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**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT**

Waiver and Termination Agreement (Lots)

STATE OF SOUTH CAROLINA )  
 ) WAIVER, RELEASE AND AMENDMENT OF  
 ) OF DECLARANT RIGHTS UNDER THE  
 ) DECLARATION OF COVENANTS,  
 ) CONDITIONS AND RESTRICTIONS  
 ) FOR MELROSE HOMESITES  
 COUNTY OF BEAUFORT )

**THIS AGREEMENT** entered into this 21<sup>st</sup> day of JANUARY, 1994, by and between **THE MELROSE GROUP LIMITED PARTNERSHIP**, a South Carolina limited partnership (hereinafter referred to as the "Declarant") and **THE MELROSE PROPERTY OWNERS ASSOCIATION, INC.**, a South Carolina non-profit corporation (hereinafter referred to as the "Association").

**WHEREAS**, the Declarant is the developer of certain real property located on Daufuskie Island, Beaufort County, South Carolina, known as Melrose which real property is more fully described on a Plat recorded in Plat Book 34 at Page 116, in the records of the RMC Office for Beaufort County, South Carolina (said real property, together with all improvements located thereon and the appurtenances thereon to belonging, and additions hereunder, being hereinafter referred to as the "Property"); and

**WHEREAS**, the Declarant created within the Property, a private residential community, and in order to provide for the preservation of the values and amenities in the Property and for the maintenance of certain open spaces and other common facilities, the Declarant subjected the Property to Declaration of Covenants, Conditions, and Restrictions for the Melrose Homesites recorded in Deed Book 470 at Page 1399 in the said RMC Office for Beaufort County, South Carolina (the "Declaration"); and

**WHEREAS**, pursuant to Article II of the Declaration the initial plan and the initial phase of the property provided for in the development of the property into two hundred thirty four (234) lots with one dwelling to be constructed on each lot. All of said lots were restricted exclusively for single-family residential use; and

**WHEREAS**, the owner of each Lot is a member of the Association; and

**WHEREAS**, there are as of the date hereof one hundred thirty-one (131) Lots (platted and/or unplatted) still owned by the Declarant; and

**WHEREAS**, the Property is located adjacent to that separate and distinct private membership entity and complex known as The Melrose Club which includes a golf course,

driving range, putting green, tennis courts, food and beverage facilities, lodging facilities and other improvements and land; and

**WHEREAS**, Declarant created one thousand five hundred fifty (1550) undivided fee simple interests in The Melrose Club (the "Unit Interests") and has engaged in the sale of the Unit Interests; and

**WHEREAS**, although Lot ownership does not entitle the owner thereof access or the right to use the facilities or amenities of The Melrose Club, a number of Lot owners are, in fact, members of The Melrose Club; and

**WHEREAS**, The Melrose Property Owners Association, Inc. and certain other plaintiffs filed suit in the Beaufort County Court of Common Pleas (Civil Action Number 92-CP-07-2143) on behalf of themselves and all lot owners and owners of Unit Interests in The Melrose Club against the Declarant and certain other named Defendants ("Unit Interests" being defined in the Declaration of Covenants, Conditions and Restrictions Establishing the Melrose Club, recorded in the RMC Office for Beaufort County, South Carolina in Deed Book 432 at Page 857, as amended); and

**WHEREAS**, Plaintiffs and Defendants of the aforesaid Civil Action have entered into that certain Settlement Agreement of even date herewith (the "Settlement Agreement") that provides for, among other things, the waiver, release, and amendment of certain reserved rights of the Declarant under the Declaration to the Association; and

**WHEREAS**, the Declarant and the Association now desire to enter into this Agreement to provide for the termination of the aforesaid reserved rights; and

**NOW, THEREFORE**, in consideration of the payment of One (\$1.00) Dollar each unto the other and other good and valuable consideration, the receipt of which is hereby acknowledged, the Declarant does relinquish, waive, amend, and assign to the Association the following described reserved rights, easements, and other benefits of the Declarant under the Declaration, as hereinafter provided:

1. The above "Whereas" clauses are hereby incorporated into this Agreement as if fully restated. All capitalized terms shall have the same meaning as defined in the Declaration except as otherwise herein set forth.

2. Under Article 2.01, Plan for Development of Property, the Declarant hereby submits all property described on Exhibit "A" attached hereto and incorporated herein by reference to become part of the Property. Additionally, the Declarant agrees that all Lots and Dwellings in the Development shall be and are hereby restricted exclusively to non-commercial single-family residential use. Further, Declarant specifically waives and terminates its right and ability to add any other property to the Development except that property shown on Exhibit "B". Declarant acknowledges and agrees that it shall have the right to develop no more than one hundred thirty-one (131) single family dwelling units on the property described on Exhibit "A".

3. Under Article 3.05, **Changes in Boundaries and Additions to Common Areas**, the Declarant hereby retains the right to transfer to the Association its ownership interest in the sewage treatment facility and/or water system and related infrastructure lines that provides sewage treatment capacity and water to the Association, provided however, that in connection with any such transfer of ownership interest, such transfer shall be free and clear of all liens and encumbrances and the equipment and facilities related to such ownership interest shall be free and clear of all liens and encumbrances and shall have been maintained in compliance with applicable laws, rules and regulations.

4. Under Article 8.01, **Common Areas**, the Declarant hereby terminates and waives its right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association.

5. Under Article 8.03, **Agreements**, the Declarant hereby terminates and waives its right to approve all agreements and determinations of the Board of Directors.

6. Under Article 9.03, **Annual Assessment**, the Declarant hereby terminates and waives its right to disapprove the budget and the annual assessments of the Association.

7. Under Article 9.04, **Special Assessments**, the Declarant hereby retains its right to approve special assessments for Common Expenses, but only if the proposed Special Assessment exceeds twenty-five (25%) percent of the annual budget established by the Board of Directors for the immediately preceding fiscal year and for so long as Declarant owns 25 or more Lots or Dwellings primarily for the purpose of sale.

8. Under Article 9.10, **Date of Commencement of Annual Assessments**, the Declarant hereby modifies its obligation for the payment of annual or special assessments on Lots for which a subdivision plat has been recorded in Beaufort County, South Carolina (the "Platted Lots") or Dwellings which it or its affiliates own to require Declarant to accrue any and all such annual and/or special assessments (with no interest on such accruals) from and after January 1, 1994 and to pay the same upon the conveyance of any such Platted Lots or Dwellings.

9. Under Article 10.5, **Architectural Approval**, the Declarant hereby modifies its right to construct improvements of any nature within the Development without approval by the Architectural Review Board ("ARB") as follows: Declarant agrees that any improvements which are constructed by Declarant or its agents or employees shall be reasonably compatible with improvements situated within the Development (as regards architectural design, color, height, materials, etc.) and with any and all restrictions set forth in the Declaration (as amended). Declarant agrees to submit to the ARB two (2) copies of the plans and specifications and related data for any construction of improvements of any nature in order for the ARB to be on notice of such construction.

10. Under Article 10.06, **Landscaping Approval and Lien for Maintenance Services**, the Declarant hereby modifies its right to landscape, grade, excavate, or fill, within the Development without approval of the ARB as follows: Declarant agrees that any landscaping, grading, excavation or filling within the Development by the Declarant, its agents or employees, shall be reasonably compatible with landscaping, grading, excavating, and filling

existing within the Development and with any and all restrictions set forth in the Declaration (as amended). Declarant agrees to submit to the ARB two (2) copies of the plans and specifications for any activity.

11. Under Article 10.09, Signs, the Declarant hereby modifies its right to maintain or permit any signs or advertising posters without the approval of the ARB as follows: Declarant agrees that it will submit to the ARB copies of any signs or posters it intends to display within 10 days of the intended posting. The ARB shall have 10 days from its receipt of said sign or poster information to provide written comments to the Declarant if the ARB (in its reasonable discretion) deems the sign or poster to be inappropriate or inconsistent with similar posters or signs which have been approved. Thereafter the Declarant and the ARB shall meet within 10 days to discuss the ARB's comments.

12. Under Article 11.01, Rules and Regulations, the Declarant retains its right to approve the overruling, cancellation, or modification of any rule or regulation established by the Board of Directors, but only for the cancellation, modification, or overruling of a rule or regulation which would materially interfere with and/or cause material expense to the Declarant in conjunction with its development of Lots and/or Dwellings in the Development.

13. Under Article 12.01, Control by Declarant, the Declarant hereby terminates and waives its right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association.

14. Under Article 12.08, Amendments by Declarant, the Declarant hereby terminates and waives its right to amend the Declaration.

15. Under Article 12.02, Amendments by Association, except for any amendment to Article 9.10 of the Declaration as amended herein, the Declarant hereby terminates and waives its right to approve any amendment to the Declaration approved by at least two-thirds (2/3) of the vote of the Association for said amendment to be effective as described in this section.

16. By execution hereof, Declarant hereby agrees to join in the execution of any necessary amendment to the by-laws of the Melrose Property Owners Association, Inc. in order to amend said by-laws to reflect the waivers contained herein.

17. Any controversy which shall arise between the parties regarding the rights, duties or liabilities of any party hereunder shall be settled by binding arbitration pursuant to the rules of the American Arbitration Association, and judgment upon the award shall be entered in accordance with the South Carolina Uniform Arbitration Act. The parties agree, subject to the consent of the American Arbitration Association, that such arbitration shall be processed pursuant to the American Arbitration "Expedited Procedure" notwithstanding that the amount in controversy may exceed the limits set for such procedure.

If any action, including arbitration, shall be brought by any party to recover any sums hereunder, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms or conditions of this Agreement, the prevailing party shall be entitled to recover costs and expenses, including reasonable attorney's fees.

If an arbitration proceeding is brought by any party to this Agreement, a request shall be made by the parties to the arbitrator that in the event a prevailing party is not determined by the outcome of the action, the arbitrator shall make a final determination concerning payment of all costs and expenses (including reasonable attorney's fees) by one or both parties, as the arbitrator deems appropriate based upon the facts and circumstances of the case.

IN WITNESS WHEREOF, the Declarant and the Association have executed this Amendment under Seal as of the day and year first above written.

IN THE PRESENCE OF:

MELROSE GROUP LIMITED PARTNERSHIP,  
a South Carolina limited partnership

By: The Melrose Company, Inc.,  
a South Carolina corporation,  
its General Partner

Janet L. Robinson  
Margaret B. Lueken

By: [Signature]  
Its: President

IN THE PRESENCE OF:

MELROSE PROPERTY OWNERS ASSOCIATION,  
INC., a South Carolina not-for-profit  
corporation

Janet L. Robinson  
Margaret B. Lueken

By: [Signature]  
Its: Secretary

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath, says that (s)he saw the within-named MELROSE GROUP LIMITED PARTNERSHIP, a South Carolina limited partnership, by The Melrose Company, Inc., a South Carolina corporation, its general partner, by its duly authorized officer, sign, seal, and as its act and deed, deliver the within written instrument, and that (s)he with the other witness whose name appears above as a witness, witnessed the execution thereof.

Janet L. Parkerson

SWORN TO before me this 21<sup>st</sup>  
 day of January, 1994.

Margaret B. Luckin  
 Notary Public for South Carolina  
 My Commission Expires: 3/17/98

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )

PROBATE

PERSONALLY appeared before me the undersigned witness, who, on oath, says that (s)he saw the within-named MELROSE PROPERTY OWNERS ASSOCIATION, INC., a South Carolina not-for-profit corporation, by its duly authorized officer, sign, seal, and as its act and deed, deliver the within written instrument, and that (s)he with the other witness whose name appears above as a witness, witnessed the execution thereof.

Janet L. Parkerson

SWORN TO before me this 21<sup>st</sup>  
 day of January, 1994.

Margaret B. Luckin  
 Notary Public for South Carolina  
 My Commission Expires: 3/17/98

EXHIBIT A**ALL MELROSE PUD PROPERTY EXCEPT FOR THE MELROSE MAINTENANCE AREA**

ALL that certain piece, parcel, or tract of land situate, lying and being in Melrose Plantation on Daufuskie Island, Beaufort County, South Carolina, containing 662.55 acres, more or less, and being more particularly shown and described on a plat entitled "Plat of 662.55 Acres Tract Known as Melrose Plantation," prepared by Gifford, Nielson, and Williams, by Josiah H. Williams, SCRLS #7626, dated May 30, 1984, and recorded in the RMC Office for Beaufort County, South Carolina on November 12, 1984 in Plat Book 32 at Page 155;

LESS AND EXCEPT all that certain piece, parcel, or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, containing 300.00 acres, more or less, and being more particularly shown and described as Tract A, Tract B, Tract C and Tract D on a plat entitled "Plat of a Portion of the Melrose Plantation Known as the Melrose Club Property, Totalling 300.00 Acres," prepared by Gifford, Nielson, and Williams, by Matthew M. Crawford, SCRLS # 9756, dated April 26, 1985 and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 35 at Page 245;

LESS AND EXCEPT all that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, containing 7.342 acres, more or less, and being more particularly shown and described on a plat entitled "A Plat of Maintenance Area, A Section of Melrose, Daufuskie Island, Beaufort County, South Carolina," prepared by Boyce L. Young, SCRLS # 11079, dated March 25, 1993, and recorded in the RMC Office for Beaufort County, South Carolina, in Plat Book 49 at Page 67;

LESS AND EXCEPT all those certain pieces, parcels, or tracts of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, containing 2.0 acres, more or less, and containing 58.0 acres, more or less, and both parcels being more particularly shown and described on a plat entitled "Plat of 662.55 Acre Tract Known as Melrose Plantation," prepared by Gifford, Nielson, and Williams, by Josiah H. Williams, SCRLS # 7626, dated May 30, 1984, and recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 32 at Page 155.

**EXHIBIT B****SOLCO, INC. TRACT AND NORMAN J. ARNOLD LOTS**

**ALL that certain pieces, parcels or lots of land situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, shown and designated as LOTS NUMBER TWENTY-SIX (26), TWENTY-SEVEN (27) and TWENTY-EIGHT (28) on a plat prepared by Civil Engineering of Columbia, dated July 20, 1978, and recorded in the RMC Office for Beaufort County, South Carolina, in Deed Book 293 at Page 16. For a more detailed description as to courses, metes and bounds, reference may be made to said plat of record.**

**ALL that certain piece, parcel or tract of land situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, containing 58.0 acres, more or less, located in MELROSE PLANTATION and being more particularly shown on the plat thereof dated June 9, 1986, revised July 23, 1986, and recorded October 2, 1986, in the RMC Office for Beaufort County, South Carolina, in Plat Book 34 at Page 47.**



*NDS*  
FILED *238675*  
W. W. B. BRYANT, ACTING  
CLERK  
DEALERS OF COUNTY, S.S.  
/ *MLL*  
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