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

ASSOCIATION OF SEA PINES PLANTATION)
 PROPERTY OWNERS, INC. and)
 EDWARD J. KUSEL,)
)
 Plaintiffs,)
 vs.)
)
 SEA PINES PLANTATION COMPANY,)
)
 Defendant.)

SETTLEMENT AGREEMENT

This Agreement is entered into this 8th day of February, 1984, between the Association of Sea Pines Plantation Property Owners, Inc. (hereinafter "Plaintiff Association") and Edward J. Kusel, the Plaintiffs in the above captioned action and Sea Pines Plantation Company, Defendant in the above entitled action, (which, with Sea Pines Company, its subsidiaries and its other entities, that own property within Sea Pines Plantation is hereinafter "Defendant") for the purpose of compromising and settling the various claims, controversies and disputes between these parties arising out of the facts and circumstances relating directly and indirectly to the above entitled action.

RECITALS

A. That a dispute or controversy has arisen between the parties hereto as to whether or not the Defendant, Sea Pines

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constructed, but shall not include land adjacent or contiguous to any such buildings:

- (i) restaurant and/or bar facilities;
- (ii) warehouse and storage facilities;
- (iii) offices;
- (iv) commercial buildings, e.g., The Harbour Town Shops;
- (v) stable buildings;
- (vi) recreation clubhouses; and
- (vii) tennis courts

E. That the September 7, 1974 Covenants at Article I, Paragraph K provides as follows:

"Business Land" shall mean property on which the following kinds of facilities have been or shall be constructed, but shall not include land adjacent or contiguous to any such buildings:

- (1) restaurant and/or bar facilities;
- (2) warehouse and storage facilities;
- (3) offices;
- (4) commercial buildings, including but not limited to retail shops, hotels, motels, inns, banks, theaters, lounges, but excluding family dwelling units;
- (5) stable buildings;
- (6) recreation clubhouses; and
- (7) tennis courts."

F. That Plaintiff alleges that, Defendant's proposed development of new hotel/inn facilities within Sea Pines Plantation on designated Business Land is not permitted under the Agreement, specifically alleging that hotels, motels, inns, banks and theatres are not permitted land uses under the Agreement.

G. That Plaintiff alleges that, owners of property within Sea Pines Plantation will suffer immediate irreparable harm if

hotels or other similar improvements are constructed within Sea Pines Plantation and are currently suffering immediate harm as a result of the existence of the aforesaid terms of September 7, 1974 Covenants which are allegedly inconsistent with the Agreement, and specifically alleges that such inconsistent terms result in a breach of the Agreement.

H. That Plaintiff in its Complaint has requested that the Court (i) issue its Order reforming the text of the September 7, 1974 Covenants to conform to the Agreement; and (ii) permanently enjoin the construction of hotels, inns; motels, banks or theatres within Sea Pines Plantation.

I. That Defendant, Sea Pines Plantation Company, filed its Answer to the Complaint specifically denying each and every material allegation set forth and raised the affirmative defense of estoppel, in that Plaintiff has had knowledge since at least 1978 and as early as 1957 of Defendant's proposed project to construct a hotel or inn in the vicinity of Harbour Town in Sea Pines Plantation, and Plaintiff's having made no objection before the Beaufort County Joint Planning Commission to the issuance of a development permit to Defendant have waived their objections and are now barred and estopped from seeking to enforce their claimed rights.

J. That Defendant, as an additional defense, raises the defense of vested rights in that Defendant as a result of

acquiring a development permit from the Beaufort County Joint Planning Commission for its proposed project in Harbour Town without objection from the Plaintiffs, has acquired vested rights in the development permit and therefore has a vested right to develop the project pursuant to the provisions of the permit and Plaintiffs are barred from now seeking to object, halt or enjoin the Defendant's project.

K. That Defendant, as an additional defense, alleges that at least one-third of the members of the Plaintiff Association, signed the Agreement after they had received and had the opportunity to review the September 7, 1974 Covenants; that the Plaintiff Association reviewed and approved, through its officers and agents, the September 7, 1974 Covenants as being acceptable to Plaintiff Association under the Agreement and that the Plaintiff Association is estopped from now complaining eight years later, that the September 7, 1974 Covenants are inconsistent with the Agreement and the proposed project at Harbour Town by Defendant violates the Agreement and/or the September 7, 1974 Covenants.

L. Prior to the date this matter was set for trial, the parties have negotiated a settlement of the dispute. All of the terms of this settlement have been expressly incorporated into this written Settlement Agreement.

M. That this Settlement Agreement is being entered into between the parties to resolve the aforementioned disputes, which have arisen in good faith between the parties.

N. That the Plaintiff Association has brought the above captioned action on behalf of and for the benefit of its members and the property owners in Sea Pines Plantation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. The parties agree to limit hotel, motel, inn and/or convention facilities construction and development in the area described as Sea Pines Plantation in the Sea Pines Plantation Property Owners Covenants of September 7, 1974, recorded in Deed Book 224 at Page 1036 in the Office of the Clerk of court for Beaufort County, South Carolina (the "September 7, 1974 Covenants") in the following manner.

- (a) For the purpose of this agreement, hotel, motel and/or inn room shall be defined as any room or combination of rooms which can be rented as one separate accommodation unit; and
- (b) A maximum of One Hundred and Sixty (160) new hotel, motel and/or inn rooms to be located in areas described at Exhibit A and Exhibit B; and
- (c) Conversion of the twenty-six (26) apartments located in that building commonly known as Harbour House "A", Harbour Town to a maximum of Forty (40) hotel, motel and/or inn rooms, in addition to those set forth in (b) above.

- (d) Not more than Sixty (60) of the new hotel, motel and/or inn rooms referenced in (b) above shall be located in the area more particularly described at Exhibit A hereto and hereinafter referred to as the "Harbour Town Site."
- (e) Not more than One Hundred (100) of the new hotel, motel and/or inn rooms referenced in (b) above shall be located in the area more particularly described at Exhibit B hereto and hereinafter referred to as the "Sea Pines Inn Site."
- (f) The Defendant shall not construct or permit to be constructed any additional hotel, motel, and/or inn rooms, and/or other convention facilities on any property in Sea Pines Plantation owned, acquired or managed by the Defendant other than as agreed to hereinabove and shall record a restrictive covenant prohibiting such construction on all property owned by the Defendant described at Exhibit C other than those permitted hereunder at the Sea Pines Inn Site and the Harbour Town Site.
- (g) The Defendant shall submit to Defendant's reconstituted Architectural Review Board for review and approval all preliminary and final site plans, elevations, architectural drawings, landscape, signage and parking plans for any new construction of hotel, motel and/or inn rooms in Sea Pines Plantation prior to finalization. Such review and approval shall not be used as a mechanism for decreasing the maximum number of hotel, motel and/or inn rooms permitted hereunder but only to insure that Defendant has complied with the terms of this Agreement and the standard architectural review board requirements. In recognition of the direct and indirect costs to Defendant of redesigning or replanning, no element of the final plans which is consistent with the approved preliminary plans may later be disapproved.
- (h) In the event of construction and development of new hotel, motel and/or inn rooms by Defendant, Defendant agrees that new meeting rooms, restaurants, convention facilities, and other ancillary facilities constructed in connection with said rooms shall be limited to those facilities appropriate to accommodate the new and converted rooms. The limitation shall also apply to modernization, alteration, refurbishment or conversion of existing ancillary facilities provided that this limitation shall not restrict Defendant's development of other permitted commercial facilities in permitted areas of Sea Pines Plantation.

2. The parties agree that apartment units located in Harbour House A which are converted to hotel, motel and/or inn rooms by the Defendant as provided herein shall be deemed to have been deducted from the number of family dwelling units then calculated to exist and shall be replaced with the same number of family dwelling units, as that term is defined in the September 7, 1974 Covenants; provided, however, that the number of family dwelling units so constructed as a result of such conversion shall not exceed twenty-six (26). In no event shall the provisions of this paragraph be interpreted to permit the Defendant or any other party to violate the Sea Pines Plantation overall density limitation of Five Thousand Eight Hundred Ninety (5,890) family dwelling units.

3. The Defendant agrees to repair at its sole expense any identifiable damage caused to roads, parking areas, landscaping, open spaces and amenities in general caused by the Defendant's construction activities or equipment utilized in connection with the construction of new hotel, motel and/or inn rooms permitted hereunder. The Defendant shall also at its sole expense be responsible for any changes proposed by Defendant in roads, parking and landscaping resulting from the development of new hotel, motel and or inn rooms or facilities constructed in connection therewith. The Advisory Board of the Sea Pines Plantation Property Owners shall be responsible for a reasonable

identification of damage and notification of such damage shall occur no later than sixty (60) days after the completion of construction.

4. The parties agree that property to be used as Business Land by the Defendant as defined in the September 7, 1974 covenants shall only be located within those parcels described at Exhibit C hereto; provided, however, that new construction of hotel, motel, inn rooms and/or convention facilities in Sea Pines Plantation shall be limited to the Harbour Town Site and the Sea Pines Inn Site and provided further that the permitted uses for Business Land shall be as provided in the September 7, 1974 Covenants. This provision shall not be interpreted to prevent the use of the properties described at Exhibit C for other permitted uses including, but not limited to, residential or recreational purposes or open space at the option of the Defendant.

5. By execution hereof, the parties agree that the agreement with Property Owners of Sea Pines Plantation, dated June 17, 1974 (the "Agreement") is not in conflict with the September 7, 1974 Covenants with respect to any issues raised by the above captioned action.

6. The Plaintiff shall immediately dismiss with prejudice or have dismissed with prejudice the above styled civil action

now pending in the Court of Common Pleas, Beaufort County, South Carolina.

7. Each party shall immediately execute and deliver to the other a mutual release, a copy of which is attached hereto at Exhibit D, which fully, completely and forever releases and discharges the other party and its legal representatives, successors and/or assigns of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, compensation and any and all liabilities of any kind whatsoever, on account of or arising out of the above entitled action, including all transactions out of which said civil actions or lawsuits arose.

8. In the event a suit is brought against Defendant by any other property owner of Sea Pines Plantation (except for an action brought either directly or indirectly by or at the request of the Defendant) for the same or similar causes of action as contained in the above referred to suit seeking to prevent the development of the hotel, motel and/or inn rooms permitted hereunder prior to completion of construction thereof, the Plaintiff Association shall cooperate with the Defendant in defending the suit by, among other things, asserting the validity of this Settlement Agreement as a limiting factor on such construction within Sea Pines Plantation. In the event such lawsuit, if brought, is not

dismissed with prejudice or otherwise disposed of before the actual commencement of the trial, then this Settlement Agreement shall be null and void and of no further force and effect.

9. The parties hereto shall participate in the preparation of and approve all public statements or other releases to the various news media outlets and any material to be included in the ASPPPO Newsletter concerning the terms of settlement.

10. No amendment, modification or alteration to the Settlement Agreement shall be effective unless in writing and executed by the parties hereto.

11. The parties hereto shall execute any and all other appropriate papers and documents that may be necessary in order to effectively implement, carry out and/or fulfill the terms and transactions contemplated under this Settlement Agreement.

12. This Settlement Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, descendants, executors, administrators, legal representatives, successors and assigns.

13. Each party understands and agrees that this Settlement Agreement is a compromise and settlement of disputed claims; that acceptance of any benefits pursuant to this Settlement Agreement is intended merely to terminate present litigation and avoid

future litigation with respect to this subject matter; and that acceptance of benefits under this Settlement Agreement is not to be construed as an acquiescence or admission of liability by any of the parties hereto to the claims and allegations of the other party.

14. This Settlement Agreement is subject to the approval of the Court of Common Pleas of Beaufort County, South Carolina and the Court's entry of a final judgment incorporating and making this Settlement Agreement a part thereof in the aforesaid Civil Action Number 82-CP-7-43.

15. In the event any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement such invalid or unenforceable provision shall be fully severable from the remainder of this Agreement.

16. This Settlement Agreement shall be governed, construed and interpreted in all respects by and under the laws of the State of South Carolina.

This Settlement Agreement was executed this 8th day of February, 1984.

PLAINTIFF:

Edward J. Kusel
EDWARD J. KUSEL

WITNESSES:

Chas. A. Scarminach
Jerry L. Wynn

ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS, INC.

BY: William H. Hervey
President

Chas. A. Scarminach
Jerry L. Wynn

ATTEST: William H. Hervey
Vice President

PLAINTIFF'S ATTORNEY:

Ed. Scarminach

DEFENDANT:

SEA PINES PLANTATION COMPANY

BY: John B. Katts
President

Chas. A. Scarminach
Jerry L. Wynn

ATTEST: Charles A. Scarminach
Secretary

DEFENDANT'S ATTORNEY:

Charles A. Scarminach
Charles A. Scarminach

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles W. McIntyre, Jr.,
who, on oath, says that (s)he saw the within named Edward J. Kusel sign, seal, and as his act and deed, deliver the within written document, and that (s)he with Terry L. Wynn witnessed the execution thereof.

SWORN to before me this 8 day
of February, 1984.

Charles W. McIntyre, Jr.
(witness)

Terry L. Wynn
Notary Public for South Carolina
My Commission expires: 10/28/92

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles W. McIntyre, Jr.,
who, on oath, says that (s)he saw the within named ASSOCIATION OF SEA PINES PLANTATION PROPERTY OWNERS, INC. by E.J. Kusel, its President, sign the within document, and Willard S. Harins, its Vice President, attest the same, and that (s)he with Terry L. Wynn witnessed the execution thereof.

SWORN to before me this 8 day
of February, 1984.

Charles W. McIntyre, Jr.
(witness)

Terry L. Wynn
Notary Public for South Carolina
My Commission expires: 10/28/92

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles W. McIntyre, Jr.
who, on oath, says that (s)he saw the within named Elbert
G. Bellows sign, seal, and as his act and deed,
deliver the within written document, and that (s)he with
Terry L. Wynn witnessed the execution thereof.

SWORN to before me this 8 day
of February, 1984.

Terry L. Wynn
Notary Public for South Carolina
My Commission expires: 10/28/92

[Signature]
(witness)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles W. McIntyre, Jr.,
who, on oath, says that (s)he saw the within named SEA PINES
PLANTATION COMPANY by John B. Platt, III, its President,
sign the within document, and Charles A. Scarminach its
Secretary, attest the same, and that (s)he with
Terry L. Wynn witnessed the execution thereof.

SWORN to before me this 8 day
of February, 1984.

Terry L. Wynn
Notary Public for South Carolina
My Commission expires: 10/28/92

[Signature]
(witness)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Charles W. McIntyre, Jr.,
who, on oath, says that (s)he saw the within named Charles A.
Scarminach, sign, seal, and as his act and deed, deliver the
within written document, and that (s)he with Terry L. Wynn
witnessed the execution thereof.

SWORN to before me this 8 day
of February, 1984.

Terry L. Wynn

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

[Signature]
(witness)

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