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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No.: 2022-000470
Case No. 2021-CP-10-04342

Levi Grantham, LLC,Appellant,

v.

Kathy Wright Mitchell,Respondent.

RECORD ON APPEAL

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Kathy Wright Mitchell*

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LEVI GRANTHAM LLC

KATHY WRIGHT MITCHELL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DONALD J. BUDMAN

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
 Note: Title abstractors and researchers should refer to the official court order for judgment details.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case Number 2021-CP-10-04342
)	
LEVI GRANTHAM, LLC,)	
)	
PLAINTIFF,	)	ORDER GRANTING DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
Vs.)	
)	
KATHY WRIGHT MITCHELL,)	
)	
DEFENDANT.)	

Presiding Judge: Frank R. Addy, Jr.
Date of Hearing: March 31, 2022
Plaintiff's Attorney: E. Brandon Gaskins
Defendant's Attorney: Donald J. Budman
Court Reporter: WebEx

This matter came before me for hearing on Webex on March 31, 2022, pursuant to Defendant's Motion for Summary Judgment based on defendant's Eighth Defense and Counterclaim for Rescission. Present for the hearing was counsel for plaintiff and counsel for defendant. The court considered the pleadings in the case, the plaintiff's memorandum and exhibits, as well as the defendant's motion, exhibits and memorandum with exhibits. Jurisdiction and venue are appropriate in Charleston County.

A review of the case file indicates that the plaintiff filed a Lis Pendens on the subject real property on August 30, 2021 as case # 2021-LP-10-0489. That was followed by the filing of a Summons and Complaint on September 20, 2021. Defendant filed an Answer and Counterclaim on November 8, 2021. A Reply to Counterclaim was filed on December 8, 2021. This motion for summary judgment was filed by defendant on February 22, 2022.

The parties to this case entered into a written Agreement to Buy and Sell Real Estate (the "Agreement"), where defendant was to sell a tract of land on James Island, South Carolina,

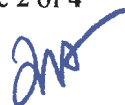


identified as Charleston County TMS # 427-00-00-024 to plaintiff for \$400,000.00. The Agreement called for a 90-day "termination right" and for a closing to occur within 30 days after the termination right expired. An additional 30-day extension period is stated in the Agreement. The Agreement also states that "Time is of the essence," in bold letters and underscored.

Typed in to the otherwise form Agreement are two contingencies, both pertaining to governmental approval of plaintiff's development plans for the property. In smaller print, but still typed into the Agreement, it states that if the contingencies are not met by the closing date, the buyer could either terminate the Agreement with a return of its earnest money deposit, or, upon notice to seller, the buyer could choose to toll the Agreement until all such conditions are satisfied. There is no time deadline set forth in the Agreement at which the buyer must satisfy the contingencies and close on the sale. By letter dated July 9, 2021, plaintiff delivered notice to defendant electing to exercise its right to toll the Agreement until the contingencies were satisfied.

On November 4, 2021, defendant notified plaintiff that since the Agreement did not set a deadline for satisfying the contingencies, she would consider December 4, 2021 to be a reasonable period of time for the buyer to do so, and close the sale. The defendant's notice stated clearly and unequivocally that if the sale did not close by that date, or the closing date not be extended by agreement, she would consider the Agreement to be terminated, and that she would seek a rescission of the contract, or damages at law as may be applicable.

No closing occurred by December 4, 2021. Nor did a closing occur by January 5, 2022 when defendant notified plaintiff that she was agreeable to extending the closing until February 11, 2022- the one year anniversary of the Agreement. Once again, the defendant's notice stated clearly and unequivocally that if the sale did not close by February 11, 2022, she would



consider the Agreement to be terminated and that she would seek a rescission of the Agreement or damages at law as may be applicable.

On February 2, 2022, defendant notified the plaintiff clearly and unequivocally of her continuing intent to terminate the contract on February 11, 2022, and seek a rescission of the Agreement, if the Agreement had not closed by then. Also in this notice, the defendant tendered a full return of the plaintiff's earnest money deposit and instructed the escrow agent that she consented to an immediate release of the escrowed funds to plaintiff if it consented to, or was ordered to, rescind the Agreement.

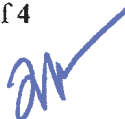
There was no closing of the Agreement by February 11, 2022. Defendant's motion for summary judgment was filed on February 22, 2022. As of the date of this hearing, there has been no closing, and no closing is scheduled. The affidavit of Joshua Craig, Director of Acquisitions for plaintiff's Charleston Division, instructs the court that the process of meeting contingencies similar to those in the Agreement could take 1 to 3 years.

I conclude that there are no genuine issues of material fact that need to be resolved in this case. The refusal or unwillingness of plaintiff to close on the Agreement to Buy and Sell Real Estate within a reasonable period of time is a substantial and fundamental breach which defeats the purpose of the subject contract. Requiring the seller to wait more than one year to close on the Agreement, when "time is of the essence," and no date is set for the satisfaction of contingencies, is unreasonable.

Therefore, it is

ORDERED, that the defendant's motion for summary judgment is granted, subject to the following condition: that the plaintiff, Levi Grantham, LLC, shall have until the close of business on April 15, 2022 to purchase the subject real property from the defendant for the sum stated in the

Page 3 of 4



RECORD 000007


Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021; and it is further

ORDERED, that should the plaintiff fail to purchase and pay for the subject real property on or before the close of business on April 15, 2022, as stated above, the Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021, which is the subject of this lawsuit, shall be immediately rescinded and terminated; at which time the Clerk of Court, at the request of counsel for defendant, shall enter judgment of rescission in favor of defendant, dismiss the remainder of this lawsuit without prejudice, and cancel the Lis Pendens, case # 2021-LP-10-0489; and it is further

ORDERED, upon entry of judgment of rescission in favor of defendant, the plaintiff's earnest money deposit of \$5,000.00 shall be released in its entirety by the escrow agent and returned to plaintiff; and it is further

ORDERED, that should plaintiff file an appeal of this Order pursuant to the South Carolina Rules of Civil Procedure and/ or the South Carolina Appellate Court Rules, and seek a supersedeas, I will require plaintiff to post a surety appeal bond in the amount of \$400,000.00 in accordance with Rule 241(d) SCACR.

AND IT IS SO ORDERED.



Frank R. Addy, Jr., Circuit Court Judge

Greenwood, South Carolina

31st day of March, 2022

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-10-04342

LEVI GRANTHAM, LLC

KATHY WRIGHT MITCHELL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

This matter comes before the Court on Plaintiff’s motion for reconsideration of the Court’s order of April 1, 2022. The Court has reviewed the motion and Defendant’s response and finds that further hearing on the matter is unnecessary. Furthermore, due to the approaching deadline of April 15th for Plaintiff to close on the property, prompt issuance of this order is necessary as time is of the essence.

Having fulling reconsidered the matter, the Court finds that the order of April 1st shall remain unchanged. Plaintiff was the author of the contract for sale and could have omitted the “time is of the essence” provision from the contract. Absent express language to the contrary, one to three years is an inherently unreasonable timeframe to meet contingencies where the contract is unambiguous in contemplating closing within 120 days. Therefore, rescission is proper as a matter of law under the facts of this case if Plaintiff elects not to close this Friday.

To the extent that Plaintiff complains that the property is necessary “for the successful completion of its contemplated residential developments” for which Plaintiff has already expended significant sums, then Plaintiff has but one option: If the property is necessary for Plaintiff’s development, then Plaintiff simply needs to buy the property. As explained at the hearing, the question is clear: Does Plaintiff want the property or not? If Plaintiff wants/requires

the property, then pay Defendant \$400,000 per the contract this Friday and just be done with it. If not, the Defendant should be able to walk away and locate another buyer.

Concerning the question of bond, the imposition of bond was for purposes of protecting Defendant should one of two contingencies arise. First, the Court was concerned with what many economists have described as a growing real estate bubble. This jurist’s memories of the 2008-09 financial crash remain vivid, and should Plaintiff appeal and such a crash reoccur, Defendant will be protected via insurance. Second, in that same financial crisis many contractors and developers went bankrupt, and the Court system was tasked with untangling the resulting Gordian knot. Bond will protect the Defendant during any appeal should Plaintiff subsequently go out of business while the appeal is pending. To the extent Plaintiff may elect to appeal and an automatic stay not be imposed, Plaintiff may similarly request bond of Defendant at that time.

For the above reasons, the Court declines to alter or amend the April 1, 2022 order.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Frank R. Addy, Jr.
Circuit Court Judge

2159
Judge Code

April 13, 2022
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

E. Brandon Gaskins

Donald Budman

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: WebEx recording only for initial hearing; no hearing held on motion to alter or amend. Contact South Carolina Court Administration to request any transcript of this hearing.

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Charleston Common Pleas

Case Caption: Levi Grantham Llc VS Kathy Wright Mitchell
Case Number: 2021CP1004342
Type: Order/Form 4

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2022-04-14 14:47:11 page 4 of 4

ELECTRONICALLY FILED - 2022 Apr 14 3:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

RECORD 000012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-LP-10-
)	
Levi Grantham, LLC,)	
)	
Plaintiff,	)	LIS PENDENS
)	
vs.)	
)	
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

NOTICE IS HEREBY GIVEN that Plaintiff will initiate an action within twenty (20) days of the date of filing of this lis pendens in the Court of Common Pleas for Charleston County, against Defendant above named, and that the real estate affected by such action is situated in Charleston County, and the following is a description thereof:

All that piece parcel or lot of land being on the east side of Folly Road in Charleston County, South Carolina, being some 0.88 of an acre, and known as Lot B on a plat dated February 28, 1980, made by W. L. Gaillard, surveyor, said plat entitled "Plat of Subdivision of Property Owned by Estate of Williman Gaillard". Said plat being recorded in the R.M.C. Office for Charleston County in Plat Book G, at Page 30A.

Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at larger appear.

Being the same property conveyed to Katherine Gilliard, formerly known as Katherine Ziamon, by deed of distribution from the estate of Louis Gilliard, Case #2009-ES-10-00637, dated February 1, 2010 and recorded in the R.M.C. Office for Charleston County in Book 0106, at Page 190.

TMS No. 427-00-00-024

Respectfully submitted,

s/E. Brandon Gaskins

E. Brandon Gaskins (S.C. Bar No. 73274)

Moore & Van Allen PLLC

78 Wentworth Street (29401)

P.O. Box 22828

Charleston, SC 29413-2828

Telephone: 843-579-7000

Facsimile: 843-579-7099

brandongaskins@mvalaw.com

Attorney for Plaintiff Levi Grantham, LLC

August 30, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-LP-10-
)	
Levi Grantham, LLC,)	
)	
Plaintiff,	)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

The undersigned hereby certifies that on this date, he caused a true and correct copy of the **Lis Pendens** to be served on the following via certified mail, return receipt requested, addressed to the following:

Kathy Wright Mitchell
3445 Osceola Street
North Charleston, SC 29405

s/E. Brandon Gaskins
E. Brandon Gaskins

August 30, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-CP-10-
)	
Levi Grantham, LLC,)	
)	
Plaintiff,	)	SUMMONS
)	
vs.	)	(Non-Jury Trial Demanded)
)	
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

To The Above-Named Defendant:

YOU ARE HEREBY SUMMONED and required to respond to the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your response to said Complaint on the firm of Moore & Van Allen PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to respond to the Complaint within the time prescribed, the Plaintiff in this action will apply to the Court for default judgment against you and for an award of the relief demanded in this Complaint.

Respectfully submitted,

s/E. Brandon Gaskins
E. Brandon Gaskins (S.C. Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street (29401)
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: 843-579-7000
Facsimile: 843-579-7099
brandongaskins@mvalaw.com

Attorney for Plaintiff Levi Grantham, LLC

September 20, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-CP-10-
)	
Levi Grantham, LLC,)	
)	
Plaintiff,	)	COMPLAINT
)	
vs.)	
	)	(Non-Jury Trial Demanded)
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

Plaintiff Levi Grantham, LLC (“Levi Grantham”), complaining of Defendant Kathy Wright Mitchell (“Mitchell”), alleges the following:

PARTIES

1. Levi Grantham is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina.
2. Mitchell is a citizen and resident of Charleston County, South Carolina.

VENUE AND JURISDICTION

3. This Court has jurisdiction of the parties and the subject matter of this action pursuant to S.C. Code Ann. § 15-53-20 and Article 5 of the South Carolina Constitution.
4. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-10 and the subject matter of this action concerns a real estate purchase agreement for real estate to be purchased within Charleston County, South Carolina.

FACTS

5. On February 11, 2021, Mitchell and Levi Grantham entered into a purchase agreement in which Levi Grantham would purchase the property commonly known as 1584 Folly Road, Charleston, South Carolina 29412, which is more particularly described as:

All that piece parcel or lot of land being on the east side of Folly Road in Charleston County, South Carolina, being some 0.88 of an acre, and known as Lot B on a plat dated February 28, 1980, made by W. L. Gaillard, surveyor, said plat entitled “ Plat of Subdivision of Property Owned by Estate of Williman Gaillard” . Said plat being recorded in the R.M.C. Office for Charleston County in Plat Book G, at Page 30A.

Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at larger appear.

Being the same property conveyed to Katherine Gilliard, formerly known as Katherine Ziamon, by deed of distribution from the estate of Louis Gilliard, Case #2009-ES-10-00637, dated February 1, 2010 and recorded in the R.M.C. Office for Charleston County in Book 0106, at Page 190.

TMS No. 427-00-00-024

(the “Property”). The purchase agreement is attached as **Exhibit A** and incorporated herein by reference (the “Purchase Agreement”).

6. In accordance with the Purchase Agreement, Levi Grantham tendered the required earnest money to Levi Grantham’s closing attorney, and the earnest money remains in escrow.

7. The Property is adjacent to another parcel that Levi Grantham has contracted to purchase, and Levi Grantham plans to assemble the parcels to develop for residential homes. As a result, the Property is unique and integral to Levi Grantham’s development plan.

8. Because the Property is integral to Levi Grantham’s development plan, the parties agreed that the closing of the sale and purchase of the Property would be contingent upon Levi Grantham obtaining a certain governmental approvals necessary for the development plan. Specifically, Paragraph 36 of the Purchase Agreement provides:

The following conditions shall be satisfied prior to closing under the Agreement:

A. Purchaser's receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.

B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all of the conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied.

9. Since entering into the Purchase Agreement, Levi Grantham has been diligently engaged in the design of its intended development of the Property and adjacent parcel and is actively seeking the necessary government approvals of its development plan. Although those approvals are actively being sought, they have not yet been obtained by Levi Grantham.

10. Because the contingencies listed in Paragraph 36 of the Purchase Agreement had not been satisfied as of the anticipated closing date, on July 9, 2021, Levi Grantham provided Mitchell with notice of its election to toll the Purchase Agreement until the contingencies were satisfied, in accordance with Paragraph 36.

11. Despite Levi Grantham's election of its option to toll the Purchase Agreement and its continuing intent to the purchase the Property, Mitchell, through her real estate agent, has indicated that she no longer intends to honor her obligation to sell the Property to Levi Grantham under the Purchase Agreement. Consistent with that representation, on August 23, 2021, Mitchell listed the Property for sale by owner on www.zillow.com for \$295,000 more than what was agreed to in the Purchase Agreement with Levi Grantham and is actively marketing and attempting to sell the Property to another purchaser. In so doing, Mitchell has anticipatorily breached the Purchase Agreement.

12. In anticipation of this action, Levi Grantham filed a lis pendens on the Property on August 30, 2021, case number 2021-LP-10-00489, to give notice of this claim based on these facts.

13. Section 22 of the Purchase Agreement states that if either Levi Grantham or Mitchell breaches the Purchase Agreement, either party may pursue any and all legal and equitable remedies available.

14. Section 22 also provides that if it becomes necessary for a party to file suit to enforce the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceedings.

15. Section 4B of Addendum 1 to the Purchase Agreement states that seller's breach of any provision of the Agreement shall constitute a default and the buyer may elect any remedy provided by law or in equity, including specific performance.

16. The Property and the acquisition of the Property by Levi Grantham is unique to it and uniquely tailored and tied to Levi Grantham's specific plans to develop the Property. Money damages are inadequate to Levi Grantham based upon these facts and there is no adequate remedy at law. Therefore, Levi Grantham is entitled to the remedy of specific performance of the Purchase Agreement.

17. If the Court does not award specific performance of the Purchase Agreement which it should, Mitchell is liable, in the alternative, to Levi Grantham for all damages and future damages suffered by Levi Grantham as a result of Mitchell's breach of the Purchase Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

18. Levi Grantham repeats all of the allegations of the above paragraphs as if they were repeated verbatim here.

19. The Purchase Agreement is a valid, legally binding contract.

20. In reliance on the Purchase Agreement, Levi Grantham has performed its obligations under the Purchase Agreement and is ready, willing and able to continue to perform, purchase, and close on the Property, subject to the contingencies included in the Purchase Agreement being satisfied.

21. Mitchell has anticipatorily breached the Purchase Agreement by attempting to sell the Property to someone other than Levi Grantham, which is in violation of her obligation to sell the Property Levi Grantham.

22. Money damages to Levi Grantham are inadequate because the Property is unique to Levi Grantham and its need and use of the Property for its intended development.

23. Levi Grantham is entitled to an award of equitable relief in the form of an order granting it specific performance of the Purchase Agreement and an order compelling Mitchell to satisfy certain contingencies needed to close on the purchase of the Property immediately and on the terms set forth in the Purchase Agreement. Levi Grantham is also entitled to an award of all attorneys' fees and costs it has incurred in connection with enforcing its rights under the Purchase Agreement.

24. If specific performance is not granted, Levi Grantham will suffer damages in the form of lost costs in pursuit of the transaction, attorneys' fees incurred in attempting to enforce its rights under the Purchase Agreement, and lost profits associated with its planned development of the Property. Therefore, if specific performance is not granted, Mitchell is alternatively liable for all damages, attorneys' fees, and costs proximately caused by Mitchell's breach of the Purchase Agreement.

WHEREFORE, Levi Grantham requests the following relief:

A. An award of specific performance of the Purchase Agreement and compelling Mitchell to satisfy certain contingencies needed to close on the purchase of the Property immediately and on the terms set forth in the Purchase Agreement as well as attorneys' fees and costs incurred in this action.

B. In the alternative, Levi Grantham prays for an award of damages, attorneys' fees, costs and prejudgment interest for Mitchell's breach of the contract.

C. Preliminary and/or permanent injunctive relief prohibiting Mitchell from selling the Property to anyone other than Levi Grantham.

D. An award of such other further relief that the court deems just.

Respectfully submitted,

s/E. Brandon Gaskins

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Attorney for Plaintiff Levi Grantham, LLC

September 20, 2021
Charleston, South Carolina

EXHIBIT A



AGREEMENT TO BUY AND SELL REAL ESTATE (FOR GENERAL USE AND LOTS/ACREAGE)

ELECTRONICALLY FILED - 2021 Sep 23 11:31 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

1. PARTIES: This legally binding Agreement entered into on February 11th, 2021 between, Buyer(s), Levi Grantham, LLC and its assigns, (hereinafter called "BUYER"), and Seller(s), Kathy Wright Mitchell (hereinafter called "SELLER"). The property shall be deeded in the name(s) of Levi Grantham, LLC and its assigns

THE [X] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____ Address 1584 Folly Road Tax Map # 427-00-00-024 City Charleston Zip 29412 County of Charleston, State of South Carolina.

3. PURCHASE PRICE shall be \$ 400,000 Four Hundred Thousand and no/100 dollars.

4. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash; or [] Subject to Financing. Financing to be obtained by [] Conventional [] Seller [] VA [] FHA [] Other terms: _____

5. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 5,000 Buyer and Seller authorize Florence Law Firm, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [X] Check, or [] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

6. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum _____ % loan (loan to value ratio) within _____ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 22.

FHA Mortgage Insurance [] will [] will not be added to the mortgage. VA funding fee [] will [] will not be added to the mortgage.

[Signature]

[] BUYER [] BUYER [] SELLER [X] SELLER HAVE READ THIS PAGE

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7. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

- (a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
- (b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: N/A

8. **OPTION TO TERMINATE AFTER DUE DILIGENCE:** (A) Seller grants to Buyer a 90 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following:

- 1. Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use, including, but not limited to, zoning, governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence");
- (B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost or expense associated with Buyer's inspection of and entry upon Property.
- (C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9. **BUILDING PERMIT:** This Agreement is is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property. If Buyer notifies Seller in writing within _____ days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

10. **REZONING:** This Agreement is is not contingent upon Property being rezoned to _____ on or before the _____ day of _____, _____ by the appropriate governmental authorities. ~~For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed. The Buyer Seller shall be responsible for pursuing such rezoning, and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.~~

11. **WELL, SEPTIC TANK, SEWER AVAILABILITY:** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property.

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed \$ N/A, then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system.

Seller represents that the property is connected to public sewer system or to septic tank or to public water or to well system or to other _____

 BUYER BUYER SELLER  SELLER HAVE READ THIS PAGE

12. **SURVEY:** Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the BUYER SELLER. The surveyor shall set and flag all property pins, showing encroachments and easements. Property must be N/A x N/A or having at least N/A acres. The survey to be approved in writing by Buyer prior to closing. The purchase price is based upon \$ N/A per N/A (acre, sq. ft., or front ft.) and shall be adjusted in accordance with the area set forth in such a survey, if applicable.

13. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 30 days after the Termination Right expires, no later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

14. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

15. **CONDITION OF PROPERTY:** The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement.

16. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5:00 o'clock P M on 2/12, 2021 unless countered or accepted by Seller in written form prior to such time. **Time is of the essence.**

17. **SPECIAL STIPULATIONS:** The following stipulations concerning restrictions, and easements affecting desired use, drainage, hazardous waste, availability of water and sewer, soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter, the following stipulations shall control: (See addendum if applicable) See Addendum 1.

Seller will not be responsible for coordinating or paying for any surveys or inspections. Should contract terminate, all surveys, inspections and other related documents will be provided to the seller at no cost for sellers use.

18. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The Buyer or the Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

19. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20. **ROLLBACK TAXES (IF ANY):** When rollback taxes are subsequently determined and billed to the Buyer, the Seller and Buyer agree that the rollback taxes shall be paid by Buyer or Seller.

21. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer ~~or Seller~~ shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

 BUYER BUYER SELLER  SELLER HAVE READ THIS PAGE

23. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

24. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

25. **APPRAISED VALUE:** (check one)

This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

26. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS:** All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the Buyer. In the event such studies are wanted or required, the studies must be furnished by the proper parties **within 15 days** of complete execution of the agreement. The Buyer and Seller must have access to all studies **within five (5) days of receipt** of the studies. If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem, the Buyer's obligations under this Agreement terminate upon written notice thereof from Buyer.

27. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense.

28. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

29. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud.

Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

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The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

30. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

31. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

32. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

33. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

34. **MEGAN'S LAW:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

35. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

36. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) The following conditions shall be satisfied prior to closing under the Agreement:

- A. Purchasers receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.
- B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all of the conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF

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THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.
Levi Grantham, LLC

BUYER: by: [Signature] CFO Date 2-10-21 Time _____

WITNESS: [Signature] Date 2/10/21 Time _____

BUYER: [Signature] Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Kate & Ann Date 2-11-2021 Time _____

WITNESS: [Signature] Date 2-11-2021 Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LRM LISTING AGENT AND COMPANY Jason Wang, Century 21 Brand Name Real Estate

SELLING AGENT AND COMPANY Joshua Craig, Crescent Homes Realty, Inc.

SELLING AGENT IS PRESENTING THIS OFFER AS A BUYER'S AGENT OR SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE

THIS ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE (the "Addendum") for certain Property described in that certain Agreement to Buy and Sell Real Estate (the "Agreement"), which Property is sometimes referred to herein as the "Lot(s)" located in Subdivision is made and entered into on _____, 2021 (the "Effective Date") by **Levi Grantham, LLC**, and its assigns ("Buyer") **Kathy Wright Mitchell** ("Seller"). If there is any conflict or inconsistency between the terms and conditions of The Agreement and this Addendum, the terms and conditions of this Addendum shall control and govern the rights and obligations of the parties.

1. Due Diligence Materials and Termination Right:
 - A. Due Diligence Materials. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer copies of all due diligence materials pertaining to all or any portion of the Lot(s) in its possession or control, including title materials, subdivision documents, plats, surveys, plans, studies and reports.
 - B. Termination Right. If Buyer terminates this Agreement prior to the expiration of the Termination Right in accordance with Paragraph 8 of the Agreement or as may otherwise be expressly permitted herein, then Escrow Agent shall return the Earnest Money to Buyer.
2. Title:
 - A. Seller Warranties. Notwithstanding Section 13 of the Agreement, Seller represents and warrants to Buyer that Seller has "good and marketable, fee simple title" to the Lot(s), and that at closing, Seller shall convey "good and marketable, fee simple title" to the Lot(s) to Buyer, subject only to the following exceptions (the "Permitted Exceptions"):
 - (1) the lien for ad valorem taxes which are not yet due and payable;
 - (2) easements shown on the applicable subdivision plat;
 - (3) declarations, restrictions and covenants affecting the subdivision; and
 - (4) general service lines and utility easements that serve only the Lot(s).

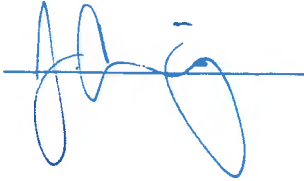
"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company chosen by Buyer at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions.
 - B. Title Defects. If Buyer's examination of the title and a survey of the Lot(s) reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller in connection with Buyer's Due Diligence, then Seller shall promptly cure the Title Defects, provided that if Seller does not demonstrate to Buyer's reasonable satisfaction that Seller will cure such Title Defects prior to closing, then Buyer may by written notice to Seller extend the expiration of the Termination Right or, if applicable, the closing, until such time as the Title Defects are cured. Notwithstanding the foregoing, Buyer shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including without limitation judgment liens that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than closing. Buyer shall be entitled to cure Monetary Encumbrances with proceeds payable to Seller at closing and to examine title to the Lot(s) prior to closing and to object to all matters appearing of record or otherwise affecting the Lot(s) between the date on which Buyer made its title examination pursuant hereto and the date of closing. Seller agrees not to further encumber the Lot(s) from and after the Effective Date.
3. Seller's Representations and Warranties: Seller covenants, represents and warrants to Buyer the following:
 - A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent of any other party and the signatories to this Agreement for Seller are duly authorized to bind Seller.
 - B. Seller has neither received notice nor has any knowledge with respect to all or any portion of the Lot(s): (i) that any condemnation or taking is pending or is contemplated, (ii) of any violation of any applicable law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements; (iii) of any default or breach under any covenant, condition, restriction, right-of-way or easement; and/or (iv) of any private or public special assessment.
 - C. To the best of Seller's knowledge, the Lot(s) have not been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws,

regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on or about the Lot(s).

- D. There are no leasehold or occupancy agreements encumbering the Lot(s), no party has any possessory interest or right in the Lot(s), and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Lot(s).
 - E. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Lot(s) or Seller is pending, threatened or contemplated by Seller.
 - F. Seller will give prompt written notice to Buyer of any change of changed conditions affecting any of the covenants, representations and warranties set forth in the Agreement as affected by this Addendum.
4. Default and Remedies:
- A. Buyer's Default. If closing does not occur because of Buyer's breach of the Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy under the Agreement, Seller may terminate the Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The parties recognize that it would be difficult to determine the actual damages suffered by Seller as a result of such failure of Buyer to consummate the sale contemplated hereby, and the parties agree that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Buyer's breach of the Agreement and relinquishes any and all right to pursue an action for specific performance against Buyer in the event Buyer defaults in any of its obligations hereunder.
 - B. Seller's Default. Seller's breach of any provision of the Agreement shall, at Buyer's option, constitute a default hereunder. Buyer may elect in addition to the Mediation Clause set forth in the Agreement any remedy provided by law or in equity, including termination of the Agreement and receive a refund of the Earnest Money and any other fees or sums paid to Seller, specific performance, injunctive relief or other relief to require Seller to perform its obligations under the Agreement. If Buyer engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Buyer.
5. Notice: All notices, demands, and other communications which are to be given by Buyer or Seller to the other shall be in writing, which may be delivered via e-mail, by hand delivery or by a nationally recognized overnight delivery service with charges therefor billed to shipper (any of which shall be deemed given and received upon delivery) to the addresses set forth on the signature page hereto. If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. In the event of a change of address by either Buyer or Seller, such party shall give written notice thereof in accordance with the foregoing. Any notice rejected or not deliverable shall be deemed received on the first date of attempted delivery.
6. Other:
- A. Time Periods. Should the date upon which any act required to be performed under the Agreement fall on a Saturday, Sunday, or holiday, the time for performance shall be extended to the next business day.
 - B. Confidentiality. Except as specifically provided in the Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Buyer and Seller agree to (i) keep the Agreement and its terms confidential, (ii) keep confidential any information that is provided by Buyer or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of the Agreement, and (iv) not make any public announcement or press release about the Agreement without the other's prior written approval.
 - C. Amendment. The Agreement, as modified by this Addendum, shall not be further modified or amended except by an instrument in writing executed by or on behalf of the parties.
 - D. Independent Consideration. If Buyer terminates the Agreement pursuant to a right to do so granted to Buyer hereunder, and if the Earnest Money is otherwise refundable to Buyer and additional consideration is required for the Agreement to be enforceable under applicable law, then Buyer and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into the Agreement.

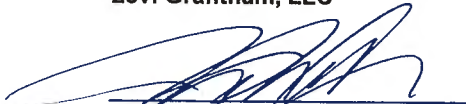
IN WITNESS WHEREOF, the parties have executed this Addendum on the date first written above.

WITNESSES:



BUYER:

Levi Grantham, LLC



Jim Cone, CFO

Date: 2-10, 2021

572 Savannah Hwy
Charleston, SC 29407
Attn: Edward M. Terry
Telephone: (84) 573-9635
Email: t.terry@crescenthomes.net

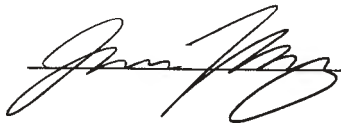
With a copy to:

Florence Law firm, LLC
62 Columbus St.
Charleston, SC, 29403
Attn: John Florence
Telephone: (843) 352-8558
Email: john@florencelawfirm.net

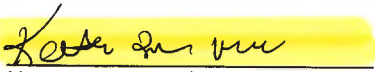
With a copy to:

LevickRoth
999 Peachtree Street NE, Suite 855
Atlanta, GA 30309
Attn: Suzan E. Roth, Esq
Telephone: (404) 201-7841
Email: sroth@levickroth.com

WITNESSES:



SELLER:



Name: Kathy Wright

Date: February 11th, 2021

Address: 3443 Osceola St., N Chs, SC 29405
Attn: _____
Telephone: 843 743 3876
Email: Na.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case Number 2021-CP-10-04342
)	
LEVI GRANTHAM, LLC,)	
)	
PLAINTIFF,	)	ANSWER AND COUNTERCLAIM
)	
Vs.)	
)	
KATHY WRIGHT MITCHELL,)	
)	
DEFENDANT.)	
_____)	

Defendant, Kathy Wright Mitchell, answering the Plaintiff's complaint alleges as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of Plaintiff's complaint unless specifically admitted herein.
2. Defendant admits paragraphs 1, 2, 3, 4, 5 and 6 of Plaintiff's complaint.
3. Defendant is without knowledge sufficient to form a belief as to paragraph 7 of Plaintiff's complaint, and denies the same.
4. Responding to paragraph 8 of Plaintiff's complaint, Defendant admits that the parties agreed to the contingencies set forth in paragraph 36 of the Purchase Agreement dated February 11, 2021, but Defendant is without knowledge sufficient to form a belief as to the remainder of paragraph 8 and therefor denies the same.
5. Defendant is without knowledge sufficient to form a belief as to paragraph 9 of Plaintiff's complaint, and denies the same.
6. Responding to paragraph 10 of Plaintiff's complaint, Defendant admits that she received a notice from Plaintiff purporting to toll the Agreement, but Defendant is without knowledge sufficient to form a belief as to the remainder of paragraph 10 and therefor denies the same.

7. Defendant admits that part of paragraph 11 of Plaintiff's complaint which states that on August 23, 2021, Defendant listed the subject property for sale by owner on www.zillow.com for more than what was agreed upon in the Purchase Agreement between the parties, but Defendant denies the remainder of said paragraph and alleges further that the listing placed on www.zillow.com was removed by Defendant on or before September 27, 2021; that no contract or sale of the subject property resulted from said listing; and that Defendant stands ready, willing and able to perform in accordance with the terms and conditions of the subject Purchase Agreement with Plaintiff so long as Plaintiff stands ready to do the same and is prepared to satisfy or waive the stated contingencies within a reasonable period of time.

8. Defendant admits paragraphs 12, 13, 14 and 15 of Plaintiff's complaint, but denies that she committed any breach of the Purchase Agreement.

9. Defendant denies paragraphs 16, 17 and 18 of Plaintiff's complaint.

10. Defendant admits paragraphs 19 and 20 of Plaintiff's complaint, but only if the contingencies in the subject Purchase Agreement are satisfied or waived by Plaintiff within a reasonable time.

11. Defendant denies paragraphs 21, 22, 23 and 24 of Plaintiff's complaint.

FOR A SECOND DEFENSE
(Waiver)

12. By virtue of Plaintiff's delay in fulfilling the conditions precedent contained in the subject Purchase Agreement, Plaintiff has waived its right to compel Defendant's performance of the Agreement.

FOR A THIRD DEFENSE
(Estoppel)

13. By virtue of Plaintiff's delay in fulfilling the conditions precedent contained in the subject Purchase Agreement, Plaintiff is estopped from enforcing the terms of the Purchase Agreement against Defendant.

FOR A FOURTH DEFENSE
(Laches)

14. Due to Plaintiff's unreasonable delay in performing under the terms of the subject Purchase Agreement, which delay has been prejudicial to Defendant, Defendant is excused from performing under the terms of the Purchase Agreement under the theory of Laches.

FOR A FIFTH DEFENSE
(Rule 12 (b) (6))

15. Plaintiff's first cause of action in its complaint fails to state facts sufficient to constitute a cause of action against Defendant, and should be dismissed.

FOR A SIXTH DEFENSE
(Mistake)

16. The subject contract for sale states the "Time is of the Essence" with regard to closing, yet it fails to state a time in which the buyer is obligated to satisfy its contingencies. The subject contract should be declared void due to a mutual mistake of the parties.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

17. Defendant re-alleges paragraphs 1 through 16 of this Answer and Counterclaim as if fully set forth herein.

18. Under the terms and conditions of the subject Purchase Agreement entered into between the parties on February 11, 2021, Plaintiff was obligated to fulfill various condition precedent to the contract by obtaining preliminary plat approval from the applicable governmental entity for its

intended development and to obtain access availability to the property from the SCDOT or applicable authority for Plaintiff's intended development.

19. The Plaintiff has not fulfilled the stated conditions precedent as stated aforesaid.
20. As no time limit is stated in the Purchase Agreement in which Plaintiff is to fulfill the conditions precedent, the law implies that the conditions are to be fulfilled by Plaintiff within a reasonable amount of time.
21. The amount of time Plaintiff is taking to fulfill the conditions precedent is now unreasonable, and the conditions are still not met.
22. As a direct and proximate result of the Plaintiff's unreasonable delay in fulfilling the conditions precedent to the Purchase Agreement, the Plaintiff has breached the subject Purchase Agreement causing Defendant actual and consequential damages in an amount to be determined by the trier of fact.
23. Plaintiff is informed and believes that she is entitled to an award of reasonable attorney's fees and costs, as allowed by the subject Purchase Agreement, for bring this claim against Plaintiff.

FOR A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Rescission)

24. Defendant re-alleges paragraphs 1 through 23 of this Answer and Counterclaim as if fully set forth herein.
25. Because of the Plaintiff's unreasonable delay in performance under the terms of the subject Purchase Agreement, the Plaintiff has breached the subject Purchase Agreement so substantially and fundamentally as to defeat the purpose of the contract. Defendant will suffer irreparable harm and has no adequate remedy at law in the event Plaintiff's unreasonable delay is allowed to continue.

26. Defendant has acted in good faith at all time pertinent hereto, and has stood ready willing and able to complete the terms of the Purchase Agreement.

27. Defendant seeks to rescind the subject Purchase Agreement and is willing to restore herself and the Plaintiff to the positions they occupied prior to making the Purchase Agreement. Defendant will suffer irreparable harm and has no adequate remedy at law.

WHEREFORE, Defendant prays judgment of this court as follows:

1. For an Order dismissing the Plaintiff's complaint, with the costs and disbursements of the action awarded to Defendant; and
2. For an Order granting Defendant an amount of actual and consequential damages against Plaintiff; and
3. For an Order granting Defendant a reasonable amount of attorney's fees and costs against the Plaintiff; or
4. In the alternative, for an Order granting Defendant a full rescission of the subject Purchase Agreement, placing the parties back to their original status quo ante; and
5. For such other and further relief as this court deems just and proper.

SOLOMON, BUDMAN & STRICKER, LLP

BY: /DJB

Donald J. Budman, S.C. Bar # 00998

1052 Gardner Rd., Ste. 200

P.O. Box 30280

Charleston, SC 29417

(843) 763-1118- Office

(843) 763-7518- Fax

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
8th day of November, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-CP-10-04342
)	
Levi Grantham, LLC,)	
	)	PLAINTIFF LEVI GRANTHAM, LLC'S
Plaintiff,	)	REPLY TO DEFENDANT KATHY
	)	WRIGHT MITCHELL'S
vs.	)	COUNTERCLAIMS
)	
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

Plaintiff Levi Grantham, LLC ("Plaintiff"), replying to Defendant Kathy Wright Mitchell's ("Defendant") Answer and Counterclaim, alleges and states as follows:

GENERAL DENIAL

1. Each and every allegation contained in the Answer and Counterclaim inconsistent with the allegations of the Complaint and/or not hereinafter specifically admitted is denied, and strict and competent proof of such allegations is demanded.

REPLYING TO DEFENDANT'S FIRST DEFENSE

2. In response to the allegations contained in Paragraphs 1 through 11 of the Answer and Counterclaim, Plaintiff reasserts the allegations of the Complaint and incorporates the same herein as if restated verbatim. To the extent a response is required, Plaintiff denies all allegations contained therein and demands strict proof thereof.

REPLYING TO DEFENDANT'S ADDITIONAL DEFENSES

3. Answering Paragraphs 12 through 16 of the Answer and Counterclaim, the allegations contained in Paragraphs 12 through 16 constitute conclusions of law to which no answer is required. To the extent an answer is required, Plaintiff denies that such additional defenses are applicable.

REPLYING TO DEFENDANT'S FIRST COUNTERCLAIM
(Breach of Contract)

4. Responding to Paragraph 17 of the Counterclaim, Plaintiff/Counterclaim Defendant reasserts the allegations of the Complaint and the preceding Paragraphs of this Reply and incorporates the same herein as if restated verbatim.

5. Plaintiff/Counterclaim Defendant admits Paragraph 18 of the Counterclaim.

6. Plaintiff/Counterclaim Defendant denies Paragraph 19 of the Counterclaim.

7. Plaintiff/Counterclaim Defendant denies Paragraph 20 of the Counterclaim.

8. Plaintiff/Counterclaim Defendant denies Paragraph 21 of the Counterclaim.

9. Plaintiff/Counterclaim Defendant denies Paragraph 22 of the Counterclaim.

10. Plaintiff/Counterclaim Defendant denies Paragraph 23 of the Counterclaim

REPLYING TO DEFENDANT'S SECOND COUNTERCLAIM
(Rescission)

11. Responding to Paragraph 24 of the Counterclaim, Plaintiff/Counterclaim Defendant reasserts the allegations of the Complaint and the preceding Paragraphs of this Reply and incorporates the same herein as if restated verbatim.

12. Plaintiff/Counterclaim Defendant denies Paragraph 25 of the Counterclaim.

13. Plaintiff/Counterclaim Defendant denies Paragraph 26 of the Counterclaim.

14. Plaintiff/Counterclaim Defendant denies Paragraph 27 of the Counterclaim.

15. Plaintiff/Counterclaim Defendant denies that Defendant/Counterclaim Plaintiff is entitled to any relief requested in her prayer for relief.

WHEREFORE, having fully answered the Answer and Counterclaim of Defendant/Counterclaim Plaintiff, Plaintiff/Counterclaim Defendant prays:

- a. that the counterclaims be dismissed with prejudice;

- b. for the additional costs and expenses incurred in defending against these claims; and
- c. for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

s/E. Brandon Gaskins

E. Brandon Gaskins (S.C. Bar No. 73274)

Moore & Van Allen PLLC

78 Wentworth Street

P.O. Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Facsimile: (843) 579-7099

brandongaskins@mvalaw.com

Attorney for Plaintiff Levi Grantham, LLC

December 8, 2021
Charleston, South Carolina

SOLOMON, BUDMAN & STRICKER, LLP

BY: /DJB
Donald J. Budman, S.C. Bar # 00998
1052 Gardner Rd., Ste. 200
P.O. Box 30280
Charleston, SC 29417
(843) 763-1118- Office
(843) 763-7518- Fax

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
22nd day of February, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case Number 2021-CP-10-04342
)	
LEVI GRANTHAM, LLC,)	
)	
PLAINTIFF,	)	DEFENDANT’S AFFIDAVIT IN
	)	SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
Vs.)	
)	
KATHY WRIGHT MITCHELL,)	
)	
DEFENDANT.)	
)	

Personally appeared before me, Kathy Wright Mitchell, who after being duly sworn, does depose and say as follow:

1. Affiant is Kathy Wright Mitchell. I am the defendant in the above case. I am 60 years old. I have a high school education. I live in North Charleston, South Carolina. I am unmarried and have 2 children. I am employed by Kiawah Island Golf Resort and work full time as a supervisor of the housekeeping department. I am not a real estate professional. I make this Affidavit based upon my own personal knowledge. I am competent to testify as to all matters contained in this Affidavit.

2. Plaintiff, Levi Grantham, LLC is an experienced real estate development Company in South Carolina.

3. I inherited the subject real estate from the estate of my mother by Deed of Distribution dated April 7, 2014. The subject property is described in the contract of sale between the parties as Charleston County TMS # 427-00-00-024. The street address is 1584 Folly Rd., Charleston, SC 29412. The lot is slightly less than 1 acre and contains a 1,200 sq. ft. brick house with a porch and carport. The subject property has approximately 83.5 feet of frontage on Folly Road.

4. The plaintiff and I entered into a written contract of sale, and an Addendum 1, regarding the real estate dated February 11, 2021 agreeing upon a purchase price. The contract and the Addendum are attached as exhibits to the Complaint in this case.

5. The contract contains two contingencies in Paragraph 36: 1) That the Purchasers receive “preliminary plat approval from the applicable governmental entity for Purchaser’s intended development plan,” and 2) “Access availability from the SCDOT or applicable authority for Purchaser’s development plan.”

6. The contract states that “Time is of the Essence,” and set an original closing date for 30 days following the expiration of the 90 day Termination Right, or 120 days from the February 11, 2021 date of the contract, all pursuant to paragraphs 8, 13, and 36 of the Contract. The contract in paragraph 36 states that the buyer can extend the closing date in the event buyer needed additional time to meet the contingencies. If the contingencies were not met by the original closing date, the buyer was allowed to extend the closing date by giving Notice to the Seller of its intention to “toll” the agreement. The contingencies were not met by the 120 day closing period.

7. As the original closing date of June 11, 2021 approached, the buyer provided such Notice to me. The contract, which was prepared by the buyer and presented to me, did not state an end point for the extension period or “tolling” period of the contract. The contract is silent as to when the extension period would end if the contingencies were not met by the buyer and the contract is not closed. As of the date of this motion, the contract has still not closed, and the buyer has not given me or my attorney any firm indication as to when the contract will close.

8. A reasonable amount of time to close on this contract has passed. The time set in the original contract for closing was a period of 120 days from the date of the contract, which was February 11, 2021. A period of 5 months was actually given to the buyer to close. On July 9, 2021,

the buyer sent me a Notice to toll the agreement. Being frustrated with the plaintiff's lack of action and communication, I re-listed the property for sale myself on Zillow.com. I received no interest on the listing. When the plaintiff objected to the listing, I promptly removed it and sought legal counsel.

9. On November 4, 2021, my attorney gave notice to the plaintiff that the extension to meet the contingencies which began on July 10, 2021 would end 5 months thereafter; that is on December 10, 2021. I further advised plaintiff that I was ready, willing and able to meet the terms and conditions of the contract and would sell the property to Levi Grantham, LLC at the contract price through December 10, 2021. Plaintiff was advised that if the contract was not closed by December 10, 2021, or unless other arrangements were made to extend the contract further, I would consider the contract to be *terminated*, and would seek a rescission of the contract or damages at law as may be applicable. A copy of my attorney's letter dated November 4, 2021 is attached to this Affidavit as Exhibit 'A'.

10. My attorney received a response with some information regarding plaintiff's attempts to meet the contingencies, but no closing was scheduled, and no closing took place.

11. On January 5, 2022, my attorney again notified plaintiff that February 11, 2022 would mark the one-year anniversary of the original contract and the eight-month anniversary of the extension granted to allow Plaintiff time to meet the contingencies. I renewed my notice to Plaintiff that if the subject contract was not closed by February 11, 2022, I would consider the contract to be terminated and would seek a rescission of the contract, or damages at law, as may be applicable. I also expressed my willingness to terminate the contract sooner than February 11, 2022, if plaintiff would agree. A copy of my attorney's letter dated January 5, 2022 is attached to this Affidavit as Exhibit 'B'.

12. On February 2, 2022, I advised Plaintiff that I was tendering a full return of Levi Grantham's \$5,000.00 earnest money deposit paid pursuant to the terms and conditions of the subject contract to it. I instructed the escrow agent that I consented to an immediate release of the funds earmarked as its earnest money deposit to Levi Grantham if Levi Grantham either consented to, or was ordered to, rescind the subject contract. A copy of my attorney's letter dated February 2, 2022 is attached to this Affidavit as Exhibit 'C'.

13. The plaintiff in this case has failed to timely perform the February 11, 2021 contract to purchase my property. I was taken advantage of by having an undated "tolling" period placed in the contract allowing the buyer to have an open ended period of time to meet its contingencies in a contract in which time was of the essence. Plaintiff has now had a period of more than double (240 days) the time to meet its contingencies and close, following the original amount of time it had to close on the property (120 days) at the contract's inception. In the meantime, there has been an unprecedented rise in real estate values since February 11, 2021. As the owner of this property, the value of my property has risen by no less than 15% just in the past year, and probably more. All of the lots surrounding my property are valued at \$460,000.00 or more. Comparables in my area that are not fronting on Folly Road have sold for more than the contract price in this case. The plaintiff should not stand to benefit from this rise in value without having first purchased the property within a reasonable time of the contract. .

14. I am requesting that the court rescind the subject contract and put the plaintiff and me back into the positions we were in prior to this contract. I should not be required to wait an indeterminate amount of time to sell the real estate to the Plaintiff. Since the contract states that Time was of the Essence, I should not have to wait for more than a reasonable amount of time to close. More than a year from the original contract date, and eight months beyond the original

closing date is unreasonable on its face. I am also being required to keep my property off of the open market for an unreasonable length of time subject only to a \$5,000.00 earnest money deposit which represents a mere 1.25% of the purchase price.

Signed by:



KATHY WRIGHT MITCHELL

SWORN BEFORE ME THIS 22nd OF FEBRUARY, 2022.



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 02/18/2030

EXHIBIT 'A' TO AFFIDAVIT OF DEFENDANT
SOLOMON, BUDMAN & STRICKER, L.L.P.

DONALD J. BUDMAN

MICHAEL A. STRICKER
(SC, GA, TN)

Attorneys At Law

Triest Executive Center
1052 Gardner Road, Suite 200
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Telephone:
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Fax:
(843) 763-7518

November 4, 2021

E. Brandon Gaskins, Esq.
Moore & Van Allen, PLLC
P.O. Box 22828
Charleston, SC 29413-2828
By Electronic Delivery and U.S. Mail

Re: Levi Grantham, LLC v. Kathy Wright Mitchell
Case # 2021-CP-10-04342

Dear Brandon,

As you know I represent the defendant, Kathy Wright Mitchell in the above case. As I understand the facts, my client and yours, Levi Grantham, LLC, entered into a contract of sale dated February 11, 2021, where my client as "Seller" would sell to your client as "buyer" the real estate described in the contract as Charleston County TMS # 427-00-00-024, 1584 Folly Rd., Charleston, SC 29412.

My client understood that the buyer was attempting to assemble the subject property and adjoining properties for development. In that regard, the contract stated contingencies which if not met could extend the time for closing at the option of the buyer. The contract states that "Time is of the Essence," and set an original closing date for 30 days following the expiration of the 90 day Termination Right, or 120 days from the date of the contract. The contract allowed the buyer to extend the closing date in the event buyer needed additional time meet the contingencies; that is, to obtain an approved preliminary plat for development and to obtain access availability to the property from Folly Rd from SCDOT. The buyer was allowed to extend the closing date by giving Notice to the Seller of its intention to "toll" the agreement. I understand that the buyer provided such Notice to the Seller.

The unfortunate part of this contract, which I did not prepare, and which I don't think you prepared, is that the extension period for the closing, or "tolling" the closing date, does not state an end point. At what point does the extension period end if the contingencies are not met by the buyer and the contract is not closed? It is my understanding that under South Carolina law, where a contract does not express a time deadline, and the contract otherwise states that "time is of the essence," that the court will apply a *reasonableness* standard, and will infer that the contract should be completed within a reasonable period of time.

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E. Brandon Gaskins, Esq.
November 4, 2021
Page Two

The time set in the original contract for closing was a period of 120 days from the date of the contract. A period of 5 months was actually given to the buyer. On July 9, 2021, the buyer elected to extend or toll the agreement. A similar amount of time is reasonable for the extension. The extension began on July 10, 2021 and will end 5 months thereafter; that is on December 10, 2021. Between now and that date, my client is ready, willing and able to meet the terms and conditions of the contract and will sell the property to Levi Grantham, LLC at the contract price.

This letter constitutes my client's notice to the buyer that if the subject contract is not closed by December 10, 2021, or unless other arrangements are made to extend the contract further, my client will consider the contract to be *terminated*, and will seek a rescission of the contract, or damages at law as may be applicable.

Sincerely,



Donald J. Budman

Cc: Kathy Wright Mitchell
3445 Oceola St.
N. Charleston, SC 29405

ELECTRONICALLY FILED - 2022 Feb 22 3:44 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

EXHIBIT 'B' TO AFFIDAVIT OF DEFENDANT
SOLOMON, BUDMAN & STRICKER, L.L.P.

DONALD J. BUDMAN

MICHAEL A. STRICKER
(SC, GA, TN)

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(843) 763-1118
Fax:
(843) 763-7518

January 5, 2022

E. Brandon Gaskins, Esq.
Moore & Van Allen, PLLC
P.O. Box 22828
Charleston, SC 29413-2828
By Electronic Delivery and U.S. Mail

Re: Levi Grantham, LLC v. Kathy Wright Mitchell
Case # 2021-CP-10-04342

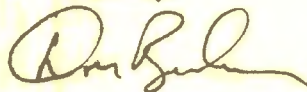
Dear Brandon,

On October 27, 2021, I emailed you expressing my Client's legal position regarding a *reasonable time* for Levi Grantham to close on the contract to purchase my Client's Folly Road property. That was followed up with a letter on November 4, 2021 giving your client formal notice of my client's intention to terminate the contract and seek a rescission thereof if it was not closed by December 10, 2021. My Client instructed me to extend that deadline following your email to me dated December 7, 2021.

We are now approaching January 7, 2022 and I have no update from you regarding any recent progress toward a closing. I recognize that the holidays were upon us and things move slowly during that time. February 11, 2022 will be the one-year anniversary of the original contract and the eight-month anniversary of the extension granted to meet the contingencies.

Please be advised that this letter constitutes my Client's renewed notice to the buyer that if the subject contract is not closed by February 11, 2022, my client will consider the contract to be terminated and will seek a rescission of the contract, or damages at law, as may be applicable. If the buyer is agreeable to terminating the contract sooner than February 11, 2022, please let me know and in exchange for a mutual release of contract, we can rescind the contract.

Sincerely,



Donald J. Budman

ELECTRONICALLY FILED - 2022 Feb 22 3:44 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

SOLOMON, BUDMAN & STRICKER, L.L.P.

DONALD J. BUDMAN

MICHAEL A. STRICKER
(SC, GA, TN)

Attorneys At Law

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1052 Gardner Road, Suite 200
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Mailing Address:

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Charleston, S.C. 29417

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(843) 763-1118

Fax:
(843) 763-7518

February 2, 2022

E. Brandon Gaskins, Esq.
Moore & Van Allen, PLLC
P.O. Box 22828
Charleston, SC 29413-2828
By Electronic Delivery and U.S. Mail

Re: Levi Grantham, LLC v. Kathy Wright Mitchell
Case # 2021-CP-10-04342

Dear Brandon,

On December 7, 2021, you advised me that "Levi Grantham still intends to purchase the property and is working diligently to get a development plan finalized, reviewed, and approved." On January 5, 2022, after hearing nothing more about a closing date on the contract to purchase my client's Folly Road property, I wrote to you summarizing my requests for additional information from Levi Grantham. I notified you that my client was willing to close on the contract on or before February 11, 2022, after which time she would consider the contract to be terminated. My letter to you dated January 5, 2022 stated in part:

"Please be advised that this letter constitutes my Client's renewed notice to the buyer that if the subject contract is not closed by February 11, 2022, my client will consider the contract to be terminated and will seek a rescission of the contract, or damages at law, as may be applicable. If the buyer is agreeable to terminating the contract sooner than February 11, 2022, please let me know and in exchange for a mutual release of contract, we can rescind the contract."

This letter is to advise you again that my client has given Levi Grantham more than a reasonable time to close on the February 11, 2021 contract and intends to consider the contract terminated if not closed by February 11, 2022. In furtherance of her claim to rescind the contract, Mrs. Mitchell hereby tenders a full return of Levi Grantham's \$5,000.00 earnest money deposit paid pursuant to the terms and conditions of the subject contract. She hereby instructs the escrow agent, The Florence Law Firm, LLC, that she consents to an immediate release of the funds to Levi Grantham if Levi Grantham either consents to, or is ordered to, rescind the subject contract.

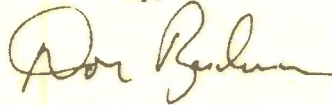
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E. Brandon Gaskins, Esq.
February 2, 2022
Page Two

Please also be advised that in the event, and only in the event, the subject contract is not rescinded either by agreement of the parties or by an Order of the Court, and notwithstanding the tender of the Buyer's earnest money deposit as stated herein, Mrs. Mitchell reserves her rights to pursue her claim for breach of contract and any other remedy at law she may have against the Buyer.

Please let me know if your client intends to close on the purchase of the subject property on or before February 11, 2022, or if your client is agreeable to a rescission of the contract and a return of its earnest money deposit. I look forward to hearing from you.

Sincerely,



Donald J. Budman

Cc: Mrs. Kathy W. Mitchell

The Florence Law Firm, LLC
Attn: John Florence
62 Columbus St.
Charleston, SC 29403
By Electronic Delivery

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-CP-10-04342
)	
Levi Grantham, LLC,)	
	)	PLAINTIFF LEVI GRANTHAM, LLC'S
Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
	)	DEFENDANT KATHY WRIGHT
vs.	)	MITCHELL'S MOTION FOR
	)	SUMMARY JUDGMENT
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

Defendant Kathy Wright Mitchell’s Motion for Summary Judgment, which seeks to rescind a valid agreement for the sale and purchase of property, should be denied because discovery is premature and there are genuine issues of material fact at issue in this case. The parties have not engaged in written discovery and no depositions have been scheduled or taken. Furthermore, despite Mitchell’s claim otherwise, Plaintiff Levi Grantham, LLC has not failed to perform under the contract. Instead, it properly invoked the tolling provision in the purchase agreement so that it could satisfy the contingencies to close on the purchase. Since tolling the closing date, Levi Grantham has diligently pursued the development approvals that it needs to satisfy the closing contingencies. At worst, these efforts to toll the agreement and pursue the necessary approvals create disputed issues of fact that make summary judgment improper at this early stage of the litigation.

II. FACTS

Levi Grantham is an affiliate of Crescent Homes SC, LLC (“Crescent Homes”) and is responsible for acquiring land that Crescent homes develops for residential construction. (Ex. A,

Affidavit of Joshua Craig ¶ 2). Crescent Homes is a residential homebuilder engaged in the development of homes and subdivisions throughout South Carolina, including Charleston County. (*Id.*). Among other things, Levi Grantham is responsible for acquiring land that Crescent Homes develops for residential construction. (*Id.*).

Mitchell is the owner of a parcel of land located at 1584 Folly Road, Charleston, South Carolina 29412, which is more particularly described as:

All that piece parcel or lot of land being on the east side of Folly Road in Charleston County, South Carolina, being some 0.88 of an acre, and known as Lot B on a plat dated February 28, 1980, made by W.L. Gaillard, surveyor, said plat entitled "Plat of Subdivision of Property Owned by Estate of Williman Gaillard". Said plat being recorded in the R.M.C. Office for Charleston County in Plat Book G, at Page 30A.

Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and larger appear.

Being the same property conveyed to Katherine Gilliard, formerly known as Katherine Ziamon, by deed of distribution from the estate of Louis Gilliard, Case #2009-ES-10-00637, dated February 1, 2010 and recorded in the R.M.C. Office for Charleston County in Book 0106, at Page 190.

TMS No. 427-00-00-024

(the "Property"). On February 11, 2021, Levi Grantham and Mitchell (together the "Parties") entered into an Agreement to Buy and Sell Real Estate (the "Purchase Agreement") by which Levi Grantham contracted to purchase the Property from Mitchell for an agreed upon price of Four Hundred Thousand and 00/100 Dollars (\$400,000.00). (Ex. B, Purchase Agreement). Pursuant to the terms of the Purchase Agreement, Levi Grantham tendered Five Thousand and 00/100 Dollars (\$5,000.00) to its closing attorney, and the earnest money remains in escrow. (*Id.*).

The Property is adjacent to another parcel that Levi Grantham has also contracted to purchase. (Ex. A at ¶ 5.). Plaintiff plans to combine the two parcels in order to develop a residential subdivision (the "Subdivision"). (*Id.*). As a result, the Property is integral to Levi

Grantham's development plan. (*Id.*). For this reason, the Parties agreed that the closing of the sale and purchase would be contingent upon Levi Grantham first obtaining certain governmental approvals. (*Id.* at ¶ 8; Ex. B.) Specifically, Paragraph 36 of the Purchase Agreement provides:

The following conditions shall be satisfied prior to closing under the Agreement:

A. Purchaser's receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.

B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all the conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled *until all such conditions are satisfied*.

(*Id.* at ¶ 36)(emphasis added).

The contingencies provided for in Paragraph 36 are intended to ensure that the contract is not terminated while Levi Grantham is undertaking efforts to obtain the necessary approvals. These efforts specifically include: (1) hiring an engineer and/or land planner to prepare the concept plan of the subdivision; (2) preparing a concept plan that must be approved by the City's Technical Review Committee ("TRC") and Planning Commission; (3) attending a pre-application meeting with the City's planning staff; (3) submitting a concept plan application to the TRC; (4) coordinating with other local governmental agencies and utility providers to ensure that adequate public infrastructure exists to service the new development; (5) attending TRC meetings to receive comments to the plans submitted for review; (6) revising the concept plan based on comments from the TRC members; and (7) obtaining approval from the Planning Commission after receiving approval from the TRC. (Ex. A at ¶ 7). This process requires a significant expenditure of time

and resources and can take anywhere from 1 to 3 years depending on the challenges with the development site. (*Id.*).

After closing on the Purchase Agreement, Levi Grantham promptly began seeking the necessary approvals to satisfy the contingencies. (*Id.* at ¶ 10). First, it hired Bowman Consulting Group (“Bowman”) to prepare the concept plan and related documents for the development of the Subdivision to ensure that it complied with the applicable zoning code and land development regulations, including stormwater regulations. (*Id.*). During the process of preparing these materials, Levi Grantham and Bowman Consulting held a meeting with the City planning staff on December 15, 2020 to discuss the development and receive guidance regarding the issues needed to obtain approval. (*Id.*). Based on the feedback received from this meeting, Bowman Consulting prepared a preliminary concept plan and submitted it to the City for informal review as part of the TRC’s scheduled Sketch Plan Wednesday meetings, which was held on May 12, 2021. (*Id.*). Levi Grantham also held an additional meeting with the City’s planning staff on June 23, 2021 to get additional information regarding the City’s interpretation of the commercial requirements for the site. (*Id.*).

Based on the feedback provided in the May 12th and June 23rd meetings, Bowman Consulting Group began the process of modifying the concept plan to include a commercial component to meet the applicable zoning requirements. (*Id.* at ¶ 11). These modifications were significant as they changed the entire project and took a considerable amount of time. (*Id.*). After the modifications were complete, Levi Grantham submitted a concept plan application to the City in December 2021 for TRC and Planning Commission review. (*Id.*). The first review meeting on the project by TRC occurred on January 13, 2022. (*Id.*). Although most departments involved in

the TRC review process submitted comments to proposed concept plan and application, the City's engineering department did not provide any comments. (*Id.*).

In response to the comments received from the first TRC review, Bowman Consulting Group modified the concept plan again and submitted the modified plans. (*Id.* at ¶ 12). The project is now scheduled for second review by TRC on April 14, 2022. (*Id.*).

Despite Levi Grantham's diligent efforts, it had not acquired all of the necessary approvals before the anticipated closing date. (*Id.* at ¶ 13). However, it still desires to purchase the Property. (*Id.*) For this reason, prior to the closing date, Plaintiff notified Mitchell of its intent to toll the Purchase Agreement. (*See* Def.'s Aff. Supp. Mot. Summ. J. at ¶ 7.) On July 9, 2021, Levi Grantham notified Mitchell Again, via letter, of its intent to toll the Purchase Agreement. (Ex. A – Craig Aff., ¶ 13 and Ex. 1.)

Though Levi Grantham properly notified Mitchell of its election to toll the Purchase Agreement and its continuing intent to buy the Property, on August 23, 2021, Defendant listed the Property for sale by owner on Zillow for \$695,000.00, which is \$295,000.00 more than what was agreed to in the Purchase Agreement with Levi Grantham. (Ex. C, Zillow Listing for 1584 Folly Road).

As a result of this anticipatory breach of the Purchase Agreement, Levi Grantham then filed this breach of contract action on September 20, 2021, requesting that the Court order specific performance of the Purchase Agreement by Mitchell. On November 8, 2021, Mitchell filed her Answer and a Counterclaim for rescission against Levi Grantham. Defendant then filed this Motion for Summary Judgment based on her rescission counterclaim, along with an Affidavit in support of that Motion on February 22, 2022. The Parties have not exchanged written discovery

or taken any depositions. Levi Grantham submits this memorandum in opposition to Plaintiff's Motion for Summary Judgment.

III. STANDARD

"In ruling on motions for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993). "Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits, [if any] show that there is no genuine issue of material fact." *Shuler v. Tuomey Regional Medical Center, Inc.*, 313 S.C. 225, 227, 437 S.E.2d 128, 130 (Ct. App. 1993). To withstand a motion for summary judgment "in cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

IV. ARGUMENT

A. Summary judgment is premature.

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C. 1975)). For this reason, "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.* (citing 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice para. 56.02[6], p. 56-39 (2d. ed. 1990)).

Summary judgment is premature here because there are issues of material fact which must be addressed through discovery. Levi Grantham filed this suit on September 9, 2021, alleging one

cause of action for breach of contract against Mitchell. Defendant filed her Answer and Counterclaims for breach of contract and rescission on November 8, 2021. Levi Grantham answered Mitchell's counterclaims on December 8, 2021. Defendant then filed the instant Motion for Summary Judgment on February 22, 2022. The Parties have not engaged in written discovery or taken any depositions. And any argument that Levi Grantham has had sufficient time to conduct discovery is without merit as two months is clearly insufficient to begin and complete discovery. Accordingly, Plaintiff must be allowed the time and opportunity to conduct discovery before the Court considers whether summary judgment is appropriate.

Mitchell's argument that summary judgment is appropriate and timely because there are no issues of material fact in dispute in this matter is simply incorrect. As set forth in the attached Affidavit of Joshua Craig, Levi Grantham has not been dilatory in pursuing its development rights. Further, Levi Grantham has asserted a claim that Mitchell breached the terms of Purchase Agreement by listing her property for sale while still under contract with Levi Grantham. If summary judgment is granted, that argument will be rendered null. Without the benefit of discovery concerning Mitchell's anticipatory breach of the Purchase Agreement, the court cannot determine whether the relief sought by Plaintiff, an order seeking specific performance by Mitchell in accordance with Addendum 1 to the Purchase Agreement, or Defendant, rescission of the Purchase Agreement, is appropriate. Accordingly, the Court should find that Defendant cannot establish that there is no genuine issue of material fact in dispute and consequently deny Mitchell's Motion for Summary Judgment.

B. There are disputed issues of material fact about whether Levi Grantham has breached the Purchase Agreement.

"The court is without authority to consider the parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was

executed.” *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). Therefore, “the determination of the parties’ intent at the time they execute the contract is a question of fact that should not [be] decided on summary judgment.” *Wallace v. Day*, 390 S.C. 69, 77, 700 S.E. 2d 446, 450 (Ct. App. 2010) (finding that though the contract stated time was of the essence, summary judgment for plaintiff’s failure to close on time was improper because the terms of the contract’s default provision were ambiguous and a question of fact requiring a determination of the parties’ intent). Where the contract does not provide a precise date by which payment must be made, a reasonable time will be implied. *Davis v. Cordell*, 237 S.C. 88, 99, 115 S.E.2d 649, 654 (1960).

Contrary to Mitchell’s arguments, Levi Grantham has not breached the Purchase Agreement or failed to perform its obligations thereunder. Although Levi Grantham has not closed on the purchase, it is diligently seeking the approvals necessary to satisfy the contingencies to closing. In fact, the parties recognized that additional time may be needed to obtain the approvals and provided Levi Grantham with the option of tolling the closing date to obtain such approvals.

On July 9, 2021, Levi Grantham triggered the tolling provision by sending Mitchell notice thereof. Since then, Levi Grantham has diligently been seeking the approvals necessary to satisfy the contingencies. It hired Bowman to prepare and submit a preliminary concept plan for the Subdivision to the City. (Ex. A at ¶ 10.) Bowman and Levi Grantham have met with the TRC and City planning staff multiple occasions to discuss the City’s commercial zoning requirements. (*Id.*). Bowman and Levi Grantham were required to make substantial modifications to the Subdivision plans which took a significant amount of time to complete. (*Id.* at ¶ 11). The revised plans were then submitted in December 2021 and a review meeting was held on January 13, 2022.

(*Id.*). Bowman and Levi Grantham were then required to revise and resubmit the plans once again and a second review by the TRC is now scheduled for April 14, 2022. (*Id.* at ¶ 12).

While Mitchell may be dissatisfied with the progress that has been made by Levi Grantham in satisfying the contingencies, she cannot deny that she agreed to the tolling provision in the Purchase Agreement. Furthermore, Mitchell has not produced any evidence to date suggesting that Levi Grantham has unreasonably delayed its efforts to obtain the necessary development approvals. Even if she does, that evidence would only create disputed issues of fact about the reasonableness of Levi Grantham's efforts to satisfy the closing contingencies, which would preclude summary judgment. *Davis*, 237 S.C. at 99, 115 S.E.2d at 654. Therefore, summary judgment is improper, and Mitchell's Motion should be denied.

Even if the terms of the Purchase Agreement and the tolling agreement are not ambiguous, the Court should not grant summary judgment for Levi Grantham's failure to close on the property because Paragraph 36 does not include a "time is of the essence" clause. This case may be compared to *Prime Group, Inc. v. Northern Trust Co.* 215 Ill. App. 3d 1065, 159 576 N.E.2d 841 (Ill. App. 1991). There, the parties' entered into a contract to purchase property which included a provision outlining certain conditions precedent to closing, including approval of the plans by the appropriate governmental agencies, and provided the plaintiff purchasers the ability to extend the time period for satisfying the conditions. *Id.*, 215 Ill. App. 3d at 1067, 576 N.E.2d at 843. The contract provided that plaintiffs could extend the closing for ten successive thirty-day periods by written notice and payment of \$5,000 to defendant sellers for each extension but it did not set a date by which the plaintiffs must notify the defendants of their election to extend the closing each time. *Id.*, 215 Ill. App. 3d at 1068, 576 N.E.2d at 843. After the plaintiffs notified the defendant

of their intent to extend the, the defendants stated that the contract had terminated because notice was provided two days after defendants claimed it was due. *Id.*

As in the case at bar, the plaintiffs brought suit seeking specific performance of the contract and the defendants subsequently moved for summary judgment. *Id.*, 215 Ill. App. 3d at 1068-69, 576 N.E.2d at 843. Relying on the fact that the contract included no specific extension notification date, the trial court granted specific performance. *Id.*, 215 Ill. App. 3d at 10669, 576 N.E.2d at 844. The defendants then appealed, arguing in part that the contract's "time is of the essence" clause required the plaintiffs to notify them of their intent to extend the contract and tender their extension payment prior to the end of the previous extension period.

The appeals court noted that the "time is of the essence" clause was located in a different paragraph of the contract than the extension provision. *Id.*, 215 Ill. App. 3d at 1071, 576 N.E.2d at 845. Specifically, the court stated,

[w]e . . . refuse to apply the 'time is of the essence' clause from paragraph 17 to the extension provision in paragraph 9 . . . because . . . the parties did not intend time to be of the essence in the extension provision. Even though a contract expressly stipulates that time is of the essence, the court will look at the parties' intentions, as seen in the language and the circumstances surrounding the agreement, in order to determine whether the strictly enforce a provision.

Id. Accordingly, the court refused to "give effect to such clause unless it clearly applies to the contract requirement against which it is south to be applied." *Id.* (citing 81 C.J.S. Specific Performance § 121 (1977)). Because the parties could have included language that time was of the essence but decided not to, the court refused to read that requirement into the extension paragraph.

Similarly, here, Paragraph 36 includes no requirement that time is of the essence to or that the conditions precedent must be met by a certain date or the contract is terminated. The Parties

easily could have included such language in the contract but chose to state that Levi Grantham has the ability to toll the Purchase Agreement until the contingencies are met instead. As such, the Court should not accept Defendant's argument and read prescriptive language into the contract where none exists.

V. **CONCLUSION**

For the foregoing reasons, Defendant's Motion for Summary Judgment should be denied.

s/E. Brandon Gaskins
E. Brandon Gaskins (S.C. Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
Facsimile: (843) 579-7099
brandongaskins@mvalaw.com

Attorney for Plaintiff Levi Grantham, LLC

March 28, 2022
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No.: 2021-CP-10-05624
)	
Levi Grantham, LLC,)	
)	
Plaintiffs,)	
)	
vs.	)	AFFIDAVIT OF
	)	JOSHUA CRAIG
)	
Kathy Wright Mitchell,)	
)	
Defendants.)	
_____)	

Personally appeared before the undersigned officer duly authorized to administer oaths, Joshua Craig, who, under oath, states as follows:

1. I, Joshua Craig, am over eighteen (18) years of age, and of sound mind and body. I am competent to give this affidavit, and it is based upon my own personal knowledge. I understand that this affidavit will also be presented to the Court in the above-captioned civil action.
2. I am the Director of Acquisitions for the Charleston Division of Levi Grantham, LLC (“Levi Grantham”). Levi Grantham is an affiliate of Crescent Homes SC, LLC (“Crescent Homes”), which is a residential homebuilder engaged in the development of homes and subdivisions in South Carolina, including Charleston County. Levi Grantham is responsible for acquiring land that Crescent Homes develops for residential construction.
3. As the Director of Acquisitions, I am responsible for locating property for purchase of property by Levi Grantham for development by Crescent Homes. I oversee the purchase of property, work with land planners and engineers to create develop plans for new subdivisions, and oversee the application process with local governments to receive the necessary permits and approvals to develop residential subdivisions.

4. In 2020, Levi Grantham began the process to purchase and assemble two adjacent parcels of land in order to develop a new residential subdivision (the "Subdivision") located off of Grimball Road Extension and Folly Road/SC Highway 171 ("Folly Road").

5. Pursuant to that development, on or about February 11, 2021, Levi Grantham entered into an Agreement to Buy and Sell Real Estate (the "Purchase Agreement") with Defendant Kathy Wright Mitchell (together the "Parties"). A true and accurate copy of the Purchase Agreement is attached to this affidavit as **Exhibit 1**. Mitchell's property is located at 1584 Folly Road (the "Property") and is one of the two parcels that Levi Grantham intends to purchase for development of the Subdivision. Also, the Property is also needed for another residential development that Levi Grantham and Crescent Homes is pursuing. As a result, the Property is unique and integral to Levi Grantham's development plan.

6. The City of Charleston city limits run through the land that will become the Subdivision. As a result, the development is located partially in the City of Charleston and partially in Charleston County. Because of this, both the City and the County must separately approve various aspects of the development application.

7. Several steps are required to develop a new residential subdivision in the City of Charleston and Charleston County. These include: (1) hiring an engineer and/or land planner to prepare the concept plan of the subdivision; (2) preparing a concept plan that must be approved by the City's Technical Review Committee ("TRC") and Planning Commission; (3) attending a pre-application meeting with the City's planning staff; (3) submitting a concept plan application to the Technical Review Committee ("TRC"); (4) coordinating with other local governmental agencies and utility providers to ensure that adequate public infrastructure exists to service the new development; (5) attending TRC meetings to receive comments to the plans submitted for review;

(6) revising the concept plan based on comments from the TRC members; and (7) obtaining approval from the Planning Commission after receiving approval from the TRC. This process requires a significant expenditure of time and resources and can take anywhere from 1 to 3 years depending on the challenges with the development site.

8. Accordingly, the parties agreed that the closing of the sale and purchase of the Property were contingent upon Levi Grantham obtaining the above referenced governmental approvals necessary to develop the Subdivision. Specifically, Paragraph 36 of the Purchase Agreement provides:

The following conditions shall be satisfied prior to closing under the Agreement:

A. Purchaser's receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.

B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied.

(Ex. 1 - Purchase Agreement).

9. Because Levi Grantham must obtain approval from both the City of Charleston and Charleston County for approval of the Subdivision, the process necessarily takes longer than it would if only the City or only the County was involved. Because Levi Grantham does not have control over this process, the tolling provision was included in the Purchase Agreement to ensure that the sale was not terminated by actions outside of the control of either party.

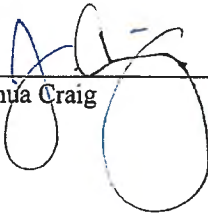
10. After the Parties entered into the Purchase Agreement, Levi Grantham began the process to obtain the necessary approvals for development of the Subdivision. First, Levi

Grantham hired Bowman Consulting Group to prepare the concept plan and related documents for the development of the Subdivision to ensure that it complied with the applicable zoning code and land development regulations, including stormwater regulations. During the process of preparing these materials, Levi Grantham and Bowman Consulting held a meeting with the City planning staff on December 15, 2020 to discuss the development and receive guidance regarding the issues needed to obtain approval. Based on the feedback received from this meeting, Bowman Consulting prepared a preliminary concept plan and submitted it to the City for informal review as part of the TRC's scheduled Sketch Plan Wednesday meetings, which was held on May 12, 2021. Also, we held an additional meeting with the City's planning staff on June 23, 2021 to get additional information regarding the City's interpretation of the commercial requirements for the site.

11. Based on the feedback provided in the May 12th and June 23rd meetings, Bowman Consulting Group began the process of modifying the concept plan to include a commercial component to meet the applicable zoning requirements. These modifications were significant as they changed the entire project and took a considerable amount of time. After the modifications were complete, Levi Grantham submitted a concept plan application to the City in December 2021 for TRC and Planning Commission review. The first review meeting on the project by TRC occurred on January 13, 2022. Although most departments involved in the TRC review process submitted comments to proposed concept plan and application, the City's engineering department did not provide any comments.

12. In response to the comments received from the first TRC review, Bowman Consulting Group modified the concept plan again and submitted the modified plans. The project is scheduled for second review by TRC on April 14, 2022.

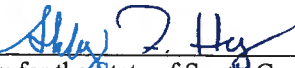
13. Despite Levi Grantham's diligent efforts, at the time of the anticipated closing, it had not yet obtained the required approvals for development of the Subdivision. As a result, on July 9, 2021, provided Mitchell with written notice of its election to toll the Purchase Agreement until the contingencies were satisfied, in accordance with Paragraph 36. A true and accurate copy of the notice in which Levi Grantham tolled the Purchase Agreement is attached as Exhibit 2. Since that time, Levi Grantham has diligently been pursuing the approvals needed to satisfy the contingencies in the Purchase Agreement, and it still intends to purchase the Property.



Joshua Craig

Sworn to before me this

28th day of March, 2022



Notary for the State of South Carolina

My Commission Expires: October 19, 2026

Abby F. Hayes
Notary Public, State of South Carolina
My Commission expires Oct. 19, 2026

EXHIBIT 1



AGREEMENT TO BUY AND SELL REAL ESTATE (FOR GENERAL USE AND LOTS/ACREAGE)

ELECTRONICALLY FILED - 2022 Mar 28 5:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

1. PARTIES: This legally binding Agreement entered into on February 11th, 2021 between, Buyer(s), Levi Grantham, LLC and its assigns, (hereinafter called "BUYER"), and Seller(s), Kathy Wright Mitchell (hereinafter called "SELLER"). The property shall be deeded in the name(s) of Levi Grantham, LLC and its assigns

THE [X] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____ Address 1584 Folly Road Tax Map # 427-00-00-024 City Charleston Zip 29412 County of Charleston, State of South Carolina.

3. PURCHASE PRICE shall be \$ 400,000 Four Hundred Thousand and no/100 dollars.

4. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash; or [] Subject to Financing. Financing to be obtained by [] Conventional [] Seller [] VA [] FHA [] Other terms: _____

5. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 5,000 Buyer and Seller authorize Florence Law Firm, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [X] Check, or [] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

6. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum _____ % loan (loan-to-value ratio) within _____ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 22.

FHA Mortgage Insurance [] will [] will not be added to the mortgage. VA funding fee [] will [] will not be added to the mortgage.

[Signature] BUYER [] BUYER [] SELLER [K34M] SELLER HAVE READ THIS PAGE Form 330 PAGE 1 OF 6

7. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

- (a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
- (b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: N/A

8. **OPTION TO TERMINATE AFTER DUE DILIGENCE:** (A) Seller grants to Buyer a 90 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following:

- 1. Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate to evaluate the suitability of Property for Buyers intended use, including, but not limited to, zoning, governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence");

(B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost or expense associated with Buyer's inspection of and entry upon Property.

(C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9. **BUILDING PERMIT:** This Agreement is is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property. If Buyer notifies Seller in writing within _____ days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

10. **REZONING:** This Agreement is is not contingent upon Property being rezoned to _____ on or before the _____ day of _____, _____ by the appropriate governmental authorities. ~~For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed. The Buyer Seller shall be responsible for pursuing such rezoning, and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.~~

11. **WELL, SEPTIC TANK, SEWER AVAILABILITY:** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property.

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed \$ N/A, then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system.

Seller represents that the property is connected to public sewer system or to septic tank or to public water or to well system or to other _____

[Signature] BUYER BUYER SELLER [Signature] SELLER HAVE READ THIS PAGE

12. **SURVEY:** Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the BUYER SELLER. The surveyor shall set and flag all property pins, showing encroachments and easements. Property must be N/A x N/A or having at least N/A acres. The survey to be approved in writing by Buyer prior to closing. The purchase price is based upon \$ N/A per N/A (acre, sq. ft., or front ft.) and shall be adjusted in accordance with the area set forth in such a survey, if applicable.

13. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 30 days after the Termination Right expires, no later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

14. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

15. **CONDITION OF PROPERTY:** The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement.

16. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5:00 o'clock P M on 2/12, 2021 unless countered or accepted by Seller in written form prior to such time. **Time is of the essence.**

17. **SPECIAL STIPULATIONS:** The following stipulations concerning restrictions, and easements affecting desired use, drainage, hazardous waste, availability of water and sewer, soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter, the following stipulations shall control: (See addendum if applicable) See Addendum 1.

Seller will not be responsible for coordinating or paying for any surveys or inspections. Should contract terminate, all surveys, inspections and other related documents will be provided to the seller at no cost for sellers use.

18. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The Buyer or the Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

19. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20. **ROLLBACK TAXES (IF ANY):** When rollback taxes are subsequently determined and billed to the Buyer, the Seller and Buyer agree that the rollback taxes shall be paid by Buyer or Seller.

21. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer ~~or Seller~~ shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

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23. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

24. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

25. **APPRAISED VALUE:** (check one)

This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

26. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS:** All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the Buyer. In the event such studies are wanted or required, the studies must be furnished by the proper parties within 15 days of complete execution of the agreement. The Buyer and Seller must have access to all studies **within five (5) days of receipt** of the studies. If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem, the Buyer's obligations under this Agreement terminate upon written notice thereof from Buyer.

27. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense.

28. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

29. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud.

Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

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The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

30. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

31. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

32. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

33. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

34. **MEGAN'S LAW:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

35. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

36. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) The following conditions shall be satisfied prior to closing under the Agreement:

A. Purchasers receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.

B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all of the conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

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THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.
Levi Grantham, LLC

BUYER: by [Signature], CFO Date 2-10-21 Time _____

WITNESS: [Signature] Date 2/10/21 Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Kate & Ann Date 2-11-2021 Time _____

WITNESS: [Signature] Date 2-11-2021 Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LRM LISTING AGENT AND COMPANY Jason Wang, Century 21 Brand Name Real Estate

SELLING AGENT AND COMPANY Joshua Craig, Crescent Homes Realty, Inc.

SELLING AGENT IS PRESENTING THIS OFFER AS A BUYER'S AGENT OR SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE

THIS ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE (the "Addendum") for certain Property described in that certain Agreement to Buy and Sell Real Estate (the "Agreement"), which Property is sometimes referred to herein as the "Lot(s)" located in Subdivision is made and entered into on _____, 2021 (the "Effective Date") by **Levi Grantham, LLC**, and its assigns ("Buyer") **Kathy Wright Mitchell** ("Seller"). If there is any conflict or inconsistency between the terms and conditions of The Agreement and this Addendum, the terms and conditions of this Addendum shall control and govern the rights and obligations of the parties.

1. Due Diligence Materials and Termination Right:

- A. Due Diligence Materials. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer copies of all due diligence materials pertaining to all or any portion of the Lot(s) in its possession or control, including title materials, subdivision documents, plats, surveys, plans, studies and reports.
- B. Termination Right. If Buyer terminates this Agreement prior to the expiration of the Termination Right in accordance with Paragraph 8 of the Agreement or as may otherwise be expressly permitted herein, then Escrow Agent shall return the Earnest Money to Buyer.

2. Title:

- A. Seller Warranties. Notwithstanding Section 13 of the Agreement, Seller represents and warrants to Buyer that Seller has "good and marketable, fee simple title" to the Lot(s), and that at closing, Seller shall convey "good and marketable, fee simple title" to the Lot(s) to Buyer, subject only to the following exceptions (the "Permitted Exceptions"):

- (1) the lien for ad valorem taxes which are not yet due and payable;
- (2) easements shown on the applicable subdivision plat;
- (3) declarations, restrictions and covenants affecting the subdivision; and
- (4) general service lines and utility easements that serve only the Lot(s).

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company chosen by Buyer at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions.

- B. Title Defects. If Buyer's examination of the title and a survey of the Lot(s) reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller in connection with Buyer's Due Diligence, then Seller shall promptly cure the Title Defects, provided that if Seller does not demonstrate to Buyer's reasonable satisfaction that Seller will cure such Title Defects prior to closing, then Buyer may by written notice to Seller extend the expiration of the Termination Right or, if applicable, the closing, until such time as the Title Defects are cured. Notwithstanding the foregoing, Buyer shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including without limitation judgment liens that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than closing. Buyer shall be entitled to cure Monetary Encumbrances with proceeds payable to Seller at closing and to examine title to the Lot(s) prior to closing and to object to all matters appearing of record or otherwise affecting the Lot(s) between the date on which Buyer made its title examination pursuant hereto and the date of closing. Seller agrees not to further encumber the Lot(s) from and after the Effective Date.

3. Seller's Representations and Warranties: Seller covenants, represents and warrants to Buyer the following:

- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent of any other party and the signatories to this Agreement for Seller are duly authorized to bind Seller.
- B. Seller has neither received notice nor has any knowledge with respect to all or any portion of the Lot(s): (i) that any condemnation or taking is pending or is contemplated, (ii) of any violation of any applicable law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements; (iii) of any default or breach under any covenant, condition, restriction, right-of-way or easement; and/or (iv) of any private or public special assessment.
- C. To the best of Seller's knowledge, the Lot(s) have not been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws,

regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on or about the Lot(s).

- D. There are no leasehold or occupancy agreements encumbering the Lot(s), no party has any possessory interest or right in the Lot(s), and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Lot(s).
 - E. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Lot(s) or Seller is pending, threatened or contemplated by Seller.
 - F. Seller will give prompt written notice to Buyer of any change of changed conditions affecting any of the covenants, representations and warranties set forth in the Agreement as affected by this Addendum.
4. Default and Remedies:
- A. Buyer's Default. If closing does not occur because of Buyer's breach of the Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy under the Agreement, Seller may terminate the Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The parties recognize that it would be difficult to determine the actual damages suffered by Seller as a result of such failure of Buyer to consummate the sale contemplated hereby, and the parties agree that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Buyer's breach of the Agreement and relinquishes any and all right to pursue an action for specific performance against Buyer in the event Buyer defaults in any of its obligations hereunder.
 - B. Seller's Default. Seller's breach of any provision of the Agreement shall, at Buyer's option, constitute a default hereunder. Buyer may elect in addition to the Mediation Clause set forth in the Agreement any remedy provided by law or in equity, including termination of the Agreement and receive a refund of the Earnest Money and any other fees or sums paid to Seller, specific performance, injunctive relief or other relief to require Seller to perform its obligations under the Agreement. If Buyer engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Buyer.
5. Notice: All notices, demands, and other communications which are to be given by Buyer or Seller to the other shall be in writing, which may be delivered via e-mail, by hand delivery or by a nationally recognized overnight delivery service with charges therefor billed to shipper (any of which shall be deemed given and received upon delivery) to the addresses set forth on the signature page hereto. If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. In the event of a change of address by either Buyer or Seller, such party shall give written notice thereof in accordance with the foregoing. Any notice rejected or not deliverable shall be deemed received on the first date of attempted delivery.
6. Other:
- A. Time Periods. Should the date upon which any act required to be performed under the Agreement fall on a Saturday, Sunday, or holiday, the time for performance shall be extended to the next business day.
 - B. Confidentiality. Except as specifically provided in the Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Buyer and Seller agree to (i) keep the Agreement and its terms confidential, (ii) keep confidential any information that is provided by Buyer or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of the Agreement, and (iv) not make any public announcement or press release about the Agreement without the other's prior written approval.
 - C. Amendment. The Agreement, as modified by this Addendum, shall not be further modified or amended except by an instrument in writing executed by or on behalf of the parties.
 - D. Independent Consideration. If Buyer terminates the Agreement pursuant to a right to do so granted to Buyer hereunder, and if the Earnest Money is otherwise refundable to Buyer and additional consideration is required for the Agreement to be enforceable under applicable law, then Buyer and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into the Agreement.

IN WITNESS WHEREOF, the parties have executed this Addendum on the date first written above.

WITNESSES:

BUYER:

Levi Grantham, LLC

Jim Cone, CFO

Date: 2-10, 2021

572 Savannah Hwy
Charleston, SC 29407
Attn: Edward M. Terry
Telephone: (84) 573-9635
Email: t.terry@crescenthomes.net

With a copy to:

Florence Law firm, LLC
62 Columbus St.
Charleston, SC, 29403
Attn: John Florence
Telephone: (843) 352-8558
Email: john@florencelawfirm.net

With a copy to:

LevickRoth
999 Peachtree Street NE, Suite 855
Atlanta, GA 30309
Attn: Suzan E. Roth, Esq
Telephone: (404) 201-7841
Email: sroth@levickroth.com

WITNESSES:

SELLER:

Name: Kathy Wright

Date: February 11th, 2021

Address: 3443 Osceola St, N Chs, SC 29405
Attn: _____
Telephone: 843 743 3876
Email: Na.

EXHIBIT 2

Levi Grantham, LLC
572 Savannah Highway
Charleston, SC 29407

July 9, 2021

Kathy Wright Mitchell
445 Osceola Street
North Charleston, South Carolina 29405

BY OVERNIGHT DELIVERY
(843) 743-3876

RE: Agreement to Buy and Sell Real Estate ("Agreement") by and between Levi Grantham, LLC ("Buyer") and Kathy Wright Mitchell ("Seller")


Please be advised that Purchaser has been diligently pursuing satisfaction of the contingencies described in Paragraph 36 of the Agreement; however, at this time, the contingencies set forth therein remain unsatisfied.

Purchaser will continue to pursue satisfaction of the contingencies; however, as of the date of this letter, Purchaser is electing to exercise its right to toll the Agreement until such time as the contingencies have been satisfied as set forth in Paragraph 36 of the Agreement. Closing under the Agreement shall occur upon the satisfaction of the contingencies listed in the Agreement.

Purchaser will keep you updated as to its progress in satisfying the contingencies. In the meantime, please contact me if you would like to discuss. Thank you.

Sincerely,

Levi Grantham, LLC


By: James Conner
Its: CEO

cc: LevickRoth (By Email)
Florence Law Firm (By Email)

EXHIBIT B



AGREEMENT TO BUY AND SELL REAL ESTATE (FOR GENERAL USE AND LOTS/ACREAGE)

ELECTRONICALLY FILED - 2022 Mar 28 5:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

1. PARTIES: This legally binding Agreement entered into on February 11th, 2021 between, Buyer(s), Levi Grantham, LLC and its assigns, (hereinafter called "BUYER"), and Seller(s), Kathy Wright Mitchell (hereinafter called "SELLER"). The property shall be deeded in the name(s) of Levi Grantham, LLC and its assigns

THE [X] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____ Address 1584 Folly Road Tax Map # 427-00-00-024 City Charleston Zip 29412 County of Charleston, State of South Carolina.

3. PURCHASE PRICE shall be \$ 400,000 Four Hundred Thousand and no/100 dollars.

4. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash; or [] Subject to Financing. Financing to be obtained by [] Conventional [] Seller [] VA [] FHA [] Other terms: _____

5. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 5,000 Buyer and Seller authorize Florence Law Firm, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [X] Check, or [] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

6. LOAN PROCESSING AND APPLICATION: Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum _____ % loan (loan-to-value ratio) within _____ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within _____ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 22.

FHA Mortgage Insurance [] will [] will not be added to the mortgage. VA funding fee [] will [] will not be added to the mortgage.

[Signature] BUYER [] BUYER [] SELLER [K 2/11] SELLER HAVE READ THIS PAGE Form 330 PAGE 1 OF 6

7. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

- (a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
- (b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: N/A

8. **OPTION TO TERMINATE AFTER DUE DILIGENCE:** (A) Seller grants to Buyer a 90 day right ("Termination Right") from the date of this agreement during which Buyer may do any or all of the following:

- 1. Conduct at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate to evaluate the suitability of Property for Buyer's intended use, including, but not limited to, zoning, governmental regulations, environmental concerns, availability of utilities and whether the soil on Property will support a septic system of a size and type of desired Buyer (hereinafter collectively referred to as "Buyer's Due Diligence");
- (B) Seller acknowledges and agrees that Buyer and/or his agents and employees may have free access during normal business hours to visit Property for the purpose of conducting Buyer's Due Diligence. Buyer hereby agrees to indemnify and hold Seller, Broker and Broker's Affiliated Licensees harmless from and against any and all loss, injury, cost or expense associated with Buyer's inspection of and entry upon Property.
- (C) If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be part of this agreement, and Buyer shall be deemed to have accepted Property "as-is". The expiration of the Termination Right shall not, however, remove or terminate and other contingencies to which the Agreement may be subject, or limit any other rights which Buyer may have under this Agreement.

9. **BUILDING PERMIT:** This Agreement is is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate governmental authority to build on Property. If Buyer notifies Seller in writing within _____ days after the complete execution of this agreement that Buyer is unable to acquire all required licenses and permits for the appropriate governmental authority to build on Property, then in such event this Agreement shall terminate. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.

10. **REZONING:** This Agreement is is not contingent upon Property being rezoned to _____ on or before the _____ day of _____, _____ by the appropriate governmental authorities. ~~For purpose herein, the term rezoned shall mean that the above referenced zoning has been fully approved by the appropriate governmental authority and any period to appeal such rezoning has expired without an appeal being filed. The Buyer Seller shall be responsible for pursuing such rezoning, and paying all associated costs. All rezoning applications shall be submitted to Seller for Seller's approval prior to filing, which approval shall not be unreasonably withheld. All parties agree to cooperate, to sign the necessary documentation and to support the rezoning application. If Buyer notifies Seller or Broker in writing within forty eight hours after the above date the Property cannot be so rezoned, then in such event this Agreement shall automatically terminate and Broker shall promptly refund the Earnest Money to Buyer. If Buyer fails to provide said notice, then this contingency shall be deemed to have been waived by Buyer.~~

11. **WELL, SEPTIC TANK, SEWER AVAILABILITY:** It shall be the responsibility of the Buyer to obtain approval from the South Carolina Department of Health and Environmental Control or other proper South Carolina authority prior to closing in the event a well and/or septic tank is needed to be placed on the property.

In the event that the Buyer applies for well or septic tank approval and DHEC or other proper authority denies approval or issues a preliminary opinion showing that the property is not suitable for the installation of a well and/or a conventional septic system suitable for the Buyer's intended home or other structure, then in such event, the Buyer may elect to rescind this Agreement and receive a refund of the earnest money deposit. If the property is capable of being connected to a water and/or sewerage line maintained by a private or public utility for a normal tap fee and at a cost to complete tap not to exceed \$ N/A, then in such event, the Buyer shall contract such authority to obtain confirmation that the subject property is properly tapped for water and sewer system or may be tapped into the water and sewerage system.

Seller represents that the property is connected to public sewer system or to septic tank or to public water or to well system or to other _____

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12. **SURVEY:** Upon the acceptance of this offer, the property shall be surveyed by a licensed surveyor at the expense of the BUYER SELLER. The surveyor shall set and flag all property pins, showing encroachments and easements. Property must be N/A x N/A or having at least N/A acres. The survey to be approved in writing by Buyer prior to closing. The purchase price is based upon \$ N/A per N/A (acre, sq. ft., or front ft.) and shall be adjusted in accordance with the area set forth in such a survey, if applicable.

13. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 30 days after the Termination Right expires, no later than 9:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

14. **POSSESSION:** Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property free of debris and in a clean condition. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

15. **CONDITION OF PROPERTY:** The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Agreement. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to the Buyer. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then the Buyer may elect to rescind the agreement.

16. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5:00 o'clock P M on 2/12, 2021 unless countered or accepted by Seller in written form prior to such time. **Time is of the essence.**

17. **SPECIAL STIPULATIONS:** The following stipulations concerning restrictions, and easements affecting desired use, drainage, hazardous waste, availability of water and sewer, soil test, wetlands study, subordination, lot releases, etc., should be included here. If conflicting with printed matter, the following stipulations shall control: (See addendum if applicable) See Addendum 1.

Seller will not be responsible for coordinating or paying for any surveys or inspections. Should contract terminate, all surveys, inspections and other related documents will be provided to the seller at no cost for sellers use.

18. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER IS TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The Buyer or the Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

19. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

20. **ROLLBACK TAXES (IF ANY):** When rollback taxes are subsequently determined and billed to the Buyer, the Seller and Buyer agree that the rollback taxes shall be paid by Buyer or Seller.

21. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer ~~or Seller~~ shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

22. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 23), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

 BUYER BUYER SELLER  SELLER HAVE READ THIS PAGE

23. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

24. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

25. **APPRAISED VALUE:** (check one)

This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

26. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS:** All reports and certifications called for by the lending agencies and any governmental body, by the Buyer concerning any special study area, wetlands or for any environmental protection matter shall be at the expense of the Buyer. In the event such studies are wanted or required, the studies must be furnished by the proper parties within 15 days of complete execution of the agreement. The Buyer and Seller must have access to all studies **within five (5) days of receipt** of the studies. If Buyer fails to meet these deadlines, Buyer is deemed to have waived any and all rights under this paragraph. If the Buyer is not satisfied with the results, the Seller shall have the option of correcting the problem. If the Seller elects not to correct the problem, the Buyer's obligations under this Agreement terminate upon written notice thereof from Buyer.

27. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's Seller's expense.

28. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

29. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud.

Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

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The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

30. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

31. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

32. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

33. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. **Time is of the essence.**

34. **MEGAN'S LAW:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

35. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

36. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) The following conditions shall be satisfied prior to closing under the Agreement:

- A. Purchasers receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.
- B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

If all of the conditions set forth in this Paragraph are not satisfied as of closing, the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF

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THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.
Levi Grantham, LLC

BUYER: by [Signature] CFO Date 2-10-21 Time _____

WITNESS: [Signature] Date 2/10/21 Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Kate & Ann Date 2-11-2021 Time _____

WITNESS: [Signature] Date 2-11-2021 Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

2/10 LISTING AGENT AND COMPANY Jason Wang, Century 21 Brand Name Real Estate

SELLING AGENT AND COMPANY Joshua Craig, Crescent Homes Realty, Inc.

SELLING AGENT IS PRESENTING THIS OFFER AS A BUYER'S AGENT OR SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE

THIS ADDENDUM 1 TO AGREEMENT TO BUY AND SELL REAL ESTATE (the "Addendum") for certain Property described in that certain Agreement to Buy and Sell Real Estate (the "Agreement"), which Property is sometimes referred to herein as the "Lot(s)" located in Subdivision is made and entered into on _____, 2021 (the "Effective Date") by **Levi Grantham, LLC**, and its assigns ("Buyer") **Kathy Wright Mitchell** ("Seller"). If there is any conflict or inconsistency between the terms and conditions of The Agreement and this Addendum, the terms and conditions of this Addendum shall control and govern the rights and obligations of the parties.

1. Due Diligence Materials and Termination Right:

- A. Due Diligence Materials. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer copies of all due diligence materials pertaining to all or any portion of the Lot(s) in its possession or control, including title materials, subdivision documents, plats, surveys, plans, studies and reports.
- B. Termination Right. If Buyer terminates this Agreement prior to the expiration of the Termination Right in accordance with Paragraph 8 of the Agreement or as may otherwise be expressly permitted herein, then Escrow Agent shall return the Earnest Money to Buyer.

2. Title:

- A. Seller Warranties. Notwithstanding Section 13 of the Agreement, Seller represents and warrants to Buyer that Seller has "good and marketable, fee simple title" to the Lot(s), and that at closing, Seller shall convey "good and marketable, fee simple title" to the Lot(s) to Buyer, subject only to the following exceptions (the "Permitted Exceptions"):
 - (1) the lien for ad valorem taxes which are not yet due and payable;
 - (2) easements shown on the applicable subdivision plat;
 - (3) declarations, restrictions and covenants affecting the subdivision; and
 - (4) general service lines and utility easements that serve only the Lot(s).

"Good and marketable, fee simple title" shall be such title as is acceptable to and insurable by a nationally recognized title insurance company chosen by Buyer at standard rates on the American Land Title Association Owner's Policy 2006 Form, free and clear of all exceptions except the Permitted Exceptions.

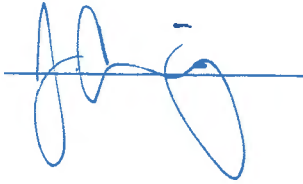
- B. Title Defects. If Buyer's examination of the title and a survey of the Lot(s) reveals matters other than the Permitted Exceptions (the "Title Defects") and notice of the Title Defects is given to Seller in connection with Buyer's Due Diligence, then Seller shall promptly cure the Title Defects, provided that if Seller does not demonstrate to Buyer's reasonable satisfaction that Seller will cure such Title Defects prior to closing, then Buyer may by written notice to Seller extend the expiration of the Termination Right or, if applicable, the closing, until such time as the Title Defects are cured. Notwithstanding the foregoing, Buyer shall not be required to object to mortgages, deeds of trust and other liens and encumbrances, including without limitation judgment liens that can be cured or removed with the payment of money (collectively "Monetary Encumbrances"), all of which shall be removed by Seller not later than closing. Buyer shall be entitled to cure Monetary Encumbrances with proceeds payable to Seller at closing and to examine title to the Lot(s) prior to closing and to object to all matters appearing of record or otherwise affecting the Lot(s) between the date on which Buyer made its title examination pursuant hereto and the date of closing. Seller agrees not to further encumber the Lot(s) from and after the Effective Date.
3. Seller's Representations and Warranties: Seller covenants, represents and warrants to Buyer the following:
- A. Seller has the authority and power to enter into this Agreement and to consummate the transaction provided for herein without the approval or consent of any other party and the signatories to this Agreement for Seller are duly authorized to bind Seller.
 - B. Seller has neither received notice nor has any knowledge with respect to all or any portion of the Lot(s): (i) that any condemnation or taking is pending or is contemplated, (ii) of any violation of any applicable law, ordinance or regulation, including zoning ordinances, development, permit or subdivision requirements, or any other legal requirements; (iii) of any default or breach under any covenant, condition, restriction, right-of-way or easement; and/or (iv) of any private or public special assessment.
 - C. To the best of Seller's knowledge, the Lot(s) have not been used in connection with, nor has there been any surface or subsurface contamination due to the use, storage, disposal or treatment of any materials, substances or hazardous wastes, as defined by any federal, state or local health or environmental laws,

regulations or ordinances, and there are no such materials, substances or hazardous wastes present in, on or about the Lot(s).

- D. There are no leasehold or occupancy agreements encumbering the Lot(s), no party has any possessory interest or right in the Lot(s), and no party has any right of first refusal, right of first offer or other contractual right to purchase or possess all or any portion of the Lot(s).
 - E. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Lot(s) or Seller is pending, threatened or contemplated by Seller.
 - F. Seller will give prompt written notice to Buyer of any change of changed conditions affecting any of the covenants, representations and warranties set forth in the Agreement as affected by this Addendum.
4. Default and Remedies:
- A. Buyer's Default. If closing does not occur because of Buyer's breach of the Agreement, and such breach is not cured within thirty (30) days after receipt of notice thereof from Seller, then, as its sole remedy under the Agreement, Seller may terminate the Agreement and the Earnest Money shall be paid to Seller as full liquidated damages and not a penalty. The parties recognize that it would be difficult to determine the actual damages suffered by Seller as a result of such failure of Buyer to consummate the sale contemplated hereby, and the parties agree that such liquidated damages are reasonable. Seller hereby waives any right to damages in excess of said liquidated damages for Buyer's breach of the Agreement and relinquishes any and all right to pursue an action for specific performance against Buyer in the event Buyer defaults in any of its obligations hereunder.
 - B. Seller's Default. Seller's breach of any provision of the Agreement shall, at Buyer's option, constitute a default hereunder. Buyer may elect in addition to the Mediation Clause set forth in the Agreement any remedy provided by law or in equity, including termination of the Agreement and receive a refund of the Earnest Money and any other fees or sums paid to Seller, specific performance, injunctive relief or other relief to require Seller to perform its obligations under the Agreement. If Buyer engages legal counsel to enforce its rights hereunder, Seller shall be responsible for all legal fees and costs of enforcement incurred by Buyer.
5. Notice: All notices, demands, and other communications which are to be given by Buyer or Seller to the other shall be in writing, which may be delivered via e-mail, by hand delivery or by a nationally recognized overnight delivery service with charges therefor billed to shipper (any of which shall be deemed given and received upon delivery) to the addresses set forth on the signature page hereto. If sent by e-mail, a notice shall be deemed given when such e-mail is transmitted to the e-mail notice address specified below and shall be deemed received on that same day unless given after 6:00 p.m. in the receiving location, in which case such receipt shall be the next business day. In the event of a change of address by either Buyer or Seller, such party shall give written notice thereof in accordance with the foregoing. Any notice rejected or not deliverable shall be deemed received on the first date of attempted delivery.
6. Other:
- A. Time Periods. Should the date upon which any act required to be performed under the Agreement fall on a Saturday, Sunday, or holiday, the time for performance shall be extended to the next business day.
 - B. Confidentiality. Except as specifically provided in the Agreement, and except for disclosures to their respective attorneys, agents and lenders or as required by law, the Buyer and Seller agree to (i) keep the Agreement and its terms confidential, (ii) keep confidential any information that is provided by Buyer or its consultants, (iii) not use any such confidential information for any purpose other than performance or enforcement of the Agreement, and (iv) not make any public announcement or press release about the Agreement without the other's prior written approval.
 - C. Amendment. The Agreement, as modified by this Addendum, shall not be further modified or amended except by an instrument in writing executed by or on behalf of the parties.
 - D. Independent Consideration. If Buyer terminates the Agreement pursuant to a right to do so granted to Buyer hereunder, and if the Earnest Money is otherwise refundable to Buyer and additional consideration is required for the Agreement to be enforceable under applicable law, then Buyer and Seller hereby direct Escrow Agent to pay the sum of One Hundred Dollars (\$100.00) from the Earnest Money to Seller as consideration for entering into the Agreement.


IN WITNESS WHEREOF, the parties have executed this Addendum on the date first written above.

WITNESSES:



BUYER:

Levi Grantham, LLC


Jim Cone, CFO

Date: 2-10, 2021

572 Savannah Hwy
Charleston, SC 29407
Attn: Edward M. Terry
Telephone: (84) 573-9635
Email: t.terry@crescenthomes.net

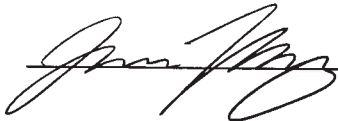
With a copy to:

Florence Law firm, LLC
62 Columbus St.
Charleston, SC, 29403
Attn: John Florence
Telephone: (843) 352-8558
Email: john@florencelawfirm.net

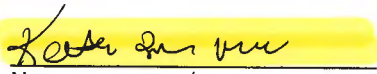
With a copy to:

LevickRoth
999 Peachtree Street NE, Suite 855
Atlanta, GA 30309
Attn: Suzan E. Roth, Esq
Telephone: (404) 201-7841
Email: sroth@levickroth.com

WITNESSES:



SELLER:


Name: Kathy Wright

Date: February 11th, 2021

Address: 3443 Osceola St N Chs, SC 29405
Attn: _____
Telephone: 843 743 3876
Email: Na

EXHIBIT C

1584 Folly Rd, Charleston, SC 29412

[zillow.com/homes/1584-folly-road.-charleston.-sc-29412_rb/10898293_zpid/](https://www.zillow.com/homes/1584-folly-road.-charleston.-sc-29412_rb/10898293_zpid/)

1 of 3



Interested in touring this home?

-
-
-



-
-
-

ELECTRONICALLY FILED - 2022 Mar 28 5:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

\$695,000

For sale by owner [View Zestimate®](#)

Est. payment:

\$695,000

For sale by owner [View Zestimate®](#)

Est. payment:

• **Overview**

Travel times

Overview

Time on Zillow

3 days

|

205

|








2

This 1200 square foot single family home has 3 bedrooms and 2.0 bathrooms. This home is located at 1584 Folly Rd, Charleston, SC 29412.

What the seller loves about this home

This is a 3 bed 2 full bathroom about 1,200 square feet. Nice neighborhood convenient to the beach and stores. Not far from downtown and surrounding areas. Just 7 minutes from Folly Beach edge of America. This is a fixer up just waiting for your personal touch!!! Has a lot of land to offer including in this property to expanded the home or subdivided the lot. Please call (843)743-3876 or email, I'll get back to you as soon as possible. Thanks

• **Facts and features**

-  Type:SINGLE_FAMILY
-  Year built:1984
-  Heating:Other, Gas
-  Cooling:No Data
-  Parking:Carport, Garage - Detached
-  Lot:0.88 Acres
-  Price/sqft:\$579

Interior details

Bedrooms and bathrooms

- Bedrooms: 3
- Bathrooms: 2
- Full bathrooms: 2

Basement

Basement: None

Flooring

Flooring: Hardwood, Laminate

Heating

Heating features: Other, Gas

Appliances

Appliances included: Freezer, Microwave, Range / Oven, Refrigerator

Other interior features

Total interior livable area: 1,200 sqft

Property details

Parking

Parking features: Carport, Garage - Detached

Property

- Exterior features: Shingle, Brick
- View description: City

Lot

Lot size: 0.88 Acres

Other property information

Parcel number: 4270000024

Construction details

Type and style

Home type: SingleFamily

Material information

Roof: Asphalt

Condition

- New construction: No
- Year built: 1984

Community and Neighborhood Details

Location

Region: Charleston

HOA and financial details

Other financial information

Annual tax amount: \$936

Services availability

70.3

- **Estimated market value**

The list price and Zestimate® for this home are very different, so we might be missing something.

\$271,900

- **Monthly cost**

Estimated monthly cost \$1,438

All calculations are estimates and provided for informational purposes only. Actual amounts may vary.

Don't miss out on this home, or any other on your list. [!\[\]\(59c121683c47961e4c45d45950b1fd2b_img.jpg\) Get pre-qualified](#)

- **Rental value**

\$1,800/mo

- **Nearby schools in Charleston**

About GreatSchools

The GreatSchools Summary Rating is based on several metrics.

About the ratings: GreatSchools Ratings are designed to be a starting point to help parents compare schools, and should not be the only factor used in selecting the right school for your family. Zillow and GreatSchools recommend that parents tour multiple schools in-person to inform that choice. As of October 2020, the GreatSchools Ratings methodology continues to move beyond proficiency and standardized test scores. The latest methodology prioritizes student growth through measures of equity and school quality. [Learn more](#)

Disclaimer: School attendance zone boundaries are provided by a third party and are subject to change. They are not guaranteed to be accurate, up to date, or complete. Check with the applicable school district prior to making a decision based on these boundaries.

- **Similar homes**

-  Broker Reciprocity



\$600,000

3 bd 2 ba 1.7k sqft

671 Sterling Dr, Charleston, SC 29412

For Sale

MLS ID #21023355

- \$399,000

3 bd 2 ba 1.7k sqft

750 Fort Johnson Rd, Charleston, SC 29412

For Sale

MLS ID #21023361

- \$699,900

3 bd 4 ba 1.4k sqft

9 Dereef Ct, Charleston, SC 29403

For Sale

MLS ID #21023187

- \$400,000
4 bd 2 ba 1.3k sqft
1611 Westmoreland Ave, Charleston, SC 29412
For Sale
MLS ID #21019920
- \$575,000
4 bd 2 ba 1.6k sqft
12 Simons St, Charleston, SC 29403
For Sale
MLS ID #21023133
- \$390,000
3 bd 2 ba 1.1k sqft
1851 Christian Rd, Charleston, SC 29407
For Sale
MLS ID #21023307
- \$735,000
3 bd 3 ba 1.7k sqft
45 Rose Ln, Charleston, SC 29403
For Sale
MLS ID #21022802
- \$365,000
4 bd 2 ba 1.6k sqft
1859 Saint Julian Dr, Charleston, SC 29407
For Sale
MLS ID #21023197

- o \$354,900

3 bd 3 ba 1.6k sqft

2926 Split Hickory Ct, Johns Island, SC 29455

For Sale

MLS ID #21023492

- o \$389,000

3 bd 2 ba 1.4k sqft

813 Brigantine Dr, Charleston, SC 29412

For Sale By Owner

•

- **Neighborhood: 29412**

Nearby homes

-



\$460,000

-- bd -- ba -- sqft

1594 Folly Rd, Charleston, SC 29412

Off Market

- \$189,000

4 bd 2 ba 2.6k sqft

1580 Folly Rd, Charleston, SC 29412

Sold

- \$451,900

3 bd 2 ba 2.4k sqft

1578 Folly Rd, Charleston, SC 29412

Off Market

- \$216,300

2 bd 1 ba 840 sqft

1574 Folly Rd, Charleston, SC 29412

Off Market

- \$976,549
3 bd 2 ba 2.5k sqft
1575 Folly Rd, Charleston, SC 29412
Off Market
- \$225,000
3.5 Acres
1566 Folly Rd, Charleston, SC 29412
Lot/Land
MLS ID #16023950
- \$221,800
2 bd 1 ba 1k sqft
1565 Folly Rd, Charleston, SC 29412
Off Market
- \$410,800
1 bd 1 ba 600 sqft
1633 Rafeal Ln, Charleston, SC 29412
Off Market

-
-

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case Number 2021-CP-10-04342
)	
LEVI GRANTHAM, LLC,)	
)	
PLAINTIFF,	)	DEFENDANT’S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
)	
Vs.)	
)	
KATHY WRIGHT MITCHELL,)	
)	
DEFENDANT.)	
_____)	

Defendant moves the Court for an Order granting her Summary Judgment in this case pursuant to Rule 56, SCRPC, on the grounds that there are no genuine issues of material fact that need to be resolved between defendant and plaintiff with regard to defendant’s second cause of action in her counterclaims which requests a rescission of the contract to sell and buy real estate entered into on February 11, 2021, and that the defendant is entitled to judgment as a matter of law.

UNDISPUTED FACTS

Plaintiff, Levi Grantham, LLC is an experienced real estate development Company in South Carolina. Defendant is an individual who inherited the subject real estate following the death of her mother in 2012. The subject property is described in the contract of sale between the parties as Charleston County TMS # 427-00-00-024. The contract of sale is attached as an exhibit to the plaintiff’s complaint. The street address of the subject property is 1584 Folly Rd., Charleston, SC 29412. Folly Road is a very heavily travelled thoroughfare that branches directly off of U.S. Hwy 17 North. It runs from peninsular Charleston, crosses the Wappoo cut, through all of James Island

and ends at Folly Beach. The Folly Road is the only roadway on and off of Folly Beach. The property has more than 80 feet of frontage on Folly Road and is 0.88 acres large. A copy of the Charleston County GIS map of the property is attached as exhibit 'A'. The plaintiff and defendant entered into a written contract of sale regarding the real estate dated February 11, 2021, agreeing that for an agreed upon purchase price, defendant would sell, and plaintiff would buy the property.

The contract described how the buyer was attempting to assemble the subject property and adjoining property, and that there would be a permitting process thereafter for development. In that regard, the subject contract stated a contingency that would extend the time for closing at the option of the buyer. The contract states that "Time is of the Essence," and set an original closing date for 30 days following the expiration of the 90 day Termination Right. That totaled 120 days from the February 11, 2021 date of the contract. The contract states that the buyer can extend the closing date in the event buyer needed additional time to obtain an approved preliminary plat for development and to obtain access availability to the property from Folly Rd from SCDOT. If the contingencies were not met by the original closing date, buyer could extend the closing date by giving Notice to the Seller of its intention to "toll" the agreement. On June 4, 2021, the buyer notified seller that it was extending the closing date by 30 days to pursue satisfaction of the contingencies. On July 9, 2021, the buyer notified the seller that it was "tolling" the sales agreement indefinitely. The July 9, 2021 letter to seller states, "Closing under the Agreement shall occur upon the satisfaction of the contingencies listed in the Agreement." The June 4, 2021 letter from buyer to seller and the July 9, 2021 letter to seller are attached as exhibit "B".

The contract, which was prepared by the buyer and presented to the seller, did not state an end point for the extension period or "tolling" period of the contract. The contract is silent as to when the extension period would end if the contingencies were not met by the buyer and the

contract is not closed. As of the date of this motion hearing, the contract has still not closed. The buyer's letters state that seller will keep buyer "updated as to its progress in satisfying the contingencies." However, the buyer has only given seller one or two very sparse updates since July 2021 and has not given seller any firm indication as to when the contract will close.

In South Carolina, the court will apply a *reasonableness* standard, and will infer that the contract should be completed with a reasonable period of time where a contract does not express a time deadline, and the contract otherwise states that "time is of the essence." Davis v. Cordell, 237 S.C. 88, 115 S.E.2d 649 (1960). More than a year has gone by since the date of this contract. A reasonable amount of time to close on this contract has long since passed. Defendant should not have to wait for an unreasonable amount of time to close, and is entitled to a rescission of the contract.

The time set in the original contract for closing was a period of 120 days from the date of the contract. A period of 5 months was actually given to the buyer. On July 9, 2021, the buyer exercised its option to extend or toll the agreement once again. The defendant responded to the buyer by advising the buyer that a similar 5 month period would be reasonable for the extension. The defendant gave notice to the plaintiff on November 4, 2021 that the extension to meet the contingencies which began on July 10, 2021 would end 5 months thereafter; that is on December 10, 2021. Defendant further advised plaintiff that she was ready, willing and able to meet the terms and conditions of the contract and will sell the property to Levi Grantham, LLC at the contract price through December 10, 2021.

Plaintiff was advised that if the contract was not closed by December 10, 2021, or unless other arrangements were made to extend the contract further, defendant would consider the

contract to be *terminated*, and would seek a rescission of the contract or damages at law as may be applicable.

After receiving scant information and no closing date from plaintiff, defendant again notified plaintiff that she would extend the deadline date once again. On January 5, 2022, defendant notified Plaintiff that February 11, 2022 would mark the one-year anniversary of the original contract and the eight-month anniversary of the extension granted to allow plaintiff time to meet the contingencies. Defendant renewed her notice to plaintiff stating that if the subject contract was not closed by February 11, 2022, the seller would consider the contract to be terminated and would seek a rescission of the contract, or damages at law, as may be applicable. Defendant also expressed her willingness to terminate the contract sooner than February 11, 2022, if plaintiff would agree.

On February 2, 2022, defendant advised plaintiff that she was tendering a full return of Levi Grantham's \$5,000.00 earnest money deposit paid pursuant to the terms and conditions of the subject contract to it. Defendant instructed the escrow agent, that she consented to an immediate release of the funds earmarked as its earnest money deposit to Levi Grantham if Levi Grantham either consented to, or was ordered to, rescind the subject contract.

"The general rule is that for a breach of contract to warrant rescission, the breach must be so fundamental and substantial as to defeat the purpose of the contract." Gibbs v. G.K.H., Inc., 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct.App.1993); "[A] rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." Rogers v. Salisbury Brick Corp., 299 S.C. 141, 143–44, 382 S.E.2d 915, 917 (1989). See also Ellie, Inc. v. Maccichi, 358 S.C. 785, 94 S.E.2d 485 (Ct. App. 2004). A failure to timely perform a contract to purchase real estate is a fundamental and substantial breach of the contract.

Defendant, seller, should not be required to wait an indeterminate amount of time to sell the real estate to the plaintiff. Since the contract states that Time was of the Essence, she should not have to wait for more than a reasonable amount of time for closing. More than a year from the original contract date, and eight months beyond the original closing date, is unreasonable on its face. It is unreasonable that defendant should lose out on the unprecedented rise in real estate values since February 11, 2021. It is unreasonable that plaintiff may stand to benefit from the unprecedented rise in real estate values during this period of time, without even having to pay the purchase price offered to defendant. The buyer is, in essence, making money without having to spend money to purchase this property.

It is unreasonable that Defendant must keep her property off of the open market for an unreasonable length of time subject only to a \$5,000.00 earnest money deposit which represents a mere 1.25% of the purchase price. It is unreasonable that defendant, who has had no experience with real estate sales and/or development, and who acquired the property through inheritance, finds herself being dangled in the wind of uncertainty by plaintiff, which is operated by sophisticated and experienced real estate developers.

The defendant has clearly and unequivocally notified the plaintiff of her intent to terminate and rescind the contract, first on November 4, 2021 and again on January 5, 2022. Notwithstanding the notice to plaintiff, it has continued to delay its performance. The plaintiff and defendant can be put back to a status quo, by a return of plaintiff's earnest money deposit. First Equity Investment Corp. v. United Service Corp. of Anderson, 299 S.C. 491, 386 S.E.2d 245 (1989). Defendant has tendered the return of the deposit and has authorized the escrow agent to give the deposit back to the plaintiff. There has been no whole or part performance on either parties' part of the subject contract. Zan, LLC v. Ripley Cove, LLC, 406 S.C. 404, 751, S.E.2d 664 (Ct. App. 2014).

For the forgoing reasons, and because there are no genuine issues of material fact to be resolved, defendant is entitled to a rescission of the subject contract, placing the parties back to the status quo, and freeing the defendant from the terms and conditions of the contract with plaintiff, and its indeterminate terms.

Respectfully submitted,

SOLOMON, BUDMAN & STRICKER, LLP

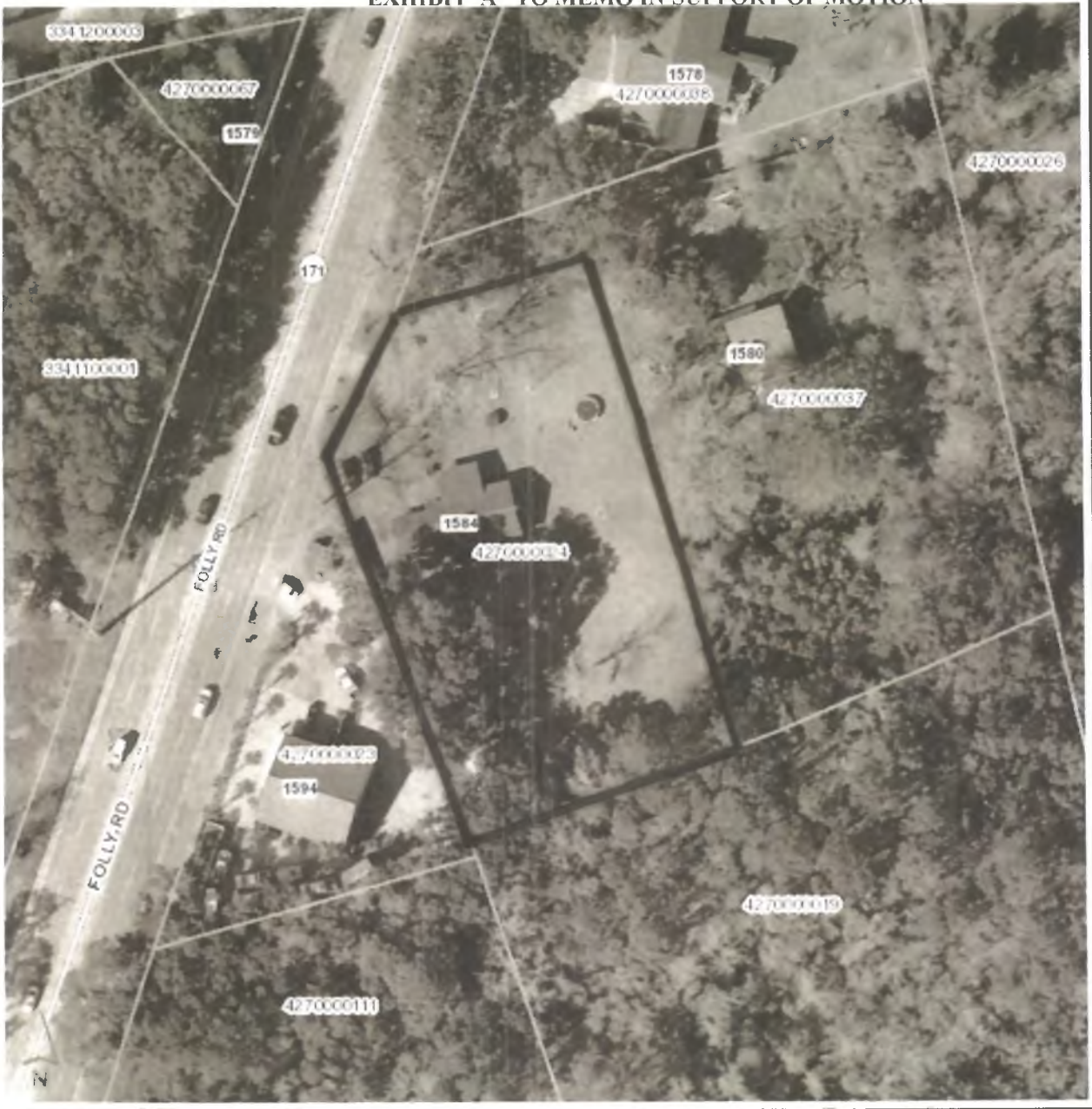
BY: /Donald J Budman
Donald J. Budman, S.C. Bar # 00998
1052 Gardner Rd., Ste. 200
P.O. Box 30280
Charleston, SC 29417
(843) 763-1118- Office
(843) 763-7518- Fax

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
22nd day of March, 2022

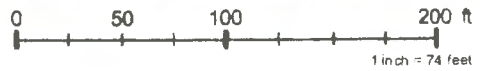
EXHIBIT 'A' TO MEMO IN SUPPORT OF MOTION

ELECTRONICALLY FILED - 2022 Mar 29 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342



427-00-00-024

PID: 4270000024
OWNER1: MITCHELL KATHY WRIGHT
PLAT BOOK PAGE: G-30A
DEED BOOK PAGE: 0399-763
Jurisdiction: COUNTY OF CHARLESTON



Note: The Charleston County makes every effort possible to produce the most accurate information. The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

Author: Charleston County SC
 Date: 3/22/2022

EXHIBIT 'B' TO MEMO IN SUPPORT OF MOTION

June 4, 2021

Kathy Wright Mitchell
445 Osceola Street
North Charleston, South Carolina 29405

BY OVERNIGHT DELIVERY
(843) 743-3876

RE: Agreement to Buy and Sell Real Estate ("Agreement") by and between Levi Grantham, LLC ("Buyer") and Kathy Wright Mitchell ("Seller")

Dear Ms. Mitchell,

Please be advised that Buyer has been diligently pursuing satisfaction of the contingencies set forth in Paragraph 36 of the Agreement including:

1. Receipt of preliminary plat approval from the applicable governmental entity for Buyer's intended development plan; and
2. Access availability from SCDOT or the applicable authority for Buyer's intended development plan.


However, at this time, these contingencies remain unsatisfied and cannot reasonably be resolved by the June 11, 2021. Accordingly, by this letter, Buyer is exercising its right to extend the closing for thirty (30) days as set forth in Paragraph 33 of the Agreement.

Buyer will continue to pursue satisfaction of these contingencies and will keep you updated as to the status. Please note that Buyer hereby retains all rights under the Agreement, including but not limited to those rights set forth in Paragraph 36.

Please contact Joshua Craig [*me*] if you have questions or would like to discuss. Thank you.

Sincerely,

Levi Grantham, LLC


By: Jim Cone
Its: CEO

cc: LevickRoth (By Email)
Florence Law Firm (By Email)

ELECTRONICALLY FILED - 2022 Mar 29 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

EXHIBIT 'B' TO MEMO IN SUPPORT OF MOTION

Levi Grantham, LLC
572 Savannah Highway
Charleston, SC 29407

July 9, 2021

Kathy Wright Mitchell
445 Osceola Street
North Charleston, South Carolina 29405

BY OVERNIGHT DELIVERY
(843) 743-3876

RE: Agreement to Buy and Sell Real Estate ("Agreement") by and between Levi Grantham, LLC ("Buyer") and Kathy Wright Mitchell ("Seller").

Please be advised that Purchaser has been diligently pursuing satisfaction of the contingencies described in Paragraph 36 of the Agreement; however, at this time, the contingencies set forth therein remain unsatisfied.

Purchaser will continue to pursue satisfaction of the contingencies; however, as of the date of this letter, Purchaser is electing to exercise its right to toll the Agreement until such time as the contingencies have been satisfied as set forth in Paragraph 36 of the Agreement. Closing under the Agreement shall occur upon the satisfaction of the contingencies listed in the Agreement.

Purchaser will keep you updated as to its progress in satisfying the contingencies. In the meantime, please contact me if you would like to discuss. Thank you.

Sincerely,

Levi Grantham, LLC



By: James Conner
Its: LLC

cc: LevickRoth (By Email)
Florence Law Firm (By Email)

ELECTRONICALLY FILED - 2022 Mar 29 11:53 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2021-CP-10-04342
COUNTY OF CHARLESTON)	
)	
Levi Grantham, LLC,)	
	)	MOTION FOR RECONSIDERATION
Plaintiff,)	
)	
vs.)	
)	
Kathy Wright Mitchell,)	
)	
Defendant.)	
_____)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff Levi Grantham, LLC (“Levi Grantham”) moves for reconsideration of and/or to alter or amend the Court’s order of April 1, 2022 granting Defendant Kathy Wright Mitchell (“Defendant”) summary judgment on her counterclaim for rescission. First, the order should be reconsidered because the Court improperly relied on the Agreement’s “time is of the essence” provisions, which are preempted by Section 36 of the Agreement. Second, the order should be reconsidered and summary judgment denied because the determination of the reasonableness of time to close on the purchase of the Property under the Agreement is a question of fact, which should be resolved in favor of Levi Grantham in light of the evidence indicating that it could take one to three years to satisfy the contingencies under the Agreement. Third, the order should be reconsidered and vacated because it incorrectly imposes a supersedeas bond on Levi Grantham in the event of an appeal despite the facts that an appeal will stay the Court’s order and that Defendant will potentially receive a windfall through a double-recovery if she prevails on appeal. For these reasons as explained further below, the Court should reconsider its ruling and deny summary judgment on Defendant’s counterclaim for rescission.

STANDARD OF REVIEW

Under Rule 59, SCRCP, a motion for reconsideration serves the traditional role of asking the trial judge to reconsider any previously raised and decided issue encompassed in the judgment. See James F. Flanagan, *South Carolina Civil Procedure* (2d Ed. 1996), at 474 (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). As stated by the South Carolina Supreme Court in *Elam v. South Carolina Dept. of Transp.*:

First, it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek “reconsideration” of issues and arguments. A motion under Rule 59(e) long has been viewed as “motion for reconsideration” despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.

361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004).

ARGUMENT

A. There is an ambiguity as to whether the “time is of the essence” provisions apply to Levi Grantham’s satisfaction of the closing contingencies, and such ambiguity precludes summary judgment.

In granting Defendant summary judgment on her claim for rescission of the Agreement, the Court inappropriately relied on the language therein stating that “time is of the essence.” Although the Agreement does contain such language in multiple provisions, such language is expressly preempted by Section 36 of the Agreement, which establishes the contingencies that must be met before closing and provides Levi Grantham with the right to toll the Agreement and the closing of the purchase if such contingencies are not met.

In this case, it is undisputed that the contingencies under Section 36 have not been met and that Levi Grantham had the right to toll the Agreement. Thus, the question presented to the Court under Defendant's motion for summary judgment was whether Levi Grantham failed to close on the purchase of the Property under the Agreement within a reasonable time under Section 36. In concluding that Levi Grantham had not closed within a reasonable time, the Court relied on language in the Agreement stating that "time is of the essence." However, Section 36 expressly states that the stipulations in that section "shall preempt printed matter herein." When this language is construed in the light most favorable to Levi Grantham, as it must under a motion for summary judgment, Levi Grantham's right to toll the Agreement until the contingencies were satisfied preempted the "time is of the essence" language. At minimum, Section 36 and the "time is of the essence" provisions create an ambiguity about whether the parties intended the "time is of the essence" provisions to apply to the closing if the contingencies had not been met. Because of that ambiguity, the determination of the parties' intent with respect to those provisions "is a question of fact that should not have been decided on summary judgment." *See Wallace v. Day*, 390 S.C. 69, 77, 700 S.E. 2d 446, 450 (Ct. App. 2010) (finding that though the contract stated time was of the essence, summary judgment for plaintiff's failure to close on time was improper because the terms of the contract's default provision were ambiguous and a question of fact requiring a determination of the parties' intent).

B. The Court improperly decided questions of fact about whether Levi Grantham failed to close on the purchase of the Property within a reasonable time.

In granting Defendant summary judgment, the Court improperly and prematurely decided questions of fact about the reasonableness of Levi Grantham's failure to close in a timely fashion under the Agreement. Where the contract does not provide a precise date by which payment must be made, a reasonable time will be implied. *Davis v. Cordell*, 237 S.C. 88, 99, 115 S.E.2d 649,

654 (1960). The determination of what is a reasonable time must be determined “according to the circumstances of the case.” *Id.* at 101, 115 S.E.2d at 655. Furthermore, a party to a contract may make time of the essence of the other party’s performance of the contract by “giving notice to the other that he will insist on performance by a certain date, provided the time allowed by the notice is reasonable, **which is a question of fact for the jury depending on the circumstances of the particular case.**” *Hobgood v. Pennington*, 300 S.C. 309, 314, 387 S.E.2d 690, 693 (Ct. App. 1989) (emphasis added).

In this case, the Court conclusively ruled that Levi Grantham’s failure to close within a year of the effective date of the Agreement was unreasonable. However, the Court did not provide any analysis for determining what was a reasonable period of time to satisfy the contingencies and close on the purchase. In contrast, Levi Grantham presented evidence indicating that the process for satisfying the contingencies and obtaining the necessary approvals to close on the Property could take up to three years, which indicate that a failure to close within a one-year period is not unreasonable.

Because this is a motion for summary judgment, Levi Grantham’s evidence relating to the amount of time it takes to obtain development approvals should have been construed in the light most favorable to Levi Grantham. If this had been done, there would be genuine issues of fact for the jury or court to decide after the parties complete discovery. By failing to do this and instead considering the evidence in the light most favorable to Defendant, the Court erred in granting Defendant summary judgment on her claim for rescission. Therefore, the Court should reconsider its order and deny Defendant’s motion for summary judgment.

C. The Court improperly decided the amount of the supersedeas bond.

In its order granting summary judgment to Defendant, the Court ruled that it would require Levi Grantham to post a surety appeal bond in the amount of \$400,000 if Levi Grantham files an appeal and seeks a supersedeas. This order should be reconsidered and vacated because it inaccurately states the posture of the case and the parties' burdens of seeking supersedeas or lifting the automatic stay.

As a threshold matter, the imposition of a supersedeas bond on Levi Grantham is unnecessary in the current context because Levi Grantham will have no reason to seek a supersedeas if it appeals the order. Under Rule 241(a), SCACR, an appeal of the order granting summary judgment and rescinding the Agreement will automatically stay the Court's order. Because a supersedeas will "suspend or stay the matters decided in the order," it is only appropriate in those cases falling under the exception to the general automatic stay rule. Therefore, Levi Grantham will not be seeking a supersedeas upon any appeal because such appeal will be subject to the automatic stay rule.

As a result, it will be Defendant's burden under Rule 241 to lift the automatic stay rather than Levi Grantham's burden of obtaining a supersedeas. If Defendant seeks to lift the stay, then lifting the stay should be conditioned on Defendant posting a bond to secure Levi Grantham against loss during the appeal. If Defendant sells the Property during the appeal and Levi Grantham ultimately prevails on appeal and its underlying claims, then Levi Grantham's success will be hollow because it will have lost the ability to buy the Property, which is needed for the successful completion of its contemplated residential developments. Thus, Defendant should only be able to have the automatic stay lifted by posting an appeal bond in an amount that will protect Levi Grantham's investment in pursuing the developments, which will be lost if Defendant sells the

Property during the appeal. *See Melton v. Walker*, 209 S.C. 330, 335, 40 S.E.2d 161, 163 (1946) (holding that appeal's stay of proceeding is necessary because plaintiff's right of appeal would be hollow and fruitless if property could be sold during appeal).

In contrast, Defendant will suffer little, if any, harm by an appeal. At worst, Defendant may be prevented from selling the Property during the pendency of the appeal. But if she prevails on appeal, she will maintain possession of the Property at the conclusion of the appeal and be able to sell it at that time, while also enjoying the benefit of any appreciation in value. And if she is awarded a \$400,000 bond posted by Levi Grantham at the conclusion of the appeal, she will receive a windfall by retaining the Property and the purchase price under the Agreement. Thus, the amount of the bond required under the order appears to be a penalty designed to deter Levi Grantham from seeking an appeal rather than being rationally related to any harm that Defendant will suffer from an appeal. *See Elk Horn Coal Corp. v. Cheyenne Res., Inc.*, 163 S.W.3d 408 (Ky. 2005) (ruling that appeal bond statute violated equal protection and due process rights because it deterred meritorious appeals and imposed a penalty). This is fundamentally unfair and punitive to Levi Grantham and in violation of Rule 241.

Based on these factors, the Court erred in imposing a supersedeas bond on Levi Grantham. Therefore, the provision of the order imposing such a bond should be reconsidered and vacated.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for Reconsideration and/or alter or amend the order granting Defendant summary judgment as to Defendant's counterclaim for rescission.

Respectfully submitted,

/s/ E. Brandon Gaskins
E. Brandon Gaskins (S.C. Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
Facsimile: (843) 579-7099
brandongaskins@mvalaw.com

Attorney for Plaintiff Levi Grantham, LLC

April 11, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case Number 2021-CP-10-04342
)	
LEVI GRANTHAM, LLC,)	
)	
PLAINTIFF,	)	DEFENDANT’S MEMORANDUM
	)	IN OPPOSITION TO PLAINTIFF’S
Vs.	)	RULE 59(E) MOTION FOR
	)	RECONSIDERATION
KATHY WRIGHT MITCHELL,)	
)	
DEFENDANT.)	
_____)	

The defendant opposes the plaintiff’s Rule 59(e) SCRCP motion for reconsideration on the following grounds and requests that the court deny the plaintiff’s motion.

A. The subject contract was not ambiguous.

The court, in ruling on defendant’s motion for summary judgment did not find that the contract between the parties was ambiguous. Neither the “Time is of the Essence” provision, nor the “These stipulations shall preempt printed matter herein” are ambiguous. Neither provision is susceptible to more than one interpretation. Whether an ambiguity exists in the language of a contract is a question of law. S.C. Dep’t of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001).

Plaintiff cites Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010) for the proposition that the determination of the parties' [to a contract] intent with respect to those provisions 'is a question of fact'" at S.E.2d 450. However, before the court is legally able to examine and weigh the intent of the parties to a contract, the court must first find that the contract is ambiguous. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Id. at S.E.2d 449; Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997).

B. The plaintiff failed to close on the subject contract within a reasonable time.

The court correctly found that the buyer failed to close within a reasonable time. Reference to the case of Hobgood v. Pennington 300 S.C. 309, 314, 387 S.E.2d 690, 693 (Ct.App. 1989), is misplaced. In that case, "Time is of the Essence" was not a part of the contract. The Seller attempted to argue that a letter sent by it to the buyer after the contract was signed constituted an agreement between the parties to include the provision in the contract. The Court of Appeals stated, "Where time is not originally of the essence, it may be made so by one party giving notice to the other that he will insist on performance by a certain date, provided the time allowed by the notice is reasonable, which is a question of fact for the jury depending on the circumstances of the particular case." The present case does not involve a determination of whether a "time is of the essence" provision was added to the

contract. The circumstances of that case which raised a question of fact as to whether the seller's notice insisting on performance by a certain date was reasonable or not, is not applicable to this case.

C. The issuance of an amount of supersedeas bond was appropriate.

The court actually did the parties a favor by setting an amount of a supersedeas bond in its Order. Whether an appeal from the Court's Order is subject to the automatic stay is not of any consequence. The stay on appeal may not be automatic. This case could be subject to an exception to the automatic stay rule found in Rule 241 (b)(4) SCACR "Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170." The Order directing the purchase and sale of the real property on or before April 15, 2022, and the consequential rescission of the contract in the event the buyer does not purchase the property by that date, may not extinguish certain equitable interests acquired by the buyer by virtue of the executory contract. See Singleton v. Cuttino, 107 S.C. 465, 92 S.E. 1046 (1917) (finding that a buyer has the equitable interest in land before the conveyance). If that be the case, the Seller should be protected by an appeal bond in the event she suffers damages as a result of an appeal.

If the stay is not automatic, the plaintiff buyer has the ability under Rule 241 (c) and (d) to impose a stay. In that instance the court has already set the amount of the bond, in the event the buyer wishes to stay the rescission of the contract.

WHEREFORE, defendant prays that the plaintiff's Rule 59(e) SCRCF motion be dismissed.

Respectfully submitted,

SOLOMON, BUDMAN & STRICKER, LLP

BY: / Donald J. Budman

Donald J. Budman, S.C. Bar # 00998

1052 Gardner Rd., Ste. 200

P.O. Box 30280

Charleston, SC 29417

(843) 763-1118- Office

(843) 763-7518- Fax

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
13th day of April, 2022

RECEIVED

Apr 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2021-CP-10-04342

Levi Grantham, LLC,Appellant,

v.

Kathy Wright Mitchell,Respondent.

NOTICE OF APPEAL

Appellant Levi Grantham, LLC appeals the Order Granting Respondent Summary Judgment on her Counterclaim for Rescission of the Honorable Frank R. Addy, Jr. in the above-captioned matter, which was filed on April 1, 2022, and the Order Denying Appellant’s Motion for Reconsideration of the Honorable Frank R. Addy, Jr. in the above-captioned matter, which was filed on April 14, 2022. Appellant received written notice of entry of these orders on April 1, 2022 and April 14, 2022, respectively (copies of which are attached as Exhibit “A”).

s/E. Brandon Gaskins
E. Brandon Gaskins (S.C. Bar No. 73274)
Moore & Van Allen PLLC
78 Wentworth Street
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Email: brandongaskins@mvalaw.com
Attorney for Appellant Levi Grantham, LLC

April 18, 2022
Charleston, South Carolina

OTHER COUNSEL OF RECORD:

Donald J. Budman, Esquire (S.C. Bar No. 00998)
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Attorney for Respondent Kathy Wright Mitchell

RECEIVED

Apr 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No. 2021-CP-10-04342

Levi Grantham, LLC,Appellant,

v.

Kathy Wright Mitchell,Respondent.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing **Notice of Appeal** via electronic mail only, addressed as follows:

Donald J. Budman, Esquire
Solomon, Budman & Stricker, LLP
1052 Gardner Rd., Suite 200
P.O. Box 30280
Charleston, SC 29417
dbudman@southcarolinainlaw.org

Attorney for Respondent Kathy Wright Mitchell

s/E. Brandon Gaskins

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Email: brandongaskins@mvalaw.com

Attorney for Appellant Levi Grantham, LLC

April 18, 2022

Charleston, South Carolina

LEVI GRANTHAM LLC

KATHY WRIGHT MITCHELL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DONALD J. BUDMAN	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

RECEIVED
Apr 18 2022
 SC Court of Appeals

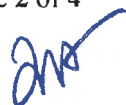
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

identified as Charleston County TMS # 427-00-00-024 to plaintiff for \$400,000.00. The Agreement called for a 90-day "termination right" and for a closing to occur within 30 days after the termination right expired. An additional 30-day extension period is stated in the Agreement. The Agreement also states that "Time is of the essence," in bold letters and underscored.

Typed in to the otherwise form Agreement are two contingencies, both pertaining to governmental approval of plaintiff's development plans for the property. In smaller print, but still typed into the Agreement, it states that if the contingencies are not met by the closing date, the buyer could either terminate the Agreement with a return of its earnest money deposit, or, upon notice to seller, the buyer could choose to toll the Agreement until all such conditions are satisfied. There is no time deadline set forth in the Agreement at which the buyer must satisfy the contingencies and close on the sale. By letter dated July 9, 2021, plaintiff delivered notice to defendant electing to exercise its right to toll the Agreement until the contingencies were satisfied.

On November 4, 2021, defendant notified plaintiff that since the Agreement did not set a deadline for satisfying the contingencies, she would consider December 4, 2021 to be a reasonable period of time for the buyer to do so, and close the sale. The defendant's notice stated clearly and unequivocally that if the sale did not close by that date, or the closing date not be extended by agreement, she would consider the Agreement to be terminated, and that she would seek a rescission of the contract, or damages at law as may be applicable.

No closing occurred by December 4, 2021. Nor did a closing occur by January 5, 2022 when defendant notified plaintiff that she was agreeable to extending the closing until February 11, 2022- the one year anniversary of the Agreement. Once again, the defendant's notice stated clearly and unequivocally that if the sale did not close by February 11, 2022, she would



consider the Agreement to be terminated and that she would seek a rescission of the Agreement or damages at law as may be applicable.

On February 2, 2022, defendant notified the plaintiff clearly and unequivocally of her continuing intent to terminate the contract on February 11, 2022, and seek a rescission of the Agreement, if the Agreement had not closed by then. Also in this notice, the defendant tendered a full return of the plaintiff's earnest money deposit and instructed the escrow agent that she consented to an immediate release of the escrowed funds to plaintiff if it consented to, or was ordered to, rescind the Agreement.

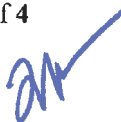
There was no closing of the Agreement by February 11, 2022. Defendant's motion for summary judgment was filed on February 22, 2022. As of the date of this hearing, there has been no closing, and no closing is scheduled. The affidavit of Joshua Craig, Director of Acquisitions for plaintiff's Charleston Division, instructs the court that the process of meeting contingencies similar to those in the Agreement could take 1 to 3 years.

I conclude that there are no genuine issues of material fact that need to be resolved in this case. The refusal or unwillingness of plaintiff to close on the Agreement to Buy and Sell Real Estate within a reasonable period of time is a substantial and fundamental breach which defeats the purpose of the subject contract. Requiring the seller to wait more than one year to close on the Agreement, when "time is of the essence," and no date is set for the satisfaction of contingencies, is unreasonable.

Therefore, it is

ORDERED, that the defendant's motion for summary judgment is granted, subject to the following condition: that the plaintiff, Levi Grantham, LLC, shall have until the close of business on April 15, 2022 to purchase the subject real property from the defendant for the sum stated in the

Page 3 of 4



RECORD 000130


Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021; and it is further

ORDERED, that should the plaintiff fail to purchase and pay for the subject real property on or before the close of business on April 15, 2022, as stated above, the Agreement to Buy and Sell Real Estate between the parties dated February 11, 2021, which is the subject of this lawsuit, shall be immediately rescinded and terminated; at which time the Clerk of Court, at the request of counsel for defendant, shall enter judgment of rescission in favor of defendant, dismiss the remainder of this lawsuit without prejudice, and cancel the Lis Pendens, case # 2021-L.P-10-0489; and it is further

ORDERED, upon entry of judgment of rescission in favor of defendant, the plaintiff's earnest money deposit of \$5,000.00 shall be released in its entirety by the escrow agent and returned to plaintiff; and it is further

ORDERED, that should plaintiff file an appeal of this Order pursuant to the South Carolina Rules of Civil Procedure and/ or the South Carolina Appellate Court Rules, and seek a supersedeas, I will require plaintiff to post a surety appeal bond in the amount of \$400,000.00 in accordance with Rule 241(d) SCACR.

AND IT IS SO ORDERED.



Frank R. Addy, Jr., Circuit Court Judge

Greenwood, South Carolina

31st day of March, 2022

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-10-04342

RECEIVED
Apr 18 2022
SC Court of Appeals

LEVI GRANTHAM, LLC

KATHY WRIGHT MITCHELL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

This matter comes before the Court on Plaintiff’s motion for reconsideration of the Court’s order of April 1, 2022. The Court has reviewed the motion and Defendant’s response and finds that further hearing on the matter is unnecessary. Furthermore, due to the approaching deadline of April 15th for Plaintiff to close on the property, prompt issuance of this order is necessary as time is of the essence.

Having fulling reconsidered the matter, the Court finds that the order of April 1st shall remain unchanged. Plaintiff was the author of the contract for sale and could have omitted the “time is of the essence” provision from the contract. Absent express language to the contrary, one to three years is an inherently unreasonable timeframe to meet contingencies where the contract is unambiguous in contemplating closing within 120 days. Therefore, rescission is proper as a matter of law under the facts of this case if Plaintiff elects not to close this Friday.

To the extent that Plaintiff complains that the property is necessary “for the successful completion of its contemplated residential developments” for which Plaintiff has already expended significant sums, then Plaintiff has but one option: If the property is *necessary* for Plaintiff’s development, then Plaintiff simply needs to buy the property. As explained at the hearing, the question is clear: Does Plaintiff want the property or not? If Plaintiff wants/requires

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the property, then pay Defendant \$400,000 per the contract this Friday and just be done with it. If not, the Defendant should be able to walk away and locate another buyer.

Concerning the question of bond, the imposition of bond was for purposes of protecting Defendant should one of two contingencies arise. First, the Court was concerned with what many economists have described as a growing real estate bubble. This jurist's memories of the 2008-09 financial crash remain vivid, and should Plaintiff appeal and such a crash reoccur, Defendant will be protected via insurance. Second, in that same financial crisis many contractors and developers went bankrupt, and the Court system was tasked with untangling the resulting Gordian knot. Bond will protect the Defendant during any appeal should Plaintiff subsequently go out of business while the appeal is pending. To the extent Plaintiff may elect to appeal and an automatic stay not be imposed, Plaintiff may similarly request bond of Defendant at that time.

For the above reasons, the Court declines to alter or amend the April 1, 2022 order.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Frank R. Addy, Jr.

Circuit Court Judge

2159

Judge Code

April 13, 2022

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

E. Brandon Gaskins

ATTORNEY(S) FOR THE PLAINTIFF(S)

Donald Budman

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: WebEx recording only for initial hearing; no hearing held on motion to alter or amend. Contact South Carolina Court Administration to request any transcript of this hearing.

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Charleston Common Pleas

Case Caption: Levi Grantham Llc VS Kathy Wright Mitchell
Case Number: 2021CP1004342
Type: Order/Form 4

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2022-04-14 14:47:11 page 4 of 4

ELECTRONICALLY FILED - 2022 Apr 14 3:33 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004342

RECORD 000135

1 State of South Carolina) Circuit Court
 2 County of Charleston) Ninth Judicial Circuit

3
 4 Levi Grantham, LLC,) Transcript of Record
)
 5 Plaintiff,) Case No. 2021-CP-10-043042
)
 6 vs.)
)
 7 Kathy Wright Mitchell,)
)
 8 Defendant.)

9
 10 March 31, 2022
 11 Charleston, South Carolina
 (Via WebEx Videoconferencing)

12
 13 B E F O R E:
 14 The Honorable Frank R. Addy, Jr., Judge

15
 16 A P P E A R A N C E S:
 17 E. Brandon Gaskins, Esquire
 On behalf of the Plaintiff
 18
 Donald J. Budman, Esquire
 19 On behalf of the Defendant

20
 21 Reported by: WebEx Virtual Court
 22 Transcribed by: Stacy S. Johnson
 Circuit Court Reporter
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PAGE

Certificate of Reporter

32

E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held March 31,
2 2022, beginning at approximately 11:30 AM.)

3 THE COURT: Okay. I think that we are going to be
4 going on the record in Case Number 20 -- Grantham, LLC,
5 versus Kathy Mitchell. Case 21-CP-10-4342. This is a
6 breach of contract action and I believe the defendant's
7 motion for summary judgment as to the second cause of
8 action and the counterclaim rescinding the real estate
9 contract.

10 I've got a purchase agreement, earnest money --
11 depending -- deposited in escrow, sorry, closing remains
12 pending, looking to develop residential homes. Apparently
13 the contract would be contingent on Grantham obtaining
14 government approvals necessary for the development plan.

15 MR. BUDMAN: That's -- this is Donald Budman,
16 Your Honor.

17 THE COURT: Yes, sir.

18 MR. BUDMAN: I'm trying to get my video up.

19 THE COURT: At the -- at the very bottom of the
20 screen, it should have a thing saying start video.

21 MR. BUDMAN: Oh, there it is. Of course. There
22 we go.

23 THE COURT: There you go.

24 MR. BUDMAN: There we go.

25 THE COURT: All right. Let's see here.

1 Mr. Budman, it's your motion, so I'll give you
2 the floor.

3 MR. BUDMAN: Thank you, Your Honor.

4 May it please the Court? Good morning.

5 THE COURT: Good morning.

6 MR. BUDMAN: And good morning, Mr. Gaskins.

7 I represent Kathy Mitchell, the owner of this
8 property on Folly Road in Charleston county, and she
9 entered into a contract of sale with regard to some
10 property that she inherited from her mother, entered
11 into a contract of sale with Levi Grantham, LLC, a
12 development company. They agreed upon a price of
13 \$400,000, all as set forth in the contract, which is
14 attached to the plaintiff's complaint and also to the
15 plaintiff's memorandum in opposition to the motion.

16 And it's a fairly short contract, a form contract
17 actually, and the contract called for a closing within
18 90 days, that being what they call the termination
19 period, and it also allowed for an additional 30 days
20 to close after the conclusion of the termination period,
21 so that's a period of 120 days from February the 11th,
22 2021. The contract did state with regard to the
23 extension that time was of the essence.

24 Below that in the contract was a statement of
25 several contingencies and the contingencies were that

1 the purchasers were to receive a preliminary plat
2 approval from applicable government entities and that
3 they obtain access availability from the highway
4 department for their intended development of the land,
5 and then in even smaller print under the contingencies,
6 which is Section 36 of the contract, it gives the buyer
7 the option if the conditions are not met to either
8 terminate the agreement and get a return of their
9 earnest money or at the election of the buyer they
10 can toll the agreement until all such conditions are
11 satisfied. That's a direct quote from the -- the
12 contract.

13 The difficulty that arises with respect to this
14 contract is that there is no time limitation for the
15 tolling essentially of the contract in the event that
16 the contingencies are not met and so the termination
17 time went by, the 30 days after the termination
18 period went by, it was 120 days, the contract was still
19 not closed and the purchaser sent a notice to the buyer
20 -- to the seller that they were tolling the agreement.

21 I'm sorry there's a great latency on my video
22 and audio and I always seem to have this problem. I
23 apologize for that.

24 But, nevertheless, getting back to the contract --
25 THE COURT: I can hear you fine, so that's not a

1 problem.

2 MR. BUDMAN: Thank you, sir.

3 So the extension period went by, the seller
4 received the notice that they were tolling the agreement
5 and the -- the seller did something that -- that upset
6 the buyer, and perhaps even understandably, she listed
7 the property on Zillow for two hundred and something
8 thousand dollars more than they were gonna pay for it,
9 and they filed a lis pendens first, the buyer did, and
10 then they followed it up with a lawsuit on September
11 the 20th of 2021 suggesting that the seller was
12 anticipatorily breaching the contract. That's when I
13 got involved in the case.

14 I believe it was seven days after the lawsuit was
15 filed and served that the seller removed the listing
16 from Zillow, and that is alleged in her answer to the
17 complaint, which went to the buyer in November.

18 In December -- well, actually it was early November
19 that I wrote a letter to Mr. Gaskins and let him know
20 that the listing had been removed, that there were no
21 contracts that resulted from that listing and that the
22 seller stood ready, willing and able to sell the
23 property to Levi Grantham, but we pointed out that we
24 were well beyond the time limits of the contract and
25 we notified the buyer in clear and unequivocal terms

1 that the seller would give them a reasonable time in
2 which to close. Since there was no time set forth in
3 the contingency, we would give them a reasonable time,
4 which we set as being in December.

5 As it worked out, December was almost the exact
6 same amount of time that the buyer had from the
7 beginning of the contract to the end of the first
8 period, so it was a period of five months essentially.
9 They had five months to close from February and so we
10 were willing to give them an additional five months to
11 close on the contingency stating that we believed that
12 to be reasonable.

13 We then received some information about what the
14 buyer was doing to meet the contingencies. It was
15 December at Christmastime and we all know how that goes
16 with regard to public affairs and so in the first part
17 of January I got back in touch with Mr. Gaskins and
18 told him that that was fine and that we would extend
19 the reasonable period to close once more until the
20 one-year anniversary of the contract, which would be
21 February the 11th of 2022.

22 At the same time -- well, actually a couple of
23 weeks later in January we notified the holder of the
24 earnest money deposit that if the matter did not close
25 and if the -- the buyer agreed we would tender the

1 return of the earnest money deposit to Levi Grantham
2 and consider the contract to be terminated and, of
3 course, it did not close, nor did Levi Grantham agree
4 to terminating the contract, and so we then followed
5 through with our -- I hate to call it a threat, but
6 with our determination that the contract would be
7 terminated and rescinded, and we filed this lawsuit
8 yet another month later, in March of this year, still
9 not hearing anything from Levi Grantham with regard
10 to the closing or what it was doing to satisfy the
11 contingencies.

12 So this motion was filed the first part of March
13 and here it is March the 31st and we still have no
14 information about a closing. In fact, in receiving
15 the plaintiff's memorandum in opposition to the motion,
16 we now see how difficult it is for the plaintiff, the
17 buyer, to meet the contingencies that -- that are in
18 the contract.

19 And what's of interest is the fact that the
20 contract contains two contingencies, but we're now
21 informed that there are eight steps that must be taken
22 before the one contingency dealing with the preliminary
23 plat approval is approved and so it is the defendant's
24 position that the best remedy that the defendant can
25 have is a rescission of the contract, that she is

1 willing to terminate the contract, to not claim that
2 it's been breached and be willing to return to the
3 buyer all of its earnest money deposit.

4 You know, if -- if the buyer knew that it was
5 gonna take a year or more to satisfy the contingencies
6 as it states in the plaintiff's memorandum, why enter
7 into a contract with the plaintiff to -- I mean, with
8 the defendant to close in 90 days with a 30-day
9 extension? Why was there no representation to the
10 seller that it was gonna take a year to three years to
11 satisfy the contingencies? And I think that goes to
12 the heart of the equities involved in this case.

13 And based on the affidavit of Mr. Craig I think
14 his last name is, the plaintiff's affidavit, there's
15 -- there's no closing in sight. A one to three-year
16 period that's not even stated in the contract is an
17 unreasonable time on its face and as a matter of law,
18 which should lead to a rescission of the case.

19 And the case law says, according to the cases that
20 are cited in the defendant's memorandum in support of
21 the motion, that there has to, first of all, be a breach
22 that affects the object of the parties' contract. Well,
23 the object of this contract from the defendant's point
24 of view is to sell her property and the buyer on this
25 day, which is almost fourteen months from the date of

1 the contract, is not -- still not in a position to
2 close the contract and not even sure when it will be.

3 The next requirement is that the contract must
4 have been -- stated that time was of the essence, which
5 this contract did with respect to the extension.

6 And then the last requirements in our case law
7 is that the seller has to promptly and unequivocally
8 notify its intention to demand rescission and so that
9 began in the November -- the November 2021 letter to
10 the buyer. We notified them then, we notified them
11 again in the first part of January and, again, in the
12 last part of January and then followed up it up with
13 this motion, which is probably the most formal notice
14 that they could get, and we still are not any closer
15 to a closing than -- than it appeared that we were
16 back in December.

17 And so with regard to the case law, it seems
18 obvious that the plaintiff is -- is in breach and --
19 and that the breach is a large breach that goes to the
20 heart of the contract and that the defendant has no
21 real other adequate remedy at law other than to ask
22 the Court to terminate the contract and allow these
23 parties to either go their separate ways or allow them
24 to enter into a new and more reasonable contract.

25 You know, a couple of things that I wish to state,

1 Your Honor, one is that the market has been a little
2 bit unique we might say over the past year and property
3 values have risen at record rates and if we allow this
4 contract to continue on and allow the buyer to have an
5 indefinite period of time to satisfy these contingencies,
6 in essence, they're getting the benefit of the increase
7 in the value of the property without having to pay a
8 dime.

9 In the meantime, the defendant owner of the
10 property is paying the taxes and the insurance and all
11 of the expenses of keeping up the property and if in
12 another year the -- the buyer says okay, we're ready
13 to close now, the property will not only have increased
14 in value, but the owner of the property, the seller,
15 would have spent a great deal of money maintaining the
16 property in the meantime.

17 That's why it's our belief that a one-year period
18 where there is an indeterminant amount of time stated
19 is more than reasonable, especially when there was only
20 a 120-day period initially to close the property. I
21 think that -- that the defendant is being generous by
22 having offered them up until February and, you know,
23 if they told us that we're gonna close tomorrow, I
24 would probably recommend my client to be at the
25 closing table. That's not what I'm seeing in the

1 affidavit in their memorandum.

2 The other thing that I wish to point out, and
3 then I'll conclude my argument, is that there's an
4 Illinois case that is cited by the plaintiff in their
5 memorandum, and it's an interesting case. I'm not sure
6 that it represents the law in South Carolina, but it's
7 a very interesting case that talks about time being of
8 the essence and how it affects certain contracts, but
9 the interesting thing about that case is that the buyer
10 in that case was entitled to extensions of time and each
11 time that the buyer got an additional extension of time,
12 the buyer had to pay for it.

13 I've been doing this for an awfully long time and
14 I've seen that in virtually every commercial case that
15 I've been involved in where, sure, you want an extension
16 of time, you can have an extension of time, but you're
17 gonna have to pay for it. You're gonna have to put
18 some money in the kitty towards the extension and we'll
19 give you all the extensions that you want. Well, that
20 is not the case in this con -- in this contract. Of
21 course, we're not gonna rewrite it, it is what it is,
22 but if ever there's a contract that should be equitably
23 rescinded, it is that type of case or contract where
24 the buyer is not -- the buyer's getting the extensions
25 for free.

1 And so that's why the plaintiff believes that
2 the contract should be rescinded. That is the only
3 equitable remedy that the -- that the plaintiff can
4 have. We've given the buyer ample notice of our request
5 for this remedy and we've gotten no information other
6 than the information that is contained in the memorandum
7 and the affidavit that followed the -- the plaintiff's
8 memorandum.

9 So thank you, Your Honor. That's the defendant's
10 position.

11 THE COURT: Okay. Thank you.

12 Because Mr. Budman referenced it, I'm looking at
13 the affidavit specifically of Joshua Craig and obviously
14 the -- the concern that the Court has is -- or one of
15 the things that went through my mind is kind of how
16 diligent has the buyer been in pursuing meeting the
17 contingencies or complying with the contingencies and
18 page 2 lists the seven things that -- that typically
19 have to be done and per that affidavit it looks like --
20 I don't know. There's seven --

21 MR. BUDMAN: There's actually eight, Your Honor.
22 Pardon me.

23 THE COURT: Okay.

24 MR. BUDMAN: Number 3 is twice. There's two
25 Number 3's in there.

1 THE COURT: Okay. Okay. Yeah, you're right. It
2 looks like we're on Number -- the second Number 3 then,
3 submitting a concept plan, application pending review,
4 and then it goes up and in about two weeks it looks
5 like y'all have got -- the buyer has another second
6 review of the TRC on April the 14th.

7 Let me hear from you, Mr. Gaskins. If time is of
8 the essence, it seems like -- it seems like maybe the
9 buyer should have had all this -- maybe instead of a
10 contract to purchase the property, maybe he should have
11 gone with an option for first -- option of first refusal
12 or something like that, buy that from her, and then
13 pursue all these -- then pursue complying with all of
14 the contingencies before he -- before he put the cart
15 before the horse.

16 But let -- let me hear from you, Mr. Gaskins, if
17 I could.

18 MR. GASKINS: Yes, Your Honor. I'll be glad to.

19 For the record, Brandon Gaskins on be plaintiff
20 of the plaintiff, Levi Grantham, LLC.

21 And so when we look at these steps, I don't know
22 that they are necessarily sequential and clearly defined.
23 There is definitely some overlap, but I would say that
24 we are in, I guess, Steps 5 and 6, which but for my
25 grammatical error or mistake would be 6 and 7.

1 So they have submitted a concept plan for review
2 by the TRC. They have gone to a first review meeting
3 and have revised the plans based on the comments that
4 they received, resubmitted, and now are up for their
5 second review on April 14th as you stated.

6 Your Honor, some of these planning stages and
7 the activities that -- that are required to go in them
8 are outside of their control and -- and as you see in
9 Mr. Craig's affidavit, when they went to first review
10 they didn't even get comments from engineering.

11 So, unfortunately, in this day and age, especially
12 in Charleston, the City of Charleston, development is
13 being made more difficult by the red tape and the
14 hurdles that you have to go through, and that's just
15 part of it, and -- and that's changing. Personally
16 I've seen the process slowed down over recent months
17 and -- and maybe over the last couple of years as
18 officials have tried to slow down the pace of -- of
19 development and growth.

20 So it's somewhat fluid, it cannot be predicted,
21 which is why I think that this contingency was put
22 in there. And while I understand Ms. Mitchell's
23 frustration and Mr. Budman's frustration, the
24 developer and the buyer in this case, shares in that
25 frustration and would like for it to move more quickly,

1 but sometimes these things are outside of your control,
2 which is why this paragraph was important.

3 And maybe if Mr. Budman was involved at the outset,
4 the contract would have been drafted differently, but
5 at the end of the day -- and I -- I wasn't involved
6 in the negotiation and drafting of the contract either,
7 but at the end of the day this contract sets forth what
8 the -- what the parties bargained for. We believe that
9 Levi Grantham has been more than reasonable in pursuing
10 their -- their approvals and has -- has been acting in
11 good faith at all times and we think that that's set
12 forth in the affidavit.

13 You know, turning -- turning to the -- to the
14 motion, I mean, I have several different arguments,
15 but one I would say is that this motion appears to be
16 somewhat procedurally inappropriate insofar as the
17 defendant is moving for summary judgment on their
18 second counterclaim for rescission, which for rescission
19 to apply there must be a breach of contract, which is
20 their first counterclaim, and they're not moving for
21 summary judgment on that.

22 Maybe it is implicit in what they're doing, but,
23 you know, I would say two things to that. One, I would
24 say a motion -- a motion for summary judgment at this
25 preliminary stage of -- of the litigation is premature.

1 The parties have not engaged in any written discovery,
2 but I think there are some undisputed facts. I think
3 what is disputed is the reasonableness of the time
4 period and the reasonableness of what Levi Grantham has
5 done to comply with their obligations and perform under
6 the contract.

7 Reasonableness is something that would have to be
8 determined by taking into consideration all of the facts
9 and circumstances of this case and we believe that that
10 includes looking at what -- what the buyer has done to
11 perform and conduct this due diligence and -- and obtain
12 their preliminary approvals, and ultimately that's an
13 issue of fact that would need to be decided by -- by a
14 jury or a judge if it was non -- if it was a nonjury
15 case. So because there are those material issues of
16 fact regarding my client's performance of the contract,
17 summary judgment would -- would be inappropriate at this
18 time.

19 THE COURT: If that's -- I mean, the problem is
20 if that's the case, we're three -- I was down in
21 Charleston recently. You know, you guys are gonna be
22 three years or more before this could ever be in front
23 of a jury or in front of -- in front of somebody and,
24 you know, to suggest that we're gonna wait three
25 years to get all this sorted out is -- is a bit much

1 and that, you know, we're just gonna keep this property
2 in limbo with -- I've got some practical concerns, and
3 Mr. Budman does, too, okay?

4 You know, I read this morning an article in the
5 Wall Street Journal that -- that we're looking at
6 potentially another housing bubble, okay, so if you've
7 got property and you're looking to move it, maybe now's
8 the time to move it, especially if we are looking at
9 another bubble in the next two years or so.

10 Your -- let me ask you this. Your client had
11 developed -- had he already finished the development
12 of the adjacent piece of property that he had on this?

13 MR. GASKINS: So, no, there are -- there are kind
14 of two separate developments that utilize Ms. Mitchell's
15 property and the one that is referenced in the affidavit
16 is the one that is further along in the process and
17 so that property is -- is basically being used for
18 stormwater retention to drain the property that's being
19 developed, kind of a mixed use residential and commercial
20 component, and then there's a separate one that's just
21 residential. So it's an integral part of -- of both
22 projects and that's going through the planning stages
23 as well.

24 And I -- Your Honor, I -- I completely understand
25 the practical concerns.

1 THE COURT: So the one -- yeah, the one referenced
2 in the affidavit then is the one that's currently under
3 construction?

4 MR. GASKINS: It is not under construction. That
5 one is further along in the planning process --

6 THE COURT: Okay.

7 MR. GASKINS: -- and that's why we kind of relied
8 on that one.

9 THE COURT: And then Ms. Mitchell's property --
10 Ms. Mitchell's property is just being used for drainage?

11 MR. GASKINS: For -- for both projects, yes.

12 THE COURT: Okay. So where -- if the affidavit
13 references the other property that's not involved in
14 this litigation, where are we in terms of the necessary
15 permits to do for Ms. Mitchell -- for Ms. Mitchell's
16 property what has to be done?

17 MR. GASKINS: I'm not sure about the exact stage
18 that that one is at, but regardless of what happens
19 with that one if this -- if this plan gets approved, I
20 believe my client would have an obligation to go ahead
21 and close because they cannot -- they cannot develop
22 the project that's further along without Ms. Mitchell's
23 property. It would basically throw the whole stormwater
24 plan out and they couldn't develop -- they couldn't
25 develop this project.

1 THE COURT: Okay. Well -- and I just want to be
2 clear on this, okay, because we're -- we're at Number 5
3 or -- okay. We're at Number 6. Let's renumber these
4 and so Number 5 is gonna become Number 6, Number 6 is
5 gonna be 7 and 7's gonna be 8.

6 So we're at the stage of attending the TRC meetings
7 to receive comments to the plans submitted for review
8 or are we at the revising the concept plan based on
9 comments from the TRC members?

10 MR. GASKINS: So we're at both stages. They --
11 they overlap. So you go -- you submit, you attend the
12 first meeting, you get comments from the -- the various
13 departments involved in this -- in this review process,
14 you revise, you resubmit, you go to another meeting.
15 It's a three-step process TRC, so we are at the second
16 TRC meeting. After that, it will -- they will get --
17 presumably they will -- they could say well, yeah, this
18 meets all of the requirements, you're good to go to
19 planning commission. In my experience, that's unlikely.
20 You usually have to go through those three steps.

21 So presumably what would happen is at the second
22 level TRC review, they would get further comments based
23 on the -- on the modified plans and hopefully these
24 things kind of water themselves down and at the -- by
25 the third stage you have a project that is compliant

1 with all the zoning requirements and land development
2 regulations or, if not, it's close to it and you can
3 modify them and submit to the planning commission.

4 So that's where -- we're at the -- right before
5 the second TRC review.

6 THE COURT: Okay. Did -- did your client -- was
7 it the plaintiff or the defendant who came up with the
8 contract that was -- it was referenced that it's a
9 boilerplate contract. I really haven't looked at it.
10 Who -- who -- who originated the contract? I'm assuming
11 it was your client.

12 MR. GASKINS: That would be my assumption as well,
13 Your Honor, but I don't want to represent that because
14 I don't -- I don't know that specifically. I think that
15 is the case, but it is a form contract. However, I
16 think the contingencies listed in there, as with all
17 forms, there are places where you can fill in additional
18 information. The contingency that was placed in there
19 was -- was an additional language, not form language,
20 which I -- I think based on the provision in there,
21 I think it's safe to assume was drafted by my client.

22 THE COURT: Okay. I'm happy to hear anything else
23 you want to tell me about -- about this. I mean, it
24 seems to me -- you're paying how much for this property?
25 400?

1 MR. GASKINS: Yes, Your Honor.

2 Your Honor, I would -- and I -- I see -- I see
3 you struggling and thinking about it.

4 THE COURT: Yeah, I'm struggling because in my --
5 in my personal experience, the first house that I bought,
6 okay, I ended up selling it as a FSBO and the -- I had
7 two contracts that fell through and I just didn't want
8 to pay the six percent commission and so the third
9 contract I was -- you know, I had two mortgage payments
10 going on and that was really kind of a pain in the
11 patookus and I really wanted to close, and so finally,
12 you know, the -- the third contract I had had a -- had
13 a couple of contingencies and I said okay, look, fine,
14 I'll -- you know, I'll fix the first one, and they came
15 back and they said well, you know, look, we also think
16 this is a problem, too, and I'm like, you know, I'm not
17 in a position to fix that, but here's what I'll do, I'll
18 take five grand off the -- the purchase price and y'all
19 can fix it, and I show up the day of closing -- and you
20 guys who do real estate know how this happens, so I show
21 up on the day of closing at my friend's office, sign all
22 the paperwork and, of course, there's a -- there's another
23 issue that he wants and he wants a discount on it and I
24 say, you know, look, buddy, I've come off the purchase
25 price, I fixed this thing for you, I want to sell the

1 house, the question is do you want to buy it, and so at
2 this point in time, you know, we have this third -- this
3 third revised contract for sale and we have an agreement
4 and you want the house or not.

5 I'm kind of feeling like it's time for your client
6 to say do I want the property or not. He has the -- you
7 know, if he originated this contract, he shouldn't have
8 put a clause in there that says time is of the essence.
9 He could have simply bought it outright and I doubt he
10 would have lost money because -- of course, real estate
11 -- I read the Post and Courier. Real estate's going
12 through the roof. I'm very sympathetic. I've heard the
13 same -- I've seen the same things and I've got friends
14 in Charleston and -- and I know how the -- the planning
15 commission can be and all the red tape that a developer
16 has to jump through down there because you've got a lot
17 of people who are indies, they don't want it in their
18 backyard, they don't want to destroy the rural character
19 of Folly Beach or a road that heads to Folly Beach or
20 anything like that, but, I mean, that's kind of on your
21 client, it's not on her, and --

22 MR. GASKINS: Your Honor, I -- I think you're --
23 you're making some good points, which kind of -- kind
24 of leads me to the last argument that I was gonna make.

25 THE COURT: Fire away.

1 MR. GASKINS: To the extent that my client has
2 been unreasonable or -- and I don't think they've been
3 unreasonable. To the extent --

4 THE COURT: I'm not saying that they've been
5 unreasonable. I'm not saying that they've been
6 unreasonable. Yeah, I'm saying this has taken just too
7 dang long based on the wording of the contract.

8 MR. GASKINS: Right, Your Honor, and that's what I
9 -- that's what I meant to say. To the extent that the
10 -- the contractual terms are unreasonable, the time is
11 unreasonable and because of that they -- they've breached
12 by not closing, rescission is not the appropriate remedy
13 here.

14 And I would point you to the case that Mr. Budman
15 primarily relies on, Budman -- or not Mr. Budman, Davis
16 versus Cordell, where the Court talks about rescission.
17 It says in such a case, mere delay in performance will
18 not give rise to the right of rescission unless it be
19 such as to warrant the conclusion that the party delaying
20 does not intend to perform, and I think by their actions
21 that Levi Grantham has shown that it does intend to
22 perform, it is attempting to perform, so rescission would
23 be inappropriate.

24 And I would also argue that it's inappropriate
25 because you cannot place the parties in status quo

1 ranking. My client has spent a considerable amount of
2 money pursuing the -- the development that requires this
3 piece of property, so I don't think rescission is the
4 proper remedy. So I think it's -- you know, if there
5 is a remedy, it's specific performance or the lost money
6 related to the delay, but, you know, that's --

7 THE COURT: I don't disagree and I'm sure -- yeah,
8 I'm sure he's -- and sorry to interrupt, but I'm sure
9 he's spent a lot of money. I know that these kind of
10 plans don't come cheap and he's had to hire engineers
11 and all that's been contracted out probably to third
12 parties, but, you know, if you're in for a penny, you're
13 in for a pound. I'm -- I'm assuming that your client's
14 got \$400,000. And -- and they were looking to close
15 this. They say hey, look, we can do it February the
16 11th, the one year anniversary of this and, you know,
17 here we are six -- six weeks later.

18 Mr. Budman, is she still wanting to sell --
19 Mr. Budman, is she still wanting to sell it for 400,000?

20 MR. BUDMAN: Well, if --

21 THE COURT: I'd be more than happy to say -- I
22 mean, I'd be more than happy to -- one option for the
23 Court, if -- if your client is interested in it, is
24 this thing closes in two weeks, they come with a check,
25 no contingencies and we call it a day, or I grant your

1 motion. I mean, you know --

2 MR. BUDMAN: Well, I -- I think that --

3 THE COURT: It's a little un -- it's a little --
4 you make -- you make some valid points, okay, but I
5 grant your motion. What happens if it gets appealed,
6 you know?

7 MR. BUDMAN: Right, I understand that. That's
8 what I was gonna say is that we might be able to do
9 both, which is, you know, order a specific period and
10 if that doesn't happen, then -- then the contract be
11 rescinded. I think I've already said that if you told
12 us to close tomorrow, she would be there, and so what's
13 the difference between tomorrow and, say, the 15th of
14 April?

15 But, you know, if it gets to a period of much
16 longer than that, I'll have -- the further away from
17 today it gets, probably the harder time I'll have
18 convincing her that that is the right thing to do.

19 And -- and I understand exactly what you're saying,
20 Your Honor, and I think that you -- you're right on the
21 mark with that. Nobody wants an appeal, everybody wants
22 this case over with, and so if we have -- if we, rather
23 than rescind it, put a specific date for closing in, I
24 don't think I could argue with that.

25 THE COURT: I -- I haven't looked that hard on the

1 -- at the contract. Was there any sort of financing
2 contingency that we have to concern ourselves with?
3 I'm assuming that the money is there, right, Mr. Gaskins?

4 MR. GASKINS: I can't speak directly about whether
5 the money is there, but I do not believe there is a
6 financing contingency.

7 THE COURT: Okay. If your -- if your client who's
8 building homes in Charleston isn't making money and
9 doesn't have 400,000 in the bank, he's doing something
10 wrong, okay?

11 MR. GASKINS: Your Honor, I -- I don't disagree
12 and I'm not -- I'm not arguing with you. I've always
13 assumed that the money is there and because of the
14 assumption I've never -- I've never asked if they're
15 there.

16 THE COURT: Sure.

17 MR. BUDMAN: I may -- I'm kind of hesitant to --
18 to say anything further, but I think that it needs to
19 be said, Your Honor. Can I have one minute?

20 THE COURT: Go ahead.

21 MR. BUDMAN: Yeah. The Davis Cordell case does
22 say what -- Mr. Gaskins just recently told you about
23 that, but it goes further and approves language from a
24 New York case that says that when the notice of intention
25 to rescind is necessary and -- and given, that it's

1 appropriate to rescind the contract based on a mere
2 delay of performance.

3 So if you were to look at Headnote 11 in the Davis
4 Cordell -- Davis versus Cordell case, you'll see the
5 language that allows the contract to be rescinded in
6 this circumstance. That's number one.

7 Number two, my argument with regard to no genuine
8 issue of material fact doesn't really revolve around
9 whether Levi Grantham has been dilatory or abandoned
10 the contract or whether or not it's actually been
11 diligent or not because I don't think it's about that.
12 The argument is that there's no genuine issue of
13 material fact with regard to the amount of time that's
14 gone by. The case law seems to reflect that when there
15 is no specific period of time, the Court is to infer a
16 reasonable period of time and that -- whether they've
17 been diligent or not it has been an unreasonable amount
18 of time waiting for the buyer to purchase the property,
19 and so that concludes my argument.

20 THE COURT: Okay. Here's what I'm gonna do.

21 Per the affidavit, the second review by TRC is set
22 for Thursday -- according to my calendar, Thursday,
23 April the 14th. If this contract does not close by the
24 15th, that's roughly two weeks from now and it's a day
25 after they meet with the TRC, if it doesn't close by

1 the 15th, at the close of business on the 15th, then
2 the contract is rescinded. The Court will grant -- the
3 Court grants the defendant's motion.

4 If any appeal is taken from this, then a bond for,
5 I guess, \$400,000 would have to be -- would have to be
6 purchased by the -- by the plaintiff.

7 That's fair. It's time that this comes to an end
8 and there's no telling what's gonna happen on the 14th.
9 That's fair to the plaintiff in that you know what the
10 people in Charleston are saying to them on the 14th and
11 they can make a decision to walk away and forfeit the
12 earnest money or continue with the project by purchasing
13 it on the 15th and it's fair to the defendant in that
14 there's some finality to this and she is not waiting for
15 years for these various contingencies to be -- to be
16 approved.

17 Suggest, Mr. Gaskins, the next time your client
18 enters into an arrangement like this he not put the
19 language in there that time is of the essence and that
20 might help him a little bit or tell him to visit you --
21 tell him to visit you first, okay?

22 MR. GASKINS: Yeah. Thank you, Your Honor.

23 MR. BUDMAN: Your Honor, may I add one thing,
24 please?

25 THE COURT: Sure.

1 MR. BUDMAN: And that is, that if we are going to
2 rescind the contract, what -- what do we do with the
3 lis pendens that's filed by the plaintiff? Would that
4 need to be cancelled as well?

5 THE COURT: It would -- it would simply go away
6 and I trust, Mr. Budman, that you will -- in the order
7 that you're gonna e-mail or that your paralegal's gonna
8 e-mail to me sometime this afternoon or tomorrow that
9 that will be addressed.

10 MR. BUDMAN: Sure.

11 THE COURT: But, yeah, the lis pendens is going
12 away. I'm essentially -- if it gets rescinded, the
13 lawsuit's dead.

14 MR. BUDMAN: Yes, sir. Thank you.

15 MR. GASKINS: Your Honor, subject -- subject to
16 my client's right to appeal.

17 THE COURT: Certainly. Certainly.

18 MR. BUDMAN: Absolutely.

19 THE COURT: But this needs -- I mean, like I said,
20 your client either wants these -- this property or he
21 doesn't want this property. It's time to either put up
22 or walk away and if he's invested that much money and
23 he wants to make sure that, you know, he can develop it,
24 obviously an appeal is gonna probably mess up his ability
25 to develop it further. It's gonna put all of that in

1 limbo, especially if the other parcel is dependent upon
2 this parcel, so it would not take much for Mr. Budman
3 to throw a big old monkey wrench into that project as
4 well if it's not clear that you're ever gonna own this
5 property.

6 So we know where we stand and I think I know what
7 your advice to your client's gonna be, Mr. Gaskins.

8 MR. BUDMAN: Thank you, Your Honor.

9 THE COURT: No problem. Mr. Budman, if you can get
10 me --

11 MR. BUDMAN: I will. Yes, sir.

12 THE COUR: -- e-mail me an order and I'll sign it
13 the old-fashioned way and then e-file it because I've
14 been having issues with e-filing.

15 MR. BUDMAN: I'll make sure that Mr. Gaskins gets
16 a copy as well when I send it to you.

17 THE COURT: Certainly.

18 All right. Gentlemen, I really appreciate this.
19 Thank you both.

20 MR. BUDMAN: Thank you, Your Honor.

21 MR. GASKINS: Thank you.

22 MR. BUDMAN: Thanks, Brandon.

23 (Whereupon, the proceedings were concluded at
24 12:05 PM.)
25

C E R T I F I C A T E

1
2
3 I, Stacy S. Johnson, Official Court Reporter
4 for the Eleventh Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete transcript of record
7 of all the proceedings had and the evidence introduced
8 in the hearing of the captioned case in Circuit Court
9 on the 31st day of March, 2022, recorded via WebEx
10 Virtual Court, and transcribed by me to the best of my
11 ability.

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15 interruptions and/or technical difficulties and
16 inaudible or unintelligible indications due to being
17 conducted remotely via videoconferencing.

18 I do further certify that I am neither of kin,
19 counsel, nor have an interest to any party hereto.

20
21 July 8, 2022

22
23 1s/ Stacy S. Johnson
24 STACY S. JOHNSON
25 CIRCUIT COURT REPORTER

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No.: 2022-000470
Case No. 2021-CP-10-04342

Levi Grantham, LLC,Appellant,

v.

Kathy Wright Mitchell,Respondent.

CERTIFICATE OF COUNSEL

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

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January 18, 2023
Charleston, South Carolina