999 F.2d 1241, 1246 (8th Cir. 1993) (holding in an indistinguishable scenario that partial summary judgment in favor of the defendants was improper and the issue should have been resolved

pursuant to Rule 17(a)).

III. Rule 17(a), SCRPC—Disputes Over the Real Party in Interest

HN11 Under Rule 17(a), the definition of the proper party is the same as it has always been—the proper party is any “real party in interest.” As Judge Bell observed in *Seaside Resorts, Inc. v. Club Car, Inc.*, 308 S.C. 47, 416 S.E.2d 655 (Cl. App. 1992), “The adoption of the South Carolina Rules of Civil Procedure has not changed the law. Where, as here, the named plaintiff has suffered an actionable loss at the hand of the defendant, he is a real party in interest and the requirement of Rule 17(a) is met.” 308 S.C. at 62, 416 S.E.2d at 665.

However, when the question is how to resolve a dispute as to whether a plaintiff is the real party in interest, the procedure we follow for resolving that dispute changed significantly under Rule 17(a). Formerly, the failure to bring suit in the name of the real party in interest was a jurisdictional failure requiring dismissal of the lawsuit. See *Wilson v. Gibbes Mach. Co.*, 189 S.C. 426, 430, 1 S.E.2d 490, 492 (1939) (stating “unless the real party in interest institutes the suit and is before the Court, the Court is without jurisdiction” (citing *Hodges v. Lake Summit Co.*, 155 S.C. 436, 447-48, 152 S.E. 658, 662 (1930))). **HN12** Under [19] the Rules of Civil Procedure, however, it is improper to immediately dismiss a lawsuit simply because it was not brought in the name of the real party in interest. Rule 17(a) provides:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Rule 17(a), SCRPC.

The purpose of this provision is to avoid precisely what occurred here—the unnecessary procedural dismissal of a lawsuit the court should resolve on the merits. As the Reporter’s Note to the rule indicates, this sentence “is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake.” See also 6A Wright, Miller & Kane, *supra*, at § 1541 (stating the last

sentence of Rule 17(a) was added “to provide that the failure to join the real party in interest at the commencement of the action does not require dismissal”).

Therefore, the circuit court [20] in this case erred by dismissing Patton’s claims for Alexia’s medical expenses under Rule 56—summary judgment. Rather, the court should have resolved the dispute under **HN13** Rule 17(a), which provides three mechanisms to avoid forfeiture: “ratification, joinder, or substitution.” In this case, Patton attempted to use all three mechanisms. First, she attempted ratification by arguing in her Rule 59(e) motion that she “assigned and waived her right to recover tort-related pre-majority medical expenses in favor of her child, Alexia.” **HN14** Ratification under Rule 17(a) is the formal approval by the proper party of another party bringing the action. In this scenario, Patton is both parties. It is impossible that Patton—in her individual capacity—did not approve of the claim she made in her representative capacity. Her Rule 59(e) motion was the formal expression of that approval—ratification. Patton also attempted joinder and substitution by moving to amend her complaint. She attached to her Rule 15 motion to amend a proposed “amended pleading [that] changes the capacity in which Angela Patton [sues] from Next Friend to her individual capacity.”

The defendants contend that any argument under Rule 17(a) is not preserved for our review because Patton never specifically [21] mentioned Rule 17. We find this argument troubling. It was the defendants who first invoked the Rule 17(a) requirement that “Every action shall be prosecuted in the name of the real party in interest” by claiming Patton in her representative capacity was not the proper party to bring the claim for Alexia’s medical expenses. In doing so, it was the defendants who first failed to mention Rule 17. While Patton also did not specifically rely on Rule 17, she did specifically ask to take advantage of each of the three provisions contained in Rule 17(a) to address the alleged failure to bring a claim by the correct party: “ratification, joinder, [and] substitution.” The provision upon which the defendant sought partial summary judgment and the provision upon which Patton defended the motion are both expressed in Rule 17(a), in adjoining sentences. It is not possible to address the issue of who is the proper party to bring a claim without addressing Rule 17(a). As we will discuss more fully in section IV explaining our analysis under Rule 15 of the South Carolina Rules of Civil Procedure, the Rules were never intended to trap a party simply for not using the

proper words or rule number to describe the applicable legal principal. This is particularly true when the trap was set by the opposing parties who [*22] themselves did not properly name the applicable principle.

IV. Rule 15, SCRPC

In both her Rule 59(e) motion and her motion to amend the complaint, Patton did specifically rely on Rule 15 of the South Carolina Rules of Civil Procedure, and particularly the relation back provisions of Rule 15(c). As we will explain, we reach the same conclusion under Rule 15 that the circuit court should have reached under Rule 17.

A. Rule 15(a)

HN15 [↑] Rule 15(a) provides that when a party asks to amend his pleading, "leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC. "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Cl. App. 2005) (citing Jarrell v. Seaboard Sys. R.R., Inc., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Cl. App. 1987)). "Rule 15(a) is substantially the same as the Federal Rule," Rule 15(a), SCRPC notes, and the Supreme Court of the United States has referred to the Rule's "freely given" provision as a "mandate" that "is to be heeded," Foman v. Davis, 371 U.S. 178, 182; 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962). The Foman Court continued:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing [*23] party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."

Id. (citing Fed. R. Civ. P. 15(a)); accord Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Cl. App. 1988).

In this case, the circuit court never considered Rule 15(a). HN16 [↑] While we have consistently held that a circuit court's ruling on a Rule 15 motion to amend is

within its discretion,⁸ a court's failure to exercise its discretion is itself an abuse of discretion. State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (quoting Samples v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Cl. App. 1997)). Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it. Instead, the circuit court denied the motion to amend based solely on its mistaken belief that the amendments could not relate back under Rule 15(c). The circuit court thus denied the motion to amend the complaint on its perception of the merits of the amended claims, not under the criteria for amendment the court was required to consider under Rule 15(a). This was error, regardless of the soundness of the Rule 15(c) analysis. See Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999) (analogizing a Rule 15(d) motion to supplement a complaint to a motion to amend a complaint under Rule 15(c) and finding the trial court erred in denying the plaintiff's motion to supplement his complaint because the trial court should [*24] not have relied on the merits-related question of whether the defendant was immune under the Tort Claims Act). Cf. 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1487 (3d ed. 2010) (stating "numerous courts have held that a proposed amendment that clearly is frivolous, advancing a claim or defense that is legally insufficient on its face, or that fails to include allegations to cure defects in the original pleading, should be denied").

The record before us contains no basis for a finding of prejudice under Rule 15(a) because the defendants did not argue prejudice⁹ and the circuit court did not conduct a prejudice analysis. At oral argument, however, the defendants argued,

The prejudice, Your Honor, is . . . essentially allowing a way around the rule that was in place. The rule that they could have followed. The rule that is not hard to follow. Certainly no[] . . . reason

⁸ See, e.g., Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) ("A motion to amend is within the sound discretion of the trial judge . . ." (citing Foggie v. CSX Transp., Inc., 315 S.C. 17, 22, 431 S.E.2d 587, 590 (1993))).

⁹ HN17 [↑] "The burden is . . . on the party opposing the motion to show how it is prejudiced." Stanley v. Kirkpatrick, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

has been given as to why it wasn't followed in this case. And so it is allowing this claim to come in from some, essentially from someone who did not pursue it originally, but could have. And that is the problem. We have never had an explanation at any of the levels as to why the [*25] rule was not followed.

We find the argument betrays a misunderstanding of prejudice under Rule 15. HN18 [↑] The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend. See Lee v. Bunch, 373 S.C. 654, 661, 647 S.E.2d 197, 201 (2007) ("The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it." (citing Collins Entm't, Inc. v. White, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Cl. App. 2005))); Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Cl. App. 2014) (affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend).

In this case, all three defendants were well aware of the claim for medical expenses because the claim was included in each original complaint. It made no difference to the defendants as to the merits of the claim whether Patton brought [*26] it in her own or her representative capacity. There is no indication defendants' procedural or evidentiary presentation would have varied at all if Patton had been allowed to amend the complaint to assert the claim in her individual capacity. While permitting the amendment would cause the defendants to face the merits of the amended claim, the defendants' opportunity to defend the claim on the merits was no different than it would have been if Patton had originally brought the claim in her own capacity. There was no new issue presented by Patton's proposed amendment, the amendment would have caused the defendants no disadvantage as to the merits they did not already face, and therefore, there is no prejudice.

When we decided Tucker, Hughey, Wilson, and the

other pre-Rules cases upon which the defendants rely for their argument the circuit court properly dismissed Patton's claims, we operated under the technical confines of code pleading. Today, however, we operate under the far more flexible notice pleading provisions of the Rules of Civil Procedure. As Professor Flanagan observed; HN19 [↑] "The purpose of the rules is to secure justice, and consequently, they reduce formalities and technicalities." [*27] Flanagan, *supra*, at 3. Disallowing the amendment draws us back to the technical pitfalls of code pleading we thought we escaped in 1985 when we adopted the Rules. As the Supreme Court of the United States wrote in 1962,

HN20 [↑] It is too late in the day and entirely contrary to the spirit of the . . . Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. "The . . . Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."

Foman, 371 U.S. at 181-82, 83 S. Ct. at 230, 9 L. Ed. 2d at 225 (quoting Conley v. Gibson, 355 U.S. 41, 48, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80, 86 (1957)); see also Maybank v. BB&T Corp., 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (HN21 [↑] "In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." (citing Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991))); 4 Charles Alan Wright, Arthur R. Miller & Adam N. Steinman, *Federal Practice and Procedure* § 1029 (4th ed. 2015) ("The federal rules are designed to discourage battles over mere form and to sweep away needless procedural controversies that either delay a trial on the merits or deny a party his day in court because of technical deficiencies."); 3 *Cyclopedia of Federal Procedure* § 8.2 (3d ed., rev. [*28] 2017) ("The spirit of the Rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid, if possible, depriving a litigant of a chance to bring a case to trial.").

Because the record contains no basis for a conclusion the defendants would have been prejudiced by allowing Patton to amend her complaint, we find the circuit court erred in not allowing the amendment.

B. Rule 15(c)

If the circuit court had allowed the amendment, the court

would then have been required to address Rule 15(c)—whether the amendment related back to the time of Patton's initial complaints against the parties. In March 2012 when Patton filed her lawsuit against Amisub, and in August 2013 when Patton moved to amend her complaint to assert claims in her individual capacity, the three year statute of limitations on Patton's individual claims had expired. HN22[↑] See S.C. Code Ann. § 15-3-545(A) (2005) (setting the statute of limitations on a medical malpractice action at three years). In November 2009, however, when Patton filed suit against Dr. Miller and Rock Hill Obstetrical, the statute of limitations had not expired. Therefore, for Patton's individual claims to comply with the statute [29] of limitations, her amended complaint must relate back to when she filed Alexia's claim against Dr. Miller and Rock Hill Obstetrical.

Rule 15(c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

Patton's individual claim against Dr. Miller and Rock Hill Obstetrical for Alexia's medical expenses satisfies Rule 15(c) because it is the exact claim she made in the representative capacity. In fact, there is no difference between the old claim and the new claim except the capacity of the person bringing it. Therefore, Patton's amended claims against Dr. Miller and Rock Hill Obstetrical for Alexia's medical expenses relate back to the November 2009 filing and comply with the statute of limitations.

The defendants rely on Valentine v. Davis, 319 S.C. 169, 460 S.E.2d 218 (Cl. App. 1995), for their contention that Rule 15 does not permit amendments "to add a new plaintiff to the case." In Valentine, after a complicated procedural history involving claims in state and federal court, there remained one state court action with three plaintiffs, and one federal action in which the Valentines [30] were plaintiffs, all against the same defendant—the Davis group. 319 S.C. at 170-71, 460 S.E.2d at 219. The three state court plaintiffs were Shelly and Larry Williams, whose claims concerned repairs to the Williams' home, and Thomas Slother, whose claim concerned an alleged debt the defendant owed Slother. *Id.* The Valentines, who had previously been plaintiffs in the state court action, had a similar—but separate—claim pending in federal court concerning repairs to the Valentines' home. *Id.* When the federal

court later dismissed the Valentines' claims, "Slother and the Williams filed a motion to amend the state court complaint to reinstate the Valentines to the action." 319 S.C. at 171, 460 S.E.2d at 219. The circuit court "denied the motion finding no basis under the South Carolina Rules of Civil Procedure to join the Valentines as plaintiffs." *Id.* On appeal from that ruling, the court of appeals held Rule 15 does not allow a new plaintiff to assert a new and separate claim. 319 S.C. at 172, 460 S.E.2d at 219. The court of appeals stated,

The proposed amended complaint shows the allegations asserted by the Valentines, Slother, and the Williams do not arise out of the same transaction or series of transactions or occurrences. In fact, the only connection between the claims is that the Valentines, [31] Slother, and the Williams are represented by the same attorney and they all assert different personal claims against the Davis group.

319 S.C. at 172, 460 S.E.2d at 220.

Contrary to the situation in Valentine, Patton sought to amend *her own* complaint to maintain *the same* claim in a different capacity. The reasoning in Valentine is sound, but the decision stands only for the proposition that Rule 15 does not contemplate adding a new plaintiff to assert a new claim, and thus Valentine is inapplicable to this case.

Patton, on the other hand, relies on Thomas v. Grayson, 318 S.C. 82, 456 S.E.2d 377 (1995). In Thomas, the plaintiff brought a wrongful death and survival action in the federal district court of South Carolina alleging medical negligence in causing the death of her husband. 318 S.C. at 84, 456 S.E.2d at 378. She did so, however, only in her capacity as personal representative appointed by the probate court of her home state of Michigan. *Id.* "The defendants answered claiming that Mrs. Thomas lacked capacity to sue because she failed to allege her qualification and/or appointment as personal representative in South Carolina." 318 S.C. at 85, 456 S.E.2d at 378. The plaintiff was subsequently appointed personal representative by a South Carolina probate court and moved to amend her complaint to assert the same claims in her new capacity. [32] *Id.* "However, this was done after the three year period for commencing an action under the wrongful death statute had expired." *Id.* When the "defendants moved for dismissal" on the ground the "plaintiff was not duly qualified as a personal representative under South Carolina law when the complaint was filed," the district

court certified three questions to this Court. *Id.* One of the questions was, "Would the . . . adoption of Rules 15(c) . . . and 17(a) . . . of the South Carolina Rules of Civil Procedure allow for the relation back of any amendment to the complaint to assert the qualification in South Carolina of the foreign personal representative in an action which was otherwise timely?" 318 S.C. at 84, 456 S.E.2d at 378.

Mrs. Thomas—like Patton—was the original plaintiff who sought to amend her complaint to assert the same claim in a new capacity. Also like Patton, Mrs. Thomas did not attempt the amendment until the statute of limitations had run for any new party asserting a claim. The situation in *Thomas*, therefore, is the same as the situation here.

Discussing the impact of the adoption of the Rules of Civil Procedure on the issues we faced in *Thomas*, we began with Rule 17(a). We stated,

HN23 Rule 17(a) has changed the result when the amended pleading [33] merely amplifies the old cause of action, provided that the defending party was originally placed on notice of the events involved. The real party in interest is no longer precluded from being named plaintiff, after the statute of limitations has run on a claim timely filed by one who lacked capacity to sue because he was not the real party in interest. Instead a reasonable time must be allowed after objection for ratification of commencement of the action and it has the same effect as if the action had been commenced in the name of the real party in interest. We find that the current Rule 17(a) changes existing State law where the action was brought within the applicable limitations and the real party in interest joined and ratified the action shortly thereafter in accordance with the requirements of Rule 17(a).

318 S.C. at 87, 456 S.E.2d at 380.

We then turned to Rule 15, and held HN24 Rule 15 also permits the amendment, and the amendment relates back to the original complaint under Rule 15(c). 318 S.C. at 88-89, 456 S.E.2d at 380. We stated, "The test . . . under Rule 15(c) . . . is . . . whether the claim . . . asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading," and then,

Rule 15(c) is based on the concept that once litigation involving particular [34] conduct or a

given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.

318 S.C. at 88, 456 S.E.2d at 380.

Patton's amended claim is indistinguishable from the amended claim in *Thomas*. It is the same claim asserted by the same person in a new capacity. The defendants argue, however, that *Thomas* is distinguishable from this case because all the plaintiff's amended claims in that case were made in the plaintiff's new capacity, but in this case Patton makes the amended claims in her individual capacity, while some of the original claims remain in her representative capacity. Thus, the defendants argue, Patton seeks to add a new capacity, but *Thomas* permits only the substitution of one capacity for another. The defendants also argue *Thomas* is distinguishable because the plaintiff sought to change from one representative capacity to another representative capacity, while Patton sought to change from a representative capacity to her own individual capacity.

We find no basis for the defendants' [35] arguments in Rule 15 or in *Thomas*. Considering the defendants' arguments in light of *Thomas*, however, we are convinced that our Rule 15(c) analysis is inseparable from a Rule 17(a) analysis when the dispute concerns the identity of the proper plaintiff. In *Thomas*, we stated, "The subsequent adoption of Rules 15(c) and 17(a), SCRCP allow for the relation back of an amendment to the complaint," and we permitted the same person to assert the same claim in a new capacity. 318 S.C. at 88, 456 S.E.2d at 380; see also 6 Cyclopaedia, supra, at § 21.11 ("When an action is brought by someone other than the real party in interest within the limitations period, and the real party in interest joins or ratifies the action after the limitations period has run, the amendment or ratification relates back to the time suit was originally filed and the action need not be dismissed as time barred . . .").

The defendants also argue the court of appeals' decision in *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 518 S.E.2d 44 (Cl. App. 1999), supports their position that a new plaintiff may be added only when there is a clear substitution, not when the original plaintiff remains for some claims. We read *Twelfth RMA* to support Patton's right to amend her

complaint. First, the court of appeals considered both Rule 15(c) and Rule 17(a) in its analysis. 335 S.C. at 641, 518 S.E.2d at 47. In addition, the court distinguished Valentine on the [*36] same basis we have distinguished it—that Valentine involved a new claim, whereas the case before it involved a new plaintiff to assert the same claim. *Id.* Relying on both Rule 15(c) and Rule 17(a), the court of appeals permitted an amendment similar to the amendment Patton sought to make. Twelfth RMA does not support the defendants' position.

We find the circuit court erred by refusing to permit the amendment as to Patton's individual claims against Dr. Miller and Rock Hill Obstetrical. We also find the circuit court erred in not recognizing that the amendment relates back to November 2009. Patton's individual claim against Amisub, however, must be treated differently. Patton has effectively conceded that she may not pursue a claim for pre-majority medical expenses against Amisub.

V. Conclusion

The parties framed the question posed in this appeal as whether this Court should change the common law rule expressed in Tucker, Johnston, Hughey, and others. We frame the question differently, and in this opinion we have done nothing more than apply the South Carolina Rules of Civil Procedure. HN25 [↑] Pursuant to Rule 17(c), "Whenever a minor . . . has a representative, . . . the representative may sue . . . on behalf of the minor [*37]" If a dispute arises as to whether that representative is "the real party in interest," Rule 17(a) governs the dispute. If the representative seeks to amend the complaint, Rules 15(a), 15(c), and 17(a) provide there should be no unnecessary dismissal, but rather the parties and the trial court should work to reach the merits. In this case, the circuit court failed to apply these Rules, and unnecessarily dismissed a claim it should have tried on the merits.

We REVERSE the circuit court's award of partial summary judgment to Dr. Miller and Rock Hill Obstetrical, AFFIRM partial summary judgment to Amisub, and REMAND to the circuit court for the completion of discovery and trial.

BEATTY, C.J., and KITTREDGE, J., concur. HEARN, J., concurring in a separate opinion. Acting Justice Costa M. Pleicones, dissenting in a separate opinion.

Concur by: HEARN

Concur

JUSTICE HEARN: I concur in result with the majority. However, I would limit resolution of the case to Justice Few's thorough analysis of Rule 15, SCRPC, and would not reach the discussion of Rule 17, SCRPC. Because the parties did not advance any arguments regarding the application or interpretation of Rule 17, I find the issue is not properly before us at this time. See Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001) (repeating the maxim, "[A]ppellate courts, like well-behaved [*38] children, do not speak unless spoken to and do not answer questions they are not asked.").

Dissent by: PLEICONES

Dissent

ACTING JUSTICE PLEICONES: I respectfully dissent and would dismiss the writ of certiorari as improvidently granted as I agree with the opinion of the Court of Appeals. See Patton v. Miller, Op. No. 2015-UP-367, 2015 S.C. App. Unpub. LEXIS 446 (S.C. Ct. App. filed July 22, 2015).

End of Document

EXHIBIT C

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
 2 COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602
 3 MARC HAAS, SUSAN HAAS, ROB STAR)
 and MELISSA STAR,)
 4)
 Plaintiffs,)
 5)
 vs.)
 6)
 TI OLDFIELD OPERATIONS, LLC, SF)
 7 OPERATIONS, LLC, OLDFIELD CLUB,)
 OLDFIELD COMMUNITY ASSOCIATION,)
 8 OLDFIELD CLUB BOARD OF DIRECTORS)
 and JOHN DOES 1-10,)
 9)
 Defendants,)
 10)
 and)
 11)
 TI OLDFIELD OPERATIONS, LLC, and)
 12 SF OPERATIONS, LLC,)
)
 13 Third-Party Plaintiffs,)
)
 14 vs.)
)
 15 OLDFIELD, LLC, and CRESCENT)
 COMMUNITIES, LLC f/k/a CRESCENT)
 16 RESOURCES, LLC,)
)
 17 Third-Party Defendants.)

18 * * * * *

19 DEPOSITION OF: ROBERT STAR
 20 DATE TAKEN: Wednesday, January 25, 2017
 21 TIME: 10:10 a.m.
 22 PLACE: Mullen Wylie
 200 Merchant Street
 23 Hilton Head Island, South Carolina
 24 REPORTED BY: EVE WILBANKS
 Registered Professional
 25 Reporter, Certified LiveNote

1 include social members. I'm not sure why a social
2 member would need a locker at the clubhouse, but
3 that's what they've done. They've changed the
4 signage on the road that said "Golf Clubhouse" to
5 "Clubhouse." This all happened in the last few
6 weeks, that it's gone that far. If you want, I
7 have a picture of the sign so you can see it.

8 Q. I'll trust you on that. I assume I'll
9 get a copy of that letter once I kind of get into
10 this case a little bit more.

11 MR. FORD: We'll take a copy of that if
12 you all have it.

13 THE WITNESS: The letter or the picture?

14 MR. FORD: The picture.

15 BY MR. OGIBA:

16 Q. So you signed the Settlement Agreement
17 in September of 2009 --

18 A. Yes.

19 Q. -- correct? And you're aware that
20 Crescent and Oldfield, LLC, transferred their
21 rights in this development to SF Operations and TI
22 Oldfield in July of 2010, correct?

23 A. Yes.

24 Q. So you have a period of about ten months
25 after you executed the Settlement Agreement but

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1 before Crescent transferred its rights in the
2 development to another entity, correct?

3 A. Okay.

4 Q. Well, my question is, do you have any
5 evidence that during that ten-month period, when
6 Crescent was still the acting developer on this
7 project, that Crescent somehow -- in some way
8 violated the terms of the Settlement Agreement?
9 And I ask that because you haven't sued Crescent
10 and you haven't sued Oldfield, LLC, directly. So
11 I assume you don't have evidence of a direct
12 breach by either of them.

13 A. So here is my confusion -- the answer to
14 that -- where is my Settlement Agreement?

15 MR. TONEY: You want the Settlement
16 Agreement? Exhibit 2.

17 MR. FORD: It's 2.

18 MR. TONEY: Here it is.

19 A. I -- we sued Oldfield, LLC. That's why
20 I'm confused by you keep saying Oldfield, LLC.

21 Q. I don't see -- I guess we can kind of go
22 off of -- go off the record here. We're talking
23 about two different things. You're talking about
24 suing Oldfield, LLC, in 2009, right, in the
25 context of the bankruptcy?

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1 A. Yes.

2 Q. I'm talking about this current
3 litigation.

4 THE WITNESS: Have we sued Oldfield,
5 LLC?

6 MR. TONEY: I don't think so.

7 A. If you say no, then, no, I did not.

8 Q. So you have not sued either Crescent or
9 Oldfield, LLC. They were brought in through two
10 of the parties you did sue.

11 A. Yeah. I don't think we had anything to
12 do with you. Right.

13 Q. So I guess I'm taking a leap of faith
14 here that the reason -- one of the bases on which
15 you decided not to sue Crescent is you had no
16 evidence of a breach in that ten-month period
17 after the execution of the Settlement Agreement;
18 is that accurate?

19 A. Yes.

20 MR. OGIBA: I apologize. I think I'm
21 just about done.

22 That's all the questions I have. Thank
23 you.

24 CROSS- EXAMINATION

25 BY MS. DETERS:

ELECTRONICALLY FILED - 2017 Sep 14 1:48 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

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EXHIBIT 1

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NOTE: In this Property Report, the words "You" and "Your" refer to the Buyer. The words "We," "Us" and "Our" refer to the Developer.

RISKS OF BUYING LAND

The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

Any value which your lot may have will be affected if the roads, utilities and all proposed improvements are not completed.

Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program and local real estate brokers may not be interested in listing your lot.

Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact will depend upon the location, size, planning, and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

WARNINGS
THROUGHOUT THE PROPERTY REPORT THERE ARE SPECIFIC WARNINGS CONCERNING THE DEVELOPER, THE SUBDIVISION OR INDIVIDUAL LOTS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY CONTRACT OR AGREEMENT.

GENERAL INFORMATION

This Report covers One Hundred Thirty-Five (135) lots located in Beaufort County, South Carolina. See page 27 for a listing of these lots. It is estimated that the subdivision will contain Five Hundred Forty Seven (547) lots.

The Developer of this subdivision is:

TI Oldfield Development, LLC
TI Oldfield Operations, LLC
10 Oldfield Circle
Okatie, SC 29909-4024
Telephone Number (770) 390-2555

Answers to questions and information about this subdivision may be obtained by telephoning the Developer at the number listed above.

ALL FACILITIES OF OLDFIELD CLUB ARE NOT AUTOMATICALLY AVAILABLE TO LOT OWNERS IN THE SUBDIVISION. LOT OWNERS ARE AUTOMATICALLY ISSUED A COMMUNITY MEMBERSHIP. A COMMUNITY MEMBERSHIP PERMITS USE OF ALL SOCIAL FACILITIES OF OLDFIELD CLUB. A COMMUNITY MEMBERSHIP DOES NOT ENTITLE YOU TO USE OF THE GOLF COURSE OR GOLF PRACTICE FACILITIES, BUT COMMUNITY MEMBERS MAY PATRONIZE THE GOLF SHOP AND THE GRILL IN THE GOLF HOUSE. TO ACQUIRE A GOLF MEMBERSHIP AND HAVE USE OF THE GOLF FACILITIES, PURCHASERS MUST OBTAIN A GOLF MEMBERSHIP AT THE TIME OF CLOSING ON THEIR LOT. OTHERWISE, A GOLF MEMBERSHIP IS NOT GUARANTEED TO A PROPERTY OWNER. THE COST OF A GOLF MEMBERSHIP IS SUBSTANTIAL AND NO REFUND OF THE PURCHASE PRICE OF A LOT WILL BE MADE BECAUSE OF A FAILURE TO ACQUIRE A GOLF MEMBERSHIP. THE VALUE OF YOUR LOT MAY BE ADVERSELY AFFECTED BY THE FAILURE TO ACQUIRE A GOLF MEMBERSHIP, SO YOU SHOULD CAREFULLY CONSIDER YOUR PURCHASE OF A LOT IF IT IS BASED UPON YOUR PRESUMED ABILITY TO ACQUIRE A MEMBERSHIP.

TITLE TO THE PROPERTY AND LAND USE

A person with legal title to property generally has the right to own, use and enjoy the property. A contract to buy a lot may give you possession but does not give you legal title. You will not have legal title until you receive a valid deed. A restriction or an encumbrance on your lot, or on the subdivision, could adversely affect your title.

Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages or liens affecting your lot and some important facts about payments, recording and title insurance.

METHOD OF SALE

Sales Contract And Delivery of Deed

We intend to use only the cash method of selling. An installment sales contract will not be used. In all sales, a ten percent (10%) deposit is required, with the remainder of the purchase price due at closing which will normally not be in excess of thirty (30) days from the date of contract signing and in any case within one hundred eighty (180) days of the signing of the contract. You will receive at closing a general warranty deed free and clear of all liens and encumbrances and subject only to those restrictions, reservations, easements and covenants of record that apply to the property.

Type of Deed

The transfer of legal title will be accomplished by a general warranty deed to be delivered to purchasers at closing which shall occur within one hundred eighty (180) days from the signing of the Sales Contract.

Oil, Gas and Mineral Rights

The oil and gas rights to the lots in this subdivision will not belong to the purchaser of these lots. The exercise of these rights could affect the use, enjoyment and value of your lot; provided, however, that the owner of the oil and gas rights to the lots does not have the right to disturb the surface of your lot in any exploration of the oil and gas.

ENCUMBRANCES, MORTGAGES AND LIENS

The lots described in this Property Report are subject to a mortgage granted by the developer to The Shumard Foundation, Inc. and Innovative Fortunes, Inc. (hereinafter, "mortgage").

We will obtain a release from the holder of the mortgage covering your lot at the time of closing. The release fees will be paid to the mortgage holder simultaneously with the closing of your lot, and a document evidencing the release shall be recorded prior to the recording of your

deed.

At closing you should expect to receive evidence that we have caused the release of the lot from the lien of the mortgage. In the event we default under the mortgage affecting your chosen lot prior to closing and before entering a release of your lot, any money you have paid will be refunded to you by the escrow agent. "Escrow" section of this Property Report.

RECORDING THE CONTRACT AND DEED

Method Or Purpose Of Recording

Normally, the Sales Contract mentioned above will not be recorded because it is replaced by the deed at closing as described above. Under South Carolina law, recording of the contract or deed would protect you from such third parties as subsequent purchasers from, or future creditors of, the Developer. It is not the local custom to record sales contracts and your contract will not be in recordable form.

We will deliver to you at closing a deed to your lot, and you will be responsible for recording your deed in the Office of the Register of Deeds located in the Beaufort County Multi-Government Center, 1000 Ribaut Road, Beaufort, South Carolina 29902, as soon as practicable after closing. Also, you will be responsible for paying the cost of recording the deed which is currently \$10.00.

UNLESS YOUR CONTRACT OR DEED IS RECORDED YOU MAY LOSE YOUR LOT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

Title Insurance

You should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the lot. We recommend that you have an attorney or other appropriate professional interpret the policy.

PAYMENTS

Escrow

All deposits and down payments submitted by you prior to closing on your lot purchase shall be under the control of an independent third party acting as an escrow agent. These funds will be disbursed by the escrow agent only after we have delivered to the closing attorney for recording all documents necessary to convey to you unencumbered title to your lot. This procedure will allow you to receive a return of all money paid in the event of our failure to convey title or our default on any other obligation which would otherwise result in your loss of that money prior to your receiving title to your lot. The escrow account is administered by McNair Law Firm, P.A., 4 Clarks Summit Drive, Suite 200, Bluffton, SC 29910. 843-815-2171.

Prepayments

You may prepay any portion of the funds due under the Sales Contract without any penalty.

Default

If you default prior to transfer of title, our sole remedy is to retain all down payments or earnest money deposits as agreed upon liquidated damages for your default of the sales contract. The sales contract provides that you will have 10 days from receipt of notice of a default under the contract to cure such default.

RESTRICTIONS ON THE USE OF YOUR LOT

Restrictive Covenants

Restrictive Covenants have been recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, located in the Beaufort County Multi-Government Center, 1000 Ribaut Road, Beaufort, South Carolina 29902.

Complete copies of the Restrictive Covenants, the Oldfield Club Articles of Incorporation and Bylaws are available by request. Certain major provisions of these Restrictive Covenants are discussed in the paragraphs below. However, this discussion only highlights certain areas of the Restrictive Covenants and should not be substituted for a careful study of the Restrictive Covenants by you.

The restrictions referred to as the Declaration of Covenants, Conditions and Restrictions for Oldfield (the "Restrictive Covenants") set forth certain architectural standards and guidelines and provide for our right to disapprove the architectural plans for any house or improvement to be constructed on a lot. We may ultimately assign these approval rights to the Oldfield Architectural Review Committee (the "ARC"). We shall provide community and architectural standards in the Oldfield Architectural Guidelines and the Oldfield Restrictions and Rules. We have the right to disapprove the architectural plans for any house or lot improvement. This blanket authority extends to purely aesthetic considerations such as the exterior elevations and color of residence. We reserve the right to control the house site and location of any building in the subdivision.

The Restrictive Covenants also contain additional restrictions applicable to the Oldfield Community Association (the "Association") which make each lot owner automatically a member of that Association and responsible to pay certain assessments of the Association. Accompanied with the responsibility of paying certain assessments to the Association are the rights and prerogatives of membership as are set forth in those Restrictive Covenants, Articles of Incorporation and Bylaws of the Association. If you own a lot in a multiple ownership situation such as a partnership, corporation, or as co-tenants, the covenants provide that only one person shall be designated by the co-owners as the voting representative on behalf of the co-owners of the lot.

Other provisions of the Restrictive Covenants restrict the use of the lot to single family housing purposes, and there are restrictions against commercial activity. Also prohibited is the maintenance of any animal, etc., which would be a nuisance or create an unsightly or unpleasant atmosphere in the neighborhood. A reasonable number of generally recognizable household pets are allowed.

The Restrictive Covenants also provide that no antennas designed to receive direct broadcast satellite or video programming services via multipoint distribution services may be attached to the exterior portion of any house or lot unless smaller than one (1) meter in diameter. Antennas designed to receive television broadcast signals may be permitted, however they are subject to Architectural guidelines to minimize obtrusiveness from streets and adjacent property. The Restrictive Covenants also allow the Board of Directors of the Association the power to promulgate rules and regulations to govern or prohibit the outside storage or parking upon any lot of any motor homes, commercial vehicles of any type, camper, or trailer, boat or other water craft, boat trailer and similar vehicles.

The Restrictive Covenants provide that they will be in effect for twenty (20) years from the date of recording. Thereafter, they may be renewed for an unlimited number of successive ten (10) year periods.

The Oldfield Community Association (the "Association") has been incorporated in South Carolina as a non-profit corporation. All purchasers of dwelling units or lots within Oldfield are automatically members of the Association upon taking title to their lot or dwelling unit. There are provisions for the Association set forth in the Restrictive Covenants which are recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, as noted previously.

Recreational Covenants

A Recreational Covenant for Oldfield Club has been recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. The Recreational Covenant obligates each property owner to be a Community Member of Oldfield Club and to pay dues which will entitle the Community Member to use and enjoy the Social Facilities of Oldfield Club.

A Declaration of Recreational Covenant for Oldfield Cottage Lots also has been recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. This Covenant obligates owners of "Cottage Lots" 17, 19-22, 208-218 and 366-374 to acquire and maintain a Cottage Golf Membership in Oldfield Club and to pay the applicable membership contribution, periodic dues, and other charges associated with a Cottage Golf Membership as Oldfield Club may establish from time to time.

Lakeside Village Covenants

All lots within the Lakeside Village neighborhood are subject to Declaration of Covenants, Conditions and Restrictions for Lakeside Village at Oldfield, as amended (the "Lakeside Village Covenants"). A complete copy of the Lakeside Village Covenants is available

upon request. The Lakeside Village Covenants contains additional restrictions applicable to the Lakeside Village at Oldfield Association, Inc. (the "Lakeside Village Association") which makes each lot owner within the Lakeside Village neighborhood automatically a member of the Lakeside Village Association and responsible to pay certain assessments of the Lakeside Village Association. In addition to the responsibility of paying certain dues and assessments to the Lakeside Village Association are the rights, responsibilities, obligations and benefits of membership as are set forth in the Lakeside Village Covenants, the Lakeside Village Association Articles of Incorporation and Bylaws of the Lakeside Village Association.

Easements

We have reserved perpetual, alienable and releasable easements on, over and under the ground to erect, maintain and use pipes, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of storm drainage and electricity, cable television, security cable equipment, telephone equipment and gas, sewer, water or other private or public conveyance or utility.

We have also reserved for ourself, the Association, and their successors, assigns, and designees the nonexclusive right and easement to enter upon property adjacent to bodies of water and wetlands located within or adjacent to Oldfield to install, operate, maintain and replace pumps to supply irrigation water to the common areas; to construct, maintain and repair structures and equipment used for retaining water; and to maintain such areas.

We have also reserved for ourself, the Association, and their successors, assigns and designees the nonexclusive right and easement of access and encroachment over the common areas and lots adjacent to or within 100 feet of bodies of waters and wetlands in Oldfield in order to (a) temporarily flood and back water upon and maintain water over such portions of Oldfield (b) alter in any manner and generally maintain the bodies of water and wetlands within common areas; (c) and to maintain and landscape the slopes and banks pertaining to such areas.

Other than the foregoing easements, all easements for flood control or flowage are not contained within the boundaries of any subdivided lot and are clearly shown and delineated on all subdivision plats or are provided for in the Restrictive Covenants applicable to the lots.

PLATS, ZONING, SURVEYING, PERMITS AND ENVIRONMENT

Plats

The plats for all of these lots have been approved by the Beaufort County Development Review Committee and are recorded in the Office of the Register of Deeds for Beaufort County which is located in the Beaufort County Multi-Government Center, 1000 Ribaut Road, Beaufort, South Carolina 29902.

Zoning

The Beaufort County Development Review Committee has approved the lots covered by

this Report for single family residential use only. Moreover, all lots are subject to the Restrictive Covenants which restrict the use of the properties to single family residences. We will review and approve or disapprove all plans prior to commencement of construction of any dwelling on your lot.

Surveying

All of the lots covered by this Report have been surveyed, staked and marked for identification.

Lenders may require an individual survey prior to making a loan. Individual surveys are made at the expense of the Buyer and the estimated expense for a typical lot is \$500.00.

Permits

Prior to the construction of a house, you must obtain approval from the Architectural Review Committee and a building permit from the County of Beaufort which has offices located at the Bluffton Center, Room 100, Ulmer Road, in Bluffton and in Beaufort at the Beaufort County Administration Building on Ribaut Road. There is presently a \$2,300.00 fee required to be paid to the Architectural Review Committee with the application for review of plans and a \$10,000 Compliance Deposit. The Beaufort County building permit is based on square footage and the cost to build. The current rate per square foot is \$87.00. You will need to contact Beaufort County to receive the exact calculation once you have the square foot amount to obtain your exact cost for the building permit.

Pursuant to the South Carolina Development Impact Fee Act (§6-1-910 *et seq.* S.C. Code 1976, as amended), Beaufort County has enacted an Impact Fee Ordinance which provides for the collection of certain fees at the time of issuance of a building permit for new residential construction. ~~Currently, these fees total \$5,482.00 per single family residence comprised of the following: \$1,481.00 for fire facilities, \$553.00 for library facilities, \$1,335.00 for park facilities and \$513.00 for road improvements.~~ No fee is due at the time of closing on your lot, however these fees will be due from you in addition to the building permit fee at the time of application for a building permit.

Environment

We are not aware of any environmental impact study which considers the effect of the subdivision on the environment.

ROADS

ACCESS TO THE SUBDIVISION

Access to the subdivision is provided by S.C. Highway 170 which is a four-lane public road. This road is maintained by the South Carolina Department of Transportation and you will not be assessed for the maintenance cost for this road. S.C. Highway 170 has an asphalt surface to a width of forty-eight feet (48').

ACCESS WITHIN THE SUBDIVISION

We are responsible for the construction of all interior roads. No portion of the construction cost will be borne by you. The roads to the all of the lots in the subdivision consist of two lanes with an asphalt wearing surface width of between eighteen (18) and twenty-two (22) feet. The rights of way range from fifty (50) feet to eighty (80) feet.

Roads to all of the lots have been constructed and are completed with an asphalt-wearing surface:

The roads within Oldfield are private and have been conveyed to the Oldfield Community Association.

As provided in the Restrictive Covenants of Oldfield, each residential lot owner is required to pay an annual assessment to Oldfield Community Association, and an allocation is made from that assessment for road maintenance. Maintenance of all of the roads once completed by us is a responsibility of the Oldfield Community Association. The roads will be maintained so as to provide access to the lots on a year-round basis once completed per the schedule above.

The Restrictive Covenants also provide for the right of the Declarant or its successor, including the Association, to (a) maintain guarded gates controlling access to the roads within Oldfield and (b) to require payment of fees by business invitees.

The table below identifies the distance (in miles) from the center of the subdivision to nearby amenities.

NEARBY COMMUNITIES	POPULATION (2010 U.S. Census)	DISTANCE OVER PAVED ROADS	DISTANCE OVER UNPAVED ROADS	TOTAL
Beaufort, SC (County Seat)	12,361	14	0	14
Hilton Head Island SC	37,099	15	0	15
Savannah, GA	136,724	23	0	23

UTILITIES

Here we will discuss the availability and cost of basic utilities. The areas covered will be water, sewer, electricity, telephone, and fuel or other energy sources.

WATER

The subdivision is served by a central water system. Beaufort-Jasper Water and Sewer Authority, a governmental body created by the South Carolina Legislature, located on Highway 170, south of Beaufort, South Carolina, has completed the central system. We will be responsible for the construction associated with expansion of this system and the extension of its lines to your lot. Beaufort-Jasper Water and Sewer Authority will supply the water and administer the system.

Water service is currently available to all lots.

Beaufort-Jasper Water and Sewer Authority has determined that the central water plant has capacity to serve the anticipated population of this development. The necessary construction permits to extend the central system lines to the lots covered by this report have been obtained. The chemical and bacteriological content of the central water system has been tested and the tests show that the water meets all standards for a public water supply.

You will be required to connect to the central water system since the Restrictive Covenants of Oldfield prohibit the drilling of individual wells, except for use related to water-source heating and cooling systems, subject to the approval of the Architectural Review Committee. You may not make other provisions for obtaining domestic water. Beaufort County will not issue a building permit for any lot until central water is available to the lot. We will pay all of the construction costs associated with expansion of the central water system. You will be required to pay a one-time connection fee to Beaufort-Jasper Water and Sewer Authority at the time of connection to the system, which is currently Five Hundred Fifty Dollars (\$550.00).

The developer is contractually obligated to provide water service to your lot line.

SEWER

The subdivision is served by a central sewer system. Beaufort-Jasper Water and Sewer Authority, a governmental body created by the South Carolina Legislature, which is located on Highway 170, south of Beaufort, South Carolina, operates the central system. We are responsible for the construction associated with expansion of this system and the extension of its lines to your lot line. Beaufort-Jasper Water and Sewer Authority will operate, maintain and administer the system to all phases once in place.

Sewer service is available to all lots.

You will not be responsible for any construction costs relating to the sewer collection system or the expansion of the lines to your lot. These costs will be paid by us. You will be

required to pay a one-time connection fee, which is currently One Hundred Fifty Dollars (\$150.00), to Beaufort-Jasper Water and Sewer Authority at the time of connection to the system.

You are required to connect to the central sewer system, as septic tanks and any other means of individual sewer disposal are prohibited in Oldfield by the Restrictive Covenants.

The developer is contractually obligated to provide sewer service to your lot line.

ELECTRICITY

South Carolina Electric and Gas Company, Inc. (SCE&G), a public utility regulated by the South Carolina Public Service Commission, with offices located at 11323 North Jacob Smart Boulevard, Ridgeland, South Carolina 29936, is responsible for providing electrical service to Oldfield by constructing primary, electrical lines in the various subdivisions developed within Oldfield.

Electrical service is available to all lots.

You will not be responsible for any of the construction costs incurred to extend electrical service in front of or adjacent to your lot. After completion of service lines, primary electric service for each lot is normally available within seven (7) working days of the request to SCE&G. However, the installation of customer service is under the control of the electric company and not us.

When electrical service has been completed as outlined above, the electric company may charge you to connect the meterbox for your house to the trunk line providing power. The current charge for that service from the trunk line to your house up to 125 feet is free and, in excess of 125 feet, you will be charged a rate depending on the overall length and size of the electrical main.

TELEPHONE SERVICE

Telephone service is furnished to Oldfield by Hargray Telephone with offices at 5 Buck Island Road, Bluffton, South Carolina, 29910. Hargray Telephone is a public utility regulated by the South Carolina Public Service Commission.

Telephone service is available to all lots.

You will not be responsible for any of the construction costs incurred to extend telephone service to your lot. All these costs will be paid by the telephone company providing service. However, you will be required to pay an installation charge which, by South Carolina state law, can not exceed one hundred fifty dollars (\$150.00). Telephone installation charges are estimated to be \$22.00. As Hargray, Inc. is responsible for construction and completion of the telephone lines, not us, we can give no assurance that service will be available for use by the estimated date. Once service has been extended to a lot, complete telephone service is currently being

provided within approximately fourteen (14) business days after request is made by you to Flargray, Inc.

FUEL OR OTHER ENERGY SOURCES

Electricity is the primary energy source in the subdivision and is provided by SCE&G. SCE&G will also provide natural gas to Oldfield. The cost of installation for a natural gas line at no charge if there is a gas line located on the street. Additionally, propane gas is available to you currently at an approximate cost of \$500.00 for installation and \$50-\$90 per year and up for tank rental from Suburban Propane, Highway 278, Hilton Head Island, South Carolina or from Kleckley Gas Company, Ridgeland, South Carolina.

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FINANCIAL INFORMATION

A copy of our financial statements for the period ending December 2012 is available from us upon request.

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LOCAL SERVICES

In this topic, we will discuss the availability of fire and police protection and the location of schools, medical care and shopping facilities.

FIRE PROTECTION

Fire protection is provided by the Bluffton Township Fire District, located seven (7) miles from the center of Oldfield which consists of four (4) paid firemen. This fire department provides year-round service at no cost other than as a part of the ad valorem taxes for Beaufort County.

POLICE PROTECTION

Police protection is provided by the Beaufort County Sheriffs Department. Private security patrol personnel are also employed by the Oldfield Community Association. The private security personnel provide security gate protection and patrol in Oldfield. The access road to the subdivision is patrolled by the Beaufort County Sheriffs Department and the South Carolina Highway Patrol.

SCHOOLS

You are entitled to use Beaufort County's Public Schools with elementary education being provided at Okatie Elementary School. A junior high school is available at H. E. McCracken Middle School, and a high school is available at Bluffton High School. School bus transportation will be provided from the subdivision to each of these schools.

HOSPITALS

The nearest hospital available to the residents of this subdivision Coastal Carolina Medical Center located at 1000 Medical Center Drive near Hardeeville within approximately ten (10) miles from the center of Oldfield. Alternatively, Beaufort Memorial Hospital located at 121 South Ribaut Road in Beaufort within approximately nineteen (19) miles from the center of Oldfield. Another nearby hospital, Hilton Head Medical Center and Clinics, is located at 25 Hospital Center Boulevard, Hilton Head Island, within twenty-two (22) miles from the center of Oldfield. The Bluffton-Okatie Outpatient Center is located within three (3) miles from the center of Oldfield in Okatie, South Carolina. Ambulance service is provided by the Beaufort County Emergency Medical Services. Additional hospitals are located in Savannah, Georgia.

PHYSICIANS AND DENTISTS

Physicians' offices are located approximately three (3) miles to the south from Oldfield at the Bluffton - Okatie Outpatient Center at the intersection of U.S. 278 and S.C. Route 170. Other physicians' and dentists' offices are located approximately ten (10) miles from Oldfield at Sheridan Park in Bluffton. The Medical Pavilion and Island Medical Plaza, both adjacent to the Hilton Head Medical Center and Clinics, are located approximately twenty-two (22) miles from

Oldfield. Numerous physicians and dentist offices are located in the vicinity of Beaufort Memorial Hospital at 122 Ribaut Road, Beaufort, South Carolina, approximately nineteen (19) miles from Oldfield. The Bluffton-Okatie Outpatient Center and various other locations around Bluffton are also available. Additional physicians and dentists' offices are located in Bluffton, SC, Beaufort, SC and Savannah, GA.

SHOPPING FACILITIES

There are no shopping facilities in the subdivision. The closest shopping facilities are located at Wal-Mart Supercenter, Buckwalter Place to Shopping Facilities, Bluffton Commons at Belfair, Belfair Towne Village, Kitties Crossing and the Hilton Head Factory Stores 1 and 2 in Bluffton which are approximately four (4), six (6), eight (8), ten (10), eleven and one half (11.5) and fourteen (14) miles, respectively, from the center of Oldfield. Other various shopping centers are located on Hilton Head Island at Main Street, Indigo Run, Pineland Station, Main Street Village, Festival Center at Indigo Run, Northridge Plaza and Port Royal Plaza, approximately twenty (20) miles from the center of Oldfield. These centers contain drug stores, supermarkets, and numerous shops, stores, offices, banks, restaurants, dry cleaners, video stores, beauty salons, discount department stores, ladies shops, mens shops, optical stores, and specialty shops.

There are other shopping centers located in Hilton Head, SC, Beaufort, SC and Savannah, GA.

MAIL SERVICE

Mail service is provided to the subdivision by the U.S. Postal Service. Approved mail boxes can be purchased from the Association by property owners. Larger mail boxes may be purchased after a certificate of occupancy is issued for a residence in Oldfield.

PUBLIC TRANSPORTATION

There is no public transportation system from the subdivision to nearby towns. Furthermore, there is no public transportation system within the subdivision. The nearest public transportation is located on Fording Island Road approximately eight (8) miles from the center of Oldfield.

AIR SERVICE

The nearest air service is located on Hilton Head Island, South Carolina twenty-two (22) miles and Savannah, Georgia thirty-two (32) miles.

RECREATIONAL FACILITIES

**THE RECREATIONAL FACILITIES LISTED BELOW ARE OWNED BY TI
 OLDFIELD OPERATIONS, LLC AND ARE GUARANTEED TO BE
 AVAILABLE ONLY TO MEMBERS OF THE OLDFIELD CLUB. SEE THE
 WARNING ON PAGE 2 OF THIS REPORT.**

FACILITY	PERCENTAGE OF CONSTRUCTION COMPLETE	ESTIMATE DATE OF START OF CONSTRUCTION (MONTH/YEAR)	ESTIMATED DATE AVAILABLE FOR USE (MONTH/YEAR)	FINANCIAL ASSURANCE OF COMPLETION	BUYER'S ASSESSMENT
GOLF FACILITIES					
18 Hole Golf Course, putting green and driving range	100%	08/00	11/01	None	
Golf Shop/Cart Barn	100%	10/01	04/02	None	*
Golf House	100%	09/04	04/06	None	*
SOCIAL FACILITIES					
Activity Center with Swimming Pool, Tennis Courts, and Fitness Center	100%	10/02	06/03	None	*
River House	100%	01/01	11/01	None	*
Outfitters Center	100%	09/01	06/02	None	*
Community Dock	100%	12/01	06/02	None	*

* Annual dues are assessed to Community Members for access to the Social Facilities. For 2013, the annual dues for a Community Membership, paid on a quarterly basis, are \$4,560 for a resident and \$4,000 for a non-resident.

Restricted to use by Golf Members. For Golf Membership, there is currently a Club Membership Contribution of \$15,000 due at time of application. In addition, the Club may establish minimum usage fees to ensure a minimum level of revenue from operations. Golf Membership is a completely separate fee structure. Currently, the annual dues for a Golf Membership, paid on a monthly basis, are \$5,565 for a resident and \$4,550 for a non-resident.

Constructing the Facilities

The recreational facilities have been completed and are available for use. You will not be responsible for any of the costs to construct these recreational facilities.

Maintaining the Facilities

Oldfield Club is responsible for the operation and maintenance of the Club Facilities.

Who May Use the Facilities

You automatically acquire a Community Membership in Oldfield Club at closing and you will be required to maintain it. This membership permits use of all of the Social Facilities, but does not permit use of the golf course or golf practice facilities. If you purchase your lot in a corporate or partnership name or as a co-tenant or other legal entity, the entity shall designate at the time of application one individual to exercise the privileges of a Community Membership.

Purchase of a lot in Oldfield does not automatically confer an Equity Golf Membership in the Oldfield Club. Owners of lots in Oldfield will have the right to apply for an Equity Golf Membership in the Oldfield Club at the time of their lot purchase subject to the terms and conditions prevailing for membership. Authorized Golf Memberships in Oldfield Club are currently limited to a total of 375. If you desire to obtain a Golf Membership in Oldfield Club, you must obtain an application, be approved for membership and pay the applicable Golf Membership Contribution.

Purchasers of Cottage Lots 17-22, 208-218, and 366-374 are required to acquire and maintain a Cottage Golf Membership in Oldfield Club and to pay the applicable membership contribution, periodic dues, and other charges associated with a Cottage Golf Membership as Oldfield Club may establish from time to time.

The Plan for Offering of Memberships in Oldfield Club is available upon request describing the criteria, rights, and responsibilities of membership.

Transfer of the Facilities

Pursuant to the Plan for Offering of Memberships in Oldfield Club, the Developer shall not transfer the Club Facilities to Oldfield Club before at least 250 Golf Memberships have been sold, but shall complete the transfer within 180 days after the earlier of the following: (a) the initial sale of all Authorized Golf Memberships or the sale of all lots planned for the Community, whichever occurs last; (b) the Developer's election following the third anniversary of the later of the Golf Commencement Date or the Social Commencement Date, provided that the Club has had a positive cash flow from operations for a minimum of twelve (12) months; or (c) the members' election at any time after the tenth anniversary of the sale of the first Golf Membership, upon the affirmative vote of Equity Golf Members entitled to cast 51% of the total votes of equity Golf members, provided that at least 51% of the Authorized Golf Memberships have been issued and are outstanding at the time of such vote. The Club Facilities shall be conveyed in their "as is" condition, free and clear of any monetary liens or encumbrances except those securing (1) any lease obligations relating to the golf course maintenance equipment, golf carts, and general office systems; and (2) a working capital loan which shall secure no more than

the value of net realizable receivables, inventories and supplies on hand plus any prepayments under contracts or leases for the benefit of the Club. Upon such transfer, the Club shall assume and fulfill all obligations under any leases, operating contracts, license and permits relating to the operation or maintenance of the property transferred.

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SUBDIVISION CHARACTERISTICS AND CLIMATE

In this section, we will discuss the basic terrain of the subdivision, its climate and any nuisances or hazards in this area.

GENERAL TOPOGRAPHY

The subdivision is located on the coastal mainland, bordered in part by salt marshes and the Okatie River, which is located in Beaufort County in the south-southeastern part of South Carolina. The topography of the land within the subdivision is level with sandy soil, ranging in elevations from four (4) feet above mean sea level (the critical level at the marsh is 5.5 feet) to elevations at twenty-three (23) feet above mean sea level. A variety of trees, including pines, live oaks and various hardwood trees, abound over most of the property, and much of the property abuts tidal marshes.

There are no unstable or expansive soil conditions in this phase of Oldfield. All lots in the subdivision have slopes of less than twenty percent (20%). No special construction techniques are required to erect a residence. The finished floor elevations above mean sea level are directed by FEMA guidelines and/or the covenants and restrictions applicable to the lot.

WATER COVERAGE

During periods of heavy rain, any lot may have some temporary standing water. The drainage system is designed to accommodate storm water run-off occurring at a rate and intensity equivalent to a 25-year storm as required by the Beaufort County Zoning and Development Ordinance. Temporary standing water on individual lots can be eliminated during construction by coordinating on-site landscaping, grading and drainage with the subdivision storm drainage facilities being constructed adjacent to the lots.

DRAINAGE AND FILL

Any lot in the subdivision may require some drainage work, excavation, or fill before construction for drainage, flood control, and structural bearing capacity. It is not possible to disclose specific lots which may require drainage work, excavation, or fill because that varies from lot to lot depending upon various factors including, but not limited to, the type of construction used by an owner, and the topography of individual lots. County building codes require minimum finished floor elevations which may be higher than the existing grades. Therefore, depending on the foregoing factors, fill may be required.

FLOOD PLAIN

As is the case for many communities, the subdivision is located in a flood plain. All of Beaufort County has been designated as flood-prone by the Federal Insurance Administration of the Federal Emergency Management Agency. The cost of flood insurance depends upon what flood zone classification the dwelling is located. For any dwellings located in flood zones "B" and "C", flood insurance coverage of up to \$250,000 for the dwelling and up to \$60,000 for contents would cost approximately \$301.00 annually. For any dwellings located in flood zones "A-8", flood insurance coverage for the dwelling would cost approximately \$0.67 per \$100.00 for the first \$50,000 in dwelling coverage and \$0.08 per \$100.00 for additional dwelling

coverage up to \$250,000. Flood insurance coverage for contents in an "A-8" flood zone would cost approximately \$0.89 per \$100.00 for the first \$15,000 in contents coverage and \$0.12 per \$100.00 for additional contents coverage up to \$100,000.00. Federal law requires mandatory purchase of flood insurance as a prerequisite to mortgage financing by most institutions in these designated flood hazard areas. The following lots are located in flood zone "A-8": All lots in Plat Book 109 at Page 108; Lots 255-256; and Lots 372 and 374.

FLOODING AND SOIL EROSION

We have a program for flooding and soil erosion with minimum control for soil erosion, sedimentation or periodic flooding throughout the subdivision.

The major drainage outfall for this project is a series of lagoons and ditches. The lagoons and ditches serve additionally as retention basins to return a portion of the runoff to the natural ground water system. This program has been approved by the Beaufort County Development Review Committee and the Development Permit has been obtained for the lots which are the subject of this Property Report.

NUISANCES

We are unaware of any nuisances which affect your lot or the subdivision.

HAZARDS

The subdivision is potentially subject to earthquakes. The Federal Government in recent years has developed data on earthquake activity in the United States and has produced a seismic risk map of the United States. This map is based on known distribution of damaging earthquakes. Four such zones have been determined on this basis. Due to the severe damage associated with the Charleston high intensity earthquake of 1886, a large portion of South Carolina is included in the highest intensity zone (Zone 3) (equal to the zoning assigned to part of California and Nevada). The map states that no consideration was given to the probable reoccurrence of high intensity earthquakes. The most recent earthquake was in April, 1998 with an intensity of 3.9 on the Richter Scale. The center of the earthquake was located in Camden, South Carolina.

The subdivision, in common with the Southeast coastal region of the United States, is subject to occasional hurricanes. The most recent hurricane to affect the coastal regions of the South Carolina Lowcountry was Hurricane Hugo in the fall of 1989.

The Bluffton area also has been subject to forest fires and tornadoes.

We are unaware of any proposed plans for construction, either public or private, which may create a nuisance or safety hazard or adversely affect the subdivision. There are no existing or possible future hazards of which we are aware.

The subdivision is located in an area which has been assigned a State Fire Rating of 5. The ratings range from 1 to 10 with 1 being the best rating. The practical effect of a 5 rating is that homeowners in the subdivision are provided average fire protection and pay average insurance rates.

CLIMATE

The average temperatures for the warmest and coldest months of the year are contained in the table below. The area has an average annual rainfall of 48.91± inches and an average annual snowfall of 0 inches.

<u>MONTH</u>	<u>HIGH</u>	<u>LOW</u>	<u>MEAN</u>
January	59°F	38°F	49°F
July	89°F	71°F	80°F

OCCUPANCY

One hundred seventy (190) homes in the subdivision are occupied on a full-time or part-time basis as of the date of this report.

ADDITIONAL INFORMATION

In this heading, we will discuss the following areas:

1. The Property Owners' Association.
2. The Annual Real Estate Taxes.
3. Resale Opportunity in Lot Sales.
4. Equal Opportunity in Lot Sales.
5. Listing of Lots.

THE PROPERTY OWNERS' ASSOCIATION

Oldfield Community Association has been incorporated by Oldfield, LLC as a non-profit corporation under the laws of the State of South Carolina.

When you purchase a lot in this subdivision, you automatically become a Class "A" member of the Oldfield Community Association. You are given one (1) vote for each lot that you own in the development. We may appoint a majority of the members of the Board of Directors during the Class "B" Control Period which continues until the first to occur of 75% of the lots are improved with completed homes; December 31, 2015; or when the Developer so determines.

The 2013 annual Association Base Assessment is in the amount of \$2,040.00 for an unimproved lot and \$2,290.00 for an improved lot. This Base Assessment represents your prorata share of the Association's operating expenses. The amount of the annual Base Assessment is determined each year during preparation of the Association's annual budget for the coming year. At least thirty (30) days prior to budget year, the Board of Directors sends all lot owners a copy of the annual budget and notice of the amount of the Base Assessment for the coming year. That budget and Base Assessment becomes effective unless disapproved by at least 75% of the members in a special meeting. At the time of the Closing on your lot, the Restrictive Covenants require you to pay a one-time non-refundable working capital assessment equal to one-sixth (1/6) of the annual Base Assessment in effect at the time of closing.

In addition to the annual Base Assessment, the Restrictive Covenants provide for the following types of assessments: (1) Neighborhood Assessments for specific budgeted expenses of a Neighborhood within the Project, as determined by the Board; (2) Special Assessments to cover unbudgeted expenses; (3) Specific Assessments against a particular piece of property within the Project for any special services provided or to cover costs to bring such property into compliance with the governing documents; and (4) Community Enhancement and Marketing Fee in the form of a transfer fee upon each subsequent transfer of title to a Unit in the Project (i.e., all resales). The amount of this transfer fee is to be determined by the Board and is capped at 1% of the gross selling price. The purpose of the transfer fee is to fund a separate account to be used for such purposes as the Board determines to be beneficial to the general good and welfare of Oldfield and which are outside the general operating budget. Owners of unimproved lots will be subject to a Specific Assessment of a semi-annual \$45.00 fee for mowing of unimproved lots. Owners of Golf Cottage Lots 208-218 are subject to a Neighborhood Assessment of \$959.93 per quarter. Owners of River Cottage Lots 20-22 are subject to a Neighborhood Assessment of \$1,101.00 per quarter. Owners of Cottage Lots 366-374 may be subject to a Neighborhood Assessment in the future. Owners of lots within the Lakeside Village neighborhood are subject to a Neighborhood Assessment of \$465.00 per quarter.

The Board of Directors, on behalf of the Association, is responsible for the enforcement of the Restrictive Covenants applicable to Oldfield Community Association. Certain portions of the Restrictive Covenants are currently enforced by us. The Architectural Review Committee will have architectural control over the subdivision and will be controlled by us until such time as all of the lots in the subdivision have been developed and we have notified the Board of Directors of the Association that we are transferring our rights to the Association, or such earlier time as determined by us and evidenced by written instrument in recordable form.

In addition, under the Restrictive Covenants, the Association has the duty and right to maintain the common areas of open space when they are conveyed by the Developer to the Association. The Association is responsible for maintenance of the common properties on which improvements have been completed.

The current level of Base Assessments is projected to be sufficient to meet the expected operating expenses, including maintenance and replacement costs, of the Association. If the assessments are insufficient to meet the Association's expenses, the base assessments may be increased to cover the deficit.

TAXES

After obtaining title to your property, you will be required to pay Beaufort County real property taxes. Taxes for the current year will be prorated at closing. At closing, you will pay to Oldfield your share of the current year's taxes, and Oldfield will be responsible for payment of the taxes to Beaufort County for the current year. The amount of County taxes is determined by and paid to the Beaufort County Treasurer's Office which is located in the Multi-Government Complex, Ribaut Road, Beaufort, South Carolina 29902.

Using the actual millage rate for 2016 of 0.04751 mills, the formula to compute the estimated 2016 County taxes for lots located in Oldfield is as follows:

$$\begin{aligned} 100\% \text{ of the appraised value} \times 6\% &= \text{assessed value} \\ \text{Assessed value} \times 0.04751 \text{ mills} &= \text{annual ad valorem taxes} \end{aligned}$$

The millage rate is set on a calendar year basis and is subject to change each year. It should be noted that permanent residences may be assessed at a value of four percent (4%) instead of the six percent (6%) rate referred to in the above formula. You must make application for the reduced rate to the Beaufort County Assessor from January 1 of the current year through January 15th of the following year.

Using the above formulas, the annual County taxes on an unimproved lot after sale to a purchaser would range between \$564.81 to \$1,914.30 (based on a price range of \$50,000.00 to \$1,306,000.00).

RESALE OR EXCHANGE PROGRAM

You are not permitted to post any sign on the lot which advertises the lot for sale, which may hinder you in the resale of your lot. The requirements for membership in the Oldfield Community Association and the fees attached to your lot contained in the restrictions may hinder you in the resale of your lot. We have a program to assist you in resale of your lot through on-

site real estate brokerage services.

We have made no provision for exchanging your lot.

EQUAL OPPORTUNITY IN LOT SALES

The Developer is in compliance with Title VIII of the Civil Rights Act of 1968. The Developer has not, and will not, discriminate against you because of your race, color, religion, sex, handicap, familial status or national origin. Furthermore, the Developer will not indicate a preference for, or a rejection of any particular group in the Developer's advertising, rendering of lot services, or in any other manner.

LISTING OF LOTS

Lots which are the subject of this Property Report, were recorded on in the Office of the Register of Deeds for Beaufort County, South Carolina as follows:

LOT NUMBERS	PLAT BOOK	PAGE NUMBER	DEVELOPER
Lots 7-10, 12, 16, 29-33, 37, 38, 53, 56 & 57.	Plat Book 109	Page 108	TI Oldfield Development, LLC
Lots 244-248, 250, 255 & 256	Plat Book 83	Page 38	TI Oldfield Development, LLC
Lots 372 & 374	Plat Book 113	Page 183	TI Oldfield Development, LLC
Lot 286	Plat Book 89	Page 11	TI Oldfield Operations, LLC
Lots 382-393, 398-419, 421, 423-431 & 433	Plat Book 116	Page 168	TI Oldfield Development, LLC
Lots 452, 456, 457, 459-462, 464-466, 528, 529, 533, 536 & 537	Plat Book 116	Page 71	TI Oldfield Development, LLC
Lots 468-503, 505-510 & 513-519	Plat Book 119	Page 186	TI Oldfield Development, LLC

COST SHEET, SIGNATURE OF SENIOR EXECUTIVE OFFICER

In addition to the purchase price of your lot, there are other expenditures which must be made. Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price of Lot	
Cash Price of Lot	\$ _____
Finance Charge	\$ <u>NONE</u>
Total Sale Price of Lot	\$ _____

Estimated One-Time Charges:

1. One-time Association Working Capital Assessment (equivalent of 1/6 of Base Assessment)	\$ <u>325.00</u>
2. Water Connection Fee*	\$ <u>525.00</u>
3. Sewer Connection/Service Fees*	\$ <u>150.00</u>
4. Construction costs to extend electric and/or telephone service to lot line	\$ <u>NONE</u>
5. Architectural Review Committee Fee*	\$ <u>2,300.00</u>
6. Beaufort County Impact Fees*	\$ <u>5,482.00</u>
Total of Estimated One-Time Charges	\$ <u>8,782.00</u>

Total of Estimated Sales Price and One-Time Charges \$ _____
 (*Paid at the time of house construction)

Estimated annual charges, exclusive of utility use fees

1. Taxes - Average unimproved lot after sale to purchaser (Appraised Value x 6% x 0.18069)	\$ _____
2. Community Association assessment (unimproved - 2013)	\$ <u>2,040.00</u>
3. Community Membership in Oldfield Club (non-resident -2013)	\$ <u>2,290.00</u>

The information contained in this Property Report is an accurate description of our subdivision and development plans.

TI Oldfield Development, LLC,
 a Georgia limited liability company
 By: SF Operations, LLC,
 Its: Manager

TI Oldfield Operations, LLC,
 a Georgia limited liability company
 By: SF Operations, LLC,
 Its: Manager

By: _____
 I. William Stolz, III, its manager

By: _____
 I. William Stolz, III, its manager

RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE
PURCHASER RECEIPT
IMPORTANT: READ CAREFULLY

NAME OF SUBDIVISION: Oldfield
DATE OF REPORT: December 13, 2013
ILS Number: 32553

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received By: _____ Date: _____

Street Address: _____

City: _____ State: _____ Zip: _____

If any representations are made to you which are contrary to those in this Report, please notify the:

Office of Interstate Land Sales Registration
HUD Building
451 Seventh Street, S.W.
Washington, DC 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot _____ Block _____ Section _____

Name of Salesperson _____

Signature _____ Date _____

PURCHASER CANCELLATION

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of Subdivision Oldfield Date of Contract _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) Signature _____ Date _____

RECEIPT, AGENT CERTIFICATION AND CANCELLATION PAGE
PURCHASER RECEIPT
IMPORTANT: READ CAREFULLY

NAME OF SUBDIVISION: Oldfield
DATE OF REPORT: December 13, 2013
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We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

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Street Address: _____

City: _____ State: _____ Zip: _____

If any representations are made to you which are contrary to those in this Report, please notify the:

Office of Interstate Land Sales Registration
HUD Building
451 Seventh Street, S.W.
Washington, DC 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot _____ Block _____ Section _____

Name of Salesperson _____

Signature _____ Date _____

PURCHASER CANCELLATION

If you are entitled to cancel your purchase contract, and wish to do so, you may cancel by personal notice or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below.

Name of Subdivision Oldfield Date of Contract _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) Signature _____ Date _____

EXHIBIT 2



January 13, 2017

To the Board of Directors and General Manager

Oldfield Community Association
1 Oldfield Circle
Okatie, South Carolina 29909

In planning and performing our audit of the financial statements of Oldfield Community Association (the "OCA") as of and for the year ended December 31, 2015, in accordance with auditing standards generally accepted in the United States of America, we considered OCA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. However, as discussed below, we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Company's financial statements will not be prevented, or detected and corrected, on a timely basis. We consider the following deficiencies in OCA's internal control to be material weaknesses:

Lack of Timely Financial Reporting Oversight: It appears from the numerous significant deficiencies and other matters described below that management and/or the Board of Directors is not timely reviewing the monthly financials, particularly the balance sheet, for general reasonableness or for more obvious potential errors.

We recommend that management and/or the Board of Directors review the monthly financial statements for unusual balances and variances in light of current operations in order to timely detect material misstatements that may result from either error or fraud.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the following deficiencies in OCA's internal control to be significant deficiencies:



BABUSH NEIMAN
KORNMAN & JOHNSON

CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

No Formal Board Approval of Certain Community Enhancement or Reserve Fund Activity: It was noted that there was no formal board approval of certain fund activity. There was fund activity during the year that was not accurately reflected and there was no evidence of formal board approval of transfers between the funds and the operating fund.

It is highly recommended that board approval of all sources and uses of fund balances and changes thereto be formally documented in the board meeting minutes whether the approval is done before the activity or subsequently.

Incorrect Entries to Community Enhancement or Reserve Fund Equity Balances: It was noted that erroneous entries were made to the funds' opening equity balances during the year. The result was that net income was overstated by \$43,370. These items were for current year expenses that should have been reflected in the operating fund with a corresponding transfer to the operating fund and a corresponding transfer from either the capital reserve or community enhancement fund.

We recommend that management routinely review the fund accounting (the funds' cash and equity accounts) throughout the year to ensure all fund account activity is accurately recorded and approved.

Improper Recording and Maintenance of Bad Debt Expense and Allowance for Doubtful Accounts: During the audit it was noted that there is no formal policy for recording bad debt expense and allowance for doubtful accounts and that necessary review and adjustments are not being performed throughout the year. Bad debts were appropriately written off to the allowance for doubtful accounts during the year. But, no additional allowance or bad debt expense was being recorded for the current year. The result was that the allowance for doubtful accounts had a significantly understated debit balance of \$9,093 and bad debt expense was significantly understated as \$34,590. After the review with management and making necessary audit adjustments, the adjusted allowance for doubtful accounts became a credit balance of \$93,000 and the adjusted bad debt expense was \$136,683.

We recommend that management put in place a formal policy to record bad debt expense and monitor the allowance for doubtful accounts. All write-offs of specific accounts should be written off against the allowance for doubtful accounts. And, the allowance for doubtful accounts and related bad debt expense should be reviewed and adjusted as necessary monthly.

Capital leases Not Recorded Correctly: It was noted that the Company recorded a capital lease liability of approximately \$61,000 that was in Oldfield Club's name.

We recommend for ease of accounting that leases be taken by the entity that will be using the leased property.

During our audit, we also became aware of the following deficiencies in internal control, other than significant deficiencies or material weaknesses, and other matters that are opportunities for strengthening internal controls and operating efficiency:

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Inconsistent Fixed Assets Capitalization Policy: Material fixed asset purchases with long term useful lives were being improperly expensed.

We recommend that a formal capitalization policy be put in place and that fixed asset purchases be recorded accordingly.

No Reconciliation of Fixed Asset Accounts: Fixed asset accounts, including accumulated depreciation, were not being reconciled monthly and thus inappropriate entries were being recorded to the fixed asset accounts and went undetected.

We recommend that a fixed asset rollforward schedule be maintained monthly to track purchases, sales and depreciation expense to timely identify and correct incorrect entries to these accounts.

No Reconciliation of Accounts Payable Sub-Ledger to General Ledger: It was noted that the accounts payable detail from Strongroom did not reconcile to the general ledger and there was no reconciliation performed.

We recommend that the accounts payable detail be reconciled to the general ledger monthly. We also recommend that no journal entries be made to the accounts payable general ledger without consideration of how the accounts payable sub-ledger (Strongroom) will be effect and what, if any, adjustments are needed to the sub-ledger.

Overstated Deferred Revenue: It was noted that some of the customers booked as "prepaid" were no longer prepaid. The deferred revenue schedule prepared had customers payments (revenue) of \$748 on the schedule that had should have been recognized into income.

We recommend that the deferred (prepaid) revenue schedule be reviewed and adjusted as necessary monthly.

Accrued Expenses Not Accurately Captured and Recorded: It was noted that numerous 2015 expenses, totaling \$20,854, paid in 2016 were not being accurately accrued for as of year-end.

We recommend that management put in place proper procedures to ensure completeness of accrued expenses as of year-end.

Lack of Reconciliation of Related Party Due To/from Accounts: The due to/from Oldfield Club account was not reconciled with the Oldfield Club at year-end. They were out of balance with each other by \$17,400.

We recommend management reconcile all due to/from accounts on a monthly basis and maintain detail schedules of the individual items outstanding between the entities.

Documentation Regarding Related Party Allocations: The Club and Oldfield Community Association share in common expenses throughout the year which involve allocations and prorations between the entities based on the operations of each entity. There is no formal supporting documentation for the monthly allocations of these shared expenses between the Company and Oldfield Community Association.



We recommend that a schedule of monthly allocations be maintained and that schedule of allocations be reviewed and approved routinely by management and the Boards of both entities.

Incorrect Recording of Audit Adjusting Journal Entries: Adjusting journal entries resulting from the audits are not being recorded correctly in the OCA's general ledger.

We recommend that management reconcile the OCA's trial balance after the audit entries are made to the trial balance provided by BNKJ. Any entries to accounts receivable and accounts payable should be corrected also at the sub ledger level as well as at the general ledger level.

We will review the status of these comments during our next audit engagement. We have already discussed many of these comments and suggestions with various Company personnel, and we will be pleased to discuss them in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing the recommendations.

This communication is intended solely for the information and use of management, Board of Directors, and others within the Company, and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Babush, Neiman, Kornman & Johnson, LLP
Atlanta, Georgia

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EXHIBIT 1
TO THE SECOND
AFFIDAVIT OF ROB
STAR

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NOTE TO CLERK: Please cross-reference to: Book 1354
Page 1455

Upon recording, please return to:
Jo Anne P. Stubblefield, Esq.
Hyatt & Stubblefield, P.C.
1260 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303

FIRST AMENDMENT TO THE
DECLARATION OF RECREATIONAL COVENANT FOR OLDFIELD CLUB

THIS AMENDMENT is made this 19th day of March, 2001.

WITNESSETH

WHEREAS, Oldfield, LLC, a South Carolina limited liability company ("Declarant"), executed and filed that certain Declaration of Recreational Covenant for Oldfield Club, which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354, Page 1455, *et seq.* (the "Covenant"); and

WHEREAS, Section 4.2 of the Covenant provides that the Covenant may be amended by an instrument signed by the Club Operator and by owners of a majority of the Residential Units and by Declarant, so long as Declarant owns any portion of the property subject to that certain Declaration of Covenants, Conditions, and Restrictions for Oldfield which was recorded in the Office of the Register of Deeds of Beaufort County, South Carolina on November 17, 2000 in Book 1354 at Page 1359, *et seq.* (the "Residential Declaration"), or has an option unilaterally to submit additional property to the Residential Declaration in accordance with its terms; and

WHEREAS, the Declarant desires to amend the Covenant for the purpose of creating two dues categories for Community Members, one category for Residents and one category for Non-residents; and

WHEREAS, the Declarant is the Club Operator; and

WHEREAS, the undersigned owners constitute the owners of a majority of the Residential Units; and

WHEREAS, the Declarant currently owns property subject to the Residential Declaration and has an unexpired option to submit additional property to the Residential Declaration;

NOW, THEREFORE, the Covenant is hereby amended by deleting Section 3.1 in its entirety and replacing it with the following:

~~3.1~~

Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

(b) the costs of janitorial service, maintenance and repair, property and liability insurance; and similar ongoing expenditures related to such facilities; and

(c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;

(d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and

(e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Members shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. Dues for Non-resident

2

Members shall be equal to an amount that is \$450.00 less than the amount charged Resident Members. Club Operator shall provide a copy of such budget to the holder of each Community Membership at least 45 days prior to the effective date of such budget, along with notice of the amount of the dues payable for such budget year.

Any usage fees charged to Community Members shall not exceed the amount charged to other classes of members with comparable use privileges.

The obligation to pay dues and usage fees for Community Memberships shall commence no earlier than the first day of the first month following the date on which a permanent social and dining facility is available for use by Community Members.

IN WITNESS WHEREOF, the Declarant has set its hand and seal as of the date first above written.

DECLARANT: OLDFIELD, LLC, a South Carolina limited liability company

By: Crescent Resources, Inc., a South Carolina corporation, its sole member

By: C. S. Mitchell
Charles S. Mitchell, Vice President

IN THE PRESENCE OF

[Signature]
Witness

[Signature]
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19th day of March, 2001 by Oldfield, LLC, a South Carolina limited liability company, by Crescent Resources, Inc., its sole member, by Charles S. Mitchell, its Vice President, on behalf of the limited liability company.

[Signature]
Notary Public for South Carolina
My Commission Expires: May 01, 2002

1285/CADoc/0201/v1e-1ps

Subject: Club Dues Update
From: Oldfield Club (oldfield@hamptongolfclubs.com)
To: ringo52673@yahoo.com;
Date: Thursday, February 7, 2013 1:04 PM

Having trouble viewing this email? [Click here](#)



Dear Oldfield Member,

Oldfield is a very unique community built on the foundation of a lifestyle offering that encompasses golf, boating, river access, social activities, equestrian, nature and fitness. Not only is the amenity package unparalleled but it is also coupled with a dues structure that is on average 58% lower than other comparable private communities. The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Therefore, effective April 1, 2013, we will increase Community Dues to the following annual structure:

- * Resident Dues - \$4,560
- * Non - Resident Dues - \$4,000
- * This increase will be pro rated for 2013. There will be no increase to POA or Golf Dues

With this increase we will amend the access privileges granted to community members to allow for limited golf access including 10 complimentary rounds per year (including cart fee) and use of the practice facilities. With this new access to the golf course our hope is that you connect with other members, enjoy lunch after a round of golf, and most importantly, invite your friends and family to join you.

Also effective April 1, we will discontinue the "Member for a Day" program. We will continue to use the golf course to promote Oldfield but with a limited offering of complimentary rounds only available to qualified prospects for either

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9/21/2017

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real estate or membership.

We remain committed to our efforts to develop and grow this Club and to maintain the lifestyle that defines Oldfield.

Regards,

Club Board of Directors
Oldfield Club

Forward email

 SafeUnsubscribe



This email was sent to ringo52673@yahoo.com by oldfield@hamptongolfclubs.com |
Update Profile/Email Address | Instant removal with SafeUnsubscribe™ | Privacy Policy.

Oldfield Club | 130 Oldfield Way | Okatie | SC | 29909

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9/20/2017

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Subject: 2013 Budget Explanation and Clarification
From: Oldfield Club (oldfield@hamptongolfclubs.com)
To: ringo52673@yahoo.com;
Date: Monday, March 4, 2013 6:00 PM

Having trouble viewing this email? [Click here](#)



Dear Oldfield Members,

There appears to be increasing confusion regarding the allocation of dues income resulting from the dues increase that will go into effect April 1. The increase will be applied to the Community Membership Dues component of the Club. The increase will in no way subsidize the golf operation of the Club and is also not part of the POA Base Assessment. All Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of all Club Facilities, not the Golf Course, Golf Maintenance or Golf Shop.

2013 Budget for Golf Course & Golf Shop:
 Golf Income - TOTAL: \$449,220
 Golf Dues - TOTAL: \$620,172
 TOTAL GOLF INCOME: \$1,069,392
 TOTAL GOLF EXPENSE: \$1,149,260
 (including Golf Maintenance)
 TOTAL GOLF NET: (\$79,868)

Any remaining Golf Operations deficit for 2013 will be funded by the Sponsor, TI Oldfield Operations.

Dues for the Community Membership are applied only to the overhead costs and costs of operating, maintaining and repairing the amenities to which Community Members have access. Below is a list of the Operating Deficits for each Club amenity. These numbers are reflected in the new 2013 Budget that was just recently sent out.

Food & Beverage NET: (\$238,130)
 Sports Center NET: (\$315,675)

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Outfitters Center NET: (\$58,078)
 Equestrian NET: (\$65,673)
 Greeter's Store NET: (\$31,708)
 Lodging NET: (\$2,577)
 Facility Maintenance NET: (\$113,697)
 Membership Department NET: (\$27,627)
 Administration Department NET: \$614,495
Includes Total Dues Income(except Golf) of \$1,639,336

TOTAL CLUB FACILITIES NET: (\$238,670)

These numbers are based upon past performance of the Club. While past performance cannot guarantee future performance of the Club, the budgeted amounts are accurate enough to demonstrate that there are substantial deficits to support.

In funding these deficits, the Sponsor, TI Oldfield Operations, is also funding a contribution to the OCA Capital Reserve Fund. There are three capital funds that include the OCA Capital Reserve Fund, Club Capital Reserve Fund and Community Enhancement Reserve Fund. Currently those funds total just over \$1.6 million and over the past two years the Sponsor has funded \$100,000 to the OCA Capital Reserve and successfully collected \$62,545 in funding owed by Crescent Resources. Another critical source of funding for the OCA Capital Reserve comes from community enhancement fees collected on property sales, and over the past two years these fees totaled more than \$100,000. Total funding in 2011 and 2012 is in excess of \$260,000.

Continual funding is clearly needed and that is why your support throughout the community and Lowcountry is so vital. We now have a marketing campaign that is strategically targeted and is producing results. Property sales contribute to our dues line, to our capital reserve and ultimately supports our sustainability. Every membership sale not only contributes to the golf operation but connects more members to every component of the club resulting in greater utilization of our amenities. Our unified support and total commitment to growth in sales, membership and usage are essential to the success of Oldfield Club.

We remain devoted to these efforts and hope that by providing more information on the 2013 budget for the Club and the current state of the reserves we have alleviated some confusion and misconceptions throughout the community.

Best regards,
Jamie D. Selby
General Manager

forward email

 SafeUnsubscribe

 Constant Contact
Try it FREE today.

This email was sent to ringo52673@yahoo.com by oldfield@hamptongolfclubs.com |
Update Profile/Email Address | Instant removal with SafeUnsubscribe™ | Privacy Policy.

Oldfield Club | 130 Oldfield Way | Okatie | SC | 29909

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Rob Star

From: [Redacted]
Sent: Monday, January 28, 2013 11:18 AM
To: [Redacted]
Subject: EM: 2642 Budget Explanation and Clarification

← DATE I forwarded email to myself

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-888-5710
(c) 703-748-1177

DATE

www.mrcgroup.net

From: Phillip Galbreath [mailto:phillip@sfcapitalgroup.com]
Sent: Monday, March 11, 2013 11:18 AM
To: Rob Wilson <rwilson@mrcgroup.net>
Subject: Re: 2013 Budget Explanation and Clarification

Rob - sorry I thought I had responded. I am just not sure what else I can say or tell you. We laid out the exact budget items to the community, showing the golf deficit and overall deficit for the Club. I can tell you the numbers are the numbers, as you and I both know any time we produce anything it will be highly scrutinized and "checked out". So you are not subsidizing the golf course with this dues increase.

I am always happy to schedule a call with you, I am just afraid we are at an impasse and not sure what else there is to say, or what I can share that is going to change your opinion. That being said, I respect you and am more than happy to talk if you want.

I don't have another scheduled trip right now, but I am sure I will be down there in the next 6 weeks or so.

Thanks and again I apologize for not responding to your initial email. That was my oversight.

I had not heard about the ad regarding Buzz, but I must say that I stand by my hope that we get rid of him. The add is a little extreme but he needs to go.

Phillip Galbreath
SF Capital
678-524-3523 - Mobile
770-390-2555 - Office
phillip@sfcapitalgroup.com

On Mar 11, 2013, at 11:03 AM, Rob Wilson <rwilson@mrcgroup.net>

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wrote:

Phillip

I'm a little surprised that I haven't heard back from you on my note below as you're typically very responsive. I certainly hope everything is OK

In regards to my comments, I remain skeptical that Community members aren't subsidizing the golf club with this new dues increase and I'd love to have a discussion with you to help me better understand the specifics. Any chance another Oldfield trip is on the near term horizon? Sorry that I was totally booked up last week when you guys were here

If not, maybe we can schedule a call

On another note, I suspect that you saw that an ad was taken out in the OG+B to fire Buzz - USA Today actually had a small story about it. I think his road record over the last 4 years (including Colorado) is like 2-47....staggeringly bad. The 13-17 finish this year is frustrating because the team clearly had the potential to win 15 or 16 and didn't seem to make any improvement on the road. I continue to think that next year needs to be the last for Buzz if he doesn't have a very good season (at least 18 wins and an NIT trip)

Again, I hope that things are OK and will look forward to your feedback

Rob

Rob Wilson | MRC group Inc.
Aligning Leaders with Technology Companies
1420 Spring Hill Rd., Ste. 600, McLean, VA 22102
(c) 703-866-5710
(o) 703-748-1177

www.mrcgroup.net

From: Rob Wilson [mailto:rwilson@mrcgroup.net]
Sent: Tuesday, March 05, 2013 11:31 AM
To: 'Jamie Selby'
Cc: 'Phillip Galbreath'
Subject: RE: 2013 Budget Explanation and Clarification

Thanks for the note Jamie

Perhaps the confusion stems from the initial letter sent by the Club Board that states the following...

The model of membership at Oldfield is also very different, allowing owners the choice of whether or not to participate as a golf member. While this model is convenient for current owners and attractive for potential buyers, it does not support community-wide sustainability.

Couple that statement with the new golf access / privileges granted to all community members and the announcement that the public "member for the day" program was being discontinued, and any rational reader can only come to the conclusion that the cost of the golf course is the reason for the increase in dues (...and that access to the golf course was being offered in return for the additional fees - almost a new form of membership)

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9/20/2017

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Subject: Letter from Community Members

From: Rob Wilson (rwilson@mrcgroup.net)

To: richardpricejr@gmail.com; gerry@militaryjusticeattorneys.com; gapatic@aol.com; prosell@yahoo.com; nsmllari@msn.com; whstephens@hargray.com; cannizz@hargray.com; bhammle@me.com; hjohnstonnsc@aol.com;

Date: Sunday, May 5, 2013 1:25 PM

May 5, 2013

To: Oldfield Community Counsel (OCC) Board Members

On February 7, 2013, Oldfield Club Members received an email from Management announcing a dues increase. The 2013 budget illustrates that the increase was due to a decrease in golf revenue and a decrease in the developer's contribution. We realize that these are decisions driven by TI but we are greatly concerned with the precedent that has been set by charging the non-golf membership for access to an amenity that was not a part of the original club structure they bought.

While we support the Golf Club, we are alarmed that the OCC has remained silent on the recent dues increase and adjustment made to our membership structure. Rather the OCC Board seems focused on a drive towards turnover of the club from TI to the members. We reject this modification to our membership and the undersigned members hereby respectfully demand a response from the OCC board regarding the issues presented:

1. In recent e-mail from Management, justification for the increase in dues is mostly to offset the cost of operating the Community Club, and not the Golf Club. The email states "All Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of all Club Facilities, not the Golf Course, Golf Maintenance or Golf Shop." The financial analysis shared in the email goes to great efforts to show a modest loss for the Golf Club (\$79,868) and a more severe loss for the Community Club (\$238,670).

2. Even a modest 25% allocation of the Administrative expenses to Golf would completely reverse the deficit claimed in TI's dues increase explanation. A 25% allocation of the G+A expenses to the Golf Club would make the current golf deficit closer to \$330k/year (\$79k+\$250k) while the Community club would be break even. It is clear the accounting practice employed by the club masks overhead for the Golf Club in the General and

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Administrative section of the Club. We are aware that this has always been the practice employed by the community but as the developer subsidy has been reduced and the OCC is driving towards turnover we think it is time to fully understand the budget and the allocation of expenses.

3. In the OCC presentation regarding the reserve study, the OCC accepts the recommendations of \$644,987 of annual minimum funding. Although this number may be high, even at half that amount members will still need to contribute approximately \$320,000 annually. During the recent OCC turnover presentation Rick Price stated those reserve needs are roughly 58% for golf and the remainder for other club assets. Since we do not have any contribution now to a Club Reserve and will be deferring these contributions until we achieve turnover, there could be three years of deferral in addition to \$320k/year. This would create a \$960k contribution in arrears and an additional \$320k in year one. If you allocate the reserve based on the current membership of roughly 400 homeowners and 110 equity golf members, this is what the community is facing:

Annual Reserve Need:

Golf Members = $\$2,023$ annually (58% of \$320k/year = \$185,600
 $\$185,600/110$ equity members = \$1,687 + \$336 Community = \$2,023)
 Community Members = $\$336$ annually (42% of \$320k/year = \$134,400
 $\$134,400/400 = \336 annually)

One time Deferred Reserve Need:

Golf Members at 58% of \$960k = \$556,800 or $\$5,061$ /equity member
 Community Member at 42% of \$960k = \$403,200 or $\$1,008$ /member
 Total one time Golf member deferred reserve need is $\$6,069$

4. The Members that are signing this letter are concerned that this modification to our membership initiated by TI will foster a new model where all members pay equally for all the amenities to which they may have access. We believe this to be a significant change to our Membership and includes us in the potential Golf liabilities illustrated above.

5. We wish to support the OCC and would like written assurances that ALL golf overhead, including Administrative costs, annual reserve needs, deferred reserve needs and any and all deferred repairs and maintenance will be the sole responsibility of the golf members, whether equity or not, while maintaining the privacy of our first class gated community. That the model for membership within our community is not a quasi membership class where members get limited access to golf amenities while the expenses continue to get spread out across all homeowners. We are specifically asking for a pledge to the

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membership that if we support your membership drive you will ensure that the Oldfield Club will function as a Club that has a financial firewall between golf and the community and a Board that protects the interests of the 75% of the community that purchased property with these financial expectations.

Regards,

Robert and Dianne Wilson
Bruce and Faithe Berger

Brandon and Kyleen Bright

Robert and Cynthia Haas

Chuck and Debbie Hobbs

Todd and Meghan Cowart

Chris and Christy Murphy

Geoffrey and Linda Moebius

Dan and Sandi Green

Richard Merlino

Bob Weinfeld

Robert and Melissa Star
Vince and Jane Cammarato

Rush and Jessica Lowther

Marc and Sue Haas

Todd and Jenny Cawthon

Luis and Rosita Vega

Chuck and Patti Young

Bob and Buchanan Shaw

Tom and Liz Sferlazzo

Suzanne Walter

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HAAS ROA 000646

May 30, 2013

Via: Electronic Delivery at rwilson@mrcgroup.net

From: Oldfield Community Council Board

To: Mr. Robert Wilson and all other OCC member signatories.

RE: Response to May 5, 2013 letter to "Oldfield Community Council & Oldfield Community Members"

Please accept this correspondence as our response to your letter received on May 5, 2013.

Before responding to your stated issues, we are happy to read of your support for the golf club. As fellow Oldfield homeowners, we are sure you realize how important the golf course is to the overall success of the community, and we hope you will continue to support the golf club.

Over the past several months the Oldfield Community Council Board has made a good faith effort to communicate to the overall community of their collective position on a host of issues, such as, but not limited to: turnover, financial estimates for OCA and Club, capital reserves for OCA and Club, and golf membership drives. Moreover, the Board recently provided two open forums to the community-at-large to discuss many of the issues stated above, and outlined its financial path to turnover. During these most recent meetings, the Board provided printouts of detailed financial estimates, reviewed relevant language in the governing documents, as well as provided a "questions and answer" session for all attendees. Thus, the Board rejects any notion that it has remained silent, or shirked any of its obligations to its membership and the community.

1. Dues Increase. Pursuant to the governing documents, the sponsor, prior to the turnover date, has the right to set and change the dues and other charges payable by the members. Additionally, the sponsor may establish different levels of dues for each classification of membership, including community memberships. Although the Board did not support the April 1, 2013 dues increase and, in fact, expressed to TI its opposition to it, the Board does not believe that TI has violated any relevant sections of the governing documents regardless of any perceived justification for the dues increase.

2. Adjustment made to our membership structure. The Board presumes the "adjustment to membership structure" you write of involves the recent amendment increasing the rounds of golf for all Club members to ten from four, as well as access to the golf course practice facilities. Although, the Board did not support this amendment, it does not believe TI has violated any relevant sections of the governing documents; but rather this change is in fact envisioned in such documents. Accordingly, the Board believes TI did not make an "adjustment" to the membership structure; but rather made a change to the existing community membership classification allowing for more golf rounds. Furthermore, if the increase in golf rounds for

community members is to be construed as a significant "adjustment" to its existing structure it would represent the second such adjustment - the first being the May 16, 2005 amendment to the bylaws allowing for the allotment of "four (4) rounds of golf per calendar year.

3. *Accounting practice employed by the club.* The Board appreciates your attempts to quantify the cost to Club members with respect to the Miller-Dodson recommendation, which provides a three-year deferral of annual contributions in the amount of \$645,000 to reserves. Such a deferral has a cost, but the appropriate calculation follows:

Amount of capital replacements from 2013 to 2035 (M+D)	\$14,645,445
# of years from 2013 to first peak yr in 2035	23
Annual funding	\$636,758
# of years from 2015 to 2035	20
Updated annual funding due to 3 "lost" years	\$732,272
Increase of annual funding required due to 3 "lost" years	\$95,514

In the recent financial presentation, the Board presented a 2016 financial estimate based on certain assumptions, including constant dollars, and turnover being achieved. The conclusion in the Board's presentation with regard to the funding of the Club Reserve was \$612,140 of projected funding from operations would leave a shortfall of 6% in achieving the Reserve funding goal of \$650,000. A \$95,000 adjustment to the annual funding because of a 3-year deferral in the commencement of funding would produce an 18% shortfall as shown below:

2016		
Presentation	Adjusted	
\$650,000	\$555,000	Annual Reserve funding
\$612,140	\$517,140	Funding from operations
\$37,860	\$37,860	Shortfall
6%	6%	Shortfall %
435	435	# of Club members
192	192	# of Golf members

4. *Financial firewall.* Although we would appreciate your support for the recent golf membership drive, we are unable to provide you any assurances of Club dues not being applied to golf operations. Whether there should be a "financial firewall" between golfers and non-golfers is not for the Board to decide while the Club is managed by the sponsor. Indeed, if TI chose to make such a firewall between golfers and non-golfers, they would have to modify the governing documents to do so. As you know, the sponsor has wide latitude to set Club dues and modify community memberships in order to make the overall Club a viable one. Moreover, the sponsor has discretion to manage and allocate the dues collected in their better business judgment. The Board does note the possibility of some Club dues being applied to golf operations, particularly if golf membership revenues do not increase.

The Board believes the best way forward to resolve this issue *until* turnover is to focus on generating more golf members, and in doing so making the possibility of Club dues subsidizing golf operations a remote one.

We will continue our evaluation of the issues you raise as we have discussions about the issues with our members and TI.

Very Respectfully,

OCC Board

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Oldfield Finance Committee
Meeting Minutes for October 22, 2013 (Held at the Golf Clubhouse)

Present: Frank Roland: Chair, Fred Church: Secretary, Jay Barr, Robin Doorly, Rob Star

Absent:

Next meeting: Tuesday, November 5, 2013 @ 1:00 PM

-
1. The meeting was called to order by the Chair, Frank Roland at 1:00 PM.
 2. The Minutes of the September 19, 2013 meeting were approved.
 3. We welcomed Rob Star as a new member of the Finance Committee.
 4. We reviewed and discussed the financial package that would be regularly circulated to the Committee and the OCC Board. Subject to a few additions it was approved.
 5. We then began a discussion of modeling the OCA, Club and Golf numbers to be continued at our next meeting.

Next Meeting – Tuesday, November 5, 2013 @ 1:00 PM

The Meeting adjourned at 2:15 PM

Minutes prepared by Fred Church, Secretary

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Subject: 2014 Club Membership & OCA Update
From: Oldfield Club (oldfield@hamptongolfclubs.com)
To: ringo52673@yahoo.com;
Date: Friday, November 15, 2013 4:50 PM

Having trouble viewing this email? [Click here!](#)



November 15, 2013

Dear Oldfield Members,

It seems we all feel every year that time flies by quicker and quicker. We're soon closing out yet another year and we've had some great things happen for the community and residents. We've added 67 new Golf Members this year, 13 of which have been Equity Golf Members. This growth in membership is important for so many reasons that go far beyond just golf. We have a new group of supporters and Raving Fans of Oldfield, spreading the word of how incredible Oldfield really is. Additionally, our daily a la carte lunch and dinner business is stronger than ever. Food & Beverage continues to grow and now on any given night at the Grill or the River Club is busy and vibrant...just as any successful Club/Community should be.

With the recent transaction of Bald Eagle Partners, we will now have two developers working toward one common goal to sell property and build homes which will ultimately contribute immensely to the growth and long term sustainability of Oldfield.

We continue to make ongoing Club and Community improvements both in our programming and services offered to our members and in the infrastructure and facility upkeep throughout. Numerous repairs and additions were made to the Golf Course, Equestrian Facilities, Sports Club and Tennis, River Club, Outfitters Center and community assets as well. However, this is a big property with many components and there's still a lot more to do. We remain committed to these ongoing improvements and work will continue throughout 2014.

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We sincerely appreciate your generous support of all that is so vital to our success - participation, growth, a positive message and our staff. This is a special place, and a place we all love, Members and Employees alike. We continue to offer our unconditional commitment to enhance your membership experience and enrich your lives here at Oldfield Club.

You may download the Final 2014 Club Budget by clicking the corresponding link:

- Please note, there have been no increases in dues or assessments.

[2014 Club Budget](#)

My best regards,



Jamie D. Selby
General Manager

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Oldfield Club - 2014 Budget
 Profit & Loss Budget Overview
 January through December 2014

	Jan 14	Feb 14	Mar 14	Apr 14	May 14	Jun 14	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	TOTAL Jan - Dec 14
Ordinary Income/Expense													
Income													
40000 - Merchandise - Income	3,200.00	3,200.00	7,200.00	10,000.00	8,400.00	8,000.00	8,000.00	7,400.00	8,400.00	10,000.00	9,000.00	5,000.00	82,700.00
41000 - Golf Sales - Green and Cart Fee	84,000.00	7,700.00	18,600.00	18,000.00	8,600.00	7,700.00	10,700.00	8,300.00	8,600.00	13,500.00	7,250.00	8,300.00	138,950.00
42000 - Other Golf Revenues	8,000.00	18,600.00	41,000.00	14,000.00	13,000.00	13,000.00	13,000.00	13,000.00	22,000.00	18,000.00	13,000.00	8,000.00	222,200.00
43000 - Membership Income - Other Fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
44000 - Food - Sales	13,710.00	14,410.00	32,725.00	30,850.00	71,863.00	37,250.00	37,533.00	22,350.00	42,520.00	43,150.00	27,050.00	30,850.00	477,820.00
45000 - Non-Alcoholic Beverages Sales	650.00	830.00	800.00	1,050.00	1,400.00	1,050.00	1,420.00	1,000.00	1,500.00	1,450.00	750.00	750.00	12,330.00
46000 - Beer - Sales	830.00	870.00	4,330.00	4,350.00	3,000.00	1,750.00	2,250.00	1,250.00	2,450.00	4,330.00	2,300.00	2,000.00	31,250.00
47000 - Wine - Sales	2,330.00	1,825.00	8,650.00	8,450.00	13,725.00	4,650.00	8,300.00	4,150.00	7,100.00	8,975.00	4,750.00	3,225.00	67,450.00
48000 - Liquor - Sales	1,750.00	1,825.00	8,300.00	8,450.00	8,300.00	3,575.00	3,575.00	2,100.00	6,150.00	8,000.00	4,750.00	3,400.00	49,750.00
49000 - Outlets - Income	3,700.00	7,725.00	9,075.00	8,200.00	8,200.00	7,200.00	8,220.00	7,770.00	8,220.00	7,920.00	7,420.00	6,470.00	83,340.00
50000 - Equations Cents-Income	9,220.00	9,870.00	13,725.00	8,400.00	9,720.00	13,750.00	13,020.00	13,020.00	13,720.00	13,370.00	8,250.00	9,470.00	119,240.00
51000 - Sports Center - Income	400.00	600.00	810.00	0.00	23.00	25.00	0.00	0.00	0.00	25.00	0.00	0.00	1,663.00
52000 - Rental Property	3,000.00	8,250.00	23,500.00	20,800.00	29,000.00	25,000.00	14,500.00	18,000.00	14,000.00	13,000.00	13,000.00	8,000.00	200,650.00
53000 - Membership Dues - Income	214,807.00	214,807.00	213,323.00	213,323.00	214,810.00	214,804.00	213,323.00	214,807.00	213,323.00	213,323.00	213,323.00	213,323.00	2,377,323.00
54000 - Other Revenues	8,218.70	13,174.50	24,254.40	32,211.00	48,008.70	37,483.00	32,201.00	13,020.00	23,520.00	28,000.00	21,133.50	13,941.10	254,086.90
55000 - Etched Programs	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-200.00	-2,400.00
Total Income	343,879.70	244,778.50	437,819.60	431,183.00	422,644.70	371,213.00	333,222.00	323,302.00	373,872.00	331,877.00	313,711.50	317,479.10	4,203,940.00
Cost of Goods Sold													
60000 - Merchandise - COGS	2,494.50	2,870.00	8,107.50	7,177.00	5,925.00	6,033.00	7,633.00	8,250.00	8,043.00	7,807.50	6,407.50	4,150.00	63,030.00
61000 - Food - COGS	8,250.00	8,307.50	17,048.75	21,822.00	30,294.25	13,658.00	12,041.50	9,782.00	17,973.75	20,228.00	11,820.50	13,044.50	182,854.50
62000 - Non-Alcoholic Beverages - COGS	400.00	523.75	591.00	820.00	725.00	675.00	523.75	523.75	523.75	615.00	478.50	450.00	7,425.00
63000 - Beer and Wine - COGS	1,400.75	873.75	3,975.00	4,540.00	4,354.25	2,340.00	3,123.25	2,044.75	3,128.00	3,331.00	2,491.50	2,262.75	34,232.45
64000 - Liquor - COGS	423.00	615.40	1,800.00	1,814.00	1,710.00	1,677.00	1,472.00	850.00	1,710.00	1,823.00	1,410.00	1,062.00	14,918.40
Inventory Under Cost of Goods	20,000.00	6,200.00	10,500.00	16,100.00	12,250.00	10,200.00	8,400.00	11,000.00	6,500.00	12,000.00	8,125.00	6,000.00	113,400.00
Total Costs	14,722.10	14,823.33	44,951.20	54,953.00	52,112.50	41,642.50	34,020.00	29,300.75	39,301.25	43,620.50	31,822.00	20,624.25	424,477.30
Gross Profit	334,879.60	234,822.24	392,718.40	380,229.20	370,532.20	329,570.50	303,172.00	294,001.25	334,570.75	288,256.50	281,889.50	296,854.85	3,779,462.70
Expenses													
80000 - Salaries & Wages	129,801.50	128,311.00	132,700.15	144,191.33	212,103.03	162,825.07	147,317.73	133,762.11	162,254.03	211,972.44	163,176.97	123,204.03	1,722,432.33
81000 - Contractors & Doers	3,337.00	3,197.00	3,547.00	4,627.00	4,847.00	4,474.00	3,827.00	3,197.00	3,677.00	3,617.00	3,087.00	4,247.00	44,184.00
82000 - Contract Labor	2,830.00	650.00	8,200.00	2,820.00	2,430.00	2,800.00	4,080.00	2,200.00	1,920.00	4,800.00	1,950.00	1,950.00	30,250.00
83000 - Employee Expenses	10,431.33	17,400.67	17,023.04	13,193.44	23,105.03	18,297.02	19,307.74	10,300.00	18,630.03	23,710.81	21,010.46	18,663.78	234,972.20
84000 - Employee Benefits	4,263.32	4,306.32	4,264.32	4,418.62	4,418.62	4,418.62	4,418.62	4,418.62	4,418.62	4,418.62	4,418.62	4,418.62	52,377.84
85000 - Employee Utilities	418.00	800.01	3,063.31	673.05	1,043.65	1,501.78	1,424.43	593.57	2,300.00	1,450.00	825.00	825.00	14,441.18
86000 - Automobile Expenses	600.00	600.00	575.00	600.00	600.00	575.00	600.00	600.00	600.00	600.00	600.00	600.00	6,750.00
87000 - Travel and Entertainment	1,125.00	2,435.00	750.00	830.00	541.00	405.00	1,720.00	370.00	670.00	820.00	410.00	410.00	6,250.00
88000 - Employee Training & Education	250.00	650.00	750.00	530.00	200.00	60.00	600.00	300.00	0.00	60.00	0.00	100.00	2,830.00
89000 - Employee Expenses - Other	150.00	133.00	133.00	133.00	133.00	133.00	133.00	133.00	133.00	133.00	133.00	133.00	1,620.00
90000 - Events and Turnovers	2,784.00	1,870.00	2,880.00	4,323.00	3,770.00	2,320.00	10,470.00	1,320.00	4,870.00	4,470.00	2,770.00	2,220.00	44,170.00

00000 • Hampton Golf Fee	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	3,333.00	30,892.00
00000 • Price Year Adjustments	0.00	2,500.00	0.00	0.00	2,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,000.00
Total Other Expenses	-10,832.65	-7,828.63	-10,837.63	-11,187.63	-17,837.63	-12,837.63	-11,063.63	-10,634.63	-10,630.63	-10,373.63	-10,003.63	-10,644.63	-142,873.63
Total Other Income	10,617.65	6,061.63	10,632.63	11,512.63	17,612.63	12,622.63	11,181.63	10,782.63	10,637.63	19,458.63	10,130.63	10,782.63	144,073.63
Net Income	47,794.60	-12,317.54	33,428.16	-21.40	-31,032.78	-6,872.21	-20,532.44	-23,542.21	6,922.79	-27,172.53	12,788.45	21,882.69	-20,507.82

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HAAS ROA 000655

7/24/2014
From: Rick Price

Key Assumptions

1. Terms of the TI/BE deal as explained to the community - very important re "base case" run
2. We will continue to operate as we do today including:
 - a. Continuation of the HG/Jamie contract
 - b. No F&B minimum
 - c. Continued catering (weddings) business
 - d. No additional changes in allocations - Club to OCA and within Club between golf and non-golf
3. No turnover expenses or revenues except recovery of the 5% SC tax - no professional expenses (e.g. legal and engineering), no payments from TI, no payments to TI
4. Further bifurcation of golf/non-golf accounting within Club, essentially treating golf like the OCA (e.g. separate golf and non-golf Reserves)
5. Club Turnover 12/31/14
6. No update to M+D conclusions reflecting (i) escalation, (ii) differences between 2013/14 actual vs M+D assumptions, and (iii) some asset movement between Club and OCA (e.g. Greeters store)
7. 10 BE sales from its 77 property purchase in each of 2016 and 2017

Rob Star

From: Richard Price [richardpricejr@gmail.com]
Sent: Thursday, August 07, 2014 5:13 PM
To: Joseph Barr; W W Hamilton; Hank Johnston; Tom & Barb Lake; Bill Stephens; Gerry Healy; Lisa Smith; Frank Roland; steve0017; Steve Doyle; Nick Smilari; hankjohnston@hargray.com; Jerry Petric
Cc: Pat Rau; Robin Doonry; Rob Star; fred church
Subject: Re: OCC Board meeting agenda and materials
Attachments: memo re OCC model3.doc; ATT00001.htm

See the attached "A Guide to the Club Model" that I had prepared for the Finance Committee. Perhaps it will help you navigate your way through this rather large file.

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A Guide to the Club Model

September 21, 17

← Not sure why
Risk Price used this
date - received 8/7/14

Attached are the projections for the Club (x-Golf). For those of us considering Club Turnover for the past couple of years, a major issues is how to deal with a club business model that combines golf and non-golf operations despite provisions in the governing documents that specify different "rules" for matters such as golf and non-golf assessments. Post Turnover, most have concluded that there will need to be two Club capital reserves, one for golf and one for non-golf. That assumption is incorporated here. There are nine "sheets" here.

Start with the Key Assumptions sheet. Please review this carefully as these assumptions are critical. Are there assumptions here that you do not agree with?

Then move to Base ClubModel.

The Base ClubModel sheet is the OCC's financial projections through 2018 for non-golf operations (the "Club"). These projections are based on the Club budget for 2014 as modified by Jamie Selby 7-9-14 to reflect both operating results year-to-date and work done by Patrick Rau and Jamie on Food & Beverage. This unofficial "modified budget" for 2014 shows an operating profit ("Results After Allocations") of \$60,422 (cell C48).

Note that for purposes of this presentation, Turnover is assumed to occur year-end 2014, allowing the Club to build reserves commencing 2105 (cell D53).

The #'s projected for 2015 and beyond are based very significantly on the results for 2014. The current level of Club expenditures results in Oldfield as we see and experience it today. An important, fundamental assumption, is that we will continue to operate as we do today unless, post Turnover, the community chooses otherwise and the post-Turnover Club board acts to implement operating changes, presumably after obtaining community input. This means that we assume that we will continue to offer both our current menu and level of services at all venues. And the menu and level of services will remain unchanged throughout the entire period covered by the projections. The same applies to capital repairs and replacements although this statement is tempered somewhat by the Miller Dodson study that, it might be argued, projects a greater level of repairs and replacements than would be projected by TI.

These projections can be run with or without an inflation assumption. In general, the discussion below will be based on projections with 0% inflation. Obviously there will be inflation, and costs will generally increase at the rate of inflation. So implicit in this "constant \$" approach is the assumption that dues and other revenues will also increase at the rate of inflation.

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In projecting the future financial results for the Club, the two biggest assumptions, the two "drivers", are (i) dues revenues and (ii) the annual contribution to the repair and replacement capital reserve.

Dues revenues are calculated in the sheet labeled "Assessments". It is based on the current level of Club dues and the total # of dues payors. We currently have 432 dues paying members with the potential of 109 future dues payors as there are 541 lots (547 but 6 lots are consolidated). We assume that all of these 109 Bald Eagle ("BE") owned lots become dues payors effective 2018, as per the terms of the TI/BE transaction. However, at the same time, TI will become exempt for Club dues on lots that it owns - currently 36 lots. It is then assumed that BE sells 10 lots in each of 2016 and 2017. As discussed later, I recommend eliminating this assumed sale of 10 lots each in 2016 and 2017 from our "base case" model but have left it in the model for now.

The difference between gross dues and net dues is a 5% SC tax on all Club dues as long as the Club remains owned by a private corporation. When Turnover occurs, the Club will then be owned by members, and this 5% tax will no longer apply. We test the effects of modifying the dues payors assumptions in Run 1, Run 2 and Run 3.

The second major assumption is the level and timing of capital repairs and replacements and the effect of that on the "required" capital reserve contribution each year. This data is presented in sheet M+D. As most will recall, the OCC commissioned a study with Miller Dodson ("M+D") in 2012. The data presented in the M+D sheet is from that report. This data shows that we should set aside an average of \$270,000 per annum from 2015 until 2033 to fund roughly \$5.67 million of expenditures for the repair and replacement of Club capital assets. The Miller Dodson report sets forth assumptions for the repair and replacement of 581 capital assets at the club - golf and non-golf. The vast majority of these 581 assets are Club assets. Some assets are shared between the Club and Golf. Of the \$5.67 million, shared assets represent about \$.62 million of the total. The sharing assumption is 75/25 for Club/Golf. It is beyond the scope of this memo to explain the M+D work. Please see the actual report that is available on the OCC web site.

Line 592 presents the M+D recommended repair and replacement costs for each year for each of the relevant 581 assets listed above. Look at line 592 for 2015. Repair and replacement costs are estimated to total \$244,988 in 2015, dropping to \$39,060 in 2016 and \$96,645 in 2017 before increasing to \$533,381 in 2018. The annual requirements are listed on line 592 while the cumulative requirements are listed below. The cumulative requirements for the 21 years through 2035 total \$5,665,487, or \$269,785 (cell AB596) per year. Because the # of dues payors is projected to increase over the projection period, the annual reserve requirement is "equalized" so that the total annual requirement is somewhat less than \$269,785 in the early years and slightly more in the later years.

The line 599 annual reserve contribution requirement is generally funded from 3 sources - operating income, depreciation and the 5% tax "recovery". Depreciation is included here as depreciation is a non-cash expense and the funds available from operations are, therefore, operating income plus depreciation. In 2015 only, funding can also come from current reserves or members' equity, assumed to be \$25,000 in this run.

The annual "dues requirement" is set forth on line 605 and the cumulative dues requirement is set forth on line 606. Critical to this analysis is line 600, annual operating results. If the annual operating results projected can be achieved, this analysis shows that there is no need for a dues increase to fund the M+D recommended level of reserves for the projection period. Again, this is all presented in constant \$'s - the M+D data and the operating income projections.

This takes us back to the Base Club Model sheet. At the top of the Base Club Model sheet are the "Revenues". Most items are simply a summary of the dues as calculated from the Assessments sheet. The one other significant item here is "Dues Allocation to Golf". This is \$96,000, the current annual charge that is an expense to the Club and a revenue item for golf.

The next category of data presented is "Operating Results" by venue. There are several different approaches used to projecting future venue results. The Sports Club is an example of a venue where future results will likely be affected by both inflation and cost increases, especially cost associated with membership growth. Costs (mostly personnel) are assumed to increase at the rate of inflation as are Sports Club revenues - this is the assumption in column I, generally set at 0%. In addition, as membership grows so will the costs related to serving more members. As there are likely to be certain economies of scale, we assume, for example, that if membership increases by 20%, basic costs will increase by 10%. If inflation is assumed to be 0% then the total increase in costs is 10%. This is presented in column J and K.

Equestrian is an example of a venue where the growth of membership is unlikely to impact the operating results because the facility is currently operating at full capacity - no more horses or stalls are possible. The loss here, therefore, is assumed to increase simply at the rate of inflation, again set at 0% in the results presented.

Food and Beverage deserves special mention as the results achieved here are fundamental to the health of the Club. An analysis was undertaken by Pat Rau representing the OCC's Finance Committee and Jamie. The projected results are from that analysis. A reduction in F&B loss from the \$200,000 originally projected for 2014 makes it possible to build reserves at the M+D recommended levels without a dues increase. If the community is comfortable continuing to position Oldfield as a wedding destination, our F&B results benefit

Under the heading "Expenses", Facilities Maintenance and Membership are assumed to grow based on the rate of inflation.

Under the heading "Administration Expense", the Membership and Professional categories are assumed to grow at the rate of inflation while Personnel and Support are assumed to increase at the rate of inflation plus 50% of the rate of growth in members.

Under the heading "Other Expenses", most line items are increased based solely on inflation. Bad Debts for 2014 at \$98,000 are approximately 5% of gross dues. This relationship (5% of gross dues) is projected to hold for the future. The assumed growth in the expense item "depreciation" will need to be tweaked but it is not important as this non-cash expense is simply added back to operating income as stated above.

Jamie needs to review the Allocations projection. At \$261,000 for 2014, this is 33% of the sum of Administrative Expenses and Management Incentive. This 33% relationship is projected to continue.

Jamie needs to be comfortable with these projections. His "first pass" views are incorporated in the projections, but he will need to review this further.

These projections give no credit to any savings associated with a potential decision to terminate the HG contract.

Several sensitivity runs are summarized in the sheets Run 1 ClubModel, Run 2 ClubModel and Run 3 ClubModel. In these sensitivity runs we test the effect of changing the # of dues payors, the key driver in this model.

In Run 1, we eliminate the assumption that Bald Eagle sells 10 lots (from its inventory of 77 dues-exempt lots) in each of 2016 and 2017. We understand that BE's general plan is to sell homes, not lots, but we have yet to see anything tangible here. Furthermore, we would generally expect BE to first develop and sell the 20 lots on which it is currently paying Club dues as opposed to developing and selling lots on which it is not paying Club dues. Therefore, as suggested earlier, I recommend considering Run 1 as our "base case" model.

In Run 2, we reduce the # of dues payors by 77 for 2018 onward. Essentially this assumption models the effect of BE's continued exemption for paying Club dues on its lots (109 in 2018) while TI would continue to pay Club dues on its 36 lots. The net reduction in payors, therefore, would be 77 (109 less 36). The final run, Run 3, simply shows the effect of a further reduction of 20 dues payors commencing immediately.

All results are then summarized in the Summary Results sheet.

Analysis

General: The strong year-to-date performance of the Club, especially with regard to F&B, puts the Club in an excellent position to build sufficient reserves to meet the recommendations from the Miller Dodson report. The one caveat here is the projected growth in Club members - dues payors. The Base Case run indicates that the Club can fund the M+D \$5,459,000 recommended level of repairs and replacements through 2035 and still have an ending reserve balance of \$3,790,921 - quite a significant margin for error.

Below needs to be updated :

1. Member "break-even": The definition of break-even is somewhat discretionary. If the Club has 438 members in 2017 (up 6 from 432 as of today) and this roster of 438 members remains unchanged throughout the remainder of the projection period, then the Club can build the recommended reserves with a \$49,306 margin remaining. (Note that this margin is less than the dues contribution over the period from 1 member - hence the 438 break-even #). However, in the first couple of years, the reserves are underfunded, reaching an additional funding requirement of \$24,959 in 2016. This deficit is then eliminated in 2017.

One can get to 438 as follows. (See the R2Assessments sheet). Assume that instead of selling 10 lots in each of 2016 and 2017, BE simply sells 6 lots in 2017. Assume further that for 2018, BE is able to extend its exemption for not paying dues on the balance of its 109 lots while, as a result of this extension, TI continues to pay on its 36 lots. This results in 438 dues payors for the projection period starting in 2017.

2. Disaster scenario: It's all about dues paying members. Start by assuming that there are no additional sales, resulting in the continuation of 432 dues paying members. Then assume that at the end of 2014, the Club loses 30, 40 or 50

	Members Lost		
	30	40	50
Number of Members	402	392	382
Total Reserves Req	\$2,640,212	\$3,400,251	\$4,160,290
Avg Yr'l Req	\$125,724	\$161,917	\$198,109
Dues to Cure	\$313	\$413	\$505

members.

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Rob Star

From: Joseph barr [prosell@yahoo.com]
Sent: Wednesday, September 03, 2014 9:56 AM
To: Rob Star, Jprau; richard price
Cc: busterbutchy@gmail.com; fcc@theworld.com
Subject: Re: OCC Finance Committee Mtg 9-16 at noon

Rob,

Just a reminder when we put together our projections we did not change anything that was approved by the accountants and management, TI. I am not sure where you saw the golf committee was reporting a profit either. Again this can be debated after turnover.

Jay

From: Rob Star <rob@svafinancial.com>;
To: JPRAU@aol.com <JPRAU@aol.com>; richardpricejr@gmail.com <richardpricejr@gmail.com>;
Cc: busterbutchy@gmail.com <busterbutchy@gmail.com>; fcc@theworld.com <fcc@theworld.com>;
prosell@yahoo.com <prosell@yahoo.com>;
Subject: RE: OCC Finance Committee Mtg 9-16 at noon
Sent: Wed, Sep 3, 2014 1:35:20 PM

Can someone please tell me how we can go forward with this \$96k charge to the community members when the golf committee has said they are profitable by that amount? What happens to that "profit" and if the golf club does not need those funds why aren't they getting redistributed to the Club for other much needed funding?

Thanks.

From: JPRAU@aol.com [mailto:JPRAU@aol.com]
Sent: Tuesday, September 02, 2014 10:30 AM
To: richardpricejr@gmail.com
Cc: busterbutchy@gmail.com; Rob Star; fcc@theworld.com; prosell@yahoo.com
Subject: Re: OCC Finance Committee Mtg 9-16 at noon

It's on my calendar.

Pat Rau

In a message dated 8/31/2014 7:01:39 P.M. Eastern Daylight Time, richardpricejr@gmail.com writes:

At its last meeting, the OCC board approved with minor modifications the financial projections (OCA, Club and Golf) as

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recommended by the finance committee and, with regards to Golf, the golf committee. I expect that Jay will announce shortly a meeting of the OCC membership to discuss the status of Turnover discussions. This will include a review with members of the approved financial projections. Accordingly, we will have a meeting of the OCC Finance Committee Tuesday, 9-16 at noon at the Club to discuss the approved financial projections and how best to present these to members. =

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Run 3 ClubModel

9/3/2014

Run 3 Club Model (Constant \$)	CLUB 5 YEAR PLAN (without Golf)					Assumptions			
	2014 (mod)	2015	2016	2017	2018	Inflation	Other Total		
Community Dues Resident	4,560	4,560	4,560	4,560	4,560		See Assessments		
Community Dues Non Resident	4,000	4,000	4,000	4,000	4,000		See Assessments		
Dues Paying Owners	412	412	412	412	412		See Assessments		
REVENUE									
Member Net Dues	1,749,672	1,749,672	1,749,672	1,749,672	1,749,672		See Assessments		
Other Revenue - Late Charges	50,000	50,000	50,000	50,000	50,000		hard wired		
Dues Allocation to Golf	(96,000)	(96,000)	(96,000)	(96,000)	(96,000)		hard wired		
Other Revenue									
Total Revenue	1,703,672	1,703,672	1,703,672	1,703,672	1,703,672				
Operating Results									
Sports Club	(315,000)	(315,000)	(315,000)	(315,000)	(315,000)	0.0%	Calc	0.0%	
Outfitters	(85,000)	(85,000)	(85,000)	(85,000)	(85,000)	0.0%	0.0%	0.0%	
Food & Beverage	(110,250)	(98,593)	(92,682)	(81,547)	(66,668)		hard wired		
Equipment	(55,000)	(55,000)	(55,000)	(55,000)	(55,000)	0.0%	0.0%	0.0%	
Greeters	(40,000)	(40,000)	(40,000)	(40,000)	(40,000)	0.0%	0.0%	0.0%	
Golf Cottages	35,000	35,000	35,000	35,000	35,000		hard wired		
River Cottages	15,000	15,000	15,000	15,000	15,000		hard wired		
Total Venues	(558,250)	(549,593)	(537,682)	(526,547)	(511,668)				
Results from Operations	1,145,422	1,160,079	1,165,990	1,177,125	1,192,004				
Expenses									
Facilities Maintenance	185,000	185,000	185,000	185,000	185,000	0.0%	0.0%	0.0%	
Membership	55,000	55,000	55,000	55,000	55,000	0.0%	0.0%	0.0%	
Administration Expense									
Personnel	337,000	337,000	337,000	337,000	337,000	0.0%	Calc	0.0%	
Support (Tel, Supl, Postage, Util, Other)	112,000	112,000	112,000	112,000	112,000	0.0%	Calc	0.0%	
Membership (Mktg, S Advtg, Events, Other)	41,000	41,000	41,000	41,000	41,000	0.0%	0.0%	0.0%	
Professional (Hampton Golf, Legal, Audit, Banking, Other)	262,000	262,000	262,000	262,000	262,000	0.0%	0.0%	0.0%	
Other Expenses	752,000	752,000	752,000	752,000	752,000				
Taxes	73,000	73,000	73,000	73,000	73,000	0.0%	0.0%	0.0%	
Insurance	141,000	141,000	141,000	141,000	141,000	0.0%	0.0%	0.0%	
Bad Debts	98,000	92,088	92,088	92,088	92,088		5.0%		
Depreciation	72,000	72,000	72,000	72,000	72,000		hard wired		
Management Incentive	40,000	40,000	40,000	40,000	40,000	0.0%	0.0%	0.0%	
Other	9,000	9,000	9,000	9,000	9,000		hard wired		
Total Expenses	1,419,088	1,419,088	1,419,088	1,419,088	1,419,088				
Results Before Allocations	(273,666)	(259,009)	(253,098)	(241,963)	(227,084)				
Allocations to OCA	281,000	281,360	281,360	281,360	281,360				
Results After Allocations	(15,578)	2,351	2,262	19,397	54,278				
Elimination of SC Tax		92,088	92,088	92,088	92,088		See Assessments		
Add back depreciation	72,000	72,000	72,000	72,000	72,000				
Operating Income Excluding Depreciation	56,422	166,439	172,350	183,485	198,364				
Existing Reserve	\$25,000	\$25,000							

First time on a budget

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000ClubModel_080114_RPV2

Run 3 ClubModel

**Run 3 Club Model
(Constant \$)**

	CLUB 5 YEAR PLAN (w/without Golf)				Assumptions	
	2014 (mod)	2015	2016	2017	2018	Other Total
Required Reserve Contribution		(259,785)	(259,785)	(259,785)	(259,785)	MD Cash Flow Method
Net Funds	81,422	(78,346)	(37,435)	(86,301)	(71,421)	

Changes from Run 2 Model
Add assumption that BE does not pay dues on an additional 20 lots purchased from third parties

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Rob Star

From: Richard Price [richardpricejr@gmail.com]
Sent: Tuesday, September 16, 2014 4:36 PM
To: Rob Star
Subject: Re: Emailing: 2014 Finance minutes july.pdf

Rob --

We discussed your request. As you will note in the minutes from the meeting today, the minutes were approved as presented without any changes.

On Sep 15, 2014, at 3:01 PM, Rob Star wrote:

Dear FC Members,

After my review of the minutes, that were done at my request, I am asking the committee to support this addition to the minutes as promised by Frank in the meeting. Please keep in mind that minutes are not a summary of events. They are intended to record all the events and comments in a committee meeting. I feel the lack of consideration for my objection to the financial model was not heard by the FC and you all voted in favor of it anyway. Please add to the minutes:

Rob Star also asked to express his objections to the committee before the vote for approval of the financial presentation and was declined the opportunity by the Chairman, Frank Roland. When challenged on the normal protocol for any committee is to allow committee members an opportunity to speak to the committee before any vote Frank said he was aware of my concerns and then asked to go ahead with a vote. Rob asked that this exchange get properly documented in the FC minutes and Frank agreed.

Please understand why I feel my objection and treatment in the FC meeting needs to be documented. All I seek in this process, at a very important juncture in our community, is full transparency of all the financials and a complete understanding of the precedent that has been set by TL. All members deserve any change of this magnitude gets fully vetted by all the interested parties.

Regards,

Robert Star

Robert Star

Sent from my iPhone

On Sep 13, 2014, at 3:02 PM, "Frank Roland" <froland35@gmail.com> wrote:

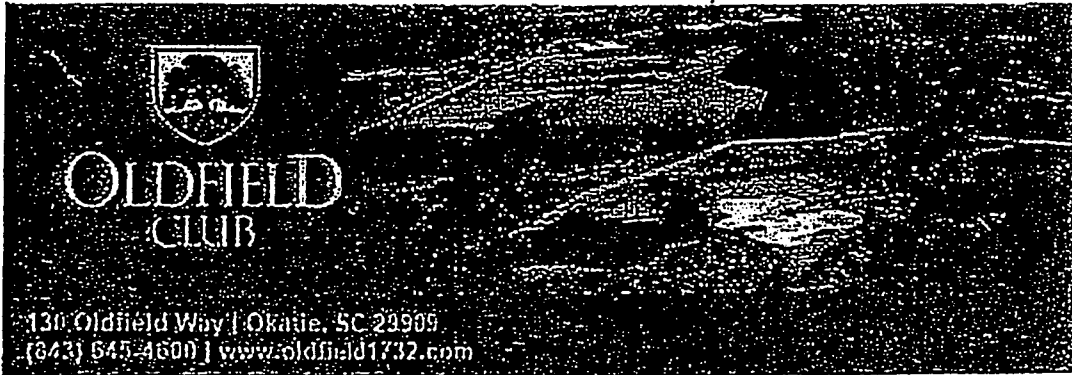
Attached are the July 24th Finance Committee minutes. If you have trouble pulling these up let me know and I will get you a hard copy.

9/20/2017

Print

Subject: Budget Documents for Joint Meeting
From: Oldfield Club (oca@oldfieldsc.com)
To: ringo52673@yahoo.com;
Date: Wednesday, June 8, 2016 10:31 PM

[Click here!](#) Having trouble viewing this email?



Budget Documents for June 9 Club & OCA Joint Meeting

During our Community Meeting tomorrow, June 9 at 4:30 p.m., we will thoroughly review the updated 2016 Projections and Budgets for the OCA and Club along with a summary of our Reserve Budgets. While our review will be more in depth during the PowerPoint presentation tomorrow, it will be helpful for all to have printable documents to review in advance and bring to the meeting. Additional copies will also be available tomorrow if needed.

Please click on the links below to review and/or print each document:

- [Club - 2016 Updated Budget Summary](#)
- [OCA - 2016 Updated Budget Summary](#)
- [OCA - 2016 Updated Reserve Summary](#)

Please also find a copy of the OCA and Club Meeting Notice below.

The OCA and Club invite you...

COMMUNITY MEETING

Thursday, June 9 | 4:30 p.m. | Golf Clubhouse

There are three agenda items followed by a Q&A:

- I. Community Survey Kick-Off

about:blank

1/2

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HAAS ROA 000668

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II. Marketing Update
III. Revised, Post-Turnover 2016 Budgets

General Q&A

*There will be an open bar following the meeting!
Dinner has been pushed back to 6 p.m. to accommodate this meeting.*

Not able to attend in person? Here is how you can hear the meeting:

Access this meeting through the link below on your computer and use your microphone and speakers (VoIP) - a headset is recommended.

<https://global.gotomeeting.com/join/444212725>

Not at your computer? Click the link to join this meeting from your iPhone®, iPad®, Android® or Windows Phone® device via the GoToMeeting app and using the Meeting ID.

Meeting ID: 444-212-725

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Access Code: 444-212-725

Please note when calling into the meeting to put your phones on mute to allow a quiet platform for the presenters.

Oldfield Community Association, 130 Oldfield Way, Okatie, SC 29909

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Oldfield Club
Summary Profit & Loss
2016 Full Year Budget Comparisons

Updated Full Year Budget reflects actuals through April, and updated budget inputs for May-Dec

	Full Year Budget			Comments
	Updated	Original	\$ Over Original	
REVENUE				
Merchandise	101,596	105,650	-4,054	
Golf Sales - Green and Cart Fees	223,976	209,405	14,571	
Other Golf Revenue	165,113	167,500	-2,387	Includes \$96K golf course access assessment. Offset below in Marketing and Advertising Expense.
Membership Income-Other Fees	9,071	11,600	-2,529	
Food & Beverage Sales	822,585	821,599	986	
Outfitters-Income	130,042	133,750	-3,708	
Equestrian Center - Income	108,105	107,850	255	
Sports Center-Income	1,250	1,350	-100	
Rental Property	227,340	238,500	-11,160	
Membership Dues				5% Admissions Tax eliminated for all Membership Dues and accounting for Bad Debt Expense separately
Equity Golf Members	650,212	612,664	37,548	
Non-Equity Golf	249,588	237,450	12,138	
Club Dues	1,936,273	1,761,773	174,500	
Other Dues	21,515	21,413	1,101	
Other Revenue	424,408	437,172	-12,764	Includes Service Charges (\$151K), Facility Rentals (\$116K), Finance/Late Fees (\$53K)
Discount Programs	(5,620)	(7,200)	1,580	
Total Revenue	5,066,404	4,860,477	205,927	
COST OF GOODS SOLD	536,095	557,264	-21,169	
Gross Profit	4,530,308	4,303,213	227,095	
EXPENSES				
Employee/Labor Costs	2,422,591	2,411,907	10,684	
Events and Tournaments	46,572	51,652	-5,080	
Operating Costs	108,688	82,924	25,764	Primarily an increase hay expense at the Equestrian Center
Centralized Services	12,120	24,240	-12,120	Discontinue Hampton Golf services after June
Marketing and Advertising	134,987	151,368	-16,381	Includes \$96K golf course access assessment. Offset above in Other Golf Revenue.
Member Expenses	21,445	14,455	6,991	
Contract Services	103,039	105,944	-2,905	
Course and Grounds Maintenance	213,905	224,250	-10,345	\$20K in cart path repairs not performed
Repairs	93,832	92,000	1,832	
Supplies	122,027	118,040	3,987	
Professional Fees	129,607	70,250	59,357	Higher Legal & Accounting fees associated with Turnover
Equipment Lease Expense	179,505	187,140	-7,635	
Insurance	189,333	180,348	8,985	
Taxes	96,413	99,358	-2,945	
Bad Debt	36,480	-	36,480	2% of total Membership Dues. Previously, netted from Membership Dues
Other Expenses	476,978	478,604	-1,626	
Total Expenses	4,387,583	4,292,478	95,105	

Oldfield Club
 Summary Profit & Loss
 2016 Full Year Budget Comparisons

Updated Full Year Budget reflects actuals through April, and updated budget inputs for May-Dec

	Full Year Budget			Comments
	Updated	Original	\$ Over Original	
OTHER (INCOME)/EXPENSE				
Other Income	(483)	-	-483	
Other Expense				
Interest Expenses	(574)	-	-574	
Depreciation Expenses	199,924	192,600	7,324	
Inter Company Allocations	(237,742)	(236,996)	-747	
Other	5,259	-	5,259	
Total Other Expense	(33,134)	(44,996)	11,862	
Net Income	176,341	55,731	120,610	
YTD Capital Replacement Expenditures				
Wine Cooler Refrigeration	4,415			
Poolside Furniture	36,938			
Steam Unit Parts-Repairs	3,950			
Lap Pool Cover	3,739			
Total	48,442			

Oldfield Community Association
 Summary Profit and Loss
 2016 Full Year Budget Comparison

Updated Full Year Budget reflects actuals through April, updated budget inputs for May-Dec

	Full Year Budget		\$ Over Original	Comments
	Updated	Original		
500-900 OCA INCOME				
Gate Pass Income	229,985	181,650	38,335	Greater construction traffic
Barcode Decal	175	240	-65	
Community Fees - Income	59,107	58,250	2,857	
Assessments/Dues	1,151,217	1,147,300	3,917	
Other Income	29,799	28,044	1,755	
Total 100 OCA Income	1,470,283	1,423,484	46,799	
500-900 OCA - EXPENSES				
Security	388,692	388,775	-2,083	Primarily lower straw & mulch expense Lower Admin Wages-Allocation Higher level of ARB activity (Consulting Services)
Maintenance	418,747	427,040	-8,293	
Administration	399,998	407,714	-7,716	
ARB	44,198	38,000	8,198	
Utilities	70,822	70,575	247	
Total 500-900 OCA Expenses	1,320,446	1,330,104	-9,658	
500-900 OCA Operating Income (Loss)	149,837	93,380	56,457	
LAKESIDE & COTTAGES OPER INCOME (LOSS)				
200 River Cottages	983	478	486	
300 Golf Cottages	-87	18	-105	
400 Lakeside	1,839	80	1,759	
OCA Income (Loss) Before Depreciation	152,553	93,856	58,697	
OTHER (INCOME)/EXPENSE				
Depreciation	56,707	55,440	1,267	
Total (Income)/Expense	56,707	55,440	1,267	
Original Budget Reconciliation		126	-126	
Net Income	95,846	38,841	57,004	

3A

TERMINATION AGREEMENT

FILED UNDER SEAL

Oldfield Community Association
 Summary Profit and Loss
 2016 Full Year Budget Comparison

Updated Full Year Budget reflects actuals through April, updated budget inputs for May-Dec

	Full Year Budget			Comments
	Updated	Original	\$ Over Original	
500-900 OCA INCOME				
Gate Pass Income	229,985	191,650	38,335	Greater construction traffic
Barcode Decal	175	240	-65	
Community Fees - Income	59,107	56,250	2,857	
Assessments/Dues	1,151,217	1,147,300	3,917	
Other Income	29,789	28,044	1,755	
Total 100 OCA Income	1,470,283	1,423,484	46,799	
500-900 OCA - EXPENSES				
Security	386,692	388,775	-2,083	Primarily lower straw & mulch expense Lower Admin Wages-Allocation Higher level of ARB activity (Consulting Services)
Maintenance	418,747	427,040	-8,293	
Administration	389,688	407,714	-7,726	
ARB	44,198	39,000	8,188	
Utilities	70,622	70,575	247	
Total 500-900 OCA Expenses	1,320,448	1,330,104	-9,656	
500-900 OCA Operating Income (Loss)	149,837	83,380	58,457	
LAKESIDE & COTTAGES OPER INCOME (LOSS)				
200 River Cottages	963	478	485	
300 Golf Cottages	-87	18	-105	
400 Lakeside	1,839	80	1,759	
OCA Income (Loss) Before Depreciation	152,553	83,658	68,895	
OTHER (INCOME)/EXPENSE				
Depreciation	58,707	55,440	1,267	
Total (Income)/Expense	58,707	55,440	1,267	
Original Budget Reconciliation		128	-128	
Net Income	95,846	38,841	57,204	

3A

**OLDFIELD COMMUNITY ASSOCIATION
RESERVE FUNDS - 2016 UPDATED BUDGET**

	Actual	Updated Budget		Comments
	Jan-Apr	May-Dec	Full Year	
CAPITAL RESERVE FUND				
Beginning Balance	884,861	803,473	864,861	
Revenues				
Re-sale Assessments	38,565	0	38,565	
Interest Earned	63	144	207	
Expenses				
Bank Fees	15	45	60	
Transfers to Operating Fund				
Capital Repairs and Improvements	0	14,000	14,000	Gate House \$2K, Security Vehicles \$2K, Sidewalks \$10K
Ending Balance	893,473	889,572	889,572	
COMMUNITY ENHANCEMENT FUND				
Beginning Balance	472,209	462,650	472,209	
Revenues				
Re-sale Assessments	0	68,000	68,000	
Interest Earned	71	110	181	
Expenses				
Miller Dodson Study	9,630	15	9,645	
Forensic Accountant	0	15,000	15,000	
Oldfield Marketing Program	0	62,502	62,502	
Ending Balance	462,650	453,243	453,243	

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Rob Star

From: Jay Barr [prosell@yahoo.com]
 Sent: Wednesday, November 30, 2016 4:49 PM
 To: Rob Star
 Cc: Medlegalobgyn; r.a.shaw@hargray.com; Adam.dowe@yahoo.com;
 allson.joy.french@gmail.com; bchampigny@lamcotec.com; bbgun29@msn.com;
 lowbrianc@aol.com; kregang@aol.com; trishjg7@aol.com; dsnyder283@gmail.com;
 dnelems@gmail.com; derekholland@hargray.com; erica1010@gmail.com;
 jstcfaircpa@gmail.com; vanacker.courtney@gmail.com; jsbowman1969@gmail.com;
 jessica@accurepro.com; jpullen31@gmail.com; jdmshaw41@yahoo.com;
 partysue@yahoo.com; janetmandesigns@suddenlink.net; chefsnook1@yahoo.com;
 kevin@schofieldtrucking.com; lynnennis@aol.com; marcmaas@hotmail.com;
 mark.rovnak@us.pwc.com; carfox01@aol.com; rich1.mullen@gmail.com;
 twilson@mrcgroup.net; rod@hargray.com; sharonf@temple.edu; segoldberg@yahoo.com;
 jmbient@aol.com; timothyscotrice@gmail.com; jshisler@hotmail.com; thealy416@me.com;
 wmliefer@yahoo.com; cbrad109@aol.com; ddrury@oldfieldsc.com

Subject: Re parking pads

I will be responding to your questions in my Presidents letter that should be out by Friday or this weekend. FYI the clubhouse has always been paid for by all members and it never was only for golfers. The club board has not yet changed anything from previous years.

Jay

Sent from my iPad

> On Nov 29, 2016, at 9:03 PM, Rob Star <rob@svgfinancial.com> wrote:

> --_000_4D238F9AB2934F53BC177CA95FD2633Dsvgfinancialcom_

> Content-Type: text/plain; charset="us-ascii"

> Content-Transfer-Encoding: quoted-printable

>

> Jay, Charlie & David(GM)

>

> Can you please share with the community where in the documents the

> Clubhouse overhead can be shifted to the Social Members P&L? Can you

> please show where in the docs the OCA should pay any inter-company

> allocation that pays for the overhead of the Clubhouse? And can you

> please share with the Members where you are permitted to charge the

> social members a marketing fee for the benefit to the golf P&L?

>

> This is the second request for this information and since these

> decisions have been made one can only assume that you have the

> documentation to support this allocation.

>

> Thank you for your immediate response.

>

> Rob Star

>

> On Nov 29, 2016, at 4:16 PM, Medlegalobgyn <medlegalobgyn@aol.commailto:medlegalobgyn@aol.com> wrote:

> Good afternoon Jay and Charlie

>

> I had voiced my objection to the Board(s) for retaining Mr. Selby

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TERMINATION AGREEMENT

FILED UNDER SEAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB,
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

TI OLDFIELD OPERATIONS, LLC
AND SF OPERATIONS, LLC,

Third-Party Plaintiffs,

OLDFIELD, LLC AND CRESCENT
COMMUNITIES, LLC F/K/A
CRESCENT RESOURCES, LLC,

Third-Party Defendants.

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-07-602

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

Defendants Oldfield Club, Oldfield Club Board of Directors, Oldfield Community Association, TI Oldfield Operations, LLC, and SF Operations, LLC (collectively "Defendants") have filed motions for summary judgment and supporting memoranda and exhibits. Plaintiffs Marc Haas, Susan Haas, Rob Star, and Melissa Star (collectively "Plaintiffs") oppose those motions, and have filed opposition papers.

HAAS ROA 000688

The Court held a hearing on September 9, 2017, at which all parties were represented by attorneys: Denise Savage for all Plaintiffs; Ian Ford for defendants Oldfield Club and members of its board of directors; Suzanne Deters for defendant Oldfield Community Association; Merritt Abney for defendants TI Oldfield Operations, LLC, and SF Operations, LLC. Chris Ogiba represented third-party defendant Oldfield, LLC and Crescent Communities, LLC f/k/a Crescent Resources, LLC. At the hearing, the Court instructed the parties to submit supplemental briefs and exhibits, which was done. The motion is now ripe for ruling.

As set forth below, the Court GRANTS Defendants' motions for summary judgment, and dismisses Plaintiffs' causes of action with prejudice. As will be discussed below: (1) there is no evidence that the Defendants have breached any requirement in the Agreement at issue; (2) Defendants' alleged actions are permitted under Oldfield's governing documents; (3) this lawsuit was filed outside of the statute of limitations; and (4) Plaintiffs have not produced evidence that they sustained requisite damages as a result of their claims.

BACKGROUND

Oldfield is a private community in Bluffton, South Carolina. The community has a homeowners' association (defendant Oldfield Community Association) and an amenities club (defendant Oldfield Club), of which all property owners must be members.

Plaintiff Rob Star is a property owner at Oldfield. Plaintiffs Marc and Susan Haas, and Melissa Star, are Mr. Star's in-laws and wife, respectively. For years, Mr. Star has been a critic of the various boards of directors at Oldfield.

In 2009, Mr. Star had a dispute with a developer of Oldfield regarding the bankruptcy of that developer (third-party defendant Crescent Communities, LLC f/k/a Crescent Resources, LLC, and Oldfield, LLC). To resolve that dispute, on September 17, 2009, those parties apparently entered into an agreement ("Agreement"), the terms of which are confidential. Defendants provided an *in camera* copy of the Agreement to the Court at the hearing on September 9, 2017.

The developer's bankruptcy proceedings were in Texas. In negotiating the Agreement, Plaintiffs were represented by an attorney, albeit not one licensed in South Carolina. Plaintiffs do not know whether or not their lawyer determined if the Agreement was consistent with South Carolina law or the governing documents of Oldfield. (Ex. 1 to Oldfield Club Memorandum filed 9/14/2017 ("OC Memo.") at 23:6-24:12)

In this lawsuit, Plaintiffs take the position that, as a result of the Agreement, they became Community Members¹ of Oldfield Club (as opposed to Golf Members). Plaintiffs paid the same dues as other Community Members, and were treated like other such members. They had access to Oldfield Club amenities, like the other members. (*Id.* at 189:10-13, 230:5-14) That includes use of parts of the clubhouse (which contains a restaurant, social rooms, administrative offices, and a store) and certain rounds of golf

¹ At Oldfield, Community Members are sometimes referred to as Social Members, and *vice versa*. (Ex. 1 to OC Memo. at 32:2-20, 35:15-16, 36:14-15)

each year. Each year the Oldfield Club budgets were published to the members, so the use of members' dues was open to the members. (*Id.* at 134:9-17, 142:3-14)

For years, and in this lawsuit, Plaintiffs have objected to the allocation of Community Members' fees among golf and non-golf expenses at Oldfield. Summarized, Plaintiffs claim that Community Members' fees may not be used in any way to support golf facilities at Oldfield (the clubhouse, golf course, etc.). This has been a longstanding complaint of Plaintiffs. For example, on February 7, 2013, members of Oldfield Club received an e-mail regarding an increase in dues. In response, plaintiff Rob Star authored a letter in which he again complained about the use of Community Member fees to pay for golf facilities at Oldfield. (Ex. 2 to OC Memo. (Star letter: "The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general membership of the Club."))

More than three years later, Plaintiffs filed this lawsuit on the issue of allocation of funds between golf and non-golf amenities. *See, e.g.*, Compl. ¶¶ 37, 38, 39, 40. Plaintiffs allege three causes of action: (1) breach of settlement agreement; (2) negligence/gross negligence; and (3) constructive trust/accounting.

LEGAL STANDARD

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to judgment as a matter of law.” Rule 56(c), SCRCP. In determining whether summary judgment is appropriate, the inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The party seeking summary judgment has the burden of clearly establishing the absence of any material fact. *Jones v. State Farm Mut. Auto Insurance, Co.*, 364 S.C. 222, 612 S.E. 2d 719 (Ct. App. 2005). Once the party seeking summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case exists, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* On those issues where the nonmoving party will have the burden of proof, it is that party’s obligation to provide specific facts demonstrating all elements of the claim. *Baughman*, 306 S.C. at 116. If the nonmoving party fails to establish a genuine issue of fact as to one essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore summary judgment must be granted. *Id.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There is no evidence that Defendants breached the terms of the Agreement at issue.

The Agreement was submitted to this Court at the September 9, 2017 hearing, and was thoroughly reviewed. Generally, "the construction of contracts is a question of law for the court." *Hope Petty Motors v. Hyatt*, 310 S.C. 171, 175, 425 S.E.2d 786, 789 (Ct. App. 1992); *Watson v. Underwood*, 756 S.E.2d 155, 161 (S.C. App. 2014). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Schulmeyer v. State Farm Fire and Cas. Co.*, 579 S.E.2d 132, 134 (S.C. 2003). "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. It is a question of law for the court whether the language of a contract is ambiguous." *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001); *McGill v. Moore*, 672 S.E.2d 571, 574 (S.C. 2009).

At the hearing, the Court specifically questioned Plaintiffs' counsel as to what language in the Agreement was breached by Defendants, or would be breached by the alleged use of Plaintiffs' (and others') dues for golf-related amenities at Oldfield Club. Plaintiffs' counsel was unable to point to language in the Agreement that prohibits such actions. In its review, the Court is unable to discern any such terms that have been breached as alleged by Plaintiffs. The supplemental briefing by Plaintiffs did not change this perception. Accordingly, Plaintiffs have failed to satisfy core elements of their

causes of action: breach of an agreement or a duty by the Defendants.²

2. The unambiguous language of the governing documents allows Community Member dues to be used for amenities available to those members.

As stated above, a crux of Plaintiffs' complaint is their belief that their Community (Social) Member dues may not be used for golf facilities under any circumstances. (Ex. 1 to OC Memo. at 32:4-6; 37:13-16; 70:3-8; 92:5-18) Plaintiffs admit that they have had access to golf facilities. (Ex. 1 to OC Memo. at 90:10-16; 106:1-13: Mr. Star has use of the dining facilities at the golf club, and the shops, and can play golf at Oldfield Club). There is no dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees. (Ex. 5 to OC Memo., Amended Plan for Offering of Memberships, 5/16/2005: Community Members have access to a certain number of rounds of golf per calendar year).

The governing documents specifically allow that Community Membership dues may be used for facilities that are available to such members. The covenants at Oldfield state:

3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not

² Plaintiffs' breach of contract and negligence claims both require a breach of a duty, or of a contractual term, as an essential element of the claims. *See Allegro, Inc. v. Scully*, 791 S.E.2d 140, 145 (S.C. 2016), *reh'g denied* (Oct. 26, 2016) ("In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach."); *Fettler v. Gentner*, 722 S.E.2d 26, 29 (S.C. App. 2012) ("A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty.").

be subject to assessment for operating deficient or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

- (a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;
- (b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and
- (c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;
- (d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and
- (e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

When an amenity is used for both Golf and Community Members, the estimated costs are allocated among the memberships to whom the facility, services, and/or programs are available:

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member,"

as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. . . .

(Ex. 4 to OC Memo. (First Amendment to the Declaration of Recreational Covenant for Oldfield Club, 3/19/2001, recorded in Beaufort County 3/23/2001, Book 01397, Page 1270) (emphasis added)) As discussed above, there is no dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees.

Based on the undisputed language of the governing documents, Community Members' dues may be used for the facilities that are made available to such members. Nothing in the Agreement alleged by Plaintiffs in this lawsuit changes those governing documents, or the authority of Oldfield Club to budget its expenses according to those provisions. As discussed above, Plaintiffs admit that they have had access to golf facilities. Plaintiffs also admit that they and their dues have been treated in the same manner as other such members. Therefore, the governing documents are clear and unambiguous, and there is no credible evidence of any breach by Defendants as alleged by Plaintiffs, either of the alleged Agreement or of the governing documents.

3. Plaintiffs' claims are barred by the statute of limitations.

The undisputed evidence shows that Plaintiffs filed these claims outside of the three-year statute of limitations. South Carolina law specifies a three-year limitations period for breach of contract and negligence actions. *See* S.C. Code Ann. § 15-3-530. "The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that

he might have a claim against another party (discovery rule). . . . The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 465 S.E.2d 88, 90 (S.C. 1995) (internal citations and footnotes omitted).

Plaintiffs filed their lawsuit on March 10, 2016. There is no genuine dispute that Plaintiffs were aware, or should have been aware, of their alleged claims for more than three years (before March 10, 2013). For example, in 2012 Mr. Star met with the developer about his concern regarding how administrative costs were being allocated among golf versus non-golf. (Ex. 1 to OC Memo. at 293:13-294:9: "That's why those meetings took place.") At deposition in this lawsuit, Mr. Star agreed that those issues were similar to the issues he is concerned about in this lawsuit. (*Id.* at 280:1-281:16; 293:13-294:9; Ex. 3 to OC Memo.: March 5, 2013 e-mail from Robert Wilson to Phillip Galbreath, (exhibit 10 to Star depo.)); *see also* Ex. 1 to OC Memo. at 280:11-12: "That's why Rob [Wilson] and I both sent that letter that you guys have referenced already.")

Additionally, a 2013 letter from Mr. Star references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities. (Ex. 2 to OC Memo.; Ex. 1 to OC Memo. at 177:4-6; 182:6-12) Mr. Star acknowledged that budget allocations are reflected in the budgets annually, and are publicly available at Oldfield. (Ex. 1 to OC Memo. at 142:3-14; 134:9-17) Plaintiffs produce no evidence that the numbers have been hidden:

Q. When did that \$96,000 golf course access assessment start?

A. I don't know the exact date.

Q. Okay. Has it been three years, five years? Any estimate?

A. I'm going to say somewhere around the three-year mark.³

Q. And as far as you know, has it been reflected in the budgets during that time?

A. As far as I know.

Q. So do you have any evidence it's been hidden in any way from members?

A. I'm not accusing them of hiding it, no.

Q. I understand. I'm just trying to understand what is in the mind—

A. It's right there on the page.

Q. For everyone to see, and it's publicly available, at least within Oldfield, correct?

A. Yes.

(Ex. 1 to OC Memo. at 141:21-142:14 (emphasis added).) Mr. Star acknowledged that the golf/non-golf allocation issue has been going on "always." (*Id.* at 150:15-17; *see also id.* at 175:14-176:3 ("I was aware that it was happening, but I did not see the data, and I didn't know to what extent it was happening.")).

In sum, there is no genuine dispute of material fact that Plaintiffs were aware, before March 10, 2013, of the facts and circumstances giving rise to their claim regarding use of Community Member fees to pay for golf facilities. As such, their claims are barred by the statute of limitations.

³ The undisputed evidence shows that the Club members were notified of this allocation at least as early as February 7, 2013. Ex. 2 to OC Memo.

4. There is no evidence of damage to Plaintiffs.

Plaintiffs have produced no evidence they have suffered any damages. Proof of damages is a required element of Plaintiffs' breach of contract and negligence claims.⁴ At their depositions, Plaintiffs were questioned repeatedly on how *they* had been damaged under the allegations in the Complaint, and repeatedly responded that they did not know. (See, e.g., Ex. 1 to OC Memo. at 60:23-25; 62: 9-18)

Q. It sounds like you don't know what your damages are, correct —

Mr. Toney: Object to the form.

Q. — sitting here today?

A. Until I get — right, yes. Yes.

(*Id.* at 66:25-67:4)

Q. Do you know how much you believe you're being charged for, that you don't think you should be charged for?

A. You just asked me that question.

Q. I know. And I'm asking you again. Do you know?

A. I do not know.

(*Id.* at 71:10-16)

There also is no dispute that Plaintiffs have had access to Oldfield Club's amenities, and that they have paid the same dues as other Community Members. (See, e.g., Ex. 1 to OC Memo. at 105:6-7; 106:1-15) Therefore, under no credible legal theory can Plaintiffs get their dues *back*. Even under Plaintiffs' theory of the case, a portion of Plaintiffs' dues should have been allocated toward other areas of Oldfield Club's

⁴ See footnote 2, *supra*.

expenses; Plaintiffs do not allege they should have paid less than other Community Members. Under such circumstances, Plaintiffs have not been damaged, are not entitled to monetary relief, and cannot meet their burden of proof on that issue.⁵

5. Mr. Star's affidavit filed in opposition to summary judgment is a "sham affidavit" for purposes of summary judgment.

Mr. Star was deposed on two separate days. As discussed above, he had little or no knowledge on issues such as damages, governing documents, and so forth. However, in response to Defendants' motions for summary judgment, on September 13, 2017, Mr. Star submitted to this Court a new affidavit which attempted to create disputes of material fact. The "affidavit" is more aptly described as an opposing memorandum rearranged into affidavit format, and signed by Mr. Star.

The South Carolina Supreme Court has ruled that a party may legitimately submit a post-deposition affidavit to *correct or clarify* previous testimony, but may not submit an affidavit to "create[] an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement." In such instances, the trial court may "disregard a subsequent affidavit as a 'sham.'" *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (S.C. 2004). South Carolina's Supreme Court has issued guidance to distinguish such affidavits:

In distinguishing between a sham affidavit and a correcting or clarifying affidavit, the following considerations provide guidance: (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which

⁵ Plaintiffs' third cause of action is for constructive trust/accounting. See Compl. ¶¶ 52-59. That is an equitable claim that is based on the allegations in Plaintiffs' breach of contract and negligence causes of action. Because those causes of action fail, the constructive trust claim fails too.

there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.

Id. Here, there is no serious question that Mr. Star's recent affidavit is a "sham" under the Supreme Court's factors.

For example, no explanation is offered for the statements that contradict Mr. Star's deposition testimony (factor 1). Mr. Star's previous multi-day deposition testimony is not even acknowledged. Mr. Star had access to all the information at the time of his deposition (factor 3). Even so, there is tremendous variation (both in frequency and degree) between Mr. Star's sworn testimony and his affidavit (factor 4). For example, as discussed above, Mr. Star testified that the defendants' financials reflected the allocation issues, and that he is not accusing defendants of hiding the information. (*See supra*; Ex. 1 to OC Memo. at 141:21-142:14) Yet his affidavit now accuses defendants of lying about the allocation issue and claims he was "misled." Aff. ¶ 6. This is directly contrary to his testimony that "It's right there on the page." (Ex. 1 to OC Memo. at 141:21-142:14)

Additionally, as discussed above, Mr. Star testified that he was aware of the allocation issue at least as early as 2012, when he met with the developer to discuss the issue. *See supra*. Yet his affidavit states that "Plaintiffs could not have discovered the improper allocation of dues until September 2014." (Aff. ¶ 7 (emphasis in original)) Moreover, Mr. Star testified that he has no legal education or training. (*See, e.g.*, Ex. 1 to

OC Memo. at 22:13-14; 31:12-13; 34:15-17) Yet his affidavit delves deeply into legal arguments and conclusions, including S.C. Code § 15-3-50, the "voluntary payment doctrine," and the doctrine of "estoppel." (Aff. ¶¶ 8-11) As discussed above, Mr. Star testified that he has no knowledge of his damages. *See supra*. Yet the affidavit delves into claims of "compensatory damages," "consequential damages," "punitive damages," and "restitution." (Aff. ¶¶ 24-27) Again, this clearly is the opposition memorandum rearranged into an affidavit format.

Having had 18 months to engage in discovery before the summary judgment hearing, Mr. Star is not permitted to manufacture issues with a "sham" affidavit to avoid summary judgment. His affidavit is disregarded under Supreme Court precedent.

CONCLUSION

For these reasons, Defendants' motion for summary judgment should be granted as to all of Plaintiffs' claims, which are dismissed with prejudice.

So ordered this ___ day of January 2018.

Edgar W. Dickson
Circuit Court Judge

(collectively, the “Plaintiffs,” together with the Defendants, the “Parties”) having opposed the Summary Judgment Motions and having filed opposition papers with supporting affidavits of Rob Star (collectively, the “Rob Star Affidavits”), among other exhibits (collectively, “Plaintiffs’ Objection”); and the Court having held a hearing on the Summary Judgment Motions on September 9, 2017 (the “Hearing”) at which all Parties were represented by counsel; and at said hearing, the Court instructed the Parties each to submit supplemental briefs and exhibits (the “Supplemental Briefs”); and such Supplemental Briefs having been filed by the respective Parties; and the Court having reviewed the Summary Judgment Motion, the Objection and the Rob Star Affidavits, and the Supplemental Briefs; the Court makes the following findings as applied to alleged facts in the Action:

1. The moving party on a motion for summary judgment, has the burden of proof to demonstrate there is no genuine issue of material fact in dispute. SCRCP Rule 56; *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 372 (2003).
2. In determining whether any triable issue of fact exists, the evidence and all inferences when can reasonably be drawn therefrom *must be viewed in the light most favorable to the nonmoving party*. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).
3. Upon reviewing the Summary Judgment Motions, the Rob Star Affidavits, the Objection and the Supplemental Briefs, and in the absence of any indisputable proof filed by the respective Defendants in support of facts alleged in the Summary Judgment Motions, and viewing the facts in the most favorable light to the Plaintiffs (i.e. the non-

moving parties), *the Court concludes the following triable issues of fact, among others, exist, thus precluding summary judgment in the respective Defendant's favor*¹:

- a. Whether the Governing Documents, as opposed to the Agreement, are applicable to ascertaining Defendants' respective liability, if any, in the Action;
 - b. Whether accurate post-audit financial statements were produced by OC and OCA to the Plaintiffs (See Exhibit 2 to the Affidavit of Rob Star, dated September 13, 2017) to ascertain liability and damages arising from the alleged misapplication of Plaintiffs' Dues;
 - c. When the Plaintiffs could have reasonably discovered that the Plaintiffs' Dues (as set forth in the Complaint filed in the Action and in the Plaintiffs' Objection and the Plaintiffs' Supplemental Brief) were purportedly misapplied by the OC; and
 - d. Whether TI is a successor-in-interest to Crescent pursuant to the transaction documents executed by and among TI and Crescent for the sale of Oldfield property and declarant rights;
4. As to the Defendants' request for summary judgment arising from the "voluntary payment doctrine," the "voluntary payment doctrine" is an affirmative defense available in specific situations in which a payment is voluntarily made under a mistake of law. *It does not apply under contracts that impose a legally enforceable duty to pay. Salling v. Budget Rent-A-Car Systems, Inc.*, 672 F.3d 442, 444 (6th Cir. 2012). Thus, the "voluntary payment doctrine" does not apply to either the Agreement or the Governing Documents (whichever is ultimately applicable) which are both contracts

¹ All capitalized terms herein have the meanings ascribed in the Summary Judgment Motions, the Rob Star Affidavits, the Objection and Supplemental Briefs, unless otherwise defined herein.

that impose a legally enforceable agreement regarding the payment and allocation of the Plaintiffs' respective Membership Dues. *Id.*

Accordingly, based upon, and incorporating herein, the Court's findings hereinabove, it is,

ORDERED, that the relief sought by Defendants in the Summary Judgment Motions are denied in their totality.

So ordered this ___ day of January 2018.

Edgar W. Dickson
Circuit Court Judge

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CIRCUIT COURT
EDGAR W. DICKSON

I certify that this Record on Appeal contains no matter which is irrelevant to this appeal.

Dated: Beaufort, SC

Sept 25, 2018

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