

RECEIVED

Jun 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas R. Keith Kelly, Circuit Court Judge

Appellant Case No. 2022-001557
Civil Action Case No. 2016-CP-42-01854

Chandelle Property Owners Association, Respondent,

v.

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein, Defendants,

and

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming in their personal and official capacities, Third-Party Defendants,

And

Kenneth L. Galloway and Molly C. Galloway, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, in their personal Capacities, Third-Part Defendants,

Of whom James Douglas Armstrong, Jane Armstrong, Warren Johnson Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, are the Appellants.

RECORD ON APPEAL – VOLUME 4

WENDELL L. HAWKINS, P.A.

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Attorney for Appellants

MCCABE, TROTTER & BEVERLY, P.C.

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Attorneys for Respondent

CLARKSON, WALSH & COULTER, P.A.

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jharjenhausen@clarksonwalsh.com

**Additional Attorneys of Record for
Respondent**

DEED 89- VPG 898

WITNESS the Grantors' hands this 5th day of October, 2007.

SIGNED, Sealed and Delivered
In the presence of:

CSC DEVELOPERS, LLC

Martta Finley
Witness

D. E. Cobb
Douglas E. Cobb, Member

L. D. [Signature]
Notary Public

John R. Stewart, Jr.
John R. Stewart, Jr., Member

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 5th
day of October, 2007.

Martta Finley
Witness

L. D. [Signature]
Notary Public for South Carolina
My Commission expires: 6-9-2009

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007100989 Book: DE 2293 Page: 1986-1987
October 09, 2007 01:19:24 PM

Timothy J. Hanney

Pfeiffer Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601

Grantee's Address: PO Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that THE GREER RG IRREVOCABLE PROPERTY TRUST (hereinafter referred to as "Grantors") in consideration of TEN and no/100th Dollars (\$ 10.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto JANE VAN WIEREN, TRUSTEE, or her successor in trust, of THE GREER RG IRREVOCABLE PROPERTY TRUST, dated October 25, 2006, and any amendments thereto, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of its interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: 4-05-00-038.45

This being the same property conveyed unto the Grantor by deed of CSC Developers, LLC, October 5, 2007 and recorded October 9, 2007 in the Register of Deeds Office for Spartanburg County, South Carolina, in Deed Book 89-V at Page 897.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

And the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

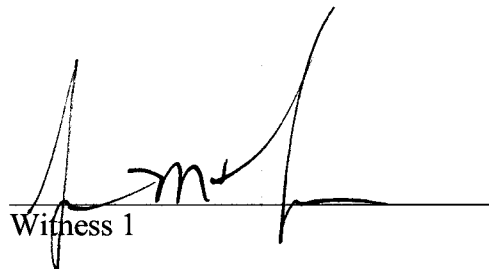
DEE-2011-18983
Recorded 4 Pages on 5/25/2011 3:09:56 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register

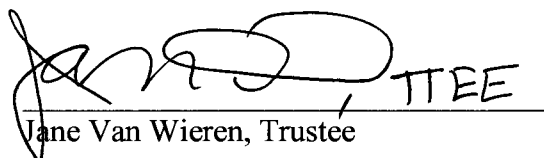


98 M PG 701

WITNESS the Grantors' hands this 19 day of May 2011.

SIGNED, Sealed and Delivered
In the presence of:


Witness 1

 TTEE
Jane Van Wieren, Trustee

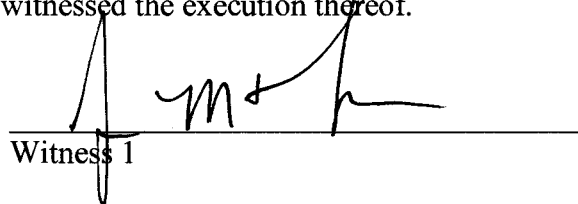

Notary Public

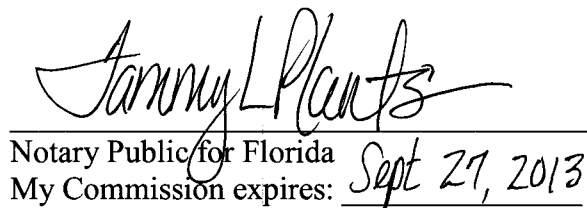
STATE OF FLORIDA)
COUNTY OF Indian River)

PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 19
day of May 2011.


Witness 1


Notary Public for Florida
My Commission expires: Sept 27, 2013



98 M PG 102

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 450 AIR PARK DR. Greer SC
bearing Spartanburg County Tax Map Number 4-05-00-038.45
was transferred by Greer Irrevocable Trust
to Jane Van Wieren as trustee of the Greer RG Irrevocable
on 5-19-2011

3. The deed is exempt from the deed recording fee because (See Information section of affidavit): Reason #12

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

Agent For the Trustee

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Responsible Person Connected with the Transaction

ROB GRAHAM

Print or Type Name Here

SWORN to before me this 25th day of MAY 20 11Nancy B Ward
SIGNATURE OF NOTARYNotary Public for South CarolinaMy Commission Expires: 5/21/14

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Book

Reported in 98 M Page 700

Register of Deeds
Spartanburg, South CarolinaOffice of Register of Deeds
Spartanburg, South Carolina

mail - Grantee

DEE-2017-18749

DEE BK 115-N PG 632-635

Recorded 4 Pages on 04/24/2017 03:57:43 PM
 Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$195.00
 Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
 Dorothy Earle, Register Of Deeds

**State of South Carolina,
 County of Spartanburg**

GRANTEE'S ADDRESS:

450 Arr Park Dr.
 Mheen, SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated

October 25, 2006 in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained,

sold and released, and by these Presents does grant, bargain, sell and release unto the said **Jane Van Wieren, Trustee, or her**

successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 32 and Lot 36 on a plat entitled "Chandelle, Section 4A", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on January 8, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 163 at Page 885.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

TMS# 4-05-00-038.57 (Lot 32)

4-05-00-038.00 (Lot 36)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

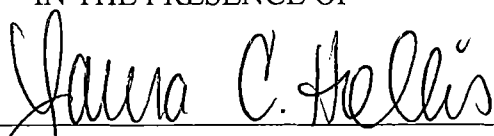
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns forever.

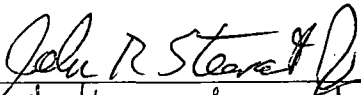
AND **CSC Developers, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

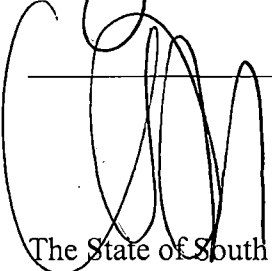
WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


CSC Developers, LLC



By:  (L.S.)
It's Authorized Members

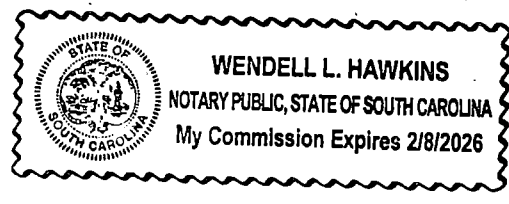


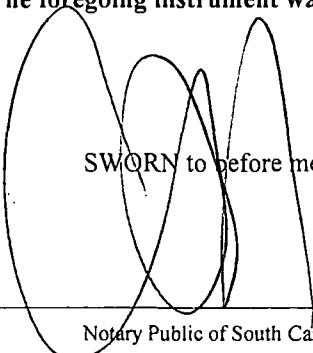
The State of South Carolina,

Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.

SWORN to before me, this March 10, 2017





(SEAL)

Notary Public of South Carolina
My Commission Expires 2-8-2026

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Page 1 of 2

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 32, 36 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.57 and 4-05-00-038.00, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$75,000.00
- (b) Place the amount listed in item 5 above here: -0-
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$75,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.

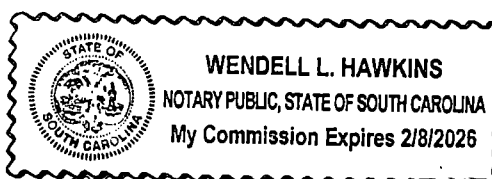
8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
day March of 2017

Notary Public for South Carolina
My Commission Expires: 2-8-2026

John R. Stewart Jr.
Responsible Person Connected with the Transaction
John R. Stewart Jr.
Print or Type Name Here



INFORMATION.

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds: .

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty,
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed--pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S. C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, development, and building permits must be obtained from Spartanburg County prior to the commencement of any construction. Permits may also be required by DHEC and SCDOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT

DEC 06 2017

DATE

PLT-2017-56582

PLT BK 173 PG 419-419

Recorded 1 Pages on 12/06/2017 09:58:54 AM

Recording Fee: \$10.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.

Dorothy Earle, Register Of Deeds

Reference North
PB 134-342

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of date must be met in order to develop the property.

"I hereby state that to the best of my professional knowledge, information and belief, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."

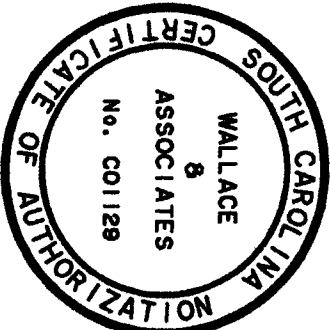
There is a 5' drainage and utility easement on all side and rear lot lines.

This property is subject to any and all easements and/or rights-of-way of record or not of record. It is the intent of this survey that Lots 32, 33, 36 and 37 be combined and made one parcel.

Except as specifically shown or stated on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision regulations; zoning or other land use regulations, and any other facts that an accurate and current title search may disclose. This survey does not constitute a title search by the Surveyor.

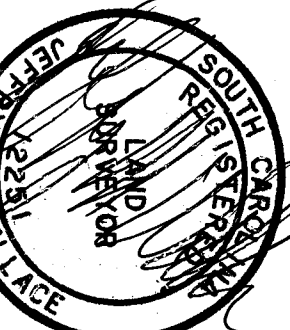
Wallace & Associates does not warrant the existence or nonexistence of Jurisdictional Wetlands or areas that may be affected by hazardous materials on the survey site.

This survey is not a true and valid print of the original document unless it bears an original signature and raised embossed seal of the Surveyor.



Wallace & Associates
Complete Surveying Services

Jeffrey M. Wallace, (864) 297-6989
P.O. Box 903, Taylors, S.C. 29687



State Of South Carolina
County Of Spartanburg
Combination Survey For
Jane Van Wieren, Trustee of
the Greer RG Irrevocable
Property Trust
Chandelle, Sec. 4 and 4A
Lots 32, 33, 36 and 37

40 0 40 80
1" = 80'

Date: Dec. 03, 2017

Tax Map: 4-05-00-039.04

4-05-00-039.04

Reference Deed: 15N-632, 87V-167

Drawn By: JMW

Project # 175049

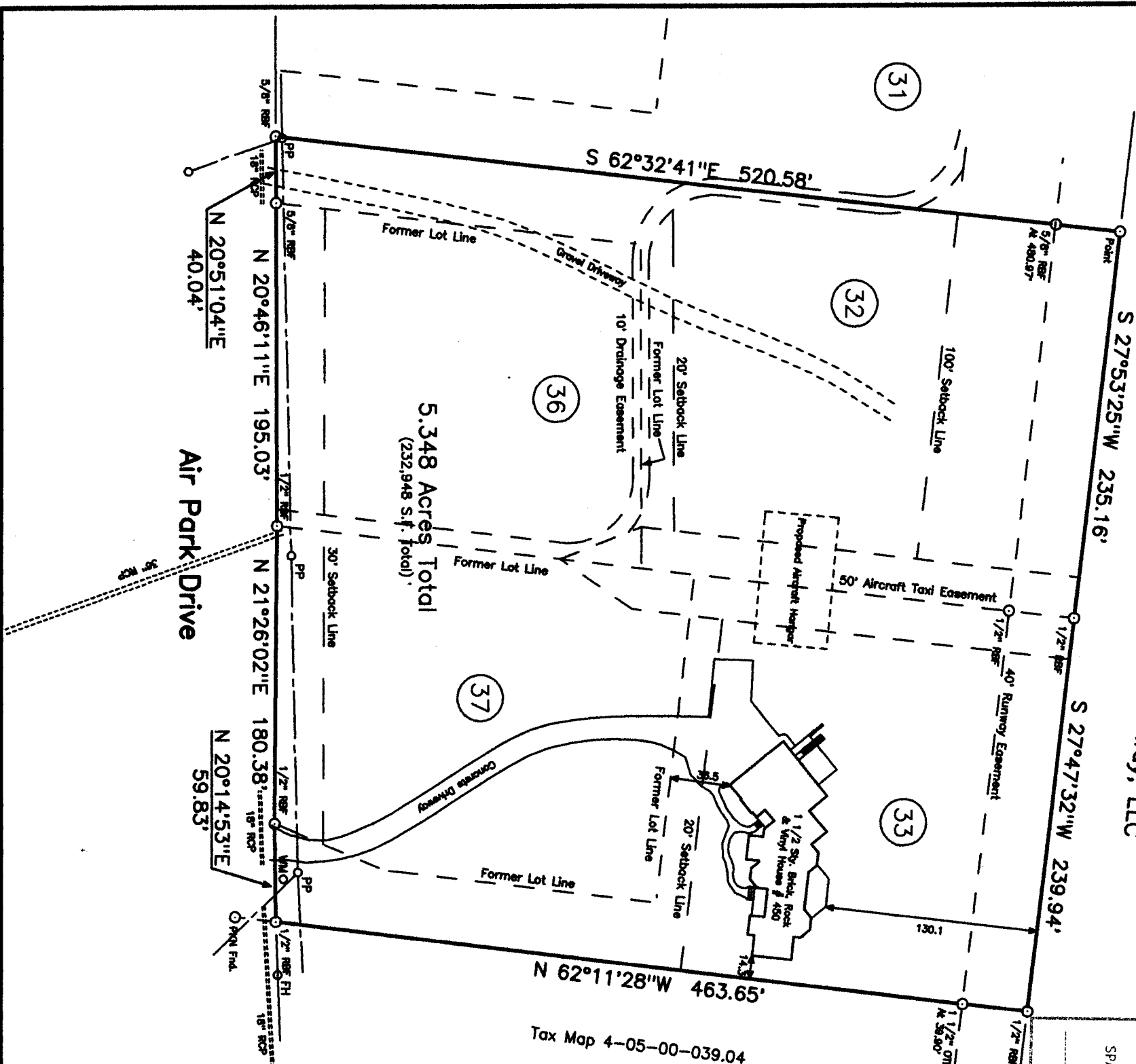
Field Book: Ranger, Page 5049

Field Crew: JMW, JB

Reference Plat: 163-885, 158-840

Project # 175049

Project # 175049



Tax Map 4-05-00-039.04

**State of South Carolina,
County of Spartanburg**

DEE-2017-18748



DEE BK 115-N PG 628-631

Recorded 4 Pages on 04/24/2017 03:57:42 PM
Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$195.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

450 Arr Park Dr.
Greer SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 31 and Lot 35 on a plat entitled "Chandelle, Section 5", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on November 20, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 164 at Page 709.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

TMS# 4-05-00-038.58 (Lot 31)
4-05-00-038.59 (Lot 35)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

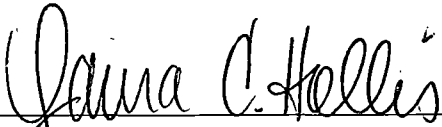
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns forever.

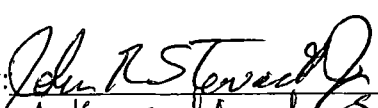
AND **CSC Developers, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

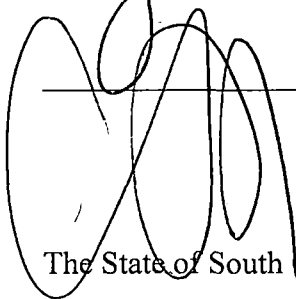
WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


CSC Developers, LLC

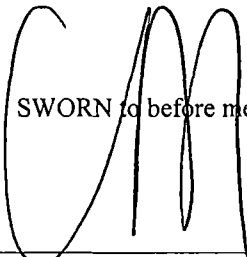


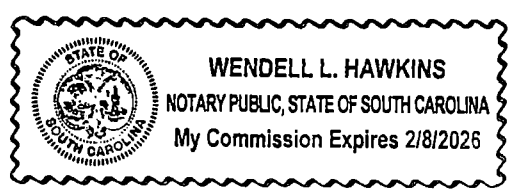
By:  (L.S.)
It's Authorized Member



The State of South Carolina,
Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.


SWORN to before me, this March 10, 2017



Notary Public of South Carolina
My Commission Expires 2-8-2026

(SEAL)

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

Page 1 of 2

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 31, 35 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.58 and 4-05-00-038.59, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$75,000.00
- (b) Place the amount listed in item 5 above here: -0-
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$75,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

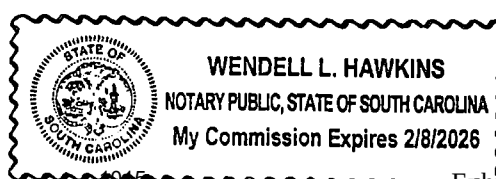
9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
 day March of 2017

Notary Public for South Carolina
 My Commission Expires: 2-8-2026

Responsible Person Connected with the Transaction

Print or Type Name Here

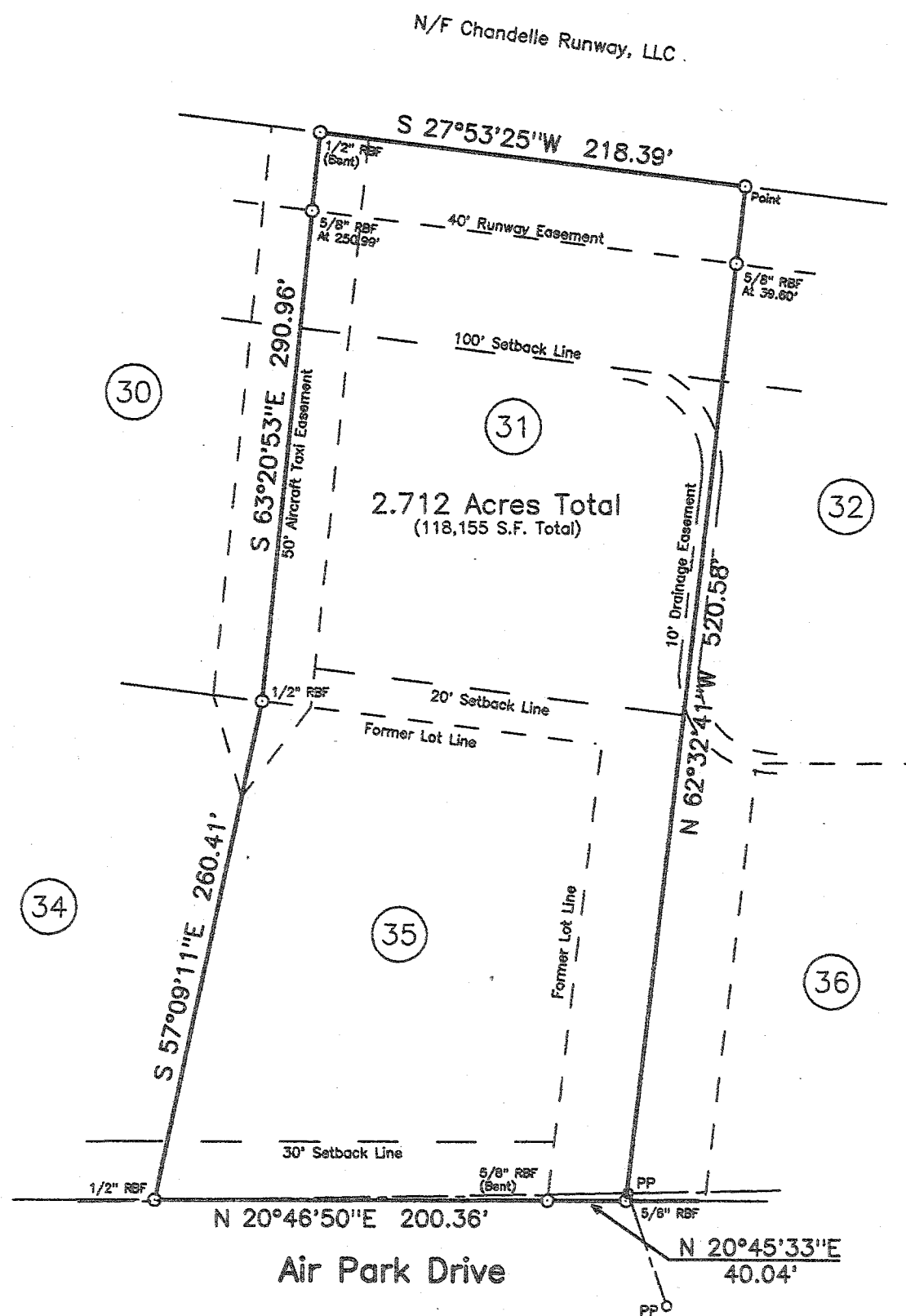


INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed-- pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S. C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.



Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, development, and building permits must be obtained from Spartanburg County prior to the commencement of any construction. Permits may also be required by DHEC and SCDOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT

DEC 05 2017

DATE

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of date must be met in order to develop the property.

"I hereby state that to the best of my professional knowledge, information and belief, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."

There is a 5' drainage and utility easement on all side and rear lot lines.

This property is subject to any and all easements and/or rights-of-way of record or not of record.

It is the intent of this survey that Lots 31 and 35 be combined and made one parcel.

Except as specifically shown or stated on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision regulations; zoning or other land use regulations, and any other facts that an accurate and current title search may disclose. This survey does not constitute a title search by the Surveyor.

Wallace & Associates does not warrant the existence or nonexistence of Jurisdictional Wetlands or areas that may be affected by hazardous materials on the survey site.

This survey is not a true and valid print of the original document unless it bears an original signature and raised embossed seal of the Surveyor.

(Handwritten signatures)

Reference North
PB 134-342

PLT-2017-57563



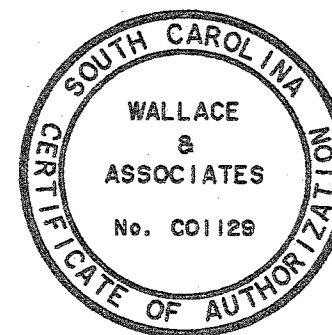
PLT BK 173 PG 448-448

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Recording Fee: \$10.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.

Dorothy Earle, Register Of Deeds



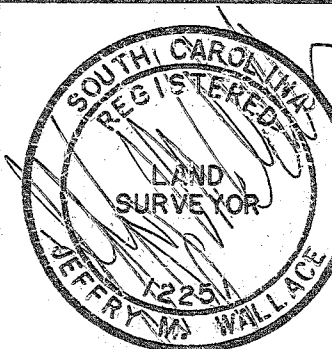
Wallace & Associates

Complete Surveying Services

Jeffry M. Wallace (864) 297-6989
P.O. Box 903, Taylors, S.C. 29687

State Of South Carolina
County Of Spartanburg
Combination Survey For
Jane Van Wieren, Trustee of
the Greer RG Irrevocable
Property Trust

Chandelle, Sec. 5
Lots 31 and 35



Jeffry M. Wallace R.L.S. 12251



Date: Dec. 03, 2017

Tax Map: 4-05-00-038.56, 038-59

Reference Deed: 115N-628

Drawn By: JMW

Field Book: Ranger, Page 5049

Field Crew: JW, JB

Reference Plat: 164-709

PLT-2017-57563



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-42-01854

Chandelle Property Owners)
Association,)
)
Plaintiff,)
)
vs.)
)
James Douglas Armstrong,)
Jane Armstrong, Kenneth L.)
Galloway, Molly C. Galloway,)
Warren Johnson, Rhonda)
Johnson, Lawrence E. Lewis,)
Barbara L. Lewis, John K.)
Payne, Ruth G. Payne, and)
Jane Van Wieren as Trustee)
of the Greer R.G. Irrevocable)
Property Trust, dated October)
25, 2006, and also all other)
persons unknown, claiming)
any right, title, estate,)
interest in or lien upon the)
real estate described in the)
complaint herein,)
)
Defendants.)

DEPOSITION OF ROBIN GREER GRAHAM

Pursuant to Notice of Deposition and/or agreements in the above entitled case, the deposition of Robin Greer Graham was taken at the office of Wendell L. Hawkins, P.A., 310 The Parkway, Greer, South Carolina, on Wednesday, July 13, 2022, commencing at 9:08 A.M.

REPORTED BY: Sheila B. Smith, CVR-CM-M
Certified Verbatim Reporter
Certificate of Merit

APPEARANCES:

D. RYAN MCCABE, JR., Esquire
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209
ryan.mccabe@mccabetrotter.com

.....On behalf of Chandelle Property Owners
Association

WENDELL L. HAWKINS, Esquire
Wendell L. Hawkins, P.A.
310 The Parkway
Greer, South Carolina 29650
wlh@hawkinslawfirm.com

.....On behalf of James Douglas Armstrong,
Jane Armstrong, Rhonda Johnson, Warren
Johnson, John K. Payne, Ruth G. Payne and
Jane Van Wieren, as trustee of the Greer
R.G. Irrevocable Property Trust dated
October 25, 2006

RICHARD L. PATTON, Esquire
Patton Law Firm
819 East North Street
Greenville, South Carolina 29601
pattonlawfirmllc@gmail.com

.....On behalf of Kenneth Galloway and Molly
Galloway

JOHN D. HARJEHAUSEN, Esquire
Clarkson Walsh & Coulter, P.A.
P. O. Box 6728
Greenville, South Carolina 29606
jharjehausen@clarksonwalsh.com

.....On behalf of Chandelle Property Owners
Association, Billy J. Israel, Bruce R.
Goldberg, and George Lynn Fleming

ALSO ATTENDING: Billy Israel
Diane Fanti
George Lynn Fleming

Greg Steck (via telephone)

1 Q. What did you take courses in?

2 A. Business management and organization.

3 Q. Have you ever held a contractor's license?

4 A. Never.

5 Q. Have you ever had a real estate --

6 A. No.

7 Q. -- sales license?

8 A. No.

9 Q. Have you ever held any occupational licenses?

10 A. No.

11 Q. Do you know what I mean by that, occupational?

12 A. Like a management, rental, or whatever?

13 Q. Yes, sir.

14 A. Yeah.

15 Q. You've never had a real estate management license?

16 A. No.

17 Q. Have you ever been denied an occupational or
18 professional license?

19 A. No.

20 Q. Tell me about Greer R.G. Irrevocable Property
21 Trust dated October 25, 2006.

22 A. That was a Trust my -- from my mother.

23 Q. Did you provide any property for that --

24 A. No, I didn't. I mean, she did.

25 Q. Okay. Who is the current Trustee?

1 A. Jane Van Wieren.

2 **Q. What is your connection to Jane Van Wieren?**

3 A. It's my sister.

4 MR. MCCABE: Do you need him to spell Van
5 Wieren for the record?

6 COURT REPORTER: Yes.

7 MR. MCCABE: Will you spell Van Wieren for the
8 record?

9 WITNESS: V-A-N W-I-E-R-E-N.

10 EXAMINATION RESUMED BY MR. MCCABE:

11 **Q. Who is the successor Trustee?**

12 A. I would have to -- I don't know on that.

13 **Q. Are you a Trustee?**

14 A. No.

15 **Q. Do you serve as the Trust protector?**

16 A. No. I mean, I don't know what a Trust protector
17 is, so I don't -- you know, I don't know what that
18 is. So --

19 **Q. Okay. Do you have the power to modify any of the**
20 **terms of the Trust?**

21 A. I can do that, yes.

22 **Q. What terms can you -- or is it limited to an area**
23 **or do you have a general right to amend the terms**
24 **of the Trust?**

25 A. I would have to review the Trust to see exactly

1 what terms.

2 **Q. Do you have any agreements, written agreements**
3 **that provide you authority to act on behalf of the**
4 **Trust?**

5 A. Not with me.

6 **Q. Please provide a copy of that to your lawyer if**
7 **you have it. Do you have a -- has the Trust been**
8 **amended since the creation date of October 25,**
9 **2006?**

10 A. Again, I'm not -- not that I'm aware of.

11 **Q. Okay, thank you. Who is Ruth Graham?**

12 A. My deceased mother.

13 **Q. And she was the settler of the Trust?**

14 A. You know, when you say settler, you're talking
15 about the person that created it or --

16 **Q. Funded it.**

17 A. -- funded it?

18 **Q. Yes, sir.**

19 A. Yeah.

20 **Q. And why was the Trust formed?**

21 A. It was formed -- she wanted to provide for some
22 family members.

23 **Q. Is there a termination date for the Trust?**

24 A. Not that -- I don't know.

25 **Q. We have a trial scheduled for August 29. Do you**

1 intend to modify the Trust or to convey any of the
2 property in the Chandelle Subdivision prior to the
3 trial date?

4 A. No.

5 Q. Do you have any contracts for the sale of any --
6 or does the Trust have a contract for sale or an
7 intention to sell any of the property in the
8 Chandelle Subdivision?

9 A. Not at this time. It's my understanding with the
10 lis pendens you filed, it's tied up anyhow. So --

11 Q. Who are the beneficiaries of the Trust?

12 A. On that there, I mean, isn't that the idea of a
13 Trust, so that that information is protected?

14 Q. I'm not sure what the -- I don't know anything
15 about the background of the Trust. I don't intend
16 to ask you a bunch of details about the Trust.

17 MR. HAWKINS: You can answer the question.

18 WITNESS: What?

19 MR. HAWKINS: You can answer the question.

20 WITNESS: Okay.

21 WITNESS CONTINUES:

22 A. I'm the beneficiary.

23 EXAMINATION RESUMED BY MR. MCCABE:

24 Q. Are you the sole beneficiary?

25 A. Yes.

1 A. I wasn't prepared. I mean, I'd have to go back
2 and review all the things that have been done
3 around there.

4 Q. Well, if you have some other concerns while we're
5 talking that come to you, even if we're on another
6 document, bring it back up.

7 A. Okay.

8 Q. This is my day to talk to you and hear about it
9 now instead of for the first time at trial and ask
10 you about it. So as part of this lawsuit, the
11 Association -- at some point you acknowledge that
12 you did pay some assessments in the past?

13 A. Yes.

14 Q. Okay. And at some point, you stopped paying
15 assessments or the Trust, I should say, stopped
16 paying assessments. Do you agree with that?

17 A. Yeah, that is correct. Once we found out that
18 they were not going for the intended purposes that
19 we were told, and we found out that, you know, the
20 lawn maintenance and things like that there
21 weren't being handled, that the funds had been
22 diverted for legal fees.

23 Q. Please provide me a list and explanation for all
24 the reasons that the Trust discontinued paying
25 assessments to the Association.

1 A. Okay. Well, I mean -- you mean like right now or
2 --

3 **Q. Yes, sir, please.**

4 A. Okay. Well, I mean, I don't know, but about the
5 time you gave the -- you know, the slick
6 presentation that, you know, the developer -- the
7 runway was Chandelle's and that the developer
8 committed fraud and that, you know, once that's
9 proven, they'll be responsible for the legal fees,
10 and here it is today, we're probably sitting about
11 800, \$850,000 in legal fees, that, you know, is
12 reason.

13 **Q. Any other reasons?**

14 A. Yeah. I mean, well, just like I mentioned, you
15 know, all the fees that, you know, or majority are
16 legal fees and not anything used, you know, in the
17 community.

18 **Q. Any others?**

19 A. I mean, I'm sure I can think of some in just -- as
20 we go along and I'll come back.

21 **Q. All right. You said presentation by me. I think**
22 **you're referring to me as in Ryan McCabe's**
23 **presentation?**

24 A. Yes.

25 **Q. Can you tell me specifically what it was that you**

1 runway.

2 **Q. Did you submit for architectural approval?**

3 A. Yeah. And -- what do you mean, for the main
4 house?

5 **Q. Yes, sir.**

6 A. Yeah. I think that was submitted to John or
7 whoever it was, yeah.

8 **Q. And do you know under what authority or under what**
9 **document architectural approval --**

10 A. He was the developer at the time. So I just --
11 you know, we figured that that's -- you know,
12 because it was -- you know, he was limiting like
13 -- or not limiting but I guess, you know, wanting
14 to see certain properties being developed out
15 there.

16 **Q. And did John or any other representative of CSC or**
17 **the development entity provide you with a copy of**
18 **Restrictive Covenants?**

19 A. I had seen some documents, yes.

20 **Q. And who provided those to you?**

21 A. I'm going to guess that that was Marilyn.

22 **Q. Marilyn Berry?**

23 A. Berry, yeah.

24 **Q. And did you see those before you purchased any**
25 **property within Chandelle?**

1 A. I had reviewed those, yes.

2 Q. When you purchased the property originally at
3 Chandelle, did John Stewart or Marilyn Berry or
4 anyone else associated with CSC ever tell you that
5 there were standards and rules related to the
6 community?

7 A. I don't recall.

8 Q. Did you ever deal with Doug or Nicole Cobb?

9 A. No.

10 Q. Was Mr. Payne involved with CSC or the
11 development?

12 A. That's -- I don't have privy to that information.
13 I don't know.

14 MR. HAWKINS: Can I take a break?

15 MR. MCCABE: Yes, sir.

16 (BREAK; OFF THE RECORD)

17 (EXHIBIT NUMBER 1 MARKED [Facsimile/Document])

18 EXAMINATION RESUMED BY MR. MCCABE:

19 Q. I'm showing you what's marked as Exhibit Number 1.
20 Will you take a look at that?

21 A. (Reviewing document.) Okay.

22 Q. Do you recognize this document?

23 A. I don't.

24 Q. All right. This is a three-page document. On the
25 first page, it appears to be a facsimile

1 it says there, I mean, thank you for your
2 permission to use the airstrip at Chandelle in the
3 future.

4 **Q. The next one I want to go to is the Contract of**
5 **Sale.**

6 MR. MCCABE: Can you mark that one?

7 (EXHIBIT NUMBER 6 MARKED [9/24/05 Contract of Sale])

8 EXAMINATION RESUMED BY MR. MCCABE:

9 **Q. Next I'm showing you what's marked as Exhibit**
10 **Number 6. Will you take a look at that document**
11 **and let me know when you're ready for me to ask**
12 **you questions on it?**

13 A. Okay, I'll let you know. (Reviewing document.)
14 Okay.

15 **Q. Do you recall signing this document?**

16 A. I don't recall. I mean, it's -- I would say I
17 signed it. It looks like my signature, so -- but,
18 you know, again, you're talking 17 years ago.

19 **Q. Fair enough. If you look at the bottom of the**
20 **second page of this two-page exhibit. It appears**
21 **to be your signature at the bottom right-hand**
22 **corner?**

23 A. Yes, it does.

24 **Q. And if you go to the second page, the third**
25 **paragraph says, purchase agrees to abide by the**

1 **Chandelle Covenants, Conditions and Restrictions**
2 **and Revisions recorded at the ROD office of**
3 **Spartanburg County. Do you recall that?**

4 A. Well, I see it is written there. Yeah, just like
5 I see here, if CSC Developers should decide to
6 sell the runway to the homeowners, purchaser would
7 not be charged an additional fee for owning Lot
8 37, which again, with the Runway Agreement.

9 Q. **I'm not disputing it says that. I'm just trying**
10 **--**

11 A. Okay. I'm just pointing out that --

12 Q. **-- to establish what documents you believe were**
13 **applicable or you were informed or that you had**
14 **some knowledge of when you closed on the first**
15 **lot. And you would agree that it says -- and your**
16 **signature -- that you agree to abide by the**
17 **Chandelle Covenants, Conditions and Restrictions**
18 **and Revisions recorded at the ROD office of**
19 **Spartanburg County, correct?**

20 A. That's what the document indicates here.

21 Q. **And as you point out in the prior paragraph it**
22 **says, if purchaser buys this lot (37), the maximum**
23 **yearly assessment will be limited to \$100. If CSC**
24 **Developers should decide to sell the runway to the**
25 **homeowners, purchaser would not be charged an**

1 A. Okay. I mean, I'm sure if he was handing them
2 out, we would have gotten them, just, you know, to
3 file away.

4 **Q. I'm just trying to figure out if you're familiar**
5 **with it. Can you check to see if you have a copy**
6 **of Covenants with a blue cover page that would**
7 **have been provided by CSC?**

8 A. Okay.

9 **Q. Thank you.**

10 A. Uh-huh.

11 MR. MCCABE: Let's mark this one next, this
12 Limited Power of Attorney.

13 (EXHIBIT NUMBER 7 MARKED [8/8/05 Limited Power of
14 Attorney])

15 WITNESS ANSWERS:

16 A. (Reviewing document.) Okay. I mean, it looks
17 like a typical power of attorney.

18 EXAMINATION RESUMED BY MR. MCCABE:

19 **Q. Do you recall signing this -- or receiving this**
20 **document?**

21 A. I don't. Again, you're -- this is I'm guessing
22 from 17 years ago. I mean, that looks like my
23 mother's signature. You know, as to actually
24 receiving it, I don't recall, I just don't.

25 **Q. Has Ms. Van Wieren provided you with a limited**

1 power of attorney for the Trust?

2 A. You mean this one?

3 Q. Or any limited power of attorney or any other
4 power of attorney on behalf of the Trust.

5 A. I would have to look and see. I mean, again,
6 we're talking, you know, a long time.

7 Q. As you sit here today, do you believe that you
8 hold power of attorney for the Jane Van Wieren
9 Trust?

10 A. Yes.

11 Q. You do; okay. Do you know if anyone else has
12 power of attorney to act on behalf of the Trust?

13 A. No, not that I'm aware of.

14 (EXHIBIT NUMBER 8 MARKED [Miscellaneous Notes])

15 EXAMINATION RESUMED BY MR. MCCABE:

16 Q. I'm showing you what's marked as Exhibit Number 8.
17 This was produced by CSC during the course of the
18 lawsuit, but do you recognize this handwriting?

19 A. I do not.

20 Q. Do you see the number up top that says under -- it
21 says, Rob Graham at the top?

22 A. Yes.

23 Q. See where it says, 772-418-9900?

24 A. Yes.

25 Q. Is that your number?

1 Declaration of Covenants, Conditions and
2 Restrictions. The following words were added
3 after, Plat Book 158, Page 840. It says, Lot 32
4 and Lot 36, Section 4A plat recorded January 6th,
5 2009 in Plat Book 163, Page 885: Lot 31 and 35,
6 Section 5 plat recorded October 13, 2009 in Plat
7 Book 164, Page 709. Do you recall the facts and
8 circumstances involving this document or these
9 plats or these lot numbers?

10 A. I don't, no. I mean, I don't think I was involved
11 with any of those at that time, or the Trust was
12 not involved with it.

13 Q. Do you recall ever meeting or dealing with a
14 Stephen E. Berry?

15 A. No. I wouldn't know him if I fell over him.

16 Q. Okay. Do you know if Stephen Berry is Marilyn
17 Berry's husband?

18 A. I don't know.

19 Q. Okay, thank you.

20 (EXHIBIT NUMBER 11 MARKED [Combination Survey-Lots 32,
21 33, 36, 37])

22 EXAMINATION RESUMED BY MR. MCCABE:

23 Q. The next document I'll show you is Exhibit Number
24 11.

25 A. (Reviewing document.) Okay.

1 Q. Are you familiar with this document?

2 A. Looks like a survey.

3 Q. And do you recall having any involvement with
4 submitting this survey to the Spartanburg County
5 Planning Department?

6 A. Yes. Yeah. I believe I did that, yeah. Yes.

7 Q. And do you recall the purpose of submitting this
8 plat to the Spartanburg County Planning
9 Department?

10 A. I believe it was to -- there was going to be a
11 proposed building to be built. And it looks like
12 from here it was straddling a couple different
13 lots so that it was to, you know, resolve that
14 issue.

15 Q. And looking at this document here, it's got it
16 looks like a 31, a 32, a 33, a 36, and 37?

17 A. Well, the survey in front of us is really only for
18 32, 33, 36, and 37. Are we on the same page?

19 Q. Well, I'm inquiring. Do you know who owns Lot 31?

20 A. Yeah. It would be the Trust.

21 Q. And what about Lot 32?

22 A. All that, the 32, 33, 36, and 37 would be the
23 Trust.

24 Q. Okay. So looking at this, it says under here --
25 see where it starts with, I hereby state? There's

1 you said you couldn't remember the lot numbers,
2 but you recalled that the Trust lots were combined
3 into two parcels?

4 A. Correct.

5 Q. Two lots now?

6 A. Correct.

7 Q. And is it your understanding that -- looking at
8 this, does this refresh your recollection that 32,
9 33, 36, and 37 were combined into one lot?

10 A. Say -- 32, 33, 36, and 37 would have been combined
11 into one parcel.

12 Q. Do you recall the other lot numbers that were
13 combined?

14 A. Well, from this here, I would say it was 31, and
15 I'm going to -- again, without seeing -- say that
16 the other one should have been 35 if they were
17 going in numerical order there.

18 Q. Could it be 15? Could it have been Lot 15?

19 A. I don't think so, no.

20 (EXHIBIT NUMBER 12 MARKED [10/5/07 General Warranty
21 Deed])

22 EXAMINATION RESUMED BY MR. MCCABE:

23 Q. I'm showing you what's marked as Exhibit Number
24 12.

25 A. (Reviewing document.) Okay.

1 Q. Is Exhibit Number 12 the deed from CSC Developers
2 to the Greer R.G. Irrevocable Property Trust for
3 Lot Number 37?

4 A. Yes, that's what it appears to be.

5 Q. I don't have any other questions about that. I'm
6 just establishing it for trial.

7 (EXHIBIT NUMBER 13 MARKED [5/19/11 Quit-Claim Deed])

8 EXAMINATION RESUMED BY MR. MCCABE:

9 Q. The next instrument I'm going to show you is
10 marked as Exhibit Number 13.

11 A. (Reviewing document.) Okay.

12 Q. Do you recognize this document?

13 A. I mean, it looks like a Quit-Claim Deed.

14 Q. Do you remember the purpose of this Quit-Claim
15 Deed?

16 A. I don't remember what the purpose is, no, unless
17 it was -- I'm not sure. I don't know. I'm just
18 saying unless it was a correction, but it would
19 say correction I think.

20 Q. Could it be because it wasn't titled in the name
21 of the Trustee originally or something?

22 A. That's what -- I mean, that's what I'm just
23 looking at. I mean, that's just a guess I would
24 have.

25 Q. Okay, thank you. You see below the property

1 description it says it's subject to all rights-of-
2 way, easements, and protective covenants? Do you
3 see that?

4 A. I see that, yes.

5 Q. That's it for that one.

6 (EXHIBIT NUMBER 14 MARKED [11/29/05 General Warranty
7 Deed])

8 EXAMINATION RESUMED BY MR. MCCABE:

9 Q. The next document I'm showing you is marked as
10 Exhibit Number 14.

11 A. (Reviewing document.) Okay.

12 Q. Do you recognize this deed?

13 A. I don't, but I mean, it -- you know, it's
14 recorded. So --

15 Q. This one says from CSC to Ruth Graham.

16 A. Okay.

17 Q. Do you recall why this was deeded to Ms. Graham as
18 opposed to the Trust?

19 A. I believe it may have had something to do with a
20 -- what do you call it, an exchange.

21 Q. A 1031 exchange?

22 A. Yeah, I think that may have been why, have her
23 identify the property or whatever it was.

24 Q. Okay, thank you. And do you see that this is a
25 deed for Lot 33, Lot Number 33 in the description?

1 A. Yes.

2 Q. And below, you see this paragraph that begins
3 with, this conveyance is subject to all rights-of-
4 way, easements, and protective covenants affecting
5 the same appearing upon the public records of
6 Spartanburg County, including, but not limited to,
7 those restrictive covenants entitled Chandelle
8 Covenants, Conditions and Restrictions that are
9 recorded in the office of the Register of Deeds
10 for Spartanburg County, South Carolina, in Deed
11 Book 67-A, Page 583.

12 A. I see that, yeah.

13 Q. I don't have any further questions on that one.
14 (EXHIBIT NUMBER 15 MARKED [10/25/06 Quit-Claim Deed])

15 EXAMINATION RESUMED BY MR. MCCABE:

16 Q. I'm going to next hand you a -- did I cut you off?

17 A. No. I just was looking at the other one. I
18 didn't see that language in the -- the verbiage
19 about Chandelle Covenants and so forth wasn't on
20 the other deed from that attorney.

21 Q. Next document I'm showing you is marked as Exhibit
22 Number 15.

23 A. (Reviewing document.) Okay.

24 Q. Do you recognize this Quit-Claim Deed?

25 A. I don't, but I mean, it's -- again, it's -- this

1 is -- is this one that's 17 years ago? No.

2 **Q. 2006.**

3 A. It's 15 years ago.

4 **Q. And this is a deed from Ruth Graham to the Greer**
5 **R.G. Irrevocable -- to Jane Wieren, as Trustee for**
6 **the Greer R.G. Irrevocable Property Trust. Do you**
7 **see that?**

8 A. Yeah. I see that, yes.

9 **Q. And this also references Lot Number 33?**

10 A. Yes.

11 **Q. And you see it also has the same language saying**
12 **that it's subject to the Chandelle Covenants below**
13 **the property description?**

14 A. Okay.

15 **Q. Do you recall your mother transferring this**
16 **property to the Trust and any of the facts and**
17 **circumstances --**

18 A. Yeah, I see her signature on it. So yeah, that
19 would certainly make sense.

20 (OFF THE RECORD)

21 (EXHIBIT NUMBER 16 MARKED [3/10/17 Deed])

22 EXAMINATION RESUMED BY MR. MCCABE:

23 **Q. I'm just trying to confirm these documents. The**
24 **next document I'm showing you is marked as Exhibit**
25 **Number 16.**

1 A. (Reviewing document.) Okay.

2 **Q. Do you recognize this document?**

3 A. It looks like -- what's this? It looks like the
4 deed for the purchase of some lots there.

5 **Q. For Lot 32 and Lot 36?**

6 A. Yes.

7 **Q. And this is another deed from CSC to Jane Van**
8 **Wieren, Trustee for the Greer R.G. Irrevocable**
9 **Property Trust?**

10 A. That's what it appears to be, yes.

11 **Q. Okay. And this one is dated April 24, 2017, or**
12 **the recorded date is; excuse me. Do you recall --**

13 A. Yeah. I mean, I recall purchasing, yes, some
14 lots.

15 (EXHIBIT NUMBER 17 MARKED [10/13/05 Summary Plat])

16 EXAMINATION RESUMED BY MR. MCCABE:

17 **Q. The next document I'm showing you is marked as**
18 **Exhibit Number 17, and this is a plat. It's got**
19 **two different plat, book and pages. It was**
20 **recorded on two different occasions, so I'll use**
21 **the one that's got the registered deed information**
22 **on there. On that one it says Plat 2005, Page**
23 **57066 I believe, with a recording date of November**
24 **1, 2005. Do you recognize this plat?**

25 A. I mean, I don't think I had anything to do with

1 this. But I mean, it looks like the -- the lots
2 indicate where the original purchase was back in
3 whatever that deed shows.

4 **Q. So you don't believe that you had this survey**
5 **commissioned?**

6 A. I don't think I did, no. I mean, it's possible.
7 I don't remember this if it was, but I don't think
8 I did.

9 MR. MCCABE: Let's mark this one.

10 (EXHIBIT NUMBER 18 MARKED [7/16/08 Summary Plat])

11 EXAMINATION RESUMED BY MR. MCCABE:

12 **Q. I'm showing you what's marked as 18. I'm showing**
13 **you another plat. It looks like it was recorded**
14 **on one occasion on January 8, 2009. Can you take**
15 **a look at this document and tell me if you**
16 **recognize it?**

17 A. (Reviewing document.) I recognize the -- I think
18 I recognize the lots. I mean, I didn't have this
19 done, so I don't -- this wasn't my doing.

20 **Q. Okay, thank you.**

21 (EXHIBIT NUMBER 19 MARKED [Combination Survey-Lots 31,
22 35])

23 EXAMINATION RESUMED BY MR. MCCABE:

24 **Q. I'm showing you what's marked as Exhibit Number**
25 **19.**

1 A. (Reviewing document.) Okay.

2 **Q. Do you recognize this document, another plat. It**
3 **looks like again it's got two different -- it**
4 **looks like it was recorded at Plat Book 173,**
5 **beginning at Page 448 on December 12, 2017.**

6 A. Yeah. This one would have been one that the Trust
7 had done, yes.

8 **Q. Do you recall the purpose of this survey?**

9 A. It was in part, you know, to combine the lots from
10 the standpoint of -- to avoid the depreciable
11 situation would have happened if they had property
12 in front and behind.

13 **Q. And 35 being the one in front?**

14 A. Correct. On the road, yes.

15 **Q. So the purpose of this was to facilitate the**
16 **combination of Lot 31 and Lot 35 into one lot?**

17 A. That is correct.

18 **Q. Did you ask Wallace & Associates to prepare this**
19 **survey?**

20 A. Yes.

21 **Q. You personally did?**

22 A. Yes.

23 **Q. What is the -- do you know what lot number this is**
24 **referred to now after the combination?**

25 A. I have -- I don't know. I mean, you know, it's

1 EXAMINATION RESUMED BY MR. MCCABE:

2 **Q. I'm showing you what's marked as Exhibit Number**
3 **20. Do you recognize this deed?**

4 A. (Reviewing document.) It looks like a deed
5 transferred to the Trust for Lot 31 and 35.

6 **Q. Okay, thank you.**

7 **(EXHIBIT NUMBER 21 MARKED [7/16/08 Summary Plat])**

8 EXAMINATION RESUMED BY MR. MCCABE:

9 **Q. I'm showing you a document entitled Summary Plat,**
10 **Exhibit Number 21. Are you familiar with this**
11 **document?**

12 A. I'm not. I mean, I didn't request this or I don't
13 know, you know, what this is. Well, I mean, I
14 know what it is. It looks like a survey that --
15 we were the owners. I mean, maybe CSC Developers
16 had it surveyed.

17 **Q. I'm just seeing what you knew about it.**

18 **(EXHIBIT NUMBER 22 MARKED [2/24/06 Letter/Home Plans])**

19 EXAMINATION RESUMED BY MR. MCCABE:

20 **Q. The next document is Number 22.**

21 A. (Reviewing document.) Okay.

22 MR. MCCABE: Let me add to that. We'll make
23 this a part of the same exhibit there. I tell you
24 what, just mark that as 23.

25 **(EXHIBIT NUMBER 23 MARKED [3/13/06 Letter-Documents])**

1 EXAMINATION RESUMED BY MR. MCCABE:

2 **Q. I'm going to hand you two exhibits. That's 23.**
3 **Looking at 22, are you familiar with that**
4 **document?**

5 A. I remember, you know, something -- yeah, I mean, I
6 recall some -- like looking at some of the stuff,
7 yeah, I mean, as far as --

8 **Q. Does the Trust maintain a file of the construction**
9 **records and architectural requests?**

10 A. There may be some straggling docs around, but I
11 mean, it's 17 years ago.

12 **Q. The Trust did not provide this document, it was**
13 **provided by CSC. Do you know if you have a copy**
14 **of this in your files?**

15 A. I doubt it. I mean, some of this could have been
16 also in my mom's records that -- you know, she's
17 deceased and, you know, we dispersed of her
18 estate.

19 **Q. This document is a letter from your mother to I**
20 **believe John Stewart, submitting and requesting**
21 **plans to -- or requesting architectural approval**
22 **to build a house.**

23 A. Okay.

24 **Q. Do you think that's a fair summary of these**
25 **documents, or Number 22?**

- 1 A. Yeah. Yeah.
- 2 **Q. Is that your mother's signature on the first page?**
- 3 A. It appears to be, yes.
- 4 **Q. See on the third and fourth page there's some**
- 5 **handwriting below the photographs? Specifically**
- 6 **look at the third page. It's Bates-labeled 00864.**
- 7 **This is the Bates label over here (indicating).**
- 8 **We call that a Bates label.**
- 9 A. Okay.
- 10 **Q. Is that your signature on that?**
- 11 A. It looks like that could be my signature, yeah.
- 12 **Q. Is that your handwriting on there?**
- 13 A. Yeah, I would say it looks like mine.
- 14 **Q. What about the next page, Bates label 865? Is**
- 15 **that your handwriting?**
- 16 A. I would say it is.
- 17 **Q. And you're saying this pictures are to give a**
- 18 **general idea of what you would like to build?**
- 19 A. Right.
- 20 **Q. And you were asking for permission?**
- 21 A. Yeah. I mean, they wanted to know what was going
- 22 to go up there, so yeah.
- 23 **Q. Thank you. Let's go to Number 23. Do you**
- 24 **recognize this document?**
- 25 A. (Reviewing document.) I mean, the last page is

1 definitely something that I signed.

2 **Q. The Building Construction Form page?**

3 A. Yes.

4 **Q. So this is -- it says, Sincerely, the**
5 **Architectural Control Committee, right?**

6 A. Uh-huh.

7 **Q. And did you believe -- is that what you refer to**
8 **as CSC or did you believe the Architectural**
9 **Control Committee was a committee of the**
10 **Association?**

11 A. Well, this is addressed to Ruth Graham.

12 **Q. You're correct.**

13 A. Okay.

14 **Q. I'm asking what your understanding of what entity**
15 **the Architectural Control Committee was a part of.**

16 A. I mean, whoever John -- you know, dealing with
17 John.

18 MR. HAWKINS: Was that 23?

19 MR. MCCABE: It was attached to the back of
20 22.

21 MR. HAWKINS: Got it.

22 (OFF THE RECORD)

23 EXAMINATION RESUMED BY MR. MCCABE:

24 **Q. Let's go to the third page of Exhibit 23. Is that**
25 **your handwriting?**

1 A. It is.

2 Q. It says, contractor's name, Rob Graham. Did you
3 self perform?

4 A. Yes.

5 Q. It says Lot Number 33?

6 A. Yes.

7 Q. And then at the bottom it says, certification.
8 Did you sign this certification?

9 A. I did sign that.

10 Q. It says, I (we) certify that the above information
11 constitutes a description of the proposed building
12 and accessory construction and of the location of
13 the site of all items of construction and the same
14 will be in accordance with the Chandelle Covenants
15 and Restrictions. Did I read that correctly?

16 A. Yes.

17 Q. And then you signed it. That's your signature,
18 correct?

19 A. Yes, it is.

20 Q. It says the date is February 24, 2006?

21 A. Yes.

22 Q. In your hand, correct?

23 A. That's in my hand.

24 Q. Thank you.

25 (EXHIBIT NUMBER 24 MARKED [3/13/06 Letter-Documents])

1 EXAMINATION RESUMED BY MR. MCCABE:

2 **Q. The next document I'm showing you is marked as**
3 **Exhibit Number 24. Will you take a look at that**
4 **and tell me if you recognize that document?**

5 A. (Reviewing document.) Yeah, I think I do recall
6 something about what this alludes to.

7 **Q. And you, in fact, complied after receiving this,**
8 **didn't you?**

9 A. Yeah, I think I did.

10 **Q. It says, as instructed by the Board of Directors**
11 **of the Chandelle Property Owners Association, the**
12 **Architectural Control Committee, ACC, has made a**
13 **thorough inspection of your property for**
14 **compliance with the Covenants, Conditions and**
15 **Restrictions. Did I read that correctly?**

16 A. Yes, you did.

17 **Q. And you didn't object at that time, did you?**

18 A. I don't recall. I mean, there was a time that I
19 did respond.

20 **Q. And as a matter of fact, you paid assessments that**
21 **year to the Association, didn't you?**

22 A. In 2010, yes.

23 **Q. For two lots, correct?**

24 A. I think, if I'm not mistaken. I'd have to look at
25 the -- I believe it was like \$100 for the second

1 again, that was about the time of I think the
2 closing. Some of the -- somewhere '06, '07, so I
3 mean, I believe so, but it -- I don't know that.

4 **Q. Do you have any reason to deny it, as you sit here**
5 **today?**

6 A. To do what?

7 **Q. Do you have any reason to deny that they were paid**
8 **in 2007, as you sit here?**

9 A. I don't know to deny it. I mean, I -- you know,
10 Ryan, I just don't know.

11 **Q. Okay, that's fair.**

12 MR. HAWKINS: Can we take a break?

13 (BREAK; OFF THE RECORD)

14 (EXHIBIT NUMBER 25 MARKED [8/15/12 Letter])

15 EXAMINATION RESUMED BY MR. MCCABE:

16 **Q. The next document I'm showing you, Mr. Graham, is**
17 **Exhibit Number 25. Do you recognize that**
18 **document?**

19 A. (Reviewing document.) Yeah. That's been like ten
20 years ago, but yeah, it looks -- I vaguely
21 remember it, yes.

22 **Q. And this is a letter from the Chandelle ACC to you**
23 **I guess as representative of the Trust related**
24 **some -- issues related to the appearance of your**
25 **property?**

1 A. Yeah.

2 (EXHIBIT NUMBER 26 MARKED [8/25/12 E-mails])

3 EXAMINATION RESUMED BY MR. MCCABE:

4 **Q. The next document I'm going to show you is marked**
5 **as Exhibit Number 26. Do you recognize this**
6 **document?**

7 A. (Reviewing document.) Yes, this looks familiar.

8 **Q. So earlier you mentioned something about some**
9 **preferential treatment. Does this e-mail from you**
10 **contain some of your concerns and complaints about**
11 **the conditions of some of the property either at**
12 **Chandelle or the adjacent --**

13 A. Yeah, I think it speaks for itself.

14 **Q. Do you recall sending this?**

15 A. I vaguely -- yeah, I do remember doing this
16 because of the complaints that I saw there
17 reviewing -- jogging my memory, you know, being
18 called out on stuff and then -- you know, and this
19 here, but all these other things that were around.

20 **Q. And was this sent in response to Exhibit Number**
21 **25, which was the letter from the --**

22 A. I do believe so. I don't know what the date is.
23 Yeah, it looks like it was, as far as the dates on
24 this.

25 **Q. And in this communication, you didn't challenge**

1 the validity of the Architectural Control
2 Committee or the Board anywhere in this, did you?

3 A. Not that I'm aware of.

4 Q. As a matter of fact, you brought some other issues
5 to their attention to be addressed, didn't you?

6 A. Right. Yes, I did.

7 Q. And is that because you believed they had the
8 authority to address the issues that you raised
9 and asked them to consider?

10 A. I just wanted to, you know, confirm that there was
11 not preferential treatment to others.

12 Q. And you also paid -- excuse me; the Trust also
13 paid assessments in 2011, correct?

14 A. I believe so.

15 Q. And the Trust also paid assessments in 2012,
16 correct?

17 A. I'd have to check.

18 Q. So that would be -- at least by this point in
19 time, the Trust has paid assessments for at least,
20 without checking on the year, at least five
21 consecutive years by this point, by your memory,
22 correct?

23 A. Again, I would need to verify with that. I mean,
24 it sounds accurate, but I would need to verify. I
25 mean, I -- you know, I don't know, I mean, if I

1 ever got a response because I asked if there could
2 be no trespassing signs put out, you know, for --
3 and I don't know that I ever got a response to
4 that.

5 **Q. And you believe you were entitled to a response?**

6 A. Well, I mean, if they, you know, were in fact --
7 you know, this is what they're doing, I mean,
8 don't you think a response would have been in
9 order?

10 **Q. Well, I'm not being critical, I'm just asking. I**
11 **mean, if you believe they're the appropriate**
12 **authority to consider those, then --**

13 A. Well, yeah.

14 **Q. -- if you're asking me the question.**

15 A. Yeah, I'm just saying the converse is true, is
16 that if they are, you know, a governing board,
17 then they should have been answering that
18 question.

19 (EXHIBIT NUMBER 27 MARKED [9/13/12 Memo])

20 EXAMINATION RESUMED BY MR. MCCABE:

21 **Q. I'm showing you what's marked as Exhibit Number**
22 **27. Maybe that is the answer to the question.**

23 A. Okay.

24 **Q. Do you recall receiving that communication?**

25 A. Give me time to read it a little bit, let me just

1 see if it jogs my memory.

2 **Q. Sure.**

3 A. (Reviewing document.) Okay. So your question is
4 then?

5 **Q. Well, does that appear to be a response?**

6 A. It does appear to be a response, yes.

7 **Q. To the issues that you had raised to the**
8 **Architectural Control Committee in the prior**
9 **exhibit?**

10 A. It appears to be, yes.

11 (EXHIBIT NUMBER 28 MARKED [E-mail Chain])

12 EXAMINATION RESUMED BY MR. MCCABE:

13 **Q. The next document is Exhibit Number 28.**

14 A. (Reviewing document.) Okay.

15 **Q. Do you recognize this document?**

16 A. Yeah, I would -- yeah, I do believe so.

17 **Q. This is an October, 2017 e-mail from you to the**
18 **Board. It says, just wanted to notify the ACC of**
19 **Chandelle that we plan to start construction of an**
20 **airplane hangar on Lots 33 and 32?**

21 A. Yes. Yeah.

22 **Q. And it provides some details?**

23 A. Yes.

24 **Q. And did you send that to the ACC because you**
25 **believe you needed approval?**

1 A. I had sent that to them because we started filling
2 up some dirt, and Bruce Goldberg was down there
3 like flies on crap. I mean, so I've seen, you
4 know, what takes place and, you know, we wanted to
5 get a hangar built. And, you know, if we didn't
6 do that, they would have, you know, been on the
7 phone to you on speed dial.

8 **Q. And do you see there's also an e-mail on this from**
9 **October 31, 2017 from Pat Finucane that says,**
10 **thanks for the update; please provide us with**
11 **drawings, elevation and site locations?**

12 A. I see that, yes.

13 **Q. And did you, in fact, provide that information?**

14 A. I'm sure I did. Otherwise, you know, there would
15 have been an injunction.

16 MR. MCCABE: This one is two pages.

17 (EXHIBIT NUMBER 29 MARKED [E-mail Chain])

18 EXAMINATION RESUMED BY MR. MCCABE:

19 **Q. The next document is Exhibit Number 29. This**
20 **appears to be another bounce-off from you from an**
21 **e-mail that you had sent we talked about a minute**
22 **ago from October 23, 2017. It appears that you**
23 **sent another e-mail on November 14, 2017 that**
24 **says, please find attached plans for the proposed**
25 **hangar to be constructed for your review. Did I**

1 read that correctly?

2 A. Yes, you -- yes, that's what it states here.

3 (EXHIBIT NUMBER 30 MARKED [E-mail Chain])

4 EXAMINATION RESUMED BY MR. MCCABE:

5 Q. The next document I'm going to show you is Exhibit
6 Number 30.

7 A. (Reviewing document.) Okay.

8 Q. So looking at this, do you recognize this
9 document?

10 A. I believe I do, yeah.

11 Q. It starts at the bottom on this document, an e-
12 mail from you to John. It says, per Chandelle
13 documents, I sent notice of proposed construction
14 of an airplane hangar that is on Lot 37 and Lot
15 36.

16 A. I'm sorry. Where are you?

17 Q. Oh, I'm sorry. At the very bottom.

18 A. The very bottom, okay.

19 Q. Yes, sir. Over where a previous aircraft taxiway
20 was. Billy called and notified me that I needed
21 (per the Declarations) and okay from CSC
22 Developers to combine these lots. If this meets
23 with your approval of combining Lots 32, 33, 36,
24 and 37. And you say in here, 33 and 37 are
25 already combined. Please acknowledge such to

1 satisfy the requirements of the Declarations. Did
2 I read that correctly?

3 A. Yes.

4 Q. Okay. So you sought approval from John Stewart
5 per Billy Israel's --

6 A. It was only because it was precipitated through
7 the Homeowners Board to get that. I mean, I never
8 would have known to do that.

9 Q. But you acknowledge here that it's something
10 that's required by the Declarations or the -- you
11 used the term, Chandelle documents. And then you
12 also used the term, per the Declarations, correct?

13 A. That's what's written here, yeah, that's correct.
14 And like I said, I mean, if it wasn't, I mean, it
15 would have been like Galloway's situation, yeah,
16 shut down and, you know --

17 (EXHIBIT NUMBER 31 MARKED [12/19/17 Memo])

18 EXAMINATION RESUMED BY MR. MCCABE:

19 Q. The next document I'm showing you is marked as
20 Exhibit 31. This memorandum was sent to Jane Van
21 Wieren and you. It's dated December 19, 2017.

22 MR. HAWKINS: Hang on a second.

23 MR. MCCABE: Okay. I'm sorry. I'm skipping
24 some in the interest of time.

25 MR. HAWKINS: That's okay.

1 WITNESS ANSWERS:

2 A. (Reviewing document.) Okay.

3 EXAMINATION RESUMED BY MR. MCCABE:

4 **Q. Do you recall seeing this document?**

5 A. Again, I mean, I vaguely remember some -- yeah,
6 some of the -- some of this, yes.

7 **Q. So you paid the 2013, 2014, and 2015 assessments**
8 **as well; isn't that correct? Excuse me; the Trust**
9 **paid the assessments through 2015?**

10 A. Again, I mean, I would have to verify that. I
11 don't know.

12 **Q. Does this will jog your memory or refresh your**
13 **memory that earlier you testified that you showed**
14 **up at the meeting in 2016 with a check for the**
15 **dues?**

16 A. That sounds familiar, yes.

17 **Q. Would that have been the dues for 2016?**

18 A. I don't know.

19 **Q. Is your memory that you paid the -- all of the**
20 **assessments that -- excuse me; the Trust paid all**
21 **the assessments that were due prior to 2016?**

22 A. Yeah. As long as the assessments were used to
23 improve the property, maintain, and so forth, they
24 were paid. But once they went for -- started
25 going for legal fees -- and sometimes I'm duped

1 because -- and I'm not sure, I'll have to find out
2 what year it was, where the fees were paid and
3 under -- the understanding of, you know, going for
4 the maintenance and cutting the grass and found
5 out that it was sidelined and -- for legal fees.

6 **Q. At this point the Trust has owned property since**
7 **2006, correct?**

8 A. Correct. Well, again, I mean, I -- whatever the
9 deed I was willing to go off of because I mean,
10 there was a transfer or whatever, exchange. I
11 mean, you know, just whatever is -- you know, I'm
12 not that great with the dates on that stuff.

13 **Q. I understand. And what I'm trying to establish is**
14 **that the Trust paid assessments for nine**
15 **consecutive years.**

16 A. Okay. Well, I didn't -- again, I mean, until I
17 would verify. But if -- from 2006 -- I mean, I
18 don't know when they started paying fees. You
19 know, it could have been 2007, could have been
20 2008. I don't know.

21 **Q. Do you recall ever refusing -- or the Trust ever**
22 **refusing to pay the assessments prior to 2016?**

23 A. No. No, I mean, because again, I mean, the
24 maintenance was done, cutting grass and, you know,
25 paying the -- I guess the insurance on the runway

1 and the lighting and all like that.

2 (EXHIBIT NUMBER 32 MARKED [1/10/18 E-mail/Documents])

3 EXAMINATION RESUMED BY MR. MCCABE:

4 **Q. The next document I'm going to show you is marked**
5 **as Exhibit Number 32.**

6 A. (Reviewing document.) Okay.

7 **Q. And 32 also contains that memo in there from the**
8 **prior exhibit, you know, that the ACC -- in order**
9 **to prove that they asked you to do a few things.**
10 **One was to obtain a legal opinion and provide some**
11 **type of indemnification, and that sort of thing.**
12 **Do you remember that?**

13 A. I remember that there was an issue with the
14 easement that apparently I contacted Wendell to
15 address.

16 **Q. Okay. And so in response, you submitted -- on**
17 **this Exhibit Number 32, it appears that you**
18 **submitted to the Board and Mr. Israel an opinion**
19 **letter and some attached documents addressing this**
20 **taxiway easement issue, correct?**

21 A. Correct.

22 **Q. And you did this because the Board, the**
23 **Architectural Control Committee, and/or the**
24 **Association required it, correct?**

25 A. Well, again, I mean, if it wasn't done and I had

1 went ahead with construction, it would have been
2 shut down. You would have been on speed dial.

3 **Q. But nowhere in any of these documents that we've**
4 **looked at did you object on those grounds, you**
5 **just complied, correct?**

6 **A. Path of least resistance.**

7 MR. HAWKINS: Ryan, your exhibit there on the
8 top of your pile, it looks like you've got case
9 law on there that was supposed to be a part of
10 this?

11 MR. MCCABE: I think you submitted that as an
12 attachment to --

13 MR. HAWKINS: But he doesn't have that and
14 mine is out of order.

15 MR. MCCABE: I'm sorry. It was supposed to be
16 attached to the back of that.

17 MR. HAWKINS: I don't care how you do it. I
18 mean, it's just a case.

19 MR. MCCABE: If you don't object, I'm going to
20 enclose all of the attachments that were enclosed
21 with your letters, and I apologize for not
22 attaching it to the back. It contains your
23 opinion --

24 MR. HAWKINS: So that's the end of that
25 particular section if you put all this stuff

1 (DISCUSSION OFF THE RECORD)

2 EXAMINATION RESUMED BY MR. MCCABE:

3 **Q. I'm handing you what's marked as Exhibit Number**
4 **36. Do you mind if I look over your shoulder? I**
5 **printed two copies of the wrong exhibit. Do you**
6 **recognize that document?**

7 A. This I don't, no.

8 **Q. Do you recall receiving notice that your voting**
9 **privileges were being suspended in connection with**
10 **nonpayment of assessments?**

11 A. Well, I mean, I'm not sure we ever had any voting
12 rights. You know, can you -- I don't know if they
13 can find one thing that we ever voted on.

14 **Q. I think we can talk about that. I think you did**
15 **attend meetings and vote at some of the meetings.**

16 A. Well, we attended meetings because we were
17 invited, but not one did we ever vote. We weren't
18 able to.

19 **Q. We can talk about that on the documents.**

20 A. Okay.

21 **Q. But did you receive a copy of the suspension of**
22 **voting rights?**

23 A. This I don't recall receiving, no. I mean, I
24 recall receiving the runway violations. This I do
25 not recall.

1 **Q. Do you know what, if anything, that Jane Van**
2 **Wieren will testify to in this case?**

3 A. She has -- doesn't have firsthand knowledge like I
4 do.

5 **Q. Does he have any firsthand knowledge related to**
6 **the counterclaims or third-party claims that have**
7 **been asserted against my clients?**

8 A. She's aware that there's things going on, but not
9 to the extent that I, myself know because I live
10 here and, you know, see what's going on and stuff.

11 **Q. But she doesn't have any knowledge of, say, the**
12 **Runway License Agreements or --**

13 A. Not like -- I mean, you know, she's been -- she's
14 familiar with what's going on, but not to the
15 extent. In other words, she knows there's a
16 lawsuit and things like that there and, you know,
17 knows, you know, what's happening with the Board
18 and stuff like that, I mean, but only from stuff
19 that I've relayed to her.

20 **Q. Okay. And that's what I want to make clear. On**
21 **behalf of the Trust, only yourself and Jane would**
22 **be witnesses that have knowledge regarding the**
23 **Trust claims against the Association or the third-**
24 **party Defendants?**

25 A. Yeah. I'm not so sure she would even know, other

1 than what I've, you know, relayed.

2 **Q. And that's why I want to ask my questions of you**
3 **today because you're not on that list.**

4 A. Uh-huh.

5 **Q. But I want to make sure that you're the one that**
6 **knows about such claims.**

7 A. Okay.

8 **Q. And my understanding is that you're telling me**
9 **that you do?**

10 A. Yes.

11 **Q. The Trust has asserted a claim for damages against**
12 **the Association and/or the Third-Party Defendants.**
13 **Do you know the amount of those damages that the**
14 **Trust is claiming?**

15 A. Not at this point, not -- you know, it hasn't come
16 to conclusion.

17 **Q. Well, what do you understand the nature of the**
18 **Trust's damages are in this case?**

19 A. Oh, the legal fees that we've incurred, I mean,
20 for starters.

21 **Q. What else other than legal fees?**

22 A. I mean, just the legal fees, the runway --
23 whatever the assessments are -- not the
24 assessments, but the fines and so forth.

25 **Q. Well, sir, this case is on the trial roster for**

1 A. Yeah. I would requisition the check and she would
2 sign it.

3 **Q. Okay. But you can't tell me, as you're sitting**
4 **here today, whether the Trust has ever paid any**
5 **dues to the Association?**

6 A. Well, when you say the Association, you're talking
7 about Chandelle Property Owners Association?

8 **Q. Correct.**

9 A. Okay. I believe it has, but at the same time I
10 can't sit here and look you straight in the eyes
11 and say that, you know, one time it wasn't paid to
12 CSC Developers early on. I don't know. You know,
13 I'd have to go back, you know. If I'd known ahead
14 of time, I could have gotten the accurate answer
15 for you on that.

16 **Q. Well, isn't the Trust's position that it has paid**
17 **money to the Association?**

18 A. You're talking about in the past?

19 **Q. Yes.**

20 A. Then yeah. I mean, yeah, the -- some of the dues,
21 yeah.

22 **Q. So you're the witness who's going to testify on**
23 **behalf of the Trust, correct?**

24 A. Yes.

25 **Q. It's alleged in this case that the Trust has paid**

1 Q. Okay. So at some point up until that point, you
2 understood that you were a part of the Association
3 and then thereafter you had an understanding that
4 you're not part of the Association? Am I
5 misunderstanding something?

6 A. I would say at that point, yeah, that, you know,
7 we were, you know, figured a part of it and --
8 until we were told otherwise.

9 Q. Well, what was it that led you to the
10 understanding that you were not part of the
11 Association?

12 A. The presentation by Ryan McCabe to say that the
13 developer, you know, screwed up and didn't bring
14 these lots in. You're not a part of it. You need
15 to sign the ratification agreement and need to,
16 you know, I guess have the deed changed or
17 whatever.

18 Q. But prior to that meeting, your understanding was
19 that your lots were part of the Association,
20 correct?

21 A. I believe that, you know, it was a part. I mean,
22 that's why I was paying the dues.

23 MR. HARJEHAUSEN: Let's go ahead and mark
24 this.

25 (EXHIBIT NUMBER 43 MARKED [11/24/20 Pleading])

1 A. That's correct. Yeah, Jane would not have any
2 information that would be relevant, you know,
3 other than hearsay.

4 **Q. And that document also asks about damages, but**
5 **we've now talked about damages in detail, correct,**
6 **about the 9,300, the 25,000, and the 73,000,**
7 **correct?**

8 A. We've talked about it, yes.

9 **Q. And that's not listed in that document, correct?**

10 A. I didn't see anything in there, no.

11 **Q. And where I'm going with all this is this next**
12 **question. Are you aware of any other information**
13 **responsive to those interrogatories that we have**
14 **not discussed?**

15 A. That's in here?

16 **Q. In Exhibit 42, yeah.**

17 A. When you say -- what do you mean that we have not
18 discussed? You --

19 **Q. Do you believe those responses are true and**
20 **accurate, to the best of your knowledge, other**
21 **than what we've discussed?**

22 A. Yeah. Like the item 6 where it has Jane will
23 testify, you know, that's -- we've talked about --

24 **Q. You clarified that it will be probably you?**

25 A. Clarified, correct. Yes.

1 **thing, correct?**

2 MR. HAWKINS: Object to the form.

3 WITNESS ANSWERS:

4 A. Again, you're talking about a time prior to being
5 told you're not a part of the Association.

6 EXAMINATION RESUMED BY MR. HARJEHAUSEN:

7 **Q. Well, prior to this lawsuit, what money was put to**
8 **litigation expenses?**

9 A. I -- you mean as far as for the Trust or for the
10 homeowners?

11 **Q. It's my understanding that prior to this lawsuit**
12 **or the meeting with Mr. McCabe, you were under the**
13 **impression that the Trust's lots were part of the**
14 **development of Chandelle Property Association and**
15 **subject to the Covenants. Am I misunderstanding**
16 **that?**

17 A. I would say that that's probably accurate.

18 **Q. And prior to either that meeting with Mr. McCabe**
19 **or this lawsuit, dues were paid, correct?**

20 A. Yes, when they were the 500, 600, whatever it was.

21 **Q. Is it your contention that those dues were put**
22 **toward litigation expenses?**

23 A. The last ones with -- the funds were not used --
24 we noticed that the grounds weren't being kept,
25 and that's when we found out that they were

1 sidetracked to somewhere else.

2 **Q. When is the last time the Trust paid any dues to**
3 **the Association?**

4 A. I would have to check the records. I believe --
5 I'm guessing maybe 2015, 2016, somewhere. That's
6 a guess.

7 **Q. Okay. So since that time, the Trust hasn't paid**
8 **any money to the Association?**

9 A. It paid money to John Stewart for the runway one
10 of those years. We were billed.

11 **Q. For one of those years?**

12 A. For a year somewhere in that range, yes. There
13 was money paid to them. They, you know, sent out
14 an invoice and, you know, that's what -- you know,
15 I think typically that's what happened is a
16 invoice was sent out by them. And again, I'd need
17 to go back through and look and see exactly how
18 that took place.

19 **Q. And at that time, the runway was still titled**
20 **under the name Chandelle Runway, LLC; isn't that**
21 **correct?**

22 A. I believe it may have been, yes.

23 **Q. That would have been before any bankruptcy of CSC**
24 **or Chandelle Runway, LLC, correct?**

25 A. I believe so. I would think so, yes.

1 Q. So at the time those payments were made, none of
2 those dues that the Trust paid was put to the use
3 of litigation, correct?

4 A. To the best of my knowledge, it wasn't, other than
5 the one -- you know, the last year that was paid
6 where we, you know, realized, having paid the
7 dues, that it didn't go towards maintaining the
8 property because they took the stance that they
9 didn't own it, or didn't own anything and that's
10 when the money was converted.

11 Q. Other than that payment to Mr. Stewart, or since
12 that payment to Mr. Stewart, has the Trust paid
13 any dues to the Association?

14 A. No.

15 Q. So to the extent it hasn't paid any dues, it can't
16 argue that any money it paid went to a wrong
17 purpose, can it?

18 A. Well, we can argue if the fees are imposed that,
19 yes, you know, it's out there in litigation.

20 Q. But at least as we sit here today, no money has
21 actually been paid and put toward litigation that
22 the Trust has paid?

23 A. That's correct, other than the last time they paid
24 dues, which may have been 2015, 2016, somewhere in
25 that --

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

CONTRACT OF SALE

RECEIVED from **Rob Graham for Ruth Graham and/or Assigns** Purchaser, this
24 day of September, 2005, the sum of Fifteen Hundred Dollars (\$1,500.00),
 on account of the purchase of the following described property:

Lot #33 on a Preliminary Section 4 Plat included herein consisting of approximately 1.5 ac.
 This Lot being a part of the same property conveyed to CSC Developers by Deed of JB & CR
 Inc. recorded February 20, 1997 in Deed Book 65-L, Page 286, Block Map # 4-05-00-38.00
 in the ROD Office of Spartanburg County, South Carolina.

This enclosed preliminary plat borders to the north by Lot 24 consisting of 1.48 acres on a
 Deed recorded in the ROD Office of Spartanburg County July 30, 2004 in Deed Book 80W
 page 598, borders on the south by a lot containing 2.58 acres on a deed recorded in the ROD
 Office of Spartanburg County September 12, 2001 in Deed Books 74M pages 141 and 144,
borders on the west by Air Park Drive, a Spartanburg County road and borders to the east by
 Chandelle Runway.

Upon payment of the further sum of Eighty Eight Thousand Four Hundred Dollars
 (\$88,400) within 30 days from the date a county approved plat is given to the purchaser, CSC
 Developers, LLC, Seller, covenants and agrees and binds himself and his heirs, executors,
 administrators and assigns, to convey the said property above described to the said **Ruth Graham**
and/or Assigns, her heirs or assigns, in fee simple, by a proper deed, with covenants of general
 warranty, free from encumbrances, except such as are herein agreed to be assumed.

And upon tender of such deed, the Purchaser agrees to fully comply with the terms of this
 Contract of Sale. All taxes, assessments, rents and water rents, and premiums of unexpired policies
 of insurance to be pro-rated to date of completion of sale.

Purchaser has the option to cancel this contract and receive full refund of downpayment if
 approved plat is not ready within 90 days of this date.



Upon failure of the Purchaser to comply with the terms hereof within the stipulated time, the Seller shall have the right to retain the amount paid this day, and to enforce the performance of this contract according to Law.

Purchaser has a twenty-four (24) month option to buy Lot #37 shown on the same preliminary plat consisting of approximately 1.1 acres for the amount of Fifty Thousand Dollars (\$50,000.00). If purchaser buys this lot (37) the maximum yearly assessment will be limited to \$100.00. If CSC Developers should decide to sell the runway to the homeowners, purchaser would not be charged an additional fee for owning Lot 37.

Purchaser agrees to abide by the Chandelle Covenants, Conditions and Restrictions and Revisions recorded at the ROD Office of Spartanburg County. Purchaser also understands that the minimum home heated square foot requirements are in the process of being changed from 2000 to 2600 square feet.

Purchaser agrees to obtain a Spartanburg County building permit and start construction on a home on Lot #33 within 24 months of the date of lot purchase.

WITNESS the parties hereto by their hands and seals the day and year first above written.

AS TO SELLER:

Signed, Sealed and Delivered
in the Presence of:

Marilyn N. Berry

CSC DEVELOPERS, LLC (SEAL)

By:

John H. Stewart (SEAL)
Member

AS TO PURCHASER:

Signed, Sealed and Delivered
in the Presence of:

Marilyn N. Berry

Ron Galt

LIMITED POWER OF ATTORNEY

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, RUTH J. GRAHAM, residing at [REDACTED] hereby appoint ROB GRAHAM of PO Box 550, JENSEN BEACH, FLORIDA, 34958, as my Attorney-in-Fact ("Agent").

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs pertaining to purchase of property in South Carolina and North Carolina and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent's powers shall include, but not be limited to, the power to:

1. Sell, offer to purchase, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property.
2. Enter into binding contracts on my behalf with respect to purchase of property in North and South Carolina and any subsequent permits, licenses, legal documents, etc. that would be required on my behalf.
3. Maintain and/or operate any business that I may own.
4. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.
5. Sell, convey, lease, lease option, rent, mortgage, manage, insure, improve, repair, or perform any other act with respect to any of my investment, rental property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This DOES NOT include the right to sell, rent, lease or encumber any homestead that I now own or may own in the future.
6. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:
 - a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.
 - b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).



c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

d. File or apply for any necessary building permits, licenses, surveys, meetings as may be required by local municipalities.

This Power of Attorney shall be construed broadly as a LIMITED Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to a general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

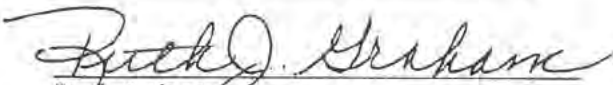
I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

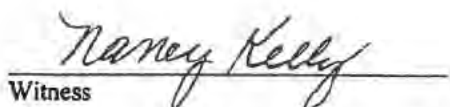
My Agent shall be entitled to reasonable compensation for any services provided as my Agent. My Agent shall be entitled to reimbursement of all reasonable expenses incurred in connection with this Power of Attorney.

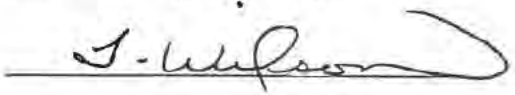
My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death. This Power of Attorney may be revoked by me at any time by providing written notice to my Agent.

Dated 8/8/05, 2005 at 


Ruth J. Graham


Witness

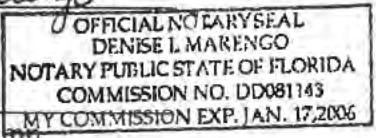

Witness

Acknowledgement:

STATE OF FLORIDA
COUNTY OF SAINT LUCIE

The foregoing instrument was acknowledged before me this 8 day of August, 2005 by Ruth Graham, ~~who is personally known to me or who~~ has produced FL0146650-770-28-718-0 as identification.


Signature of Notary



Name typed, printed, or stamp



PLT BK 173 PG 419-418
Recorded 1 Page on 12/06/2017 09:58:54 AM
Recording Fee: \$10.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, development, and building permits must be obtained from Spartanburg County prior to the commencement of any construction. Permits may also be required by DHEC and SCOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT

DEC 06 2017

DATE

N/F Chandlee Runway, LLC



EXEMPT

Plot as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (a). It does not guarantee the right of title or any other interest in the land. All encroachments or easements shown on this map are shown for informational purposes only. Any land development and construction of any kind must be in order to develop the property.

"I hereby state that to the best of my professional knowledge, information and belief, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."

There is a 5' drainage and utility easement on all side and rear lot lines.

This property is subject to any and all easements and/or rights-of-way of record or not of record.

It is the intent of this survey that Lots 32, 33, 36 and 37 be combined and made one parcel.



Except as specifically shown or stated on this plot, this survey does not purport to reflect any of the following which may be applicable to the subject real estate, easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision regulations; zoning or other land use regulations, and any other facts that an accurate and current title search may disclose. This survey does not constitute a title search by the Surveyor.

Wallace & Associates does not warrant the existence or nonexistence of Jurisdictional Wetlands or areas that may be affected by hazardous materials on the survey site.

This survey is not a true and valid print of the original document unless it bears an original signature and raised embossed seal of the Surveyor.

Wallace & Associates
Complete Surveying Services

Jeffrey M. Wallace (864) 297-6969
P.O. Box 903, Taylors, S.C. 29687

State Of South Carolina
County Of Spartanburg
Combination Survey For
Jane Van Wieren, Trustee of
the Greer RG Irrevocable
Property Trust

Chandelle, Sec. 4 and 4A
Lots 32, 33, 36 and 37

40 0 40 80 1" = 80'

Date: Dec. 03, 2017

Field Book-Range, Page 5049

Field Draw: JW/JB

Reference: Deed H19-402, en-102

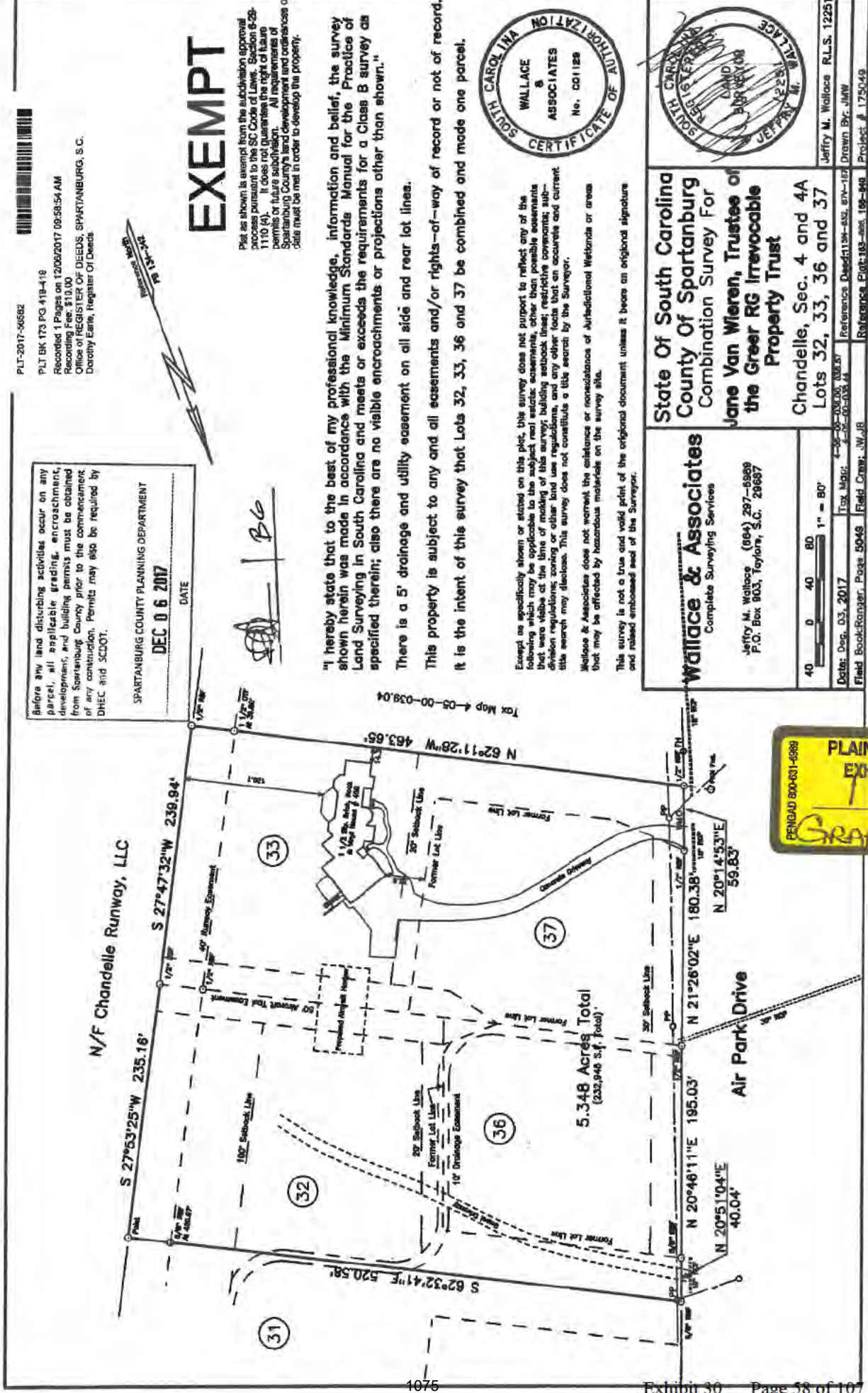
Reference Plot: 183-ans, 186-840

Project #: 1750149

Jeffrey M. Wallace R.L.S. 12251

Drawn By: JMW

Project #: 1750149



DEED 89-1-V PG 897



October 09, 2007 01:19:24 PM Cons: \$50,000.00
Rec: \$10.00 Cnty Tax: \$55.00 State Tax: \$130.00

2007100989

DEED
2 PGS
Page: 1986-1987

FILED IN GREENVILLE COUNTY, SC

Pfeiffer Gantt & Gleaton, PA
The Symphony Center
200A South Main Street
Greenville, SC 29601

Grantee's Address: PO Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)

GENERAL WARRANTY DEED

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that CSC Developers, LLC (hereinafter referred to as "Grantors") in consideration of FIFTY THOUSAND and no/100th Dollars (\$ 50,000.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto THE GREER RG IRREVOCABLE PROPERTY TRUST (hereinafter referred to as "Grantee"), its heirs and assigns, forever, all of its interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: 4-05-00-038.45

This being the same property conveyed unto the Grantor by deed of JB & CR, Inc., dated February 19, 1997 and recorded February 20, 1997 in the Register of Deeds Office for Spartanburg County, South Carolina, in Deed Book 765L at Page 286.



THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

And the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

DEE-2007-56321
Recorded 2 Pages on 10/23/2007 10:59:54 AM
Recording Fee: \$10.00 Documentary Stamps: \$185.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



GENERAL WARRANTY DEED

Page 1 of 2

DEED 89 - VPG 898

WITNESS the Grantors' hands this 5th day of October, 2007.

SIGNED, Sealed and Delivered
In the presence of:

CSC DEVELOPERS, LLC

Martta Finley
WitnessD. E. Cobb
Douglas E. Cobb, MemberL. D. [Signature]
Notary PublicJohn R. Stewart, Jr.
John R. Stewart, Jr., Member

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF SPARTANBURG)

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 5th
day of October, 2007.Martta Finley
WitnessL. D. [Signature]
Notary Public for South Carolina
My Commission expires: 6-9-2009FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007100989 Book: DE 2293 Page: 1986-1987
October 09, 2007 01:19:24 PMTimothy J. Haney

Pfeiffer Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601



Grantee's Address: PO Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that THE GREER RG IRREVOCABLE PROPERTY TRUST (hereinafter referred to as "Grantors") in consideration of TEN and no/100th Dollars (\$ 10.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto JANE VAN WIEREN, TRUSTEE, or her successor in trust, of THE GREER RG IRREVOCABLE PROPERTY TRUST, dated October 25, 2006, and any amendments thereto, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of its interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: 4-05-00-038.45

This being the same property conveyed unto the Grantor by deed of CSC Developers, LLC, October 5, 2007 and recorded October 9, 2007 in the Register of Deeds Office for Spartanburg County, South Carolina, in Deed Book 89-V at Page 897.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

And the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

GENERAL WARRANTY DEED

Page 1 of 2

DEE-2011-18983
Recorded 4 Pages on 5/25/2011 3:09:56 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



FILED 98 M PG 701

WITNESS the Grantors' hands this 19 day of May 2011.

SIGNED, Sealed and Delivered
In the presence of:


Witness 1

 TTEE
Jane Van Wieren, Trustee

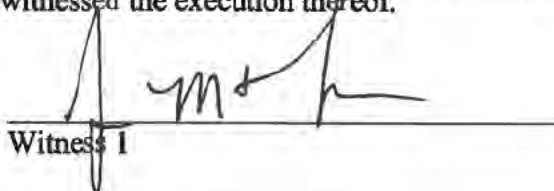

Notary Public

STATE OF FLORIDA)
COUNTY OF Indian River)

PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 19
day of May 2011.


Witness 1


Notary Public for Florida
My Commission expires: Sept 27, 2013



98 M PG 102

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 450 AIR PARK DR. Greer SC
bearing Spartanburg County Tax Map Number 4-05-00-038.45
was transferred by Greer Irrevocable Trust 5
to Jane Van Wieren as trustee of the Greer RG Irrevocable
on 5-19-2011

3. The deed is exempt from the deed recording fee because (See Information section of affidavit): Reason #12

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

Agent for the Trustee

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Rob Graham
Responsible Person Connected with the Transaction

ROB GRAHAM

Print or Type Name Here

SWORN to before me this 25th day of MAY 20 11

Nancy B Ward
SIGNATURE OF NOTARY

Notary Public for South CarolinaMy Commission Expires: 5/21/14

DEC 98 M PG 703

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Office of Register of Deeds,
Spartanburg, South Carolina
Recorded in DEC 98 Page 700
Book 98M

mail - Grantee

DEED 84-P PG 931

333.07

Pfeiffer & Gantt, PA
The Symphony Center
200A South Main Street
Greenville, SC 29601

DEE-2005-64622

Recorded 2 Pages on 12/9/2005 9:22:42 AM

Recording Fee: \$10.00 Documentary Stamps: \$333.00

Office of Register of Deeds, Spartanburg, S.C.

Stephen Ford, Register



Grantee's Address: 685 S.W. Post Terrace, Port St. Lucie, FL 34953

STATE OF SOUTH CAROLINA)

GENERAL WARRANTY DEED

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that CSC DEVELOPERS, LLC, a South Carolina limited liability company, (hereinafter referred to as "Grantor") in consideration of EIGHTY-NINE THOUSAND NINE HUNDRED and No/100th Dollars (\$ 89,900.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto RUTH GRAHAM, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of their interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: Portion of 4 05-00 038.00

This being a portion of the property conveyed unto the Grantor by deed of JB and CR Inc. recorded February 20, 1997 and recorded February 20, 1997, in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 65-L, Page 286.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

And the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

GENERAL WARRANTY DEED

Page 1 of 2

1082

Exhibit



DEED 84 - P PG 932

WITNESS the Grantors' hands this 29th of November 2005.SIGNED, Sealed and Delivered
In the presence of:

CSC DEVELOPERS, LLC

Martha U. Finkley
Witness

Doug Cobb
By: Doug Cobb
Its: Member

Dickson
Notary Public

John R. Stewart, Jr.
By: John R. Stewart, Jr.
Its: Member

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 29th
day of November 2005.

Martha U. Finkley
Witness

Dickson
Notary Public for South Carolina
My Commission expires: 09-2009

951087--VPG167

Pfeiffer & Gantt, PA
The Symphony Center
200A South Main Street
Greenville, SC 29601



Grantee's Address: P.O. Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that RUTH GRAHAM, a South Carolina limited liability company, (hereinafter referred to as "Grantor") in consideration of TEN and No/100th Dollars (\$ 10.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto JANE VAN WIEREN, TRUSTEE, or her successor in trust of the GREER RG IRREVOCABLE PROPERTY TRUST, dated October 25, 2006, and any amendments thereto, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of their interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: Portion of 4 05-00 038.00

This being the same property conveyed unto the Grantor by deed of CSC Developers, LLC, dated November 29, 2005, and recorded December 9, 2005, in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 84-P at Page 931.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

DEE-2007-6989
Recorded 3 Pages on 2/12/2007 9:18:33 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



WITNESS the Grantors' hands this 25th day of October 2006.

SIGNED, Sealed and Delivered

In the presence of:

Paula L. Haney
Witness

Ruth Graham
RUTH GRAHAM

D. R. R.
Notary Public

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF GREENVILLE)

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 25th
day of October 2006.

Paula L. Haney
Witness

D. R. R.
Notary Public for South Carolina
My Commission expires: 6-9-2009

87--VPG169

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- 1) I have read the information on the back of this affidavit and I understand such information.
- 2) The property being transferred is located at lot 33, Chandelle Private Aviation Estates, bearing Spartanburg County Tax Map Number 4 05-00 028.00 Portion was transferred by Ruth Graham Trust, to Greer RG Irrevocable Property on October 25, 2006.
- 3) The deed is exempt from the deed recording fee because (See Information section of affidavit):
9) transferring realty from a family partnership or family trust

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

- 4) As required by Code Section 12-24-70, I state that I am a responsible person who was Connected with the transaction as: attorney
- 5) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

David W. Gantt
 Responsible Person Connected with the Transaction

David W. Gantt
 Print or Type Name Here

SWORN to before me this 25th
 day of October, 2006

Martha U. Finley
 Notary Public for South Carolina
 My Commission Expires: 11/8/11

**State of South Carolina,
County of Spartanburg**

DEE-2017-18749

DEE BK 115-N PG 632-635

Recorded 4 Pages on 04/24/2017 03:57:43 PM
Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$195.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

450 Arr Park Dr.
Mheen, SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated

October 25, 2006 in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained,

sold and released, and by these Presents does grant, bargain, sell and release unto the said Jane Van Wieren, Trustee, or her

successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 32 and Lot 36 on a plat entitled "Chandelle, Section 4A", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on January 8, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 163 at Page 885.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

TMS# 4-05-00-038.57 (Lot 32)

4-05-00-038.00 (Lot 36)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

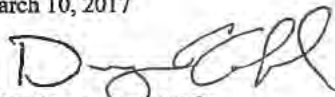
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 its Heirs and Assigns forever.

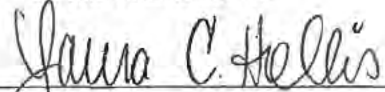
AND CSC Developers, LLC does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

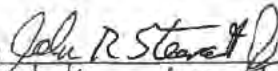


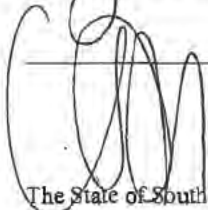
WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF


CSC Developers, LLC



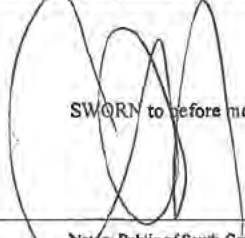
By:  (L.S.)
It's Authorized Members



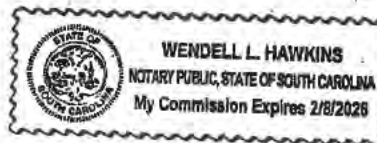
The State of South Carolina,

Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.


SWORN to before me, this March 10, 2017

Notary Public of South Carolina
My Commission Expires 2-6-2026 (SEAL)



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 32, 36 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.57 and 4-05-00-038.00, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$75,000.00
- (b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$75,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.

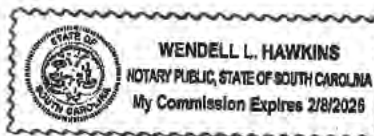
8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
day March of 2017

Notary Public for South Carolina
My Commission Expires: 2-8-2026

John R. Stewart Jr.
Responsible Person Connected with the Transaction
John R. Stewart Jr.
Print or Type Name Here



INFORMATION.

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

PLT BK 173 PG 448

Before any land disturbing activities occur on any parcel, all applicable grading, encroachment, development, and building permits must be obtained from Spartanburg County prior to the commencement of any construction. Permits may also be required by DHEC and SCDOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT

DEC 05 2017

DATE

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-2b-1110 (A). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of said must be met in order to develop the property.

"I hereby state that to the best of my professional knowledge, information and belief, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."

There is a 5' drainage and utility easement on all side and rear lot lines.

This property is subject to any and all easements and/or rights-of-way of record or not of record. It is the intent of this survey that Lots 31 and 35 be combined and made one parcel.

Except as specifically shown or stated on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject tract: easements, other than possible easements that were visible at the time of making of this survey; building setbacks; utility easements; subdivision regulations; zoning or other land use regulations, and any other facts that are accurate and current title search may disclose. This survey does not constitute a title search by the Surveyor.

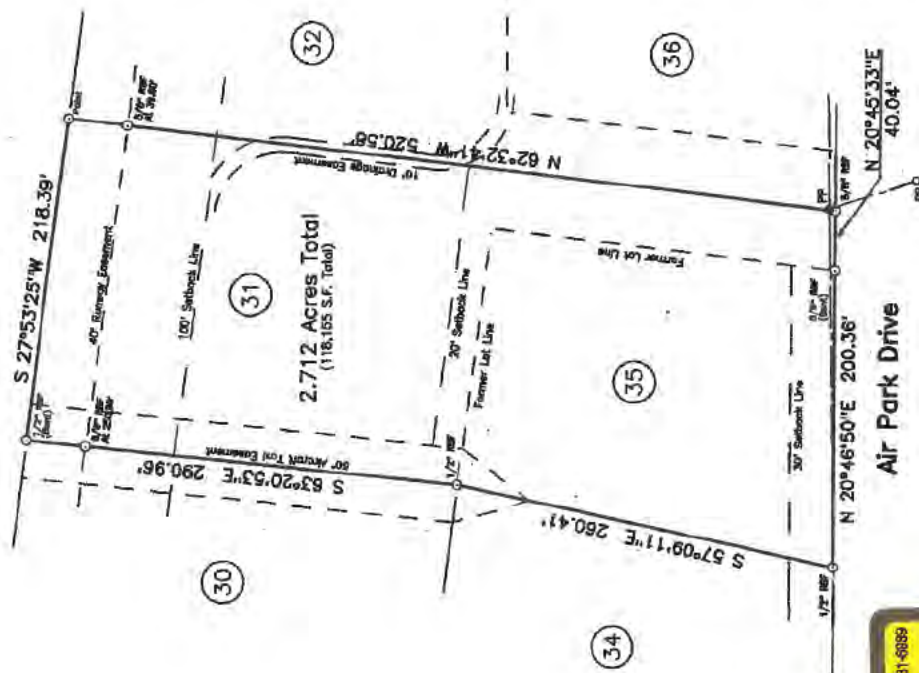
Wallace & Associates does not warrant the existence or nonexistence of Jurisdictional Wetlands or areas that may be affected by hazardous materials on the survey site.

This survey is not a true and valid print of the original document unless it bears an original signature and related embossed seal of the Surveyor.



Wallace & Associates Complete Surveying Services Jeffrey M. Wallace (864) 297-6968 P.O. Box 903, Taylors, S.C. 29687	State Of South Carolina County Of Spartanburg Combination Survey For Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 5 Lots 31 and 35	
	Date: Dec. 03, 2017 Field Book/Plat, Page 5049 Field Crew: JMW/JE	Reference Deed: 115N-828 Reference Plat: 164-709

40 0 40 80 1" = 80'



**State of South Carolina,
County of Spartanburg**

DEE-2017-18748



DEE BK 115-N PG 628-631

Recorded 4 Pages on 04/24/2017 03:57:42 PM
Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$195.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

450 Arr Park Dr.
Greer SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated**October 25, 2006** in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained,

sold and released, and by these Presents does grant, bargain, sell and release unto the said Jane Van Wieren, Trustee, or her

successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 31 and Lot 35 on a plat entitled "Chandelle, Section 5", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on November 20, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 164 at Page 709.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

TMS# 4-05-00-038.58 (Lot 31)
4-05-00-038.59 (Lot 35)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 its Heirs and Assigns forever.

AND CSC Developers, LLC does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.



WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Jaina C. Hollis

D. Stoltz
CSC Developers, LLC

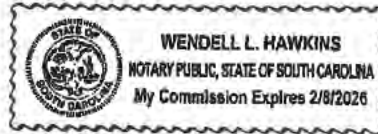
By: John R. Stover (L.S.)
It's Authorized

[Signature]
The State of South Carolina,

Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.

[Signature]
SWORN to before me, this March 10, 2017



(SEAL.)

Notary Public of South Carolina

My Commission Expires 2-8-2026

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:
1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 31, 35 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.58 and 4-05-00-038.59, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
(b) ☐ The fee is computed on the fair market value of the realty which is
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

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(If no amount is listed, place zero here.)
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7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

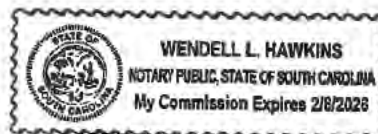
9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
day March of 2017

Notary Public for South Carolina
My Commission Expires: 2-8-2026

John R. Stewart Jr
Responsible Person Connected with the Transaction

John Stewart Jr
Print or Type Name Here



Page 2 of 2

INFORMATION

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- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
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- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed-pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 79)(a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

RUTH GRAHAM



February 24, 2006

CSC Developers
400 Air Park Dr.
Greer, SC 29651

Dear John,

Please find enclosed plans for the home I would like to have constructed on Lot 33 in Chandelle Estates. My son, Rob will be up in the area the week of March 6, 2006. Perhaps if you were available, he could go over the plans with you should you have any questions regarding construction materials, colors, etc. There are some homes over in the Willow Creek Golf Community that he could show you color combinations that I would like to end up with. As you are aware he will be building this home on my behalf and I would appreciate your working with him on this project. Thank you for your help and consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Ruth Graham".

Ruth Graham



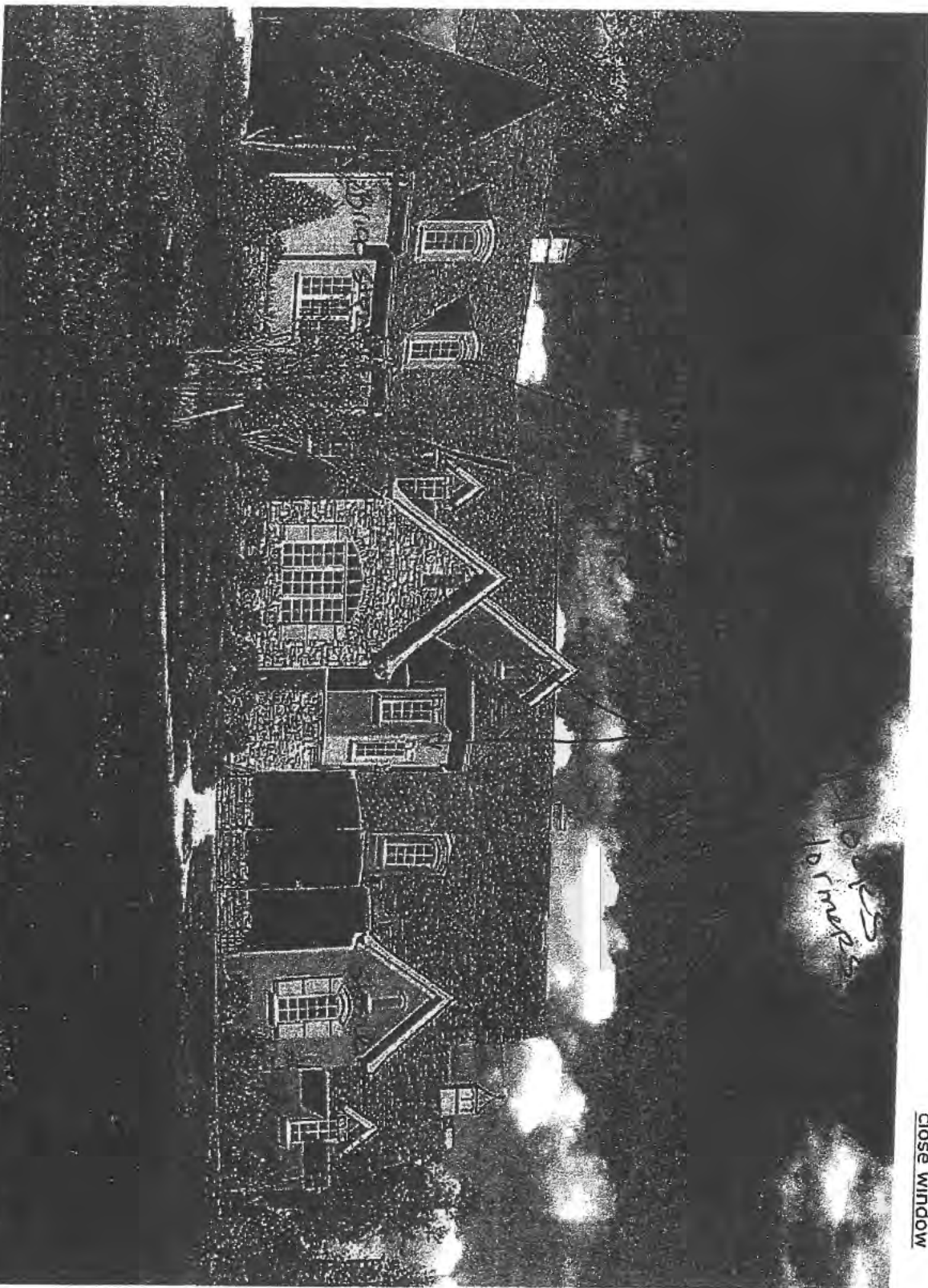


House Plan HWEP101568 image

<http://www.cplans.com/image-gallery.hvx/Q/Plan.HWEP101568/Im...>

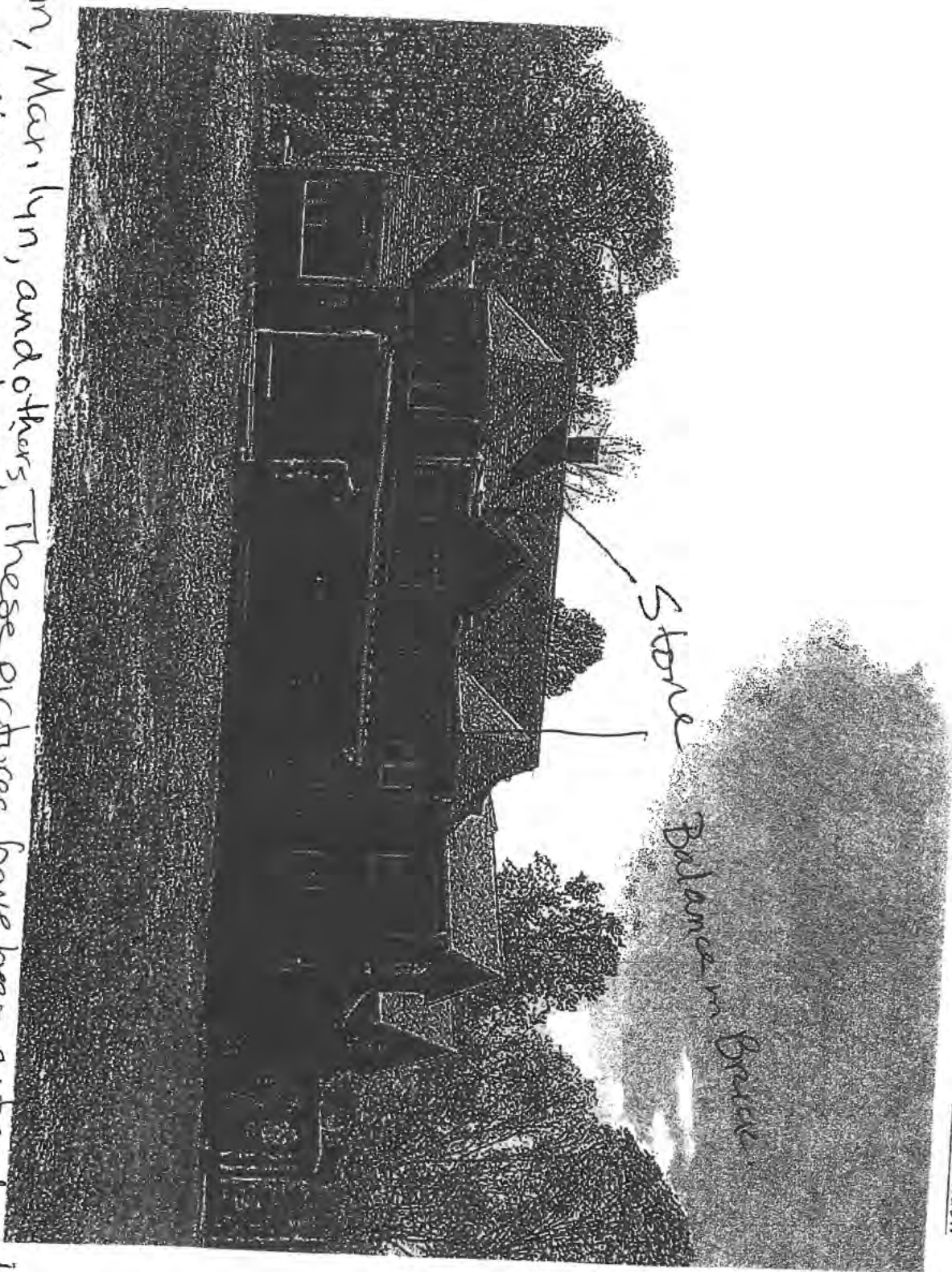
close window

out
to
10 mins



Feel free to contact me if you have any questions. Call Rob Graham
- 418-9900 Thank you Rob G

close window



John, Marilyn, and others, These pictures have been cut and pasted to give you a general idea of what we would like to build.



PRIVATE AVIATION ESTATES

March 13, 2006

Mrs. Ruth Graham



Dear Mrs. Graham,

On March 13th, the Architectural Control Committee approved the blue prints and submitted building form for the construction of your home on Lot 33, Chandelle Private Aviation Estates.

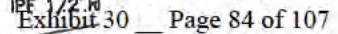
Feel free to contact any of the below committee members if you should have questions. And again, welcome to "Chandelle".

Sincerely,
Architectural Control Committee

John Stewart
Doug Cobb
Marilyn Berry
Ken Payne



The edges of the porch to be set back 130' total from here.



Chandelle

Private Aviation Estates

BUILDING CONSTRUCTION FORM

1. **LOCATION**
 Lot # 33 Street Address 450 AIR PARK DR.
2. **CONTRACTOR'S:** Name Rob GRAHAM Phone 772-335-9876 License # USING SUBS
772-418-9900
 FAX 772-335-9854
3. **HOME DESCRIPTION**
 Style TUSCAN, EUROPEAN
 Exterior Wall Composition MIXTURE OF BRICK, STONE, STUCCO & SHAKE simulated vinyl
 Exterior Roof Composition 30 year ARCHITECTURAL TYPE Roof Pitches 8/12, 12/12, 4/12
 # of Bedrooms 4 # of Baths 3 1/2
 Heated Area- First Floor 3282 sq.ft. Garage Area TBD sq.ft.
 Second Floor 1083 sq.ft. Deck, Patio Area TBD sq.ft.
 Other Floor _____ sq.ft. Total SQ. Feet TBD
 HVAC: Heat Pump _____ Gas Pump _____
4. **HANGAR DESCRIPTION** NOT AT THIS TIME
 Hangar N sq.ft. Type Door _____
 Exterior Surface Composition _____
 Exterior Roof Composition _____
 Roof Pitch _____ Type Door _____
5. **CERTIFICATION**
 I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions. I (we) further certify that there is no intent of using this residence for any business or professional purposes and that the building site and adjacent areas will be free of litter during construction.
 OWNER: Rob Graham Date: 2-24-06
 OWNER: _____ Date: _____

CSC Developers * 400 Air Park Drive * Greer, SC 29651 * 864-877-2126

Date 3-19-10

Mr. Rob Graham
P. O. Box 550
Jensen Beach, FL 24958

Dear Rob,

As instructed by the Board of Directors (BOD) of the Chandelle Property Owners Association, the Architectural Control Committee (ACC) has made a thorough inspection of your property for compliance with the Covenants, Conditions and Restrictions (CCR's). It is our desire to be unbiased but firm in our commitment to making sure that Chandelle is developed harmoniously and consistently maintained to be as esthetically pleasing as possible.

We have made an across-the-board decision to approve all existing TV satellite dishes, surveillance cameras and outdoor lighting. However, all future additions need to be requested in writing.

At this time, we are requesting that only one security system warning sign be placed either on the bottom of your mailbox post or within a foot of your mailbox on a secure stake that is upright at all times. Please do not put too large a sign, 10" x 10" or less is preferred. A decal near the front door is also acceptable. If these signs become too distracting, we may ask that they be removed. We are also asking that any yard ornament be neat and upright and that your mailbox be plumb.

Many of our residents have garbage pickup service. Please make sure that your storage container is out of sight after being emptied.

Current Violations, Approvals and Recommendations:

Violation, Section 5.2: Pile of cement blocks in your back yard next to your home needs to be removed within 30 days.

You are a very important part of our community and your efforts will help keep our property values high. If you need to contact a member of the ACC or the BOD, always feel free to do so.

Sincerely,
The ACC





PRIVATE AVIATION ESTATES

To: Rob Graham
From: Chandelle ACC
Subject: Property Maintenance
Date: August 15, 2012

Mr. Graham:

The current members of the Chandelle Architectural Control Committee are Stu Swanson, Lynn Fleming, and Pat Finucane. Not all of us have met you in person, but we are all full-time residents of Chandelle. The role of the ACC is fully outlined in the Chandelle Documents, but basically, the committee is charged by the Property Owners Association to insure compliance with those documents and to preserve the quality and harmony of construction and improvements within the Chandelle community.

It has come to the attention of the ACC that your property is not being maintained to the standards of the Chandelle community. Specifically, the members of the ACC and the Association board of directors feel that the exterior appearance of your property needs attention. The areas that need to be addressed are as follows:

1. Mowing and trimming need to be accomplished on a regular basis.
2. Any excess construction materials should be discarded or stored inside.
3. Landscaping plantings should be kept neatly trimmed and mulch beds weeded and mulched on a regular basis.
4. Red clay stains around the foundation should be removed.

We are beginning to experience new interest from prospective owners, and we need to present the community at its best. Please take this as constructive criticism and help us make our community look like the premier aviation development that is Chandelle Aviation Estates. We all are looking forward to a period of exciting growth!

Kind Regards,
Chandelle ACC (on behalf of the Property Owners Association)



Subject: Re: Letter from Chandelle ACC

From: Rob Graham <investorob@aol.com>

Date: 8/25/2012 11:54 AM

To: topduck2k@yahoo.com

CC: kgallowa@ix.netcom.com, bjisrael1@bellsouth.net, deputyfour@aol.com, kb3cwn@att.net, icacplane@yahoo.com

Mr Fleming,

We are in receipt of your letter regarding "constructive criticism" as you put it and as you can see we are working on the issues you have addressed. We have removed the 5 bundles of shingles that were sitting in the driveway for 10 days awaiting the roofer to show up..not a problem we will let our roof leak! We have gotten the grass cut, etc.

Since you have brought these issues up we would appreciate hearing from you regarding some "creative criticism" we have regarding items and things we have had to look at and deal with and we want to make sure that you have addressed them as well with other neighbors so as to not be discriminating. The items are as follows:

Across from us to the rear we are always looking at enclosed trailers whether they be horse, cargo, etc and saw horses left out if these are allowed please let us know so when we get a trailer we won't be expecting any violation notices from you. Perhaps this home is not a part of Chandelle?



One of the biggest detractions we find to our neighborhood is what we have had to look at for our entire time here and that is the High grass, junk, debris shells of cars, shells of aircraft, trucks, trailers, hail damaged vinyl and boarded up window for QUITE some time and the former Chandelle office. We have had to endure burning piles of junk from down there too..What can be done about this eyesore and nuisance to improve the desirability of our neighborhood?





Without trespassing on our neighbors property we noticed high grass and weeds similar to those you

'speak about at our home and want to make sure you are giving them the same "creative criticism" by letter form as us. We also notice red clay stains on their driveway and want to make sure they got written notice or is that allowed?



We would also like to bring to your attention that we have seen for quite some time another neighbors hangar door is open quite alot and frankly it appears like an aircraft repair shop with cowling laying outside of the hangar, saw horses, vehicles on the grass day after day. FRANKLY our 5 bundles of shingles are FAR less detracting in OUR opinion.. I guess we should just leave our garage doors open so the roofer can go in and get the shingles that way and have more of our junk showing. We are hoping that will be ok with you. Again we guess that this is fine leaving hangar doors open and garage doors open revealing junk, etc. is permitted?



We also noticed weed growing in the flower beds of the Rexroad home...Have they been sent a notice?

We also hear dogs barking at 6:30AM disturbing our peace to the north of us..Is this allowed?

We would like to know where we could put no trespassing signs as we have seen golf carts, etc. trespassing on our property and would request this to cease and desist so that our privacy is not denied and respected.

We plan on doing more in depth inspections perhaps by golf cart or on foot since it seems ok for neighbors to drive by and on and trespass on our property and we are sure We will have some more "constructive criticism" for you.

Regards,
Jane VanWieren, Trustee
Rob Graham

-----Original Message-----

From: lynn fleming <topduck2k@yahoo.com>

To: investorob <investorob@aol.com>

Cc: Stu Swanson <icacplane@yahoo.com>; Pat Finucane <kb3cwn@att.net>; Billy Israel <bjisrael1@bellsouth.net>;

Bruce Goldberg <deputyfour@aol.com>; Ken Galloway <kgallowa@ix.netcom.com>

Sent: Wed, Aug 15, 2012 1:51 pm

Subject: Letter from Chandelle ACC

Mr. Graham:

Please find attached a letter from the ACC regarding property maintenance at Chandelle. A hard copy will be mailed as well.

Regards,
G. Lynn Fleming
topduck2k@yahoo.com
lynn.fleming@bellsouth.net

From: Pat <n831rv@gmail.com>

To: Chandelle Poa <chandellepoa@aol.com>; bjisrael1 <bjisrael1@bellsouth.net>; icacplane <icacplane@yahoo.com>; rv8builder <rv8builder@gmail.com>; topduck2k <topduck2k@yahoo.com>; hazmat1212 <hazmat1212@aol.com>; deputyfour <deputyfour@aol.com>

Subject: Re: Fwd: Hangar Construction on Lot 32 and 33

Date: Tue, Oct 31, 2017 12:44 pm

Thanks' for the update. Rob, please provide us with exterior drawings/elevations and site plan locations so that we may properly review your construction plan. E-mail or hard copy are acceptable. Thanks for your attention to this request.

Pat Finucane
Member ACC

On 10/31/2017 10:47 AM, Chandelle Poa wrote:

-----Original Message-----

From: Rob Graham <investorob@aol.com>

To: ChandellePOA <ChandellePOA@aol.com>

Sent: Mon, Oct 23, 2017 2:44 pm

Subject: Hangar Construction on Lot 32 and 33

Just wanted to notify the ACC of Chandelle that we plan to start construction of an Airplane Hangar on Lots 33 and 32. Interior square footage not to exceed 3600 square feet and construction will conform with the current home on Lot 33. Exterior materials will be majority of brick, some stone and some vinyl siding, and aluminum /metal capping. Interior finish will be drywall per Spartanburg County building codes. Approximate interior structure size is 45 X 80 and is staked out on the proposed location within the required setbacks. Thank you for your help in this matter.
Sincerely,

Rob Graham
772-418-9900

-----Original Message-----

From: ChandellePOA <ChandellePOA@aol.com>

To: chandellepoa <chandellepoa@aol.com>

Sent: Wed, Dec 14, 2016 1:51 pm

Subject: Chandelle POA Appointments



December 14, 2016

Dear Chandelle Neighbors:



It is our pleasure to announce to you that the Board of Directors, by the authority given to it in Article VI – Board of Directors, Section 6.6 – Removal of Directors: Vacancies, of the Chandelle Aviation Estates By Laws, has appointed Lynn Fleming as a Director, to fill the unexpired term left by the resignation of Ken Galloway. Lynn has served our
PLAINTIFF 2641

From: Ely Grote <Ely.Grote@mccabetrotter.com>

To: Chandelle Poa <chandellepoa@aol.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>

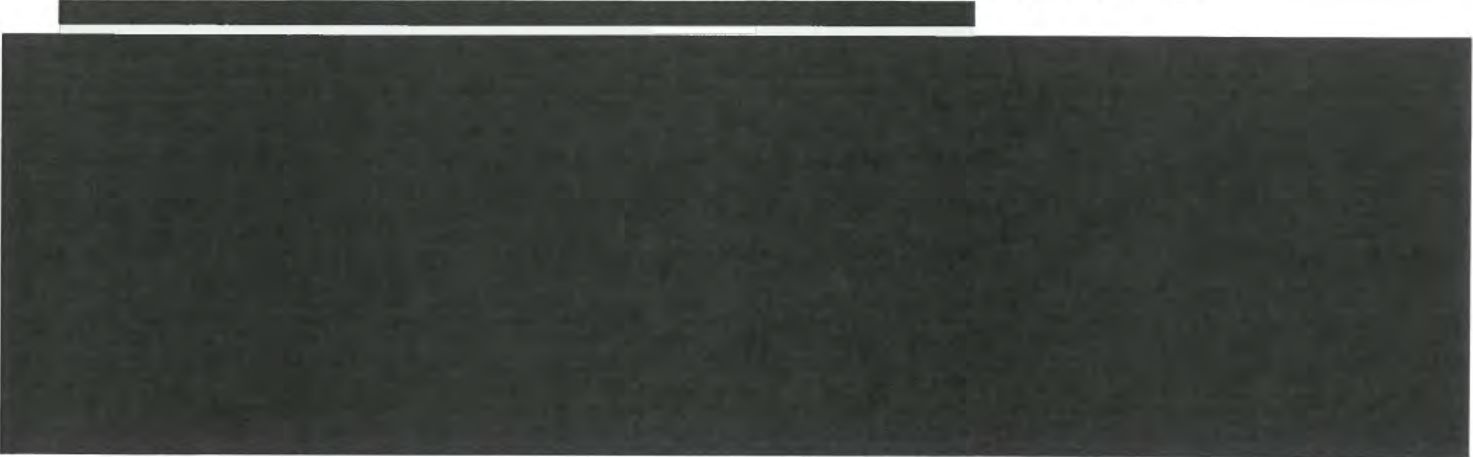
Date: Fri, Nov 17, 2017 9:28 am



From: Chandelle Poa [<mailto:chandellepoa@aol.com>]

Sent: Wednesday, November 15, 2017 10:18 PM

To: Ely Grote <Ely.Grote@mccabetrotter.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>



-----Original Message-----

From: Rob Graham <investorob@aol.com>

To: chandellepoa <chandellepoa@aol.com>; n831rv <n831rv@gmail.com>

Sent: Tue, Nov 14, 2017 10:58 am

Subject: 450 Air Park Dr. Greer SC Hangar Construction on Lot 32 and 33

Please find attached plans of the proposed hangar to be constructed for your review.



PLAINTIFF 2643

Exhibit 30 __ Page 93 of 107

We also have been in contact with Lee Davis at Spartanburg County Mapping to combine lots 32, 33, 36 and 37 into 1 parcel as well as having them surveyed to be recorded in the county records. Doing this will negate the need for the taxiway that you addressed in your letter that was emailed on 11-8-2017.

Please let us know what else is needed to proceed with this project.

I plan on supervising the construction on this project.

Sincerely,

Rob Graham

772-418-9900

-----Original Message-----

From: Chandelle Poa <chandellepoa@aol.com>

To: investorob <investorob@aol.com>

Sent: Wed, Nov 8, 2017 12:07 pm

Subject: Re: Hangar Construction on Lot 32 and 33

**Attached please find correspondence from the
Chandelle Property Owners Association Board of Directors
regarding your property.**

-----Original Message-----

From: Rob Graham <investorob@aol.com>

To: ChandellePOA <ChandellePOA@aol.com>

Sent: Mon, Oct 23, 2017 2:44 pm

Subject: Hangar Construction on Lot 32 and 33

Just wanted to notify the ACC of Chandelle that we plan to start construction of an Airplane Hangar on Lots 33 and 32. Interior square footage not to exceed 3600 square feet and construction will conform with the current home on Lot 33. Exterior materials will be majority of brick, some stone and some vinyl siding, and aluminum /metal capping. Interior finish will be drywall per Spartanburg County building codes.

Approximate interior structure size is 45 X 80 and is staked out on the proposed location within the required setbacks

Thank you for your help in this matter.

Sincerely,

Rob Graham

772-418-9900

-----Original Message-----

From: ChandellePOA <ChandellePOA@aol.com>

To: chandellepoa <chandellepoa@aol.com>

Sent: Wed, Dec 14, 2016 1:51 pm

Subject: Chandelle POA Appointments



December 14, 2016

PLAINTIFF 2644

Exhibit 30 __ Page 94 of 107

From: Chandelle Poa <chandellepoa@aol.com>
 To: bjisrael1 <bjisrael1@bellsouth.net>
 Subject: Fwd: 450 Air Park Dr. Greer, SC Combining lots 32, 33, 36, 37
 Date: Wed, Jul 18, 2018 4:30 pm

-----Original Message-----

From: Chandelle Poa <chandellepoa@aol.com>
 To: icacplane <icacplane@yahoo.com>; lynn.fleming <lynn.fleming@bellsouth.net>; deputyfour <deputyfour@aol.com>;
 hazmat1212 <hazmat1212@aol.com>; bjisrael1 <bjisrael1@bellsouth.net>
 Sent: Wed, Nov 22, 2017 9:35 pm
 Subject: Fwd: 450 Air Park Dr. Greer, SC Combining lots 32, 33, 36, 37

FYI

Billy

-----Original Message-----

From: Rob Graham <investorob@aol.com>
 To: ChandellePOA <ChandellePOA@aol.com>
 Sent: Mon, Nov 20, 2017 3:30 pm
 Subject: Fwd: 450 Air Park Dr. Greer, SC Combining lots 32, 33, 36, 37

Per the conversation with Billy, please accept this email as approval of the declarant to combine the subject lots.
 Please let me know if anything else is needed.

Thank you,

Rob Graham
 772-418-9900

-----Original Message-----

From: John Stewart <stewart6337@gmail.com>
 To: Rob Graham <investorob@aol.com>
 Sent: Mon, Nov 20, 2017 2:52 pm
 Subject: Re: 450 Air Park Dr. Greer, SC Combining lots 32, 33, 36, 37

Rob,

We have no problem with you combining lots 32 and 36 with your other two combined lots 33 and 37. We understand that by combining these four lots together the taxiway easement between the lots will no longer exist. Good luck on your project.

CSC Developers LLC
 John Stewart (member)
 Doug Cobb(member)



On Mon, Nov 20, 2017 at 10:58 AM, Rob Graham <investorob@aol.com> wrote:

Hi John,

Per Chandelle documents, I sent notice of proposed construction of an airplane Hangar that is on lots 37 and lot 36 over where a previous aircraft taxiway was. Billy called and notified me that I needed (per the Declarations) an ok from CSC Developers to combine these lots.

If this meets with your approval of combining lots 32, 33, 36, and 37 (Lots 33 and 37 are already combined), please acknowledge such to satisfy the requirements of the declarations.

Property Owners Association



PRIVATE AVIATION ESTATES

To: Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust and Rob Graham
 From: BOD, Chandelle Property Owners Association
 Subject: Hangar Construction Lot 33 and 32
 Date: December 19, 2017

The Chandelle ACC has reviewed your request for approval of construction of a hangar on Lot 33 and Lot 32 and is satisfied with the design of your hangar, from an architectural perspective, and stands willing to give architectural approval subject to the following:

- Obtain a legal opinion and provide it to the BOD verifying that the easement shown on the plat that you submitted will be terminated by merger of the properties and that building on the platted taxiway easement will be legal.
- That Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust and Rob Graham execute an indemnity agreement in favor of the Board of Directors, the ACC and members thereof, to protect them should building over the taxiway easement be held to have been illegal, improper or infringing upon the rights of other property owners in Chandelle.
- The 2016 and 2017 Chandelle POA assessments for combined Lots 33 and 37 are delinquent and must be paid. Balance outstanding as of 12/2/2017 is \$3,145.01.

Be advised that if you proceed to build without ACC approval and without complying with the foregoing requirements, you are doing so at your own risk, including the risk that the ACC/Association may pursue an injunction. You may also be subject to fines as are allowed in the Chandelle Documents. Should you have any questions, you may contact the Board of Directors.

Chandelle BOD and ACC



From: Rob Graham <investorob@aol.com>
To: ChandellePOA <ChandellePOA@aol.com>; bjisrael1 <bjisrael1@bellsouth.net>
Subject: 450 Air Park Dr. Greer Requested information
Date: Wed, Jan 10, 2018 9:05 am
Attachments: Opinion Letter 180109.pdf (1724K)

Please find attached the attorney's response to the taxi way easement and supporting case law regarding the issue.

Sincerely,

Jane VanWieren, Trustee

Rob Graham

772-418-9900



PLAINTIFF 2649

Exhibit 30 __ Page 97 of 107

116 E Earle St.
Anderson, SC 29621
(864) 332-0881 Phone
(864) 332-0882 Fax
anderson@wlhawkinslawfirm.com

Wendell L. Hawkins, PA
Attorneys at Law
Wendell L. Hawkins, Esq.

January 9, 2018

Susan S. Miranda, Esq.

103-C Regency Commons Dr.
Greer, SC 29650
(864) 848-9370 Phone
(864) 848-9759 Fax
greenville@wlhawkinslawfirm.com
Wendell L. Hawkins, Esq.
Melinda K. Powers
Aimee V. Leary
Writer's Reply Address
Phone Extension - 211
wlh@wlhawkinslawfirm.com

Attn: Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust

Electronic delivery: investorob@aol.com

Re: Termination of 50' Aircraft Taxi Easement-Opinion

Dear Mrs. Van Wieren:

You have requested our office issue an opinion addressing the requests of the Chandelle Property Owner Association (the "Association") in a letter dated December 19, 2017. In that letter, the Association requested the following:

1. A legal Opinion verifying that the easement shown on your plat will be terminated by merger of the properties and that the building on the platted taxiway will be "legal" and "not infringing upon the rights of other property owners in Chandelle; and
2. An indemnification agreement in favor of the Association, the Board of Directors, the ACC and members thereof to protect them should building over the taxiway easement be held to have been "illegal, improper or infringing upon the rights of other property owners in Chandelle"; and
3. Payment of the assessments for lots 33 & 37.

First of all, I do not believe there is a need to address the payment of assessments so no opinion is given as to that matter. With respect to the termination of the 50' Taxiway Easement shown on that certain Plat entitled "Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust" prepared by Wallace and Associates, R.L.S. 12251 dated December 3, 2017 (the "Easement"), I offer the following. Based on the Plat, the Easement is a burden on Lots 32, 33, 36, and 37 (The servient tenement or estate). The Easement was intended to benefit those lots only (the "Dominant Estate"). According to the holdings of *Haselden v. Schien*, 167 S.C. 534, 166 S.E. 634 (1932), "in order to effectuate the extinguishment of an easement by unity of title, the fee to the dominant and servient tenements must be vested in the same person at the same time." So, it is my opinion that the Easement is terminated by the Trust's outright fee simple ownership of the servient estate and the dominant estate.

With respect to the indemnification requested in Paragraph 2 of the Association's letter, I don't believe the Association, Board Members or Committee Members are authorized under the Restrictions to request indemnity in the performance of their duties and I would not give anyone a blanket indemnity (which includes the expense of defense and duty to defend). I believe the Association, the Board and its various committees are most likely covered under a director's and officers policy of indemnification and that is the instrument from which they must seek and were intended to seek indemnity under should someone decide to sue any of them for whatever such person should whimsically decide to sue them over. I would consider a lawsuit over this easement to be whimsical and frivolous, but I cannot prevent any person or entity from suing another.

QUALIFICATIONS/ASSUMPTIONS

The Opinions rendered are subject to the following qualifications and assumptions:

1. The Trust has not been revoked or otherwise amended to affect the provisions of the Trust;
2. This opinion is for the benefit of Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust only and is not transferrable;
3. No opinion is offered with respect to the terms "legal", "proper" and "not infringing upon the rights of other property owners in Chandelle" as used in the Association's letter dated December 19, 2017 as the terms are overly broad and subjective.
4. This opinion assumes the Easement was properly created and offers no opinion as to errors in the creation of the Easement which may make the Easement of no force and effect and void *ab initio*.

With kind regards, I remain

Very truly yours,

Wendell L. Hawkins, Esq.

Encl.
Letter dated December 19, 2017
Plat
Haselden v. Schien, 167 S.C. 534, 166 S.E. 634 (1932)

Property Owners Association



PRIVATE AVIATION ESTATES

To: Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust and Rob Graham
 From: BOD, Chandelle Property Owners Association
 Subject: Hangar Construction Lot 33 and 32
 Date: December 19, 2017

The Chandelle ACC has reviewed your request for approval of construction of a hangar on Lot 33 and Lot 32 and is satisfied with the design of your hangar, from an architectural perspective, and stands willing to give architectural approval subject to the following:

- Obtain a legal opinion and provide it to the BOD verifying that the easement shown on the plat that you submitted will be terminated by merger of the properties and that building on the platted taxiway easement will be legal and not infringing upon the rights of other property owners in Chandelle.
- That Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust and Rob Graham execute an indemnity agreement¹ in favor of the Chandelle Property Owners Association, the Board of Directors, the ACC and members thereof, to protect them should building over the taxiway easement be held to have been illegal, improper or infringing upon the rights of other property owners in Chandelle.
- The 2016 and 2017 Chandelle POA assessments for combined Lots 33 and 37 are delinquent and must be paid. Balance outstanding as of 12/2/2017 is \$3,145.01.

Be advised that if you proceed to build without ACC approval and without complying with the foregoing requirements, you are doing so at your own risk, including the risk that the ACC/Association may pursue an injunction. You may also be subject to fines as are allowed in the Chandelle Documents. Should you have any questions, you may contact the Board of Directors.

Chandelle BOD and ACC

¹ Which must first be approved as to form and content by the Board of Directors and the ACC.



any land disturbing activities occur on any all applicable grading, encroachment, and building permits must be obtained in Spartanburg County prior to the commencement of construction. Permits may also be required by the SCDOT.

SPARTANBURG COUNTY PLANNING DEPARTMENT

DEC 06 2017

DATE

PLT-2017-56582



PLT BK 173 PG 419-419

Recorded 1 Pages on 12/06/2017 09:56:54 AM

Recording Fee: \$10.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.

Dorothy Earle, Register Of Deeds

Reference North
PB 134-342

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of date must be met in order to develop the property.

"I hereby state that to the best of my professional knowledge, information and belief, the survey shown herein was made in accordance with the Minimum Standards Manual for the Practice of Land Surveying in South Carolina and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."

There is a 5' drainage and utility easement on all side and rear lot lines.

This property is subject to any and all easements and/or rights-of-way of record or not of record.

It is the intent of this survey that Lots 32, 33, 36 and 37 be combined and made one parcel.

Except as specifically shown or stated on this plat, this survey does not purport to reflect any of the following which may be applicable to the subject real estate: easements, other than possible easements that were visible at the time of making of this survey; building setback lines; restrictive covenants; subdivision regulations; zoning or other land use regulations, and any other facts that an accurate and current title search may disclose. This survey does not constitute a title search by the Surveyor.

Wallace & Associates does not warrant the existence or nonexistence of Jurisdictional Wetlands or areas that may be affected by hazardous materials on the survey site.

This survey is not a true and valid print of the original document unless it bears an original signature and raised embossed seal of the Surveyor.



Wallace & Associates
Complete Surveying Services

Jeffrey M. Wallace (864) 297-6989
P.O. Box 903, Taylors, S.C. 29687

State Of South Carolina
County Of Spartanburg
Combination Survey For
Jane Van Wieren, Trustee of
the Greer RG Irrevocable
Property Trust

Chandelle, Sec. 4 and 4A
Lots 32, 33, 36 and 37



Jeffrey M. Wallace R.L.S. 12251

40 0 40 80
1" = 80'

Date: Dec. 03, 2017

Tax Map: 4-05-00-038.00, 038.57
4-05-00-038.44

Reference Deed: 115N-632, 87V-187

Drawn By: JMW

Field Book: Ranger, Page 5049

Field Crew: JW, JB

Reference Plat: 163-885, 158-840

Project # 175049

PLAINTIFF 2654

167 S.C. 534
Supreme Court of South Carolina.

HASELDEN
v.
SCHEIN.

No. 13519.
|
Nov. 21, 1932.

Synopsis

Appeal from Common Pleas Circuit Court of Beaufort County; J. Henry Johnson, Judge.

Suit by M. V. Haselden against Annie Schein. From a decree for plaintiff, defendant appeals.

Affirmed.

West Headnotes (11)

[1] Easements

↪ Continuous and apparent easements, and notice

Rule that easement may be extinguished by conveying servient estate to purchaser without notice of easement requires intentional concealment or deception which imposed upon purchaser.

2 Cases that cite this headnote

[2] Easements

↪ Continuous and apparent easements, and notice

Easement of right of way held not extinguished by failure of reference to its existence in deeds to purchaser of servient estate and purchaser's grantor, where predecessors' deeds gave notice thereof, and way was in open notorious use.

1 Cases that cite this headnote

[3] Easements

↪ Merger

Where owner of servient estate over which right of way exists acquires title in fee to dominant estate, right of way is extinguished.

2 Cases that cite this headnote

[4] Easements

↪ Merger

To effectuate extinguishment of easement by unity of title, fee to dominant and servient tenements must be vested in same person at same time.

1 Cases that cite this headnote

[5] Easements

↪ Merger

Easement held not extinguished by merger of title where joint owner of both servient and dominant estates before easement was imposed became sole owner of servient estate and conveyed it to another before he reacquired dominant estate.

3 Cases that cite this headnote

[6] Easements

↪ Nature and form: injunction

Litigant may waive action for damages for obstructing easement of way and seek injunctive relief.

Cases that cite this headnote

[7] Estoppel

↪ Knowledge of facts

One cannot avail himself of estoppel if his own negligence to avail himself of information within reach brought about situation complained of.

1 Cases that cite this headnote

[8] Estoppel

Haselden v. Schein, 167 S.C. 534 (1932)

166 S.E. 634

⚡ Prejudice to person setting up estoppel

"Estoppel" arises when person by his action or nonaction causes one to change his position to his hurt, and it would be inequitable to permit such person to set up claim antagonistic to one claiming estoppel.

Cases that cite this headnote

[9] Estoppel

⚡ Prejudice to person setting up estoppel

To enforce estoppel against another, one must show he was misled to his injury by action or nonaction, or language or silence of such other.

Cases that cite this headnote

[10] Appeal and Error

⚡ Judgment or Order

Court's statement in decree, that easement was quasi public right of way to theater, if error, held harmless, where prayer for injunctive relief was not based alone on obstruction to theater patrons' use.

Cases that cite this headnote

[11] Appeal and Error

⚡ Remedy at law or in equity

Objection that remedy for obstructing easement is action at law for damages and not injunction, not made in trial court, comes too late.

Cases that cite this headnote

Attorneys and Law Firms

*634 Nathans & Sinkler, of Charleston, for appellant.

George W. Beckett, of Beaufort, for respondent.

Opinion

BONHAM, J.

Plaintiff, the respondent, seeks by this action to enjoin the defendant from obstructing an easement which plaintiff claims over an alleyway, on the property of the defendant, in the city of Beaufort, S. C., and seeks to recover the sum of \$1,000 damages for alleged obstruction thereof.

The defendant, the appellant here, for answer denies the existence of such easement, and alleges that plaintiff is estopped to set up a claim to such easement by reason of the estoppel which had existed against plaintiff's grantor.

The matter was heard by Judge J. Henry Johnson at chambers, by consent of counsel, upon an agreed statement of facts. He filed his decree adjudging and ordering that plaintiff have an injunction against the defendant against any interference with the use of said right of way which might impair or defeat the easement, and "that she be and is hereby required to move the fence back to the line of the eastern side of the building formerly known as the Palace Market." From this decree the appeal comes to this court.

From the "Agreed Statement of Facts," set out in the transcript of record, we condense this shorter, but sufficient, statement:

*635 The property on both sides of and including the disputed right of way was owned in fee by J. R. Bellamy and L. H. Little, Sr.; they sold to Chris Culuris a lot fronting on Bay street, in the city of Beaufort, S. C., with certain defined boundaries, and by the same deed of conveyance covenanted "that a private right of way ingress and egress four (4) feet wide and extending from Bay Street on the South to Port Republic Street on the North shall be maintained as appurtenant to the land hereby conveyed; but the same shall not be or become (evidently something left out here in recording) retain the right to maintain gates or doors in and upon the same, and to keep the same free and clear of any and all obstacles to its use as a way for the use of the occupants of the property on both sides thereof; said way to be adjacent to and west of the premises above granted and described; but nothing herein contained shall be construed to prevent the grantor herein from building over the same so long as it is open and unobstructed and ten feet high." This deed was dated April 23, 1921.

At the time of this conveyance, the property upon which this servitude was imposed was owned by the same grantors, J. R. Bellamy and L. H. Little, Sr. Subsequently,

to wit, November 23, 1921, L. H. Little, Sr., conveyed to J. R. Bellamy "all his right, title and interest in and to the balance of the property, measuring thirty feet nine inches (30# 9#), being the above premises conveyed to Bellamy and Little by Epstein, less the premises heretofore conveyed to Chris Culuris." May 22, 1924, Bellamy conveyed this last-mentioned property to Beaufort Bank.

Bellamy and Little foreclosed the purchase-money mortgage given to them by Culuris, and at the sale it was bid off by J. R. Bellamy, to whom deed was made June 4, 1925.

J. R. Bellamy became insolvent and Hal R. Pollitzer was appointed receiver of his estate. By deed dated February 21, 1927, Pollitzer conveyed to M. V. Haselden, plaintiff, the property conveyed to Culuris by Bellamy and Little. This deed makes no mention of the easement appurtenant thereto.

November 10, 1927, W. J. Thomas, as receiver of Beaufort Bank, conveyed to Annie Schein the property conveyed to Beaufort Bank by J. R. Bellamy. This deed makes no reference to the easement.

The appeal assails the decree of the circuit court upon the grounds stated in seven exceptions, which appellant's counsel, in his brief, elects to treat under three heads, which method of treatment we adopt. They are:

(1) Does estoppel operate to defeat a claim of easement, or is it necessary for a merger of the dominant and servient estates to be had before the right of dominant estate in such easement can be barred?

(2) Was the easement so limited that it did not include the right of user by patrons of a picture house on the rear of the lot, the interference with such user being the basis of plaintiff's claim for injunction?

(3) Do the pleadings and facts as agreed on entitle plaintiff to relief by injunction, or is his remedy by an action at law for damages?

Appellant's contention under the first head is that the circuit judge erred in holding that there was no merger of the dominant and servient estates in Bellamy, but that, if there was no merger, nevertheless plaintiff is estopped to claim the easement because his predecessor in title, Bellamy, was estopped to claim it for the reason that Bellamy had conveyed the servient tenement to Beaufort

Bank without stating in the deed that it was subject to this easement, and the bank had conveyed it to the defendant without making any mention of the easement. Hence, if Bellamy was estopped, the plaintiff, as his successor in title of the dominant estate, is estopped.

Was there a merger? Or, more strictly speaking, was there an extinguishment of the easement?

The contention of the appellant is that it was extinguished (1) by the uniting in Bellamy of the title in fee to the dominant and servient estates; or (2) by the conveyance of the servient tenement to Annie Schein without notice of the easement.

Was the title to the dominant and servient estates ever vested in Bellamy at one and the same time? When the easement came into existence, the dominant and servient estates were owned by Bellamy and Little. Their deed of conveyance to Culuris imposed upon their own land an easement in favor of the land conveyed to Culuris. The Culuris property became the dominant estate. Thereupon Bellamy bought the interest of Little in the servient estate. This he conveyed to Beaufort Bank, which in turn conveyed it to Annie Schein. When he reacquired the title to the property which he and Little had sold to Culuris, the title to the servient estate was in the bank. It never was in Bellamy at the same time that he owned the dominant estate.

[1] There can be no doubt that, if the owner of the servient estate over which a right of way exists, acquires the fee-simple title to the dominant estate, the right of way is extinguished, because "The essential ingredient of a right of way would be wanting; it would not be a right of way over another's land, but over his own land." Pearce v. McClenaghan, 5 Rich. 178, 187, 55 Am. Dec. 710.

"An easement is extinguished if the titles to both the dominant and servient tenements become vested in fee in the same person, since the user corresponding to the easement is exercised over one's own land, rather than over that of another, and is a mere ordinary incident of the right of ownership." The Modern Law of Real Estate, Tiffany, vol. 1, p. 734.

*636 [2] The plain deduction from this language is that, in order to effectuate the extinguishment of an easement by unity of title, the fee to the dominant and servient tenements must be vested in the same person at the same time.

2. Was the easement here involved extinguished by the conveyance of the servient tenement to one who had no notice of the easement?

The answer to this question involves the consideration of the doctrine of estoppel. It appears from statements contained in the transcript of record that, when Bellamy conveyed the servient tenement to Beaufort Bank, the deed of conveyance contained no reference to the easement; and when Thomas, receiver of the Beaufort Bank, conveyed the same property to this defendant, his deed likewise made no reference to the easement. From these premises it is contended that Bellamy, who reacquired the title to the dominant estate, was estopped to assert the existence of the easement, and the plaintiff, as his successor in title, is now so estopped.

[3] [4] [5] [6] Estoppel arises when one by his action, or his failure to act, or by his speaking, or his failure to speak, has caused one to change his position to his hurt, and it would be inequitable to permit the other to assert a position or set up a claim antagonistic to the one who claims the estoppel. In order, however, that one may enforce an estoppel against another, he must show that he was misled to his injury by the action or the nonaction, or the language or the silence of that other. It is not enough that he might have been so misled, he must actually have been misled. Nor can one avail himself of the rule of estoppel if his own negligence to avail himself of information, the sources of which were in his reach, has brought about the situation of which he complains. In this present case there is an absence of proof that the defendant was misled by the fact that no reference was made of the easement in the deed of Bellamy to the bank, and that of Thomas, receiver, to appellant, of the existence of the easement. But these deeds gave her notice that the origin of the title to her lot was in Bellamy and Little. The deed from Little to Bellamy of his interest in the servient tenement which deed was on record, gave express notice of the existence of the easement. The deed from Bellamy and Little to Culuris, which created the easement, was also on record. The rule of the law that an easement may be extinguished by the conveyance of the servient estate without notice to the purchaser, of the easement, carries with it the idea that there has been an intentional concealment or deception which imposed upon the purchaser. No such thing is shown here. Moreover, the right of way was in open and notorious use; the slightest inquiry on the part of

defendant would have apprised her of its nature, its extent, and that it was appurtenant to the property which she was buying and to which it was immediately adjacent.

[7] [8] We do not think the easement was extinguished by merger of title nor by the failure to refer in the deed of Bellamy to the bank and that of Thomas, receiver, to the defendant to the existence of the easement.

It is elaborately and forcefully argued that, where one whose title is defective has conveyed and warranted it, a good title later acquired by him passes to his grantee by the warranty. There is no denial of this just rule of the law. We think it has no application here. There is no defect in the title to the servient estate. Defendant received exactly what Bellamy had and that which he received under the deed from Little to him, which expressly stated that the right of way remained intact.

[9] The issue stated in the second question propounded in the appellant's brief is aimed at the statement in the circuit decree that the easement which is of a notorious character involved the use of the strip in question as a quasi public right of way for ingress and egress to a moving picture theater, etc.

The attack seems the refinement of criticism. If the language used was erroneous, it is harmless. The prayer for relief by injunction is not predicated alone upon the ground that the obstruction of the alleyway by defendant obstructed the use of it by patrons of the moving picture theater. Paragraph 5 the complaint is to this effect: "That the purpose of said easement was to permit ingress and egress from Bay Street to the business buildings on the rear of the lot conveyed by Bellamy and Little to Chris Culuris, and access from the rear of that portion of the property fronting South on Bay Street, all of which was and is of great value to said dominant estate."

Paragraph 6 declares that the business conducted in the building on the rear or northern side of said lot is a motion and talking picture theater, access to which can only be had through the right of way.

Paragraph 7 of the complaint is to the effect: "That prior to this action the defendant built upon the four foot easement, a right of way, a fence materially constricting the width of the said right of way and obstructing the use thereof and rendering the same less valuable to plaintiff

Haselden v. Schein, 167 S.C. 534 (1932)

166 S.E. 634

and his tenants as a way of ingress and egress, and constructing in said fence two large gates opening out and upon plaintiff's adjacent property."

Nowhere is found authority for the assumption that no other personal or business interests were served by the use of the alleyway than that of the patrons of the theater. If the patrons were prevented from reaching the theater, the interests of the owners of the theater were necessarily injured. The deed granting the easement expressly provided *637 that the alley shall be "kept free and clear of any obstacles to its free use as a way for the use of the occupants of the property on both sides thereof." Plaintiff is one of such occupants.

The third and last question suggested by appellant's brief is this: "Do the pleadings and facts as agreed on entitle plaintiff to relief by injunction, or is his remedy by an action at law for damages?"

[10] [11] We are frank to say that, if this issue had been opportunely made, it would have merited consideration. We think the general practice is to bring such suits on

the law side of the court in an action for damages. If damages be found, the court issues its order to carry out such finding. But we know of no rule which prevents a litigant from waiving the suit in the law court; and that is what appellant has done. This question was not raised by demurrer or answer, and was never presented to or passed upon by the circuit court. On the contrary, defendant consented that the matter should be heard by the circuit judge at chambers, on an agreed statement of facts. The objection comes too late.

It is the judgment of this court that the judgment of the circuit court be affirmed.

BLEASE, C. J., STABLER and CARTER, JJ., and W. C. COTHRAN, A. A. J., concur.

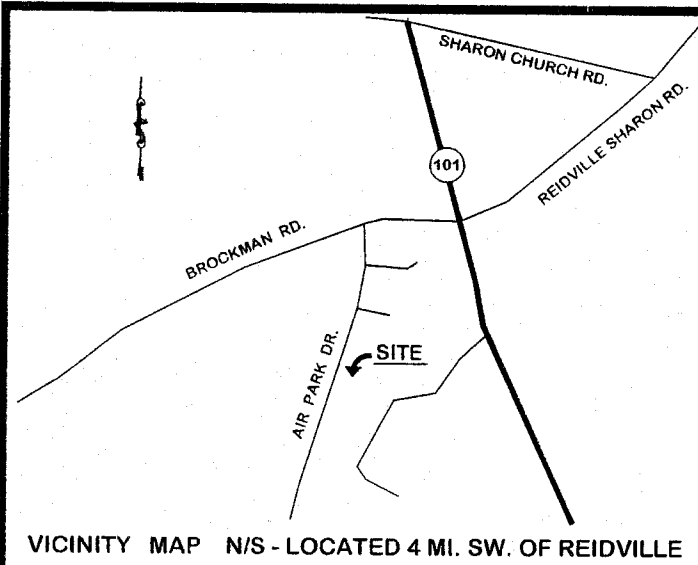
All Citations

167 S.C. 534, 166 S.E. 634

End of Document

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T-166P6249



VICINITY MAP N/S - LOCATED 4 MI. SW. OF REIDVILLE

COMMUNITY
GREER

ZIP CODE

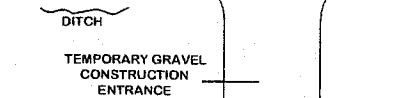
29651

LEGEND

AC. - ACRES
B.M. - BLOCK MAP
D.B. - DEED BOOK
P.B. - PLAT BOOK
RD. - ROAD
R/W - RIGHT-OF-WAY

LOT DISTURBANCE DETAIL
NOT TO SCALENOTE:
BUILDERS MUST ADHERE TO THE APPROVED PLANS

STREET



PROPOSED RESIDENCE

PLACE SILT FENCE BELOW
DISTURBED AREA

REVISED

NOTES

NO TITLE SEARCH BY HUSKEY & HUSKEY, INC.

PROPERTY SHOWN SUBJECT TO EASEMENTS OF RECORD.

UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED.

NO FEATURES LOCATED OTHER THAN THOSE SHOWN.

ADDRESS TO BE PLACED IN BOX ON EACH LOT.

A 5' EASEMENT IS RESERVED ON ALL REAR AND SIDE LOT LINES FOR DRAINAGE AND UTILITIES.

1/2" REBAR SET ON CORNERS, UNLESS NOTED.

BUILDING LINES (from property lines), IF APPLICABLE
FRONT - 30.00'
REAR - 40.00'
SIDE - 7.50' (except where affected by 25' aircraft taxi esmt.)

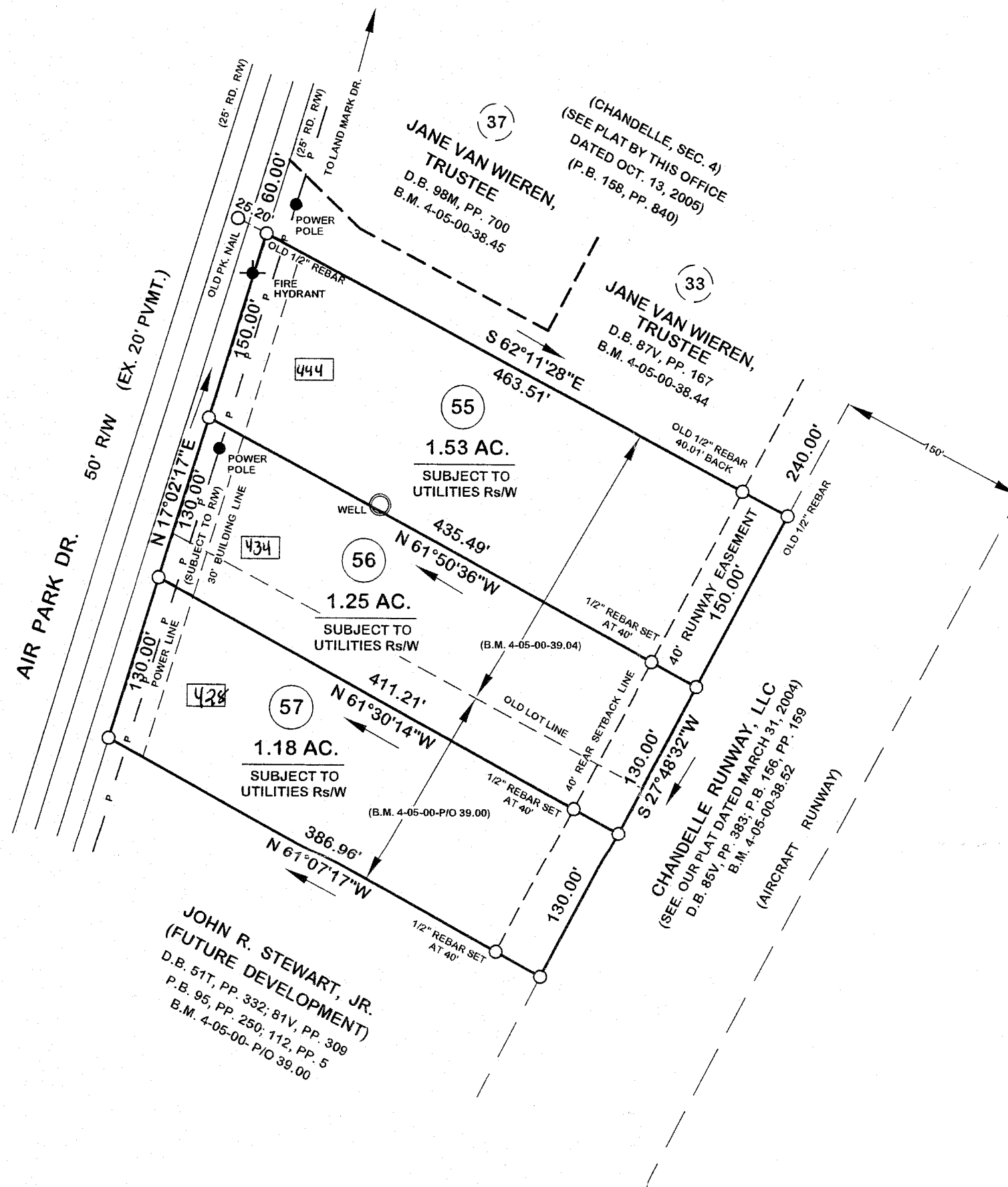
LOTS TO BE SERVICED BY INDIVIDUAL SEPTIC TANKS AND WELLS.

SEE PLAT FOR BILLY JOE GODFREY BY THIS OFFICE DATED NOV. 29, 2000.

SEE ALSO PLAT BOOKS 95, PP. 250 AND 112, PP. 5.



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA; AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED. THE BUILDING(S) OR WALL(S) SHOWN HEREON DO NOT ENCR OACH ON THE ADJACENT PROPERTY, EXCEPT AS SHOWN. I HEREBY STATE THAT THE AREAS WERE DETERMINED BY THE D.M.D METHOD OF CALCULATION OR BY COMPUTER. THIS PROPERTY IS NOT IN A FLOOD HAZARD AREA, AS DEFINED BY THE FLOOD INSURANCE MAP.



REVISIONS BOX

DATE	REVISIONS

CERTIFICATE OF ACCURACY

I HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE FIELD SURVEY IS 1/7500+ AS SHOWN HEREON AND THAT THE AREA WAS DETERMINED BY THE D.M.D METHOD OF AREA CALCULATION.

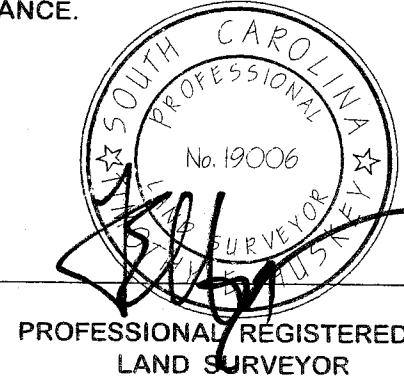
REFERENCE: DEED BOOK, 59 B PP. 941 ; 98 S PP. 90 ; 51 T PP. 332
PLAT BOOK 117 PP. 374 ; 153 PP. 77
BLOCK MAP 4-05-00-39.04, P/O 39.00

THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH THE SPARTANBURG COUNTY UNIFIED LAND MANAGEMENT ORDINANCE.

SEPTEMBER 20, 2011
DATE

19006

S.C. REG. NO.

PROFESSIONAL REGISTERED
LAND SURVEYOR

SUMMARY PLAT

CERTIFICATE OF SUBDIVISION/
LAND DEVELOPMENT APPROVAL

I, THE UNDERSIGNED CERTIFY THAT THE PLAT INDICATED HEREON CONFORMS TO THE DESIGN STANDARDS AND REQUIREMENTS IN SPARTANBURG COUNTY UNIFIED LAND MANAGEMENT ORDINANCE, WITH THE EXCEPTIONS OF SUCH VARIANCES, IF ANY, AS RECORDED IN THE MINUTES OF THE SPARTANBURG COUNTY PLANNING COMMISSION, AND THAT IT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE COUNTY REGISTER OF DEEDS.

OCT 21 2011

DATE

CHAIRMAN, SECRETARY OR
PLANNING DIRECTOR FOR SPARTANBURG
COUNTY PLANNING COMMISSION

JOB NO.: 11561 FIELD BK.: 11-5-61 FIELD CHIEF: T. E. H. DRWN. BY: S. H. D. CKD. BY: T. E. H.

NAME OF SUBDIVISION

CHANDELLE

SECTION 8

A MINOR RESIDENTIAL SUBDIVISION

SPARTANBURG COUNTY - SOUTH CAROLINA

OWNER/DEVELOPER

CSC DEVELOPERS
400 AIRPARK DR.
GREER, SC 29651
PHONE 864-877-2126

SURVEYOR

HUSKEY & HUSKEY, INC.
2939 CHESNEE HWY.
SPARTANBURG, SC 29307
PHONE 864-578-5671

NUMBER OF ACRES 3.96 MILES OF NEW ROAD 0

NUMBER OF LOTS 3 DATE SEPTEMBER 20, 2011 REVISED

SCALE 1" = 100'



Exhibit PLAIN P 13611 S - 944

Grantee Address 6004 Lakehurst Drive, Arlington, TX 76016-1000 Tax Map #P/O 4-05-00-039.04

STATE OF SOUTH CAROLINA)**SPECIAL WARRANTY DEED****COUNTY OF SPARTANBURG)**

KNOW ALL MEN BY THESE PRESENTS, that **RL 240 LLC AND WRIGLEY5, LLC** in consideration of **SEVENTY TWO THOUSAND DOLLARS AND NO/100S, (\$72,000.00)**, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto,

JOSEPH G. KOHN AND DALE D. KOHN**AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON**

All that certain piece, parcel or lot of land, with all improvements thereon or hereinafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated on a new survey as **LOT NO. 55 OF CHANDELLE, SECTION 8, containing 1.53 Acres, more or less**, dated September 20, 2011, prepared by Huskey & Huskey, Inc., and recorded herewith in the Register Of Deeds Office for Spartanburg County in **Plat Book 166 at Page 249**. Reference being made to said recent survey for a more complete description as to metes and bounds.

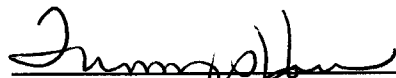
This being a portion of the same property as conveyed to RL 240 LLC and Wrigley 5, LLC by deed of Greer State Bank recorded June 24, 2011 in said ROD Office in Deed Book 98-S at Page 90.

THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448

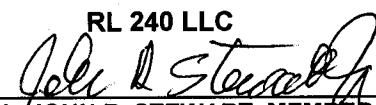
This property is conveyed subject to all restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

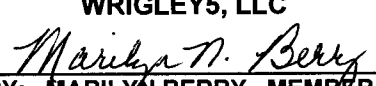
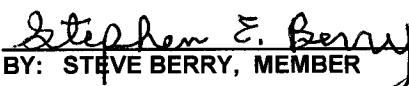
Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever.

Witness the Grantor's (s') Hand(s) and Seal(s) this 28TH day of October 2011


 Witness (AS TO ALL GRANTORS)


 Witness (AS TO ALL GRANTORS)

RL 240 LLC

 BY: **JOHN R. STEWART, MEMBER**

WRIGLEY5, LLC

 BY: **MARILYN BERRY, MEMBER**

 BY: **STEVE BERRY, MEMBER**

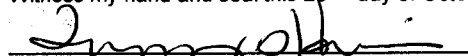
State of South Carolina)

Acknowledgement

County of Greenville)

The undersigned Notary Public for the State of South Carolina does hereby certify that the officer stated above personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 28TH day of October 2011.


 Notary Public for South Carolina
 My Commission expires 7/10/2017

DEE-2011-38811

Recorded 1 Pages on 11/3/2011 8:46:37 AM

Recording Fee: \$10.00 Documentary Stamps: \$266.40

Office of Register of Deeds, Spartanburg, S.C.

128 Dorothy Earle, Register

Exhibit 3633



DEE-2012-26327
 Recorded 1 Pages on 6/21/2012 10:52:02 AM
 Recording Fee: \$10.00 Documentary Stamps: \$247.90
 Office of Register of Deeds, Spartanburg, S.C.
 Dorothy Earle, Register



Grantee Address 6004 Lakehurst Drive, Arlington, TX 76016-1000
 Tax Map #P/O 4-05-00-039.00 **TO BE COMBINED WITH 4-05-00-039.04**

STATE OF SOUTH CAROLINA)

SPECIAL WARRANTY DEED

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that **JOHN R. STEWART, JR., RL 240 LLC AND WRIGLEY 5, LLC** in consideration of **SIXTY SIX THOUSAND NINE HUNDRED FIFTY DOLLARS AND NO/100S, (\$66,950.00)**, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto,

JOSEPH G. KOHN AND DALE D. KOHN

AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

All that certain piece, parcel or lot of land, with all improvements thereon or hereinafter constructed thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated on a new survey as **LOT NO. 56 OF CHANDELLE, SECTION 8, containing 1.25 acres, more or less**, dated September 20, 2011, prepared by Huskey & Huskey, Inc., and recorded herewith in the Register Of Deeds Office for Spartanburg County in **Plat Book 166 at Page 249**. Reference being made to said recent survey for a more complete description as to metes and bounds.

This being a portion of the same property as conveyed to RL 240 LLC and Wrigley 5, LLC by deed of Greer State Bank recorded June 24, 2011 in said ROD Office in Deed Book 98-S at Page 90 and a portion of the property conveyed to John R. Stewart, Jr. by deed of Harold W. Brockman recorded October 22, 1985 in Deed Book 51-T at Page 332.

THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448

This property is conveyed subject to all restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises. Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever.

Witness the Grantor's (s') Hand(s) and Seal(s) this 19TH day of JUNE 2012

Witness (AS TO ALL GRANTORS)

Witness (AS TO ALL GRANTORS)

JOHN R. STEWART, JR.
 RL 240 LLC

BY: JOHN R. STEWART, MEMBER

WRIGLEY5, LLC

 BY: MARILYN BERRY, MEMBER

State of South Carolina)

Acknowledgement

County of Greenville)

The undersigned Notary Public for the State of South Carolina does hereby certify that John R. Stewart, Jr. and the Members stated above personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 19TH day of June 2012.

Notary Public for South Carolina
 My Commission expires 7/10/2017

ELECTRONICALLY FILED - 2022 Sep 09 4:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

Grantee mailing address: 444 Airpark Drive, Greer, SC 29651
Tax Map # 4-05-00-039.04

DEED 107 UPG 361

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that JOSEPH G. KOHN AND DALE D. KOHN in consideration of SIX HUNDRED FIFTY SIX THOUSAND DOLLARS AND NO/100, (\$656,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

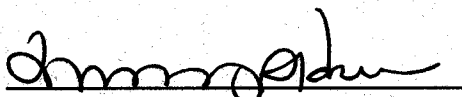
ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY, DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 166 AT PAGE 249. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

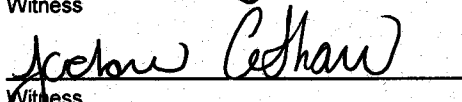
THIS BEING THE SAME PROPERTY AS CONVEYED TO JOSEPH G. & DALE D. KOHN BY DEED OF JOHN R. STEWART, JR., ET AL RECORDED NOVEMBER 3, 2011 IN DEED BOOK 99-M AT PAGE 048 AND RECORDED JUNE 21, 2012 IN DEED BOOK 100-Z AT PAGE 363.

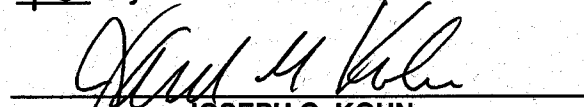
This property is conveyed subject to all restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantors(s') successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's(s') Hand(s) and Seal(s) this 15 day of DECEMBER 2014


Witness


Witness


JOSEPH G. KOHN

DALE D. KOHN

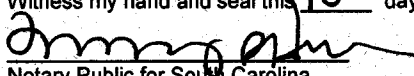
State of South Carolina)

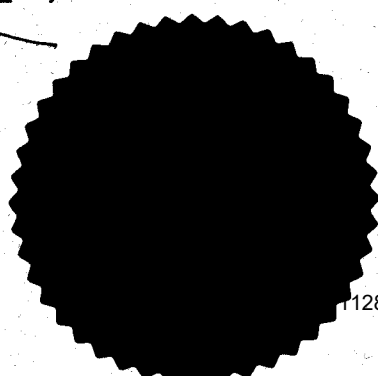
Acknowledgement

County of Greenville)

I, Tammy S. Hill, a Notary Public for the State of South Carolina, do hereby certify that Joseph G. Kohn and Dale D. Kohn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 15 day of December 2014.


Notary Public for South Carolina
My Commission expires: 7/10/2017



DEE-2014-50159
Recorded 1 Pages on 12/16/2014 9:07:03 AM
Recording Fee: \$10.00 Documentary Stamps: \$2,427.20
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register

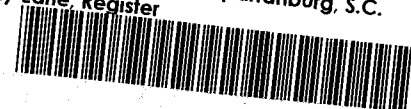


Exhibit PLAINTEXT 3634

ELECTRONICALLY FILED - 2022 Sep 09 4:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

This document was prepared by
Greer State Bank
1111 West Poinsett Street
Greer, SC 29650

MTG-2014-50160
Recorded 7 Pages on 12/16/2014 9:07:14 AM
Recording Fee: \$13.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



State of South Carolina

MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is December 15, 2014 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: James Douglas Armstrong
Jane G Armstrong
35 Moore Street
Ocean Isle Beach, NC 28469

☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

LENDER:
Greer State Bank
1111 West Poinsett Street, Greer, SC 29650

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
See Attached Exhibit A

The property is located in Spartanburg at 444 Air Park Drive
(County)
, Greer, South Carolina 29651
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

SOUTH CAROLINA - MORTGAGE (NOT FOR FNMA, FHLMC, FHA OR VA USE)

© 1994 Bankers Systems, Inc., St. Cloud, MN (1-800-397-2341) Form RE-MTG-SC 2/1/2013

-C166(SC) (1302)

VMP MORTGAGE FORMS

(page 1 of 4)

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.
- 6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.
- 8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.
- 10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.
- 11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.
- 12. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor irrevocably grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Mortgagor will promptly provide Lender with true and correct copies of all existing and future Leases. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default under the terms of this Security Instrument.

Mortgagor agrees that this assignment is immediately effective between the parties to this Security Instrument and effective as to third parties on the recording of this Mortgage. Mortgagor agrees that Lender may take actual possession of the property without the necessity of commencing legal action and that actual possession is deemed to occur when Lender, or its agent, notifies Mortgagor of default and demands that any tenant pay all future Rents directly to Lender. On receiving notice of default, Mortgagor will endorse and deliver to Lender any payment of Rents in Mortgagor's possession and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected will be applied as provided in this Security Instrument. Mortgagor warrants that no default exists under the Leases or any applicable landlord/tenant law. Mortgagor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.

(page 2 of 4)

13. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
14. **DEFAULT.** Mortgagor will be in default if any party obligated on the Secured Debt fails to make payment when due. A good faith belief by Lender that the prospect of any payment, performance, or realization on the Property is significantly impaired shall also constitute an event of default.
15. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

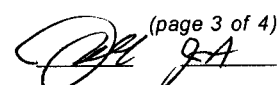
16. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the lender, court costs, and other legal expenses allowed by law. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.
17. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
18. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
 19. **INSURANCE.** Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

(page 3 of 4)


20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
25. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.
26. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- ☐ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☒ **Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
☐ Condominium Rider ☒ Planned Unit Development Rider ☐ Other
- ☐ **Additional Terms.**

X

THIS MORTGAGE SHALL MATURE 01/01/2030

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) James Douglas Armstrong (Seal) (Date) Jane G Armstrong (Seal) (Date)

Signed, sealed and delivered in the presence of:

(Witness) Tammy Hill

PROBATE:

STATE OF South Carolina, COUNTY OF Greenville }ss.
 Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 15 day
 of December 2014

(Signature) Notary Public for South Carolina
 My commission expires: 7-10-17

(Witness) Jordan Cothran
 (Seal) (Signature) Jordan Cothran

Loan origination organization Greer State Bank
 NMLS ID 527724
 Loan originator Sue Gaines
 NMLS ID 616277

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this **15th day of December, 2014**, and is incorporated into and shall be deemed to amend and supplement the Mortgage (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to **GREER STATE BANK** whose address is **PO BOX 1029, Greer, South Carolina 29652** (the "Lender") of the same date and covering the property described in the Security Instrument (the "Property") and located at:

Address: **444 Air Park Drive, Greer, South Carolina 29651**

Legal Description: **SEE ATTACHED EXHIBIT "A"**

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (ii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.
- B. Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:
 - (i) Lender waives the provision in the Funds for Taxes and Insurance section of the Security Instrument for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and
 - (ii) Borrower's obligation to maintain hazard insurance coverage on the Property under the Hazard or Property Insurance section in the Security Instrument is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.
- C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.
- D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument, as provided in the Condemnation section in the Security Instrument.
- E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:
 - (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

Initials

[Handwritten initials]

- (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender;
- (iii) termination of professional management and assumption of self-management of the Owners Association; or
- (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

By signing this Planned Unit Development Rider, each Borrower acknowledges reading, understanding, and agreeing to all its terms and provisions.

 (Seal)  (Seal)
 James Douglas Armstrong Date 12-15-14 Jane G Armstrong Date 12-15-14

THIS INSTRUMENT PREPARED BY:
GREER STATE BANK
 1111 WEST POINSETT STREET
 GREER, SC 29650

AFTER RECORDING RETURN TO:
GREER STATE BANK
 1111 WEST POINSETT STREET
 GREER, SC 29650

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 Planned Unit Development Rider - Closed End DL2028

Page 2 of 2

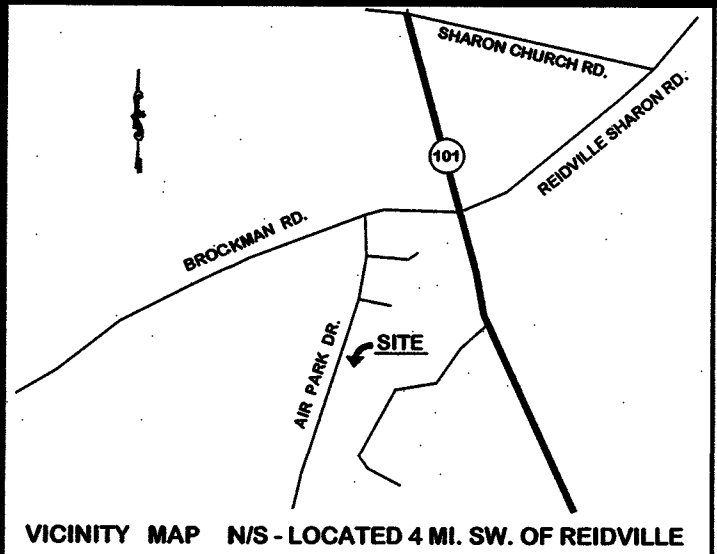
www.compliancesystems.com

Initials 

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS **LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY,** DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN **PLAT BOOK 166 AT PAGE 249.** REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

THIS BEING THE SAME PROPERTY AS CONVEYED TO JAMES DOUGLAS & JANE G. ARMSTRONG BY DEED OF JOSEPH G. & DALE D. KOHN TO BE RECORDED HERewith.

ELECTRONICALLY FILED - 2022 Sep 09 4:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854



COMMUNITY
GREER

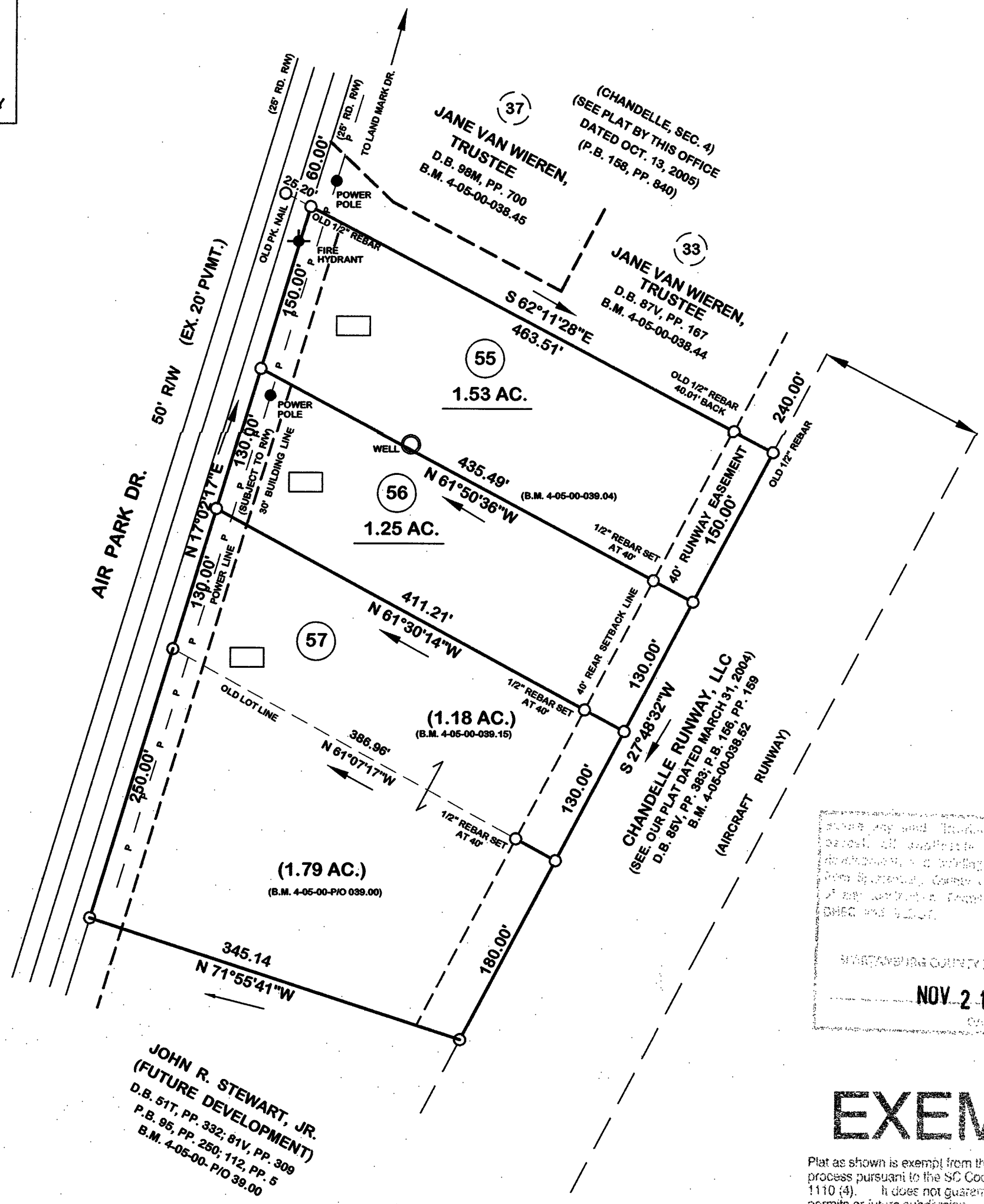
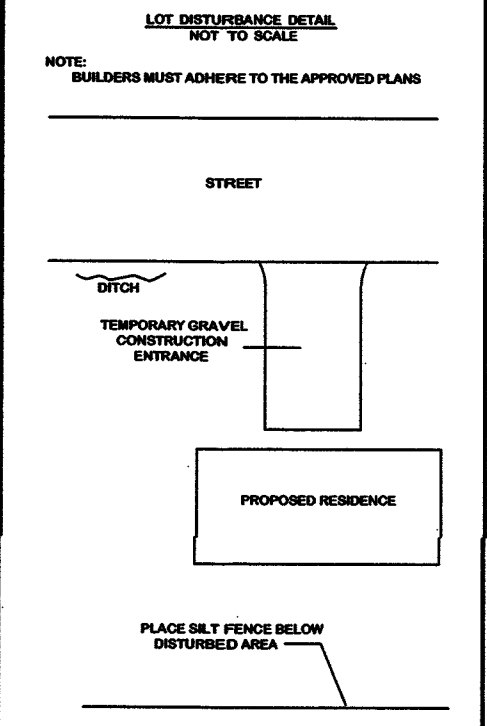
ZIP CODE
29651

LEGEND
AC. - ACRES
B.M. - BLOCK MAP
D.B. - DEED BOOK
P.B. - PLAT BOOK
RD. - ROAD
R/W - RIGHT-OF-WAY

PLT-2016-55907

PLT BK 171 PG 927-927

Recorded 1 Pages on 12/13/2016 10:18:39 AM
Recording Fee: \$10.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds



NOTES

NO TITLE SEARCH BY HUSKEY & HUSKEY, INC.

PROPERTY SHOWN SUBJECT TO EASEMENTS OF RECORD.

UNDERGROUND UTILITIES HAVE NOT BEEN LOCATED.

NO FEATURES LOCATED OTHER THAN THOSE SHOWN.

ADDRESS TO BE PLACED IN BOX ON EACH LOT.

A 5' EASEMENT IS RESERVED ON ALL REAR AND SIDE LOT LINES FOR DRAINAGE AND UTILITIES.

1/2" REBAR SET ON CORNERS, UNLESS NOTED.

BUILDING LINES (from property lines), IF APPLICABLE
FRONT - 30.00'
REAR - 40.00'
SIDE - 7.50' (except where affected by 25' aircraft tax esmt.)

LOTS TO BE SERVICED BY INDIVIDUAL SEPTIC TANKS AND WELLS.

SEE PLAT FOR BILLY JOE GODFREY BY THIS OFFICE DATED NOV. 29, 2000.

SEE ALSO PLAT BOOKS 95, PP. 250 AND 112, PP. 5.



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA; AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED. THE BUILDING(S) OR WALL(S) SHOWN HEREON DO NOT ENCROACH ON THE ADJACENT PROPERTY, EXCEPT AS SHOWN. I HEREBY STATE THAT THE AREAS WERE DETERMINED BY THE D.M.D METHOD OF CALCULATION OR BY COMPUTER. THIS PROPERTY IS NOT IN A FLOOD HAZARD AREA, AS DEFINED BY THE FLOOD INSURANCE MAP.

REVISIONS BOX	
DATE	REVISIONS
4-4-16	ADDED PARCEL TO LOT 57
11-9-16	PER COUNTY: -MOVED LOT 57 SYMBOL TO ORIG. LOCATION -MOVED SW. CORNER -REMOVED 'SUMMARY PLAT'

CERTIFICATE OF ACCURACY

I HEREBY CERTIFY THAT THE RATIO OF PRECISION OF THE FIELD SURVEY IS 1/7500+ AS SHOWN HEREON AND THAT THE AREA WAS DETERMINED BY THE D.M.D METHOD OF AREA CALCULATION.

REFERENCE: DEED BOOK 59 B PP. 941 ; 98 S PP. 90 ; 51 T PP. 332
PLAT BOOK 117 PP. 374 ; 153 PP. 77 ; 166 PP. 249
BLOCK MAP 4-05-00-039.04, 039.15, P/O 039.00

THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH THE SPARTANBURG COUNTY UNIFIED LAND MANAGEMENT ORDINANCE.

SEPTEMBER 20, 2011
DATE

19006
S.C. REG. NO.

1136



CERTIFICATE OF SUBDIVISION/ LAND DEVELOPMENT APPROVAL								
I, THE UNDERSIGNED CERTIFY THAT THE PLAT INDICATED HEREON CONFORMS TO THE DESIGN STANDARDS AND REQUIREMENTS IN SPARTANBURG COUNTY UNIFIED LAND MANAGEMENT ORDINANCE, WITH THE EXCEPTIONS OF SUCH VARIANCES, IF ANY, AS RECORDED IN THE MINUTES OF THE SPARTANBURG COUNTY PLANNING COMMISSION, AND THAT IT HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE COUNTY REGISTER OF DEEDS.								
NOV 21 2016								
DATE	CHAIRMAN, SECRETARY OR PLANNING DIRECTOR FOR SPARTANBURG COUNTY PLANNING COMMISSION							
JOB NO.: 11561	FIELD BK.: 11-5-61	FIELD CHIEF: T. E. H.	DRWN. BY: S. H. D.	CKD. BY: T. E. H.				
NAME OF SUBDIVISION CHANDELLE SECTION 8								
A MINOR RESIDENTIAL SUBDIVISION								
SPARTANBURG COUNTY - SOUTH CAROLINA								
OWNER/DEVELOPER CSC DEVELOPERS 400 AIRPARK DR. GREER, SC 29651 PHONE 864-877-2126								
SURVEYOR HUSKEY & HUSKEY, INC. 2939 CHESNEE HWY. SPARTANBURG, SC 29307 PHONE 864-578-5671								
NUMBER OF ACRES 5.75	MILES OF NEW ROAD 0							
NUMBER OF LOTS 3	DATE SEPTEMBER 20, 2011 REVISED (SEE BOX)							
SCALE 1" = 100'								

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances in date must be met in order to develop the property.

DEE-2017-4013



DEE BK 114-Q PG 424-426

Recorded 3 Pages on 01/30/2017 09:43:44 AM
Recording Fee: \$10.00 County Taxes: \$128.70 State Taxes: \$304.20
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

Grantee mailing address: 444 Airpark Dr., Greer, SC 29651
Tax Map # p/o 4-05-00-039.00 and 4-05-00-039.15

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that **JOHN R. STEWART, JR.** in consideration of **ONE HUNDRED SIXTEEN THOUSAND SIX HUNDRED DOLLARS AND NO/100, (\$116,600.00)** the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A SURVEY AS **LOT NO. 57 (CONTAINING 1.18 ACRES AND 1.79 ACRES) OF CHANDELLE, SECTION 8**, PREPARED BY HUSKEY & HUSKEY, INC., DATED SEPTEMBER 20, 2011 AND REVISED APRIL 4, 2016 AND NOVEMBER 9, 2016 AND RECORDED IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN **PLAT BOOK 171 AT PAGE 927**. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

This being a portion of the same property as conveyed to John R. Stewart, Jr. by deed of Harold W. Brockman Jr. recorded October 22, 1985 in the ROD Office for Spartanburg County in Deed Book 51-T at Page 332.

This property is further conveyed subject to all other restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) as joint tenants with right of survivorship and not as tenants in common. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantors(s') successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's Hand and Seal this 25 day of January 2017

Laura C. Hellis

Witness

John R. Stewart Jr

JOHN R. STEWART, JR.

[Signature]

Witness
State of South Carolina)

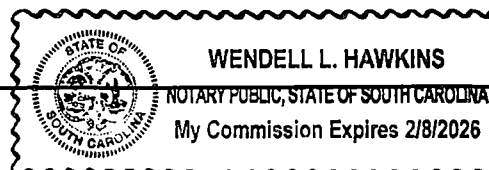
Acknowledgement

County of Greenville)

The undersigned Notary Public for the State of South Carolina, do hereby certify that John R. Stewart, Jr personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and seal this 25 day of January 2017.

[Signature]

Notary Public for South Carolina-Greenville
My Commission expires: 2-8-2026



ELECTRONICALLY FILED - 2022 Sep 09 4:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Page 1 of 2

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Air Park Drive, Greer, South Carolina 29651, bearing Spartanburg County Tax Map Number 4-05-00-039.15 and p/o 4-05-00-039.00, was transferred by John R. Stewart, Jr. to James Douglas Armstrong and Jane G. Armstrong on January 31, 2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$116,600.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$116,600.00
- (b) Place the amount listed in item 5 above here: -0-
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$116,600.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: 432.9.

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

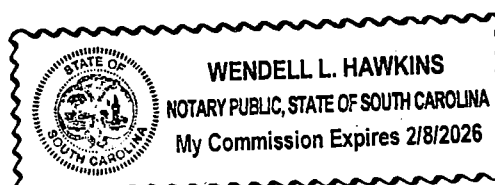
SWORN to before me this
January 31, 2017

Responsible Person Connected with the Transaction

John R. Stewart, Jr.

Print or Type Name Here

Notary Public for South Carolina, Greenville County
My Commission Expires: 2-8-2026



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty,
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed--pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S. C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendants.

James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne and Ruth G. Payne,

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants.

018771.00006

**SECOND CONTINUATION OF FILING
OF EXHIBITS TO MEMORANDUM IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Respectfully submitted,

s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

D. Ryan McCabe, SC Bar No. 16977

MCCABE, TROTTER & BEVERLY, PC

4500 Fort Jackson Blvd., Suite 250

Columbia, South Carolina 29209

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com;

Ryan.McCabe@mccabetrotter.com

**ATTORNEYS FOR CHANDELLE PROPERTY
OWNERS ASSOCIATION**

September 9, 2022
Columbia, South Carolina

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF SPARTANBURG) CASE NO.: 2016-CP-42-01854
3

4 Chandelle Property Owners)
5 Association,) DEPOSITION OF
6 Plaintiff,) JANE ARMSTRONG
7 vs.) AUGUST 9, 2022

8 James Douglas Armstrong,)
9 Jane Armstrong, Kenneth L.)
10 Galloway, Molly C. Galloway)
11 Warren Johnson, Rhonda)
12 Johnson, John K. Payne,)
13 Ruth G. Payne, and Jane Van)
14 Wieren as Trustee of the)
15 Greer R.G. Irrevocable)
16 Property Trust, dated October)
17 25, 2006, and also all other)
18 persons unknown, claiming any)
19 right, title, estate,)
20 interest in or lien upon the)
21 real estate described in the)
22 complaint herein,)
23 Defendants.)

24 _____)
25

1 Deposition on oral examination of JANE ARMSTRONG,
2 reported by Susanna M. Amstutz, Court Reporter and Notary
3 Public in and for the State of South Carolina; pursuant to
4 Rule 30 of the South Carolina Rules of Civil Procedure;
5 said deposition was taken at the offices of Wendell L.
6 Hawkins, P.A., 310 The Parkway, Greer, South Carolina on
7 Tuesday, the 9th day of August, 2022; commencing at the
8 hour of 12:59 p.m.

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APPEARANCES:

REPRESENTING THE PLAINTIFF:

D. RYAN MCCABE, ESQ.
McCabe Trotter & Beverly, P.C.
4500 Fort Jackson Boulevard, Suite 250
Columbia, South Carolina 29209
(ryan.mccabe@mccabetrotter.com)

REPRESENTING THE DEFENDANT:

WENDELL L. HAWKINS, ESQ.
Wendell L. Hawkins, P.A.
310 The Parkway
Greer, South Carolina 29650
(wlh@wlhawkinslawfirm.com)

JOHN D. SOLAR, ESQ.
and
JOHN HARJEHAUSEN, ESQ.
Clarkson Walsh Coulter
Post Office Box 6728 (29606)
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Greenville, South Carolina 29607
(jsolar@clarksonwalsh.com)
(jharjehausen@clarksonwalsh.com)

1 RICHARD L. PATTON
2 Patton Law Firm
3 819 E. North Street, Suite 234
4 Greenville, South Carolina 29601
5 (pattonlawfirmllc@gmail.com)
6
7

8 ALSO PRESENT:

- 9 - Diane Fanti
10 - Billy J. Israel
11 - George Lynn Fleming
12

13 VIA ZOOM:

- 14 - Greg Stett
15
16
17
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25

1 **Q. And how did you learn about that house?**

2 A. How did we learn about the house?

3 **Q. Yes, ma'am.**

4 A. We drove through the neighborhood. We had looked
5 at a house there before and this house was up for
6 sale by owner and that's how it started.

7 **Q. Did you know John Stewart before then?**

8 A. No.

9 **Q. Did you know Doug Cobb before then?**

10 A. No.

11 **Q. What about Marilyn Berry?**

12 A. No.

13 **Q. Did you know anybody connected with the community
14 before you purchased the house at Chandelle?**

15 A. No, sir.

16 **Q. Okay. When is the last time you talked to John
17 Stewart?**

18 A. It's been several years. I couldn't tell you
19 exactly how many.

20 **Q. What about Marilyn Berry?**

21 A. Quite a while.

22 **Q. What about Doug Cobb or his wife?**

23 A. I haven't talked to them since they left.

24 **Q. All right. Are you a member of the Chandelle
25 Property Owners Association?**

1 MR. HAWKINS: Object to the form.

2 BY MR. MCCABE:

3 Q. You can answer.

4 A. That's a yes or no.

5 Q. Are you asking me?

6 A. We thought we were members and then we weren't
7 members, so.

8 Q. Okay. All right. Why did you think -- let's
9 talk about the first part of that. Why did you
10 think you were members?

11 A. Well, we were presented that -- that we were, so
12 I've always assumed we were until all this
13 happened.

14 Q. Okay. What -- what led you to believe that you
15 were not a member of the Chandelle Property
16 Owners Association?

17 A. Well, we got sued, that's why.

18 Q. Okay. Any other -- any other reasons?

19 A. No, sir.

20 Q. Did someone review chain of title or chain of
21 property and advise you that you were not
22 members?

23 A. No, sir.

24 Q. Did you seek legal advice to determine whether
25 your property was bound by the restrictive

1 **covenants?**

2 A. We did not. We knew nothing about the
3 neighborhood.

4 **Q. And you purchased the property -- tell me who you**
5 **purchased lots 55 and 56 from.**

6 A. They were already there. The house was built on
7 it.

8 **Q. And when you closed on that house, did you -- or**
9 **during the process of purchasing the house, did**
10 **you talk to the prior owners?**

11 A. We talked with them, yes, but they did not
12 specify any information about the neighborhood.

13 **Q. And that was Joseph and Dale Kohn?**

14 A. Yes, sir.

15 **Q. Did you know them prior to purchasing?**

16 A. I did not.

17 **Q. When's the last time you talked to them?**

18 A. I couldn't tell you. It's been a while.

19 **Q. Does your house have a hangar --**

20 A. Yes, sir.

21 **Q. -- on the back?**

22 A. Not on the back. It's on the side.

23 **Q. On the side?**

24 A. It's not connected.

25 **Q. Okay. Do you or your husband own an airplane?**

1 A. No, sir.

2 Q. Did you own an airplane when you first moved in?

3 A. We did.

4 Q. Does your husband still have a pilot's license?

5 A. No, sir.

6 Q. Did you receive a Property Disclosure Statement
7 from the Kohns when you purchased the house?

8 A. Not to my knowledge.

9 Q. Are you familiar with the real estate properties
10 from your experience?

11 A. I didn't -- I don't recall seeing one.

12 Q. Please check your -- your records, and if you do,
13 provide that to Mr. Hawkins.

14 A. Okay.

15 (PLAINTIFF'S EXHIBIT NUMBER 1 MARKED FOR IDENTIFICATION
16 PURPOSES (1 page) - Amendments to Covenants, Conditions and
17 Restrictions of Chandelle Subdivision)

18 Q. I'm showing you what's been marked Exhibit 1.

19 (Document tendered to witness)

20 Do you recognize that document?

21 A. No, sir, I don't.

22 Q. It's a document entitled "Amendments to
23 Covenants, Conditions and Restrictions of
24 Chandelle Subdivision." If you look at the third
25 paragraph, it says, and it adds some language,

1 and references some lots. Are you familiar with
2 Lots 55, 56 and 57 in Section 8.

3 A. Yes, sir.

4 Q. And who owns those lots?

5 A. We do. Doug and I.

6 Q. And what year did you purchase the house?

7 A. It would be seven years in December.

8 Q. Approximately 2015?

9 A. In December.

10 Q. And did you purchase lot 57 after that?

11 A. Yes, sir.

12 Q. Okay. Do you recall seeing this amendment to the
13 restricted covenants?

14 A. I do not.

15 (PLAINTIFF'S EXHIBIT NUMBER 2 MARKED FOR IDENTIFICATION
16 PURPOSES (1 page) - Summary Plat Chandelle Section 8)

17 Q. I'm showing you what's been marked as Exhibit
18 Number 2.

19 (Document tendered to witness)

20 This is a document entitled Summary Plat
21 Chandelle Section 8." Are you familiar with this
22 -- this plat?

23 A. Well, I have seen it, but I don't look at it
24 every day.

25 Q. Okay. Do you see that the date on this is 2011,

1 September, 2011, in the bottom right-hand corner?
2 And the -- the -- the lots 55, 56 and 57
3 identified on this appear to be the lots that you
4 own?

5 A. Yes, sir.

6 (PLAINTIFF'S EXHIBIT NUMBER 3 MARKED FOR IDENTIFICATION
7 PURPOSES (2 pages) - Special Warranty Deed Lots 55 and 56)
8 (Document tendered to witness)

9 Q. I'm showing you what's marked as Exhibit 3.
10 There's two documents in there. Have you ever
11 seen those documents before?

12 A. Not recently. Maybe when we closed on the
13 property.

14 Q. And if you were to look, you see these are
15 special warranty needs for lot 56 from John
16 Stewart RL 240 and Wrigley 5 to Joseph G. Kohn
17 and Dale Kohn for lot 56, correct?

18 A. Yes, sir.

19 Q. Are you aware that, at one point in time, the lot
20 was modified? It was originally one.
21 Essentially, there was a combination or some
22 lines were adjusted. Are you aware of that
23 issue?

24 A. No, sir.

25 Q. Do you -- if you'll look down to the fourth

1 paragraph, do you see in all caps, bold,
2 underlined, it says "THIS PROPERTY IS
3 SPECIFICALLY SUBJECT TO RESTRICTIVE COVENANTS AT
4 CHANDELLE SUBDIVISION"?

5 A. I do.

6 Q. As recorded in Deed Book 67A page 583.

7 A. Yes, sir.

8 Q. And you and Mr. Armstrong purchased this property
9 from the Kohns, correct?

10 A. Yes, sir.

11 (PLAINTIFF'S EXHIBIT NUMBER 4 MARKED FOR IDENTIFICATION
12 PURPOSES (1 page) - Title to Real Estate for Lots 55 and 56
13 of Chandelle Subdivision)

14 Q. I'm showing you what's been marked Exhibit Number
15 4.

16 (Document tendered to witness)

17 Do you recognize that document?

18 A. Yes, sir.

19 Q. And what is it?

20 A. Title to real estate.

21 Q. And is this the deed from the Kohns to you and
22 Mr. Armstrong?

23 A. Yes, sir.

24 Q. And do you see it says for "lot nos. 55 and 56 of
25 Chandelle, section 8"?

1 A. Yes, sir.

2 Q. If you go down to the paragraph after that, it
3 references another deed from the prior Exhibit 3.
4 It says "This being the same property as conveyed
5 to Joseph G. & Dale D. Kohn by deed of John R.
6 Stewart, Jr., et al recorded November 3, 2011"?

7 A. Yes.

8 Q. Those are the ones that we looked at that said
9 the property was specifically subject to the
10 restrictive covenants, correct?

11 A. Yes, sir.

12 (PLAINTIFF'S EXHIBIT NUMBER 5 MARKED FOR IDENTIFICATION
13 PURPOSES (7 pages) - Mortgage on 444 Air Park Drive)

14 Q. I'm showing you what's been marked as Exhibit 5.
15 Do you recognize that document?

16 A. Yes, sir.

17 Q. And what is it?

18 A. It's a document from Greer State Bank about the
19 property, about the mortgage.

20 Q. And this is the mortgage that you took out for
21 the purchase of lots 55 and 56?

22 A. The house.

23 Q. Where the house is located.

24 A. Yes, sir.

25 Q. Okay. Will you turn to, there's some language on

1 the bottom that says Plaintiff's, it has page
2 numbers, would you go to Plaintiff's 3639?

3 (Witness complies)

4 A. Yes, sir.

5 Q. And this is the Planned Unit Development Rider to
6 the note?

7 A. Yes, sir.

8 Q. Okay. If you look under where it says PUD
9 Covenants under "A" it says "Borrower shall
10 perform all of Borrower's obligations under PUD's
11 Constituent Documents. The "Constituent
12 Documents" are the (I) articles of incorporation,
13 trust instrument or any equivalent document which
14 creates the Owners Association; and (ii) any by-
15 laws or other rules or regulations of the Owners
16 Association."

17 A. Yes, sir.

18 Q. "Borrowers shall promptly pay, when due, all dues
19 and assessments imposed pursuant to the
20 Constituent Documents".

21 A. Yes, sir.

22 Q. Did I read that correctly?

23 A. Yes, sir.

24 Q. And, if you will, turn to the next page.

25 (Witness complies)

3	A. Yes, sir.

5	A. Yes, sir.

11 | A. Yes, sir. It was when we closed on the property.

14	A. Yes, sir.

17	(Witness complies)

20	A. No, sir.

Garber Reporting
info@garberreporting.com

1 book 67-A at page 583, amended in Book 72-G at
2 Page 843 and amended at Book 88-H at Page 448."
3 Did I read that correctly?

4 A. Yes, sir.

5 Q. Did you or your husband object to this language
6 being included in the Homeowner's Policy and
7 Title Insurance?

8 A. No, sir.

9 (PLAINTIFF'S EXHIBIT NUMBER 7 MARKED FOR IDENTIFICATION
10 PURPOSES (1 page) - Homeowners Association Info)

11 Q. I'm showing you what's marked as Exhibit Number 7
12 and I'll represent to you that this is a document
13 that was received pursuant to a subpoena sent to
14 Tammy Hill for closing documents.

15 (Document tendered to witness)

16 Q. Do you know who Tammy Hill is?

17 A. I do.

18 Q. And you know that Tammy Hill closed your purchase
19 for lots 55 and 56?

20 A. Yes, sir.

21 Q. Do you recognize this document marked as Exhibit
22 Number 7?

23 A. No, sir.

24 Q. Is that your signature on there?

25 A. Yes, sir.

1 Q. Is that your husband's signature?

2 A. Yes, sir.

3 Q. This reads that -- that you and your husband
4 acknowledge that you have a copy of the covenants
5 and all documents pertaining to Chandelle,
6 correct?

7 A. Yes.

8 Q. And you were advised that the dues were \$800 per
9 year payable January 1, 2015.

10 A. Yes, sir.

11 Q. And Tammy Hill says she is not collected and it
12 is the sole responsibility of the purchaser to
13 pay the 2015 HOA dues, correct?

14 A. Yes, sir.

15 Q. And you closed in December of 2014, correct?

16 A. Yes, sir.

17 Q. It's my understanding that you haven't paid
18 assessment to Chandelle since 2016. Is that
19 correct?

20 A. Yes, sir.

21 Q. And why have you not paid the assessments since
22 2016?

23 A. I think my husband can answer that question.

24 Q. What understanding do you have for why the
25 assessments haven't been paid since 2016?

1 lawyer closed the purchase of lot 57 for you?

2 A. To my knowledge, it was Tammy.

3 **Q. Or was it Mr. Hawkins?**

4 A. I could have been. I don't remember.

5 MR. ARMSTRONG: It was Tammy. Pardon me.

6 MR. HAWKINS: Just let her answer.

7 MR. ARMSTRONG: Sorry.

8 MR. HAWKINS: He'll get to it. He has the
9 answer.

10 BY MR. MCCABE:

11 **Q. Look at the notary block at the bottom of the**
12 **page.**

13 A. I see it, yes, sir.

14 **Q. Does that refresh your memory?**

15 A. No, sir.

16 **Q. Okay. That's okay. Okay. So do you recognize**
17 **this Exhibit Number 8 that I'm showing you?**

18 A. No, sir.

19 **Q. I'll represent to you that this is the deed for**
20 **you and Mr. Armstrong for lot 57.**

21 A. All right.

22 **Q. Does that refresh your recollection?**

23 A. Yes, sir.

24 **Q. And does it sound right that you closed on this**
25 **around January 25, 2017?**

1 A. Yes, sir.

2 (PLAINTIFF'S EXHIBIT NUMBER 9 MARKED FOR IDENTIFICATION
3 PURPOSES (5 pages) - First American Title Insurance Company
4 Commitment Information Sheet)
5 (Document tendered to witness)

6 Q. Okay. I'm showing you what's been marked as
7 Exhibit Number 9. Do you recognize that
8 document?

9 A. No, sir.

10 Q. Does it appear to be title insurance policy?

11 A. Yes, sir.

12 Q. Turn to the next page to Schedule A.

13 (Witness complies)

14 Review that page and tell me if that Schedule A
15 and Schedule B -- tell me if that refreshes your
16 memory on this.

17 A. Yes, sir.

18 Q. Is this your policy for Lot 57?

19 A. Yes, sir.

20 Q. If you will, turn to Schedule B - Section II with
21 the exceptions.

22 (Witness complies)

23 And, if you will, go to Section Number 12.

24 (Witness complies)

25 Does it say "Restrictive Covenants Book 67-A at

1 Page 583 as may be amended from time to time”?

2 A. Yes, sir.

3 Q. And at the time -- at the time you purchased this
4 property, this lawsuit had already started,
5 hadn't it?

6 A. It had started right after we bought the house.

7 Q. Okay. And it was in process by the time you
8 purchased lot 57 --

9 A. Yes, sir.

10 Q. -- right?

11 So at the time you purchased the property, there
12 was a lis- -- do you know what a lis pendens is?

13 A. Yes.

14 Q. There was a lis pendens found on Lot 57,
15 asserting that it was subject to the restricted
16 covenants for the community, correct?

17 A. Yes, sir.

18 Q. And you knew that at the time when you purchased
19 the lot, correct?

20 A. Not exactly, no.

21 Q. What do you mean “not exactly.”

22 A. I did not -- I'll let my husband answer that.

23 Q. But you knew that the lawsuit was pending and
24 there was a dispute --

25 A. Right

1 not.

2 Q. Have you ever watched the video, a video of the
3 meetings, that someone took?

4 A. No, sir.

5 Q. Have you listened to a recording made of any of
6 those meetings?

7 A. No, sir.

8 Q. Have you ever submitted any architectural review
9 request?

10 A. For the landscape. That's all I've done.

11 Q. And why did you submit a request -- or
12 architectural review request for approval of
13 landscaping?

14 A. The yard needed some work, and we wanted to do
15 it.

16 Q. Okay. And you believed that was the appropriate
17 process?

18 A. We were asked to do it, yes, sir.

19 Q. Do you know if the Kohns went through the
20 architectural approval process for building the
21 house on lots 55 and 56?

22 A. No, sir.

23 Q. I didn't ask that very well. That's no, you
24 don't know? Or no, they didn't?

25 A. I don't know.

1 Q. Okay. Are you aware that you paid the special
2 assessment that was levied in 2021?

3 A. Yes, sir.

4 Q. And -- and -- and why did you pay that assessment
5 but not the prior assessments?

6 A. Because it was for the runway, the special
7 assessment, and we wanted to see it done.

8 Q. But if you're not a member, why would you pay the
9 assessment, any assessment?

10 MR. HAWKINS: Object to the form.

11 THE WITNESS: I'll let my husband answer that.

12 BY MR. MCCABE:

13 Q. When you say you'll let him answer, is that
14 because he made the decision?

15 A. He's more knowledgeable.

16 Q. Well, do you object to paying the assessments
17 since 2016? You, personally?

18 A. Specifically for the runway, we paid what we were
19 billed for, \$2,000, and it went other ways.

20 Q. I'm sorry?

21 A. They didn't put it toward the runway repairs.

22 Q. Okay. It's your objection that you don't agree
23 with the way some of the money's been spent,
24 that's why you withheld payments of assessments
25 in the past?

1 A. Yes, sir.

2 Q. What do you know about the Runway License
3 Agreement?

4 A. I have seen a document that we signed. I know
5 it's there. That's all.

6 Q. Do you recall signing the Runway License
7 Agreement?

8 A. I know my husband signed it, yes.

9 Q. Do you recall being provided a consent agreement?

10 A. A consent agreement?

11 Q. Yes, ma'am. An agreement that essentially
12 acknowledged that your lots were bound by the
13 Declaration of Covenants.

14 A. It's been a while. Yes.

15 Q. And did you sign it?

16 A. Yes.

17 Q. Well, this is a document that my firm prepared to
18 the membership, do you recall?

19 A. No, sir.

20 Q. Okay. Do you recall having an objection to
21 signing that document?

22 A. No, sir. I don't really remember the document.

23 Q. Okay. Do you have any opinions on the validity
24 of the current board of directors?

25 A. No, sir.

1 A. No, sir.

2 Q. Basically a conversion means you paid money, or
3 you had property taken from you by somebody, and
4 not used for a valid purpose.

5 A. Yes, sir.

6 Q. So, based on that knowledge, are you alleging
7 that someone from the board, or someone from the
8 Property Owners Association, converted some money
9 that you had, or property that you had?

10 A. Yes, sir.

11 Q. Okay. And what -- what exactly -- which -- was
12 it money or was it property?

13 A. The property.

14 Q. Okay. So how did they -- how did they convert
15 your property?

16 A. The lis pending[sic].

17 Q. Okay. And why did the lis pendens come about?

18 A. Because we didn't pay the dues.

19 Q. Have you ever paid the assessments or the dues?

20 A. A couple of times.

21 Q. And so, is there anything else that you're
22 alleging that was converted under conversion?
23 Any property or money? Anything other than the
24 lis pendens?

25 A. No, sir.

1 saying that the board breached its duties to you?

2 A. No, sir.

3 Q. The complaint of the counterclaim also alleges
4 fraud. Are you aware of that?

5 A. No, sir.

6 Q. Okay. I'll put it this way, how, in your
7 opinion, if they did or did not, did the board or
8 board members commit fraud against your husband?

9 A. I'm not exactly sure.

10 Q. Another claim is tortious interference with
11 contractual claims. That basically means that
12 you're saying that the board, or one of the board
13 members, interfered with some type of contract
14 that you had. Do you have any contracts that
15 they interfered with?

16 A. Not to my knowledge.

17 Q. You said a couple of minutes ago that you did pay
18 property assessments a couple of times. Was that
19 assessments on both properties, or just one of
20 your properties, on Chandelle?

21 A. At that time, it was just the one property.

22 Q. And that's the one with the house on it?

23 A. Right.

24 Q. And why did you pay those assessments?

25 A. We wanted the runway.

1 Q. Okay.

2 A. We agreed that was fine.

3 Q. So, basically, your understanding was, if we pay
4 these assessments, we get runway access?

5 A. No, sir.

6 Q. Okay. So why did you -- why did you pay the
7 assessment if that wouldn't give you runway
8 access?

9 A. It was run down.

10 Q. Okay. And so these assessments were supposed to
11 fix up the runway?

12 A. Re-pave it and clean it up, yes.

13 Q. Okay. Do you recall what years, year or years,
14 you paid assessments on that property?

15 A. It was the first two years we lived there.

16 Q. And was it 2014 or 2015, I believe you testified
17 earlier?

18 A. '15/'16.

19 Q. So you think it's 2015/2016?

20 A. Right.

21 Q. And so, it's safe to say you haven't paid any
22 assessments for that specific property since
23 2016, other than that special assessment?

24 A. Yes, sir; that's right.

25 Q. In your mind, the money that the assessments --

Grantee mailing address: 444 Airpark Drive, Greer, SC 29651
Tax Map # 4-05-00-039.04

DEED 107 UPG 361

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that JOSEPH G. KOHN AND DALE D. KOHN in consideration of SIX HUNDRED FIFTY SIX THOUSAND DOLLARS AND NO/100, (\$656,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

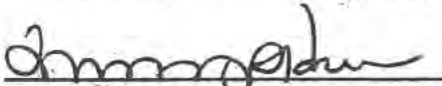
ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY, DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 166 AT PAGE 249. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

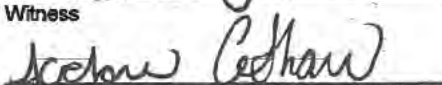
THIS BEING THE SAME PROPERTY AS CONVEYED TO JOSEPH G. & DALE D. KOHN BY DEED OF JOHN R. STEWART, JR., ET AL RECORDED NOVEMBER 3, 2011 IN DEED BOOK 99-M AT PAGE 048 AND RECORDED JUNE 21, 2012 IN DEED BOOK 100-Z AT PAGE 363.

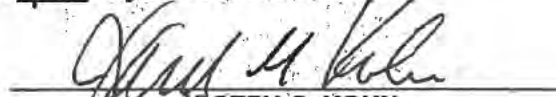
This property is conveyed subject to all restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor(s)' successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's(s') Hand(s) and Seal(s) this 15 day of DECEMBER 2014.


Witness


Witness


JOSEPH G. KOHN


DALE D. KOHN

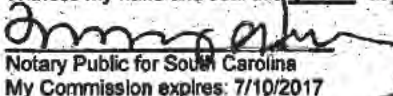
State of South Carolina)

Acknowledgement

County of Greenville)

I, Tammy S. Hill, a Notary Public for the State of South Carolina, do hereby certify that Joseph G. Kohn and Dale D. Kohn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 15 day of December 2014.


Notary Public for South Carolina
My Commission expires: 7/10/2017



DEE-2014-50159
Recorded 1 Pages on 12/16/2014 9:07:03 AM
Recording Fee: \$10.00 Documentary Stamps: \$2,427.20
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



PLAINTIFF 3634
Exhibit 32 Page 27 of 51

This document was prepared by
Greer State Bank
1111 West Poinsett Street
Greer, SC 29650

MTG-2014-50160
Recorded 7 Pages on 12/16/2014 9:07:14 AM
Recording Fee: \$13.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register

State of South Carolina

MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is December 15, 2014 and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: James Douglas Armstrong
Jane G Armstrong
35 Moore Street
Ocean Isle Beach, NC 28469

☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgages, their signatures and acknowledgments.

LENDER:
Greer State Bank
1111 West Poinsett Street, Greer, SC 29650

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
See Attached Exhibit A

The property is located in Spartanburg at 444 Air Park Drive
(County)
(Address) Greer, South Carolina 29651
(City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 300,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

Page 1 of 4

PLAINTIFF 3635
Exhibit 32

PLAINTIFF'S
EXHIBIT
2/16/18
Armstrong

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor irrevocably grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Mortgagor will promptly provide Lender with true and correct copies of all existing and future Leases. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default under the terms of this Security Instrument.

Mortgagor agrees that this assignment is immediately effective between the parties to this Security Instrument and effective as to third parties on the recording of this Mortgage. Mortgagor agrees that Lender may take actual possession of the property without the necessity of commencing legal action and that actual possession is deemed to occur when Lender, or its agent, notifies Mortgagor of default and demands that any tenant pay all future Rents directly to Lender. On receiving notice of default, Mortgagor will endorse and deliver to Lender any payment of Rents in Mortgagor's possession and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected will be applied as provided in this Security Instrument. Mortgagor warrants that no default exists under the Leases or any applicable landlord/tenant law. Mortgagor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.

(page 2 of 4)

13. **LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
14. **DEFAULT.** Mortgagor will be in default if any party obligated on the Secured Debt fails to make payment when due. A good faith belief by Lender that the prospect of any payment, performance, or realization on the Property is significantly impaired shall also constitute an event of default.
15. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

16. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the lender, court costs, and other legal expenses allowed by law. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.
17. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
18. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
 19. **INSURANCE.** Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.
21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.
22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
24. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
25. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.
26. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- ☐ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.
- ☒ **Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]
- ☐ Condominium Rider ☒ Planned Unit Development Rider ☐ Other
- ☐ **Additional Terms.**

X

THIS MORTGAGE SHALL MATURE 01/01/2030

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) *James Douglas Armstrong* (Seal) *Jane G Armstrong* (Date) _____ (Seal) _____ (Date) _____

Signed, sealed and delivered in the presence of:

(Witness) *Tammy Hill* (Witness) *Jordan Cethan*

PROBATE: STATE OF *South Carolina*, COUNTY OF *Greenville* ss.
Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this *15* day of *December*, *2014*

Timmy Shaw (Seal) *Jordan Cethan*
Notary Public for South Carolina
My commission expires: *7-10-17*

Loan origination organization Greer State Bank
NMLS ID 527724
Loan originator Sue Gaines
NMLS ID 616277

© 1994 Bankers Systems, Inc., St. Cloud, MN (1-800-587-2341) Form REMTG-SC 2/1/2013
L6000 -C166(SC) (1/302)

(page 4 of 4)

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of December, 2014, and is incorporated into and shall be deemed to amend and supplement the Mortgage (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to **GREER STATE BANK** whose address is **PO BOX 1029, Greer, South Carolina 29652** (the "Lender") of the same date and covering the property described in the Security Instrument (the "Property") and located at:

Address: **444 Air Park Drive, Greer, South Carolina 29651**

Legal Description: **SEE ATTACHED EXHIBIT "A"**

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. PUD Obligations.** Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (ii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.
- B. Hazard Insurance.** So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and hazards included within the term "extended coverage," then:
 - (i) Lender waives the provision in the Funds for Taxes and Insurance section of the Security Instrument for the monthly payment to Lender of the yearly premium installments for hazard insurance on the Property; and
 - (ii) Borrower's obligation to maintain hazard insurance coverage on the Property under the Hazard or Property Insurance section in the Security Instrument is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

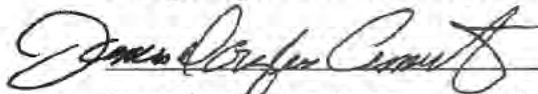
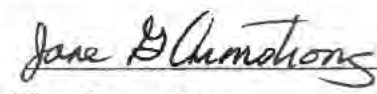
Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, with any excess paid to Borrower.
- C. Public Liability Insurance.** Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.
- D. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument, as provided in the Condemnation section in the Security Instrument.
- E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:
 - (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

- (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender;
- (iii) termination of professional management and assumption of self-management of the Owners Association; or
- (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

By signing this Planned Unit Development Rider, each Borrower acknowledges reading, understanding, and agreeing to all its terms and provisions.

 (Seal)  (Seal)
 James Douglas Armstrong Date 12-15-14 Jane G Armstrong Date 12-15-14

THIS INSTRUMENT PREPARED BY:
GREER STATE BANK
 1111 WEST POINSETT STREET
 GREER, SC 29650

AFTER RECORDING RETURN TO:
GREER STATE BANK
 1111 WEST POINSETT STREET
 GREER, SC 29650

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 Planned Unit Development Rider - Closed End DL2028

Page 2 of 2

www.compliancesystems.com

Initials 

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY, DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 166 AT PAGE 249. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

THIS BEING THE SAME PROPERTY AS CONVEYED TO JAMES DOUGLAS & JANE G. ARMSTRONG BY DEED OF JOSEPH G. & DALE D. KOHN TO BE RECORDED HERewith.

Homeowner's Policy Of Title Insurance

For A One-To-Four Family Residence



Issued by Old Republic National Title Insurance Company

Policy Number **EHP-08536429** File Number: 2014-276

OWNER'S INFORMATION SHEET

Policy Issued:
TAMMY S. HILL, ATTORNEY AT LAW
457 PENNSYLVANIA AVE, STE. A
GREER, SC 29615
PHONE 864-877-1423

Your Title Insurance Policy is a legal contract between You and Us:

It applies only to a one-to-four family residence and only if each insured named in Schedule A is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

The Policy insures You against actual loss resulting from certain Covered Risks. These Covered Risks are listed beginning on page 2 of the Policy. The Policy is limited by:

- Provisions of Schedule A
- Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions On Page 4.
- Exclusions on page 4 and 5.
- Conditions on pages 5, 6 and 7.

You should keep the Policy even if You transfer Your Title to the Land. It may protect against claims made against You by someone else after You transfer Your Title.

IF YOU WANT TO MAKE A CLAIM, SEE SECTION 3 UNDER CONDITIONS ON PAGE 5 AND 6.

The premium for this Policy is paid once. No additional premium is owed for the Policy.

This sheet is not Your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail Your rights and obligations and Our rights and obligations. Since the Policy—and not this sheet—is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If You have any questions about Your Policy, contact:

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, Minnesota 55401
800-328-4441



Agent ID No.
File No. 2014-276
Buyer/Borrower name: James Douglas Armstrong and Jane G. Armstrong

Premium: \$1740.98
Issued with Simultaneous Policy No.: LX-10515724
Prior Policy No.: None

SCHEDULE A

File No.: 2014-276

Policy No.: EHP-08536429



Our name and address is:
Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, Minnesota 55401

Policy Amount \$ 656,000.00

Policy Date and Time: 12-16-2014 at 9:07 A.M..

Deductible Amounts and Maximum Dollar Limits of Liability For Covered Risk 16, 18, 19 and 21:

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16: 1% of Policy Amount Shown in Schedule A Or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 18: 1% of Policy Amount Shown in Schedule A Or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19: 1% of Policy Amount Shown in Schedule A Or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21: 1% of Policy Amount Shown in Schedule A Or \$5,000.00 (whichever is less)	\$25,000.00

Street Address of the Land: 444 Air Park Drive
Greer SC 29651

1. Name of Insured: James Douglas Armstrong and Jane G. Armstrong
2. Your interest in the Land covered by this Policy is: **FEE SIMPLE**
3. The Land referred to in this Policy is described as:

SEE ATTACHED LEGAL DESCRIPTION

Countersigned

Authorized Officer or Agent
Issued through the office of:
Tammy S. Hill ()
457 A. Pennsylvania Ave.
Greer, SC 29650
864 877-1423

ORT Form 4445A
ALTA Homeowners Policy Of Title Insurance 01/01/08

SCHEDULE B

File No.: 2014-276

Policy No.: EHP-08538429



EXCEPTIONS

In addition to the Exclusions, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes for the year 2015 not yet due and payable, and all subsequent years.
2. Such facts as would be shown on a recent comprehensive survey of the premises described herein.
3. Covenants, conditions and restrictions as recorded in said RMC/Clerk's office in deed book 67-A at page 583, amended in Book 72-G at Page 843 and amended Book 88-H at Page 448.
4. Exception is taken to the following matters as shown on a survey for Chandelle Section 8 recorded in Plat Book 166 at Page 249: 40' rear setback line and runway easement; 30' front setback line; 7.5' side setback line; power line right of way; 5' side and rear lot lines D & U easements.

legal description

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY, DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 166 AT PAGE 249. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

THE FOLLOWING IS ALSO A LIEN AGAINST THE PROPERTY HEREIN INSURED:

Mortgage from James Douglas Armstrong and Jane G. Armstrong to Greer State Bank, dated 12-15-2014, and recorded 12-16-2014 at 9:07 A.M., in Mortgage Book 4923, at Page 812, in the Office of Register of Deeds for Spartanburg County

STATE OF SOUTH CAROLINA

HOMEOWNERS ASSOCIATION INFO

COUNTY OF GREENVILLE

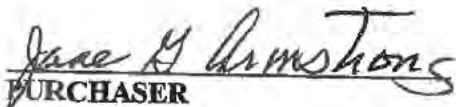
We acknowledge that we have a copy of the Covenants and all documents pertaining to Chandelle.

We further acknowledge that Tammy S. Hill, Attorney has been advised that the Dues are \$800.00 per year, payable January 1, 2015.

Tammy S. Hill Attorney has not collected any amount for the Dues. It is the sole responsibility of the Purchasers to pay the 2015 HOA Dues.



PURCHASER


PURCHASER

DEE-2017-4013



DEE BK 114-Q PG 424-426

Recorded 3 Pages on 01/30/2017 09:43:44 AM
 Recording Fee: \$10.00 County Taxes: \$128.70 State Taxes: \$304.20
 Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
 Dorothy Earle, Register Of Deeds

Grantee mailing address: 444 Airpark Dr., Greer, SC 29651
 Tax Map # p/o 4-05-00-039.00 and 4-05-00-039.15

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that JOHN R. STEWART, JR. in consideration of ONE HUNDRED SIXTEEN THOUSAND SIX HUNDRED DOLLARS AND NO/100, (\$116,600.00) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
 AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A SURVEY AS LOT NO. 57 (CONTAINING 1.18 ACRES AND 1.79 ACRES) OF CHANDELLE, SECTION 8, PREPARED BY HUSKEY & HUSKEY, INC., DATED SEPTEMBER 20, 2011 AND REVISED APRIL 4, 2016 AND NOVEMBER 9, 2016 AND RECORDED IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 171 AT PAGE 927. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

This being a portion of the same property as conveyed to John R. Stewart, Jr. by deed of Harold W. Brockman Jr. recorded October 22, 1985 in the ROD Office for Spartanburg County in Deed Book 51-T at Page 332.

This property is further conveyed subject to all other restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) as joint tenants with right of survivorship and not as tenants in common. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantors(s)' successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's Hand and Seal this 25 day of January 2017

Laura C. Hollis

 Witness

John R. Stewart, Jr.

 JOHN R. STEWART, JR.

 Witness
 State of South Carolina)

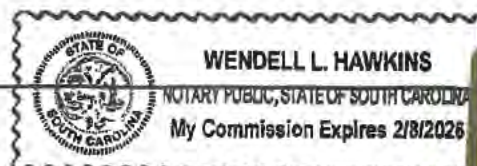
Acknowledgement

County of Greenville)

The undersigned Notary Public for the State of South Carolina, do hereby certify that John R. Stewart, Jr personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 25 day of January 2017.

Notary Public for South Carolina-Greenville
 My Commission expires: 2-8-2026



PLAINTIFF 3615

Exhibit 32 Page 39 of 51

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Air Park Drive, Greer, South Carolina 29651, bearing Spartanburg County Tax Map Number 4-05-00-039.15 and p/o 4-05-00-039.00, was transferred by John R. Stewart Jr. to James Douglas Armstrong and Jane G. Armstrong on January 31, 2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$116,600.00
(b) ☐ The fee is computed on the fair market value of the realty which is
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$116,600.00
(b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: \$116,600.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: 432.9.

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

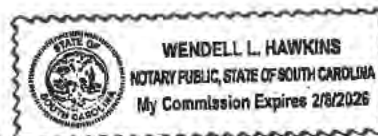
SWORN to before me this
January 31, 2017

John R. Stewart Jr.
Responsible Person Connected with the Transaction

John R. Stewart, Jr.

Print or Type Name Here

Notary Public for South Carolina, Greenville County
My Commission Expires: 2-8-2026



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 35 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed—pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.



First American Title Insurance Company

COMMITMENT INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Policy contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or you as the exclusive remedy of the parties. You may review a copy of the arbitration rules at www.alta.org.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.
YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.
If you have any questions about the Commitment, contact:

First American Title Insurance Company

1 First American Way
Santa Ana, California 92707
or

The office which issued this Commitment

TABLE OF CONTENTS

	Page
AGREEMENT TO ISSUE POLICY	1
SCHEDULE A	
1. Commitment Date	3
2. Policies to be Issued, Amounts and Proposed Insureds	3
3. Interest in the Land and Owner	3
4. Description of the Land	3
SCHEDULE B-I REQUIREMENTS	4
SCHEDULE B-II EXCEPTIONS	5
CONDITIONS	2

First American Commitment



First American Title Insurance Company

SCHEDULE A

First American Title Insurance Company
1 First American Way
Santa Ana, California 92707

Issuing Office File No.: H-21695

1. Commitment Date: January 3, 2017 @08:00 AM
2. Policy or Policies to be issued:

☒ (a) Owners Policy **STANDARD OWNERS**

Amount: of Insurance \$116,600.00

Proposed Insured: James Douglas Armstrong and Jane G. Armstrong

☐ (b) Loan Policy

Amount of Insurance \$0.00

Proposed Insured:

☐ (c) Other

Amount of Insurance \$

Proposed Insured:

1. Fee Simple interest in the land described in this Commitment is owned,
at the Commitment Date, by: John R. Stewart, Jr.

2. The land referred to in this Commitment is described as follows:

See Attached Exhibit "A" for Legal Description

Issue Date: January 20, 2017

WENDELL L. HAWKINS, P.A.

By:

Wendell L. Hawkins

THIS COMMITMENT IS FURNISHED BY FIRST AMERICAN TITLE INSURANCE COMPANY OR ITS POLICY ISSUING AGENT SOLELY FOR THE ISSUANCE OF A POLICY OR POLICIES OF TITLE INSURANCE OF FIRST AMERICAN TITLE INSURANCE COMPANY. THIS COMMITMENT IS NOT AN ABSTRACT OR AN OPINION OF TITLE. LIABILITY UNDER THIS COMMITMENT IS DEFINED BY AND LIMITED TO THE TERMS AND CONDITIONS OF THIS COMMITMENT AND THE TITLE INSURANCE POLICY TO BE ISSUED. PERSONS AND ENTITIES NOT LISTED ABOVE AS PROPOSED INSURED ARE NOT ENTITLED TO RELY UPON THIS COMMITMENT FOR ANY PURPOSE.

First American Commitment

First American Title Insurance Company

SCHEDULE B-SECTION I

REQUIREMENTS

Issuing Office File No.: H-21695

The following requirements must be met:

- 1 Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- 2 Pay us the premiums, fees and charges for the policy.
- 3 Pay all taxes and/or assessments, levied and assessed against the land, which are due and payable.
- 4 You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- 5 Documents, satisfactory to us, creating the interest in the land and/or the mortgage to be insured, must be signed, delivered and recorded:
 - a. Warranty Deed from John R. Stewart, Jr. to James Douglas Armstrong and Jane G. Armstrong conveying the property as described in Schedule A of this Commitment.
- 6 We must be furnished with a copy of SCID 3601 executed pursuant to Section 38-75-960 S.C. Code of Laws 1976, as amended, and an executed Notice of Availability of Title Insurance pursuant to S.C. Insurance Department regulation R-69-18, Vol. 25A of S.C. Code of Laws 1976, as amended.
- 7 Seller's/Owner's Affidavit Indemnity executed by current owner(s) of the land on a form to be supplied by the Company stating that there have been no improvements to the land within the past 90 days which could give rise to a construction lien and that there are no accounts or claims pending and unpaid which could constitute a lien against the land. The affidavit will also state that affiant has no knowledge of any natural person or legal entity who has or could have a claim of right, interest or lien adverse to the Insured.
- 8 Receipt of the acknowledged First American Title Insurance Company Privacy Policy.
9. Partial release of that certain mortgage in favor of Stephen E. Berry and Marilyn N. Berry dated 10/18/2013 and recorded October 23, 2013 in Book 4795, Page 150, of the Register of Deeds Office for Spartanburg County, South Carolina.

First American Commitment

First American Title Insurance Company

SCHEDULE B-SECTION II

EXCEPTIONS

Issuing Office File No.:H-21695

Any policy we issue will have the following exceptions, unless they are taken care of to our satisfaction.

- 1 (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession in the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. Any mineral or mineral rights leased, granted or retained by current or prior owners.

NOTE: Exceptions Numbered None above will be hereby deleted upon issuance of the Loan Policy Only.

6. Taxes and assessments for the year 2017 and subsequent years, not yet due and payable.
7. Agreement for use of Runways dated October 22, 1985 and recorded on October 22, 1985 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 51-T at Page 334.
8. Runway Easement dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 357.
9. Duke Power Easements recorded in Book 35-F at Page 382, Book 35-X at Page 71 and 38-J at Page 309 in the Office of the Register of Deeds for Spartanburg County, South Carolina.
10. Laurens Electric Easement recorded in 53-H at Page 972 in the Office of the Register of Deeds for Spartanburg County, South Carolina.
11. Lis Pendens 2016-CP-42-00349. The Lis Pendens involves litigation to which the insured is a party to and has knowledge of the circumstances.
12. Restrictive Covenants Book 67-A at Page 583 as may be amended from time to time.

First American Commitment

FIRST AMERICAN TITLE INSURANCE COMPANY

EXHIBIT A

Issuing Office File No.:H-21695

LEGAL DESCRIPTION:

All that certain pieces, parcels or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 57, containing 1.18 acres and 1.79 acres, more or less on a plat entitled "Chandelle, Section 8" prepared by Huskey & Huskey, Inc. dated September 20, 2011 and recorded on December 13, 2016 in the Office of the Register of Deeds for Spartanburg County in Plat Book 171 at Page 927.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to John R. Stewart, Jr. by deed of Harid W. Brockman dated October 22, 1985 and recorded on October 22, 1985 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 51-T at Page 332.

TMS# 4-05-00-039.15 and a portion of 4-05-00-039.00

First American Commitment

Property Owners Association



PRIVATE AVIATION ESTATES

September 15, 2021

Dear Members:

Your Board of Directors has voted to have the runway refurbishment work completed and to install a paved turnaround at the approach end of runway 21. We have contracted with Greenville Seal Coating Inc. for the refurbishment and Spartan Paving and Concrete for the turnaround. The turnaround work is starting today and is scheduled to be completed tomorrow. The refurbishment work is scheduled to begin September 27. The work will include filling cracks in the pavement, sealing the runway surface and repainting the runway markings. We will keep you updated on the required runway closings.

Pursuant to Article XI, Section 11.5 Special Assessments, find enclosed an invoice for a Special Assessment of \$2,000 per lot to cover the cost of this work.

If anyone has questions or comments, please contact a member of the Board.

Chandelle POA Board of Directors

Section 11.5 Special Assessments. In addition to the annual assessments authorized in Section 11.1 above, the Board of Directors may levy in any fiscal year one or more special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement on the open space or Common Area, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Notice of the amount and due dates for each special assessment must be sent to each Owner at least (30) days prior to the due date.



Chandelle Property Owners Association • 130 Chandelle Ridge Drive • Woodruff, SC 29388-9800

Property Owners Association



PRIVATE AVIATION ESTATES

September 17, 2021

Re: Special Assessment Payment Due date

Dear Members:

In the next few days you should be receiving a letter and invoice for a Special Assessment levied for the refurbishment of the Chandelle runway. It has come to the attention of the board that the envelopes were not timely deposited in US Mail. The purpose of this letter is to correct the payment due date on the invoice from October 15, 2021 to October 30, 2021. We regret this mistake and hope that it has not caused any inconvenience.

If you should have any questions, please contact a member of the board.

Thank you,

Chandelle BOD



**Chandelle Property Owners
Association**

c/o 106 Chandelle Ridge Drive
Woodruff SC 29388-9800

Date: October 15, 2021

Doug and Jane Armstrong
444 Airpark Drive
Greer, SC 29651-7443

REVISED

**2021 Special
Assessment**

Lot	Due	Special Assessment	Annual Assessment	
55/56	November 30, 2021	\$2,000.00		
57	November 30, 2021	\$2,000.00		
Refurbishment of runway and asphalt turnaround.				
Total Due				\$4,000.00

Please
make
checks
payable to:

**Chandelle
Property Owners
Association**

~Thank You~

Please contact Jeff Cooper, Treasurer,
with any questions.
jeff@cooperdesign.biz
864-304-6773

JAMES D ARMSTRONG [REDACTED]
JANE G ARMSTRONG [REDACTED]
444 AIR PARK DR.
GREER, SC 29651-7443

68-444
560 9050 [REDACTED]

DATE 10/4/21

PAY TO THE ORDER OF CPOA \$2,000⁰⁰

Two thousand & 110/100 DOLLARS

 **UNITED BANK**

MEMO Runway
per Mr. Remio

Jane G Armstrong MP

[REDACTED]

Property Owners Association

PRIVATE AVIATION ESTATES

December 1, 2021

Dear Doug and Jane Armstrong:

The Chandelle Property Owners Association has received your check dated October 4, 2021 in the amount of \$2,000. Your payment will be applied pursuant to the Chandelle POA Declaration of Covenants, Conditions & Restrictions, as amended, to your Lot 55/56. As of the date of this letter your Delinquent Assessment balance for Lot 55/56 is **\$26,537.50**. Section 11.6 is copied below.

Regards,

Chandelle POA

Section 11.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped; provided, however, that the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF SPARTANBURG) CASE NO.: 2016-CP-42-01854

3
 4 Chandelle Property Owners)
 5 Association,) DEPOSITION OF
 6 Plaintiff,) JAMES D. ARMSTRONG
 7 vs.) AUGUST 9, 2022

8 James Douglas Armstrong,)
 9 Jane Armstrong, Kenneth L.)
 10 Galloway, Molly C. Galloway)
 11 Warren Johnson, Rhonda)
 12 Johnson, John K. Payne,)
 13 Ruth G. Payne, and Jane Van)
 14 Wieren as Trustee of the)
 15 Greer R.G. Irrevocable)
 16 Property Trust, dated October)
 17 25, 2006, and also all other)
 18 persons unknown, claiming any)
 19 right, title, estate,)
 20 interest in or lien upon the)
 21 real estate described in the)
 22 complaint herein,)
 23 Defendants.)

24 _____)
 25

1 Deposition on oral examination of JAMES D. ARMSTRONG,
2 reported by Susanna M. Amstutz, Court Reporter and Notary
3 Public in and for the State of South Carolina; pursuant to
4 Rule 30 of the South Carolina Rules of Civil Procedure;
5 said deposition was taken at the offices of Wendell L.
6 Hawkins, P.A., 310 The Parkway, Greer, South Carolina on
7 Tuesday, the 9th day of August, 2022; commencing at the
8 hour of 2:30 p.m.

1 A. Well, they were together. They were a part of
2 the house.

3 **Q. Right.**

4 A. And that was -- that was in the purchase of the
5 house, those two lots were included.

6 **Q. Okay. Did you have a discussion with the Kohns**
7 **about the Property Owners Association.**

8 A. I didn't discuss it at all with them. I just
9 bought the house. There was no discussion. I
10 mean, we went to a closing, and at that time, we
11 were presented with the documents and, as far as
12 I knew, we were part of the community.

13 **Q. Did -- did -- did you have a discussion with him**
14 **about how the use of the runway worked?**

15 A. Well, we had a license agreement that was part of
16 the documents that was also presented to me when
17 I purchased my property. The license agreement
18 was part of my closing. It was presented to me
19 at that time.

20 **Q. For 55 and 56?**

21 A. That's all I bought from Kohns was 55 and 56.

22 **Q. Well, I know. I'm not trying to --**

23 A. Well, that other purchase was a later time. That
24 was when I bought the house. Again, this was
25 part of -- part of Joe's house was two lots.

1 have to look and compare the two. I -- I'm sure
2 I've got the same document. I mean, it's not
3 contested in any statement about the covenants
4 and whatever, but I can't tell you that I have
5 that specific document. I -- I'm sure I do, but
6 I'd have to look at my paperwork to see if it's
7 the same.

8 **Q. How many lots do you own in Chandelle?**

9 A. I own two.

10 **Q. Describe those lots to me.**

11 A. It's the ones I bought from Kohn and -- which is
12 combined.

13 **Q. 55 and 56?**

14 A. That's one. Yes, they're combined.

15 **Q. Okay.**

16 A. And then I bought the second lot. This is 57.

17 **Q. Okay. It's part of -- is lot 55 and 56 -- and I**
18 **say lot singular 'cause we know --**

19 A. Oh, I understand.

20 **Q. -- they're combined. You -- we agree that?**

21 A. Yeah.

22 **Q. All right. Are those lots subject to the**
23 **Declaration of Covenants for Chandelle**
24 **Subdivision?**

25 MR. HAWKINS: Object to the form.

1 THE WITNESS: Like I said, yeah.

2 BY MR. MCCABE:

3 Q. Sir?

4 A. Yes.

5 Q. Is Lot 57 subject to the restrictive covenants
6 for --

7 A. I --

8 Q. -- Chandelle --

9 A. For Chandelle.

10 I think they -- I think they have a document
11 saying yes, it is. Yeah.

12 Q. Okay. So, it's fair to say -- to say you do not
13 dispute that the restrictive covenants for the
14 Chandelle subdivision, including membership and
15 the Chandelle Property Owners Association is
16 binding on lots 55, 56, and 57, correct?

17 MR. HAWKINS: Object to the form.

18 THE WITNESS: I -- again, I -- I'll have to look
19 at my documents, but, of course, I know if I can
20 speak and tell you my understanding.

21 BY MR. MCCABE:

22 Q. Sure.

23 A. I came to an understanding that, you know, we're
24 part of the community and thought we were until
25 you -- you in Billy's hangar made a statement to

1 us that we were not properly bound, and you came
2 to ask us to try to sign a document that our
3 property would be property-bound, and then you
4 asked us to sign a -- an agreement basically
5 relieving us for the board of any responsibility
6 in the past, any errors in the past, or what they
7 might do in the future, which we refused to sign.
8 But we said we would be more than happy to amend
9 or to clear up any document problems there were.
10 We'd be glad to do it, but you'd like to sue us
11 instead. So, I -- we always felt we were a part
12 of the community all along, but you -- you
13 indicated we were not. You said we're not
14 properly bound, therefore, the restrictions were
15 screwed up and we're not properly bound. So, you
16 had to spend the money to redo it.

17 **Q. So, I had to -- what do you mean?**

18 A. You -- well, you had -- you indicated to us,
19 again, in Billy's hangar that they had to be
20 changed, and it was going to cost \$150,000 or
21 some number to redo all the restrictions, and we
22 agreed, several of us, that we'd have our
23 attorney to make the corrections and pay for it
24 to make the corrections you needed, but we were
25 not going to sign the document.

1 **Q. Have you submitted some other document or consent**
2 **that would be acceptable to you since they --**

3 A. I'd be glad to read something. I should be able
4 to. I understand that some other people have
5 signed the document that's not the same but I
6 haven't -- I don't have a clue. I have no idea.
7 The whole problem is that you've taken and
8 haven't spent any money for maintenance at all
9 from day one since I've been there. You've
10 corrected the electrical lighting. There's some
11 lighting problems you corrected. And you -- and
12 I, at the time I first moved there, we talked
13 about the cracks in the runway. And I said, yes,
14 it needs to be sealed. It needs to be done now,
15 not -- in fact, I talked about it. I said, what
16 you're talking about spending now? I said
17 nothing compared to what it's going to be. So,
18 all this time that runway sat with cracks in it.
19 So, has it done damage or going to be damaged in
20 the future? I don't know. I have not a clue.
21 But my point is, all the money has been spent to
22 pay you. Nothing's been spent for maintenance
23 whatsoever. No money has been spent for
24 maintenance.

25 **Q. Well, you understand, I can't answer your**

1 questions in a deposition about things, other
2 than clarifying a question that I'm asking you.
3 So, don't let my silence mean that I agree with
4 your interpretation we had in the meeting. But,
5 when you say -- when you -- let me -- so, are you
6 saying -- are these lots currently -- is your
7 position that lot 55 and 56 is subject to the
8 restrictions today? Yes or no?

9 MR. HAWKINS: Object to the form.

10 THE WITNESS: You know, that's going to have to
11 be determined by lawyers. I don't know. That's
12 the reason we're here. That's the reason we're
13 being sued.

14 Q. So is lot 57, your testimony under oath today, is
15 that lot 57 is or is not bound by the --

16 A. I'll have to look and see from my documents if I
17 signed it, yes. And, if I have, then, it is. I
18 can't imagine why it shouldn't be but, again, I
19 -- I'll have to look and see.

20 Q. You say -- you said a minute ago that the
21 Association didn't -- didn't -- didn't maintain
22 the runway.

23 A. They haven't spent any money for maintenance.

24 Q. And -- and you --

25 A. Any.

1 **Q. Okay. So did you pay your assessments in 2016?**

2 A. I believe I did, yeah.

3 **Q. Did you pay your assessments in 2017?**

4 A. No. Did not.

5 **Q. Why didn't you pay them in 2017?**

6 A. Because you weren't spending money from
7 maintenance, at all. You were already -- all you
8 were doing was suing me. You were suing us. You
9 didn't do any maintenance work at all. The
10 license, the sign on the property and part of the
11 document says you're supposed to maintain common
12 areas, supposed to maintain signage. The sign
13 looked like crap. The gold leaf painting on the
14 sign was shot. I took the signs down and had
15 them rebuilt. I paid for them out of my pocket.
16 I didn't ask for anything when I came there. And
17 I redid the signs in the different locations of
18 property, and I paid that.

19 **Q. And who owned the property where the signs were**
20 **located at the time?**

21 A. At that time it was owned by LLC.

22 **Q. Well --**

23 A. Or somebody. I don't know.

24 **Q. Was it owned by the Association, correct?**

25 A. Well, the money that was being forwarded that I

1 sent was for maintenance. Okay? And which were
2 maintenance, common areas, signs, anything else.
3 Okay. Again, it was in ill repair, and all I
4 did, I paid the original sign painters \$3,800 to
5 have them repair the signs, and I put them back
6 up.

7 **Q. Did you ask for reimbursement?**

8 A. Absolutely not. Don't want it. Didn't expect
9 any then. Don't want it now.

10 **Q. Well, let's talk back about 2017, 'cause if I**
11 **understand your testimony correctly, it's in --**
12 **and I'm going to phrase this, and you're welcome**
13 **to disagree with this, but, essentially, I**
14 **understand your testimony is that the Association**
15 **was obligated to maintain the runway pursuant to**
16 **the terms of the declaration --**

17 A. Uh-huh.

18 **Q. -- and because they were not doing that, you did**
19 **not pay the assessments.**

20 A. The assessments weren't paid 'cause it wasn't
21 being spent for any maintenance of any kind. It
22 was being spent for attorney fees. That's the
23 reason I didn't pay it.

24 **Q. And it's your belief that the Association in 2017**
25 **was obligated to maintain the runway?**

1 see. I can't tell you whether there was a
2 separate assignment or not. I don't recall. I
3 do not recall.

4 **Q. I'm showing you what's marked as Exhibit Number**
5 **4. Do you recognize that?**

6 (Document tendered to witness)

7 A. I'm sure this is the same document. I just
8 verify it appears to be.

9 **Q. Is that the deed from the Kohns to you and your**
10 **wife?**

11 A. That's correct.

12 **Q. Okay.**

13 A. That's the way I see it. Yeah.

14 **Q. Okay.**

15 A. And, again, that's with Joseph, yeah.

16 **Q. Okay. And I'm showing you next, I'm going to**
17 **show you what's marked as Exhibit Number 5. Do**
18 **you recognize that document?**

19 A. Yeah, it's the same. I mean, I signed this, yes.

20 **Q. And if you go to the Planned Unit Development**
21 **Rider, which is Plaintiff 36 -- 3639 at the**
22 **bottom, do you see where it says "Borrower shall**
23 **perform all the borrower's obligations under the**
24 **constituent documents? The constituent documents**
25 **are the --**

1 A. What -- what paragraphs, again, did you say?

2 Q. **Sorry. I didn't mean to get ahead of you.**

3 A. You said 30-something, and I don't see them that

4 far.

5 Q. **It's the Planned Unit Development Rider,**

6 **Plaintiff 3639. Right here.**

7 A. Okay.

8 Q. **Right there. So, we're under, on the planned**

9 **unit development rider. Oh, I'm sorry. When I**

10 **say 36, I'm talking this number here at the**

11 **bottom.**

12 A. Okay.

13 Q. **I was just showing you and seeing if -- that's --**

14 **we call that --**

15 A. All right. I have --

16 Q. **-- a Bates label.**

17 A. I have no idea about this. I don't -- I don't

18 know.

19 Q. **Well, look over on the next page that's Plaintiff**

20 **3640. Is that your signature?**

21 A. Yeah, that's mine. Yes, it --

22 Q. **Is -- I'm sorry.**

23 A. Yeah.

24 Q. **And is that your wife's signature?**

25 A. Yes, sir.

1 Q. And if you go back to the prior page of this
2 document, look at the bottom right-hand corner.
3 Is that your initials?

4 A. That's correct.

5 Q. Is that your wife's initials --

6 A. Yes, sir.

7 Q. And so if you go up under where it says PUD
8 Covenants, Section A. It says "Borrower shall
9 perform all of borrower's obligations under the
10 PUD constituent documents. The constituent --
11 constituent documents are the articles and
12 incorporation instrument or any other equivalent
13 document which creates the owners association and
14 any bylaws or other rules or regulations of the
15 owners association."

16 A. Yeah.

17 Q. "Borrower shall promptly pay when due all dues
18 and assessments imposed pursuant to the
19 constituent documents."

20 A. I understand that.

21 Q. Okay.

22 A. And part of that bylaw subject to the Association
23 shouldn't commit our community to greater than
24 \$50,000 either without a special assessment or
25 vote on it, which was not done.

1 special conditions, don't bind me to one part of
2 it, bind me to all of it.

3 **Q. So, are you a member or not?**

4 MR. HAWKINS: Object to the form.

5 THE WITNESS: It will be determined in court, I
6 guess. I'm not smart enough to figure it out. I
7 thought I was, and you sued me and said I wasn't.

8 **Q. So, are you member or not? Yes or no?**

9 MR. HAWKINS: Object to the form. How many
10 times you going to ask?

11 BY MR. MCCABE:

12 **Q. But you -- you -- is your position you're going**
13 **to testify to the Court or the jury, the fact**
14 **finder, whoever it may be, that you don't know if**
15 **you're bound or not, or is it going to be your**
16 **testimony --**

17 A. Well, when I bought my property, I thought I was
18 bound. I mean, I thought I was clearly bound. I
19 had documents, and I thought I'm bound.

20 **Q. Okay. And that's for lots 55 and 56 and lot 57?**

21 A. It's not when I bought my house. It's two
22 separate events that happened. When I -- when I
23 signed my documents for my house, I thought I was
24 a member of the Association and everything was in
25 good standing. I mean, you know, well, I paid

1 the assessment. I paid the money.

2 **Q. Well, you paid the special assessment last year,**
3 **as well, didn't you?**

4 A. Well, yeah, but, I mean, I get a note that that
5 was not what it was going to be used for. So
6 then you amended the bill and sent another bill.
7 So why would I send you another check for 2,000
8 when you're not going to apply it to why it was
9 sent for.

10 **Q. So you recall getting the revised assessment?**

11 A. We did not receive a revised bill. We did not
12 receive that.

13 **Q. Okay. I'm showing you what's marked as Exhibit**
14 **Number 6. Do you recognize that document?**

15 (Document tendered to witness)

16 A. Again, I'm sure it's part of the documents I got
17 somewhere in a closing.

18 **Q. Does it appear to be the title insurance for lot**
19 **55 and 56?**

20 A. Again, I would assume. I'm trying to -- this is
21 dated the 14th, so I'm assuming it's part of the
22 -- the title insurance is part of the closing.
23 I'll just have to look and see if it's the same
24 document. I -- I have no reason to think it's
25 not. I don't know.

1 Q. Go to Schedule B on that document, paragraph 3.

2 A. Well, just a minute. I'm trying to --

3 Q. Take your time. You can -- you can --

4 A. Where is -- is it on page 2 or 3? Schedule B? I
5 see A, Schedule A.

6 Q. All right. It's -- look at Schedule A. Look at
7 the --

8 A. Okay.

9 Q. At the top of Schedule A, does it say
10 "Buyer/borrower name, James Douglas Armstrong and
11 Jane G. Armstrong"?

12 A. Right. The name of the insurer James and Jane G.
13 Armstrong, that's correct.

14 Q. Well, it says policy amount \$656,000?

15 A. Uh-huh.

16 Q. And it says policy date, December 16, 2014?

17 A. That's correct.

18 Q. Does that refresh your -- your memory of --

19 A. Again, I -- I'll assume it's the same document,
20 yes.

21 Q. Okay. So, flip to the next page, Schedule B.

22 A. Okay.

23 Q. And see the exceptions? See, it says

24 "Exceptions." "In addition to the exclusions,
25 you are not insured against loss, cost, attorney

1 fees, and expenses resulting from" -- then under
2 there, it says para- -- under Number 3 it says
3 "covenants, conditions, and restrictions as to
4 recorded in said RMC/clerk's office and Deed Book
5 67A at Page 583. Amended in Book 72G at Page 843
6 and Amended Book 88H at Page 448. Did I read
7 that correctly?

8 A. Yeah. You read it correctly, yeah.

9 Q. All right. I'm showing you what's marked as
10 Exhibit Number 7. Do you recognize that
11 document?

12 (Document tendered to witness)

13 A. Yeah. Uh-huh. I recognize that.

14 Q. Do you remember signing this?

15 A. Yeah. Uh-huh.

16 Q. And it says "We acknowledge that we have a copy
17 of the covenants and all documents pertaining to
18 Chandelle."

19 A. Yes, sir.

20 Q. And it says "We further acknowledge that Tammy S.
21 Hill, attorney, has advised that the dues are 800
22 per year payable January 1, 2015."

23 A. Yeah. Uh-huh.

24 Q. It says "Tammy S. Hill, attorney, has not
25 collected any amount for the dues. It is the

1 sole responsibility of the purchaser to pay the
2 2015 HOA dues, correct?

3 A. Yeah, that's correct.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your wife's signature?

7 A. Yes.

8 Q. Okay. Now, I'm going to show you what's marked
9 as Exhibit Number 8.

10 (Document tendered to witness)

11 A. Okay. Yes.

12 Q. Okay. Do this -- is this the deed from John
13 Stewart to you and Ms. Armstrong for lot number
14 57?

15 A. That's right.

16 Q. Okay. And do I read this correctly when it
17 describes it as lot Number 57 of Chandelle
18 Section 8?

19 A. That's correct.

20 Q. Okay. You -- you understood this was a part of
21 Chandelle subdivision at the time of purchase; is
22 that correct?

23 A. I assumed it would be brought into Chandelle,
24 yes.

25 Q. What do you mean "you assumed it would be brought

1 in"?

2 A. Well, I don't think it was. You know? I don't
3 know that it ever formally had been brought in or
4 not, 57. I'm not sure. I don't know.

5 **Q. Okay. Well, let's look at Exhibit Number 9.**

6 (Document tendered to witness)

7 **Q. Do you recognize that document?**

8 A. I -- again, I'd have to take a look. I'm sure
9 it's the title insurance at our closing when we
10 bought the lot, yes.

11 **Q. And the lot you're referring to is lot 57?**

12 A. Yes.

13 **Q. And if you'll turn to the "Exceptions" page on**
14 **Schedule B, Section 2. Go down to Number 11.**

15 **Number 11 is lis pendens for 2016-CP-42-00349.**

16 **Is -- do you understand that to be this lawsuit?**

17 A. I would assume so, yes.

18 **Q. Okay. You understood that when you purchased lot**
19 **57, that the Association took the position that**
20 **lot 57 was bound by the restrictive covenants?**

21 A. I don't know.

22 **Q. You --**

23 A. Again, if it was, why -- why are suing us to
24 bring us into the community if I'm already in?
25 Why are you suing me to bring me in? I mean, I

1 don't understand it. It's like when I purchased
2 my house, I thought I'm in, but yet you're suing
3 me to change the documents to make sure that
4 you've modified the documents to be sure that
5 we're in. I assumed that I was in when I
6 purchased my property. Yes, I did.

7 **Q. And if you go to the next exception there after**
8 **11, number 12 says restrictive covenants, Book**
9 **67A at Page 583 as may be amended from time to**
10 **time.**

11 A. I understand that.

12 **Q. And you still decided to proceed and close on lot**
13 **57.**

14 A. Uh-huh.

15 **Q. Correct?**

16 A. I didn't want anybody moving there.

17 **Q. Since that time, did you purchase some additional**
18 **property adjacent to lot 57?**

19 A. Huh-uh.

20 **Q. Did you try to combine some property over either**
21 **lot line?**

22 A. I didn't try to, I did.

23 **Q. Okay. Tell me about that.**

24 A. I just -- the property lines were askew. They
25 were not perpendicular to the road if you took a

1 I'll just have to look and see. I -- I don't --
2 I'm not aware of anything right now.

3 **Q. Okay.**

4 MR. MCCABE: All right. And this stack goes
5 over here so I don't take it somewhere. Let's
6 take a 5-minute break, if you don't mind.

7 (A short break transpired)

8 MR. MCCABE: What's the next exhibit? 17?

9 MADAM COURT REPORTER: Yes.

10 (PLAINTIFF'S EXHIBIT NUMBER 17 MARKED FOR IDENTIFICATION
11 PURPOSES (1 page) - Informal Meeting of February 22, 2016
12 at Bruce and Cindy Goldberg's Hangar)

13 (Document tendered to witness)

14 BY MR. MCCABE:

15 **Q. Do you remember -- have you ever attended any of**
16 **the annual meetings or special meetings of the**
17 **Chandelle Property --**

18 A. I attended -- I've attended some meetings, yes.

19 **Q. Okay. Do you recall attending a meeting on**
20 **February 22, 2016, in Bruce and Cindy Goldberg's**
21 **hangar?**

22 A. I think I do. Yes, I do remember that. Was that
23 -- when in '16? January? What did you say?

24 **Q. February.**

25 A. February?

1 **Q. Yes, sir.**

2 A. Yeah. That's -- I think Billy -- the reason, I
3 think Mom -- my mother passed away that month,
4 too. Specifically, I remember being there.

5 **Q. Yeah. I'm showing you what's marked as Exhibit**
6 **Number 17 and -- and you'll see at the bottom of**
7 **this document I handed you, it says, "CSC**
8 **Developers Response 66." Did you prepare these**
9 **minutes?**

10 A. I haven't prepared any documents.

11 **Q. Do you know who might have prepared this?**

12 A. I have not a clue.

13 **Q. Do you -- did the Johnsons or --**

14 A. I have no idea what anyone else might have done.
15 I have not been with anyone when they prepared a
16 document or made a document or been in that part
17 of it.

18 **Q. Well, I was wondering if anyone shared any**
19 **documents, or notes, or meeting minutes with you,**
20 **do you recall?**

21 A. I don't know. The meeting minutes, I mean, you
22 would distribute those anyway. I don't know. I
23 haven't shared with anybody in the community. I
24 don't understand that, I mean.

25 **Q. Well, these weren't prepared by the board, and**

1 Q. And so --

2 A. I know you've got that information.

3 Q. So you think you have not paid any assessments
4 since 2016?

5 A. I believe that's correct.

6 Q. And how much were those assessments that you paid
7 in 2015?

8 MR. HAWKINS: Object to the form.

9 BY MR. SOLAR:

10 Q. How much were the assessments that you paid --

11 A. I think they were \$800.

12 Q. \$800?

13 A. And we paid the special assessment the one time
14 for the one bill we got for lot 57. I say 57.
15 Actually, for our house. So, 55 and -- 56 and
16 57.

17 Q. Did you ever receive any other request to pay a
18 special assessment, other than that one you paid
19 on?

20 A. No. Just that one.

21 Q. The regular assessments that they ask to pay
22 every year, is it your understanding that you're
23 asked to pay the same amount in assessments that
24 all of your fellow members in the community --

25 A. Well, we tried to do that several months ago in

1 trying to get a resolution to this, and I offered
2 to do so, and it was rejected without paying
3 penalties and interest.

4 **Q. Okay. But it -- but as far as your -- as far as,**
5 **you know, in 2017, when they said you owed**
6 **assessment, and since then, they were asking you**
7 **to pay the same amount that they're asking**
8 **everybody else to pay?**

9 A. Well, it has nothing to do -- the purpose or
10 reason it's not been paid, all the money was
11 being spent for attorney fees.

12 **Q. No. I understand that, sir, but --**

13 A. Well, but that's -- that's it. That's the
14 reason.

15 **Q. Well, I understand you haven't, but I'm just**
16 **trying to say -- are you being asked to pay any**
17 **more money than anybody else is?**

18 A. As far as I know, no.

19 **Q. And you also talked briefly about one of the**
20 **assessments, and what do you believe the**
21 **assessments are supposed to go towards?**

22 A. Maintenance.

23 **Q. And what is your definition of maintenance?**

24 A. Repairs of any part of the common area, cutting
25 grass. I think the Association now has got a

1 team of members that are, you know, currently
2 cutting some of the grass and then I think
3 individuals are cutting a portion of it
4 themselves.

5 **Q. Does the maintenance go towards the air runway,**
6 **as well?**

7 A. Well, whatever is required.

8 **Q. And what year do you believe that they stopped**
9 **doing maintenance?**

10 A. They haven't done any since I've been there. I
11 don't know. I don't know prior to '15, but I --
12 I can't tell you. But from '16 on, I don't know
13 of any. They did repair the runway lighting
14 which changed. It was upgraded. He changed the
15 lights on that. And as far as I know, I'm not
16 aware of anything else that was done.

17 **Q. In spite of this lack of maintenance, is**
18 **everything still usable?**

19 A. As far as I know, yeah, but I -- I don't know
20 what extent that might be in the future. What
21 liability the runway might be by not sealing
22 those cracks five or six years ago.

23 **Q. You testified earlier, and my understanding,**
24 **please correct me if I'm wrong, that it was your**
25 **understanding you were a member of the Chandelle**

1 Property Owners Association until this lawsuit
2 occurred. Is that correct?

3 A. That's correct.

4 Q. Do you want to be a member of the Chandelle
5 Property Owners Association?

6 A. Absolutely.

7 Q. I want to ask you this, and I tried to explain to
8 your wife. Unfortunately, it's a difficult
9 subject, so I'm not sure if I explained this
10 correctly, even though I was still satisfied with
11 her answers.

12 A. I might be as confused myself.

13 Q. Well, I'm trying to explain it a little different
14 way. So, board members are being sued for
15 actions they took while members of the board, and
16 they're being sued in their individual capacity.
17 And so what individual capacity means is you're
18 alleging that they did something, not on behalf
19 of the board, they did something on their own
20 volition that caused you damage. Okay?

21 MR. HAWKINS: Object to the -- if that's the
22 question, I object to the form. If it's not a
23 question --

24 MR. SOLAR: Yeah. Okay.

25 BY MR. SOLAR:

1 MR. HAWKINS: Okay. Rick?

2 MR. SOLAR: Rick, do you have --

3 MR. PATTON: I do.

4 MR. HAWKINS: Okay.

5 MR. PATTON: Do you have Exhibit 10 in the
6 stack?

7 MR. MCCABE: I'll get it. This one?

8 MR. PATTON: Yes.

9 EXAMINATION

10 BY MR. PATTON:

11 Q. Mr. Armstrong, my name is Rick Patton. As you
12 know, I represent Ken and Molly Galloway. I'm
13 going to ask you just a few questions,
14 particularly with regard to Exhibit Number 10.
15 Do you have that document in front of you?

16 A. Yeah.

17 Q. Okay. Do you have that document?

18 A. Yes.

19 Q. Thank you.

20 A. Yeah.

21 Q. All right. The front page tells us that it's
22 dated September 15th of 2021. Do you see that?

23 A. Yes, sir.

24 Q. That was roughly 11 months ago. We're coming up
25 on a year since then; is that right?

1 A. Right.

2 Q. And it announces to you, as one of the members of
3 the -- presumably, it says that you are members.
4 Do you see that? At the top of the page right
5 under the date.

6 A. Yeah. Dear Member.

7 Q. Did you get this document?

8 A. Yes.

9 Q. They sent it to you?

10 A. Yes.

11 Q. So they thought you were a member?

12 A. Yeah.

13 Q. Okay. You thought you were a member because you
14 paid the assessment?

15 A. Right.

16 Q. Is that right?

17 A. Yes.

18 Q. You paid them \$2,000; is that right?

19 A. That's correct.

20 Q. If you go to the very last page of that document
21 there's a letter dated December 1st of 2021,
22 almost three months later. Do you see that
23 document?

24 A. Yes, sir.

25 Q. It's addressed to Dear Doug and Jane Armstrong.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

C.A. No. 2016-CP-42-00074

Chandelle Property Owners Association

Plaintiff,

vs.

Kenneth L. Galloway and Molly C. Galloway,

Defendants, et al.

C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong and Jane Armstrong, Marilyn N. Berry, Stephen Berry, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmel, Silvia L. Tuemmel, Tygerway, LLC, RL 240, LLC, and Rob Graham as Trustee of the Jane Van Wieren Trust,

Defendants.

C.A. No. 2016-CP-42-03213

Chandelle Runway, LLC,

Plaintiff,

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2017-CP-42-00541

**CHANDELLE PROPERTY OWNERS
ASSOCIATION'S REQUESTS TO
ADMIT TO JAMES DOUGLAS
ARMSTRONG AND JANE
ARMSTRONG**

Chandelle Runway, LLC,

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

(18771.6)

TO: WENDELL L. HAWKINS, ESQ., ATTORNEY FOR JAMES DOUGLAS ARMSTRONG AND JANE ARMSTRONG:

Chandelle Property Owners Association (hereinafter "Plaintiff"), hereby propounds and serves, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following Requests to Admit to James Douglas Armstrong and Jane Armstrong, which you are requested to answer separately, in writing and under oath, within thirty (30) days from service thereof.

REQUESTS TO ADMIT

1. Admit that James Douglas Armstrong and Jane G. Armstrong are the owners of the property described in the deed attached as **Exhibit 1**.

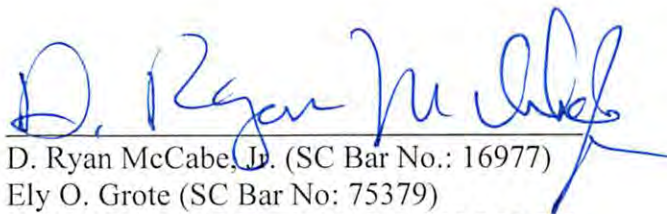
2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997,

in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

3. Admit that James Douglas Armstrong and Jane G. Armstrong are the owners of the property described in the deed attached as **Exhibit 2**.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

5. Admit that James Douglas Armstrong and Jane G. Armstrong are members of Chandelle Property Owners Association.



D. Ryan McCabe, Jr. (SC Bar No.: 16977)

Ely O. Grote (SC Bar No: 75379)

MCCABE, TROTTER & BEVERLY, PC

P.O. Box 212069, Columbia, SC 29221

Phone: 803-724-5000 Fax: 803-724-5001

Email: ryan.mccabe@mccabetrotter.com

ely.grote@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
February 9, 2018

Grantee mailing address: 444 Airpark Drive, Greer, SC 29651

Tax Map # 4-05-00-039.04

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

DEED 107 UPG 361

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that JOSEPH G. KOHN AND DALE D. KOHN in consideration of SIX HUNDRED FIFTY SIX THOUSAND DOLLARS AND NO/100, (\$656,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

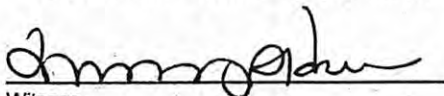
ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A NEW SURVEY AS LOT NOS. 55 AND 56 OF CHANDELLE, SECTION 8, CONTAINING 1.53 ACRES, MORE OR LESS, AND CONTAINING 1.25 ACRES, MORE OR LESS, RESPECTIVELY, DATED SEPTEMBER 20, 2011, PREPARED BY HUSKEY & HUSKEY, INC., AND RECORDED HERewith IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 166 AT PAGE 249. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

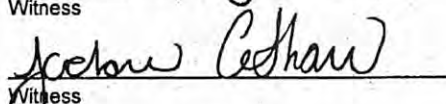
THIS BEING THE SAME PROPERTY AS CONVEYED TO JOSEPH G. & DALE D. KOHN BY DEED OF JOHN R. STEWART, JR., ET AL RECORDED NOVEMBER 3, 2011 IN DEED BOOK 99-M AT PAGE 048 AND RECORDED JUNE 21, 2012 IN DEED BOOK 100-Z AT PAGE 363.

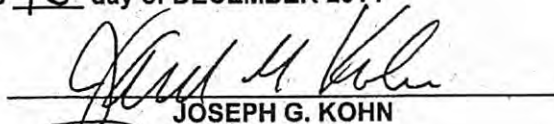
This property is conveyed subject to all restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantors(s') successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's(s') Hand(s) and Seal(s) this 15 day of DECEMBER 2014


Witness


Witness


JOSEPH G. KOHN


DALE D. KOHN

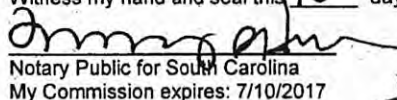
State of South Carolina)

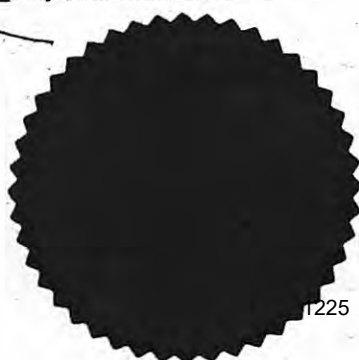
Acknowledgement

County of Greenville)

I, Tammy S. Hill, a Notary Public for the State of South Carolina, do hereby certify that Joseph G. Kohn and Dale D. Kohn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 15 day of December 2014.


Notary Public for South Carolina
My Commission expires: 7/10/2017



DEE-2014-50159
Recorded 1 Pages on 12/16/2014 9:07:03 AM
Recording Fee: \$10.00 Documentary Stamps: \$2,427.20
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



EXHIBIT

DEE-2017-4013



DEE BK 114-Q PG 424-426

Recorded 3 Pages on 01/30/2017 09:43:44 AM
 Recording Fee: \$10.00 County Taxes: \$128.70 State Taxes: \$304.20
 Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
 Dorothy Earle, Register Of Deeds

Grantee mailing address: 444 Airpark Dr., Greer, SC 29651
 Tax Map # p/o 4-05-00-039.00 and 4-05-00-039.15

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that JOHN R. STEWART, JR. in consideration of ONE HUNDRED SIXTEEN THOUSAND SIX HUNDRED DOLLARS AND NO/100, (\$116,600.00) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release unto,

JAMES DOUGLAS ARMSTRONG and JANE G. ARMSTRONG
 AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, WITH ALL IMPROVEMENTS THEREON OR HEREINAFTER CONSTRUCTED THEREON, SITUATE, LYING AND BEING IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN AND DESIGNATED ON A SURVEY AS LOT NO. 57 (CONTAINING 1.18 ACRES AND 1.79 ACRES) OF CHANDELLE, SECTION 8, PREPARED BY HUSKEY & HUSKEY, INC., DATED SEPTEMBER 20, 2011 AND REVISED APRIL 4, 2016 AND NOVEMBER 9, 2016 AND RECORDED IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY IN PLAT BOOK 171 AT PAGE 927. REFERENCE BEING MADE TO SAID RECENT SURVEY FOR A MORE COMPLETE DESCRIPTION AS TO METES AND BOUNDS.

This being a portion of the same property as conveyed to John R. Stewart, Jr. by deed of Harold W. Brockman Jr. recorded October 22, 1985 in the ROD Office for Spartanburg County in Deed Book 51-T at Page 332.

This property is further conveyed subject to all other restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) as joint tenants with right of survivorship and not as tenants in common. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantors(s') successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's Hand and Seal this 25 day of January 2017

Laura C. Hollis

 Witness

John R. Stewart, Jr.

 JOHN R. STEWART, JR.

[Signature]

 Witness

State of South Carolina)

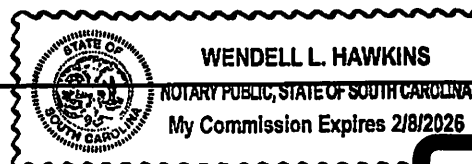
County of Greenville)

Acknowledgement

The undersigned Notary Public for the State of South Carolina, do hereby certify that John R. Stewart, Jr personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 25 day of January 2017.

Notary Public for South Carolina-Greenville
 My Commission expires: 2-8-2026



EXHIBIT

2

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Air Park Drive, Greer, South Carolina 29651, bearing Spartanburg County Tax Map Number 4-05-00-039.15 and p/o 4-05-00-039.00, was transferred by John R. Stewart, Jr. to James Douglas Armstrong and Jane G. Armstrong on January 31, 2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$116,600.00
(b) ☐ The fee is computed on the fair market value of the realty which is
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$116,600.00
(b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: \$116,600.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: 432.9.

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

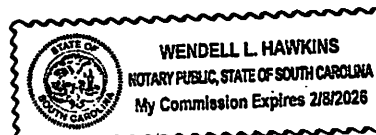
SWORN to before me this
January 31, 2017

Notary Public for South Carolina, Greenville County
My Commission Expires: 1-8-2026

Responsible Person Connected with the Transaction

John R. Stewart, Jr.

Print or Type Name Here



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed-pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S. C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,)
LLC, 331 South, LLC, Charlie M. Allison,)
Janice H. Allison, James Douglas Armstrong)
and Jane Armstrong, Marilyn N. Berry,)
Stephen Berry, Emma Jean Brockman as the)
Personal Representative of the Estate of James)
P. Brockman, Sr., Douglas E. Cobb, Nicole)
Cobb, Kenneth L. Galloway, Molly C.)
Galloway, Warren Johnson, Rhonda Johnson,)
Lawrence E. Lewis, Barbara L. Lewis, John K.)
Payne, Ruth G. Payne, John R. Stewart, Jr.,)
Angela Tanner, Helmut Tuemmel, Silvia L.)
Tuemmel, Tygerway, LLC, RL 240, LLC, and)
Rob Graham as Trustee of the Jane Van)
Wieren Trust,)

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2017-CP-42-00541

**CHANDELLE PROPERTY OWNERS
ASSOCIATION'S REQUESTS TO
ADMIT TO WARREN JOHNSON
AND RHONDA JOHNSON**

Plaintiff,)
)
vs.)
)
Bruce R. Goldberg,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03214

Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Dale Ellis,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03215

Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
George Lynn Fleming,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03344

Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Stuart R. Swanson,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC,

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

(18771.6)

TO: WENDELL L. HAWKINS, ESQ., ATTORNEY FOR WARREN JOHNSON AND RHONDA JOHNSON:

Chandelle Property Owners Association (hereinafter "Plaintiff"), hereby propounds and serves, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following Requests to Admit to Warren Johnson and Rhonda Johnson, which you are requested to answer separately, in writing and under oath, within thirty (30) days from service thereof.

REQUESTS TO ADMIT

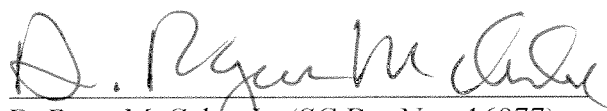
1. Admit that Warren G. Johnson and Rhonda B. Johnson are the owners of the property described in the deed attached as **Exhibit 1**.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

3. Admit that Warren G. Johnson and Rhonda B. Johnson are the owners of the property described in the deed attached as **Exhibit 2**.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

5. Admit that Warren G. Johnson and Rhonda B. Johnson are members of Chandelle Property Owners Association.



D. Ryan McCabe, Jr. (SC Bar No.: 16977)

Ely O. Grote (SC Bar No: 75379)

MCCABE, TROTTER & BEVERLY, PC

P.O. Box 212069, Columbia, SC 29221

Phone: 803-724-5000 Fax: 803-724-5001

Email: ryan.mccabe@mccabetrotter.com

ely.grote@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
February 9, 2018

DEED 94A PG 978

DO NOT PUBLISH

**State of South Carolina,
County of Spartanburg**

DEE-2009-26162
Recorded 2 Pages on 6/24/2009 10:17:52 AM
Recording Fee: \$10.00 Documentary Stamps: \$758.50
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



GRANTEE'S ADDRESS:

18 AVENS HILL DRIVE
GREER, SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC DEVELOPERS, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Two Hundred Five Thousand dollars & no cents \$205,000.00

To it in hand paid at and before the sealing of these presents by

**WARREN G. JOHNSON AND RHONDA B. JOHNSON AS JOINT TENANTS WITH RIGHTS OF
SURVIVORSHIP AND NOT AS TENANTS IN COMMON**

in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by

these Presents does grant, bargain, sell and release unto the said **WARREN G. JOHNSON AND RHONDA B. JOHNSON AS**

JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON

the following described property to wit:

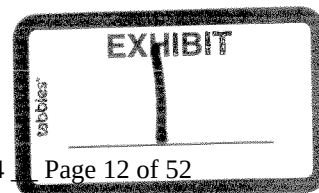
ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING SITUATE AND BEING
IN THE STATE OF SOUTH CAROLINA, COUNTY OF SPARTANBURG, BEING SHOWN
AND DESIGNATED AS LOT NO. 28 AND LOT NO. 29 OF CHANDELLE SUBDIVISION,
SECTION 7 ON PLAT ENTITLED "CLOSING SURVEY FOR WARREN G. JOHNSON AND
RHONDA B. JOHNSON", DATED APRIL 22, 2009, PREPARED BY HUSKEY & HUSKEY,
INC, PLS, RECORDED ON June, 2009 IN THE OFFICE OF THE REGISTER OF
DEEDS FOR SPARTANBURG COUNTY, SOUTH CAROLINA IN PLAT BOOK 164
AT PAGE 324. REFERENCE TO SAID PLAT BEING HEREBY MADE FOR A MORE
COMPLETE METES AND BOUNDS DESCRIPTION THEREOF.

DERIVATION:

THIS BEING THE SAME PROPERTY CONVEYED TO CSC DEVELOPERS, LLC BY DEED
OF JB & CR INC. DATED FEBRUARY 19, 1997 AND RECORDED ON FEBRUARY 20, 1997
IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY, SOUTH
CAROLINA IN BOOK 65-L AT PAGE 286. SEE ALSO THAT QUIT CLAIM DEED FROM
101 INDUSTRIAL PARK, LLC TO CSC DEVELOPERS, LLC RECORDED ON AUGUST 22,
1997 IN THE REGISTER OF DEEDS OFFICE FOR SPARTANBURG COUNTY, SOUTH
CAROLINA IN BOOK 66-K AT PAGE 539.

TMS# 4-05-00-038.47 & 4-05-00-038.54 (TO BE COMBINED)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging,
or in anywise incident or appertaining.



DEED 94A PG 979

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **WARREN G. JOHNSON AND RHONDA B. JOHNSON** AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON their Heirs and Assigns forever.

AND **CSC DEVELOPERS, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **WARREN G. JOHNSON AND RHONDA B. JOHNSON** AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON their Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

WITNESS the hand and seal of an authorized officer, this June 19, 2009

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

CSC DEVELOPERS, LLC

Laura C. Hollis
att

By: D. L. Ellett member (L.S.)
It's John R. Stewart member (L.S.)

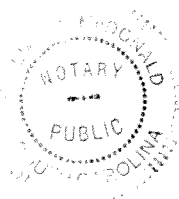
The State of South Carolina,
GREENVILLE County.

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named , in his/her capacity as of **CSC DEVELOPERS, LLC**, sign, seal, and as his /her act and deed, deliver the within written Deed, and that he/she with the notary public witnessed the execution thereof.

SWORN to before me, this June 19, 2009

att (SEAL)
Notary Public of South Carolina
My Commission Expires 2/15/12

Laura C. Hollis



**State of South Carolina,
County of Spartanburg**

DEE-2016-16325



DEE BK 111-X PG 568-671

Recorded 4 Pages on 04/19/2016 02:24:09 PM
Recording Fee: \$10.00 County Taxes: \$110.00 State Taxes: \$280.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

518 Air Park Dr.
Greer SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

One Hundred Thousand dollars & no cents (\$100,000.00)

To it in hand paid at and before the sealing of these presents by

Warren G. Johnson and Rhonda B. Johnson

in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **Warren G. Johnson and Rhonda B. Johnson** the following described property to wit:

All that certain piece, parcel or lot of land, lying situate and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 30 and Lot No. 34 of Chandelle Subdivision, Section 6 on Plat entitled "Closing Survey for Warren G. Johnson and Rhonda B. Johnson", prepared by Huskey & Huskey, Inc. dated January 15, 2016 and recorded on February 17, 2016 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 170 at Page 822.

This being a portion of the property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

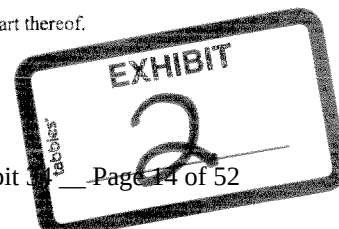
TMS# 4-05-00-038.55 (Lot 30) and 4-05-00-038.56 (Lot 34) (to be combined)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Warren G. Johnson and Rhonda B. Johnson** their Heirs and Assigns forever.

AND **CSC Developers, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Warren G. Johnson and Rhonda B. Johnson** their Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

WITNESS the hand and seal of an authorized officer, this March 17, 2016



SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

CSC Developers, LLC

Jana C. Hollis
[Signature]

By: D. Cobb (L.S.)

It's Member

By: John R. Stewart (L.S.)

It's Member

The State of South Carolina,

Greenville County.

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named, John Stewart and Doug Cobb as the Authorized Member of CSC Developers, LLC, sign, seal, and as its act and deed, deliver the within written Deed, and that he/she with the notary public witnessed the execution thereof and that the subscribing witness certified to the notary public that he/she is not a party to or beneficiary of the transaction.

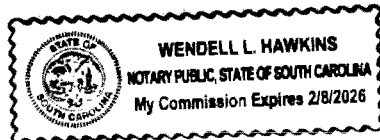
SWORN to before me, this March 17, 2016

Notary Public of South Carolina

My Commission Expires 2-8-2026

(SEAL)

Jana C. Hollis



STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 510 & 514 Airpark Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-38.55 and 4-05-00-38.56, was transferred by CSC Developers, LLC to Warren G. Johnson and Rhonda B. Johnson on 03/17/2016.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$100,000.00
 (b) ☐ The fee is computed on the fair market value of the realty which is
 (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$100,000.00
 (b) Place the amount listed in item 5 above here: -0-
 (If no amount is listed, place zero here.)
 (c) Subtract Line 6(b) from Line 6(a) and place result here: \$100,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$370.00.

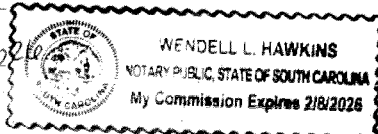
8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both:

SWORN to before me this 17
 day March of 2016

Douglas Cobb
 Responsible Person Connected with the Transaction
Douglas Cobb
 Print or Type Name Here

Notary Public for South Carolina
 My Commission Expires: 2-8-2026



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed--pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,)
LLC, 331 South, LLC, Charlie M. Allison,)
Janice H. Allison, James Douglas Armstrong)
and Jane Armstrong, Marilyn N. Berry,)
Stephen Berry, Emma Jean Brockman as the)
Personal Representative of the Estate of James)
P. Brockman, Sr., Douglas E. Cobb, Nicole)
Cobb, Kenneth L. Galloway, Molly C.)
Galloway, Warren Johnson, Rhonda Johnson,)
Lawrence E. Lewis, Barbara L. Lewis, John K.)
Payne, Ruth G. Payne, John R. Stewart, Jr.,)
Angela Tanner, Helmut Tuemmel, Silvia L.)
Tuemmel, Tygerway, LLC, RL 240, LLC, and)
Rob Graham as Trustee of the Jane Van)
Wieren Trust,)

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

Plaintiff,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

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C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2017-CP-42-00541

**CHANDELLE PROPERTY OWNERS
ASSOCIATION'S REQUESTS TO
ADMIT TO JOHN K. PAYNE AND
RUTH G. PAYNE**

vs.)
)
Bruce R. Goldberg,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03214)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
Dale Ellis,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03215)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
George Lynn Fleming,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03344)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
Stuart R. Swanson,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03409)
)

Chandelle Runway, LLC,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Billy J. Israel,	)
	)
Defendant, et al.	)
	)
	)
C.A. No. 2017-CP-42-00541	)
	)
Chandelle Property Owners Association,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CSC Developers,	)
	)
Defendant.	)

(18771.6)

TO: WENDELL L. HAWKINS, ESQ., ATTORNEY FOR JOHN K. PAYNE AND RUTH G. PAYNE:

Chandelle Property Owners Association (hereinafter "Plaintiff"), hereby propounds and serves, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following Requests to Admit to John K. Payne and Ruth G. Payne, which you are requested to answer separately, in writing and under oath, within thirty (30) days from service thereof.

REQUESTS TO ADMIT

Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 1**.

1. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997,

in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

2. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 2**.

3. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

4. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 3**.

5. Admit that the property described in the deed attached as **Exhibit 3** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

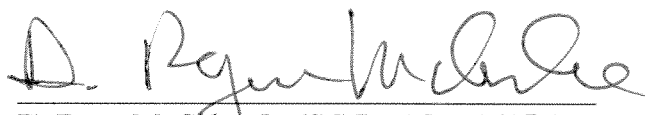
6. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 4**.

7. Admit that the property described in the deed attached as **Exhibit 4** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

8. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 5**.

9. Admit that the property described in the deed attached as **Exhibit 5** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

10. Admit that John K. Payne and Ruth G. Payne are members of Chandelle Property Owners Association.



D. Ryan McCabe, Jr. (SC Bar No.: 16977)

Ely O. Grote (SC Bar No: 75379)

MCCABE, TROTTER & BEVERLY, PC

P.O. Box 212069, Columbia, SC 29221

Phone: 803-724-5000 Fax: 803-724-5001

Email: ryan.mccabe@mccabetrotter.com

ely.grote@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
February 9, 2018

DEED90 K PG 248

DEED91-L PG 618

Mailing address: 1004 Brockman Road Greer, S.C. 29651

**Re-Record to correct Grantee Language.

Tax Map # P/O 4-05-00-038.00

To be combined with 4-06-00-070.00

NO TITLE EXAMINATION BY TAMMY S. HILL, ATTY

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that JOHN R. STEWART, JR. in consideration of EIGHT THOUSAND DOLLARS AND NO/100S, (\$8,000.00) the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release unto,

JOHN K. PAYNE AND RUTH G. PAYNE
AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP
**AND NOT AS TENANTS IN COMMON

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, approximately four miles southwest of Reidville, being shown and designated as 1.02 acres, more or less as shown upon plat and survey entitled, "CLOSING SURVEY FOR JOHN K. PAYNE AND RUTH G. PAYNE" said plat prepared by Huskey & Huskey, Inc., PLS, and recorded in the ROD Office for Spartanburg County in Plat Book 162 at Page 568. Reference being made to said plat for a more complete description.

This being a portion of the same property as conveyed unto John R. Stewart, Jr. by deed of Granny Peach Associates, A South Carolina Joint Venture as recorded in the ROD Office for Spartanburg County on December 18, 1989 in Deed Book 56-B at Page 502.

This property is conveyed subject to all other restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee(s)'s heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor(s)'s successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's Hand and Seal this 2nd day of January 2008

Tammy S. Hill
Witness
Deborah Burrell
Witness

State of South Carolina)

County of Greenville)

Acknowledgement

John R. Stewart, Jr.
JOHN R. STEWART, JR.

DEE-2008-25869
Recorded 3 Pages on 5/28/2008 3:59:37 PM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



I, Tammy S. Hill, a Notary Public for the State of South Carolina, do hereby certify that John R. Stewart, Jr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 2nd day of January 2008.

Tammy S. Hill
Notary Public for South Carolina

My Commission expires: July 10, 2017

DEE-2008-522
Recorded 1 Pages on 1/4/2008 3:08:38 PM
Recording Fee: \$10.00 Documentary Stamps: \$29.60
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register



EXHIBIT

Print Form

DEEC91-L PG 619

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

Affidavit

THIS DOCUMENT
MARGINAL
FOR IMAGING

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information
2. The property being transferred is located at SPTG
bearing SPG County Tax Map Number 116 4-5-20-03800
by John R Stewart Jr
to Janet Ruth Payne on 1/4/08
3. Check one of the following: The deed is
(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
(c) ☒ exempt from the deed recording fee because (see information section of affidavit) #12 (If exempt, please skip items 4 - 7 and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see information section of this affidavit):
(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
(b) _____ The fee is computed on the fair market value of the realty which is _____
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "yes" the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows.
(a) Place the amount listed in item 4 above here: _____
(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here)
(c) Subtract line 6(b) from line 6(a) and place result here: _____
7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is _____
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 28th
day of May 2008
Brenda Burzell
Notary Public for S
My Commission Expires: 3-16-2017

Tammy S. Hill
Responsible Person Connected with the Transaction
Tammy S. Hill
Print or Type Name Here

DEEC91-L PG 620

THIS DOCUMENT
MARGINAL
FOR IMAGINGINFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership, interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under section 170 of the Internal revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

DEED 63 Q PG 924

RECORDED

ORIGINAL

95 DEC 20 PM 3:35

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)

TITLE TO REAL ESTATE
 SPARTANBURG, S.C.

KNOW ALL MEN BY THESE PRESENTS, that I, JOHN R. STEWART, JR. in the State aforesaid for and in consideration of the sum of FIVE THOUSAND FIVE HUNDRED AND 00/100 (\$5,500.00) Dollars to us paid by JOHN K. PAYNE AND RUTH G. PAYNE (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents, do grant, bargain, sell and release unto the said JOHN K. PAYNE AND RUTH G. PAYNE, their Heirs and Assigns:

ALL AND SINGULAR, that certain piece, parcel or tract of land, lying and being in the County of Spartanburg, State of South Carolina, containing 1.71 acres, more or less, as shown on that plat of survey prepared by Joe E. Mitchell, RLS, dated December 14, 1989 and recorded in Plat Book 131 at Page 926, Office of the RMC for Spartanburg County, SC. Reference is hereby made to the plat and record thereof, for a more complete and particular description.

This is a portion of the property conveyed to the grantor herein by deed of Granny Peach Associates, a South Carolina Joint Venture, said deed being dated December 13, 1989 and recorded December 18, 1989 in Deed Book 56B at Page 502, Office of the RMC for Spartanburg County, SC.

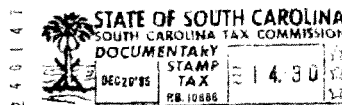
BLOCK MAP REFERENCE: A portion of 4-5-00-38

GRANTEE(S)' ADDRESS: 1162 Pinecrest Drive
 Rock Hill, SC 29730

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

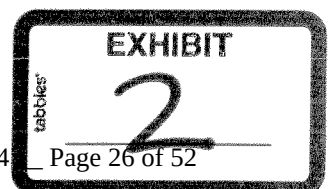
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said JOHN K. PAYNE AND RUTH G. PAYNE, their Heirs and Assigns forever.

AND I, JOHN R. STEWART, JR. do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said JOHN K. PAYNE AND RUTH G. PAYNE, their Heirs and Assigns, against myself and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.



-6.05

500 435122095#145 \$10.00M4



THIS DOCUMENT
MARGINAL
FOR IMAGING

DEED 63 Q PG 925

WITNESS the execution hereof by grantor this 20th day of December, in the year of our Lord one thousand nine hundred and eighty-nine and in the two hundred thirteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Connie M. Purvis
Robert A. Hammett

John R. Stewart Jr.
JOHN R. STEWART, JR.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within JOHN R. STEWART, JR. sign, seal and as his act and deed, deliver the within Deed of Real Estate; and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Robert A. Hammett

SWORN to before me this
20th day of December, 1989.

Connie M. Purvis
Notary Public for South Carolina

My Commission Expires: 11/1/90.

ROBERT A. HAMMETT, ATTY.

ELECTRONICALLY FILED - 2022 Sep 09 4:17 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

RECORDED 1999 JUL -7 AM 10:13 DEED 70-E - PG 676
 99 JUL -7 AM 10:46 DEED 70-E - PG 676
 185.00 Address of Grantee: 400 Airpark Dr.
 R.M.C. GREEN, SC 29651
 SPARTANBURG, S.C.
 STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
 COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that, CSC DEVELOPERS, LLC, in consideration of FIFTY THOUSAND AND NO/100, (\$50,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto:

JOHN K. PAYNE AND RUTH G. PAYNE, for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion, the following described property:

All that certain piece, parcel or lot of land, with improvements thereon, lying, situate and being in the State and County aforesaid, being shown and designated as Lot No. 51, Chandelle Subdivision, Section 2A, on a plat prepared by Huskey & Huskey, Inc., dated December 22, 1998, to be recorded herewith in the Register of Deeds for Spartanburg County, South Carolina.

This is a portion of the property conveyed to the grantor herein by deed of JB & CR, Inc., dated February 19, 1997, recorded February 20, 1997, in Deed Book 65-L at page 286, Register of Deeds for Spartanburg County, South Carolina.

Block Map #p/o 4-05-00-038.00

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), for and during their joint lives and upon the death of either of them, then to the survivor of them, and the grantee's(s') heirs (or successors) and assigns forever. And the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs (or successors) and assigns against the grantor(s) and the grantor's(s') heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the grantor's(s') hand(s) and seal(s) this 27th day of June, 1999.

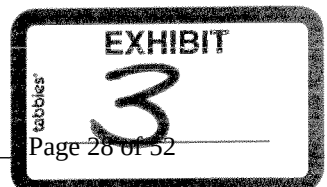
SIGNED, sealed and delivered in the presence of: CSC DEVELOPERS, LLC

[Signature]

By *John R. Stewart Jr.* MEMBER
 John R. Stewart, Jr., Member

[Signature]

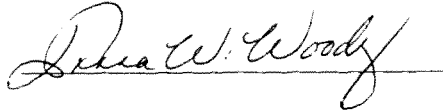
By *Douglas E. Cobb* member
 Douglas E. Cobb, Member



DEED 70-E - PG 677

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) PROBATE

PERSONALLY appeared before me the witness above named and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed, deliver the within written deed and that (s)he with the other witness above named witnessed the execution thereof.



SWORN to and subscribed before me

this 7th day of June, 1999.


Notary Public for South Carolina

My Commission Expires: 1-19-04

DEED 85 F PG 538

DEE-2006-12536
 Recorded 2 Pages on 3/7/2006 10:42:31 AM
 Recording Fee: \$10.00 Documentary Stamps: \$0.00
 Office of Register of Deeds, Spartanburg, S.C.
 Stephen Ford, Register



**TITLE TO REAL ESTATE
 NO TITLE SEARCH**

KNOW ALL MEN BY THESE PRESENTS, that John K. Payne and Ruth G. Payne, (hereinafter called "Grantor"), in consideration of One Dollar, Love and Affection, to the Grantor in hand paid at and before the sealing of these presents, by John K. Payne and Ruth G. Payne, as joint tenants with right of survivorship (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

John K. Payne and Ruth G. Payne, as joint tenants with right of survivorship

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, in the Reidville Community, being shown and designated as Lot No. 1 Chandelle Estates, containing 0.99 acre, more or less, as shown upon plat prepared for Larry Dee Davis and Angela Davis by Huskey & Huskey, Inc., Professional Land Surveyors dated April 25, 1997 and recorded in Plat Book 139, at page 931 in the Office of the RMC for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to the Grantors by deed of Larry Dee Davis and Angela R. Davis by deed dated June 1, 2000 and recorded June 2, 2000 in Deed Book 72C, at page 145.

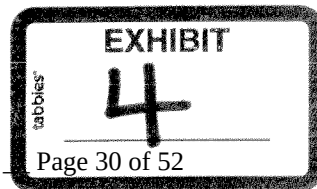
This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

Grantee's Address: 275 Chandelle Ridge Drive, Woodruff, SC 29388-9719
 TMS No.: 4 01 00 005 05

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor do hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of



DEED 85 F PG 539

inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 31st Day of January, 2006.

SIGNED, SEALED AND DELIVERED

in the presence of:

John R Stewart Jr
Marilyn N. Berry

John K. Payne
Ruth G. Payne

State of South Carolina)

)

PROBATE

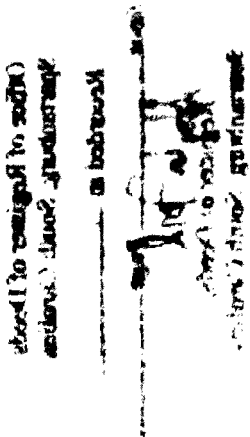
County of)

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that (s)he saw the within-named Grantor(s) sign, seal, and, as their act and deed, deliver the within-written Title to Real Estate, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 31st day of January, 2006.

Marilyn N. Berry (SEAL)
Notary Public for South Carolina
My Commission Expires: 11-16-15

John R Stewart Jr



DEE101 R PG 9231

Mailing address: 1004 Brockman Road Greer, S.C. 29651
Tax Map #4-05-00-039.06

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that **KEAT PRUSZENSKI** in consideration of **SIXTY FIVE THOUSAND SEVEN HUNDRED FORTY DOLLARS AND NO/100S, (\$65,470.00)** the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents, does grant, bargain, sell and release unto,

JOHN K. PAYNE AND RUTH G. PAYNE**AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON**

All that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Spartanburg, containing **1.73 acres, more or less**, and being shown and designated as Lot No. 2 upon plat of survey prepared for **KEAT PRUSZENSKI** by Huskey & Huskey, Inc., PLS, dated September 10, 2004 and recorded in the ROD Office for Spartanburg County in **Plat Book 156 at Page 827**. Reference being made to said plat for a more complete description.

This being the same property as conveyed unto Keat Pruszenski by deed of John R. Stewart, Jr. as recorded in the ROD Office for Spartanburg County on October 18, 2004 in Deed Book 81-L at Page 124.

This property shall be subject to the following specific restrictions: residential use only, no mobile or modular homes; property may not be sub-divided. When the property transfers out of the names of the Grantees herein by conveyance or inheritance, the property shall then be subject to the Chandelle Private Aviation Estates, Covenants, Conditions and Restrictions recorded at ROD Office for Spartanburg County in Deed Book 67-A at Page 583 and Deed Book 72-g at Page 843 and all other and future amendments to same.

This property is conveyed subject to all other restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plat(s) or on the premises.

Together with all and singular the rights, members, hereditament and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor(s)' successors or assigns to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the Grantor's Hand and Seal this 24th day of September 2012

[Signature]
Witness
[Signature]
Witness

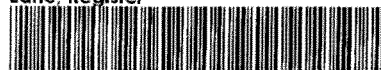
[Signature]
KEAT PRUSZENSKI

State of South Carolina)

County of Greenville)

Acknowledgement

DEE-2012-42213
Recorded 1 Pages on 9/26/2012 9:43:33 AM
Recording Fee: \$10.00 Documentary Stamps: \$242.35
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Earle, Register



I, Tammy S. Hill, a Notary Public for the State of South Carolina, do hereby certify that Keat Pruszenski personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 24th day of September 2012.

[Signature]
Notary Public for South Carolina
My Commission expires: July 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

C.A. No. 2016-CP-42-00074

Chandelle Property Owners Association

Plaintiff,

vs.

Kenneth L. Galloway and Molly C. Galloway,

Defendants, et al.

C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers, LLC, Chandelle Runway, LLC, 331 South, LLC, Charlie M. Allison, Janice H. Allison, James Douglas Armstrong and Jane Armstrong, Marilyn N. Berry, Stephen Berry, Emma Jean Brockman as the Personal Representative of the Estate of James P. Brockman, Sr., Douglas E. Cobb, Nicole Cobb, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, Lawrence E. Lewis, Barbara L. Lewis, John K. Payne, Ruth G. Payne, John R. Stewart, Jr., Angela Tanner, Helmut Tuemmel, Silvia L. Tuemmel, Tygerway, LLC, RL 240, LLC, and Rob Graham as Trustee of the Jane Van Wieren Trust,

Defendants.

C.A. No. 2016-CP-42-03213

Chandelle Runway, LLC,

Plaintiff,

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2017-CP-42-00541

**CHANDELLE PROPERTY OWNERS
ASSOCIATION'S REQUESTS TO
ADMIT TO JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

vs.)
)
Bruce R. Goldberg,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03214)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
Dale Ellis,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03215)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
George Lynn Fleming,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03344)
)

Chandelle Runway, LLC,)
)
Plaintiff,)
)

vs.)
)
Stuart R. Swanson,)
)
Defendant, et al.)
)

C.A. No. 2016-CP-42-03409)
)

Chandelle Runway, LLC,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Billy J. Israel,	)
	)
Defendant, et al.	)
	)
	)
C.A. No. 2017-CP-42-00541	)
	)
Chandelle Property Owners Association,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CSC Developers,	)
	)
Defendant.	)
	)

TO: WENDELL L. HAWKINS, ESQ., ATTORNEY FOR JANE VAN WIEREN AS TRUSTEE OF THE GREER R.G. IRREVOCABLE PROPERTY TRUST, DATED OCTOBER 25, 2006:

Chandelle Property Owners Association (hereinafter "Plaintiff"), hereby propounds and serves, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following Requests to Admit to Jane Van Wieren as Trustee of the Greer R.G. Irrevocable property Trust, Dated October 25, 2006, which you are requested to answer separately, in writing and under oath, within thirty (30) days from service thereof.

REQUESTS TO ADMIT

1. Admit that Jane Van Wieren, trustee, or her successor in trust of the Greer RG Irrevocable Property Trust, dated October 25, 2006, and any amendments there to, is the owner of the property described in the deed attached as **Exhibit 1**.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

3. Admit that Jane Van Wieren, trustee, or her successor in trust, of the Greer RG Irrevocable Property Trust, dated October 25, 2006, and any amendments thereto, is the owner of the property described in the deed attached as **Exhibit 2**.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

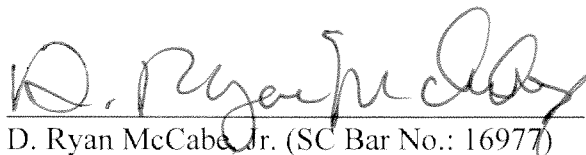
5. Admit that Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006, is the owner of the property described in the deed attached as **Exhibit 3**.

6. Admit that the property described in the deed attached as **Exhibit 3** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

7. Admit that Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 is the owner of the property described in the deed attached as **Exhibit 4**.

8. Admit that the property described in the deed attached as **Exhibit 4** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

9. Admit that Jane Van Wieren, as trustee of the Greer RG Irrevocable Property Trust, dated October 25, 2006, is a member of Chandelle Property Owners Association.



D. Ryan McCabe Jr. (SC Bar No.: 16977)

Ely O. Grote (SC Bar No: 75379)

MCCABE, TROTTER & BEVERLY, PC

P.O. Box 212069, Columbia, SC 29221

Phone: 803-724-5000 Fax: 803-724-5001

Email: ryan.mccabe@mccabetrotter.com

ely.grote@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
February 9, 2018

87--MPG1b7

Pfeiffer & Gantt, PA
The Symphony Center
200A South Main Street
Greenville, SC 29601

Grantee's Address: P.O. Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)

)

QUIT CLAIM DEED

COUNTY OF SPARTANBURG)

KNOW ALL MEN BY THESE PRESENTS, that RUTH GRAHAM, a South Carolina limited liability company, (hereinafter referred to as "Grantor") in consideration of TEN and No/100th Dollars (\$ 10.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto JANE VAN WIEREN, TRUSTEE, or her successor in trust of the GREER RG IRREVOCABLE PROPERTY TRUST, dated October 25, 2006, and any amendments thereto, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of their interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: Portion of 4 05-00 038.00

This being the same property conveyed unto the Grantor by deed of CSC Developers, LLC, dated November 29, 2005, and recorded December 9, 2005, in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 84-P at Page 931.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

DEE-2007-6989
Recorded 3 Pages on 2/12/2007 9:18:33 AM
Recording Fee: \$10.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register

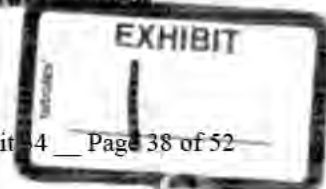


GENERAL WARRANTY DEED

Page 1 of 2

1259

Exhibit 4 Page 38 of 52



87--VP6168

WITNESS the Grantors' hands this 25th day of October 2006.

SIGNED, Sealed and Delivered
In the presence of:

Paula L. Haney
Witness

Ruth Graham
RUTH GRAHAM

David R. [Signature]
Notary Public

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN before me this 25th
day of October 2006.

Paula L. Haney
Witness

David R. [Signature]
Notary Public for South Carolina
My Commission expires: 6-9-2011

87--VPG169

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- 1) I have read the information on the back of this affidavit and I understand such information.
- 2) The property being transferred is located at lot 33, Chandelle Private Aviation Estates, bearing Spartanburg County Tax Map Number 4 05-00 028.00 Portion was transferred by Ruth Graham Trust, to Greer RG Irrevocable Property, on October 25, 2007 06
- 3) The deed is exempt from the deed recording fee because (See Information section of affidavit):
9) transferring realty from a family partnership or family trust

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

- 4) As required by Code Section 12-24-70, I state that I am a responsible person who was Connected with the transaction as: attorney
- 5) I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

David W. Gantt
Responsible Person Connected with the Transaction

David W. Gantt
Print or Type Name Here

SWORN to before me this 25th
day of October, 2006

Martha U. Finley
Notary Public for South Carolina
My Commission Expires: 11/8/11

98 M PG 100

Pfeiffer Gleaton Wyatt Hewitt, PA
935 South Main Street, Suite 203
Greenville, SC 29601

Grantee's Address: PO Box 991, Jensen Beach, FL 34958

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that THE GREER RG IRREVOCABLE PROPERTY TRUST (hereinafter referred to as "Grantors") in consideration of TEN and no/100th Dollars (\$ 10.00), the sufficiency and receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents do hereby grant, bargain, sell and release unto JANE VAN WIEREN, TRUSTEE, or her successor in trust, of THE GREER RG IRREVOCABLE PROPERTY TRUST, dated October 25, 2006, and any amendments thereto, (hereinafter referred to as "Grantee"), her heirs and assigns, forever, all of its interest in:

All that certain piece, parcel or lot of land with improvements thereon situate, lying and being in the State of South Carolina, County of Spartanburg, being known and designated as Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV, which is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Plat Book 158 at Page 840. Reference is hereby made to said plat for a more complete metes and bounds description thereof.

TMS No.: 4-05-00-038.45

This being the same property conveyed unto the Grantor by deed of CSC Developers, LLC, October 5, 2007 and recorded October 9, 2007 in the Register of Deeds Office for Spartanburg County, South Carolina, in Deed Book 89-V at Page 897.

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining. To have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs or successors and assigns, forever.

And the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

GENERAL WARRANTY DEED

Page 1 of 2

1262

DEE-2011-18983
Recorded 4 Pages on 5/25/2011 3:09:56 PM
Recording Fee: \$10.00 Documentary
Office of Register of Deeds, Spartanburg
Dorothy Earle, Register



Exhibit 34 Page 41 of 52

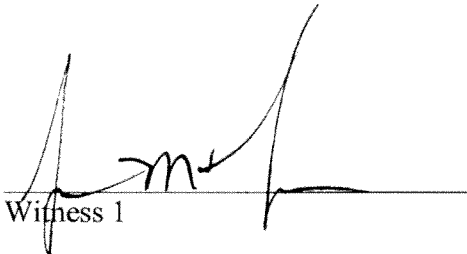
EXHIBIT

2

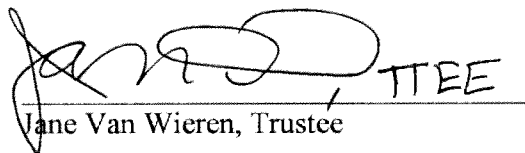
REC-98 M PG 701

WITNESS the Grantors' hands this 19 day of May 2011.

SIGNED, Sealed and Delivered
In the presence of:



Witness 1



Jane Van Wieren, Trustee



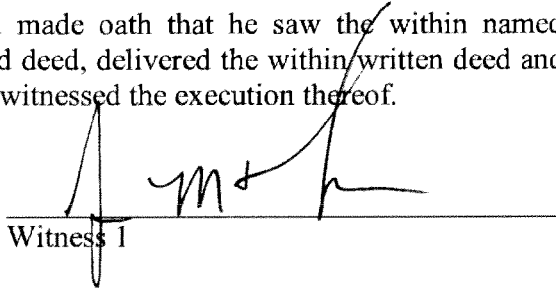
Notary Public

STATE OF FLORIDA)
COUNTY OF Indian River)

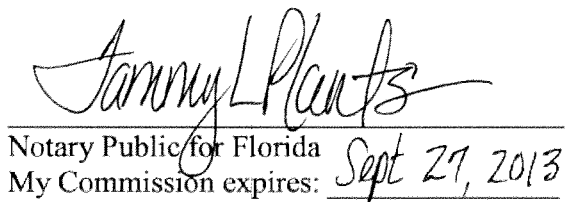
PROBATE

Personally appeared the undersigned witness and made oath that he saw the within named Grantors, did sign, seal and as the Grantors' act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

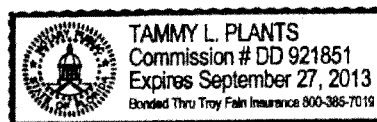
SWORN before me this 19
day of May 2011.



Witness 1



Notary Public for Florida
My Commission expires: Sept 27, 2013



98 M PG 102

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located at 450 AIR PARK DR. Greer SC,
bearing Spartanburg County Tax Map Number 4-05-00-038.45,
was transferred by Greer Irrevocable Trust
to Jane Van Wieren as Trustee of the Greer RG Irrevocable
on 5-19-2011

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):

Reason #12

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

Agent For the Trustee

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Responsible Person Connected with the Transaction

ROB GRAHAM
Print or Type Name Here

SWORN to before me this 25th day of MAY 20 11

Nancy B Ward
SIGNATURE OF NOTARY
Notary Public for South Carolina

My Commission Expires: 5/21/14

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Book

Recorded in

98 M

Page

DEED

700

Register of Deeds
Spartanburg, South Carolina

Donna E. Cook

Office of Register of Deeds
Spartanburg, South Carolina

mail - Grantee

**State of South Carolina,
County of Spartanburg**

DEE-2017-18749

DEE BK 115-N PG 632-635

Recorded 4 Pages on 04/24/2017 03:57:43 PM
Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$165.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

450 Arr Park Dr.
Greer, SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated**October 25, 2006** in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained,sold and released, and by these Presents does grant, bargain, sell and release unto the said **Jane Van Wieren, Trustee, or her****successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 32 and Lot 36 on a plat entitled "Chandelle, Section 4A", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on January 8, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 163 at Page 885.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

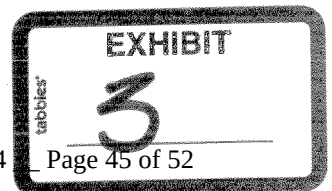
TMS# 4-05-00-038.57 (Lot 32)

4-05-00-038.00 (Lot 36)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

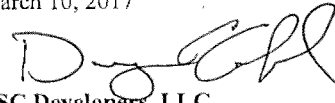
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns forever.

AND **CSC Developers, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

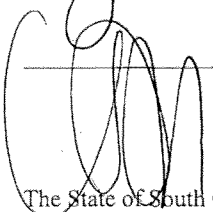


WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

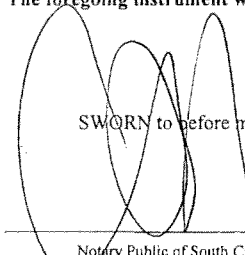

CSC Developers, LLC

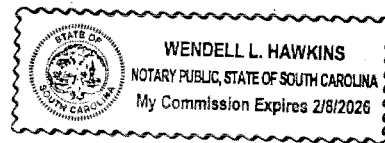
By: John R Stewart (L.S.)
It's Authorized Members

Jauna C. Hollis

The State of South Carolina,

Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.


SWORN to before me, this March 10, 2017
(SEAL)
Notary Public of South Carolina
My Commission Expires 2-8-2026



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Page 1 of 2

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 32, 36 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.57 and 4-05-00-038.00, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
(b) ☐ The fee is computed on the fair market value of the realty which is
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$75,000.00
(b) Place the amount listed in item 5 above here: -0-
(If no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here: \$75,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.

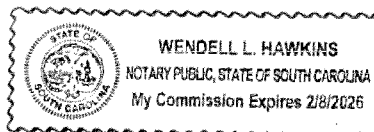
8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
day March of 2017

Notary Public for South Carolina
My Commission Expires: 2-8-2026

John R. Stewart Jr.
Responsible Person Connected with the Transaction
John R. Stewart Jr.
Print or Type Name Here



INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed--pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

**State of South Carolina,
County of Spartanburg**

DEE-2017-18748



DEE BK 115-N PG 628-631

Recorded 4 Pages on 04/24/2017 03:57:42 PM
Recording Fee: \$10.00 County Taxes: \$82.50 State Taxes: \$195.00
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

GRANTEE'S ADDRESS:

450 Arr Park Dr.
Greer SC 29651

KNOW ALL MEN BY THESE PRESENTS, THAT

CSC Developers, LLC, a South Carolina Limited Liability Company

In the State aforesaid for/and in consideration of the sum of

Seventy-Five Thousand dollars & no cents (\$75,000.00)

To it in hand paid at and before the sealing of these presents by

Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated

October 25, 2006 in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, has granted, bargained,

sold and released, and by these Presents does grant, bargain, sell and release unto the said **Jane Van Wieren, Trustee, or her**

successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 the following described property to wit:

All those certain pieces, parcels, or lots of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot 31 and Lot 35 on a plat entitled "Chandelle, Section 5", prepared by Huskey & Huskey, Inc. dated July 16, 2008 and recorded on November 20, 2009 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Plat Book 164 at Page 709.

(Derivation and Tax Map Numbers for informational purposes only)

This being a portion of that same property conveyed to CSC Developers, LLC by deed of JB & CR, Inc. dated February 19, 1997 and recorded on February 20, 1997 in the Office of the Register of Deeds for Spartanburg County, South Carolina in Book 65-L at Page 286.

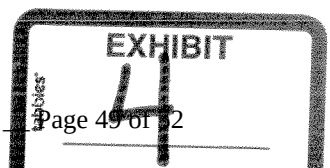
TMS# 4-05-00-038.58 (Lot 31)

4-05-00-038.59 (Lot 35)

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns forever.

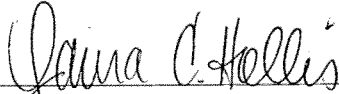
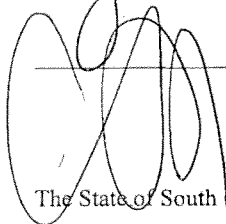
AND **CSC Developers, LLC** does hereby bind its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006** its Heirs and Assigns, against itself and its Successors and Assigns, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

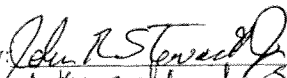


WITNESS the hand and seal of an authorized officer, this March 10, 2017

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

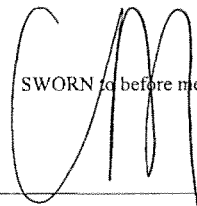

CSC Developers, LLC

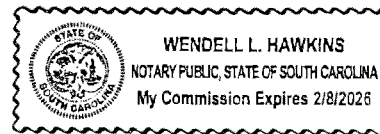



By:  (L.S.)
It's Authorised Member

The State of South Carolina,
Greenville County.

The foregoing instrument was acknowledged before me this March 10, 2017 by CSC Developers, LLC.


SWORN to before me, this March 10, 2017



(SEAL)
Notary Public of South Carolina
My Commission Expires 2-8-2026

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Page 1 of 2

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at Lots 31, 35 of Chandelle / Air Park Drive, Greer, South Carolina 29651, bearing County Tax Map Number 4-05-00-038.58 and 4-05-00-038.59, was transferred by CSC Developers, LLC to Jane Van Wieren, Trustee, or her successor in trust, of The Greer RG Irrevocable Property Trust, dated October 25, 2006 on 03/10/2017.

3. Check one of the following: The deed is

- (a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☐ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$75,000.00
- (b) ☐ The fee is computed on the fair market value of the realty which is
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is

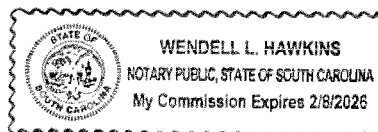
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, the amount of the outstanding balance of this lien or encumbrance is: .

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$75,000.00
- (b) Place the amount listed in item 5 above here: -0-
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$75,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$277.50.8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th
day March of 2017Notary Public for South Carolina
My Commission Expires: 2-8-2026John R Stewart Jr
Responsible Person Connected with the TransactionJohn Stewart Jr
Print or Type Name Here

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership@ is a partnership whose partners are all members of the same family. A family trust@ is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family@ means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity@ means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed-- pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S. C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT 35

116 E Earle St.
Anderson, SC 29621
(864) 332-0881 Phone
(864) 332-0882 Fax
anderson@wlhawkinslawfirm.com

Wendell L. Hawkins, PA
Attorneys at Law
Wendell L. Hawkins, Esq.

103-C Regency Commons Dr
Greer, SC 29650
(864) 848-9370 Phone
(864) 848-9759 Fax
greenville@wlhawkinslawfirm.com

Susan S. Miranda, Esq.

March 26, 2018

Via US Mail & Electronic Delivery

Wendell L. Hawkins, Esq
Aimee V. Leary, Esq.
Writer's Reply Address
Phone Extension - 212
vlh@wlhawkinslawfirm.com

Ryan McCabe, Esq. & Ely Grote, Esq.
McCabe, Trotter & Beverly, P.C.
P.O. Box 212069
Columbia, SC 29221

RE: Chandelle Property Owners Association v. CSC Developers, LLC, et al.
C/A No. 2016-CP-42-1854

Dear Ryan & Ely:

Please find herewith the Defendants Reply to Chandelle Property Owner's Association's Reply to Requests to Admit along with the Certificate of Service for the above referenced case. Please contact me with questions in regards to the enclosed material.

With kind regards I remain,

Very truly yours,


Vanessa L. Hamm
Litigation Paralegal

cc:

Stokely Holder, Esq., via electronic delivery
Bruce Bannister, Esq., via electronic delivery
John Harjehausen, Esq., via electronic delivery
Richard Patton, Esq., via electronic delivery

ELECTRONICALLY FILED - 2022 Sep 09 4:17 PM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,
 LLC, 331 South, LLC, Charlie M. Allison,
 Janice H. Allison, James Douglas Armstrong
 and Jane Armstrong, Marilyn N. Berry,
 Stephen Berry, Emma Jean Brockman as the
 Personal Representative of the Estate of James
 P. Brockman, Sr., Douglas E. Cobb, Nicole
 Cobb, Kenneth L. Galloway, Molly C.
 Galloway, Warren Johnson, Rhonda Johnson,
 Lawrence E. Lewis, Barbara L. Lewis, John K.
 Payne, Ruth G. Payne, John R. Stewart, Jr.,
 Angela Tanner, Helmut, Tuemmel, Silvia L.
 Tuemmel, Tygerway, LLC, RL 240, LLC, and
 Rob Graham as Trustee of the Jane Van
 Wieren Trust,

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-00541

CERTIFICATE OF SERVICE

Plaintiff,

vs.

Bruce R. Goldberg,

Defendant, et al.

C.A. No. 2016-CP-42-03214

Chandelle Runway, LLC,

Plaintiff,

vs.

Dale Ellis

Defendants, et al.

C.A. No. 2016-CP-42-03215

Chandelle Runway, LLC,

Plaintiff,

vs.

George Lynn Flemming,

Defendant, et al.

C.A. No. 2016-CP-42-03344

Chandelle Runway, LLC,

Plaintiff,

vs.

Stuart R. Swanson,

Defendant, et al.

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

I, **Vanessa Hamm**, hereby certify that **James Douglas Armstrong and Jane Armstrong's Reply to Chandelle Property Owners Association's Requests to Admit to James Douglas Armstrong and Jane Armstrong, John K. Payne and Ruth G. Payne's Reply to Chandelle Property Owners Association's Requests to Admit to John K. Payne and Ruth G. Payne, Warren Johnson and Rhonda Johnson Reply to Chandelle Property Owner's Association's Requests to Admit to Warren Johnson and Rhonda Johnson, and Reply to Chandelle Property Owners Association's Requests to Admit to Jane Van Wieren, as Trustee of the Greer, R.G. Irrevocable Property Trust, Dated October 25, 2006** in the above captioned matter was/were served via U.S. Mail, First Class, postage prepaid, on this the 21st day of **March**, 2018:

Addressed to:

Ryan McCabe, Esq.
McCabe, Trotter & Beverly, P.C.
Post Office Box 212069
Columbia, South Carolina 29221

Sworn to me before this 20th day of
March, 2018.

Kelly L. Meisinger
Notary Public, South Carolina
My Commission Expires: 3-22-21

Vanessa Hamm
Vanessa Hamm

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,
 LLC, 331 South, LLC, Charlie M. Allison,
 Janice H. Allison, James Douglas Armstrong
 and Jane Armstrong, Marilyn N. Berry,
 Stephen Berry, Emma Jean Brockman as the
 Personal Representative of the Estate of James
 P. Brockman, Sr., Douglas E. Cobb, Nicole
 Cobb, Kenneth L. Galloway, Molly C.
 Galloway, Warren Johnson, Rhonda Johnson,
 Lawrence E. Lewis, Barbara L. Lewis, John K.
 Payne, Ruth G. Payne, John R. Stewart, Jr.,
 Angela Tanner, Helmut, Tuemmel, Silvia L.
 Tuemmel, Tygerway, LLC, RL 240, LLC, and
 Rob Graham as Trustee of the Jane Van
 Wieren Trust,

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-00541

**JAMES DOUGLAS ARMSTRONG
 AND JANE ARMSTRONG'S REPLY
 TO CHANDELLE PROPERTY
 OWNERS ASSOCIATION'S
 REQUESTS TO ADMIT TO
 JAMES DOUGLAS ARMSTRONG
 AND JANE ARMSTRONG**

Plaintiff,)
)
vs.)
)
Bruce R. Goldberg,)
)
Defendant, et al.)
_____)
C.A. No. 2016-CP-42-03214)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Dale Ellis)
)
Defendants, et al.)
_____)
C.A. No. 2016-CP-42-03215)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
George Lynn Flemming,)
)
Defendant, et al.)
_____)
C.A. No. 2016-CP-42-03344)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Stuart R. Swanson,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

TO: D. RYAN MCCABE, JR., ATTORNEY FOR PLAINTIFF:

James Douglas Armstrong and Jane Armstrong (hereinafter "Defendants"), by and through its undersigned counsel pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, responds to Chandelle Property Owners Association (hereinafter "Plaintiff") Requests to Admit to James Douglas Armstrong and Jane Armstrong as follows:

REQUESTS TO ADMIT

1. Admit that James Douglas Armstrong and Jane Armstrong are the owners of the property described in the deed attached as **Exhibit 1**.

REPLY: Admit.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

3. Admit that James Douglas Armstrong and Jane Armstrong are the owners of the property described in the deed attached as **Exhibit 2**.

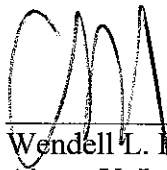
REPLY: Admit.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

5. Admit that James Douglas Armstrong and Jane Armstrong are members of Chandelle Property Owners Association.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request. The purported Board calls these Defendants members when they want money and says they are not members when it comes to a vote.



Wendell L. Hawkins (SC Bar No.: 13583)
Aimee V. Leary (SC Bar No.: 100657)
Wendell L. Hawkins, P.A.
103-C Regency Commons Dr. Greer, SC 29650
Phone: 864-848-9370 Fax: 864-848-9759
wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Defendants,
James Douglas Armstrong and Jane Armstrong

Greer, South Carolina
March 26, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,)
 LLC, 331 South, LLC, Charlie M. Allison,)
 Janice H. Allison, James Douglas Armstrong)
 and Jane Armstrong, Marilyn N. Berry,)
 Stephen Berry, Emma Jean Brockman as the)
 Personal Representative of the Estate of James)
 P. Brockman, Sr., Douglas E. Cobb, Nicole)
 Cobb, Kenneth L. Galloway, Molly C.)
 Galloway, Warren Johnson, Rhonda Johnson,)
 Lawrence E. Lewis, Barbara L. Lewis, John K.)
 Payne, Ruth G. Payne, John R. Stewart, Jr.,)
 Angela Tanner, Helmut, Tuemmel, Silvia L.)
 Tuemmel, Tygerway, LLC, RL 240, LLC, and)
 Rob Graham as Trustee of the Jane Van)
 Wieren Trust,)

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-00541

**JOHN K. PAYNE AND RUTH G.
 PAYNE'S REPLY TO CHANDELLE
 PROPERTY OWNERS
 ASSOCIATION'S REQUESTS TO
 ADMIT TO JOHN K. PAYNE
 AND RUTH G. PAYNE**

Plaintiff,	)
	)
vs.	)
	)
Bruce R. Goldberg,	)
	)
Defendant, et al.	)
_____	)
C.A. No. 2016-CP-42-03214	)
	)
Chandelle Runway, LLC,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Dale Ellis	)
	)
Defendants, et al.	)
_____	)
C.A. No. 2016-CP-42-03215	)
	)
Chandelle Runway, LLC,	)
	)
Plaintiff,	)
	)
vs.	)
	)
George Lynn Flemming,	)
	)
Defendant, et al.	)
_____	)
C.A. No. 2016-CP-42-03344	)
	)
Chandelle Runway, LLC,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Stuart R. Swanson,	)
	)
Defendant, et al.	)

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

TO: D. RYAN MCCABE, JR., ATTORNEY FOR PLAINTIFF:

John K. Payne and Ruth G. Payne (hereinafter “Defendants”), by and through its undersigned counsel pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, responds to Chandelle Property Owners Association (hereinafter “Plaintiff”) Requests to Admit to John K. Payne and Ruth G. Payne as follows:

REQUESTS TO ADMIT

1. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 1**.

REPLY: Admit.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

3. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 2**.

REPLY: Admit.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

5. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in **Exhibit 3**.

REPLY: Admit.

6. Admit that the property described in the deed attached as **Exhibit 3** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed

Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

7. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 4**.

REPLY: Admit.

8. Admit that the property described in the deed attached as **Exhibit 4** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

9. Admit that John K. Payne and Ruth G. Payne are the owners of the property described in the deed attached as **Exhibit 5**.

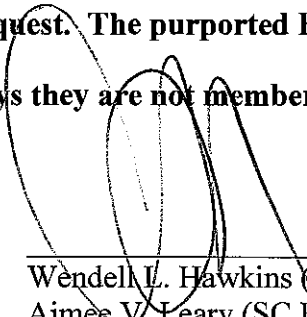
REPLY: Admit.

10. Admit that the property described in the deed attached as **Exhibit 5** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

11. Admit that John K. Payne and Ruth G. Payne are members of Chandelle Property Owners Association.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request. The purported Board calls these Defendants members when they want money and says they are not members when it comes to a vote.



Wendell L. Hawkins (SC Bar No.: 13583)
Aimee V. Leary (SC Bar No.: 100657)
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Attorneys for Defendants,
John K. Payne and Ruth G. Payne

Greer, South Carolina
March 26, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,)
 LLC, 331 South, LLC, Charlie M. Allison,)
 Janice H. Allison, James Douglas Armstrong)
 and Jane Armstrong, Marilyn N. Berry,)
 Stephen Berry, Emma Jean Brockman as the)
 Personal Representative of the Estate of James)
 P. Brockman, Sr., Douglas E. Cobb, Nicole)
 Cobb, Kenneth L. Galloway, Molly C.)
 Galloway, Warren Johnson, Rhonda Johnson,)
 Lawrence E. Lewis, Barbara L. Lewis, John K.)
 Payne, Ruth G. Payne, John R. Stewart, Jr.,)
 Angela Tanner, Helmut, Tuemmel, Silvia L.)
 Tuemmel, Tygerway, LLC, RL 240, LLC, and)
 Rob Graham as Trustee of the Jane Van)
 Wieren Trust,)

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-00541

**WARREN JOHNSON AND
 RHONDA JOHNSON REPLY
 TO CHANDELLE PROPERTY
 OWNERS ASSOCIATION'S
 REQUESTS TO ADMIT TO
 WARREN JOHNSON AND
 RHONDA JOHNSON**

Plaintiff,)
)
vs.)
)
Bruce R. Goldberg,)
)
Defendant, et al.)
_____)
)
C.A. No. 2016-CP-42-03214)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Dale Ellis)
)
Defendants, et al.)
_____)
)
C.A. No. 2016-CP-42-03215)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
George Lynn Flemming,)
)
Defendant, et al.)
_____)
)
C.A. No. 2016-CP-42-03344)
)
Chandelle Runway, LLC,)
)
Plaintiff,)
)
vs.)
)
Stuart R. Swanson,)
)
Defendant, et al.)

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

TO: D. RYAN MCCABE, JR., ATTORNEY FOR PLAINTIFF:

Warren Johnson and Rhonda Johnson (hereinafter “Defendants”), by and through its undersigned counsel pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, responds to Chandelle Property Owners Association (hereinafter “Plaintiff”) Requests to Admit to Warren Johnson and Rhonda Johnson as follows:

REQUESTS TO ADMIT

1. Admit that Warren Johnson and Rhonda Johnson are the owners of the property described in the deed attached as **Exhibit 1**.

REPLY: Admit.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

3. Admit that Warren Johnson and Rhonda Johnson are the owners of the property described in the deed attached as **Exhibit 2**.

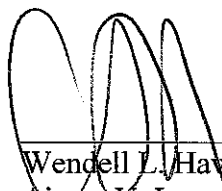
REPLY: Admit.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

5. Admit that Warren Johnson and Rhonda Johnson are members of Chandelle Property Owners Association.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request. The purported Board calls these Defendants members when they want money and says they are not members when it comes to a vote.



Wendell L. Hawkins (SC Bar No.: 13583)
Aimee V. Leary (SC Bar No.: 100657)
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wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Defendants,
Warren Johnson and Rhonda Johnson

Greer, South Carolina
March 26, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

C.A. No. 2016-CP-42-00074)

Chandelle Property Owners Association)

Plaintiff,)

vs.)

Kenneth L. Galloway and Molly C. Galloway,)

Defendants, et al.)

C.A. No. 2016-CP-42-01854)

Chandelle Property Owners Association,)

Plaintiff,)

vs.)

CSC Developers, LLC, Chandelle Runway,
 LLC, 331 South, LLC, Charlie M. Allison,
 Janice H. Allison, James Douglas Armstrong
 and Jane Armstrong, Marilyn N. Berry,
 Stephen Berry, Emma Jean Brockman as the
 Personal Representative of the Estate of James
 P. Brockman, Sr., Douglas E. Cobb, Nicole
 Cobb, Kenneth L. Galloway, Molly C.
 Galloway, Warren Johnson, Rhonda Johnson,
 Lawrence E. Lewis, Barbara L. Lewis, John K.
 Payne, Ruth G. Payne, John R. Stewart, Jr.,
 Angela Tanner, Helmut, Tuemmel, Silvia L.
 Tuemmel, Tygerway, LLC, RL 240, LLC, and
 Rob Graham as Trustee of the Jane Van
 Wieren Trust,

Defendants.)

C.A. No. 2016-CP-42-03213)

Chandelle Runway, LLC,)

IN THE COURT OF COMMON PLEAS

C.A. No. 2016-CP-42-00074

C.A. No. 2016-CP-42-01854

C.A. No. 2016-CP-42-03213

C.A. No. 2016-CP-42-03214

C.A. No. 2016-CP-42-03215

C.A. No. 2016-CP-42-03344

C.A. No. 2016-CP-42-03409

C.A. No. 2016-CP-42-00541

**REPLY TO CHANDELLE
 PROPERTY OWNERS
 ASSOCIATION'S REQUESTS TO
 ADMIT TO JANE VAN WIEREN,
 AS TRUSTEE OF THE GREER, R.G.
 IRREVOCABLE PROPERTY
 TRUST, DATED OCTOBER 25, 2006**

Plaintiff,

vs.

Bruce R. Goldberg,

Defendant, et al.

C.A. No. 2016-CP-42-03214

Chandelle Runway, LLC,

Plaintiff,

vs.

Dale Ellis

Defendants, et al.

C.A. No. 2016-CP-42-03215

Chandelle Runway, LLC,

Plaintiff,

vs.

George Lynn Flemming,

Defendant, et al.

C.A. No. 2016-CP-42-03344

Chandelle Runway, LLC,

Plaintiff,

vs.

Stuart R. Swanson,

Defendant, et al.

C.A. No. 2016-CP-42-03409

Chandelle Runway, LLC

Plaintiff,

vs.

Billy J. Israel,

Defendant, et al.

C.A. No. 2017-CP-42-00541

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers,

Defendant.

TO: D. RYAN MCCABE, JR., ATTORNEY FOR PLAINTIFF:

Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust, Dated October 25, 2006 (hereinafter "Defendants"), by and through its undersigned counsel pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, responds to Chandelle Property Owners Association (hereinafter "Plaintiff") Requests to Admit to Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust, Dated October 25, 2006 as follows:

REQUESTS TO ADMIT

1. Admit that Jane Van Wieren, trustee or her successor in trust of the Greer RG Irrevocable Property Trust, Dated October 25, 2006, and any amendments there to, is the owner of the property described in the deed attached as **Exhibit 1**.

REPLY: Admit.

2. Admit that the property described in the deed attached as **Exhibit 1** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: Defendants admit that the language to that effect is in the deed.

3. Admit that Jane Van Wieren, trustee or her successor in trust of the Greer RG Irrevocable Property Trust, Dated October 25, 2006, and any amendments there to, is the owner of the property described in the deed attached as **Exhibit 2**.

REPLY: Admit.

4. Admit that the property described in the deed attached as **Exhibit 2** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

5. Admit that Jane Van Wieren, trustee or her successor in trust of the Greer RG Irrevocable Property Trust, Dated October 25, 2006, and any amendments there to, is the owners of the property described in **Exhibit 3**.

REPLY: Admit.

6. Admit that the property described in the deed attached as **Exhibit 3** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

7. Admit that Jane Van Wieren, trustee or her successor in trust of the Greer RG Irrevocable Property Trust, Dated October 25, 2006, and any amendments there to, is the owner of the property described in the deed attached as **Exhibit 4**.

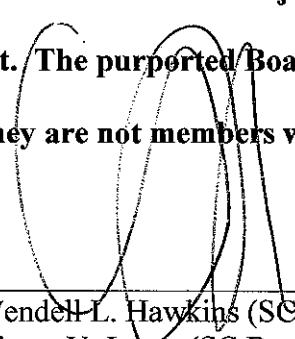
REPLY: Admit.

8. Admit that the property described in the deed attached as **Exhibit 4** is subject to and bound by the Declaration of Covenants, Conditions and Restrictions recorded with the Office of the Register of Deeds for Spartanburg County, South Carolina on December 16, 1997, in Deed Book 67-A at Page 583, and as the same may be determined to be lawfully amended and supplemented.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request.

9. Admit that Jane Van Wieren, as trustee of the Greer RG Irrevocable Property Trust, Dated October 25, 2006, is a member of Chandelle Property Owners Association.

REPLY: The request calls for a legal conclusion which is the subject of this lawsuit and therefore, Defendants must deny this request. The purported Board calls these Defendants members when they want money and says they are not members when it comes to a vote.



Wendell L. Hawkins (SC Bar No.: 13583)
Aimee V. Leary (SC Bar No.: 100657)
Wendell L. Hawkins, P.A.
103-C Regency Commons Dr. Greer, SC 29650
Phone: 864-848-9370 Fax: 864-848-9759
wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Defendants,
Jane Van Wieren, trustee of the Greer RG
Irrevocable Trust, Date October 25, 2006

Greer, South Carolina
March 26, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

vs.

CSC Developers, LLC, Chandelle
Runway, LLC, 331 South, LLC, Charlie
M. Allison, Janice H. Allison, James
Douglas Armstrong and Jane Armstrong,
Marilyn N. Berry, Stephen Berry, James
P. Brockman, Sr., Douglas E. Cobb,
Nicole Cobb, Kenneth L. Galloway, Molly
C. Galloway, Warren Johnson, Rhonda
Johnson, Lawrence E. Lewis, Barbara L.
Lewis, John K. Payne, Ruth G. Payne,
John R. Stewart, Jr., Angela Tanner,
Helmut Tuemmle, Silvia L. Tuemmle,
Jane Van Wieren as Trustee of the Greer
R.G. Irrevocable Property Trust dated
October 25, 2006, Martin Tuemmle,
Raymond M. Clark Jr., and also all other
persons unknown, claiming any right, title,
Estate, interest in or lien upon the real
estate described in the complaint herein.

Defendants.

James Douglas Armstrong and Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne and Ruth G.
Payne, Jane Van Wieren as Trustee of the
Greer R.G. Irrevocable Property Trust
dated October 25, 2006

Third Party Plaintiffs

vs

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

**DEFENDANT JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006's
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S PROPOSED ORDER
GRANTING PARTIAL SUMMARY
JUDGMENT**

Billy J. Israel, Bruce R. Goldberg, Cindy
R. Goldberg and George Lynn Fleming in
their personal and official capacities,

Third Party Defendants

Defendants, James Douglas Armstrong and Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006 (hereinafter collectively "Defendants") presents the following Memorandum in Opposition to Plaintiff's Proposed Order for Partial Summary Judgment in the above captioned matter.

Defendants first take exception to Plaintiff's initial 17 pages of factual background and findings of fact. At the outset of the hearing, Defendants stipulated that the evidence in the case would most likely lead to a finding that the Defendants were subject to the restrictions through the equitable imposition of the covenants by implication or "negative implied covenants." Defendants also stated that although they stipulated to the imposition of the covenants, Defendants took exception to the actions of the Board of Directors and the actions taken by the individuals on the Board that were *ultra vires*; those *ultra vires* acts mainly being incurring debt in excess of the \$50,000.00 limit of Article 8.2(i) of the By-Laws to pay exorbitant attorney's fees. Defendants also argued that the restrictions should be applied prospectively and not retroactively. Because of the Defendant's stipulation, the 17 pages of factual background and findings of fact are not proper in the Order and contain facts and conclusions that are simply not necessary and were never presented or discussed at the Motion hearing. The extensive list of facts included in the Order are not necessary and have the potential to prejudice the Defendants in later proceedings and given the short amount of time to trial would take the parties weeks to sift through and come to an agreement on the

contents of the Order and therefore, such a laundry list of facts should be simply left out of the Order.

Defendants further take exception to the contents of the Order beginning with paragraph 2 on page 18 of the Order entitled “The Subject Defendants Properties Described Herein are Subject to and Bound By the Declaration.” Plaintiff graciously includes self-serving findings of fact and sprinkles the Order with conclusions for which evidence was never presented and the issues were not presented in the filed Motion itself. For example, on page 23, first paragraph the Plaintiff writes, “Therefore, it is hereby declared and ordered that the Declaration is reformed to remove the purported annexation deadline in Section 16.2 thereof, dating back to the date of the recording of the Original Declaration, and as otherwise necessary to correct any potential technical defect or flaw in any of the annexations based on the purported annexation deadline.” Defendants believe that based on the multiple interjections of issues in the Order that were not deliberated or contained in the motion itself, the Court should simply order that the Defendants have stipulated that they are subject to the Original Declaration and therefore, they are.

With respect to the award of any sums of money as assessments due, Defendants have raised material issues of fact in that the Board and individuals on the Board have engaged in acts *ultra vires* and incurred debt in the form of attorney’s fees and costs well over the limits of Article 8.2(i) of the Original Declaration and By-Laws as filed. As such, any award of those assessments would be in support of the direct violation of the corporate documents and improper at this time. Defendants have filed a Motion for Summary Judgment on the issue that is currently before the Court waiting to be heard.

Likewise, if the Defendants prevail on their causes of action against the Plaintiff and

Third Party Defendants, the Defendants would be entitled to attorney's fees and costs so an award of those fees and costs at this point in time would be improper. Also, with respect to Rule 37 award of fees and costs based on Defendant's refusal to admit they were subject to the Original Declaration, Plaintiff prohibited any admission by conditioning the Consent Agreement on the Defendant's agreeing to be bound by all of the violative actions of the Board in the past and in the future and in a very self-serving way to Plaintiff's counsel. The most illustrative example of the self-serving actions of Plaintiff's counsel was to get the majority of the persons subject to the Declaration to agree to every action taken by the Board in the past or future, including the binding of the Association to over \$700,000.00 in attorney's fees and costs to date. On that subject, Defendants also objected to the granting of partial summary judgment because discovery was still incomplete. On September 22, 2022, Jeff Cooper testified in his deposition that the Association was still in debt to its attorneys in the amount of approximately \$166,000.00. It appears clear to the Defendants that Plaintiff or its Board members, individually, have violated the corporate documents, these Defendants have borne the expense of fighting and exposing the violations and it would be a grave injustice to rule that these Defendants have to pay those assessments and the attorney's fees and costs associated with the collection action without review of the propriety of the actions.

Respectfully Submitted,

WENDELL L. HAWKINS, PA

/s/ Wendell L. Hawkins
Wendell L. Hawkins, Esq. (ID # 13583)
Wendell L. Hawkins, P.A.
310 The Parkway

October 25th, 2022
Greer, South Carolina

Greer, South Carolina 29650
(864) 848-9370 (864) 848-9759 (fax)
wlh@wlhawkinslawfirm.com
Attorneys for Defendants

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas R. Keith Kelly, Circuit Court Judge

Case No. 2016-CP-42-01854

Chandelle Property Owners
Association,

Respondent,

v.

James Douglas Armstrong, Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne, Ruth G. Payne,
and Jane Van Wieren as Trustee of the
Greer R.G. Irrevocable Property Trust
dated October 25, 2006,

Appellant.

NOTICE OF APPEAL

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, appeal the order of the Honorable Keith R. Kelly dated October 29, 2022. Appellant received written notice of entry of this order on October 31, 2022.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
Wendell L. Hawkins, PA
310 The Parkway Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
wlh@wlhawkinslawfirm.com
Attorneys for Appellants

November 1, 2022
Greer, South Carolina

Other Counsel of Record:

D. Ryan McCabe, Jr., Esq.
Ely O. Grote, Esq.
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Blvd., Ste 250
Columbia, SC 29209
Phone (803) 724-5000 Fax: (803) 724-5001
Email: Ryan.mccabe@mccabetrotter.com
Ely.grote@mccabetrotter.com

James P. Walsh, Esq.
John D. Harjenhausen, Esq.
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
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jharjenhausen@clarcksonwalsh.com

1 (COURT REPORTER'S NOTE: Due to remote platform
2 interruption and audio interference throughout the
3 hearing, those instances are denoted with
4 (Inaudible) in the transcript.

5 P-R-O-C-E-E-D-I-N-G-S

6 THE COURT: Is everybody with us?

7 MR. HAWKINS: Yes, sir.

8 THE COURT: My law clerk and I have taken some
9 time to look at the motions, at least a good cursory
10 inspection and we set them this week to accommodate
11 everybody and everyone, including ourselves, because we are
12 in chambers this week, which means that we can dedicate
13 ourselves without being on the bench to deciding motions
14 after argument today.

15 May I ask this getting started here, is there
16 anything in the world that I can do to help everybody here
17 come to some kind of a mutual understanding?

18 MR. HAWKINS: Judge, I might say this if, if I
19 may.

20 THE COURT: Sure.

21 MR. HAWKINS: A little -- it's not my motion, but,
22 I think that there's no doubt that these defendants are --
23 they most likely fall within the definition of implied
24 convenience to restrict their lots.

25 I don't -- I don't know that that's really the

1 issue in this case. I think -- I think the issue is what the
2 ramifications of that are on. In our -- in our brief, we
3 pointed out the Shipyard case, wherein the Court said, Well,
4 you meet all of the -- all of the elements except for this
5 one, which is there has to be this common scheme of
6 development. And the restrictions have to tend to impose
7 the restrictions they're being sought to be imposed.

8 It's our simple argument, not it that we wouldn't
9 be subject to the restrictions, our argument is that we're
10 subject to the restrictions as they are written and
11 originally filed with the Register of Deeds. What this case
12 is trying to do is kind of envelope everything into one
13 cause of action, which would be the imposition of the
14 restrictions and, therefore, you are responsible for these
15 assessments and these late fees and these penalties.

16 I think there's ample evidence in the record that,
17 although John Stewart intended to restrict the property, and
18 my clients, at first felt like they were in the subdivision,
19 that these assessments did not fall within the definition of
20 what the assessments are in the original restrictions under,
21 I think it's Article -- Article 8 -- or Article 11, Your
22 Honor.

23 So that's the issue. And I know there's been a
24 lot of filings, a lot of exhibits, a lot of depositions,
25 plats, deeds, I don't -- I don't think that's really our

1 fight. I think that the evidence is going to prove that
2 they were subject to the restrictions, but the question
3 remains, and the real question is: What restrictions are
4 those? Are they the original restrictions and does the
5 plaintiff's position go so far as to be able to impose
6 something different, which is the variable rate assessment
7 in the Shipyard case. It's almost exactly analogous.

8 I don't think -- I don't think the case law says
9 that you have to meet -- if you don't meet all of this --
10 all of these elements, then you can't impose the
11 restrictions at all, because I don't think the cases were
12 ever presented to the courts in that way. I think the best
13 case law we have is probably Shipyard that says that the
14 covenants, which in that particular case, the defendants in
15 that case were -- they were restricted, but their
16 restrictions said they had fixed covenants. And there
17 were -- I think there were five or six other sections that
18 were developed with variable rate restrictions, and that was
19 the rub and it was a change of circumstances case, too,
20 which the court said there's no change in circumstance for
21 change in history, but that's the real issue.

22 If -- if we're subject to the restrictions, what
23 restrictions are we subject to and does that necessarily
24 meet that third element of implied restrictions?

25 I think the question here is to solve the first

1 problem, whether or not they're subject to, quote, the
2 original restrictions as filed, and then what do we do with
3 all of this other mess that comes later? If that makes
4 sense.

5 THE COURT: Yeah, it does make sense. Yes, sir.

6 Okay. But at this point, is there something I can
7 do with everybody to help us all agree and live in harmony
8 in Chandelle?

9 Mr. McCabe, do you want to be heard, sir?

10 MR. MCCABE: Yes, Your Honor. I guess I responded
11 to that. Today we were prepared to argue that we were
12 entitled to summary judgment that the remaining defendant's
13 property are subject to the restrictive covenants.

14 I think, if I understand Mr. Hawkins correctly, he
15 agrees that the lots are bound. I think maybe he's
16 saying he -- he's asking which covenants in the -- in the
17 particular case that was mentioned. The Shipyard case that
18 involved the scenario where there were 32 different
19 declarations filed. And, in this case, there is only one
20 declaration filed.

21 Now, it has been amended on some occasions, but I
22 don't think that there are any amendments, I'm not aware of
23 any amendments that would affect, you know, his clients, you
24 know, there's no -- there's nothing that would separate his
25 client's lots from the restrictions that are subject to the

1 rest. So maybe I don't understand specifically how this
2 is -- how this doesn't resolve the case.

3 Now, as far what assessments erode and that sort
4 of thing that, you know, that would be the natural next step
5 in this is if they're subject to the restrictions, then
6 obviously they're required to meet all of the obligations
7 and subject to all the requirements of the restrictive
8 covenants, which include the payment of assessments.

9 That provision hasn't been changed from the
10 original declaration. The owners have been required to pay
11 assessments to maintain the runway, the common areas, and
12 the functions of the association, for instance, the
13 architectural -- enforcement of the architectural functions
14 and that sort of thing. So that's always been a requirement
15 of the restrictive covenants.

16 So, it sounds like if -- if the defendant's lots
17 are bound subject to the declaration, then the remaining
18 issues are resolved as a result of that.

19 MR. HAWKINS: I disagree.

20 THE COURT: So who else needs to be heard?

21 Mr. Hawkins, you represent, is it Van Wieren,
22 Payne, Johnson, and Armstrong?

23 MR. HAWKINS: Yes, Your Honor.

24 THE COURT: Okay. Okay. I know who Ely's with.
25 John, are you with -- who are you with?

1 MR. HARJEHAUSEN: I represent -- I'm a co-counsel
2 for the Property Owner's Association as to the counterclaims
3 asserted against it. And also as to the counsel for the
4 third party defendants. So, to the extent that Mr. Hawkins'
5 clients have asserted counterclaims for third party claims,
6 we have a pending motion that I was prepared to argue today
7 to -- for summary judgment on those claims. I wasn't sure
8 what order the Court wanted to take the pending motions in,
9 whether they wanted to hear the affirmative motion of the
10 POA filed by Mr. McCabe and Mr. Grote.

11 Basically, I'm going to let them argue that as to
12 whether or not these lots are subject to the covenants, and
13 I think there's some other things that they're arguing as
14 well. But my concern and motion is related to the
15 counterclaims and third-party claims.

16 THE COURT: Okay. Well, yeah, I was going to
17 start with the summary judgment motion, but I don't have to,
18 it doesn't matter to me. As I indicated earlier, we're in
19 chambers and we set it here so we can give our undivided
20 attention to this, this week. So, we're kinda under a
21 timeline here. But, anyway, so we can hear them in any
22 order you want to. I will be taking it under advisement.
23 And Mattie (ph), and I will put our heads together later
24 today and tomorrow, Thursday, Friday, whatever it takes to
25 go through everything.

1 But I guess back to this, is there, anything,
2 anything, that I can do to help everybody live harmoniously?
3 And, maybe not, but I would love to.

4 MR. HARJEHAUSEN: Sure, Your Honor, at least. From
5 my perspective, I'd like to see the counterclaims and
6 third-party claims dismissed. And I'm sure that, speaking
7 for Ryan, they would like to have these lots subject to the
8 covenants and the assessments. But I'll let Ryan comment if
9 he has anything else.

10 MR. MCCABE: Well, I don't want to butt in
11 inappropriately. Ely was actually going to argue the
12 motion. I thought Mr. Hawkins just narrowed the issues.
13 Our motion for summary judgment -- our primary motion was to
14 have the -- was to ask the Court to grant judgment and find
15 that these lots were bound by the declaration. And, if I
16 understand correctly, I think he's conceding that point,
17 he's reserving some specific arguments beyond that.
18 But, if that's the case, then we don't -- we do not need to
19 be heard on that if there's -- if we've conceded that point.

20 I'm a little unclear. I believe that's...

21 THE COURT: I think -- I think Mr. Hawkins is
22 saying that, but Mr. Hawkins is certainly able to speak for
23 himself.

24 MR. HAWKINS: Thank you, Your Honor. I have to
25 raise one exception, which is Lot 51, which is Ken Payne's

1 lot, which there's evidence in the record that it was not
2 intended to be restricted.

3 So, you know, however, with, with respect to the
4 other lots I think that I'll take the opportunity on it, the
5 evidence would tend to show that my clients meet all of the
6 elements other than that particular element of the general
7 scheme of burdening the properties. To the extent it allows
8 for assessments outside of the provisions of Article 11,
9 which says that the assessments are to be used for
10 maintenance only, and I think there's ample evidence in the
11 file that that was not the case. But I don't think that --
12 you know, that's not -- that's not necessarily an argument
13 that we have to take up now, Your Honor.

14 I believe the majority of the plaintiff's motion
15 is devoted to proving that my clients are bound by the
16 restrictions under the negative covenants. And to the
17 extent the Court would find that -- well, there are -- there
18 are some imposition of -- well, the imposition of the
19 assessments we think is wrong. And that, because of that,
20 they don't meet the third element, which is that general
21 scheme burdening the properties, which has to be clear and
22 unmistakable. And I don't think that the language in the
23 restrictions as originally filed could meet that burden.

24 So, you know, to the extent we're bound by
25 original restrictions, yes. But to the extent those

1 restrictions and the way they are seeking to be imposed
2 satisfy that third element, I say, no. And that's -- there
3 are many other instances of the plaintiffs acting ultra
4 vires and it's in his deposition that's been submitted as an
5 exhibit. But, nevertheless, you know, it just seems like
6 there's a lot of time spending on trying to prove that
7 they're subject to the restrictions, that's not a problem,
8 with the exception of those caveats.

9 And I don't know, you know, you do you take one
10 before the other? I think you have to, but I can clear the
11 path to get to the point to where we start to interpret
12 those restrictions and the application of those
13 restrictions.

14 THE COURT: Okay. But the question about how the
15 money was used and, I mean, I've read that. I understand
16 that the defendants, the subject defendants, we'll call them
17 that, it's what's called in a brief. So the subject
18 defendants didn't like the way that the funds were being
19 used. But that's a separate issue as to whether or not, is
20 it not, it's a separate issue as to whether or not they're
21 restricted?

22 MR. HAWKINS: I believe that's correct, Your
23 Honor. And to the extent we can hold that in abeyance and
24 work it out, litigate it, whatever we got to do, that's
25 fine. I don't want to belabor the time with proving that

1 they're subject to the restrictions as originally filed.

2 THE COURT: Okay. Then you don't have to do that.

3 Mr. Grote.

4 MR. GROTE: Okay. Your Honor, can you hear me all
5 right?

6 THE COURT: Yes, sir.

7 MR. GROTE: That all sounds fun to me. He
8 mentioned lot -- Mr. Hawkins mentioned a Lot 51. Lot 51 is
9 not part of our motion, that specifically was taken out.
10 Lot 51 is part of the lawsuit, but we recognize that there
11 is a question of fact as to Lot 51, therefore, we didn't
12 include it in the motion.

13 So, it is not part of the motion, but the rest of
14 the lots of Mr. Hawkins' clients are in the motion. Those
15 are specifically mentioned in the brief that we submitted.

16 Now, as far as, you know, I'm not going to waste
17 time going through all of this then, because we've all, you
18 know, I guess agree that they're at least subject to the
19 restrictive covenants. One thing I would note with regard
20 to, you know, Chandelle versus something like the Shipyard
21 case that was referenced, the Shipyard case, dealt with, you
22 know, each section had its own set of restrictive covenants.
23 This case there's only one set of restrictive covenants,
24 there's an amendment provision. There were several
25 amendments filed to it.

1 I guess, really the question in my mind here is,
2 you know, is there a particular amendment that they're
3 objecting to that we need to litigate? I know that there
4 was a series of them. I think the only one that I'm aware
5 of that they're truly disputing is an amendment that was
6 filed in 2012 that was signed by the board of directors,
7 rather than the developer. And, if that's the issue, I
8 mean, we can certainly have testimony or a trial on the
9 legitimacy of that amendment.

10 But if there's some other, I guess, amendment out
11 there that they're challenging as part of this, I mean, I'm
12 just trying to clarify the issue here as far as, you know,
13 what is left to fight about. We've got the original
14 covenants. There are a series of amendments by the
15 developer, including annexations, and then I think there's
16 one final amendment to the covenants, which Mr. Hawkins'
17 clients were aware of and raised objection to that being
18 done by the board without a vote of the membership.

19 THE COURT: Mr. Hawkins, I read that.

20 So, what about that?

21 MR. HAWKINS: You know, I'm not at a point to
22 consent to any of the amendments. I think there are some
23 fact issues with respect to whether the board -- or, excuse
24 me let's start with the declarant. The declarant was
25 authorized at the time to make those amendments because of

1 the switch of the share class and the timing on that. And I
2 further think, you know, there are other issues with respect
3 to anything that the board of directors has tried to make
4 amendments on for a number of reasons, probably, the biggest
5 reason is that the restrictions don't allow them to
6 unilaterally amend the restrictions. So, another -- we're
7 just not going to consent to that.

8 Those are issues that are easily proven on a more
9 microscopic level, but, I can't consent to that. I'm
10 consenting to my client's being bound by the original
11 restrictions. Whatever was done after that, I think is
12 still an issue, because it's -- it's pertinent to basically
13 the relief that they seek.

14 THE COURT: Okay. Anybody want to be heard on
15 that?

16 MR. GROTE: Yes, Your Honor. I mean, simply, I
17 mean, I guess what we're -- our motion isn't about whether
18 the, I guess amendments, per se, are valid, except, you
19 know, some of those so-called amendments included
20 annexations attempt.

21 So, to the extent that they're consenting to be
22 bound by the covenants, our motion was simply they're bound
23 by the covenants as lawfully amended. If there's some
24 question of fact, and if they're disputing the amendments
25 or, you know, I guess that's something that we can

1 potentially get into. Leading into this, I think the only
2 amendment that I was really aware that they'd ever raised an
3 issue with was this one done by the board in 2012 and I
4 think one of the annexations was signed by the board in
5 2011, but they're already consenting to be bound by the
6 covenants. So that's kind of a nonissue.

7 Again, you know, if they're now going back and
8 challenging the amendments that the developer did, I don't
9 know that that's ever been asserted in their pleadings, I'm
10 just aware of the 2011 one. But as long as we're clear on,
11 I guess, what they're challenging then we can certainly
12 address those specific amendments or whatever specific
13 defects that they're claiming there.

14 THE COURT: Okay. So you -- Mr. Hawkins, so I got
15 the part about what you've conceded to. But you're not
16 conceding to any of the amendments being valid at this
17 point?

18 MR. HAWKINS: Well, I think any amendment
19 concerning annexations that that's moot by the fact that,
20 you know, we've agreed that we're subject to the original
21 restrictions. I do know -- I would say this, that we would
22 take issue only with the amendments that were purported to
23 be done by the board of directors.

24 THE COURT: Do you have numbers for those, sir?

25 MR. HAWKINS: They've made them exhibits, Your

1 Honor. And I couldn't follow their exhibits. So, I
2 believe -- let's see -- hold on a second.

3 Let's see. There was an amendment filed November
4 2nd of 2011, in Deed Book 99-L, Page 999, that was an
5 amendment to add lots. I think that point would be moot as
6 to my clients. However, there were some subsequent
7 amendments to that that attempted to change some substantive
8 provisions in the restrictions. So, to the extent, even the
9 board made amendments to annex, that's moot as to my
10 clients. But any other amendment that they made not
11 specifically dealing with annexation we would take issue
12 with. And I can't tell you how many were done right off the
13 top of my head.

14 MR. MCCABE: I think if you give me a second I can
15 give you the specific -- there's one amendment that's --
16 that I believe he's referring to. It was one where at that
17 time in 2011/12 the developer -- it was believed by all
18 involved that the developer still had the unilateral
19 authority to amend and the board signed an amendment by the
20 developer and I can give that -- I think that's what he's
21 referring to. I can give you --

22 MR. HAWKINS: What I'm -- what I'm referring to is
23 in the general, because I don't know every specific one
24 that's out there right now. So I would make that concession
25 in the general sense of if there's anything out there that

1 deals with anything other than annexation I'm not going to
2 concede to that being a valid amendment.

3 MR. GROTE: And you're talking about the one
4 signed by the board of directors rather than the developer?

5 MR. HAWKINS: Correct.

6 MR. GROTE: Okay. And, Your Honor, as far as the
7 amendments to the declaration signed by the board, I'm aware
8 of two. One is that 2011 annexation attempt that
9 Mr. Hawkins referred to which is kind of a moot issue.
10 There was -- I don't have the book and page, but there --
11 I'm more of one other amendment and it was filed in 2012
12 that was signed by the board of directors and that seems to
13 be a point of contention for the defendants.

14 I think, since that time, the board has filed some
15 amendments to the bylaws, because the bylaws do allow the
16 board to unilaterally amend those. But I don't think
17 there's any other annexations attempts. I'm not asking
18 Mr. Hawkins to accept my word for that, but if we're clear
19 that if it's any amendments to the declaration signed by the
20 board of directors, I think that's clear enough, and I
21 believe that's only one.

22 The affidavit of Billy Israel is Exhibit 4 to our
23 memorandum. Exhibit A to that includes all of the original
24 declaration and all of the amendments that we're aware of.
25 I can certainly pull that up if we need to.

1 THE COURT: I think -- I understand where we are
2 on that. Okay. All right. And the next issue?

3 MR. HAWKINS: Well, I think they're -- I'm sorry,
4 Judge, there are too many speaking.

5 THE COURT: Okay. No, no, no. I think we're
6 clear about which one we're that we're talking about now, at
7 least I am, and I can pull that up, because I read some of
8 that earlier today and I'm familiar with the affidavit that
9 Mr. Isreal gave, too. And the excerpts from the depositions
10 that were given. So, we got a couple of concessions here.

11 All right. Anything else that we can agree on?

12 MR. GROTE: I think the next question really is
13 the assessments you know. To my knowledge, the assessment
14 provisions I don't believe have been amended. And so I
15 think what we're dealing with is the original provisions.

16 THE COURT: Okay. How about that, Mr. Hawkins?

17 MR. HAWKINS: Well, the original -- Mr. Grote,
18 yes, I -- yeah, I think so. I mean, I think the original
19 provisions contain the language upon which we rely which is
20 what the assessments may be used for. It's fairly clear
21 from Billy Israel's deposition that the assessments that
22 have been assessed from inception this case have not been
23 expanded on maintenance in the subdivision at all. I
24 believe that even -- there's even a \$2,000 assessment my
25 client's paid for runway repair and they've applied those to

1 back assessments. So it's clear that the purpose of the
2 assessment was in 11.2 A through H, I think it's clear that
3 they weren't assessed in that manner or for that purpose.
4 And that the restrictions are clear and unambiguous with
5 respect to that. So the attempt to impose those assessments
6 on my clients is unrightful.

7 And secondly, you know, I just want to say this is
8 that prior to -- prior to scheduling this deposition, I
9 mean, this hearing, we were to take the deposition of Jeff
10 Cooper, I think that's his name, who's the treasurer, who
11 was, I think, the right person to testify as to the money.
12 we haven't been able to do that, the deposition was change.
13 And we have a right to discovery before we decide those
14 issues if it gets to that. I think Jeff Cooper is more of a
15 non-partisan party, Your Honor.

16 So before we would even get to those damages, I
17 would say it would be improper on the discovery issue alone.
18 However, I haven't seen the affidavit of debt. They said
19 they were going to enter, I'm sure it's consistent with
20 information that I have, I suppose. Right now, I think my
21 clients, they assert about \$250,000 between them in
22 assessments and fines and penalties. The fines and
23 penalties are another issue as well. Evidence in the record
24 they're trying to charge 15 percent. The restrictions allow
25 for Prime +2. In 2016 I don't think that Prime +2 is

1 anywhere near 15 percent. So I think their calculations on
2 anybody that's going to testify based on the evidence in the
3 record are suspect and I think the treasurer needs to
4 testify about it.

5 THE COURT: Okay. Mr. Grote, you want to be heard
6 on that?

7 MR. GROTE: Yes, Your Honor. I mean, my
8 understanding of their real dispute on the issue is whether
9 attorney's fees -- whether you can assess for attorney's
10 fees. And I think that's really a legal question based on
11 the declaration, which is part of the record. And our
12 contention is, is that by law and by the declaration, the
13 answer simply, yes.

14 Now, they -- there's obviously a disagreement that
15 these defendants didn't necessarily agree with the lawsuit
16 and therefore they don't want to pay any part of the money
17 that goes towards the lawsuit. But that objection aside,
18 the law and the documents would allow for this. For
19 example, the Nonprofit Act 33-31-302, specifically,
20 enumerates the powers of a nonprofit corporation and one of
21 those is specifically the power to sue or be sued. And
22 thus, you know, a corporation can and will incur attorney's
23 fees. Of course, this is a corporation, so a corporation so
24 cannot -- it has to have an attorney in circuit court,
25 right?

1 So, you know, principles of contract construction,
2 simply say that you can't construe a contract in a way that
3 would lead to absurd results. So, taken to this extreme to
4 say that the association cannot incur attorney's fees, you
5 know, look, somebody -- you get into a dispute with a
6 vendor, the vendor sees the corporation in circuit court
7 under their interpretation, then the board couldn't hire an
8 attorney to defend them and they would have to default and
9 every lawsuit brought against them or maybe they get into a
10 dispute with a defender -- excuse me, a vendor and then, you
11 know, they can't pursue any legal remedies against that
12 vendor because they can't incur attorney's fees, and
13 that's -- that's simply not what the documents contemplate.
14 And that's simply kind of an observed result that would go
15 for it, or would flow from that type of rationale.

16 Not only that, the documents themselves do
17 contemplate the attorney's fees will be incurred and can be
18 incurred. For example, Section 11.9 and 11.1 of the
19 declaration contemplate attorney's fees. They talk about
20 attorney's fees being part of the assessments part of the
21 lien. The ability to recover attorney's fees.

22 Also this Section 13.3 and 13.9 of the covenants
23 also say the same thing that, you know, if there is a
24 dispute under the covenants, the prevailing party can
25 recover attorney's fees. So, obviously, it is contemplated

1 under law and these documents that attorney's fees can be
2 incurred.

3 Plus, I think Section 2.1 of the bylaws says, you
4 know, the association and the board has the general
5 powers -- corporation, and they do provide broad powers to
6 the corporation. There's a couple other provisions as well
7 that I'll cite for you, this isn't really specifically
8 addressed in the brief, but it appears to be a point of
9 contention here.

10 And to back up a second, as far as the amount of
11 the debt, we did submit the affidavit of Billy Israel, that
12 is Exhibit 4 to the memorandum. There are a series of
13 exhibits to that, one of those, I believe it's Exhibit E to
14 that, is a spreadsheet that specifically sets forth the
15 amount of the debt owed and how it was calculated, and it
16 says forth the amount. And so it does give the interest
17 calculation in there.

18 So going back to the attorney's fees issue,
19 Section 1.6 of the declaration defines assessments that
20 says, They mean and refer to the annual special and default
21 assessments, levied pursuant to Article 11 to meet the
22 estimated cash requirements of the association. Obviously,
23 assessments are a cash requirement of the association.

24 There is reference to a maintenance fund in the
25 documents, Section 1.18 of the declaration does define that

1 maintenance fund, and it defines it as the fund created by
2 assessments and fees levied pursuant to Article 11 below to
3 provide the association with the funds required to carry out
4 its duties under the declaration.

5 So, obviously, it encompasses more than just
6 maintaining the property it's generally to fund the duties
7 of the corporation, Article 11, Section 11.1 also provides
8 authority to incur and assess for attorney's fees that deals
9 with special assessments for capital improvements and other
10 purposes as stated in this declaration. Article 11, Section
11 11.2, gives the general purposes of the assessments. And
12 it's specifically enumerates some specific items, but it
13 says generally without limitation, they are used to promote
14 the recreation, health, safety, and welfare of the owners
15 and occupants of Chandelle.

16 So, obviously, pursuing a lawsuit like this and
17 other litigation for the benefit of the community is
18 promoting the health, safety, recreation, and welfare of the
19 owners in the community. Section 11.4 of the declaration
20 provides kind of similarly, as well, it talks about budgets
21 and it talks about, you know, budgets including things such
22 as replacements and maintenance and things like that, but it
23 also talks about for other purposes as well.

24 So it's contemplated in that section, the budget
25 is going to include amounts other than just only for

1 maintenance. Section 11.5 of the declaration also talks
2 about special assessments, I believe. And, you know, they
3 can be used to make up shortfalls in the association's
4 budget and things like that.

5 So to the extent that there's any disputes or any
6 allegation that, you know, assessments can't be used for
7 attorney's fees, I think the documents clearly speak to that
8 and the Nonprofit Act would authorize that as well.

9 THE COURT: Okay. Mr. McCabe? Anybody else?

10 MR. HAWKINS: I would like to be heard on that,
11 Your Honor.

12 THE COURT: Okay.

13 MR. HAWKINS: The Nonprofit Corporation Act does
14 not set aside the documents that the cooperation has adopted
15 to govern itself. And the corporation is bound by those
16 documents. Certainly, you know, there are instances where a
17 nonprofit corporation may have no documents and have to
18 result of those duties. But to the extent those duties are
19 defined, that's the standard that they're bound by.

20 The imposition of attorney's fees, Your Honor only
21 presumes that the plaintiff prevails on its arguments on the
22 imposition of the restrictions, or which we've taken that
23 off, but the imposition of the assessment. If the
24 assessment is not authorized, then the assessment is not --
25 is not proper. And if we prove that is not proper, they're

1 not entitled to attorney's fees and costs, and arguably we
2 may be.

3 Secondly, in the imposition of restrictions and
4 covenants, the Shipyard case, I believe it's the Shipyard
5 case, makes it very clear, it's either Shipyard or Bomar,
6 that -- no, I believe it's Shipyard, those restrictions are
7 to be -- are to be imposed prospectively and not
8 retroactively, meaning whatever was done beyond the official
9 gavel falling that there was an imposition, the restrictive
10 covenants, the complaining party can't get the bounty of
11 what's behind it is what they're trying to do, they can only
12 apply things forward. So that's a further argument against
13 the attorney's fees.

14 Secondly, there's a point at which the association
15 borrowed greater than \$50,000, or subjected the HOA to debt
16 and did not receive the HOA's permission or they did not
17 take the vote of the HOA, which I believe was a 75 percent
18 vote, and that was in -- that's Article 8, as well, 8.2I,
19 which says that if the board is going to incur more than
20 \$50,000 in debt, it has to take a vote of the association
21 and it's a 75 percent vote to do that. It's pointed out in
22 our brief, clearly Billy Israel didn't do that, he just did
23 what he wanted to do, because he had adversaries that he
24 didn't want to -- he didn't want to tell, basically. He
25 kept the whole entire association in the dark about

1 incurring the debt. And right now I don't know whether the
2 attorney's fees they're claiming have been paid or not, who
3 knows until I actually talk with Jeff Cooper. I don't know
4 whether they've been paid.

5 So, you know, I'm not agreeing that just because
6 my clients are subject to restrictions, they got to pay
7 attorneys fees, because he's got to prevail on his issue.
8 And, secondly, even if it does prevail, then the fees -- the
9 restrictions are only to be applied prospectively, which
10 means he may not be entitled to money either.

11 And, you know, this is an equitable cause of
12 action, Your Honor, and we've had these equitable defenses
13 about all this -- all these bad acts that have been going
14 around and equitable estoppel, and my clients were told the
15 day they were sued by Mr. McCabe that this wasn't a case
16 about money and they're not going to ask for money. And
17 here we are right now and they're asking for at least
18 \$250,000 of back dues, assessments, fees, everything else.
19 And now they want to come ask for attorney's fees as well.

20 Well, my clients knew if they signed that consent
21 agreement, that's what was going to happen anyway. That's
22 why we didn't sign the consent agreement. There was
23 never -- these are all equitable arguments -- there was
24 never an offer to join the association to sign a consent
25 that says we'll be bound by the restrictions. There was a

1 consent that said we'll be bound by the restrictions, plus
2 all of these other things they're going to put my clients at
3 incredible risk. And right now we can tell it's at least
4 250-some-odd-thousand dollars. And that doesn't even
5 include the attorney's fee they're going to try to add on to
6 it for this particular part of the action. That's -- we
7 don't even know what that is yet.

8 So, you know, it's -- it's -- it's our argument,
9 you know, we're asking the Court to come up with some
10 equitable relief and at least some assignment of, you know,
11 we've got an argument of unclean hands. Unclean hands is a
12 complete bar -- it's a complete bar to the action, the
13 unequitable action -- or the equitable action. If, in fact,
14 there's unclean hands, then they get nothing.

15 MR. HARJEHAUSEN: Could I make a comment?

16 THE COURT: Sure.

17 MR. HARJEHAUSEN: I'm sorry, Wendell, I'm sorry go
18 ahead, I cut you off.

19 MR. HAWKINS: No, you go ahead.

20 MR. HARJEHAUSEN: I understand we're discussing
21 the Property Owners Association's Affirmative Motion for
22 Summary Judgment, but to the extent that Mr. Grote's
23 argument on attorney's fees overlaps my motion for summary
24 judgment, I want to adopt those arguments. I mean, one of
25 the issues with respect to the defendant's counterclaims is

1 that money that was paid as assessments was used to fund
2 litigation and not for maintenance. I just want to make it
3 clear that I'm adopting Mr. Grote's arguments that we
4 believe that the Nonprofit Act and with the language of the
5 covenants themselves allow assessments to be used for the
6 purposes of enforcing the covenants and for litigation, if
7 necessary. I think that that's clear. And I just wanted to
8 make sure that that was on the record. Thank you.

9 THE COURT: Yes, sir. Thank you. Okay.

10 Mr. McCabe, anything?

11 MR. MCCABE: I did want to just add a couple of
12 thoughts. You know, this argument about on this 50 percent,
13 that's not something that can be argued as a defense to your
14 property being bound by the restrictive covenants or
15 something that can be argued or asserted by an individual,
16 the nonprofit corporation -- and I think Mr. Harjehausen
17 will go into greater detail -- requires that something like
18 that be brought in the form of a derivative action.

19 And there's -- you know, there's policy reason for
20 that under the act and under the common law and that an
21 owner can't any type -- or a member of any nonprofit
22 corporation unhappy with the decision assert some
23 distinction or some action of the board of directors as an
24 excuse to not comply with the restrictive covenants.

25 So, I don't think using this -- the statute

1 clearly provides that this has to be used as a cause of
2 action. They can either seek an injunction or sue the
3 directors derivatively and receive a money judgment and that
4 would be their remedy. And that's under, I think it's
5 33-31-304, you can see the statute is very clear on that and
6 the comments actually provide some good detail.

7 As far as this argument about the Court cannot
8 enforce the restrictions, I don't believe that's what the
9 case says. I think what the case -- this the Shipyard case
10 dealt with a scenario where there's several sets of
11 covenants and what the association was trying to do in
12 Shipyard is ask the Court to make everyone pay the same
13 assessment, which was a variable rate of assessment. And
14 the Court said, Well, the restrictive covenants -- it met
15 three of the four requirements of reciprocal negative
16 easements and the Court said we need to go look back at the
17 scheme of development and restrictions can't be retroactive.

18 So when the Court went back, it said the first
19 three -- the first three declarations that were recorded
20 provided for a fixed fee. And so the Court said you can't
21 take something later and make it retroactive, the original
22 scheme of development in that case happened to be a fixed
23 fee structure, fixed fee assessments.

24 And so what the defendants are arguing is
25 something different from that. They're taking that

1 principle and they're saying you, Judge, don't have a right
2 or the Court doesn't have the authority or the power to --
3 to -- when you -- at the moment in time where you issue a
4 judgment, you can't make someone pay assessments, back
5 assessments. And that's -- it isn't some limitation on a
6 remedy, it's that the cut -- it has specifically to do with
7 when the easements or the original restrictions and
8 covenants arose, its says it can't be -- you can't,
9 obviously, by the definition of the elements of reciprocal
10 negative easements a restriction can't arise before the
11 property is commonly held or there's a scheme of
12 development. It's talking about that. It's not a
13 limitation on a -- on a remedy provided by a Court, if I'm
14 making myself clear.

15 Judge, I just wanted to clarify that retroactive
16 had nothing to do with a remedy available through the Court.

17 MR. HAWKINS: I don't think the case says that. I
18 don't think it says much about it. All I can do is take the
19 case by the plain meaning of the words. And I don't see
20 your explanation in the case. I understand that it may be
21 your theory, but I don't see that.

22 And let me say, secondly, you guys raise these --
23 these statutes regarding derivative actions, but those
24 derivative actions presume that the -- that the board or the
25 directors are acting intra vires not ultra vires. And if

1 the board does something that is not within its power or
2 authority, that doesn't act ultra vires. And Billy Isreal
3 testified, at least on one occasion and so the other is to
4 be proven, that he's done things ultra vires. And if it's
5 determined that the imposition of these assessments is
6 something that was not authorized, because it wasn't
7 maintenance, then that's an act ultra vires and you don't
8 get that protection.

9 So, you guys make a lot of assumptions about your
10 arguments and then go forward with it but you never back
11 those assumptions up.

12 MR. HARJEHAUSEN: If I could comment on that
13 briefly?

14 THE COURT: Sure.

15 MR. HARJEHAUSEN: Again, back to using assessments
16 to pay attorney's fees to enforce the covenants, I think
17 it's clear under the law, as well as the covenants that, to
18 retain council and pay that attorney fees is an intra vires
19 virus act, an authorized act.

20 Now, that's something I'll reiterate regarding
21 counterclaims. I understand that Mr. Hawkins has an
22 argument regarding whether or not the board exceeded a debt
23 limit, but when we get to the counterclaims, Mr. Hawkins
24 client's arguments is, Hey, you used these assessments to
25 hire attorneys, or to pay attorneys instead of maintenance.

1 That decision is an intra vires act. In other words, it's
2 under the Nonprofit Corporation Act, it's appropriate to
3 hire attorneys under the covenants, it's appropriate to hire
4 attorneys, and it's appropriate to pay those attorneys. And
5 there is nothing ultra vires about that.

6 THE COURT: Okay. I think I got that issue.

7 MR. MCCABE: Judge, do you mind if I clarify
8 something if I do it briefly?

9 THE COURT: Sure, go ahead.

10 MR. MCCABE: I was -- on the testimony that was
11 referred to that Mr. Isreal testified, admitted -- what he
12 admitted is that at some point the association spent more
13 than the 50,000. He was -- the testimony as submitted is
14 pretty -- he wasn't admitted that he -- that he violated
15 the -- committed some type of ultra vires action.

16 And, further, you know what we're dealing with
17 here this was -- this was -- this \$50,000 problem is because
18 the -- the -- the defendants, in essence, created this
19 problem that they're blaming on the board by not paying
20 their assessments.

21 So, they create a shortfall in funding and then
22 blame the association, same thing we're dealing with on the
23 attorney's fees, refuse for six years to admit that they're
24 subject to the restrictive covenants until today and the
25 association is forced to spend years of litigation to get to

1 this point. These debts and the shortfalls in the funding
2 were actually created by the defendants.

3 MR. HAWKINS: I don't think that's true and I
4 don't think you can prove that. That shortfall was long
5 before my defendants would have ever racked up that kind of
6 money. In fact, I don't know when Billy Israel's deposition
7 was taken, but it's pretty easy math. I think it was right
8 out the gate, but it's pretty easy math to look at when his
9 deposition was taken and the amount of money that you're
10 claiming from our clients and you can see that it's not
11 \$50,000.

12 So, you know, all of these arguments are
13 predicated -- even. Mr. Harjehausen, your argument is
14 predicated on the fact that the assessments are proper. I
15 mean, you got to prove that before you can even play ball.
16 We say they're not proper, therefore, it's ultra vires,
17 therefore, you're out of your -- you know, you're -- you're
18 out of your argument, if there are lack of other arguments,
19 I don't think there are. But you just you're playing field
20 has never been established here because of the challenge to
21 the actions. But if we never clear up the challenge to the
22 actions, we can't clear out the rest of it.

23 I mean, there's so many balls in the air that you
24 have to prove to assume your positions that it's kind of
25 hard to do it all one fell swoop. But, you know, you guys

1 say a lot of things and they're not substantiated.

2 THE COURT: Okay. I believe we've heard enough
3 about that one. Anything else from Mr. Hawkins?

4 MR. HAWKINS: No, Your Honor.

5 THE COURT: Okay. Mr. Grote, anything?

6 I think you might be muted, sir, I'm sorry.

7 Go ahead.

8 MR. GROTE: Yes just one brief thing. I think
9 there was a comment made about whether the Nonprofit Act
10 applies or not, or, you know. The provision I cited from
11 the Nonprofit Act I believe was Section 302. It says,
12 Unless the Articles of Incorporation provide otherwise, the
13 corporation has these powers. The Articles of Incorporation
14 for this association are just a standard form, there's no
15 limitation on the associations power in them. So, by law,
16 they have those powers. There's no -- no restriction in the
17 covenants themselves that would prohibit the association
18 from engaging in litigation.

19 Plus, like I said, I cited to some of them,
20 there's probably more in the covenants and bylaws that do
21 support the position of those to allow the association to
22 incur attorney's fees. And I do think there needs to be
23 some clarification of two issues, though, as it goes to
24 attorney's fees, because I think there's been a lot of
25 confusion of that in this case.

1 One, what we're referring to in the motion and in
2 the affidavit of Billy Israel are the assessments levied by
3 the association under the declaration of covenants and
4 bylaws. Those are assessments that are levied on all of the
5 owners and those are for the common expenses and for the
6 common benefit of the members of the association.

7 And so, as this lawsuit has gone on, as you can
8 imagine, the association was charged legal fees, those legal
9 fees then in turn, you know, the corporation itself doesn't
10 have money by itself but for assessing its owners.

11 So yes, by incurring that expense, that expense
12 has to be passed along in the way of assessments. So, yes,
13 these assessments that are talked about in the motion are
14 especially uniformly across the owners and some portion of
15 that does include the cost of this lawsuit. It includes
16 other costs like, whatever maintenance was performed, what
17 other legal services they've received. There was a
18 bankruptcy action, they hired separate legal counsel to deal
19 with that bankruptcy action.

20 So the very nature of a homeowner's association,
21 and a corporation like this is that whatever cost that that
22 corporation incurs has to be passed along, and so that's one
23 issue.

24 The second issue then is, you know, under the
25 covenants can the homeowner's association then recoup some

1 of that specific portion of the attorney's fees against
2 Mr. Hawkins' clients, either on the basis of the Article 13
3 that allows the prevailing party to prevail or on the basis
4 that we sent requests to admit about four years ago to admit
5 this issue that they were bound and there's been expenses
6 incurred and having to prove that up to this point, too.

7 And so the question is then whether some of that,
8 you know, general expense can be then shifted back to them,
9 which would then benefit the rest of the members of the
10 community, just to clarify that.

11 THE COURT: Okay. All right.

12 Well, go head, Mr. Hawkins, then we can move up.

13 MR. HAWKINS: Okay. With respect to any equitable
14 considerations, Your Honor, my clients were given an
15 ultimatum. They were told they were not part of the
16 community by Mr. Israel and his lawyers and they -- the
17 consent to be bound by the restrictions was sprinkled with,
18 you know, items in that consent agreement that my client
19 felt like if they signed that thing and they incurred
20 250-some-odd thousand dollars in attorney's fees, they were
21 going to have to pay it, because they agreed to it in a
22 contract. We did not agree to that in the restrictions,
23 Your Honor. And, you know, for them to say, you know, my
24 clients caused all of this mess, you know, I don't think
25 it's fair and equitable to assume that and I think it's

1 quite the contrary. It -- if the request was so simple to
2 sign a consent to be bound by those restrictions as filed,
3 this case would have never been where it's at or maybe it
4 would, I don't know. But you certainly can't -- you can't
5 sit there and say that if you denied that you're part of the
6 community.

7 Well, their -- their -- their cause of action was
8 implied covenants and if -- we didn't agree to that, we
9 didn't agree that we met all the elements of the implied
10 covenants. And, you know, that's basically what we felt
11 like they were asking. That seems to be the way it turns
12 out and it's just not fair and equitable for them -- for
13 them to start all this and then hold my clients accountable
14 when, in the beginning, they told them -- I mean, I
15 submitted my letter that I wrote to Mr. McCabe before the
16 ever started, that we'll sign something, but not with all of
17 that -- all of that fluff in there. And, you know, the next
18 thing we got hit with was a lawsuit. So, I just ask the
19 Court to keep that in mind and the equitable nature of the
20 action.

21 THE COURT: I certainly will. Okay.

22 What's the next matter we need to speak about?

23 MR. HARJEHAUSEN: I'm not sure if there's other
24 arguments, Your Honor, in support of the motion for summary
25 judgment filed by the POA, but I certainly have arguments in

1 regard to the counterclaim and third party claims.

2 THE COURT: Okay. We'll go there.

3 MR. HARJEHAUSEN: I'll try to be brief, Your
4 Honor. I mean, there's a -- you asked at the beginning of
5 this hearing if there was something that could simplify this
6 case. And I would submit to Your Honor that there are
7 parties in this case that should not be parties in this
8 case. And I will name those parties: George Lynn Fleming,
9 Bruce Goldberg, Cindy Goldberg. We have moved for summary
10 judgment on a number of the counterclaims and third party
11 claims that Mr. Hawkins' clients have asserted. And none of
12 the materials, zero, pertain to George Lynn Fleming, Bruce
13 Goldberg or Cindy Goldberg, either in their individual or
14 official capacities.

15 Now, that's a bit beyond the scope of my motion,
16 Your Honor. We did move on specific claims and causes of
17 action and as to those on behalf of the third party
18 defendants in their official and individual capacities. But
19 I would submit to you that they shouldn't be involved in
20 this case. To the extent Mr. Hawkins' clients have issues
21 with the governance and or the enforcement of the covenants,
22 really what you're going to see in the materials is they
23 take issue with Mr. Israel's leadership, and I'm not
24 conceding that Mr. Israel did anything, in fact it's my
25 position that everything that has occurred in this case

1 needed to occur. But I wanted to point out to the Court
2 that I believe these other entities and people are
3 superfluous to this dispute and really should have never
4 been sued.

5 First of all, there's nothing that's been
6 submitted by Mr. Hawkins to show that Billy Isreal, Bruce or
7 Cindy Goldberg or George Lynn Fleming did anything in their
8 individual capacity. In other words, not as a board member
9 on the POA.

10 There's nothing in the record which shows even
11 what position George Lynn Fleming had, when he served, what
12 decisions he made, and the same is true for Bruce and Cindy
13 Goldberg. So I'll get into the specific causes of action
14 for which we've moved, but it's certainly my contention in
15 this case that those folks are -- never should have been
16 joined to this lawsuit.

17 As to the claim for conversion, we've moved for
18 summary judgment on that. You've already heard arguments
19 that attorney's fees, according to Mr. Hawkins' clients,
20 were used for litigation not for maintenance.

21 First, I want to point out that there's really no
22 issue of fact here. To the extent Mr. Hawkins' clients paid
23 assessments, once they were paid the POA had the right to
24 possess them. Now, it's a separate issue, I understand he
25 has other claims as to how they were used, but once they

1 transferred possession and right, the POA had the right to
2 possess them, there's no conversion there, thereafter, Your
3 Honor. There might be, as Mr. Hawkins is going to argue
4 some sort of breach of fiduciary duty, a breach contract, or
5 something else, but there's no conversion. And I would
6 submit to you that there's no evidence that any money was
7 ever paid to Billy Isreal, Bruce or Cindy Goldberg, or
8 George Lynn Fleming, personally in their individual
9 capacities. So summary judgment should be granted at least
10 individually as to them on that ground.

11 One of the things --

12 THE COURT: I don't mean to interrupt you, but
13 let's do it this way: Let me hear from Mr. Hawkins on that,
14 we'll take them one at a time.

15 Mr. Hawkins, you have the floor.

16 MR. HAWKINS: Well, with respect to those
17 particular defendants, Your Honor, they are members of the
18 board and to the extent that they have engaged in ultra
19 vires acts, they're personal acts, and they're liable under
20 those causes of action, personally.

21 THE COURT: Okay.

22 MR. HARJEHAUSEN: Our response to that, Your
23 Honor, is the only two things that I have heard, and it
24 seems to be in the briefing, is that money was paid for
25 assessments and used for litigation or attorney's fees and

1 not maintenance. Again, I stand by the prior arguments that
2 using assessments to pay attorneys is valid and intra vires,
3 and we're going to talk about this issue of the \$50,000 debt
4 limit which, to me, pertains to a claim for breach of
5 fiduciary duty and an alleged dissipation of assets by the
6 association and has to be assertive deliberately.

7 So, again, I don't think that that limit really
8 applies to the conversion, I think it -- and we can talk
9 about that separately.

10 THE COURT: Okay. All right.

11 Go ahead, sir, you have the microphone.

12 MR. HARJEHAUSEN: Well, the next one I want to
13 talk about is this claim for breach of fiduciary duty. And
14 I think one of the things that's interesting to me is that
15 Mr. Hawkins' clients filed an affidavit and what struck me
16 is they say in that affidavit that it is clear in his
17 deposition testimony, referring to Mr. Israel, that he paid
18 for no maintenance in the subdivision since 2012, yet he
19 charged us with assessments. This claim is not for breach
20 of fiduciary duty.

21 If you look at Mr. Hawkins' complaint, it's -- and
22 or the claims that are, again, asserted against the POA and
23 the third party defendants, and I think it's important to
24 think of those, each, for each of these causes of action, is
25 there a valid claim against the POA and or is there a valid

1 claim against the third party defendants.

2 Here, they're going on the record saying they're
3 not asserting a breach of fiduciary duty claim. And if
4 that's the case, then that claim should be dismissed against
5 the POA and the third party defendants.

6 THE COURT: Okay. Mr. Hawkins.

7 MR. HAWKINS: What part of the affidavit are you
8 referring to?

9 MR. HARJEHAUSEN: I'm looking at Page 7 of the
10 affidavit, it's Paragraph 11, starts on Page 6, and goes to
11 Page 7. With respect to our cause of action for conversion,
12 Billy Israel charged us for assessments and use the money
13 for purposes other than what the restrictions allowed. It's
14 clear in his deposition testimony they paid for no
15 maintenance. The subdivision, since perhaps 2012, any
16 charges with assessments this claim is not for a breach of
17 fiduciary duty.

18 And I know that in their counterclaims, the third
19 party complaint, they're also alleging that the bylaws were
20 violated to the extent that the POA incurred more than
21 \$50,000 in attorney fee debt. But I would submit and rely
22 upon the arguments in the brief that this alleges an injury
23 to the community, which can only be asserted as a derivative
24 action. It's undisputed that there is no verified complaint
25 here. Mr. Hawkins' clients haven't even admitted that

1 they're members of the community. They needed to submit a
2 verified complaint admitting that they're members of the
3 community. And even today, there's a bit of equivocation
4 about that. He's going to allege that, well, we completed
5 it alternatively. And I don't think that that is true for
6 purposes of attempting to enforce an action against a
7 corporation.

8 Under Rule 23, you've got to state that you're a
9 member, you've got to file a verified complaint, you've got
10 to establish that you made a demand to the board of
11 directors, and none of those conditions or the rest of the
12 requirements of Rule 23 are satisfied here.

13 So, the breach of fiduciary duty claim either
14 should be dismissed because as the affidavit says, they're
15 not alleging that money used -- that was paid for
16 maintenance was used for attorney's fees is a breach of
17 fiduciary cause of action, but that's what their
18 counterclaims and third party claims explicitly state. And
19 it's in our brief, we quote what they state in their
20 counterclaims, that's -- but their affidavit is completely
21 contrary to that.

22 THE COURT: Mr. Hawkins.

23 MR. HAWKINS: Your Honor, I mean, that -- that is
24 a sentence in there, but it goes on to say it's the claim is
25 plead in the alternative, they took our money for

1 assessments and spent it for unauthorized purposes.

2 So, you know, again, I think it's just another
3 example of snatching things out of documents out of context.
4 Perhaps we foresaw his argument, I don't know. We didn't
5 bring it as a derivative action, Your Honor, because we
6 didn't feel like it met the definition, it wasn't our
7 purpose. We're suing solely for ourselves and nobody else,
8 we don't care about the rest of the members, we don't care
9 about the, you know, the rest of the association.

10 And, secondly, if you look at statute that
11 Mr. Harjehausen quotes, it says that is that it's actions
12 brought on behalf and third members -- by members, we don't
13 even fit in that -- we don't even fit in that category.

14 You know, I think that the -- I think that the
15 memorandum, again, it makes the presumption and it runs with
16 it. And the basis of all of the arguments is, this is a --
17 this is a cause of action disguised as this, and if it's
18 disguised as this, you can't fly because it's a derivative
19 action. It's just logic that goes down the road that starts
20 on a bad pretense and, therefore, it is, because I say it
21 is.

22 First of all, I don't think it meets the
23 definition of the statute for a derivative action. It
24 wasn't our attention. And, again, I don't see how you can
25 make some conclusion and then build on that conclusion to

1 make it true If you've never proven the conclusion or, you
2 know, the basis of your argument. There is no proof for the
3 basis of the argument.

4 Everything I believe that Mr. Harjehausen has
5 raised, other than there's some other surviving causes of
6 action, it all goes back to this pretense that it's an
7 action disguised as breach of fiduciary duty. And if you're
8 going to -- I don't think that his representation of the
9 meaning of our affidavit was correct. But, nevertheless, if
10 the basis of his motion for summary judgment is that these
11 are all derivative actions because breach of fiduciary duty,
12 and they're disguised is that, I just don't think that the
13 evidence is there prove it.

14 MR. HARJEHAUSEN: Your Honor, a brief rebuttal.

15 THE COURT: Yes, sir.

16 MR. HARJEHAUSEN: To the extent that Mr. Hawkins
17 essentially concedes that these lots are subject to the
18 original declaration of covenants, then these folks are
19 members of the development and, therefore, to the extent
20 they're challenging acts the corporation, they were required
21 to assert this as a derivative action. They haven't done
22 that. I'm going to move on to the next one.

23 MR. HAWKINS: I didn't consent to that, just while
24 you're there, it's a point of contention.

25 THE COURT: Okay.

1 MR. HARJEHAUSEN: And that is -- as part of the
2 underpinnings of our motion for summary judgment as to a lot
3 of these causes of action. So, for instance, the breach of
4 contract of the covenants, if Mr. Hawkins' clients aren't
5 members, then we don't owe them any duties. They have no
6 rights or obligations. And they haven't even come in and
7 said we are members of the association. It seems they --
8 that's what they seem to say earlier today, that's what my
9 understanding was. But, in any event, the factual basis for
10 the breach of contract is the same as the breach of
11 fiduciary duty, it's, we paid assessments that didn't go to
12 maintain the runway, instead they were used to pay
13 litigation. It's very clear that an association can
14 lawfully use assessments that are assessed for common
15 purposes. The covenants are clear that there's no
16 limitation on what they can be used for, it's the general
17 welfare of the community.

18 So, again, we'll rely upon the arguments of the
19 brief for that, that basically the breach of contract claim
20 is indistinguishable from the breach of fiduciary duty
21 claim. It alleges the same factual basis and for that
22 reason it should have been asserted as a derivative action.

23 One of the claims that's been asserted by
24 Mr. Hawkins' clients is one for equitable indemnity and
25 we've moved for summary judgment on that. Notably, he's not

1 cited any provision in the covenants that would give the
2 members a right of contractual indemnity against the
3 association, because there is no such provision.

4 So, the real question here is, you know, do his
5 clients have a special relationship with the POA and or the
6 third party defendants?

7 Well, first, again, there's no evidence of any
8 relationship with the third party defendants in their
9 individual capacities. So, honestly, any and all claims
10 asserted against these folks in their individual capacities
11 shouldn't be a part of this lawsuit and should be kicked.
12 There's no evidence that these folks have taken any actions
13 in their official capacity other than serving as board
14 members. And there's nothing in the record particularly as
15 to Bruce and Cindy Goldberg and George Lynn Fleming.

16 Mr. Hawkins has filed the entire deposition
17 transcript of Mr. Israel and his brief incorporates some
18 provisions, which he suggests indicates ultra vires acts by
19 Mr. Israel. I don't, as Mr. McCabe pointed out, I don't
20 think the excerpt that he quoted stands for that
21 proposition.

22 I don't think it's either our responsibility or
23 the Courts to sift through an entire deposition transcript
24 to look for an issue of fact. I think Mr. Hawkins has the
25 burden of pointing out where in the deluge of documents

1 there's an issue of fact about these things.

2 But in any event, we don't believe there's any
3 basis for a special relationship giving rise to a claim by
4 Mr. Hawkins' clients for equitable indemnity. I'm not aware
5 of a case that says that merely by being a member of an
6 association that you have a special relationship with the
7 board of directors, or in their individual capacity, giving
8 rise to a claim for equitable indemnity. I haven't seen
9 anything cited in Mr. Hawkins' brief.

10 So there's not even a -- he doesn't even plead
11 that in the claim of the third party complaint that there's
12 a special relationship. And so, for that basis, we've moved
13 to dismiss and for summary judgment. And I do want to make
14 that clear ours is a motion in the alternative. It's a
15 motion to dismiss first, a motion for summary judgment,
16 second, on a lot of these things. And, particularly, as we
17 discussed with the arguments concerning filing as a
18 derivative action, but I do believe that a complaint must
19 state either or allege facts to support such claims and
20 there is no allegation of special relationship for equitable
21 indemnity.

22 Let me move on to fraud. This kind of comes full
23 circle to --

24 MR. HAWKINS: May I address these one at a time,
25 because there's a lot of -- of stuff there.

1 THE COURT: Yeah. Go around right ahead,
2 Mr. Hawkins. Go back indemnity, I understand about the
3 breach of contract and the breach of fiduciary duty being
4 pretty much this -- I mean, I got that.

5 MR. HAWKINS: And I figured it would get to this
6 point, because this is the way it's been all along. When
7 it's convenient for the plaintiff to say you're members,
8 they say you're members. And it's when -- when it's
9 convenient for the members to say that you're not members or
10 the plaintiff to say you're not members, then that's what
11 they say. You know, that's what the whole case has been
12 about.

13 And, secondly, to the extent that that has any
14 play in anything, I believe our defense of equitable
15 estoppel, which they can't claim both positions and advance
16 themselves on those positions, that defense alone should
17 somewhat quell those averments.

18 With respect to Billy Israel and where it's
19 buried, that Mr. Israel admitted to acts ultra vires, it's,
20 in our brief, Your Honor. And that -- I don't know if
21 Mr. Harjehausen saw it. But, okay, on our brief beginning
22 on Page 8 that begins to discuss that and if you start at
23 the bottom we asked: Did you ask for a vote from the
24 members? And this is \$50,000 issue. And he said, No.

25 Have you accumulated more than 50,000 in debt?

1 Yes.

2 And you won't even tell him what the debt is. And
3 then, of course, the objections.

4 And the answer is, I haven't -- I don't know about
5 the word won't, but I hadn't.

6 In your opinion, the way the bylaws are read, are
7 you committing, I think you said the word and Mr. Israel
8 brought it up, you said the word 'ultra vires'; right?

9 And the answer was, I learned that from a lawyer,
10 Yes.

11 What does that mean?

12 Operating outside of my authority as director.

13 So, ultra vires acts are there. For
14 Mr. Harjehausen to say that it's buried within the
15 voluminous amount of documents, I don't believe it is, I
16 think we've put it right in front of the Court.

17 Again, I think a lot of these arguments are based
18 on things that simply aren't true. Of course, you know, the
19 standard of proof is it has to be the record. But for those
20 things to be said at this hearing are just a little strange
21 to me.

22 THE COURT: Okay.

23 MR. HARJEHAUSEN: No, Your Honor, I concede that
24 he has quoted an excerpt from Mr. Israel's testimony. I do
25 not concede that that excerpt shows an ultra vires or an

1 admission of an ultra vires act. But moving on what the
2 Court doesn't have is any testimony from George Lynn
3 Fleming, Bruce Goldberg, Cindy Goldberg, and I reiterate
4 that they should not be in this case.

5 I haven't heard anything from Mr. Hawkins
6 indicating a factual basis for a right of equitable
7 indemnity flowing from either the POA or these individual
8 third party defendants to his clients.

9 So, I would be happy to move on to the next cause
10 of action, Your Honor.

11 THE COURT: Okay. Thank you. Go ahead, sir.

12 MR. HARJEHAUSEN: Next one is fraud. And I want
13 to come back to the affidavit that was filed by Mr. Hawkins'
14 clients. It's a joint affidavit, they all signed off on it.
15 And the language that seems to be in support of the claim
16 for fraud is that the association argues they exercise the
17 legal right to the funds they were given by us, but those
18 funds were obtained under false pretenses. They had no
19 legal right to use the funds for anything other than
20 maintenance, which they did not do.

21 And, again, Mr. Hawkins says all these causes of
22 action have distinct factual elements, but I would suggest
23 to the Court that that's belied by this affidavit and or any
24 deposition transcript that's in front of the Court.

25 They have always taken the position that their

1 main contention is essentially being concerned about being
2 assessed for attorney's fees to bring this litigation and or
3 that those funds haven't been used for maintenance.

4 So, my point here on the fraud is that there's no
5 facts supporting fraud either by the POA or by these
6 individuals. They're -- to the extent they're arguing that
7 fraud exists because, Hey, assessments were used to fund
8 litigation, I submit that that's insufficient. We've
9 already discussed that certainly my position that the POA
10 and or the board members had the right to use assessments to
11 hire an attorney or legal advice or to bring a lawsuit.

12 You know, even if Mr. Hawkins were successful in
13 this case, you know, on some cause of action, the fact that
14 the board hired an attorney to defend itself to
15 counterclaims or to bring claims, as long as in good faith,
16 that's an authorized action.

17 So the suggestion that the board did not have the
18 right to use assessments to fund or to pay attorneys fees I
19 think is just not supported. And we just don't believe
20 there's any evidence or facts to support the fraud claims
21 either against the POA or against the individual third party
22 defendants and would submit, Your Honor, that nothing has
23 been submitted by Mr. Hawkins which supports that.

24 THE COURT: Mr. Hawkins.

25 MR. HAWKINS: Your Honor, with respect to fraud,

1 the elements for representation, and that would be an
2 assessment, that's to be used for the purposes of assess --
3 what did -- what the restrictions say. It's a falsity, it
4 obviously it wasn't true, it was material, it forced my
5 client to give up his money. They had knowledge -- the
6 board had knowledge of the falsity and chose not to disclaim
7 it. And, in fact, it was intentional, which I would think
8 could go above reckless disregard. They intended that my
9 clients give them the money, that's the fifth element.

10 The sixth, my client's knew none the better.

11 The seventh, they relied on the truth. And if
12 folks are under -- acting under the guise of a board of
13 directors which, from the beginning my folks were paying
14 their assessments when they thought they would be used for
15 the right thing, and a right to rely on there, and then
16 their proximate injury, which would be the money. And if
17 one keeps another's money, the case law is in here and fails
18 to safeguard the money, then that's fraud.

19 THE COURT: Okay. Yes, sir.

20 MR. HARJEHAUSEN: Yeah, Your Honor, we also moved
21 for summary judgment on the claims against the Property
22 Owners Association and third party defendants for self
23 dealing. I haven't seen any evidence that's been submitted
24 by Mr. Hawkins that the POA's directors allegedly sacrificed
25 the POA's interest for their own interests.

1 Again, this is a summary judgment motion under
2 Rule 56, we can move for summary judgment with or without
3 supporting affidavits. These are Mr. Hawkins' clients'
4 affirmative claims against the POA and he can't simply rely
5 upon the pleadings or conjecture or argument to support
6 them, there has to be some facts. And I would submit to you
7 that there is -- there are no facts that these third party
8 defendants benefited themselves at the expense of the
9 corporation.

10 To the extent we've been talking about assessments
11 all day, everybody that's a member has been assessed the
12 same amount.

13 THE COURT: Mr. Hawkins.

14 MR. HAWKINS: Give me one second, Your Honor.

15 Well, I believe that the self dealing, Your Honor,
16 the self dealing in something that -- that -- that we've had
17 in our -- in our pleadings as an issue is Billy Israel and
18 it's supported by his -- the deposition on Page 209 through
19 211, which we briefed in this particular brief. There is
20 evidence that the taxiway was flipped. The taxi way and the
21 grass runway area for -- because Billy Israel was on a side
22 that he needed that and that it basically benefited Bruce
23 Goldberg who had put a pool out there and basically needed
24 that space in order to get his pool where it needed to be
25 because of some of the setbacks and other things associated

1 with that particular runway.

2 So there is -- there is evidence in -- in the
3 record regarding that. And so you say there is no evidence
4 there, there's evidence in there.

5 THE COURT: Okay.

6 MR. HARJEHAUSEN: Your Honor, I'll just briefly
7 comment on that. I understand that that's Mr. Hawkins'
8 argument. I may have missed it, I know that there's a lot
9 of documents and exhibits that have been submitted, but I
10 don't know that I have seen any evidence entered into the
11 record in response to this motion for summary judgment in
12 that regard as to the unfair dealings. So, to the extent
13 that it's determined by the Court that there isn't any I
14 would reiterate my argument on that.

15 The last -- the last point, Your Honor --

16 THE COURT: Let me stop you right there.

17 Mr. Hawkins, how about that, where is it in the
18 record? Where am I going to find?

19 MR. HAWKINS: The assertion --

20 THE COURT: The pool and flipping the runway, the
21 taxi way and the pool where am I going to find it?

22 MR. HARJEHAUSEN: It's in Billy Israel's
23 deposition, Page 209 through 11.

24 THE COURT: Okay. Thank you. Okay.

25 Go ahead, Mr. Harjehausen.

1 MR. HARJEHAUSEN: Thank you, Your Honor.

2 Lastly, you know, we, as a -- basically as an
3 additional ground in the alternative for summary judgment, I
4 understand Mr. Hawkins' arguments. He suggests that we're
5 trying to combine all of his causes of action into one, but
6 I would submit to you that if you look at his counterclaims
7 and third party complaint, most of them share the same
8 factual pattern that assessments were obtained and then used
9 to fund litigation not for maintenance.

10 We would submit, Your Honor, that the record
11 establishes that there's -- there's no evidence the officers
12 acted in bad faith with dishonest motives. This litigation
13 has overwhelmingly resulted in clarification of the rights
14 and responsibilities of numerous individuals and subjecting
15 their lots through the covenants.

16 The only reason that this matter is still pending
17 is Mr. Hawkins' clients have disputed for 6 years that their
18 lots are subject to the covenants. And, oddly enough, they
19 paid assessments initially, but then they stopped paying
20 assessments and now are complaining that, Oh, we're having
21 an exposure to attorney's fees in this action for basically
22 disputing that we're part of the association.

23 So, I just don't feel that there's any evidence in
24 the record to establish that this action was brought in bad
25 faith or with dishonest motives. I understand Mr. Hawkins

1 is going to cite the Billy Israel's testimony regarding the
2 \$50,000 debt limit. But, again, to the extent that even if
3 that debt limit were exceeded it is an injury to the
4 corporation itself. They haven't admitted that they are
5 members of the association, they haven't asserted a
6 derivative action. They essentially want to bootstrap all
7 of these claims by saying, we're not a member, we sort of
8 are a member, we think we may be a member if the Court
9 decides that way.

10 But for purposes of bringing affirmative claims,
11 they have the burden of proof of showing they are a member
12 and that the board of directors and the POA owes them duties
13 and responsibilities. They've never admitted that, I
14 thought they had earlier this in this argument, and it
15 sounds like they're leaning toward that. But unless there's
16 evidence that they are, then they are not owed any duties by
17 the POA.

18 So my motion is on the counterclaims and the
19 third-party claims. They've got the burden of proof of
20 establishing at least a scintilla of evidence or fact
21 dispute and they're not even establishing, Hey, here's the
22 evidence that we are members and admitting that we're
23 members to bring these causes of action.

24 THE COURT: Mr. Hawkins, are they members?

25 MR. HAWKINS: Under the original restrictions

1 we've agreed that going forward we are members, and the
2 proof would probably tend to show that. What the problem
3 here is that my clients, and if you want to show bad faith,
4 my clients never said that they never wanted to be, nor
5 intended to be, a part of the association. My clients
6 weren't given that choice. My clients were given the choice
7 of, you can agree to be members of this association, and by
8 the way the plaintiffs asserted in their complaint that we
9 were members of the association and, therefore, the whole
10 problem the plaintiff takes inconsistent positions when it's
11 convenient for their case. But they asserted we're members.
12 We've agreed that we would come in under the implied or
13 reciprocal negative covenants, but that doesn't mean that
14 we've always asserted that we're members of the association,
15 because if we did that we lose all of these defenses,
16 because these plaintiffs are not going to take it with
17 conditions.

18 So, they've asserted we're members, we've asserted
19 we are not members. You know Mr. Grote and Mr. McCabe
20 assert that we are members so we have to pay -- we have to
21 pay all their fees, Mr. Harjehausen says we're not members,
22 so they can't bring these causes of action.

23 What I'll agree to is that under negative or
24 reciprocal negative covenants or implied covenants, whatever
25 you want to call them, that we would be bound by those

1 original restrictions. Whatever the ramifications of that
2 come out later, you know, I can agree to that because I
3 don't know -- I don't know what they are, you know.

4 We've raised at the arguments and I've raised my
5 defenses and what I'm going forward with but, you know, to
6 ask me blankly, they're members under the conditions of the
7 original restrictions as they're written. And it would be
8 my position that that would be prospective and not
9 retrospect.

10 THE COURT: I understand. Okay.

11 Mr. Harjehausen, anything?

12 MR. HARJEHAUSEN: Not really, Your Honor. I think
13 that it's taken six years to sort of get this concession and
14 I don't think that there's any bad faith or dishonesty in
15 the board initiating this litigation to get some sort of
16 either concession or declaration from this court that these
17 folks' lots are subject to the covenants, conditions, and
18 restrictions, when they were paying dues and assessments
19 prior to this litigation.

20 Then, six years later, are finally conceding that,
21 Yeah, we're bound by it. I think it's, they've taken the
22 inconsistent position. I think the POA has always been
23 consistent that Mr. Hawkins' clients lots have always been
24 subject to these covenants.

25 Now, do title issues need to be clarified?

1 Perhaps. But the POA's position has always been that these
2 lots were subject to the covenants and the assessments were
3 owed.

4 In contrast to Mr. Hawkins' clients who have said,
5 No, we don't want to be part of this. We're not going to
6 admit that we're a part of the association, but we
7 nonetheless want to sue the board and its officers as if we
8 were members of the corporation.

9 So, to me, I view the case a little differently
10 than Mr. Hawkins. He views it as we want to have our cake
11 and eat it too. I view it in the reverse that his clients
12 want to have their cake and eat it too.

13 THE COURT: Well, let me ask you this: What about
14 them being told that they were not part of the association?

15 MR. HARJEHAUSEN: I haven't seen any evidence that
16 they were told that they were not part of the association.

17 THE COURT: Well, let's talk to Mr. McCabe.

18 Mr. McCabe.

19 MR. MCCABE: Okay. So first of all, that's not
20 what was told to the members. When -- when we attended this
21 meeting -- and, you know, assuming for a moment that I had
22 said, no one's bound by these restrictive covenants, still I
23 didn't have the authority to set aside the restrictive
24 covenants and the instruments that had been filed.

25 What happened in the meeting is some issues were

1 brought up with the developer and the ownership of the
2 runway. And there were definitely no one -- I don't think
3 there was any dispute between the developer and the parties
4 at the time that there were definitely problems with the
5 covenants.

6 At the time the consent was presented to the
7 owners we, we clearly told the owners that there -- that
8 there were one, issues with the covenants, but that we
9 believe that they were bound either expressly or under
10 several implied theories, but because people were making
11 noise about this, and there was a lot of frustration about
12 issues with the runway and who is responsible the
13 association learned that the developer had conveyed the
14 runway without its knowledge to a separate entity, so there
15 were all these things going on.

16 So, but at the time, this consent was provided
17 some people were saying that the developer had appointed
18 these board members when he no longer had the authority and
19 that the developer had annexed additional property after his
20 time to expire. So a consent we said, Hey, well, there's a
21 simple solution to this, just sign this consent saying you
22 acknowledge that you are a member. I mean, all these people
23 built hangers onto the back of their house and were using
24 the runway and everything else, I mean.

25 So at the time we presented this -- this -- this

1 document, the consent, and it was modified for several
2 people, it's in the record, some people asked it some words
3 be changed and so it was changed for them, these consents.

4 But the reason it says to affirm and to ratify the
5 actions of the board it says clearly in the whereas clause
6 that the board had taken certain actions, entered into
7 contracts, levied assessments, entered into arrangements
8 with vendors, and the board did that in good faith believing
9 that they had been legitimately appointed by the developer.
10 So, what we were asking them to do is to ratify all those
11 actions and it was explained.

12 Interestingly enough, at some point when the story
13 became, Ryan McCabe went to this meeting and said none of us
14 were in there. And so, about three weeks ago, Mr. Johnson
15 was one of the people who said that, admitted that he had
16 the recordings of my presentation, that he had two
17 recordings that he hasn't even produced in six years of
18 discovery along with the file.

19 And, you know, if this recording said what the
20 defendant say it said -- I'm pretty sure the judge would
21 have seen a transcript to this by now -- but I absolutely
22 refute that I said the things that have been attributed to
23 me or to Mr. Israel at that meeting. Nevertheless, of
24 course, and we didn't foresee that six years later we'd
25 still be fighting over this issue because, I mean, like I

1 said, these houses were along the runway, they have hangers.
2 Most of these people either had planes or currently -- and
3 even some of them currently have planes.

4 So, it certainly never saw this thing playing out
5 this way. And what we thought was there was a very simple
6 solution proposed to the owner to deal with all these title
7 issues. And, quite frankly, a reasonable person would have
8 signed it or said, I'm not comfortable with this section,
9 will you modify it?

10 Well, yes, there were some people that said we're
11 not going to sign this, but there were other conditions such
12 as I don't want to pay my back assessments, I'll sign this
13 if. So, for a handful of people that became a negotiating
14 tactic which was unfair to the remaining owners.

15 And so, again, two years ago -- I got six years --
16 there was this bankruptcy that interposed itself in the
17 meantime. And, you know, another thing that gets left out
18 is that the board actually accomplished some pretty amazing
19 things considered what it was facing. They secured
20 ownership of the runway. They received a significant
21 payment of money out of the runway. There were some lots
22 owned by Mr. Brockman's family across the road. The
23 association secured making sure that those property were
24 subject to the restrictions so they weren't on this main
25 highway unrestricted as commercial lots. And, additionally,

1 they receive -- they're going to receive money when those
2 lots sells, a significant sum.

3 So and there were -- and the common areas where
4 some of these were in the Brockman estate. None of the
5 common areas had been deeded to the association. And so all
6 of these things were obtained, much of it at unnecessary
7 time and expense. A lot of this has been fighting for no
8 good reason. But I absolutely deny ever saying that these
9 lots were not bound, that was not the opinion that was given
10 to the board, that was not what was told. And there were
11 recordings out there that I'm confident would vindicate
12 that -- obviously, we said there were problems with these
13 lots and we were very forthright about the issues with
14 regard to the annexation and that there was a plat that
15 wasn't recorded.

16 I mean, we did tell the owners that there were
17 problems. Because I felt like, you know, this wasn't
18 something to hold the cards on, we needed to be honest with
19 them. And we thought at that time we were meeting with all
20 the owners in that they were all on the same page to get
21 this done.

22 But even, had I said those things, I didn't have
23 the right to unilaterally amend the restrictions or to
24 unilaterally remove a lot. If I gave bad advice, then I
25 gave a bad -- I gave bad advice, but that wouldn't excuse

1 the owner from paying. And they quickly knew within a month
2 or two that the association intended to see this thing
3 through for the handful that refused to sign the consents or
4 bind them another way.

5 For instance, Mr. Galloway, the Galloways bound
6 their lot by just conceding to summary judgment on that
7 issue. And some of the other owners negotiated to remove
8 the language. And at some point the ratification was no
9 longer necessary because three boards have been elected
10 since that time and have maintained the course of action.

11 So, you know, it became a nonissue.

12 THE COURT: Mr. Hawkins.

13 MR. HAWKINS: Your Honor, if I may.

14 Our Exhibit B to our memorandum in opposition to
15 Mr McCabe's motion, is a transcript of a meeting that he
16 says he's never seen, I guess. However, this document, and
17 I intentionally did this, this was an exhibit from one of
18 their filings back in 2017. This document is replete with
19 representations by Mr. McCabe that my client's membership in
20 the association was suspect, and not, quote, ironclad. It
21 is replete with comments to that effect. It has a common in
22 there or Mr. McCabe says, I know I'm being recorded.

23 So this is a -- this is a 20-page 20 -- wait --
24 it's a 26-page document about that meeting, and I would just
25 beg the Court to read it. There's the representations,

1 We're never going to pay any money. It's not a lawsuit
2 about that, it's about this determination of who is subject
3 it to the restrictions. All of the reasons why my clients
4 may not be subject to the restrictions. Lot 1 through 26
5 were restricted when Brockman didn't sign the restrictions.
6 There's questions as to whether the -- whether the
7 declarants could even have filed any amendments because they
8 weren't really A members or B members or, you know, all the
9 shares converted.

10 There's every reason in the world in this exhibit
11 alone that the Court should look at to where these folks are
12 saying this is a necessary lawsuit and the only way for you
13 to get out of it is for you to sign this consent which, by
14 the way, opens you up and you are contractually now bound,
15 so do everything within this consent that you agree to. And
16 I believe it's even got a quote -- it's got a clause in
17 there, Irregardless of any court of competence -- competent
18 jurisdictions ruling. I mean, that's how bad it is.

19 We weren't given an alternative. My clients were
20 not given an alternative other than this consent. I wrote
21 Mr. McCabe a letter telling him that we would consent, but
22 not with all of this junk and that was right at the
23 beginning of this lawsuit. And that is an exhibit filed in
24 our memorandums as well, Your Honor.

25 As far as any negotiation goes --

1 THE COURT: I'm don't mean to interrupt you there,
2 Mr. Hawkins, tell me where I'm going to find that. I think
3 I've read that, but tell me where.

4 MR. HAWKINS: It is Exhibit B to our memorandum in
5 opposition to Mr. McCabe's motion.

6 THE COURT: Okay. Go ahead, sir.

7 MR. HAWKINS: As far as any modifications go to
8 the extent that's an excuse, it was late in the case where
9 they had these people on the ropes with all these fees. If
10 you look at the modifications, they're so -- they're so
11 benign in no way changes the ramifications of the execution
12 of the agreement. It was signed as part of the negotiation
13 and settlement, I'm sure. It's a totally different scenario
14 and it's disingenuous in the first place because there was
15 no material change whatsoever.

16 My clients weren't given that opportunity, despite
17 my letter in the beginning. So, they can't say -- well,
18 they can say anything they want to, but their main argument
19 on these equitable actions is, you know, we didn't do
20 anything wrong, you were subject to restrictions, you didn't
21 pay your fees. It's not true. There's a whole lot of
22 things that underlie this case and that's the reason it's an
23 equitable action and we have an equitable defense.

24 And I ask the Court just to take everything into
25 consideration. And especially this Exhibit B is where

1 everything started to fall apart and all of these
2 representations were made by Mr. McCabe and mainly Billy
3 Isreal.

4 MR. MCCABE: Judge, may I?

5 THE COURT: Yes.

6 MR. MCCABE: You know, this Exhibit B, correct me
7 if I'm wrong, Ely, but the first time this shows up is in
8 the motion for summary judgment and only because Mr. Johnson
9 and some of these parties who've taken this position
10 produced under examination by other documents, admitted that
11 there was a transcript --

12 MR. HAWKINS: There is.

13 MR. MCCABE: -- approximately a month ago.

14 Still don't have this transcript. Still don't
15 have the recordings. And so, for the first time in a case
16 has been going six years this, you know, this shows up.

17 Now, obviously -- so I don't know this is true. I
18 don't know who prepared this or anything else. Of course,
19 looking at it --

20 MR. GROTE: Let me make one correction here. And
21 while you all were -- and I hate to interject, but just -- I
22 was trying to look this up when there a representation that
23 the plaintiff had filed these at some point. And my
24 recollection was no. So I was trying to go back to some of
25 the pleading. And I think the answer is no.

1 The first time that these meet -- purported
2 meeting minutes show up are actually filed by Mr. Hawkins in
3 his motion in support of -- or in his memorandum in support
4 of a motion to dismiss, and I think that was in 2017. The
5 plaintiff did file a memorandum in opposition to that motion
6 to dismiss and that's Court Stamped filed March 1, 2017, and
7 specifically raised this meeting -- this issue at the
8 meeting minutes that those we're not the meeting minutes
9 that were prepared by the association, and we didn't know
10 where that came from.

11 So, to say that we've adopted those and filed
12 those I think is a misstatement. I'm looking at the
13 memorandum that we filed back in 2017, it says, As Reported,
14 to the May 12, 2016 meeting minutes attached to defendant's
15 memorandum. Plaintiff asserts that those are not even the
16 plaintiffs meeting minutes. And it raises the issue that
17 they appear to be somebody's attempt at transcription of a
18 recording of a meeting, there's no certification of
19 accuracy, they're not done by the association.

20 So there really -- there's no foundation for
21 those. And I think those actually came from Mr. Hawkins or
22 his clients. And, you know, that address -- that issue was
23 raised and I don't think that we actually filed those and we
24 disputed what they were back in 2017 and our memorandum
25 filed on March 1st, 2017.

1 THE COURT: (Inaudible) -- stuff that I remembered
2 that. I mean, I've been in this case as long as you folks
3 have, just about, so I remember seeing something. But is
4 there a recording of this Mr. Hawkins? Is there a
5 recording? I don't know about recording.

6 MR. HAWKINS: We have -- I have produced a
7 snippet, Your Honor, of a recording that was recently and I
8 think it was produced that -- it was -- it was the -- it was
9 a meeting, Mr. McCabe was there and basically the gist of it
10 was where Mr. McCabe said, Everybody's got to sign the same
11 thing. And that is actually in this Exhibit B, as well.

12 And I'll tell you that the plaintiffs have
13 produced documents which follow this Exhibit B. I've got
14 them in a different room set aside -- but they're -- well,
15 they're actually -- well, they're marked as plaintiff's
16 exhibits, I believe, which are the -- which are their
17 minutes from these meetings that have Attorneys Eye Only
18 written all over them. I don't -- I don't think there was
19 too much redacted from them, but I don't think that those
20 minutes are as replete as these, are as accurate as these.

21 THE COURT: Okay. Everybody give me just one
22 minute here, I'm going to chat with my law clerk for a
23 second. And I'll tell you what, let's everybody take about
24 a 10-minute break, okay? I gotta get some more water. I
25 know everybody here -- we've been running two hours. So

1 let's just all get some water. We'll be back in about
2 10 minutes. Can we do that? Everybody good?

3 MR. HAWKINS: Yeah.

4 MR. MCCABE: Yeah.

5 THE COURT: Ten minutes.

6 (WHEREUPON, a brief pause held.)

7 THE COURT: Okay. Okay. All right. Anything
8 further? I think we were down to finish -- about to finish
9 up where I can take things under advisement.

10 Does that sound about right? Where is Mr. McCabe?

11 MR. MCCABE: Yes, sir. Can I correct one thing?

12 THE COURT: Sure. Where is Mr. Hawkins? Okay. I
13 think Mr. Hawkins has already jumped off. He's gone.

14 Whatever that is, can we talk about it later,
15 Ryan?

16 MR. MCCABE: Yes, sir.

17 THE COURT: Okay. All right. Okay.

18 Everybody, it's under advisement. As I said, we
19 are going to, Mattie (ph) and I, are going to be talking
20 about this and discussing this tomorrow and the next couple
21 of days so we can get some rulings to you as fast as we
22 possibly can.

23 But thank you everyone for your attention.

24 END OF REQUESTED PROCEEDINGS

25

CERTIFICATE OF TRANSCRIBER

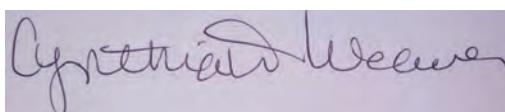
Case Name/Number: Chandelle Property Owners Association v.
James Douglas Armstrong, et. al.: 2019-CP-42-01854

Date of Hearing: September 12, 2022

Court Reporter/Monitor: WebEx

I, Cynthia D. Weaver, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither Counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

December 26, 2022

A handwritten signature in purple ink, reading "Cynthia D. Weaver", is displayed on a light purple rectangular background.

Cynthia D. Weaver,
Official Court Reporter
State of South Carolina

1 Q. 11.2.

2 A. All right.

3 Q. Referring to 11.2, what is the purpose of assessments
4 levied by the association?

5 A. I'll read it to you.

6 Q. Okay.

7 A. "11.2. Purpose of Assessments. The assessments levied
8 by the Association shall be used exclusively to promote
9 the recreation, health, safety and welfare of the
10 Owners and the occupants of Chandelle and for the
11 improvement and maintenance of the Common Area but not
12 limited to" -- would you like for me to read the rest
13 of it?

14 Q. No, that's okay. Prior to 2013 when you delivered this
15 letter, what was the majority of the assessment paid
16 for? What did you use that money for?

17 A. Maintaining the grounds surrounding the runway and the
18 community. Mowing mostly, landscaping kind of things.
19 The majority was used for that.

20 Q. And after this letter, have you paid any money towards
21 that?

22 A. I don't believe we have, no. I'd have to look back to
23 be sure, but I don't believe we have.

24 Q. Did the association collect assessments in 2013?

25 A. We did.

1 A. Yes.

2 Q. You don't spend it on that, though, do you?

3 A. They're not common areas.

4 Q. Then why are you collecting dues for the maintenance of
5 common areas?

6 MR. HARJEHAUSEN:

7 Object to the form of the question.

8 EXAMINATION RESUMED BY MR. HAWKINS:

9 A. I'm not collecting dues for the maintenance of the
10 common area currently.

11 Q. You mean like today?

12 A. No, I don't mean like today.

13 Q. Did you in 2017?

14 A. Not for common area maintenance, no.

15 Q. Do you know what your invoice said in 2017, what the
16 purpose of the collection of the annual dues was for?

17 A. Why don't you show it to me?

18 Q. I don't know. I'm asking you. You're the president of
19 the association. You live out there.

20 A. I believe---

21 Q. Did you get one?

22 A. I believe I know what it says.

23 Q. Okay. Well, tell me what you think it says.

24 A. It says that the annual assessment will be X number of
25 dollars.

1 whenever, in the opinion of the Board, it is necessary
2 to do so in order to meet the increased operating or
3 maintenance expenses or costs for additional capital
4 expenses because of emergencies. All special
5 Assessments shall be in statement form and shall be set
6 -- excuse me -- and shall set forth in detail the
7 various expenses for which the Assessments are being
8 made."

9 Q. So why don't you call a special assessment to pay for
10 your outstanding attorneys' fees at this point in time?

11 A. I already told you that. Because it's a burden on the
12 people who are paying assessments and meeting their
13 obligations to the association while others, including
14 your clients, are not doing that, and I -- and the
15 board has made a conscious decision and we have asked
16 for the advice of our attorneys, and we are doing that
17 in order not to place too great a burden on those folks
18 who are meeting their obligations.

19 Q. What about the burden that's going to be placed on the
20 homeowners association when you surprise them with what
21 their obligations are on debt to these outstanding
22 legal fees? What kind of burden is that going to
23 create?

24 A. I couldn't tell you what that's going to create in the
25 future. I have no idea.

1 Q. You're going to be obligated for that debt, and
2 obviously you know what your obligations are going to
3 be at the end of this litigation, whatever the fee is.
4 You are privy to what the bill is, but nobody else
5 knows.

6 MR. HARJEHAUSEN:

7 Object to the form of the question.

8 EXAMINATION RESUMED BY MR. HAWKINS:

9 Q. Correct? Nobody else knows but you and the board.

10 A. No, that's not correct.

11 Q. Okay. So maybe one guy on the architectural committee?

12 A. No, that's not correct either.

13 Q. Well, that's what you said earlier. You said you
14 didn't tell anybody. You haven't told anybody what---

15 A. I didn't say that I would know what that obligation was
16 at the end, and that's what you just asked me.

17 Q. You know that that obligation is building and building
18 and building, don't you?

19 A. I do know that, yes.

20 Q. And you don't feel like you should tell your
21 constituents what those obligations are?

22 A. I don't conduct my responsibilities and duties on the
23 way I feel. I do that based on a number of other
24 guidance that I can refer to, one being this
25 declaration, the other being my legal representatives.

1 Q. So you think it's more prudent to clandestinely
2 accumulate debt and just throw it on the homeowners at
3 the end? You think that's more prudent?

4 MR. HARJEHAUSEN:

5 Object to the form of the question.

6 MR. GROTE:

7 Object to the form.

8 EXAMINATION RESUMED BY MR. HAWKINS:

9 A. If you're saying that I'm clandestinely doing
10 something, you're going to have to get the definition
11 of that out before I can agree to that statement.

12 Q. Well, you're not telling your homeowners the amount of
13 debt that you're accumulating, are you?

14 MR. GROTE:

15 Object to the form.

16 MR. HARJEHAUSEN:

17 Object to the form of the question.

18 EXAMINATION RESUMED BY MR. HAWKINS:

19 A. I've already answered that question.

20 Q. I'm asking you the question again. You're not telling
21 them, are you?

22 A. No.

23 Q. Let's look at (I) under 8.2. What is that duty?

24 A. "To cause to be kept and maintained full and accurate
25 books." Excuse me. I'm sorry.

1 don't represent them, do you?

2 Q. No.

3 A. They're delinquent, as well, in a considerable amount
4 of money. So no, \$8000 would not be as significant as
5 the other assessments that I just mentioned as well as
6 there could be some other forms of reducing the
7 attorneys' fees that you're discussing with me now.

8 Q. Here is (I), 8.2(I) with respect to borrowing money.
9 Can you read that?

10 A. I can. "To borrow funds" -- excuse me. Part of my
11 responsibility would be, "To borrow funds in order to
12 pay for any expenditure or outlay required pursuant to
13 the authority granted by the provisions of the
14 Declaration and these Bylaws and to authorize
15 appropriate officers to execute all such instruments
16 evidencing such indebtedness as the Board of Directors
17 may deem necessary; provided, however, that the Board
18 shall not borrow more than \$50,000 or cause the
19 Association to be indebted for more than \$50,000 at any
20 one time without the prior approval of a majority of
21 votes of both classes of membership."

22 Q. Have you applied or asked for a vote from the members
23 of the association to accumulate more than \$50,000 in
24 debt?

25 A. No.

1 Q. And you have accumulated more than \$50,000 in debt?

2 A. Yes.

3 Q. And you won't even tell them what the balance of that
4 debt is, are you?

5 MR. GROTE:

6 Object to the form.

7 EXAMINATION RESUMED BY MR. HAWKINS:

8 A. I haven't. I don't know about the word won't, but I
9 haven't.

10 Q. Let me ask you. In your opinion, the way these bylaws
11 read, are you committing -- and I think you said the
12 word ultra vires. Right?

13 A. I learned that from the lawyers, yes.

14 Q. What does that mean?

15 A. Outside -- operating outside of my authority as a
16 director.

17 Q. So in committing the association to more than \$50,000
18 in debt, and you're continuing to accumulate that debt,
19 are you acting ultra vires?

20 MR. HARJEHAUSEN:

21 Object to the form of the question.

22 MR. GROTE:

23 Object to the form.

24 EXAMINATION RESUMED BY MR. HAWKINS:

25 Q. As you understand the term to be?

1 A. I don't believe I am in this particular instance.

2 Q. You don't believe you've exceeded your authority or
3 violated the bylaws?

4 A. No.

5 Q. And why is that?

6 A. Because I think that there are circumstances that the
7 board was put into when we started this suit that there
8 would have been no way that we could have known that we
9 were going to be in this situation to start with. So,
10 and this was a concern. This -- this paragraph in the
11 bylaws was a concern of ours, and the legal advice that
12 we got was not to be concerned about it, that, you
13 know, we're doing what we believe is the best thing to
14 do. And, again, because of the adversaries that belong
15 to the association, we have not shared all of this
16 information about these legal fees with them, and --
17 and there's advice from my attorney that I can't
18 discuss with you about that matter.

19 Q. Does Chandelle have sprinkler systems, irrigation
20 systems?

21 A. I believe it does have a -- I believe there are some
22 irrigation systems that are on our monuments, but
23 those, again, are not considered to be common areas.
24 So I don't know if Chandelle has them or not.

25 Q. Can you read (n), 8.2(n) as one of the

1 A. Just what's in the covenants.

2 Q. Do you all vote about incurring debt?

3 A. Not during my time.

4 Q. You never had a vote for that?

5 A. Huh-uh.

6 Q. Okay. Does the board currently have any debt, or does
7 the association currently have any debt? Do you owe
8 anybody money?

9 A. No, other than the attorney fees that we have.

10 Q. And those remain unpaid?

11 A. I'm sorry?

12 Q. Your attorney's fees remain unpaid?

13 A. Unpaid, did you say?

14 Q. Yes.

15 A. Yes.

16 Q. How much of the attorney's fees are unpaid, to your
17 knowledge?

18 A. Right now, I think there is roughly 100 -- I'm thinking
19 it's somewhere -- the last invoice I've seen, or the
20 last statement I've seen, it's about \$166,000.

21 Q. And when did you see that last statement?

22 A. It'd be August 1st, I think.

23 Q. Of this year?

24 A. Uh-huh.

25 Q. Who made the decision to incur that debt?

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
C.A. No. 2016-CP-42-01854

Chandelle Property Owners Association,

Plaintiff,

vs.

**JOINT AFFIDAVIT OF JAMES
DOUGLAS ARMSTRONG, JANE
ARMSTRONG, WARREN JOHNSON,
RHONDA JOHNSON, JOHN K. PAYNE,
& RUTH G. PAYNE AND ROB
GRAHAM AS THE SOLE
BENEFICIARY OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST
DATED OCTOBER 25, 2006**

CSC Developers, LLC, Chandelle
Runway, LLC, 331 South, LLC, Charlie
M. Allison, Janice H. Allison, James
Douglas Armstrong and Jane Armstrong,
Marilyn N. Berry, Stephen Berry, James
P. Brockman, Sr., Douglas E. Cobb,
Nicole Cobb, Kenneth L. Galloway, Molly
C. Galloway, Warren Johnson, Rhonda
Johnson, Lawrence E. Lewis, Barbara L.
Lewis, John K. Payne, Ruth G. Payne,
John R. Stewart, Jr., Angela Tanner,
Helmut Tuemmel, Silvia L. Tuemmel,
Jane Van Wieren as Trustee of the Greer
R.G. Irrevocable Property Trust dated
October 25, 2006, Martin Tuemmel,
Raymond M. Clark Jr., and also all other
persons unknown, claiming any right, title,
Estate, interest in or lien upon the real
estate described in the complaint herein.

Defendants.

James Douglas Armstrong and Jane
Armstrong, Warren Johnson, Rhonda
Johnson, John K. Payne and Ruth G.
Payne

Third Party Plaintiffs

vs

Billy J. Israel, Bruce R. Goldberg, Cindy
R. Goldberg and George Lynn Fleming in
their personal and official capacities,

Third Party Defendants

This affidavit is submitted for the purposes of use in opposition of both motions before the Court.

1. We are over the age of eighteen and competent to make these statements. If called upon to testify, I have personal knowledge of the facts of the above captioned matter and would testify to the following:
2. This lawsuit and the others that surround it arose out of Mr. McCabe coming to a meeting and telling the Association it had terrible problems with the HOA structure that needed to be corrected.
5. We would have been fine with joining the Association, but the "Consent Agreement and Ratification Addendum" that was presented to us was fraught with representations and provisions that we all felt were wrong and untruthful. The problems we had were:

(a) the ratification of and approval of the Actions of the Association and Board of Directors; (**Comment [1] of "Exhibit 1"**; the Consent Agreement) (We felt like this was a somewhat self-serving statement to benefit Mr. McCabe's law firm in the hiring of his law firm to fight the Chandelle Runway, LLC and that it was wrong and disingenuous to ask the members of that LLC to "give" the property to the Association and pay \$200,000.00 to correct any alleged issues which we thought to be "trumped up" as the License Agreement contained the provisions by which the Association could exercise an option to obtain the runway); (See, **Exhibit 2**, ¶ 15; the Runway License)

(b) We were specifically concerned that we would be bound to pay Mr.

McCabe's fees through assessments for a law suit we did not believe to be morally right or sustainable. **Comment [2] of "Exhibit 1";**

(c) We felt like we were being asked to give up substantive legal rights "irrespective of any decision by a court of competent jurisdiction." **Comment [3] of "Exhibit 1";**

(d) We felt like Mr. McCabe was trying to get us to approve past acts of the Board of Directors and the Association as it related to levying assessments and enforcing covenants and modifying the covenants and restrictions and endorse the lawsuit against Chandelle Runway, LLC. **Comment [4] of "Exhibit 1".** (We felt like Mr. McCabe got the Board of Directors to "drink the Kool Aid" to hire his law firm and bring us in to help pay the tab. We felt the lawsuit was wrong and did not want to be a part of it or be exposed to the exorbitant fees Mr. McCabe expected to receive from the lawsuit).

(e) We felt like the Consent Agreement and Ratification Agreement was more about being forced to contribute to Mr. McCabe's legal fees than it was to straighten out any issues with restrictions and covenants as the superfluous provisions were not necessary to our consenting to be governed by the Association or bound by the covenants as filed. We also felt like it was genuinely wrong to act as if the License Agreement never existed. **Comment [5] to "Exhibit 1."** Furthermore, it was clear from the amendment recorded in Deed Book 72-G, Page 843, that there was a licensing agreement in place. The third page of that documents says,

". . . The Licensors shall have the right to control use of the runway and taxiway

and may prohibit the use of the runway or taxiway . . ."

(f) Lastly, we were suspect of the Consent Agreement and Ratification Agreement because of the clause providing that we would agree that the Association's name was never properly changed. **Comment [6] to "Exhibit 1."**

This seems to be some sort of legal conclusion to us for which we did not see ourselves as having the authority to endorse and we certainly could not speak to the authority of the Declarant. We have checked the Secretary of State's web site and can find no evidence of the existence of Chandelle Property Owner's Association, LLC which should be conclusive of its lack of existence.

6. All things said, there was never any sort of controversy between ourselves and Chandelle Runway, LLC or the HOA until Ryan McCabe created the controversy in the minds of the Board of Directors.
7. With respect to the amendments to the restrictive covenants that were filed in Deed Book 88-H, Page 448 on April 17, 2007 ("Amendment A"), those filed in Deed Book 99-L, Page 999 on November 11, 2011 ("Amendment B"), and those filed in Deed Book 101-Q, Page 96 on September 14, 2012 ("Amendment C"), each of the preambles purport to justify the authority to amend pursuant to Article XII of the Restrictive Covenants. Amendment A was signed by the Declarant in 2007 when the control of the Board still belonged to the Declarant and the Declarant had the right to conditionally amend the restrictions. Article XII provides limitations on the amendments to protect the Lot Owners. Annexation, however, was governed by Article XVI of the Restrictions, and the Declarant's right to "annex" terminated as of December 31, 2001. See

Restrictions ¶ 16.2. So, it is our position that to the extent Lots were added by "amendment," such adding or "annexing" by amendment was not possible because property was to be added by annexation which expired on December 31, 2001. Amendments B & C were executed after the election of the first Board of Directors which was originally established around March 4, 2010 when the Class A votes outweighed the Class B votes. These amendments are executed by Billy Isreal and Bruce Goldberg purporting authority under Article XII. Amendment B was a simple attempt to annex Lots by way of Amendment. Amendment C was a substantive amendments to the rights of Owners and in our eyes constitutes a usurpation of power the was way beyond the purview or authority of the Board. Article XII is very clear and says, "[a]fter the termination of the Declarant's Right to appoint a majority of the Board of Directors, this declaration may be amended only by an affirmative vote or written consent of Voting Members representing seventy-five (75%) percent of the total votes of the association." There was never a vote taken by the Voting Members to implement Amendment B or C. Furthermore, the terms of the original Board of Directors expired no later than two (2) years after they were first elected and as of early 2012, any actions were without authority. See By-Laws ¶ 6.4(c).

8. Although we had no problem signing an Agreement to add us to the Association as necessitated by the numerous issues forwarded by Ryan McCabe in the May 12, 2016 meeting for which a copy is attached as **Exhibit A in our Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment**, we had no intention of signing the agreement he presented for the

reasons previously enumerated.

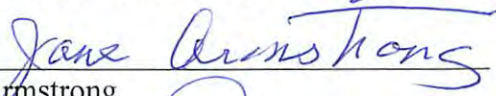
9. In fact, prior to that meeting, we, the Johnsons hired Mr. Hawkins who sent a letter to Mr. McCabe stating that we would sign a simple modified agreement, but not the one presented. (See, **Exhibit 2**; Letter to Ryan McCabe from Wendell Hawkins).
10. With respect to the cause of action for the imposition of negative covenants, we simply do not believe that the Declarant intended for the Restrictions to reach as far as the Plaintiff would like them to reach, we have seen no proof of such intentions and there was certainly no intention that Assessments were to be used for anything other than maintenance of the subdivision. It does appear clear to us that Officer terms were intended to be two (2) years, there could be no amendments without a 75% vote, the Association could not incur debt greater than \$50,000.00 without a 75% vote, Special Assessments were not for the purpose of hiring lawyers to sue people (or purported members), that the taxi way and grass runway were to be maintained in the place originally designated and the Board had no grant of authority within the provisions of the Restrictions to change that configuration and even if they did, they were acting without authority because they were beyond their original terms and, amongst numerous other arguments, the runway was supposed to be governed under the license agreements.
11. With respect to our cause of action for conversion, Billy Israel charged us for "Assessments" and used the money for purposes other than what the Restrictions allowed. It is clear in his deposition testimony that he paid for no maintenance

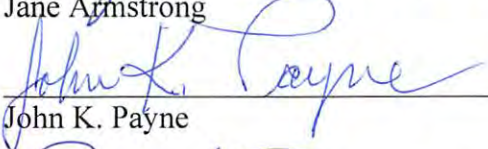
in the subdivision since perhaps 2012, yet he charged us with Assessments. This claim is not for a breach of fiduciary duty. It is a claim plead in the alternative as he took our money for assessments and spent the money for unauthorized expenses in an act of *ultra vires*. Furthermore, the Association takes inconsistent positions such that for the purposes of the Third Party Claims and Counterclaims we are not a part of the subdivision and should be barred from such actions and then in their chief Complaint they argue we are a part of the Association and therefore subject to the Restrictions. They can't have it both ways and they initiated the action, not us. The Association argues they exercised a legal right to the funds they were given by us, but those funds were obtained under false pretenses, they had no legal right to use the funds for anything other than maintenance which they did not do and in fact, they had no authority at all because they were beyond their terms.

12. With respect to a derivative claim not being properly plead, we brought this action for the benefit of ourselves and no one else. We have no concern for the other members of the association or any third parties.

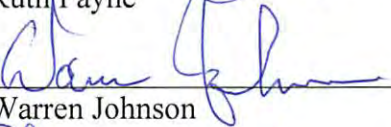
FURTHER AFFIANTS SAYETH NOT.

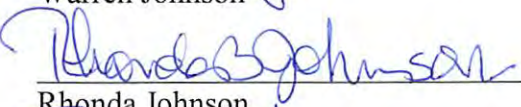

James Douglas Armstrong

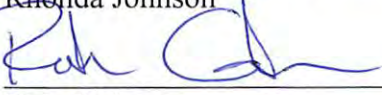

Jane Armstrong


John K. Payne

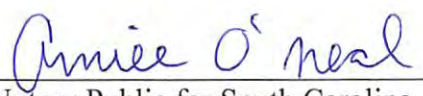

Ruth Payne


Warren Johnson


Rhonda Johnson


Rob Graham

SWORN to and acknowledged before me this
8th day of September, 2022.


Notary Public for South Carolina, Greenville County
My Commission Expires: - 6/8/32

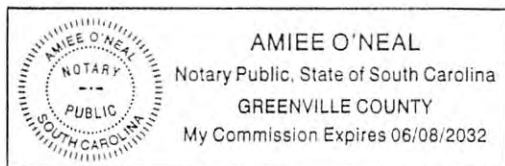


EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
)
)
 COUNTY OF SPARTANBURG) [Declaration recorded in Record Book 67-A at Page 583]

THIS CONSENT AGREEMENT AND RATIFICATION ADDENDUM OF CHANDELLE PROPERTY OWNERS ASSOCIATION (the "Addendum") is made on the Execution Date (hereinafter defined) by Chandelle Property Owners Association, Inc., a South Carolina non-profit corporation (the "Association") and BILLY F. & SUSAN R. LSRAC (the "Lot Owner(s)", owner of Lot 42 of Chandelle Subdivision (the "Subject Lot"), as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference).

WITNESSETH:

WHEREAS, The DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS of Chandelle Subdivision, recorded December 16, 1997 in the Office of the Register of Deeds for Spartanburg County in Deed Book 67-A at Page 583 (as amended and supplemented, the "Declaration") by CSC, Developers, LLC (the "Declarant"); and

WHEREAS, it is unclear from the Declaration and subsequent Amendments if the entirety of Chandelle Subdivision is properly encumbered by the restrictive covenants because certain properties were annexed after termination of the Declarant's annexation authority and it is also unclear whether certain Amendments were recorded pursuant to the amendment provision of the Declaration and with the authority of the Association membership; and

WHEREAS, it is the intent of this Addendum to provide the opportunity for owners of Lots within Chandelle subdivision to eliminate such uncertainties and hereby affirmatively encumber their Lots with the Declaration and submit themselves and all future owners of their Lots to membership in the Association as well; and

WHEREAS, it is the further desire and intent of the Lot Owner(s), by executing this Addendum, to encumber and subject the Subject Lot to the Declaration and to submit themselves and their heirs, successors, and assigns to membership in the Association, including without limitation mandatory Assessment obligations and Common Area facilities usage and enjoyment rights, to consent and agree that the Owners of any other Lots encumbered by signing this Addendum become members of the Association, and to ratify and approve the actions of the Association and the Board of Directors; and [1]

WHEREAS, it is the express intent of the Lot Owner(s) and the Association for this Addendum to be appurtenant to and run with the Subject Lot and be binding on all parties having any right, title or interest in the Subject Lot, their heirs, successors, and assigns.

DEE-2016-35986

DEE BK 113-B PG 929-936

Recorded 8 Pages on 08/18/2016 11:20:17 AM

Recording Fee: \$14.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.
Dorothy Earle, Register Of Deeds

EXHIBIT 1

NOW, THEREFORE, the Association and Lot Owner(s) hereby declare and agree that the Subject Lot shall be held, sold, used, leased, transferred, encumbered, and conveyed subject to the restrictions, covenants, conditions, easements, charges, liens, rights, obligations, duties, benefits, burdens and other provisions created, declared, or contained in the Declaration, which restrictions, covenants, conditions, easements, charges, liens, rights, obligations, duties, benefits, burdens and other provisions created, declared, or contained in the Declaration shall be appurtenant to, affect and run with the Subject Lot and be binding on all parties having any right, title or interest in the Subject Lots or any portion thereof, their heirs, successors, and assigns, and shall benefit the Association, the members of the Association, owners and the subdivision property, respectively, and each purchaser, tenant, invitee, licensee, mortgage holder and lien holder of the Subject Lot or any portion thereof and each of their respective heirs, personal representatives, successors, and assigns.

FURTHER, the Subject Lot shall for all purposes be considered a Lot as that term is defined in the Declaration, and the Lot Owner(s), their heirs, successors and assigns, shall for all purposes be considered members of the Association as set forth in the Declaration and Bylaws, and further:

(1) The Lot Owner(s), their heirs, successors, and assigns, shall possess all the rights and obligations of members contained in the Declaration and Bylaws, including without limitation voting rights in the Association, mandatory Assessment obligations, Common Area amenity access and usage, restrictions upon the use of the subdivision property and construction of any structures thereon, and all owner maintenance and repair responsibilities.

(2) The Lot Owner(s) and each purchaser, tenant, invitee, licensee, mortgage holder and lien holder of the Subject Lot, or any portion thereof, and each of their respective heirs, personal representatives, successors, and assigns, shall be subject to the provisions of the Declaration and Bylaws, and specifically to the enforcement powers granted therein to the Association.

(3) It is understood that while membership in the Association affords the Lot Owner(s) access and usage rights to the Common Area amenities, any period of non-usage by said Lot Owner(s), including their tenants, invitees, licensees, heirs, successors, and assigns, shall not affect the mandatory Association membership established by this Addendum, including [2] without limitation the obligation to pay Assessments.

FURTHER, the Lot Owner(s) agree that this instrument shall bind the Subject Lot to the Declaration as explained herein, irrespective of any decision by a court of competent jurisdiction that the Declaration [3] itself originally failed to bind the Subject Lot; and

FURTHER, the Lot Owner(s) ratify and approve of the past acts of the Board of Directors and the Association as it relates to levying assessments and enforcing covenants in good faith reliance on the [4] applicability of the covenants at issue and actions taken to establish certainty regarding the restrictions applicable to Property within Chandelle, including, without limitation, instituting lawsuits; and

FURTHER, the Lot Owner(s) agree to be bound by the outcome of any suit by and between the Association and the Declarant, in both their corporate and individual capacities, and/or any binding settlement [5] agreement entered into by the Association through its Board of Directors relating to a suit with the Declarant and regarding the restrictions applicable to the Subject Lot in particular or the Association in general. Notwithstanding this provision, the Lot Owner(s) agree that this instrument shall bind the Subject Lot to the Declaration inasmuch as it is voluntarily executed below; and

RE
RE
RE

FURTHER, the Lot Owner(s) agree that the Association's name was never properly changed from Chandelle Property Owners Association, Inc. to Chandelle Property Owners Association, LLC, that the Amendment purporting to effectuate this change was either recorded without the authority of the Declarant or Association members or that it is a scrivener's error, and that the Association's name is Chandelle Property Owners Association, Inc. [6]

The Execution Date of this Addendum shall be the date it is signed by the Lot Owner(s) and the Association (the "*Execution Date*"). If these dates of signature differ, the latest of the signature dates shall constitute the Execution Date of this Addendum.

This Addendum shall not become effective unless and until it is properly (i) executed by the Lot Owner(s) and the Association and (ii) recorded by the Association in the office of the Register of Deeds for Spartanburg County in accordance with the terms and conditions herein.

All capitalized terms not defined herein shall the meaning set forth in the Declaration.

[The remainder of this page has been left blank intentionally. Signature pages immediately follow.]

IN WITNESS WHEREOF, the Lot Owner(s) have set their hands and seals to this Addendum this 22 day of February, 2016.

WITNESSES:

[Signature]
(witness #1)
[Signature]
(witness #2)

LOT OWNER(S):

[Signature]
BILLY J. ISRAEL, JR
[NAME]
SARAH R. ISRAEL
[NAME]
[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

ACKNOWLEDGEMENT

I, D. Ryan McLake Jr., a Notary Public for the State of South Carolina, do hereby certify that the signatories above, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Given under my hand and official seal this 22nd day of February, 2016.

[Signature]
Notary Public for South Carolina
My Commission Expires: 1-12-2022

IN WITNESS WHEREOF, the Association has by its duly authorized officer set its hand and seal to this Addendum this 22nd day of February, 2016.

WITNESSES:

[Signature]
(witness #1)
[Signature]
(witness #2)

ASSOCIATION:

Chandelle Property Owners Association, Inc.

[Signature]
By: Cindy R. Goldberg
Its: Secretary / Treas

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

ACKNOWLEDGEMENT

I, D. Ryan McCabe Jr. a Notary Public for the State of South Carolina,
do hereby certify that Chandelle Property Owners Association, Inc., by
Cindy R. Goldberg, its Secretary/Treas, personally appeared
before me this day and acknowledged the due execution of the foregoing instrument.

Given under my hand and official seal this 22nd day of February, 2016.

D. Ryan McCabe Jr.
Notary Public for South Carolina
My Commission Expires: 1-12-2022

EXHIBIT "A"

PROPERTY DESCRIPTION OF SUBJECT LOT

ELECTRONICALLY FILED - 2022 Sep 09 12:16 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854
ELECTRONICALLY FILED - 2017 Feb 26 9:15 AM - SPARTANBURG - COMMON PLEAS - CASE#2016CP4201854

EXHIBIT 2

116 E Earle St.
Anderson, SC 29621
(864) 332-0881 Phone
(864) 332-0882 Fax
anderson@wihawkinslawfirm.com

Wendell L. Hawkins, PA
Attorneys at Law
Wendell L. Hawkins, Esq.

103-C Regency Commons Dr
Greer, SC 29650
(864) 848-9370 Phone
(864) 848-9759 Fax
greenville@wihawkinslawfirm.com

Susan S. Miranda, Esq.

March 3, 2016

Via Electronic Delivery and US Mail

Wendell L. Hawkins, Esq.
Aimee V. Leary, Esq.
Writer's Reply Address
Phone Extension - 211
wlh@wihawkinslawfirm.com

Mr. D. Ryan McCabe, Esq.
P.O. Box 212069
Columbia, SC 29221

RE: Chandelle Subdivision

Via Electronic Delivery: ryan.mccabe@mccabetrotter.com

Dear Ryan:

I represent Rhonda and Warren Johnson who own Lots 28 and 29 in the Chandelle Subdivision. I have reviewed the original set of Restrictions and Covenants along with the various amendments filed by both the Declarant and the Homeowner's Association. I have also reviewed a proposed Consent Agreement and Ratification Addendum that I assume was drafted by your office. While my clients have no objection to subjecting themselves to the original set of Restrictions, they are not interested in ratifying any restrictions that were arbitrarily drafted and filed by the Homeowner's Association Board.

My clients are very concerned about the current Board's usurpation of power and control of all that takes place in the subdivision without allowing the residents to vote to elect a Board of their own. It is my understanding that the current Board was appointed by the Declarant about three years ago and there has never been any sort of election thereafter. I understand the problem with the original Restrictions only purporting to restrict Lots 1-26, the summary plat for which is still not filled, and it also appears that nobody really knows the total number of lots that were intended to be developed because there is no plat reflecting that either. Nevertheless, it appears that by appointing a Board, the Declarant has relinquished its B class shares and we should be following the By-Laws with respect to the subsequent elections to elect up to 9 officers and directors with two year terms.

I think it is the common goal of all the residents to straighten out the restrictions and get the Declarant to deed the airstrip and other common areas to the HOA and those are two separate and distinct goals. What I would propose is that you remove the ratification clause in your proposed agreement and in fact declare any restriction filed by the HOA as null and void *ab initio* as the Restrictions could only be amended by a 2/3d's vote of the residents. If the Board's position is that the residents can't vote for a new Board, then there sure wasn't a vote to amend the restrictions. Secondly, upon the gathering up of all of the signatures of the lot owners who are to be annexed into the original restrictions, I think it would be appropriate at that time to allow those participating in the annexation to immediately vote for a new Board which may or

EXHIBIT 5

may not be those currently acting. Taxation without representation is clearly not the American way. It would be hard to fathom why anyone would be in disagreement with this position. Once the new Board is elected, if they want to call a meeting to amend the Restrictions, the residents can make those decisions. Please let me know what your position and the current Board's position is on these proposals.

With kind regards I remain,

Very truly yours,

Wendell L. Hawkins, Esq.

cc: Clients

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong,
Kenneth L. Galloway, Molly C. Galloway,
Warren Johnson, Rhonda Johnson, John K.
Payne, Ruth G. Payne, and Jane Van Wieren as
trustee of the Greer R.G. Irrevocable Property
Trust, dated October 25, 2006, and also all
other persons unknown, claiming any right,
title, estate, interest in or lien upon the real
estate described in the complaint herein,

Defendants.

James Douglas Armstrong, Jane Armstrong,
Warren Johnson, Rhonda Johnson, John K.
Payne, Ruth G. Payne, and Jane Van Wieren
as Trustee of the Greer R.G. Irrevocable
Property Trust dated October 25, 2006

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R.
Goldberg and George Lynn Fleming in their
personal and official capacities,

Third-Party Defendants

Kenneth L. Galloway & Molly C. Galloway

Third Party Plaintiffs,

vs.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

**ORDER GRANTING PLAINTIFF'S
MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants

This matter came before me on Plaintiff's Motion for Partial Summary Judgment against James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (collectively, the "**Subject Defendants**"), which was filed on August 19, 2022. A hearing on this motion was held before me on September 13, 2022. At the hearing, attorneys Ely O. Grote, D. Ryan McCabe, and John D. Harjehausen appeared on behalf of Plaintiff, and attorney Wendell L. Hawkins appeared on behalf of the Subject Defendants. After hearing oral argument, reviewing the memoranda and related documentation submitted by the parties, and after fully considering the facts and circumstances, I GRANT partial summary judgment to Plaintiff as follows and I find and order as follows.

FACTUAL BACKGROUND/FINDINGS OF FACT

1. Development Background

CSC Developers, LLC was the primary developer of Chandelle Subdivision. In February of 1997, CSC Developers, LLC entered into an agreement with James P. Brockman, Sr. to include approximately thirteen (13) acres of Mr. Brockman's land in the Chandelle Subdivision that was going to be developed.

In connection with the development of Chandelle Subdivision, CSC Developers, LLC recorded a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Deed

Book 67-A at Page 0583 (the “**Original Declaration**”). The Original Declaration, as amended and supplemented, shall hereinafter be referred to as the “**Declaration**”.

The Original Declaration originally specified that Lots 1 through 26 were subject to and bound by the Declaration. Specifically, the Original Declaration provided on the first page thereof as follows:

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure for the benefit of each owner thereof.

The plat referenced above in the Original Declaration shall hereinafter be referred to as the “**Section 1 Plat**”. The land owned by James Brockman, Sr. included on the Section 1 Plat encompassed roughly Lots 1-10. Uncontroverted evidence was submitted that Mr. Brockman was provided with a copy of the Section 1 Plat and was aware that his lands were included on the plat. Although the Section 1 plat was approved for recording, according to CSC Developers, LLC, the Section 1 Plat was just kept on file with the Spartanburg County Planning Commission and the lots in Section 1 of Chandelle Subdivision were sold by reference to individual lot surveys in order to save on taxes.

It is uncontroverted that CSC Developers, LLC intended all of the property shown on the Section 1 Plat to be part of the Chandelle Subdivision and bound by the Declaration, specifically including Lots 1-10. Out of Lots 1-10, Lots 1, 5, 7, 8, 9, and 10 have been sold thus far, and all of the deeds from Mr. Brockman, Sr. to the initial purchasers of these Lots specifically reference the property as being subject to the Declaration.

Further, the Declaration envisions and authorizes additional property being subjected to the Declaration and added to Chandelle Subdivision.¹ After the Original Declaration was recorded, CSC Developers, LLC did in fact continue to expand Chandelle Subdivision. After the Original Declaration was recorded, the following plats of additional sections of Chandelle Subdivision were recorded:

- Chandelle Section 1-A, recorded on September 1, 1998 in Plat Book 142, Pg. 376
 - o Depicting roads and Lots 13 and 22.
- Chandelle Section 2A, recorded November 8, 2000 in Plat Book 149, Pg. 64
 - o Depicting Lots 50, 51, 52, 53, and 54
- Chandelle Section 3-A, recorded September 26, 2002 in Plat Book 153, Pg. 97
 - o Depicting Lot 39
- Chandelle Section 3, recorded November 5, 2004 in Plat Book 156, Pg. 982
 - o Depicting Lots 39A, 40, 41, 42, 43, 44, 45, 46, and 47, and additional land.

Thereafter, CSC Developers, LLC recorded an instrument on December 28, 2004 in Deed Book 81-Y, Pg. 823 to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Chandelle Section 1A; Lot 39 (Section 3A); Lots 39a and 40-47 (Section 3). It is uncontroverted that CSC Developers, LLC believed that it had the authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. It is also uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

¹ See *e.g.*, recitals and Sections 1.1, 1.2, 1.14, 1.15, 1.24, 12.2, 16.1, and 16.2.

- Chandelle Section 4, recorded November 1, 2005 in Plat Book 158, Pg. 840
 - o Depicting Lots 33 and 37
- Chandelle Section 7, recorded December 6, 2005 in Plat Book 159, Pg. 9
 - o Depicting Lots 27 and 28
- Chandelle Section 6, recorded December 14, 2006 in Plat Book 160, Pg. 852
 - o Depicting Lots 29, 30 and 34

Thereafter, CSC Developers, LLC recorded an instrument on April 17, 2007 in Deed Book 88-H, Pg. 448, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 33 and 37 (Section 4); Lots 29, 30, and 34 (Section 6); Lots 27 and 28 (Section 7). Again, it is uncontroverted that CSC Developers, LLC believed that it had the right and authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. Further, it is uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

- Chandelle Section 4A, recorded January 8, 2009 in Plat Book 163, Pg. 885
 - o Depicting Lots 32 and 36
- Chandelle Section 5, recorded November 20, 2009 in Plat Book 164, Pg. 709
 - o Depicting Lots 31 and 35
- Chandelle Section 8, recorded October 21, 2011 in Plat Book 166, Pg. 249
 - o Depicting Lots 55, 56, and 57

Thereafter, an instrument was recorded on November 2, 2011 in Deed Book 99-L, Pg. 999, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 32

and 36 (Section 4A); Lots 31 and 35 (Section 5); and Lots 55, 56, and 57 (Section 8). While this instrument was signed by two Board members for Plaintiff rather than CSC Developers, LLC, unrefuted evidence was submitted to the Court that: (1) everyone involved, including CSC Developers, LLC, thought that this was the proper way to do it now that homeowners had been appointed to the Board of Directors for Plaintiff; (2) CSC Developers, LLC was in agreement with the Board members signing the instrument and CSC Developers, LLC knew it was being done; CSC Developers, LLC intended these lots be bound by the Declaration and intended that this instrument bind them; and (4) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC's authority. Further, it is uncontroverted that CSC Developers, LLC intended that these lots be part of Chandelle Subdivision and bound by the Declaration, and that is what CSC Developers, LLC intended to do by this instrument.

Additionally, CSC Developers, LLC recorded a revised plat for Chandelle, Section 8, on December 13, 2016 in Plat Book 171, Pg. 927, depicting Lots 55, 56, and revised Lot 57.

While Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline had been removed from the copy of the restrictive covenants distributed by CSC Developers, LLC to purchasers and prospective purchasers. Therefore, what was provided to purchasers and prospective purchasers didn't include any purported annexation deadline. Further, it is unrefuted that CSC Developers, LLC intended all of the foregoing annexations to be binding and proper.

2. John K. Payne and Ruth G. Payne – Lot 1

John K. Payne and Ruth G. Payne (the “Paynes”) are the owners of Lot 1 in Chandelle Subdivision. The Paynes are also the Owners of Lot 51; however, Lot 51 was not included in

Plaintiff's motion and is not part of this Order. Lot 1 is more particularly described in the deeds set forth hereinbelow, and currently is assigned Spartanburg County TMS # 4-01-00-005.05. As set forth above, Lot 1 was included in the land originally described in the Original Declaration as being bound by the Declaration.

Lot 1 was originally conveyed by James P. Brockman, Sr. to Larry Dee Davis and Angela Davis by deed recorded on December 19, 1997 in Deed Book 67-A, Pg. 958. This deed specifically provided that "This conveyance is specifically made subject to those certain Protective Covenants recorded in Book 67-A at Page 583" (i.e., the Declaration). Lot 1 was subsequently conveyed by Larry Dee Davis and Angela Davis to John K. Payne and Ruth G. Payne by deed recorded on June 2, 2000, in Deed Book 72-C, Pg. 145. This deed again specifically provided that "THIS CONVEYANCE is being made subject to Protective Covenants as recorded in Deed Book 67-A at Page 583 in the Office of the Register of Deeds for Spartanburg County" (i.e., the Declaration). The Paynes then deeded Lot 1 to themselves as joint tenants by deed recorded on March 7, 2006 in Deed Book 85-F, Pg. 538. The legal descriptions in the aforementioned deeds describe the property as "Lot No. 1, Chandelle Estates" and the plat referenced in the legal descriptions does reference "Chandelle Est."

Further, the Paynes executed a mortgage with respect to Lot 1, which was recorded on June 20, 2000 in Book 2352, Pg. 420, and which contained a Planned Unit Development Rider. The Planned Unit Development Rider states that the property is part of a planned unit development ("PUD") and the property includes the Borrower's interest in the homeowners association. The PUD Rider also provides that the Borrower is required to perform all of the Borrower's obligations under the PUD's Constituent Documents, including the Declaration, and bylaws or rules and

regulations of the Owners Association. The PUD rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents.

Also, during the pendency of this lawsuit, the Paynes executed another mortgage with respect to Lot 1, which was recorded on January 6, 2020 in Book 5736, Pg. 666, and which also contained a PUD Rider. The PUD Rider provides that the property is part of a planned unit development known as Chandelle, and again specifies that the Borrower must perform their obligations under the Constituent Documents and must pay all dues and assessments imposed pursuant to the Constituent Documents.

Further, there is undisputed evidence that Mr. Payne had some involvement with the development of Chandelle Subdivision, including helping with drafting the Declaration, helping manage the neighborhood early on, and serving on the architectural control committee for approximately fifteen (15) years. Further, there is undisputed evidence that the Paynes have engaged in certain additional actions in conformity with them/Lot 1 being part of Chandelle Subdivision and subject to the Declaration, including: (1) at least one of the Paynes attending at least one meeting of Plaintiff; (2) seeking approval to remove a tree per the requirements of the Declaration; and (3) payment of some assessments under the Declaration with respect to Lot 1, at least historically. Further, in his deposition, Mr. Payne specifically admitted that Lot 1 is subject to the Declaration.

3. Warren Johnson and Rhonda Johnson – Lots 28, 29, 30 and 34

Warren Johnson and Rhonda Johnson (the “**Johnsons**”) are the owners of Lots 28, 29, 30 and 34 in Chandelle Subdivision. Lots 28, 29, 30 and 34 are more particularly described in the deeds set forth hereinbelow, and are currently collectively assigned Spartanburg County TMS # 4-05-00-038.54. As set forth above, Lot 28 was platted by CSC Developers, LLC as part of

Chandelle Section 7, and Lots 29, 30, and 34 were platted by CSC Developers, LLC as Chandelle Section 6. Further, as set forth above, Lots 28, 29, 30, and 34 were all included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448.

Lots 28 and 29 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on June 24, 2009 in Plat Book 164, Pg. 328. The notes to this closing survey specifically state: "BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOT 29 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1 2006." Lots 28 and 29 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on June 24, 2009, in Deed Book 94-A, Pg. 978. The legal description in the deed references the closing survey and specifically refers to the property as "LOT NO. 28 AND LOT NO. 29 OF CHANDELLE SUBDIVISION, SECTION 7."

Subsequent to the recording of the Chandelle Section 7 plat noted above, Lots 30 and 34 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on February 17, 2016 in Plat Book 170, Pg. 822. The notes to this closing survey specifically state: "BEING LOTS 30 AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006." Lots 30 and 34 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on April 19, 2016 in Deed Book 111-X, Pg. 568. The legal description in the deed references the closing survey and specifically refers to the property as: "Lot No. 30 and Lot No. 34 of Chandelle Subdivision, Section 6."

Subsequently, Lots 28, 29, 30, and 34 were shown as all being combined into a single parcel on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson, recorded on February 2, 2018, in Plat Book 173, Pg. 674. The notes to this closing survey specifically state: "BEING

LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOTS 29, 30, AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006.” This closing survey was recorded during the pendency of this litigation.

Further, there is undisputed evidence that the Johnsons have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking approval from the Architectural Control Committee under the Declaration to build a residence on Lots 28 and 29;² (2) lack of any assertion that they were not subject to the Declaration in response to communications from Plaintiff and/or the Architectural Control Committee pertaining to failure to adhere to the requirements of the Declaration, including with respect to continuity of construction and barking dogs; (3) seeking and receiving approval from the Architectural Review Committee under the Declaration for the erection of fencing on their lots; (4) seeking and receiving approval from the Architectural Control Committee under the Declaration to add a concrete extension to their existing hangar ramp pad on their property; (5) seeking and obtaining approval of CSC Developers, LLC, as the Declarant under the Declaration, to combine Lots 28, 29, 30, and 34 into a single lot for purposes of the assessments under the Declaration as required by the Declaration;³ (6) payment of some assessments under the Declaration, at least historically; and (7) attendance at meetings of Plaintiff.

4. *Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 – Lots 31, 32, 33, 35, 36, and 37*

² In connection therewith, Warren Johnson executed a Chandelle Private Aviation Estates Building Construction Form, which specifically included a certification that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions. (emphasis added)

³ Article IV, Section 4.2 of the Declaration requires written approval of the “Declarant” to combine Lots under the Declaration.

Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (“**Van Wieren**”) is the owner of Lots 31, 32, 33, 35, 36, and 37 in Chandelle Subdivision. Lots 31, 32, 33, 35, 36, and 37 are more particularly described in the deeds set forth hereinbelow. Lots 32, 33, 36, and 37 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.44. Lots 31 and 35 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.58.

As set forth above, Lots 33 and 37 were platted by CSC Developers, LLC as Chandelle Section 4. As set forth above, Lots 33 and 37 were included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448. Additionally, as set forth above, Lots 32 and 36 were platted by CSC Developers, LLC as Chandelle Section 4A, and Lots 31 and 35 were platted by CSC Developers, LLC as Chandelle Section 5. Further, as set forth above, Lots 31, 32, 35, and 36 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

On September 24, 2005, Robin Graham, acting on behalf of his mother, Ruth Graham, entered into a Contract of Sale on behalf of Ruth Graham for the purchase of Lot 33 in Chandelle Subdivision from CSC Developers, LLC. This Contract of Sale specifically stated that “Purchaser agrees to abide by the Chandelle Covenants, Conditions and Restrictions and Revisions recorded at the ROD Office of Spartanburg County” and that “Purchaser also understands that the minimum home heated square foot requirements are in the process of being changed from 2000 to 2600 square feet.” Lot 33 was conveyed to Ruth Graham by CSC Developers, LLC by deed recorded on December 9, 2005 in Deed Book 84-P, Pg. 931. This deed specifically provided that Lot 33 was being conveyed subject to the Declaration and specifically stated, in part:

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg

County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

(emphasis in original). Further, the legal description in the deed describes the property as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV. Lot 33 was then subsequently quitclaimed from Ruth Graham to Van Wieren by deed recorded on February 12, 2007, in Deed Book 87-V, Pg. 167. This deed also again specifically stated that the conveyance was subject to “those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583” (i.e., the Declaration).

Lot 37 was conveyed to The Greer RG Irrevocable Property Trust by CSC Developers, LLC by deed recorded on October 23, 2007 in Deed Book 89-V, Pg. 897. The legal description in the deed refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.” Lot 37 was subsequently quitclaimed from The Greer RG Irrevocable Property Trust to Van Wieren by deed recorded on May 25, 2011 in Deed Book 98-M, Pg. 700. The legal description in this deed again refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.”

Lots 32 and 36 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 632. The legal description in this deed refers to the property as “Lot 32 and Lot 36 on a plat entitled ‘Chandelle, Section 4A’”.

Subsequently, Lots 32, 33, 36, and 37 were all shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 4 and 4A Lots 32, 33, 36, and 37”, which was recorded on December 6, 2017 in Plat Book 173, Pg. 419.

Lots 31 and 35 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 628. The legal description in this deed refers to the property as “Lot 31 and Lot 35 on a plat entitled ‘Chandelle, Section 5’”. Lots 31 and 35 were subsequently shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 5 Lots 31 and 35.”, which was recorded on December 12, 2017, in Plat Book 173, Pg. 448.

Based on the evidence presented to the Court, it appears to be undisputed that Robin Graham purported to act on behalf of the trust for most matters involving the Chandelle Subdivision. Mr. Graham’s deposition testimony provided to the Court indicates that he had been provided a copy of the Declaration prior to him/the trust purchasing any property within Chandelle Subdivision. Further, there is undisputed evidence that representative(s) of Ruth Graham and the relevant trust(s) have engaged in further actions and conduct in conformity with them/the relevant trust(s)/the foregoing lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval to build a house on Lot 33;⁴ (2) lack of any assertion of not being subject to the Declaration in response to notices of violation under the Declaration in 2010 and 2012; (3) seeking approval from the Chandelle Architectural Control Committee to build a hangar on Lots 32 and 33 and compliance with the Chandelle Architectural Control Committee’s requests in connection with the same; (4) payment of some assessments under the Declaration, at least historically; (5) attendance at meetings of Plaintiff; and (6) seeking approval from the

⁴ It is noted that in connection therewith, Robin Graham signed a Chandelle Private Aviation Estates Building Construction Form that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions.”

Declarant, CSC Developers, LLC, as required by the Declaration, to combine Lots 32, 33, 36, and 37, and to also combine Lots 31 and 35.⁵

5. James Douglas Armstrong and Jane Armstrong – Lots 55, 56, and 57

James Douglas Armstrong and Jane Armstrong (the “**Armstrongs**”) are the owners of Lots 55, 56, and 57 in Chandelle Subdivision. Lots 55, 56, and 57 are more particularly described in the deeds set forth hereinbelow. Lots 55 and 56 are currently collectively assigned Spartanburg County TMS # 4-05-00-039.04. Lot 57 is currently assigned Spartanburg County TMS # 4-05-00-039.15. As set forth above, Lots 55, 56, and 57 were platted by CSC Developers, LLC as Chandelle, Section 8. Further, as set forth above, Lots 55, 56, and 57 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

By deed recorded on November 3, 2011, in Deed Book 99-M, Pg. 48, Lot 55 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed specifically provided that “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” The legal description in this deed also referred to the property as “Lot No. 55 of Chandelle, Section 8.” By deed recorded on June 21, 2012, in Deed Book 100-Z, Pg. 363, Lot 56 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed also specifically provided that: “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” Further, the legal description in this deed refers to the property as “Lot No. 56 of Chandelle, Section 8.” Lots 55 and 56 were then subsequently conveyed to the Armstrongs by

⁵ It is noted that all of these lot combinations occurred in 2017, during the pendency of this lawsuit.

Joseph and Dale Kohn by deed recorded on December 16, 2014 in Deed Book 107-U, Pg. 361. The legal description in this deed again refers to the lots as “Lot Nos. 55 and 56 of Chandelle, Section 8.” A house had already been built on Lots 55 and 56 by the time the Armstrongs purchased Lots 55 and 56. In connection with the construction of the house and hangar on Lots 55 and 56, Joseph and Dale Kohn did seek and obtain approval of the Chandelle Architectural Committee under the Declaration. Further, the Armstrongs executed a mortgage with respect to Lots 55 and 56, which was recorded on December 16, 2014 in Book 4923, Pg. 812, and which contained a PUD Rider. The PUD Rider provides that the Borrower is required to perform all of the Borrowers obligations under the PUD’s Constituent Documents. The PUD Rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents. Further, the Declaration was listed as an exception to the Armstrongs’ title insurance policy with respect to Lots 55 and 56. Additionally, in connection with the closing on Lots 55 and 56, the Armstrongs executed a document entitled “HOMEOWNERS ASSOCIATION INFO” acknowledging that they had received a copy of the Declaration and all documents related to Chandelle, and that they had been advised regarding the upcoming homeowners association dues and it was their responsibility to pay the same.

Lot 57 was conveyed to James Douglas Armstrong and Jane G. Armstrong by deed recorded on January 30, 2017 in Deed Book 114-Q, pg. 424. The legal description in the deed refers to the property as lot number 57 of Chandelle, Section 8. Further, the Declaration was listed as an exception to the Armstrong’s title insurance commitment/policy for Lot 57.

Further, there is undisputed evidence that the Armstrongs have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval for some landscaping work on their

property; (2) payment of some assessments under the Declaration, at least historically; (3) attendance at meetings of Plaintiff; and (4) the deposition testimony of the Armstrongs provided to the Court indicates that they thought they were members of Plaintiff, at least until around the time that this lawsuit was instituted.

6. Marketing of Chandelle Subdivision

Based on the unrefuted evidence provided to the Court, CSC Developers, LLC marketed all of the Subject Defendants' lots described above as being part of Chandelle Subdivision. These marketing materials included various statements and information indicating that the entirety of Chandelle Subdivision was subject to and bound by the Declaration. For example, marketing brochures described Chandelle Subdivision as a "master-planned private aviation estate" and contained maps showing the lots in Chandelle. These marketing brochures mention an Architectural Committee, and some specifically provide that "Architectural Control Committee oversees building in accordance with *Covenants, Conditions and Restrictions*." Additionally, the marketing materials refer to the restrictions for the community and state that "All plans for homes, hangars, and landscaping reviewed by Architectural Control Committee" and "Recorded Restrictions ensure control of maintenance issues, noise, fences, signs, lighting, etc." The marketing materials also contained "Highlights of the Covenants" which stated in part:

The Owners/Developers of Chandelle have written a set of Covenants, Conditions, and Restrictions that will ensure the harmony and appearance of the development. Specifically, the CCR's, which apply to Chandelle, include the following...

Further, the website for Chandelle maintained by CSC Developers, LLC contained information concerning the restrictive covenants applicable to Chandelle. Additionally, maps showing the lots sold/available were created and posted to the Chandelle website maintained by CSC Developers,

LLC. These maps included the Subject Defendants' lots as being part of Chandelle, and thus part of the master-planned, covenant-restricted community described in the other marketing materials.

LAW/ANALYSIS

1. Summary Judgment Standard

Pursuant to Rule 56, SCRCP, a moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) (quoting NationsBank v. Scott Farm, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). "Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings." Id.

2. The Subject Defendants' Properties Described Herein Are Subject to and Bound By the Declaration

There is no dispute that the Subject Defendants own their respective properties described herein. As set forth above, the properties described herein are Lots 1, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57, and for ease of reference, these lots will be hereinafter referred to as the **"Subject Lots"**.

Restrictive covenants are contractual in nature and are construed like contracts, and may give rise to actions for breach of contract. Kinard v. Richardson, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014).

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development.

Id. Restrictive covenants on the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978); Kinard, 407 S.C. at 257-258, 754 S.E.2d at 894.

Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. *Bomar*, 244 S.E.2d at 310. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme. *Id.*; see also *Shipyards Property Owners Ass'n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795 (Ct.App.1992).

In the various grants of the lots, there must have been included some restriction for the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. 20 Am.Jur.2d *Covenants, Conditions, Etc.* § 173 (1965). In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972). Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. *Shipyards Property Owners Ass'n*, 414 S.E.2d at 802. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction. *Bomar*, 244 S.E.2d at 310.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994). Further, in the case of Easterly v. Hall, the South Carolina Supreme Court noted:

This court has held that restrictive covenants imposed upon some lots, but not upon others, in the same subdivision were enforceable among all where it was clear from the inception of the subdivision that there had been a general plan for its residential development and such plan had been adhered to without material departure therefrom, and if it has been understood and relied upon by those concerned, it is binding and enforceable *Inter sese*. *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538. We also held in the *Pitts* case that neither the restricting of every lot within the area

covered nor absolute identity of restrictions upon different lots is essential to the existence of a neighborhood scheme.

Easterly v. Hall, 256 S.C. 336, 343, 182 S.E.2d 671, 674 (1971).

Further, where “a deed describes land as is shown on a certain plat, such plat becomes a part of the deed.” Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965). “The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired.” Carolina Land Co. v. Bland, 265 S.C., 98, 107, 217 S.E.2d 16, 20 (1975). A plat constitutes a link in the chain of title for property. See, id.

Based on all of the foregoing, I find that the Subject Lots are expressly bound by the Declaration. Lot 1 was specifically listed as part of the property bound in the Original Declaration. Further, the deeds in the chain of title for Lot 1 specifically state that Lot 1 is subject to the Declaration, and these deeds predate any purported annexation deadline contained in the Declaration. John K. Payne also specifically admitted in his deposition that Lot 1 is subject to the Declaration, and I further find that the Paynes are bound by such admission. All of the rest of the lots that are the subject of this Order (i.e., Lots 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57) were all identified in recorded instruments supplementing or amending the Declaration to annex such lots and to subject them to the Declaration. In addition, the chains of title for Lots 33, 55, and 56 each contain a deed or deeds specifically stating that such lots are subject to the Declaration. As set forth above, Lot 33 has now been combined with Lots 32, 36, and 37.

Although Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline was not contained in the copy of the restrictive covenants distributed by the developer to purchasers and prospective purchasers, and the developer continued to develop Chandelle Subdivision after that time,

apparently without challenge or objection. Further, the evidence before me is uncontroverted that the developer, CSC Developers, LLC, intended all of the annexations to be binding and proper, and intended that all of the Subjects Lots be subject to and bound by the Declaration, and that that Subject Defendants had acted in conformity therewith. To the extent any technical defect or flaw may potentially exist on the basis of a purported annexation deadline, I find that it has been waived⁶ or the Subject Defendants are otherwise estopped from asserting the same. Further, I find that the Declaration should nonetheless also be reformed to remove the purported annexation deadline and as otherwise necessary to correct any possible technical defect or flaw in any of the annexations based on the purported annexation deadline. “Where a written contract does not conform to the intentions of the parties, a court may reform the contract.” Crewe v. Blackmon, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986). Reformation is generally available on the grounds of: (1) mutual mistake; or (2) unilateral mistake, where the unilateral mistake is induced or occasioned by fraud, deceit, concealment, or other inequitable conduct on the part of the other party. See id.; Aiken Petroleum Co. v. Nat’l Petroleum Underwriters of W. Millers Mut. Fire Ins. Co. of Kansas City, Mo., 207 S.C. 236, 253, 36 S.E.2d 380, 387 (1945); George v. Empire Fire & Marine Ins. Co., 336 S.C. 206, 221, 519 S.E.2d 107, 115 (Ct. App. 1999), rev’d, 344 S.C. 582, 545 S.E.2d 500 (2001); Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 51, 747 S.E.2d 178, 186 (2013); Forrester v. Moon, 100 S.C. 157, 84 S.E. 532 (1915). “A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended.” Progressive Max. Ins. Co., 405 S.C. at 51, 747 S.E.2d at 186. Further, a “plaintiff’s negligence does not bar reformation when the plaintiff’s unilateral mistake was induced by the defendants’

⁶ It is noted that the Declaration was recorded with the Register of Deeds prior to the Subject Defendants acquiring title to the Subject Lots and thus was a matter of public record before the Subject Defendants acquired title to the Subject Lots. See, e.g., Carolina Land Co., 265 S.C. at 107, 217 S.E.2d at 20 (The law imputes to a landowner notice of the contents of any recorded instruments in the chain of title.).

fraud, inequitable conduct, deceit or concealment.” Crewe, 289 S.C. at 234, 345 S.E.2d at 757. I find that there either has been a mutual mistake, or a unilateral mistake accompanied by fraud, deceit, concealment, or inequitable conduct. Based on the foregoing, it seems clear that the developer did not intend the Declaration to bar the annexation attempts and intended for the annexations to be binding and proper. Likewise, based on all of the foregoing, it is evident that the parties operated under the belief that the Subject Lots were subject to the Declaration and that the parties acted in conformity with the Subject Lots being subject to the Declaration. Further, I find that the developer either engaged in fraud, deceit, concealment, or inequitable conduct by distributing an unofficial copy of the restrictive covenants to purchasers or prospective purchasers that didn’t contain the purported annexation deadline. Therefore, the uncontroverted evidence in the record establishes either a mutual mistake, or a unilateral mistake accompanied by fraud, deceit, concealment, or inequitable conduct.

Further, although the instrument annexing Lots 31, 32, 35, 36, 55, 56, and 57 (recorded November 2, 2011 in Deed Book 99-L, Pg. 999) was signed by two Board members for Plaintiff rather than CSC Developers, LLC, the evidence submitted to the Court is uncontroverted that: (1) everyone involved, including CSC Developers, LLC, thought that this was the proper way to do it now that homeowners had been appointed to the Board of Directors for Plaintiff; (2) CSC Developers, LLC was in agreement with the Board members signing the instrument and CSC Developers, LLC knew it was being done; (3) CSC Developers, LLC intended these lots be bound by the Declaration and intended that this instrument bind them; and (4) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC’s authority. Based on the uncontroverted evidence, I find that this annexation was truly an annexation by CSC Developers, LLC, as the “Declarant”, even though technically signed by two

Board members for the Plaintiff, and thus it is not ineffective or invalid due to merely being signed by two Board members of Plaintiff. While not necessary to sustain the annexation in light of the foregoing finding, I nonetheless also additionally and/or alternatively find that to the extent that any technical defect or flaw may be alleged to exist with this annexation instrument based on who executed it, the uncontroverted evidence in the record also establishes that any such potential technical defect or flaw would be the product of a mutual mistake. Thus, to the extent that any such technical defect or flaw may potentially exist, I additionally and/or alternatively find that the Declaration and/or the annexation instrument should be reformed as necessary to correct any such potential technical defect or flaw.

Therefore, it is hereby declared and ordered that the Declaration is reformed to remove the purported annexation deadline in Section 16.2 thereof, dating back to the date of the recording of the Original Declaration, and as otherwise necessary to correct any potential technical defect or flaw in any of the annexations based on the purported annexation deadline. Further, it is hereby declared and ordered that the Declaration and/or the annexation instrument recorded in 2011 (Deed Book 99-L, Pg. 999) are reformed as necessary to correct any potential defect or flaw based on who signed the annexation instrument recorded in 2011.

Further, although I find that the Subject Lots are expressly bound by the Declaration, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. As set forth above, CSC Developers, LLC, was the primary developer of Chandelle Subdivision, and acted in concert with and as part of a joint venture with James Brockman, Sr. and/or others to develop Chandelle Subdivision and to convey lots to purchasers. Further, as set forth above, there was a designation of land subject to

the restrictions and a general plan or scheme of restrictions and development. In particular, as set forth more fully above:

- CSC Developers, LLC recorded the Declaration at the outset of development.
- Numerous phases/sections of Chandelle Subdivision have been platted as part of a common scheme of development. Per these plats, there is a common scheme of lot numbering. See Kinard, 407 S.C. at 260, 754 S.E.2d at 996 (noting that consecutive lettering/numbering of parcels is evidence of a single scheme of development).
- All of the Subject Lots have been platted as Lots in Chandelle Subdivision.
- All of the Subject Lots were either identified as being bound by the Declaration in the Declaration as originally recorded, or in subsequently recorded instruments supplementing or amending the Declaration.
- The deeds in the chain of title for some of the Subject Lots specifically reference the property being subject to the Declaration. Further, all of the lots conveyed by James Brockman, Sr. specifically referenced such lots as being subject to the Declaration.
- The legal descriptions in the deeds refer to the Subject Lots as lots in Chandelle Subdivision.
- CSC Developers, LLC intended that all of the Subject Lots to be part of Chandelle Subdivision and subject to and bound by the Declaration.
- Some of the Subject Defendants have executed mortgages with Planned Unit Development riders, acknowledging that the property is part of a planned unit development, and specifying that that they must comply with all of the community's "constituent documents".

- Some of the Subject Defendants have executed other documents expressly or implicitly acknowledging that their respective properties are part of Chandelle Subdivision and subject to the Declaration.
- Chandelle Subdivision was marketed as a covenant restricted, master planned community, and all of the Subject Lots were marketed as being part of Chandelle Subdivision.
- Further, the Subject Defendants have taken actions and have engaged in a course of conduct in conformity with them/the Subject Lots being part of Chandelle Subdivision and being subject to and bound by the Declaration, and have consequently either expressly or implicitly admitted to, accepted, and/or acquiesced to the same, including membership in Plaintiff. Such conduct and actions include, without limitation: (1) attending membership meetings of Plaintiff; (2) payment of assessments to Plaintiff under the Declaration, including some of the Subject Defendants paying a special assessment to Plaintiff in 2021 during the pendency of this lawsuit; (3) seeking architectural approval under the Declaration; (4) seeking Declarant approval to combine Lots under the Declaration; and (5) other correspondence and/or conduct in conformity with being part of Chandelle Subdivision, subject to the Declaration, and a member of Plaintiff, as set forth more fully above.

Further, the Declaration runs with the land. Specifically, the recitals to the Declaration provide that the provisions of the Declaration “shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.” Additionally, Section 12.1 of the Declaration provides that the terms of the Declaration “shall run with and bind the Property....”

Although I have found that the Subject Lots are expressly bound by the Declaration, based on the foregoing, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. Further, by their course of conduct as set forth above, which has been relied upon by Plaintiff and others in the community, the Subject Defendants have either expressly or implicitly admitted to, accepted, and/or acquiesced to being part of Chandelle Subdivision, including being subject to the Declaration and being members of Plaintiff, and have either waived any objection to or are otherwise estopped from denying the same now.

Further, in addition to all of the foregoing, “[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Additionally, equity looks at substance over form and the principle applies by dispensing with pure formalities which would otherwise defeat the equity. Id. at 253, 715 S.E.2d at 354. When applying such principle, the courts “look to the substance and intent of the parties, and give a construction consistent with such intent.” Id. at 253, 715 S.E.2d at 355. Such equitable maxims can allow a court to relieve a party from the consequences of accident, mistake, and fraud. See id. at 254, 715 S.E.2d at 355. Therefore, in addition to all of the foregoing grounds, the Court further exercises its inherent equitable powers to give effect to the substance and intent of the developer and the parties, and further declares that the Subject Lots are subject to the Declaration on this basis as well.

In sum, for all of the foregoing reasons, I find that the Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the

entirety of the Subject Defendants' ownership of the same, regardless of whether expressly or implicitly bound. The Declaration binds the land and runs with the land.

3. *The Subject Defendants Are Members of Plaintiff, Chandelle Property Owners Association*

Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Plaintiff, Chandelle Property Owners Association. Likewise, Section 4.1 of the Bylaws of Chandelle Property Owners Association also establishes mandatory membership for Lot Owners. Therefore, the Subject Defendants, by virtue of their ownership of Lots subject to the Declaration, are mandatory members of Plaintiff.

4. *The Subject Defendants Owe Plaintiff Assessments*

Section 11.1 of the Declaration provides that the Owner of each Lot is deemed to covenant and agreed to pay Plaintiff assessments, including annual, special, and default assessments. Further, Section 7.5 of the Declaration authorizes Plaintiff to suspend rights to use the runway and to charge individual assessments for use of the runway with respect to an Owner who is in default in the payment of assessments. Additionally, monetary fines are considered default assessments under the Declaration. Further, the Declaration provides that assessments, together with interest, costs, and reasonable attorney's fees are the personal obligation of the Owner of the Lot. Further, Section 11.7 of the Declaration provides:

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or

other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Further, Sections 11.9, 13.3, and 13.4 of the Declaration and Section 8.2(h) of Plaintiff's Bylaws collectively authorize Plaintiff to charge interest and late charges on delinquent assessments, and to bring legal action to collect amounts owed. In addition to Sections 11.1 and 11.9 of the Declaration authorizing the recovery of attorney's fees, Section 13.9 of the Declaration also provides that the prevailing party in any legal proceeding to enforce the governing documents for Chandelle Subdivision, including the Declaration and the Bylaws of Plaintiff, "shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court."

Because the Subject Lots are subject to the Declaration as set forth above, the Subject Defendants and the Subject Lots are subject to assessments under the Declaration and Bylaws of Plaintiff. In connection with its motion, Plaintiff submitted an affidavit of Billy J. Israel, Jr. setting forth the amounts alleged to be owed by the Subject Defendants to Plaintiff. I find that there is no genuine issue of material fact as to the amount of the assessments owed by the Subject Defendants, but I find that there is a genuine issue of material fact as to the amount of the interest and/or late charges, if any, that may be owed by the Subject Defendants.

I find that, as of September 1, 2022, the Subject Defendants owe Plaintiff the following amounts for assessments only, exclusive of late charges, interest, and attorney's fees, and grant judgment in favor of Plaintiff against the Subject Defendants respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00

- Armstrongs: \$44,000.00

While the Subject Defendants assert that the Declaration does not authorize or allow the Plaintiff to incur attorney's fees as an expense of Plaintiff and/or to include in the assessments any amount of attorney's fees incurred or projected to be incurred for legal services rendered to Plaintiff, I find this argument to be unpersuasive. First, as a nonprofit corporation, the Plaintiff is governed by the South Carolina Nonprofit Corporation Act. The South Carolina Nonprofit Corporation Act grants broad powers to a nonprofit corporation, including the power to sue and be sued, to incur liabilities, to impose assessments upon its members, and to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation. S.C. Code Ann. § 33-31-302. Further, the Declaration and Bylaws of Plaintiff contain numerous provisions indicating that the Plaintiff can sue, can incur attorney's fees, and can include attorney's fees incurred in the assessments to its members. These provisions include, without limitation:

- Declaration: §§ 1.6, 1.18, 2.9, 11.1, 11.2, 11.4, 11.5, 11.9, 13.3, 13.4, and 13.9.
- Bylaws: §§ 2.1, 8.1, and 8.2

The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract. Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails. An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided.

Koon v. Fares, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) (internal citations omitted). To interpret the Declaration as prohibiting the Plaintiff from bringing suit, incurring attorney's fees, or including the expense of attorney's fees in assessments would lead to an absurd result and cannot be sustained. For example, if such an interpretation was adopted, it would mean that Plaintiff could not retain counsel to defend it if it were sued, or to otherwise protect its interests. Since a

corporation cannot represent itself in circuit court, under the position advanced by the Subject Defendants, Plaintiff would be left defenseless if it were sued in circuit court and would have to go into default every time it was sued in circuit court unless it could find a lawyer willing to represent it for free. This is clearly an absurd result, and I find that an interpretation leading to such a result must be avoided.

The Subject Defendants also assert that the Plaintiff, by and through its Board, violated Section 8.2(i) of the Bylaws of Plaintiff by allegedly borrowing more than \$50,000.00 or incurring more than \$50,000.00 in debt without a vote of its members. While I don't reach the merits of whether there has been any violation of Section 8.2(i) of the Bylaws, I find that even assuming *arguendo* that a violation has occurred, it does not relieve the Subject Defendants of their obligation to pay assessments. Whether a debt was properly incurred is independent of the Subject Defendants' obligation to pay assessments. Even if a debt was improperly incurred by Plaintiff, that debt is still an obligation of the Plaintiff that Plaintiff is liable for. Like most homeowners associations, Plaintiff's primary means of funding its obligations is through assessments levied against its members. If the Court were to accept the Subject Defendants' argument, it would mean for example that if the Plaintiff were to borrow more than \$50,000 without member approval, then Plaintiff could never assess its members to pay off that loan, forcing the Plaintiff to default on the loan and suffer the adverse consequences of a default. I find that such a position cannot be sustained. Rather, if there has been any violation of Section 8.2(i) of the Bylaws,⁷ I find that it does not obviate the Subject Defendants' obligation to pay assessments, without prejudice to whatever rights the Subject Defendants may have, if any, to pursue claims against the Plaintiff or its directors, individually or derivatively, arising out of the alleged violation. Further, I find it

⁷ The merits of any alleged violation of Section 8.2(i) of the Bylaws is not reached in this Order and no ruling or opinion is expressed as to whether there has in fact been a violation thereof.

troubling that it appears that the alleged indebtedness that the Subject Defendants complain about is at least somewhat, if not largely, due to the Subject Defendants' failure to pay assessments. It appears that the Subject Defendants' withholding of assessments has resulted in or contributed to financial shortfalls for Plaintiff, impairing Plaintiff's ability to fund its liabilities. It appears that Subject Defendants then in turn attempt to argue that these shortfalls/liabilities violate the Bylaws, which thus then relieves them from the obligation to pay the assessments that were withheld to create the shortfall. I find this logic unpersuasive.

While I grant summary judgment to Plaintiff as to the principal amount of the assessments, I find that there is a question of fact as to the amount of the late charges and interest claimed by Plaintiff, and therefore deny summary judgment at this time as to late charges and interest. Likewise, I find that a determination of whether Plaintiff is entitled to an award of attorney's fees should be held in abeyance at this time for determination at a later date.

5. Attorney's Fees and Costs – Rule 37(c), SCRCP

Plaintiff's motion also sought an award of attorney's fees and costs under Rule 37(c), SCRCP on the basis of the Subject Defendants' failure to admit certain matters. I find that this issue should be held in abeyance at this time for a determination at a later date.

ORDERS

Based on the foregoing, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the entirety of the Subject Defendants' ownership of the same. The Declaration and the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999 are reformed as set forth hereinabove.

2. The Subject Defendants are members of Plaintiff by virtue of their ownership of the Subject Lots.

3. Judgment is granted in favor of Plaintiff against the Subject Defendants for past due assessments (as of September 1, 2022), exclusive of interest, late charges, and attorney's fees, respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00
- Armstrongs: \$44,000.00

Summary judgment is denied as to interest and late charges. Further, a determination of whether Plaintiff is entitled to an award of attorney's fees is held in abeyance at this time for determination at a later date.

4. A determination as to Plaintiff's claim for attorney's fees and costs under Rule 37(c), SCRPC is held in abeyance at this time for a determination at a later date.

5. The Register of Deeds for Spartanburg County is ordered to record a copy of this Order in its office and to properly index this Order in the chain of title for the Subject Lots under the following party names:

- Chandelle Property Owners Association
- John K. Payne
- Ruth G. Payne
- Warren G. Johnson
- Rhonda B. Johnson
- Jane Van Wieren, trustee, or her successor in trust, of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006
- James Douglas Armstrong
- Jane G. Armstrong

6. This Order shall bind the land, shall run with the land, shall be binding upon and inure to the benefit of Chandelle Property Association and the Subject Defendants, their heirs, successors, successors in title, and assigns, and shall be binding upon and inure to the benefit of all persons or entities having any right, title, or interest in the Subject Lots or any part thereof, their heirs, successors and assigns.

IT IS SO ORDERED.

Wendell Hawkins

From: Wendell Hawkins
Sent: Tuesday, October 25, 2022 9:15 AM
To: Kelly, R. Keith Law Clerk (Madalyn Dalton); Ely Grote; Ryan McCabe; John Harjehausen
Cc: Richard Patton
Subject: RE: 2016CP4201854 Chandelle Property
Attachments: Memo Chandelle in Opp to Proposed Order.pdf

Mattie:

Here are my general objections.

PLEASE VERIFY WIRING INSTRUCTIONS WITH OUR OFFICE VIA PHONE BEFORE WIRING MONEY. NEVER TRUST EMAILS THAT END IN ANYTHING OTHER THAN @wlhawkinslawfirm.com. READ ALL CHARACTERS BECAUSE THERE ARE SUBTLE DIFFERENCES. WE RECEIVE WIRES AT COUNTYBANK ON PELHAM ROAD. COUNTY BANK IS BASED IN GREENWOOD, SC. A LOT OF FAKE EMAILS HAVE GRAMATICAL ERRORS AND SPELLING ERRORS AND THEY DO NOT GIVE YOU PHONE NUMBERS TO CALL.

Very Truly Yours,
Wendell L. Hawkins
wlh@wlhawkinslawfirm.com

Please send all closing packages to gpackages@wlhawkinslawfirm.com

Please send all scheduling inquiries to gschedule@wlhawkinslawfirm.com

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Wendell L. Hawkins, PA
310 The Parkway
Greer, SC 29650
(864)848-9370(P) (864)848-9759(F)
web: www.wlhawkinslawfirm.com

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From: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>
Sent: Thursday, October 20, 2022 3:13 PM

To: Wendell Hawkins <wlh@wlhawkinslawfirm.com>; Ely Grote <Ely.Grote@mccabetrotter.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; John Harjehausen <jharjehausen@clarksonwalsh.com>
Cc: Richard Patton <pattonlawfirmllc@gmail.com>
Subject: RE: 2016CP4201854 Chandelle Property

External (kkellylc@sccourts.org)

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Thank you. Mr. Grote – please email me the proposed order. Judge Kelly will review the order and objections when they are received.

Thank you all,
Mattie

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Cc: Richard Patton <pattonlawfirmllc@gmail.com>
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Cc: Richard Patton <pattonlawfirmllc@gmail.com>
Subject: RE: 2016CP4201854 Chandelle Property

Good Afternoon,

Mr. Hawkins – please provide me with your written objections to the proposed order.

Thank you,
Mattie

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Subject: RE: 2016CP4201854 Chandelle Property

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Mattie,

Per the Court's direction, I have prepared a proposed order granting plaintiff's motion for partial summary judgment and have distributed the same to Mr. Hawkins. It is my understanding that Mr. Hawkins is generally in disagreement with the proposed order and has expressed a desire that before I submit the proposed order through the e-filing system, that I email the proposed order to the Court and that a phone conference or Webex conference be held to discuss the proposed order.

Would you please let me know how the Court would like to proceed with respect to submission of the proposed order and/or addressing any concerns that Mr. Hawkins may have? Thanks.

Ely O. Grote
Attorney

McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Boulevard
Suite 250
Columbia, SC 29209
Main: 803-724-5000
Direct: 803-724-5018
Fax: 803-724-5001
Email: ely.grote@mccabetrotter.com



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

From: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>
Sent: Tuesday, October 4, 2022 2:58 PM
To: Wendell Hawkins <wlh@wlhawkinslawfirm.com>; Ely Grote <Ely.Grote@mccabetrotter.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; John Harjehausen <jharjehausen@clarksonwalsh.com>
Subject: RE: 2016CP4201854 Chandelle Property

I have not seen any new filings come into my e-file queue or on the e-file when I look on the public index.

The Court does rule that because the Defendants are subject to and bound by the Declaration, they are delinquent in the payment of assessments to Plaintiff and owe the Plaintiff assessments. However, the Court is not granting summary judgment in regard to late fees and interest that is requested in Plaintiff's motion.

Let me know if you all have other questions.

Thank you,
Mattie

From: Wendell Hawkins <wlh@wlhawkinslawfirm.com>
Sent: Tuesday, October 4, 2022 1:16 PM
To: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>; Ely Grote <Ely.Grote@mccabetrotter.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; John Harjehausen <jharjehausen@clarksonwalsh.com>
Subject: RE: 2016CP4201854 Chandelle Property

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Mattie:

I assume the Court is not ruling on damages at this point in time? I suppose we need some guidance on that. I just filed a motion relative to that issue.

Very Truly Yours,
Wendell L. Hawkins
wlh@wlhawkinslawfirm.com

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From: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>

Sent: Tuesday, October 4, 2022 12:54 PM

To: Ely Grote <Ely.Grote@mccabetrotter.com>; Ryan McCabe <Ryan.McCabe@mccabetrotter.com>; Wendell Hawkins <wlh@wlhawkinslawfirm.com>; John Harjehausen <jharjehausen@clarksonwalsh.com>

Subject: 2016CP4201854 Chandelle Property

Plaintiff's Motion for Partial Summary Judgment against Armstrong Defendants

After careful consideration of the written motion and arguments of counsel, the Court **GRANTS** the Motion for Summary Judgment.

All lots at issue in this Motion are subject to and bound by the Declaration. Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Chandelle Property Owners Association. Section 4.1 of the Bylaws also establishes mandatory membership for Lot Owners. The legal description of every lot, when conveyed to each defendant, indicates that the Lot is part of the Chandelle subdivision. By virtue of owning a Lot in the subdivision, each Defendant is a mandatory member of Plaintiff. Each Lot in the subdivision was bound to the Declaration *from its inception* due to the mandatory nature of the membership.

The deeds to some Lots specifically state the Lots are subject to the Declaration, while others simply state the Lots are part of the Chandelle subdivision. To the extent that any Lot is not expressly bound by the Declaration, that Lot is bound by plain and unmistakable implication.

Mr. Grote, please prepare an order reflecting the Court's ruling and include relevant facts and procedure to support the ruling. Share with opposing counsel and submit on e-file for Judge Kelly's approval.

Plaintiff's and Third-Party Defendants' Motion to Dismiss/Partial Summary Judgment on Counterclaims

After careful consideration of the written motion and arguments of counsel, the Court **DENIES** the Motion to Dismiss/Partial Summary Judgment.

Mr. Hawkins, please prepare an order reflecting the Court's ruling and include relevant facts and procedure to support the ruling. Share with opposing counsel and submit on e-file for Judge Kelly's approval.

Thank you,

Mattie Dalton
Law Clerk to the Honorable R. Keith Kelly
125 E. Floyd Baker Blvd.
Gaffney, South Carolina 29340
(864) 596-2400

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## Ely Grote

---

**From:** Ely Grote  
**Sent:** Wednesday, October 26, 2022 1:49 PM  
**To:** Wendell Hawkins; Kelly, R. Keith Law Clerk (Madalyn Dalton); Ryan McCabe; John Harjehausen  
**Cc:** Richard Patton  
**Subject:** RE: 2016CP4201854 Chandelle Property

Mattie,

Please let this email serve as Plaintiff's response to Mr. Hawkins' objections to the proposed order. I see that Mr. Hawkins has filed (and also emailed) documentation pertaining to a separate motion filed by Defendants, which I have not yet had an opportunity to review. Plaintiff intends to file a separate response to Defendants' separate motion.

### Factual Findings/Factual Background

I believe that including facts in the proposed order is proper and appropriate, and is consistent with the guidance given by the Court. I interpreted the guidance given by the Court as its ruling was going beyond the limited issues that Mr. Hawkins was willing to consent or stipulate to, including that the lots were bound from their inception, either expressly or implicitly. The Court requested that the order include relevant facts and procedure supporting the ruling. I believe that facts are important to establish a basis for the ruling. While some of the facts were not specifically stated or argued at the hearing, detailed facts were included in Plaintiff's memorandum and I believe them to be adequately supported by the documentation submitted with Plaintiff's memorandum, including deposition testimony, affidavits, and chain of title documents. Detailed citations to the supporting information/basis for these facts is included in Plaintiff's memorandum. I do not believe that Defendants submitted any evidence in connection with the motion that would contradict or create a question of fact as to the information contained the "Factual Background/Findings of Fact" section of the proposed order, and thus I believe that such information was uncontroverted in connection with the motion/hearing and was appropriate to include in the proposed order. Since this is not a consent order, I do not believe that Defendants' consent or an agreement of the parties is needed for the for the Court to issue its final order, with such content as the Court ultimately determines is appropriate.

### Section of proposed order entitled "The Subject Defendants Properties Descried Herein are Subject to and Bound By the Declaration"

I believe that the content of this section is consistent with the guidance provided by the Court via email and is adequately supported by the uncontroverted evidence in the record before the Court. Numerous legal arguments were advanced in Plaintiff's memorandum, and Plaintiff submitted a substantial amount evidence with its memorandum prior to the hearing to support a factual and legal basis for the findings. While Defendants seem to take issue with language regarding reformation, the issue of reformation was specifically addressed in Plaintiff's memorandum. Further, this issue of reformation was pled in Plaintiff's Complaint, the current Complaint being the 3<sup>rd</sup> Amended Complaint filed on Nov. 3, 2020. Specifically, Plaintiff's causes of action for Declaratory Judgment and Quiet Title seek relief on the basis of reformation. The relief requested by Plaintiff in its Complaint in the Declaratory Judgment cause of action includes:

- k. Such other relief and/or declarations as are just and proper, including, but not limited to, reforming the Declaration and Bylaws and/or the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.

(Paragraph 82). Likewise, the relief requested by Plaintiff in its Complaint in the Quiet Title cause of action includes:

k. Making such other determinations and/or granting such other relief as is just and proper, including, but not limited to, reforming the Declaration and Bylaws and/or the use of the Court's inherent equitable powers to provide relief from the consequences of accident, mistake, and/or fraud.  
(Paragraph 86).

Assessments:

I interpreted the Court's follow-up email on 10/4/22 to indicate that the Court was awarding the principal amount of the assessments claimed by Plaintiff, but not granting summary judgment to Plaintiff as to the late fees and interest. Therefore, this is the way the proposed order is drafted. While Defendants allege "ultra vires" actions for incurring attorney's fees or allegedly exceeding an alleged debt limit, I interpreted the Court as inherently finding those arguments to be unpersuasive (at least with respect to the Defendants' obligation to pay assessments) since it was awarding the assessments. Therefore, the proposed order contains various sustaining grounds for such a finding. Also, it is respectfully asserted that the Defendants' reliance on the *ultra vires* doctrine to allegedly excuse them from the payment of assessments is misplaced and not supported under South Carolina law. The South Carolina Nonprofit Corporation Act, including Sections 33-31-302 and 33-31-304 thereof, has largely abrogated or done away with the *ultra vires* doctrine. Notably, the first sentence of the official comments to section 33-31-304 specifically states that the object of this section is to do away with the ultra vires doctrine. Section 33-31-304 and the comments thereto indicate that once an alleged ultra vires action/transaction has been entered into or completed or a 3<sup>rd</sup> party has acquired rights, the action/transaction is not void or voidable. Instead, the remedy at that point is to pursue an action against the directors who allegedly violated the corporate documents. I believe that the proposed order is consistent with this principle.

Other matters:

To avoid any confusion or inference otherwise, it should be noted that the proposed order does not contain any award of costs or attorney's fees, nor does it resolve all outstanding issues in the case. The proposed order simply leaves such matters for a determination at a later date, either through trial or other hearing. While the proposed order does not rule upon Plaintiff's request for attorney's fees under Rule 37(c), SCRPC, to avoid any confusion, I would simply note that such issue has nothing to do with the content of any "consent agreement". It simply relates to Requests for Admission served by Plaintiff per Rule 36, SCRPC in connection with this case – a copy of those requests to admit and Defendants' responses were included as exhibits to Plaintiff's memorandum.

Ely O. Grote  
Attorney  
McCabe, Trotter & Beverly, P.C.  
4500 Fort Jackson Boulevard  
Suite 250  
Columbia, SC 29209  
Main: 803-724-5000  
Direct: 803-724-5018  
Fax: 803-724-5001  
Email: [ely.grote@mccabetrotter.com](mailto:ely.grote@mccabetrotter.com)



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**Cc:** Richard Patton <pattonlawfirmllc@gmail.com>

**Subject:** RE: 2016CP4201854 Chandelle Property

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**Cc:** Richard Patton <[pattonlawfirmllc@gmail.com](mailto:pattonlawfirmllc@gmail.com)>  
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Good Afternoon,

Mr. Hawkins – please provide me with your written objections to the proposed order.

Thank you,  
Mattie

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Mattie,

Per the Court's direction, I have prepared a proposed order granting plaintiff's motion for partial summary judgment and have distributed the same to Mr. Hawkins. It is my understanding that Mr. Hawkins is generally in disagreement with the proposed order and has expressed a desire that before I submit the proposed order through the e-filing system, that I email the proposed order to the Court and that a phone conference or Webex conference be held to discuss the proposed order.

Would you please let me know how the Court would like to proceed with respect to submission of the proposed order and/or addressing any concerns that Mr. Hawkins may have? Thanks.

Ely O. Grote  
Attorney  
McCabe, Trotter & Beverly, P.C.  
4500 Fort Jackson Boulevard  
Suite 250  
Columbia, SC 29209  
Main: 803-724-5000



Direct: 803-724-5018  
Fax: 803-724-5001  
Email: [ely.grote@mccabetrotter.com](mailto:ely.grote@mccabetrotter.com)



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**From:** Kelly, R. Keith Law Clerk (Madalyn Dalton) <[kkellylc@sccourts.org](mailto:kkellylc@sccourts.org)>  
**Sent:** Tuesday, October 4, 2022 2:58 PM  
**To:** Wendell Hawkins <[wlh@wlhawkinslawfirm.com](mailto:wlh@wlhawkinslawfirm.com)>; Ely Grote <[Ely.Grote@mccabetrotter.com](mailto:Ely.Grote@mccabetrotter.com)>; Ryan McCabe <[Ryan.McCabe@mccabetrotter.com](mailto:Ryan.McCabe@mccabetrotter.com)>; John Harjehausen <[jharjehausen@clarksonwalsh.com](mailto:jharjehausen@clarksonwalsh.com)>  
**Subject:** RE: 2016CP4201854 Chandelle Property

I have not seen any new filings come into my e-file queue or on the e-file when I look on the public index.

The Court does rule that because the Defendants are subject to and bound by the Declaration, they are delinquent in the payment of assessments to Plaintiff and owe the Plaintiff assessments. However, the Court is not granting summary judgment in regard to late fees and interest that is requested in Plaintiff's motion.

Let me know if you all have other questions.

Thank you,  
Mattie

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**From:** Wendell Hawkins <[wlh@wlhawkinslawfirm.com](mailto:wlh@wlhawkinslawfirm.com)>  
**Sent:** Tuesday, October 4, 2022 1:16 PM  
**To:** Kelly, R. Keith Law Clerk (Madalyn Dalton) <[kkellylc@sccourts.org](mailto:kkellylc@sccourts.org)>; Ely Grote <[Ely.Grote@mccabetrotter.com](mailto:Ely.Grote@mccabetrotter.com)>; Ryan McCabe <[Ryan.McCabe@mccabetrotter.com](mailto:Ryan.McCabe@mccabetrotter.com)>; John Harjehausen <[jharjehausen@clarksonwalsh.com](mailto:jharjehausen@clarksonwalsh.com)>  
**Subject:** RE: 2016CP4201854 Chandelle Property

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Mattie:

I assume the Court is not ruling on damages at this point in time? I suppose we need some guidance on that. I just filed a motion relative to that issue.

**Very Truly Yours,**  
**Wendell L. Hawkins**  
[wlh@wlhawkinslawfirm.com](mailto:wlh@wlhawkinslawfirm.com)

Please send all closing packages to [gpackages@wlhawkinslawfirm.com](mailto:gpackages@wlhawkinslawfirm.com)

Please send all scheduling inquiries to [gschedule@wlhawkinslawfirm.com](mailto:gschedule@wlhawkinslawfirm.com)

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Wendell L. Hawkins, PA  
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**From:** Kelly, R. Keith Law Clerk (Madalyn Dalton) <[kkellylc@sccourts.org](mailto:kkellylc@sccourts.org)>  
**Sent:** Tuesday, October 4, 2022 12:54 PM  
**To:** Ely Grote <[Ely.Grote@mccabetrotter.com](mailto:Ely.Grote@mccabetrotter.com)>; Ryan McCabe <[Ryan.McCabe@mccabetrotter.com](mailto:Ryan.McCabe@mccabetrotter.com)>; Wendell Hawkins <[wlh@wlhawkinslawfirm.com](mailto:wlh@wlhawkinslawfirm.com)>; John Harjehausen <[jharjehausen@clarksonwalsh.com](mailto:jharjehausen@clarksonwalsh.com)>  
**Subject:** 2016CP4201854 Chandelle Property

#### **Plaintiff's Motion for Partial Summary Judgment against Armstrong Defendants**

After careful consideration of the written motion and arguments of counsel, the Court **GRANTS** the Motion for Summary Judgment.

All lots at issue in this Motion are subject to and bound by the Declaration. Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Chandelle Property Owners Association. Section 4.1 of the Bylaws also establishes mandatory membership for Lot Owners. The legal description of every lot, when conveyed to each defendant, indicates that the Lot is part of the Chandelle subdivision. By virtue of owning a Lot in the subdivision, each Defendant is a mandatory member of Plaintiff. Each Lot in the subdivision was bound to the Declaration *from its inception* due to the mandatory nature of the membership.

The deeds to some Lots specifically state the Lots are subject to the Declaration, while others simply state the Lots are part of the Chandelle subdivision. To the extent that any Lot is not expressly bound by the Declaration, that Lot is bound by plain and unmistakable implication.

Mr. Grote, please prepare an order reflecting the Court's ruling and include relevant facts and procedure to support the ruling. Share with opposing counsel and submit on e-file for Judge Kelly's approval.

#### **Plaintiff's and Third-Party Defendants' Motion to Dismiss/Partial Summary Judgment on Counterclaims**

After careful consideration of the written motion and arguments of counsel, the Court **DENIES** the Motion to Dismiss/Partial Summary Judgment.

Mr. Hawkins, please prepare an order reflecting the Court's ruling and include relevant facts and procedure to support the ruling. Share with opposing counsel and submit on e-file for Judge Kelly's approval.

Thank you,

Mattie Dalton  
**Law Clerk to the Honorable R. Keith Kelly**  
125 E. Floyd Baker Blvd.  
Gaffney, South Carolina 29340  
(864) 596-2400

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas R. Keith Kelly, Circuit Court Judge

Appellant Case No. 2022-001557
Civil Action Case No. 2016-CP-42-01854

Chandelle Property Owners Association, Respondent,

v.

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein, Defendants,

and

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming in their personal and official capacities, Third-Party Defendants,

and

Kenneth L. Galloway and Molly C. Galloway, Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg, and George Lynn Fleming, in their personal Capacities, Third-Part Defendants,

Of whom James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006, are the Appellants.

CERTIFICATE OF COUNSEL

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

RECEIVED
Jun 12 2023
SC Court of Appeals

WENDELL L. HAWKINS, P.A.

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
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Attorney for Appellants

June 4, 2023
Greer, South Carolina