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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2021-CP-07-00482
Appellate Case No. 2022 – 001097

MFM Properties, LLC; and MFM Residential Properties, LLC,..... Respondents,

v.

Rotunda Land & Development Group, LLC; and Calloway Title & Escrow, LLC,..... Defendants,

Of Which Rotunda Land & Development Group, LLC, is the.....Appellant.

RECORD OF APPEAL

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**CASE NO.: 2021-CP-07-00482_**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	
Plaintiffs,	
v.	**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	
Defendants.	

This matter came before the Court on motion by the Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC (MFM), for summary judgment against the Defendant, Rotunda Land & Development Group, LLC ("Rotunda") on the basis that there is no genuine issue of material fact. Plaintiffs by their Complaint seek the payment of forfeited earnest money to them by Rotunda. This matter was argued before the Court on April 5, 2022 at the Beaufort County Courthouse with counsel for Plaintiffs and counsel for Rotunda present. Counsel for both sides waived a court reporter and therefore this Motion is decided on the filed pleadings, memoranda, and other documents filed in connection with this matter. After considering all the information provided, the Court hereby GRANTS the Plaintiffs' Motion for Summary Judgment.

Factual Background

MFM Properties, LLC and MFM Residential Properties, LLC (collectively, "MFM" or "Plaintiffs") entered into a Purchase and Sale Agreement with Rotunda effective August 19, 2019

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("Agreement") for the sale of undeveloped real property located in Hardeeville, Jasper County, South Carolina ("Property") for $16,000,000.

Per Section 1(b) of the Agreement, in partial consideration of MFM's execution of the Agreement, Rotunda agreed to deposit One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with escrow agent, Defendant Calloway Title and Escrow, Inc. ("Escrow Agent.")[1] This sum is the "Initial Earnest Money." Per Section 12(b) of the Agreement, should Rotunda default under the Agreement, one of MFM's remedies was that the Initial Earnest Money would be forfeited to MFM.

Rotunda by letter dated February 12, 2020 exercised an option to extend an Initial Inspection Period pursuant to the Agreement and tendered an extension fee to the Escrow Agent on February 13, 2020 as provided for in the Agreement. By letter of April 17, 2020, Rotunda terminated the Agreement in accordance with Section 3(c) of the Agreement which entitled MFM to recover the Initial Earnest Money.

Rather than require the forfeiture of the Initial Earnest Money, an amendment to the Purchase and Sale agreement was made. By a Reinstatement of and First Amendment to the Agreement dated July 8, 2020 ("First Amendment"), Plaintiffs and Rotunda agreed to reinstate, amend and modify the Agreement. Among the terms of the First Amendment was that Rotunda per Section 4(b) tender a second One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent by November 30, 2020. This sum is called the "Additional Earnest

[1] Calloway Title & Escrow, LLC is a defendant in this lawsuit only by virtue of the fact that it holds the Initial Earnest Money in trust. Calloway has been served but has not answered or appeared as all parties agree that Calloway is a nominal party with the sole purpose of paying the Initial Earnest Money to the prevailing party in this litigation. MFM seeks in its Third and Fourth Causes of Action an order that Calloway pay the Initial Earnest Money to MFM, which is granted as noted *infra*.

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Money" in the First Amendment and herein. The First Amendment also confirmed at Section 4(a) that the Initial Earnest Money was non-refundable.

Rotunda failed to deposit either the Additional Earnest Money or the additional extension fee with the Escrow Agent by November 30, 2020 as required by the First Amendment. Rotunda failed to close on the property as required by the Agreement and First Extension. MFM demanded that Rotunda direct the Escrow Agent to pay the Initial Earnest Money of $100,000 to MFM and Rotunda has failed to do so. Further, MFM has demanded that Rotunda pay the Additional Earnest Money to MFM and Rotunda has failed to do so.

While admitting that it had not performed these steps required by the Agreement and First Amendment, Rotunda repeatedly asserts in its Answer that it is "ready and willing and able to do so." Additionally, at some point in late November and early December 2020, Paul Lange, owner of Rotunda, had conversations with Harry Morgan, a principal of MFM. In these conversation, Lange discussed a need for additional time to execute the Purchase and Sale agreement due to Covid-19 affecting the planning process with the Town of Hardeeville.

Notwithstanding Rotunda's position that it was still negotiating, MFM through legal counsel told Rotunda four times in December 2020 that Rotunda must either close by December 31, 2020 or send the Initial Escrow Money and the Additional Escrow Money to MFM. MFM declared the Agreement and First Amendment irrevocably in default by letter of January 12, 2021. This lawsuit followed.

Law

Summary judgment is proper when "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." Rule 56(c),

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SCRCP. "In determining whether a genuine issue of material fact exists, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Bass, 395 S.C. at 133–34, 716 S.E.2d at 912 (citing Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P., 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009)). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433, 438 (2003). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432, 438 (Ct. App. 2003).

Discussion

There is no genuine issue of material fact at issue in this case. Rotunda breached the Agreement and its First Amendment by its failure to perform as required by the agreements. These agreements are subject to the Statute of Frauds and contain unambiguous information.

Rotunda defaulted under the First Amendment. There is no dispute that Rotunda failed to perform as the First Amendment required. To recover for a breach of contract, the plaintiff must prove:

(1) A binding contract entered into by the parties;

(2) A breach or unjustifiable failure to perform the contract; and

(3) Damage suffered by the plaintiff as a direct and proximate result of the breach.

Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

The the parties, entered into the Agreement and First Amendment, which are binding contracts between MFM and Rotunda. These written contracts were clearly signed by the sophisticated parties and witnesses and contain unambiguous language. The damages are the

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$100,000 in Initial Earnest Money and $100,000 in Additional Earnest Money, plus prejudgment interest, and the prevailing party's reasonable costs and attorney's fees per Section 15(g) of the Agreement.

Rotunda claims that there is an issue of material fact and there is no actual breach or unjustified failure to perform as it is it still "ready, willing and able" to perform and that at one time, it claims one of the owners of MFM, Harry Morgan, discussed with the principle owner of Rotunda, Paul Lange, a possible new deal regarding the Property. However, these allegations, as noted *infra*, do not create a question of fact, rather this issue is a question of law.

Rotunda is owned primarily by Paul Lange, Rotunda's SCRCP 30(b)(6) deposition designee, and his wife. Mr. Lange is a highly sophisticated real estate investor with a career in commercial development. Lange in no way disputed any of the terms of the Agreement or First Amendment in the Rotunda deposition. He admitted these were the only written agreements with MFM but made references to discussions with Harry Morgan of MFM. (Lange Dep. 23: 13 – 25).

When asked repeatedly for the terms of any other agreement with MFM regarding the Property, Lange never could identify one with any specificity. However, he finally admitted that MFM Properties never granted an extension to the First Amendment, at least not one that was written or with any terms like time, place or consideration. (Lange Dep. 29: 8-12).

Lange testified during his deposition that MFM asked Rotunda, through an alleged intermediary of MFM, to present a contract for an extension to MFM. Rotunda subsequently by a proposed letter of intent dated March 11, 2021[2] with an increase in purchase price to $16,500,000

[2] This was well after the Agreement and First Amendment had been declared irrevocably terminated by MFM on January 12, 2021 as noted *supra*.

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sought *reinstatement* of the Agreement and First Amendment, but that MFM never accepted those terms. Plaintiffs' response was this lawsuit. (Lange Dep. 82:14-25; 83:14-25).

Lange also admitted that notwithstanding Rotunda's assertion that it was ready, willing and able to perform the Agreement and First Amendment, Rotunda never paid the Additional Earnest Money, and has not to this date. (Lange Dep. 38:14-22). Lange admitted that no one at MFM told him not to pay the Additional Earnest money; rather, Lange just *inferred* it from a conversation he alleged he had with Harry Morgan. (Lange Dep. 38: 24-25; 40:3-6; 84:15-25; 85: 1-12).

Lange never could say that he was expressly told that Rotunda would be granted another extension. For several legal reasons as delineated below, Rotunda's characterization of any discussions held with MFM do not rescue it from summary judgement.

First, the Agreement's merger clause at Section 14 bars an oral change to the Agreement[3] on these facts. Section 14 states that the Agreement is the only agreement and no modification may be made except in writing signed by both parties. The Agreement also has a non-wavier provision at Section 15(b) that states:

> No failure by either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

(Rotunda Dep., Ex 2.)

Beyond the merger clause, the parole evidence rule bars any attempt by Rotunda to change the terms of these written agreements. "When an agreement is reduced to writing, there is a strong implication the whole intention of the parties has been expressed and there is no agreement or

[3] The First Amendment did not change these terms; per Section 2 it was simply a reinstatement of the Agreement with a few changed terms. Further, the First Amendment at Section 7 also expressly ratified the Agreement's terms, including those listed above.

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intention contrary to that expressed." Lingefelt v. Forest Hills Homes, Inc., 305 S.C. 197, 201, 406 S.E.2d 394, 396 (Ct. App. 1991) (quoting Palmetto State Sav. Bank of S.C. v. Barr, 293 S.C. 252, 254, 359 S.E.2d 531, 532 (Ct. App. 1987). "The parole evidence rule is particularly applicable where the writing in question has an integration clause." U.S. Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 318, 364 S.E.2d 202, 205 (Ct. App. 1988).

The parole evidence rule does not prohibit evidence of a subsequent and independent agreement. Lingefelt, 406 S.E.2d at 396. However, any modification of written contract must satisfy all requisites of valid contract. Bishop Realty & Rentals, Inc. v. Perk, Inc., 292 S.C. 182, 355 S.E.2d 298 (Ct. App. 1987). As noted *infra*, Rotunda fails to demonstrate such elements.

For an alleged modification of the Agreement, Rotunda provides no evidence of the essential terms of a contract extension, such as price, time for performance, and Rotunda does not even claim that such essential terms of a contract were agreed to. "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms." Potomac Leasing Co. v. Otts Mkt., Inc., 292 S.C. 603, 606, 358 S.E.2d 154 (Ct. App. 1987). "Furthermore, the assent must be as to all the terms of the contract." Id. (Emphasis added.)

The formation of a contract requires offer, acceptance and consideration for all of which there must be mutual assent, or a "meeting of the minds" as to the essential terms. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891, 895 (1989). "Certain terms, such as price, time and place, are considered indispensable and must be set out with reasonable certainty." McPeters v. Yeargin Const. Co., 290 S.C. 327, 350 S.E.2d 208, 211 (Ct. App. 1986); Player, 382 S.E.2d at 895 (contract "must reasonably identify the subject matter of the contract, sufficiently indicate a contract has

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been made between the parties, and state with reasonable certainty the essential terms of the agreement.")

Thus, there can be no contract where the parties never completed their negotiations or where essential terms are lacking. As stated by the Supreme Court:

> Frequently, agreements are arrived at piecemeal with different terms and items being discussed and agreed upon separately. However, as long as the parties know there is an essential term not yet agreed on, there is no contract. The preliminary agreements on specific items are mere preliminary negotiation building up the terms of the final offer that may or may not be made.

Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 582, 762 S.E.2d 696, 703 (2014), quoting 1 Corbin on Contracts § 2.8. *See* W.E. Gilbert & Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 330 S.E.2d 307, 309 (Ct. App. 1985). *Also see,* Oeland v. Kimbrell's Furniture Co., 210 S.C. 223, 42 S.E.2d 228, 230 (1947)("[M]aterial terms of the contract cannot be left for future settlement.") Craven v. Williams, 302 F. Supp. 885, 890 (D.S.C. 1969) ("[A] contract is not made so long as both parties anticipate that something remains to be done to establish contractual relations."); and Savannah Guano Co. v. Fogle, 112 S.C. 234, 100 S.E. 59 (1919)(party cannot be held liable for only promising to make a contract and refusing later to fulfill that promise where all terms are not agreed upon.)

Even interpreting all evidence favorably for Rotunda, Rotunda offers no evidence of any price (consideration), or time for performance for an oral modification of the Agreement or First Amendment., Thus, there is no genuine issue of material fact that a subsequent modification agreement formed; at best these were only negotiations.

Finally, even if Rotunda had produced sufficient evidence to show all the terms of an agreement that somehow modified the Agreement, there is no evidence of a *written* amendment to the Agreement and First Amendment. This is fatal to Rotunda's defense. These agreements are

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for the sale of land. The South Carolina Statute of Frauds requires that any contract for an interest in land must be in writing and signed by the party against whom it is seeking to be enforced. S.C. Code Ann. § 32-3-10(4)[4]. Failure to put such a contract in writing renders it void. Id. Moreover, a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983) (Court held evidence of oral modification of the real estate contract violated the Statute of Frauds); see Player, 382 S.E.2d at 895.

"To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled." Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602, 604 (2007). "The burden of proof is on the party seeking to enforce the contract." Id. "The writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement." Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc., 367 S.C. 108, 623 S.E.2d 853, 856 (Ct. App. 2005). The writing must "'be thereafter executed with such clarity and certainty as to show that the minds of the parties had met on all material terms and with no material term left for future agreement or negotiation.'" Robert Harmon & Bore, Inc. v. Jenkins, 282 S.C. 189, 318 S.E.2d 371, 374 (Ct. App. 1984) *quoting in part* 73 Am. Jur. 2d Statute of Frauds § 341.

Rotunda purports to change the Agreement and First Amendment by changing the terms for their performance, that is, the payment of the Initial Earnest Money and Additional Earnest

[4] S.C. Code Ann. § 32-3-10(4) provides: "No action shall be brought whereby: ... (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; ... Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized."

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Money. However, Rotunda has presented no writing signed by MFM evidencing this alleged agreement. Thus, any such oral contract is void pursuant to the Statute of Frauds.

Therefore, there is no genuine issue of material fact but that Plaintiffs are entitled to summary judgment against Rotunda on Plaintiffs' First Cause of Action for Breach of Contract for Rotunda's breach of the Agreement by its failure to pay Plaintiffs the $100,000 Initial Earnest Money and for Rotunda's breach of the First Amendment by its failure to pay the Plaintiffs the $100,000 Additional Earnest Money.

Further, as part of this judgment, and as requested by Plaintiffs in the Third and Fourth Causes of Action, the Court orders and authorizes the Escrow Agent release the Initial Earnest Money to Plaintiffs upon their written demand with a copy of this filed Order, which would reduce the judgment by $100,000 upon receipt by Plaintiffs.[5] Plaintiffs are also entitled to prejudgment interest on the $200,000 is recoverable from January 12, 2021 (the final date of default by Rotunda), at the statutory rate set at S.C. Code Ann. § 34-31-20(A) of 8.75%. until the date of final judgment in this matter.

Finally, Plaintiffs as the prevailing parties in this matter are entitled to their reasonable attorney's fees and costs as provided in Section 15(g) of the Agreement, and therefore are entitled to an award their reasonable attorney's fees and costs. Plaintiffs shall within ten days of this Order file an affidavit of attorney's fees and costs and a calculation of prejudgment interest through the date of this Order, and Plaintiffs shall also file a proposed order regarding the same.

[5] Plaintiffs in their brief abandoned their remaining claims in the Complaint, the Fifth and Sixth Causes of Action, based on this grant of summary judgment.

IT IS SO ORDERED!

The Honorable Robert J. Bonds
Presiding Judge

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Beaufort Common Pleas

Case Caption: Mfm Properties Llc , plaintiff, et al VS Rotunda Land & Development Group Llc , defendant, et al

Case Number: 2021CP0700482

Type: Order/Summary Judgment

So Ordered

s/ Robert Bonds, 2770

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STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**CASE NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC,	
Plaintiffs,	
v.	**FINAL ORDER OF JUDGMENT INCLUDING AWARD OF ATTORNEY'S FEES, COSTS, AND PREJUDGMENT INTEREST**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	
Defendants.	

This matter came before the Court on Petition of the Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC, for their Attorney's Fees and Costs as directed by the Court in its Order of May 23, 2022 granting Summary Judgment to the Plaintiffs.

Plaintiffs seek a total of $39,661.25 in attorney's fees and $433.94 in costs from defendants. For the reasons stated below, I GRANT the Petition for fees and costs and prejudgment interest in the amounts stated below.

I. CONCLUSIONS OF LAW

The law in South Carolina is well-settled with respect to establishing an appropriate award of attorney's fees in a lawsuit.

> There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.

Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) "When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be

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disturbed unless an abuse of discretion is shown." Id. "When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth." Id.

II. FINDINGS OF FACT

A. ATTORNEY'S FEES AND COSTS

The Court has reviewed the Affidavit of Benjamin E. Nicholson, V, submitted in support of Plaintiff's Petition, the pleadings and the law. The Court has determined that reasonable attorney's fees are to be awarded to the plaintiffs as allowed by their contract with defendant.

The Court has the following findings of fact with respect to each of the factors enumerated in Blumberg v. Nealco, supra.

1. Nature, extent, and difficulty of the legal services rendered.

This matter involved a sophisticated commercial transaction for the potential purchase of real property for millions of dollars that failed. Analysis of a complex commercial real estate sales agreement was necessary. Sophisticated legal analysis was required to show that defendant's defenses were all legally untenable. The defendant's SCRCP Rule 30(b)(6) deponent was a difficult witness as questions had to be asked repeatedly to get a factual answer. Further, plaintiffs' counsel made a tactical decision to not go through written discovery before taking the defendant's deposition as a move to reduce potential fees and costs in this matter. This decision was proved correct when the Court granted the motion for summary judgment. The Court finds that the attorney's fees awarded are reasonable in light of the nature, extent and difficulty of legal services rendered.

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2. Time and labor devoted to the case.

As noted by the Affidavit of Benjamin E. Nicholson, V filed in support of this Petition, he worked 62.90 hours on this lawsuit and his law partner Cary Griffin worked 10.05 hours on defendant's default. Plaintiffs request full compensation for these hours worked. The Court finds that the attorney's fees awarded are reasonable in light of the time devoted by plaintiffs' legal counsel to the case.

3. Professional standing of counsel.

The extensive biographies of plaintiffs' counsel Benjamin E. Nicholson, V and Cary S. Griffin are attached Mr. Nicholson's Affidavit at Exhibit A. Mr. Nicholson has practiced litigation for over 30 years in South Carolina and Mr. Griffin has practiced real estate law for over 40 years in South Carolina. The Court finds that the attorney's fees awarded are reasonable in light of the professional standing of plaintiffs' legal counsel.

4. Contingency of compensation.

This was not a contingency case. Plaintiffs have been charged hourly rates and costs and have been paying the same. The Court finds that this factor does not apply.

5. Fee customarily charged in the locality for similar services.

Hourly rate charges to business clients over business disputes are the normal and customary methods of charging clients in this sort of dispute. The Court finds that the attorney's fees awarded are reasonable in light of the hourly rate charged, which is reasonable in Beaufort County, South Carolina.

6. Beneficial results obtained.

The Court granted summary judgment on plaintiffs' motion for summary judgement. Obviously, the Court finds that the attorney's fees awarded are reasonable in light of the Order.

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As a result of the Court's analysis of these factors, the Court finds that a reasonable attorney's fee to be awarded to plaintiffs from defendant is $39,661.25 and reasonable costs awarded to plaintiffs from defendant are $433.94.

B. PREJUDGMENT INTEREST

The Court further directed Plaintiffs in its order to present the Court with a calculation of prejudgment interest from January 12, 2021 to the date of the Order granting Summary Judgment on May 23, 2022. Two Hundred Thousand ($200,000.00) Dollars and no/cents at the South Carolina statutory rate of 8 3/4% at S.C. Code § 34-31-20(A) is $17,500 per year, or $47.95 per day. Since there are 496 days between January 12, 2021 and May 23, 2022, total prejudgment interest is Twenty-Three Thousand, Seven Hundred and Eighty ($23,780.82) Dollars and 82/00 ($47.95 x 496).

III. FINAL ORDER

Therefore, as the Court's Final Order and Judgment in this matter, the Court:

1. As stated in the Order granting Summary Judgment, the Court orders that Calloway Title & Escrow, LLC pay within ten (10) days of receipt of this filed Order the sum of One Hundred Thousand ($100,000.00) Dollars and no/cents payable to the plaintiffs;

2. Judgment of an additional One Hundred Thousand ($100,000.00) Dollars is granted to plaintiffs against defendant;

3. Prejudgment interest of $23,780.82 is awarded to plaintiffs from defendant; and

4. Attorney's fees and costs of $20,000 are awarded to plaintiffs from defendant. This is based on the factors addressed above as well as the general principles of equity. Specifically, the Plaintiff and Defendant engaged in conversations, outside of the presence of the attorneys, regarding the real estate contract in dispute. The Plaintiff and Defendant are sophisticated business

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owners and entrepreneurs who are familiar with the way a real estate transaction takes place. Both individuals participated in complicating these real estate dealings and based on this the most equitable outcome is to award the Defendant reduced attorney's fees and costs.

AND IT IS SO ORDERED!

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 CP-07-00482

MFM Properties, LLC, et al.

PLAINTIFF(S)

Rotunda Land & Development Group, LLC, et al.

DEFENDANT(S)

Submitted by: Benjamin E. Nicholson, V	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
MFM Properties, LLC **MFM Residential Properties, LLC**	**Rotunda Land & Development Group, LLC**	**$163,876.01**
MFM Properties, LLC **MFM Residential Properties, LLC**	**Order to disburse to Calloway Title & Escrow, LLC**	**$100,000.00**

ELECTRONICALLY FILED - 2022 Jul 29 2:48 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

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

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

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Beaufort Common Pleas

Case Caption: Mfm Properties Llc , plaintiff, et al VS Rotunda Land & Development Group Llc , defendant, et al

Case Number: 2021CP0700482

Type: Order/Attorney Fees

So Ordered

s/ Robert Bonds, 2770

ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**CASE NO.: 2021-CP-07-_____**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	
Plaintiffs,	
v.	**COMPLAINT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	
Defendants.	

COMES NOW MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC, Plaintiffs, by and through its undersigned counsel, complaining of the Defendants, ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC, as follows:

PARTIES

1. MFM Properties, LLC ("MFM Properties") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

2. MFM Residential Properties, LLC ("MFM Residential") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

3. MFM Properties and MFM Residential are collectively referred to herein as "Plaintiffs."

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4. Upon information and belief, Defendant Rotunda Land & Development Group, LLC ("Rotunda"), is a limited liability company organized and existing under the laws of the State of Georgia and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein.

5. Upon information and belief, Defendant Calloway Title & Escrow, LLC ("Escrow Agent"), is a limited liability company organized and existing under the laws of the one of the States and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein. Escrow Agent is joined in this matter solely for the purpose of receiving guidance from the court on disbursement of funds held by Escrow Agent arising out the disputes below described.

JURISDICTION AND VENUE

6. Jurisdiction and venue in this Court are proper.

7. This is a lawsuit concerning a breach of a contract to sell real property located in Jasper County, South Carolina. Most verbal and written contacts with respect to the formation of the contract at issue occurred with Plaintiffs in Beaufort County, South Carolina.

FACTS

8. Plaintiffs and Rotunda entered into a Purchase and Sale Agreement effective August 19, 2019 ("Agreement") for the sale of certain real property located in Hardeeville, Jasper County, South Carolina ("Property.")

9. In partial consideration of Plaintiffs' execution of the Agreement, Rotunda agreed to deposit One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent. This sum is the "Initial Earnest Money."

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10. Per the term of the Agreement, should Rotunda fail to comply with certain terms of the Agreement, one of Plaintiff's remedies was that the Initial Earnest Money would be forfeited to Plaintiffs.

11. Rotunda by letter dated February 12, 2020 exercised an option to extend an Initial Inspection Period pursuant to the Agreement and tendered an extension fee to the Escrow Agent on February 13, 2020 as provided for in the Agreement.

12. By letter of April 17, 2020, Rotunda terminated the Agreement in accordance with Section 3(c) of the Agreement.

13. This termination of Rotunda entitled Plaintiffs to collect the Initial Earnest Money from escrow.

14. However, by a Reinstatement of and First Amendment to the Agreement dated July 8, 2020 ("First Amendment"), Plaintiffs and Rotunda agreed to reinstate, amend and modify the Agreement.

15. Among the terms of the First Amendment was that Rotunda tender a second One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent by November 30, 2020. This sum is the "Additional Earnest Money."

16. The First Amendment also provided that the first extension fee be disbursed by the Escrow Agent to Plaintiffs, which it did.

17. The First Amendment, among other things, required that the Additional Earnest Money be deposited by Rotunda with the Escrow Agent by November 30, 2020. It also required an additional extension fee to be paid by Rotunda.

18. Rotunda failed to deposit either the Additional Earnest Money or the additional extension fee with the Escrow Agent by November 30, 2020 as required by the First Amendment.

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19. Rotunda failed to close the transaction for the sale of the Property as contemplated by the Agreement and First Amendment.

20. Plaintiffs performed all conditions precedent under the Agreement and First Amendment.

21. Plaintiffs were ready, willing and able to perform under the Agreement and First Amendment but Rotunda failed to perform.

22. Plaintiffs have demanded that Rotunda agree for Escrow Agent to release the Initial Earnest Money to Plaintiffs but Rotunda has not done so.

23. Plaintiffs have demanded that Rotunda pay to Plaintiffs the Additional Earnest Money, which Rotunda, in breach of the First Amendment, failed to pay to the Escrow Agent.

24. Plaintiffs have demanded that Escrow Agent release the Initial Earnest Money to Plaintiffs. Upon information and belief, because Rotunda has not consented to such release of funds, Escrow Agent is holding the funds pending a resolution of the disputes described herein.

25. By this lawsuit, Plaintiffs seek a release by Escrow Agent of the Initial Escrow Money to Plaintiffs and damages from Rotunda in an amount equal to the amount of the Additional Earnest Money, which Rotunda was supposed to deposit with Escrow Agent but failed to do.

26. Further, through the Agreement and First Amendment, Rotunda agreed to return certain materials to Plaintiffs in the event of a termination of the Agreement.

27. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

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28. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

29. The allegations set forth hereinabove are incorporated herein and made a part hereof.

30. Rotunda agreed that in the event it failed to perform under the Agreement, it would forfeit the Initial Earnest Money and direct Escrow Agent to pay the Initial Earnest Money to Plaintiffs.

31. Rotunda failed to perform the Agreement, thereby breaching such Agreement, for which Plaintiffs became entitled to payment of the Initial Earnest Money from Escrow Agent.

32. In breach of its contract with Plaintiffs, Rotunda failed to permit Escrow Agent to release the Initial Earnest Money to Plaintiffs.

33. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of One Hundred Thousand ($100,000.00) Dollars and no/cents, consequential damages, incidental damages, attorney's fees, and prejudgment interest.

34. Further, Rotunda breached the First Amendment by failing to tender the One Hundred Thousand ($100,000.00) Dollars and no/cents of Additional Earnest Money to the Escrow Agent. Rotunda also breached the Agreement and First Amendment by failing to perform under the Agreement and close the sale of the Property.

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35. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of an additional One Hundred Thousand ($100,000.00) Dollars and no/cents, for a total of Two Hundred Thousand ($200,000.00) Dollars and no/cents, plus consequential damages, incidental damages, attorney's fees, and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

36. The allegations set forth hereinabove are incorporated herein and made a part hereof.

37. This cause of action is brought pursuant to the South Carolina Declaratory Judgment Act.

38. Plaintiffs seek a declaration from the Court that the Escrow Agent should pay the Initial Earnest Money to Plaintiffs without any recourse to Rotunda.

FOR A THIRD CAUSE OF ACTION
(Mandatory Injunction-Initial Escrow Money)

39. The allegations set forth hereinabove are incorporated herein and made a part hereof.

40. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

41. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

42. The Agreement permits the Plaintiffs to seek a mandatory injunction to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

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43. Plaintiffs request a mandatory injunction that Escrow Agent release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

FOR A FOURTH CAUSE OF ACTION
(Specific Performance-Initial Escrow Money)

44. The allegations set forth hereinabove are incorporated herein and made a part hereof.

45. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

46. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

47. The Agreement permits the Plaintiffs to seek a specific performance to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

48. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way the Escrow Agent and Rotunda can be forced to comply with the Agreement is a mandatory injunction ordered said delivery of the Initial Earnest Money to Plaintiffs.

49. Plaintiffs request an Order that (a) the Escrow Agent specifically perform the Escrow Agreement and (b) Rotunda specifically perform the Agreement and release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

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FOR A FIFTH CAUSE OF ACTION
(Mandatory Injunction-Return of Plaintiffs' Documents)

50. The allegations set forth hereinabove are incorporated herein and made a part hereof.

51. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

52. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

53. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

54. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

55. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

56. Plaintiffs seek a mandatory injunction compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

FOR A SIXTH CAUSE OF ACTION
(Specific Performance-Return of Plaintiffs' Documents)

57. The allegations set forth hereinabove are incorporated herein and made a part hereof.

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58. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

59. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

60. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

61. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

62. In the absence of an order of specific performance that Rotunda perform the Agreement, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

63. Plaintiffs seek an order compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

WHEREFORE, the Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC, pray for the following relief:

a) An award of actual, consequential, and incidental damages against the Defendant Rotunda, including but not limited to prejudgment interest and attorneys' fees;

b) A declaratory judgment that Plaintiffs are entitled to the Initial Escrow Money held by Escrow Agent;

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c) A mandatory injunction that Escrow Agent pay the Initial Earnest Money to Plaintiffs;

d) An Order that Escrow Agent and Rotunda specifically perform the obligations of their agreements and deliver the Initial Earnest Money to Plaintiffs;

e) A mandatory injunction commanding Rotunda to return to Plaintiffs the Purchaser Due Diligence Materials;

f) An Order that Rotunda specifically perform the obligations of the Agreement and First Amendment and return to Plaintiffs the Purchaser Due Diligence Materials; and

g) Any other such relief as the Court may deem just.

Respectfully submitted,

Dated: March 16, 2021

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
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Attorneys for Plaintiffs,
MFM Properties, LLC and
MFM Residential Properties, LLC

ELECTRONICALLY FILED - 2021 May 28 1:35 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	**CIVIL ACTION NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC	
Plaintiffs,	**ANSWER TO COMPLAINT**
vs.	
ROTUNDA LAND & DEVELOPMENT GROUP, LLC and CALLOWAY TITLE & ESCROW, LLC	
Defendants.	

The Defendant, Rotunda Land & Development Group, LLC, by way of answer to the Complaint, would allege that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified, or explained is denied.
2. Upon information and belief, The Defendant admits the allegations in Paragraphs 1 and 2 of the Complaint that the MFM Properties, LLC and MFM Residential Properties, LLC are Georgia limited liability companies. Neither Plaintiffs are domesticated or authorized to do business in South Carolina.
3. Paragraph 3 of the Complaint needs no response.
4. Defendant admits the allegations of Paragraphs 4, 5, 6, 7, and 8 of the Complaint.
5. As to the allegations of Paragraphs 9 and 10 of the Complaint, the terms of the Contract speak for themselves.

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6. Defendant admits the allegations of Paragraphs 11, 12, and 13 of the Complaint.
7. As to the allegations of Paragraphs 14, 15, 16, and 17, the terms of the First Amendment speak for themselves.
8. Defendant admits the allegations of Paragraphs 18 and 19 of the Complaint but is ready willing and able to do so. In fact, Defendant has presented additional documentation to increase the purchase price, post all appropriate earnest money, and close.
9. Upon information and belief, Defendant denies the allegations of Paragraph 20 and 21 of the Complaint.
10. As to the allegations of Paragraph 23 of the Complaint, Defendant would admit only so much thereof as alleges that Defendant had not paid the Escrow Agent but is ready willing and able to do so.
11. As to the allegations of Paragraph 24 of the Complaint, Defendant is without sufficient information of belief as to the Escrow Agent's position and would deny same.
12. As to the allegations of Paragraph 25, Defendant would state that the Compliant speaks for itself and Defendant would crave reference to the defenses raised herein.
13. As top the allegations of Paragraphs 26 and 27 of the Complaint, Defendant would allege the terms of the referenced agreements speak for themselves.
14. Defendant admits it has not turned over any material to Plaintiffs as is alleged in Paragraph 28 of the Complaint and would crave reference to the4 defenses raised herein.
15. The allegations of Paragraph 29 of the Complaint need no further response.
16. As to the allegations of Paragraphs 30-35 of the Complaint, Defendant would allege it is ready, willing and able to close.
17. The allegations of Paragraph 36 of the Complaint need no further response.

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18. The allegation of Paragraph 37 is a conclusion of law and no response is necessary.

19. Defendant denies the allegation of Paragraph 38 of the complaint.

20. The allegations of Paragraph 39 of the Complaint need no further response.

21. The Defendant deny the allegations of Paragraphs 40-43 of the Complaint.

22. The allegations of Paragraph 44 of the Complaint need no further response.

23. The Defendant deny the allegations of Paragraphs 45-49 of the Complaint.

24. The allegations of Paragraph 50 of the Complaint need no further response.

25. The Defendant deny the allegations of Paragraphs 41-56 of the Complaint and would allege that there is a valid question as to the extent and content of the Due Diligence Materials.

26. The allegations of Paragraph 57 of the Complaint need no further response.

27. The terms of the agreements referred to in Paragraph 58 of the Complaint speak for themselves.

28. As to the allegations of Paragraphs 60-63, Defendant believes there is a dispute as to the contents of the Due diligence Materials and Defendant is ready, willing and able to close.

FOR A SECOND DEFENSE

29. Each and every allegation of the First Defense is realleged as fully as if repeated verbatim herein.

30. The Plaintiffs are not authorized to do business in the State of South Carolina.

31. This case should be dismissed since the Plaintiffs are not authorized to do business in the State of South Carolina.

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FOR A THIRD DEFENSE

32. Each and every allegation of the First and Second Defenses are realleged as fully as if repeated verbatim herein.

33. The Defendants are ready, willing, and able to close.

34. Plaintiffs are aware the Defendant is ready, willing, and able to close.

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger
Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

ELECTRONICALLY FILED - 2021 May 28 1:35 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

CERTIFICATE OF SERVICE

This is to certify that I, Terry A. Finger, attorney with the law office of Finger, Melnick, Brooks &LaBruce, P.C., have this day served a true and correct copy of the within and foregoing ANSWER TO COMPLAINT upon counsel of record by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows:

Benjamin E. Nicholson, V
Burr & Forman, LLP
PO Box 11390
Columbia, SC 29211

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger
Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**CASE NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	
Plaintiffs,	
v.	**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	
Defendants.	

COMES NOW PLAINTIFFS MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC (collectively, "MFM" or "Plaintiffs"), by and through their undersigned counsel, and moves the Court for Summary Judgment under Rule 56, SCRCP, against Defendants, ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC (collectively "Defendants").

Specifically, MFM seeks summary judgment on its First, Second, Third, and Fourth Causes of Action in the Complaint on the basis that there is no genuine issue of material fact but that Defendant Rotunda Land & Development Group, LLC breached its agreement with MFM by failing to pay MFM the Initial Earnest Money and the Additional Earnest Money as defined in the Complaint, by failing to deposit the Additional Earnest Money with defendant Calloway Title & Escrow, LLC, and by failing to direct defendant Calloway Title & Escrow, LLC to pay the Initial Earnest Money to MFM.

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

MFM seeks all relief requested in these causes of action, which include an Order that defendant Calloway Title & Escrow, LLC pay the $100,000 in Initial Earnest Money held in escrow directly to MFM.

In support of this Motion, MFM relies on this Motion, the Rule 30(b)(6) Deposition of Defendant Rotunda Land & Development Group, LLC filed herewith, and any other documents or pleadings filed in support of this Motion, see Exhibit A.

WHEREFORE, MFM prays that the Court grant this Motion for Summary Judgment, and award to it all relief sought against the defendants in the First, Second, Third, and Fourth Causes of Action in the Complaint, including all actual damages, prejudgment interest, attorney's fees and costs, and equitable relief.

Respectfully submitted,

Dated: December 8, 2021

BURR & FORMAN, LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
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Fax. (803) 753-3278

Attorneys for Plaintiffs,
MFM Properties, LLC and
MFM Residential Properties, LLC

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF BEAUFORT	**CASE NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	
Plaintiffs,	
v.	**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	
Defendants.	

COMES NOW PLAINTIFFS MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC (collectively, "MFM" or "Plaintiffs"), by and through their undersigned counsel, and moves the Court for Summary Judgment under Rule 56, SCRCP, against Defendants, ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC (collectively "Defendants").

Specifically, MFM seeks summary judgment on its First, Second, Third, and Fourth Causes of Action in the Complaint on the basis that there is no genuine issue of material fact but that Defendant Rotunda Land & Development Group, LLC breached its agreement with MFM by failing to pay MFM the Initial Earnest Money and the Additional Earnest Money as defined in the Complaint, by failing to deposit the Additional Earnest Money with defendant Calloway Title & Escrow, LLC, and by failing to direct defendant Calloway Title & Escrow, LLC to pay the Initial Earnest Money to MFM.

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

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In support of this Motion, MFM relies on this Motion, the Rule 30(b)(6) Deposition of Defendant Rotunda Land & Development Group, LLC filed herewith, and any other documents or pleadings filed in support of this Motion, see Exhibit A.

WHEREFORE, MFM prays that the Court grant this Motion for Summary Judgment, and award to it all relief sought against the defendants in the First, Second, Third, and Fourth Causes of Action in the Complaint, including all actual damages, prejudgment interest, attorney's fees and costs, and equitable relief.

Respectfully submitted,

Dated: December 8, 2021

BURR & FORMAN, LLP

By *s/Benjamin E. Nicholson, V*

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Fax. (803) 753-3278

Attorneys for Plaintiffs,
MFM Properties, LLC and
MFM Residential Properties, LLC

EXHIBIT A

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

MFM PROPERTIES, LLC, and MFM RESIDENTIAL PROPERTIES, LLC,

Plaintiffs,

vs. CASE NO. 2021-CP-00482

ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,

Defendants.

30(b)(6)
DEPOSITION OF: PAUL ANTHONY LANGE

DATE: November 23, 2021

TIME: 11:06 AM

LOCATION: Law Offices of Burr & Forman, LLP
23-B Shelter Cove Lane
Suite 400
Hilton Head Island, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: KELLY B. BAEKELANDT, Court Reporter

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFFS
MFM PROPERTIES, LLC, and MFM
RESIDENTIAL PROPERTIES, LLC:

BURR & FORMAN, LLP
BY: BENJAMIN "NED" E. NICHOLSON, V
1221 Main Street
Suite 1800
Columbia, SC 29201
(803) 799-9800
Nnicholson@burr.com

ATTORNEYS FOR DEFENDANT
ROTUNDA LAND & DEVELOPMENT GROUP, LLC:

FINGER, MELNICK, BROOKS & LaBRUCE, PA
BY: TERRY A. FINGER
35 Hospital Center Commons
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(843) 681-7000
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(INDEX AT REAR OF TRANSCRIPT)

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ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

(PLF. EXHIBIT 1, Plaintiffs' Second Amended Notice of Rule 30(b)(6) Deposition of Defendant Rotunda Land & Development Group, LLC, Bates-stamped MFM_00001 through MFM_00004, was marked for identification.)

PAUL ANTHONY LANGE

being first duly sworn, testified as follows:

EXAMINATION

BY MR. NICHOLSON:

Q. All right. Mr. Lange, could you state your full name for the record?

A. Paul Anthony Lange.

Q. And what is your address where you live, sir?

A. 105 -- physical home address?

Q. Yes.

A. 105 East Chambord, Atlanta 30305 [sic].

Q. Okay. And do you have a residence in Hilton Head as well, a second home?

A. Ford Plantation.

Q. Okay.

A. Yeah.

Q. All right, sir. And what is your date of birth?

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A. 12/15/69.

Q. All right. And are you married?

A. Yes.

Q. And what's your wife's name?

A. Karen.

Q. How long have y'all been married? You're under oath, sir.

A. Twenty -- '97, so 24 years.

Q. All right, sir. Any kids?

A. Only -- only puppy dogs. Four-legged furries [sic], so --

Q. Okay.

A. -- no two-leggers [sic].

Q. Gotcha. Do you have any -- well, I don't think this is a jury trial --

MR. FINGER: Yeah.

BY MR. NICHOLSON:

Q. -- so I can pass with all that stuff.

MR. FINGER: Yeah. Right.

BY MR. NICHOLSON:

Q. Tell me about your educational background starting with college.

A. I -- I went to the University of Notre Dame and -- and played baseball there and transferred and -- to University of Virginia and

graduated from UVA and played baseball at both --

Q. Okay.

A. -- for whatever that's worth. Probably irrelevant, but anyway...

Q. No, that's always good to know. Did -- do you have any postgraduate education?

A. I don't.

Q. All right. How about -- I'll tell you what, I'm going to start with some other stuff I need to start with here is have you ever been deposed before?

A. I -- I -- I think I was -- I -- I'm not sure if it was an actual deposition, but I'm -- I'm not super familiar with it candidly --

Q. Okay.

A. -- but it's been a long while before -- since doing something so --

Q. Well, let me get --

A. -- bear with me if you would.

Q. Absolutely, sir. Let me go over a few South Carolina ground rules --

A. Okay.

Q. -- just -- and now you are under oath of course like in court; you understand that?

A. Right.

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Q. But you're not locked in here as a prisoner. If you need to go to the restroom or anything like that, please do.

A. Okay.

Q. However, if you have -- under our rules I have to tell you that if you have conversations with your legal counsel off the record about the substance of matters of this deposition then I am able to ask you about those conversations.

A. Okay. Thank you.

Q. All right, sir. Now, if at any time you don't understand a question I ask or it's unclear, please tell me --

A. Okay.

Q. -- otherwise I will assume you understood it and answered it to the best of your ability.

A. Okay.

Q. Do you understand that, sir?

A. Yes.

Q. All right. Also, this is very common, but people like to do head nods and that, but head nods are fine but you also have to answer out loud affirmatively like you did just now, yes or no --

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A. Verbally.

Q. -- or something like that so the court reporter can pick that up because we don't want to put her in the position of having to -- if someone kind of does their head like sideways --

A. Yeah.

Q. -- what does that mean.

A. Got it.

Q. Understand? All right, sir.

A. Okay. Cool.

Q. All right. Can you --

MR. FINGER: Also usual stipulations?

MR. NICHOLSON: Usual stipulations.

MR. FINGER: Thank you.

MR. NICHOLSON: All objections are reserved, yes.

BY MR. NICHOLSON:

Q. All right, sir. Can you give me your employment background once you got out of UVA?

A. I went and worked at Arthur Andersen in the real estate consulting group in Washington, DC. And then I worked at Carter & Associates in Atlanta. On to Insignia/ESG. And then we had a high-end luxury homebuilding operation called Buckhead Homes. And then I've -- I've -- now

currently have multiple equity funds and -- that we manage large substantial landowners for the past nine or ten years or so. Been doing that along with vertical development on our projects.

Q. All right, sir. Now, you refer to we and our. Can you tell me who -- who we and our are?

A. Well, my -- my company, me and my company. Karen is also involved in the -- in the company, my wife.

Q. Sure.

A. She -- she and I were in business school together at the University of Virginia and so she's involved. But when I say we, I mean us --

Q. Yes, sir.

A. -- and Rotunda, our company.

Q. Yes, sir. Okay. So Rotunda -- the defendant in this matter is the company you're talking about, Rotunda? Or the --

A. I --

Q. I'll tell you what, let's back up --

A. I don't know that answer technically.

Q. All right. Let's -- let's back up for a minute. Let's back up for a minute. I -- so

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you -- you have -- the company that you operate in Atlanta that you and your wife have, it's called Rotunda...

A. Land & Development.

Q. Land & Development, okay.

A. Group, yeah.

Q. Land & Development Group, okay. And -- and that's a Georgia corporation?

A. Correct.

Q. Okay. And how long have you guys run that?

A. I -- I need to go back. We -- we -- we -- we did all that with -- pursuant to Buckhead Homes, but -- but when we formed Rotunda -- because we've had land funds and the reason we have land funds -- call it seven or eight years --

Q. Okay.

A. -- something like that.

Q. That's fine. I don't need an exact date --

A. Yeah, I'm sorry.

Q. -- I'm just trying to get a feel for --

A. I'm sorry to be overly --

Q. Sure. Sure. And was Buckhead Homes a

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development company for residence --

A. High-end luxury homes in town, yeah.

Q. All right. So were you technically a homebuilder?

A. Correct.

Q. All right.

A. In that -- in that part of the operation, yeah. I mean, separate of the investment stuff in -- as with any normal situation, we've got LLCs and different stuff we do things through and -- and projects --

Q. Yes, sir.

A. -- but yeah. Yes.

Q. Okay. Do you have any contractor's license or anything like that?

A. We had -- I -- I do not personally. I think our employees -- we -- we've got a number of employees. So no.

Q. No, I was just asking about you personally. Do you have any --

A. No, not personally. No.

Q. Do you have any licenses in real estate or anything like that?

A. No, I had -- we had -- I had a salesperson license that I put on inactive a while

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back.

Q. Sure. Okay. All right, sir. So you kind of -- kind of -- I take it you were the -- you are the co-owner of Rotunda with your --

A. Correct.

Q. -- wife?

A. Yeah.

Q. I'm just curious, where'd the name come from?

A. The -- it's -- it's interesting, the -- the famous building on UVA's campus is called the Rotunda.

Q. Oh.

A. And -- and ironically the inside of the golden dome is called the Rotunda at Notre Dame, but it -- it came mainly from the main deal and -- and at -- so it's funny because a lot of people wonder about that and they think Rotund [sic] or something so -- anyway...

Q. Yeah. So are you and your wife the only owners of Rotunda --

A. Yes.

Q. -- Land & Development?

A. Yes.

Q. Okay. And what -- what are your

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respective positions in the entity?

A. I'm the CEO and she is the COO and CFO.

Q. Got it. And what is your percentage of ownership as compared to her percentage of ownership?

A. You know, technically everything is owned through various partnerships, but I -- 50/50.

Q. Ultimately you --

A. I'd be in deep shit if I didn't say it was anything else. It's true.

Q. I understand.

A. Right down the middle, baby. Fair is fair.

Q. I understand.

MR. FINGER: You get two points, you remembered how many years you've been married and -- and -- and you've said your wife owns half.

THE WITNESS: I had to think too much. She'd scold my ass right now if she heard that.

BY MR. NICHOLSON:

Q. Okay. All right. So -- so I take

it -- and -- and we are talking about Rotunda Land Development Group [sic], LLC -- Land & Development Group, LLC. So you guys do the actual development work for property and -- is that correct?

A. We -- we do. I mean, you know, technically as -- like we just bought a large project in Atlanta as an example and we bought that with limited partners in a partnership. So Rotunda is doing the work, but it's -- it's really each individual project has its own entities, SPEs, and all that stuff.

Q. Yeah, that's typical in the real estate world. So you're just kind of -- you're the development company for a fee or something like that?

A. Well, we -- we're -- we're full-blown partners --

Q. Oh.

A. -- so Rotunda quite frankly is -- is more -- it's really more the moniker quite frankly. But, yeah, short -- short version is we, Rotunda, are typically the general partner of deals and we do them under various SPEs.

Q. Yes, sir.

A. Like we would close this transaction

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under, you know, whatever it -- it would end up -- Hardeeville --

Q. Right.

A. -- you know, Development Partners, LLC, or whatever.

Q. So Rotunda would sign the contract of sale but it would be assigned to another entity formed specifically for the purpose of the acquisition of the property that occurred?

A. Generally correct. Yeah.

Q. Yep. Okay. Got it. All right, sir. Up here if -- if you look there, there's -- that'll be Exhibit Number 1. That's the -- our Rule 30(b)(6) deposition notice.

A. Okay.

Q. And, sir, you if you look at that, there's an attachment, an Exhibit A; do you see that?

A. Yes.

Q. All right, sir. Do you understand that as -- and -- and I take it you are the designee for Rotunda Land & Development Group, LLC, which is a defendant in this case, for this 30(b)(6) deposition of the defendant?

A. Yes.

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Q. Okay. And as that designee, do you understand that you are -- you are supposed to be able to testify about all the issues listed in Exhibit A?

A. Yes.

Q. Okay. Thank you, sir. Okay. And you understand that you are speaking for the company, not just your -- not just yourself here, correct?

A. To the best of my knowledge, correct.

Q. That's a question you have to ask if you like have a witness from Ford Motor Company or something. It's not as important when you're the owner.

A. Got it.

Q. All right, sir. Now, did you review any documents in preparation for this deposition?

A. I -- I -- I reviewed some of them. Frankly, I -- I think I hopefully have a decent handle on things.

Q. Yes, sir. And about how long did you prepare for this deposition?

A. You know --

Q. Just generally.

A. -- yeah, a couple days -- I mean, really, frankly, a handful of hours. With

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everything going on, it hadn't been as much as I --

Q. Yeah. Yes, sir.

A. -- probably would have liked.

Q. All right, sir. And, of course, we are here today, you know, as you -- I represent, of course, MFM Properties, LLC, and MFM Residential Properties, LLC --

A. Okay.

Q. -- in this lawsuit against Rotunda. Whenever I talk about the property, do you understand that I'm referring to the property that Rotunda had the sales contract to buy from MFM Properties?

A. Yes.

Q. Okay. Thank you. How did Rotunda become interested in the property?

A. We -- we are -- we have purchased substantial amounts of land in -- in multiple states and -- and we are -- so we're active landowners and purchasers.

Q. Uh-huh.

A. And this was brought to me -- I don't know the exact date, but this was brought to me by a local guy that does a lot of birddogging for us

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and -- and -- as a property that would fit our -- we like to buy larger tracts oftentimes and command the master plan and -- and develop, you know, vertically some of our stuff. But, anyway, through -- through some local folks here.

Q. Okay. Did you know Harry Morgan or John Morgan before you got involved in this deal?

A. I may -- Harry and I are both at Ford, which makes all this quite frankly kind of incredulous that we're here, but I may have met Harry but I did not -- nothing meaningful.

Q. Okay. And do you recall the last time you may have had any direct personal communication with Harry Morgan or John Morgan?

A. It was -- Harry I think was the last one. It was -- it was early -- it was either December or January or -- earlier this year or December of last year.

Q. Okay, sir. And do you remember what the subject matter of that conversation was?

A. Generally, we -- we discussed -- which, again, was why I'm surprised we're here, you know, I communicated to him, you know, we were basically looking to finalize whatever we needed to do as it relates to the timing to wrap up the

development agreement. And we're talking about a few months in -- in order to do so. I was trying to get information. It was COVID and all sorts of other things going on as far as kind of what we needed to wrap up the development agreement and close. So we had been -- maintained interest and enthusiasm for the transaction the entire time. We've closed on many other deals obviously that I think they're all aware of. But it was -- it was regarding, you know, basically, you know, putting a final few-month extension in place in order to close the property.

Q. Yes, sir. And she's going to give you a marked exhibit, I have a copy for your attorney, so this one is for you, this one is for Terry.

(PLF. EXHIBIT 2, Purchase and Sale Agreement Bates-stamped MFM_00005 through MFM_00023, was marked for identification.)

MR. FINGER: Thank you.

THE WITNESS: This is for me?

MR. NICHOLSON: Yes.

MR. FINGER: This is Exhibit 2.

BY MR. NICHOLSON:

Q. If you could take a look at Exhibit 2 and tell me -- you referred to a development

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agreement, but is this what you're referring to in Exhibit 2, it's called purchase and sale agreement?

A. This whole thing is Exhibit 2?

Q. Yes, sir.

A. No. When I say development agreement, I -- I meant the time needed to wrap up the development agreement with the Town of Hardeeville.

Q. Oh, okay.

A. So it would be extending this for another few months to wrap up what we needed to --

Q. All right.

A. -- which I thought we were very much aligned to do. (Indicating.)

Q. When you say this, you're referring to Exhibit 2?

A. Correct.

Q. All right, sir. So, forgive me, I went -- so were there any other agreements between Rotunda and any of the MFM entities other than this purchase and sale agreement, Exhibit 2?

A. The agreement -- I mean, I felt, you know, we were very much working down the path of extending -- I think there was an amendment to

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this if I'm not mistaken, but extending this in order to, again -- as with virtually any other transaction, you know, you might need a month or two to wrap some things up. We were working through that, so it would be extending -- extending this in order to wrap up and close.

Q. Yes, sir. All right. So is Exhibit Number 2 the purchase agreement -- purchase and sale agreement between Rotunda and the MFM Properties, LLC, and MFM Residential Properties, LLC, for the sale of the property? Could you take a look and just confirm that with me?

A. I think, if I'm not mistaken, this is the original one and I think there was an amendment to this.

Q. Yes, sir. And I --

A. Okay.

Q. -- that's next.

A. Okay. Got it.

Q. All right. And so -- and, of course, is that -- would that be your signature on -- it's Bates-stamped MFM_00019 on the bottom right. Is that your signature under purchaser?

A. Yes.

Q. All right, sir. And you would say

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you're a sophisticated buyer and seller of real estate at this point in your career, correct?

A. I think -- think so.

Q. All right, sir. And I noticed that the law firm of Seyfarth Shaw, LLP, was representing you in this transaction; is that right?

A. Uh-huh.

Q. And specifically Steve Kennedy and Chris Troutman were the attorneys representing Rotunda -- when I say -- Rotunda in this transaction; is that correct?

A. Yeah.

Q. All right. And did you receive communications -- once the deal started, did you receive communications mostly through those attorneys when MFM's attorney Cary Griffin sent, you know, back and forth?

A. Yeah. Generally, yeah.

Q. Generally. All right.

MR. NICHOLSON: Exhibit 2 -- 3, excuse me.

(PLF. EXHIBIT 3, Reinstatement of and First Amendment to Purchase and Sale Agreement Bates-stamped MFM_00024 through MFM_00027, was

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marked for identification.)

BY MR. NICHOLSON:

Q. All right, sir. You've been handed Exhibit 3. Is this a true and accurate copy of the reinstatement of and first amendment to purchase and sale agreement?

A. I believe so.

Q. All right. And you confirmed that it is and confirmed that that's your signature on the last page of this Exhibit 3?

A. Yes.

Q. All right. And this is a reinstatement and first amendment to the purchase and sale agreement you just identified as Exhibit 2; is that correct?

A. Correct.

Q. All right. And other than these two agreements, were there any other agreements that you -- that Rotunda or you had with MFM Properties?

A. Other than the -- other than the verbal discussions and -- and the things we went over to -- and the things that -- the additional offers we submitted in order to -- to add onto this and wrap this up.

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Q. But in terms of agreements -- you understand when I say agreement I mean Rotunda offers and MFM accepts or vice versa, correct?

A. Well, I -- I -- I understand that, you know, from a -- you know, this -- this paperwork, yes, although I -- I feel like, you know, where -- where we were in the transaction and what we were preparing to do and everybody knew we were prepared to close, I -- I think that's -- I hear you, but I feel like that's a little bit -- but this is the purchase and sale agreement and this is the amendment.

Q. All right, sir. But there were no other agreements where one side promised the other something other than what was in writing; is that correct?

A. Well, I -- I do believe that our conversations, you know, where clearly I had every confidence we were going to, you know, work through an extension and wrap up as -- as, you know, as again you do in any other normal transaction. So as far as, you know, the agreement in writing, you know, that -- that's -- you know, yes, these -- these are the two amendments. But I certainly, you know, had every

confidence that we were going to, you know, finalize. And, again, to provide context, in a normal scenario -- and I think, you know, all of this was made very clear and I think everyone was well aware all along, in a normal scenario someone would want to wrap up all, you know, engineering and -- and wetlands mitigation and everything else. We were just looking to wrap up the development agreement, COVID was brutal, couldn't get answers, trying to -- you know, and they knew we were closing other transactions. So in good faith, absolutely I felt like we were going to say -- and they may say, hey, we want a little more earnest money but whatever, but I thought -- I thought naturally we were going to, you know, wrap that up, you know, the first part of the year and be done.

Q. All right. Any of those things you're talking about that you were discussing, would -- would those have ended up having a written agreement?

A. Yes.

Q. So any -- any of these -- these -- these discussions with MFM Properties about another extension or -- or that sort of thing

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would have involved ultimately Rotunda and MFM executing another document agreement to formalize it; is that correct?

A. We -- we would have -- we would have documented that. Although I -- I have to say that in good faith I've -- I've never experienced a situation where, you know, you don't -- you don't naturally work through the balance of this. You know, our ability to close was extremely well known and the challenges we were having were extremely well known as it relates to, you know, COVID and -- and, you know, one of the service providers had a child get COVID, he was literally offline for a couple of months, so it was -- I believe that's a very meaningful part of all of this.

Q. All right, sir. Was there an agreement, verbal agreement, between Rotunda and MFM Properties that there would be another extension after the ones in Exhibits 2 and 3 ran out?

A. What -- what my understanding was is that they wanted to sell the property, they -- they knew we were the correct candidate, and I was told to put together -- find out what the time

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frame is -- and I -- I can't swear it, but I think that was even communicated between the attorneys, put together the time frame and then let's wrap that up. So I -- I think that -- certainly that -- from that perspective, the agreement was in place. Did we finalize -- one of the things I was asking of them is do you want a little more earnest money, what do you want in order to wrap this up like I've done in dozens and dozens of other transactions and I couldn't get that answer so we proactively, you know, tried to get the information, you know, with, you know, various people as it relates to how long it would take to wrap up the development agreement and -- and we -- you know, and put forth an offer actually offering more money again in the interest of trying to work in good faith and get something done.

Q. All right, sir. And that offer that you're talking about was not accepted by MFM Properties, was it?

A. Well, I mean -- I mean, that -- that's -- that's -- correct, yeah. I mean, I guess they -- I mean, I -- again, I -- I think a huge part of this is -- is -- you know, it's kind of incredulous that we haven't just sat down and

had a discussion and wrapped it up and closed. I -- I -- everyone knows our capability of closing. We're -- we've got multibillion dollar capital sources, closing on other transactions, so I -- I just -- frankly I'm still kind of incredulous as to how we're here, just candidly.

Q. All right. But -- well, you understand from -- Mr. Finger and I have a little different roles here than closing deals so I'm just -- and I'm just trying to get for sure here. You've talked about -- I'm trying to confirm that there was no verbal agreement between Rotunda and MFM Properties regarding this entire -- regarding the property after Exhibits 2 and 3 expired.

A. Oh, I -- I think I -- I mean, my understanding -- again, my understanding was, you know -- you know, we're -- we're interested in selling the property, we want to sell it, you know, we'd be delighted to sell it to you, put together your terms and -- and let's wrap this up. So that's where -- I mean, again, I -- I -- you know, that's just where we were and -- and what we continued. And, frankly, what I was doing in the background was trying to figure out, okay, what is the time frame going to be so we don't have to do

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another one. But I absolutely was -- you know, felt that we were going to close on this transaction together and frankly would have already started development probably.

Q. All right. So I understand that you were -- you were working hard to try to extend the transaction or extend the time period and to do the deal. But really what I need to know is did MFM ever agree to give you an extension after the written extension in Exhibit 3?

A. Oh, I -- I think clearly the inference was let's -- let's get an extension in place and let's get this done like we had done during the middle of COVID.

Q. All right, sir. But did MFM tell you that -- in any way that they were going to give you another extension on -- to extend the contract at -- at Exhibits 2 and 3?

A. Did -- repeat the question, please.

Q. Did MFM Properties -- and I'm referring to -- since there are two sellers, I'm referring to them both. Did both or either ever tell you that you were given an extension beyond the contract at Exhibits 2 and 3?

A. Again, they -- they -- you know,

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what -- what I was -- my understanding was under the natural normal scenario where you put together what the terms are. I thought -- I thought that's what we were --

Q. All right.

A. -- had agreed we were doing or working towards.

Q. All right, sir. And I understand what you thought and I'm not disputing that, I just want to know did MFM Properties respond and tell you that you had been granted an extension?

A. No.

Q. All right.

A. Let me -- let me change my answer to that, because I -- I really feel like I -- I don't want to go away from and I don't want to belabor it and I apologize for whatever, but I -- I just feel in any remote sense of good faith, which I think has to be a part of this, everybody knowing we're closing, everybody knowing what we're going through in COVID, everybody knowing the other transactions we're closing on, all of that's known, you know, communicating come back to us and give us a number and -- and, you know, and let us, you know -- obviously the -- the absolute complete

impression and every confidence I had was we were going to wrap this up and close. We were going to put a normal extension in place and the idea that, you know -- so I just -- I need to -- I need to have that on the record. It's -- I think it's part and parcel. I don't even understand how we're all sitting here doing all of this.

Q. All right, sir. I -- and for purposes of this conversation, I think everyone understands your intention and what you thought was going on. But my simple question really is is did MFM Properties tell you they agreed to an extension after Exhibits 2 and 3, the time periods ran out?

A. I -- I -- I think they had -- they had -- the specific terms I was being told to come back to them on, but I think that clearly the spirit of it was we were going to extend this.

Q. Did they ever agree to extend it?

A. Well, I mean, I -- I guess -- again, not to split hairs, but I guess that becomes, you know -- I mean, working towards finalizing the terms and -- and -- and what have you, you know, were those finalized, that's what we were working towards so -- and up to and including, you know, being requested multiple times send us an offer,

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send us another offer, you know, and -- and so I -- I just -- I just don't think that, you know -- anyway, I don't want to belabor it, but...

Q. Work -- all right, sir. Working towards implies that there's an object -- there's an end game. The end game would it not be for MFM Properties to reach an extension agreement with Rotunda, correct?

A. Well, you know, I -- I hear you, but -- but -- and -- and -- and in any remote -- I may have acted differently if I felt like there -- anything like this would ever go on, you know. I mean, the whole -- it was communicated we need additional time, we're struggling to get answers out of certain people, we're trying to fine tune it, all of that was under the -- under the auspices of, you know what I mean, we're here -- we're here to close the deal, we want to close the transaction. That's -- that's -- that's -- you know, so it was work [sic] towards so I just don't believe that, you know, whether they, you know, decided that now the property was worth more money or -- or whatever it is, I -- I don't think -- I just don't think it's -- I don't think that's a part of what this should be or was about or good

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faith in any way. I -- I may have -- I may have done something different had I not felt like and known that, you know, clearly you're [sic] going to be reasonable, you know, people and we're all going to be good folks and we're going to wrap the transaction up and they're going to get paid, you know what I mean? So, again, I don't want to belabor it, but I -- I don't want to -- I don't want to -- I don't want to say anything -- I mean, it was just a huge part of our actions, what we were doing, and -- and how we were operating and everything else.

Q. All right. You talked about an extension. What was -- what was -- in terms of what extension were you looking for when -- with regard to the contracts that -- Exhibits 2 and 3?

A. One hundred and -- it would -- I think the number was -- what we had come up with after, again, fighting to get, you know, information out of folks, one hundred and -- 90 days and a 30-day close, all earnest money hard, additional earnest money up, wiring it to them directly. I just -- I just -- I mean, I -- you know, I just can't imagine -- you know, happy to release earnest money, all of it, and -- and, frankly, you know,

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proactively offered additional money in order to, you know, be respectful of the fact that, you know -- but 120 days, 90 to 120 days in order to wrap up the development agreements.

Q. Did you -- did Rotunda present a prepared contract for an extension to MFM Properties?

A. We were told to present terms, which we did. And then we were -- we were told through another gentleman, an agent, told to present an LOI weeks later, which we did and -- and -- and that again, you know, wanting to sit down and just have a meeting. I mean, I -- I continued to think that this was all going to resolve in a 15 minute or an hour meeting with small talk, you know, hey, this is what we want, this is where we are, clearly we're not -- you know, we're going to -- we're all operating in good faith, we need some additional time, we want to be paid a little bit more for having to wait a few more months. But, yes, we prepared these as were -- as we were instructed and asked to do.

Q. Did -- did anyone at MFM Properties accept those terms that you offered?

A. Well, frankly, we didn't get

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communication and -- you know, from them directly, which is what we were obviously looking for the entire time. And so, you know, I -- I -- I don't think they accepted those terms. But -- but clearly we were under the absolute impression that we're here to wrap this up and get done.

Q. Yes, sir. Thank you. All right. I'm going to go through some documents kind of going through between -- mostly between attorneys for MFM and Rotunda.

A. Okay.

Q. And I'll start with Exhibit 4. All right, sir. You've been handed a letter dated November 23rd, 2020, from Chris Troutman at a law firm of Seyfarth Shaw to MFM Properties, MFM Residential Properties, John R. Morgan, Sr., and Cary S. Griffin. Is -- are you -- have you seen this letter before, sir?

(PLF. EXHIBIT 4, Letter dated November 23, 2020, Bates-stamped MFM_00028 and MFM_00029, was marked for identification.)

THE WITNESS: Yes.

BY MR. NICHOLSON:

Q. All right. And you're -- you're actually shown to be copied on it; is that

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correct?

A. Correct.

Q. All right. Now, is it your understanding that Cary Griffin was the attorney for MFM Properties and MFM Residential Properties; is that correct?

A. Uh-huh.

Q. That's a yes?

A. Yes.

Q. Thank you.

A. Sorry.

Q. And of course I think you testified earlier that Steve Kennedy and Chris Troutman were Rotunda's attorneys on this transaction, correct?

A. Correct.

Q. All right. And so in -- in this letter, excuse me, Mr. Troutman is -- is stating on behalf of Rotunda, his client, that -- that Rotunda agreed to extend the inspection period for an additional 60 days pursuant to the first amendment which is Exhibit 3; is that correct?

A. Correct.

Q. All right. And he -- and he talks about as extended by this notice and payment of the extension fee, it moves the inspection period

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to January 29th, 2021; is that correct?

A. Correct.

Q. All right. And then if you turn to the second page, he says purchaser -- and that's Rotunda, right?

A. Uh-huh.

Q. Shall deposit a second extension fee in the amount of $45,000 with the escrow agent on or before Monday, November 30th, 2020. And then it says: In accordance with Paragraph 4(b) of the first amendment, purchaser will deposit an additional earnest money deposit in the amount of $100,000 with the escrow agent on or before November 30th, 2020; is that correct?

A. Correct.

Q. And was Mr. Troutman authorized to make this communication on Rotunda's behalf --

A. Yeah, I --

Q. -- to --

A. -- candidly can't remember all of it, but, yeah, I'm sure -- yeah, I imagine he was.

Q. And you agree -- you agree with the substance of the letter in terms of what he was trying to tell MFM?

A. Correct.

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Q. All right. Exhibit 5 coming your way.

(PLF. EXHIBIT 5, Letter dated December 10, 2020, Bates-stamped MFM_00030 and MFM_00031, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

Q. All right, sir. You've been handed a December 10th, 2020, letter from Cary Griffin sent to Mr. Kennedy and Mr. Troutman. Now, do you recall seeing a copy of this letter on or around December 10th, 2020?

A. I -- I -- I don't dispute that it occurred. I can't -- I can't recall -- you know, candidly we were in the middle of, you know, a lot going on obviously closing transactions and -- and this. So this particular -- but -- but I don't dispute that it's legitimate and it was sent.

Q. Okay. Let me ask you kind of leading up to this, who -- who is Calloway Title and Escrow, LLC?

A. That's a title company in Atlanta that we use from time to time on transactions.

Q. Okay. And how was that title company involved in this transaction regarding the

property?

A. I believe that they were holding the earnest money for it.

Q. Okay. And would that be the initial earnest money deposit of $100,000?

A. I -- yeah, I would -- yes, and I would imagine anything -- I think we put an extension fee up or something at some point along the way and that would have gone through them as well I would imagine.

Q. All right, sir. Now, this is a letter dated December 10th, 2020, Exhibit 5, correct?

A. Correct.

Q. And what Mr. Griffin notes is that there was no deposit of an extension fee or an additional earnest money deposit that Mr. Troutman talks about in his letter of November 23rd in Exhibit 4; is that correct?

A. Correct.

Q. Do you agree that those deposits were not made?

A. Correct.

Q. Can you tell me why?

A. Yeah, I -- I can't remember the exact date, but I had a conversation around this time

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and I think several of them where I said we're still trying to get to the -- we -- we want to get -- we're going to need some additional time, we're still trying to get the -- you know, kind of fine tune what the timeline is to wrap up the development agreement and -- and -- and so, you know, let's -- let's work -- you know, let's work towards that and let's get that done. And we're happy to put up the additional money. Again, I -- I can't -- I can't remember exactly when the -- but -- but I know during that time there was communication that I obviously was comfortable, you know, we'll end up working through this but we're probably going to have another 60 days on it and -- and -- and what have you versus, you know, doing this and then kicking the can down the road again thinking that, you know, we were all operating in good faith and -- and -- and we weren't talking about --

Q. Right.

A. -- an extended period of time, everybody understood that, so I -- I -- I thought that -- that that was the plan and what we were going to do.

Q. All right, sir. So this conversation

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would have occurred with and when -- with whom and when?

A. I -- I believe it was -- it was with Harry when I communicated to him that -- that it -- you know, what -- what -- what the plan was and what was going on.

Q. Was that --

A. I think I called him proactively. And, again, I -- I can't swear to the dates, but I know that we had that conversation and, you know, we talked about --

Q. Right.

A. -- you know, the plan and what we intended to do or whatever.

Q. Was that conversation before December 1st, 2020?

A. I can't -- I can't -- I -- I -- I don't recall candidly.

Q. All right. So you said you were proactively --

A. I just know it was around this time.

Q. All right. How many conversations did you have with Harry Morgan prior to -- in the November, December time frame of 2020?

A. I need to -- I -- I need to go back

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and -- and -- and -- I'm not sure, but I know the critical one was obviously laying out the plan and what we intended to do. And perhaps there was another one or -- or so. And then to my surprise we started to get things through Cary and -- it seemed like there was a disconnect, like maybe they're not communicating or what -- what's going on here. And then -- and then, obviously, you know, beyond that, you know, the -- the attorneys were communicating versus us, you know, communicating directly -- continuing to communicate directly.

Q. All right. When you talked -- when you talked to Harry Morgan you talked about putting out our plan. Did Mr. Morgan at any time tell you that you did not have to put down the additional earnest money as referenced in your attorney's letter Exhibit 4?

A. He -- he told me that we -- we'd -- we'd like to sell the property to you, we want to sell the property, and -- and, you know, put together what your time frame is or what you need. So I -- I think that was clearly the inference that I got. I mean, it was just -- it was a reasonable conversation among gentlemen. They

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obviously knew we had the capability of performing, they understood what I was trying to get to the bottom of and frankly I had been for months, it was COVID, again, trying to get people to answer how long is this going to take so we don't have to do that again and -- and -- and so I think clearly the inference was, you know, let's -- I mean, it was quite frankly seemingly a very reasonable conversation.

Q. All right, sir. But would you agree that Mr. Morgan did not tell you that there was any waiver of the requirement for the earnest money -- additional earnest money or the extension fee?

A. I -- I -- I would agree that it was the understanding that that was going to need to be put up as we resolved whatever we needed to resolve. That was my -- my takeaway. I can't -- I don't want to quote on anything else because I can't -- you know, I'm just telling you how we were operating.

Q. In that conversation with Mr. Morgan, did he tell you you did not have to put up the additional earnest money or extension fee related to this letter, Exhibit 4?

A. That wasn't candidly a part of the conversation because we were always going to put it up.

Q. All right. Okay. So at any --

A. So the inference was we're going to -- it wasn't even discussed I don't think because we're going to talk about it. I told him why we didn't and what we needed to resolve, we're still trying to get to the bottom of this or that.

Q. All right. So at any point did anyone for MFM Properties tell you that you would not have to put up the additional earnest money or the extension fee?

A. Again, it wasn't -- it wasn't ever something that I asked for or requested, it was understood by them that we would be and I had agreed that we were happy to do it.

Q. And can you tell me how you know that it was understood by MFM Properties that you would not have to put up the additional earnest money and extension fee within the timelines called for in your lawyer's letter?

A. Again, knowing the -- the substance of the conversation was -- and I think they were aware of the struggles we were having trying to

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get information and get things accomplished in COVID. So in good faith it was a conversation of, hey, we're going to extend this a few months, I -- you know, let's -- let's resolve that and we will be putting up the fee and everything else. So it was always the -- clearly inference, presumption that, you know, we're -- you know, we're going to put up the fee, we're happy to do it, and -- and I even proactively said, look, Harry, we'll -- I think I told him at that time if not I said through other counsel or whatever release the money to him, that's fine, we don't even need to leave it in escrow, that's fine, but let's get this -- let's get the -- you know, a reasonable time frame resolved and wrap this up. It's -- we're talking about a few months.

Q. All right. So did you have any other conversations -- and we -- you talked about the one conversation with Harry Morgan and you couldn't really remember the exact time, but did you ever talk to John Morgan?

A. I talked to John -- not in this time frame. I talked to John earlier in the year.

Q. Okay.

A. We worked out whatever, he was --

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yeah, going through the COVID stuff and all that.

Q. All right. So let's look back at Exhibit 5. So this letter of December 10th comes out asking about the status of the extension fee and the additional earnest money deposit and noting that neither one of the deposits was made by the -- the date called for, right? That's what it says in the first paragraph, correct?

A. Okay, it does say that.

Q. All right. And the first line -- first sentence of the second paragraph says failure to make these two deposits is a breach of the agreement, unquote; is that right?

A. It -- it says that, correct.

Q. All right. So then you look at the third paragraph and it says from MFM's perspective the following points are clear, A, the initial deposit is nonrefundable. B, the inspection period is over. C, there was no valid extension of the inspection period or closing. And, D, the additional deposit of $100,000 was due on November 30th and was not made. That's what it says, correct?

A. That's what it says.

Q. All right. So -- and did your lawyers

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communicate with you on a -- on a regular basis when they got communications from Mr. Griffin about this deal?

A. I -- I would imagine we -- we were communicating about it. And I think when I was -- certainly was relaying to them, and, again, I can't swear to all the time frames, but that we were in the process of working this out to resolve getting another few months to wrap it up and -- and -- and we were working through on the -- on the seller's side -- on the business side.

Q. All right. Were your attorneys supposed to be negotiating with Mr. Griffin additional terms?

A. No.

Q. All right.

A. Well, I -- I say that. I -- they -- because they had requested additional information -- or, you know, what are our terms, what kind of time frame do we need. So at some point my guy did present that, but it was, you know, a little bit -- that was a little bit after. It certainly was after December, it was January, early February, something like that.

Q. Yes, sir. That's for Mr. Finger.

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She's -- she's marking Exhibit 6 for you.

(PLF. EXHIBIT 6, Letter dated December 18, 2020, Bates-stamped MFM_00032, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

Q. All right, sir. You've been handed Exhibit 6. This is a -- do you recognize this? It's a December 18th, 2020, letter from Mr. Griffin to, again, your lawyer Steve Kennedy and Chris Troutman.

A. Uh-huh.

Q. All right. Have you seen this letter before?

A. Uh-huh.

Q. And that's -- is that a yes?

A. Yes.

Q. Okay. Thank you, sir. Now, in this one -- well, let me ask you this, have you seen this letter around December 18th, 2020?

A. I -- I would -- I would imagine that -- that they had forwarded it to me and -- and that they had let me know of it. And, again, I'm operating under the, you know, very what I

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think reasonable assumption of we're going to -- you know, we're going to release the earnest money, we're going to do whatever, we're going to finalize this time frame. Everybody understood that we needed to modify the development agreement, they understood the struggles we were going through to get things out of people, couldn't get people to respond, and -- and trying to get accurate information and -- and, you know, candidly, I thought Cary was either, you know, kind of doing his own thing in this regard, you know, being their lawyer and not necessarily communicating with them. I -- I -- you know, there seemed to be a disconnect there from me from the business side and the legal side as to why we were getting -- you know, it seemed again that we were -- you know, we were on the path and going to be working something out.

Q. All right.

MR. FINGER: Just -- could we go off the record for one second?

(Off-the-record conference.)

(PLF. EXHIBIT 7, Letter dated December 23, 2020, Bates-stamped MFM_00033 and MFM_00034, was marked for identification.)

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BY MR. NICHOLSON:

Q. All right, sir. You've been handed Exhibit Number 7.

A. Uh-huh.

Q. And this is a December 23rd, 2020, letter -- letter again from Mr. Griffin again to Mr. Kennedy and Mr. Troutman. Do you recognize this, sir?

A. Uh-huh.

Q. And that's a yes?

A. Well, I -- I've seen it since. I don't necessarily remember it from the time, but you -- you've sent it over so from that perspective, yes, I've seen it.

Q. All right, sir. Do you know whether or not you saw it in December of 2020?

A. I -- I -- I -- I -- I can't recall if I saw it in December of 2020. I mean, it's two days before Christmas and, you know, the whole thing, so -- but I don't dispute that it's an authentic document. It's not like I think it's -- you know, I'm sure it was sent.

Q. All right, sir. And that one, the first paragraph says while I do understand that we are in the midst of end of year and holiday

season, however, since there has been no substantive response to my previous inquiries that leads me to the conclusion that there may not be any response between now and the end of the year, right, that's what it says?

A. That's what it says.

Q. All right. Now, were your attorneys, Mr. Kennedy and Mr. Troutman, supposed to forward you any communications regarding this property -- regarding this deal from Mr. Griffin?

A. Yeah.

Q. So it would have been their responsibility to forward you these letters, correct?

A. Uh-huh.

Q. And -- and would it have been their responsibility to forward these letters promptly as soon as they received them?

A. Yes.

Q. Okay. So you talked a little bit earlier about how you thought that you were being -- your -- your inference was that the MFM Properties was working with you but then we have Exhibits 5, 6, and 7, which are respectfully letters of December 10th, 18th, and 23rd all

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asking about what is happening with this deal more or less.

A. Yeah, I -- I -- I can't communicate to -- I hear you. I -- I can't communicate to what Cary was going [sic] on and what -- what he was -- and, to me, that's -- you know, I -- I look at this and it seems he was, you know, doing things from a legal perspective, taking certain steps, but obviously it does not sound like they were communicating. I -- I don't know. I mean, all I can tell you is that we were operating under the -- and have remained the entire time, here to close the transaction, have the capital to deploy, have, you know, some of the most sophisticated equity on the planet ready to do the deal, and we just have to go through a normal process to wrap up. So I -- I -- I can't speak to why or the intent or if he was just doing it to -- for posturing or I -- I don't know. But -- but for this very purpose, you know, so something looks a certain way -- I mean, I just -- there was never a universe that I figured we weren't going to, you know, wrap the transaction up and close.

Q. You -- you never -- let me back up for a second. You never called the Morgans, either

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one of them, about these Griffin letters, did you? Exhibits 5, 6, and 7.

A. When I called the Morgans it was about the deal itself. I would -- I would -- it was never -- I mean, candidly there were times that I -- that I just figured they were disconnected on their side. And -- and so when I called the Morgans, it was about doing a business deal, wrapping up the business terms and having the attorneys do what they do. So, no, I -- I wouldn't refer to specific things from Cary.

Q. All right, sir. Now, as you said with regard to the November 23rd, 2020, letter from Chris Troutman, Exhibit 4, your attorneys were authorized to make representations for Rotunda to the attorney for MFM Properties; isn't that correct?

A. Well, that was per the -- per the contract --

Q. Right.

A. -- meaning that was to give notice of something or whatever he was doing.

Q. All right, sir. But on the -- you got the letter now -- you got the attorney for MFM Properties now three different times in a two-week

span writing to your attorneys that you haven't -- Rotunda has not honored the contract. Now, if you received these letters, why didn't you call anyone at MFM Properties about these letters?

A. I -- I -- I -- and that's why I -- quite frankly I -- I can't, you know, swear or promise to you the exact time frames, but clearly, you know, I -- I had -- you know, I mean, my understanding was we were going to work through the time frame, everybody was, you know, in agreement of that or supportive of that, and finalize the time frame and -- and -- and deploy the balance of the capital and wrap up and close. That was the intent. So quite frankly not to say I was ignoring these things, but I -- I -- you know, oftentimes attorneys in the business side aren't on the same page and I figured that was maybe what was going on.

Q. So when Mr. Griffin's letter says failure to make these two -- on Exhibit 5, failure to make these two deposits is a breach of the agreement you didn't think that was worthwhile having your attorneys contact Mr. Griffin and telling him he's wrong?

A. Well, I mean, I think they

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communicated before the end of the year if I'm not mistaken.

Q. Well, we'll get there. I -- I'm talking about -- I'm -- please understand, I'm talking about now with respect to Exhibit 5, 6, and 7 in the time period of -- and really Exhibit 4, in the time period of November 23rd, 2020, to December 23rd, 2020, which is the time period -- you know, that month time period of these two letters.

A. Yeah, candidly I can't speak to exactly how much they would have communicated. Again, it's holidays, a lot going on, and, you know, we've -- we've -- we've -- you know, so they're -- you know, multiple closing and all these other things, you know, the idea that -- that, you know, why are [sic] they communicated or didn't communicate, I can't -- I can't speak to but I just know how we were operating, under the auspices of clearly we're going to -- we're going to complete the transaction. They know it, they've -- you know, everybody was aware of our capitalization, they're aware of, you know, the things we've been doing, everybody was aware that -- in my opinion that we obviously were

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looking to get information on, you know, how much -- you know, what -- what exactly the steps were in order to finalize to get to a -- you know, a reasonable point and close and that was a matter of a few months, not some extended period of time.

Q. So, sir, are you saying then that -- and I -- I understand that you were looking for -- for more time and were working on things, but did you make a decision with respect to Exhibits 5, 6, and 7, the Griffin letters between December 10th, 2020, and December 23rd, 2020, did you make a decision not to respond to those letters?

A. No, I -- I didn't -- I didn't -- I -- I can't say that I made any decisions as it relates to those letters. I -- I mean, clearly I can just tell you how we were moving forward and under what we were operating. So what -- I can't say specifically I decided I'm going to ignore -- you know, I mean, again, you know, the lawyers do certain things and all those kind of things, but, you know, the business side of the deal is -- is -- you know, so I -- it wasn't like I put my finger in the eye of this and said, hey, you know -- you know, that -- that wasn't the case. It wasn't a decision like that.

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Q. You understood Mr. Griffin of course was representing MFM Properties, right, that he was their lawyer?

A. Yeah.

Q. Okay. All right, sir. Looking at -- if you would look at Exhibit 8 and please ignore -- this was printed off -- I printed this off so it has my name at the top so that should not be part of this e-mail. But if you look at the e-mail, this appears to be an e-mail from Stacy Patane, Mr. Griffin's assistant, to Steve Kennedy and Chris Troutman and it looks like it's sent to you as well on December 30th, 2020. So did you -- did you -- if you take a look at the e-mail and then take a look at the attachments and tell me does this appear to be a December 30th, 2020, letter from Mr. Griffin?

(PLF. EXHIBIT 8, E-mail chain and attachments Bates-stamped MFM_00035 through MFM_00063, was marked for identification.)

THE WITNESS: Uh-huh.

BY MR. NICHOLSON:

Q. Along with various other documents.

A. Okay.

Q. Now, did you get this e-mail around

December 20 -- excuse me, did you get this e-mail in Exhibit 8 and the documents attached on or around December 30th of 2020?

A. I -- I -- I -- I'm -- again, I -- I -- I wasn't paying attention -- yes, I don't -- I don't doubt the authenticity that that was sent.

Q. All right, sir. Now, if you looked on Exhibit 8, if you flip to the third page of it, that's MFM_00037, that's the cover letter for Mr. Griffin that says he's sending out a copy by UPS. And if you flip another couple pages, there's a December 30th, 2020, that says formal notice pursuant of Section 11 of PSA. Do you see that? That's the -- the Bates Number in the bottom right-hand corner is 39.

A. Okay.

Q. Okay. Do you remember seeing this letter before?

A. I -- I'm sure I have and I've certainly seen it since this --

Q. Right.

A. -- preparing for this in the last month.

Q. All right, sir. So as it states in the letter, this was tendering a performance by

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the seller for the purchase and sale agreement in Exhibits 2 and 3; is that correct?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Thank you, sir. All right. Now -- and this -- enclosed with this are various documents; is that correct?

A. Yeah -- yes.

Q. And would those be the kind of documents that you would expect the seller to provide a buyer at closing?

A. Yes.

Q. Okay. So if you flip to the next page, which -- the second page of the letter which is Bates-stamped MFM_00040 and you look at the next to the last paragraph. Now, what is Mr. Griffin telling you in this next -- and everybody that received this letter in that next to last paragraph starting with if closing does not occur?

A. Well, he's claiming that if it doesn't occur before this date then, you know, all closing documents shall be returned to me. This delivery constitutes complete tender of performance by the sellers -- blah, blah, blah. I mean --

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Q. Well, let me -- let me -- go ahead, I'm sorry.

A. No, that's okay, I'll let you ask the questions.

Q. All right.

A. I'm sorry.

Q. I'm going to quote -- quote it: If closing does not occur by the close of business Thursday, December 31st, 2020, the purchaser will be in default for the failure to close and therefore all closing documents shall be returned to me. This delivery constitutes complete tender of performance by the sellers pursuant to the PSA. I have copied the purchaser and escrow agent with this notice and its enclosures, unquote.

That's what it says, right?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. All right, sir. And so do you agree that this was a complete tender of performance by the seller?

A. I -- I couldn't speak to that. I'm not up to speed. I know that was the intent of the letter I believe.

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Q. All right. Did you ever dispute that this was a complete tender of performance by the seller?

A. I -- I candidly haven't focused on it. Wouldn't -- wouldn't be able to speak accurately on that.

Q. You certainly -- well, you never focused on it then; is that correct?

A. Well, I'm not saying that, I'm saying it was -- I thought this was -- quite frankly this was posturing and -- and, you know, some sort of a -- you know, I mean, there -- there tended to be -- I -- I just felt like there was a disconnect here as it relates to what's being done versus what the spirit of the deal is and what we're communicated on the business side. And that this was -- whether -- you know -- so I thought this was more formality than anything else is my point or -- or some sort of a posturing or what have you.

Q. Okay. All right, sir. You've been handed Exhibit 9, which is Bates-stamped MFM_00126 through 134 and I believe these are actually a couple different e-mails so -- let me see, actually three different -- okay. I -- I am --

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I'll tell you what, let's just -- let's make these three different exhibits. I apologize if they all got stamped together.

MR. FINGER: Yeah.

THE WITNESS: Want them back?

MR. NICHOLSON: Go off the record for a second.

(Off-the-record conference.)

(PLF. EXHIBIT 9, E-mail chain Bates-stamped MFM_00126 through MFM_00128, was marked for identification.)

(PLF. EXHIBIT 10, E-mail chain Bates-stamped MFM_00129 through MFM_00131, was marked for identification.)

(PLF. EXHIBIT 11, E-mail chain Bates-stamped MFM_00132 through MFM_00134, was marked for identification.)

BY MR. NICHOLSON:

Q. All right, sir. Let's talk about Exhibit 9 first which is Bates-stamped MFM_00126 to 128. All right, sir. Now, looking at the top page of this e-mail, does this appear to be an e-mail from Steve Kennedy, your lawyer, to Cary Griffin?

A. Yes.

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Q. All right. And is he referring -- if -- if you look at --

(The proceedings were interrupted.)

THE WITNESS: Sorry.

MR. NICHOLSON: That's okay.

THE WITNESS: I'll silence that.

Okay.

BY MR. NICHOLSON:

Q. All right, sir. With reference to the top message that Mr. Kennedy has -- sends to Mr. Griffin on December 30th, 2020, at 5:14 PM, is there anything incorrect in Mr. Kennedy's statement to Mr. Griffin?

A. Is there anything incorrect?

Q. Yes, sir.

A. Not to my knowledge.

Q. Okay. And --

A. I mean, other than -- again, I can't -- you know, clearly what I would have been communicating is, hey, we're going to -- you know, we're going to resolve this on the business side and, you know, that's in motion or whatever -- whatever I would have communicated and I think he was communicating that.

Q. All right, sir. If you could look at

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Exhibit 10 then, which is MFM_00129 to MFM_00131.

A. Okay.

Q. All right. So 10, is that a December 31st, 2020, e-mail from Mr. Kennedy to Mr. Griffin --

A. Uh-huh.

Q. -- copying Mr. Troutman?

Is that yes?

A. Uh-huh -- yes.

Q. All right. And is there anything that you disagree with what he says here in this e-mail at the top of the page?

A. No.

Q. So -- so you did -- you agree that you were going to put together -- you being Rotunda were going to put together revised terms which among other things allow us, Rotunda, to complete entitlements and close; is that correct?

A. Correct.

Q. Okay. All right. If you could look now at Exhibit 11.

A. Okay.

Q. If you could -- and that's MFM_00132 to 134.

A. Got it.

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Q. And if you look, this appears to -- to be the -- if you look at the very last page, does this appear to be the same e-mail at the end of this exhibit that is the first e-mail in Exhibit 10?

A. I think I understand what you're saying, but can you -- can you -- just to make sure I don't say something --

Q. All right, sir. Sure. All right. The bottom of Exhibit 11 has an e-mail from Steve Kennedy --

A. Which is MFM_00134?

Q. Yes, sir.

A. Okay.

Q. Is that e-mail on MFM_00134 the same e-mail as the top of Exhibit 10?

A. Yes.

Q. Okay.

A. Shit, man, sorry.

Q. No -- no, I -- e-mails --

A. I just wanted to make sure, I don't want to say something and look back like wait a minute, hold on, sorry --

Q. The e-mails make us all crazy.

A. My fault.

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Q. All right, sir. So back to Exhibit 11.

A. Okay.

Q. And it appears that Mr. Griffin responds to Mr. Kennedy on January 3rd, 2021; is that correct?

A. Yes.

Q. And what he says is is that -- in part is, quote, I can only reiterate that the MFM position has not changed and is very specifically set forth in my 12/10, 12/18, and 12/23 letters as supplemented by my 12/30 letter.

Did Mr. Kennedy or Mr. Troutman forward you this e-mail at any point in time?

A. I -- I don't know that they forwarded me this.

Q. Okay.

A. I -- I can't say that they did, although I -- I -- hopefully it's evident, I'm communicating with them we're going to work out the balance of the terms, we got to find -- I've got to get answers on how -- you know, again it's a nominal period of time, but we've got to figure out, you know, what we need to do to wrap up the development agreement on the entitlement side and

close.

Q. All right, sir.

A. And we're going to put together as tight a time frame as we can in order to get that done. And -- and candidly the spirit was -- my understanding was so we don't kick the can down the road again, let's wrap this thing up and let's close it.

Q. All right, sir. So did you actually call Harry Morgan on December 31st?

A. I -- I can't -- I -- I -- again, I can't necessarily remember or swear. All I know is the conversations, you know, they occurred and described what was going on and -- and -- and I felt like we were very much at an understanding of, you know -- you know, get the time frame together, we want to sell the property, want to sell it to you, know you're capable of closing and -- and, you know, let's get the time frame and -- and wrap up.

Q. All right, sir. Now, you do recall, do you not, talking to or calling Mr. Harry Morgan very close at least to the December 31st, December 30th time frame when this -- all these letters were all coming out, do you not?

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A. I -- I -- yes, I mean, I know we talked. I'm trying to remember how many times we talked. But clearly we communicated about this and -- and it was, you know --

(The proceedings were interrupted.)

THE WITNESS: If it's okay with you, can I put this on silent? I put it on vibrate, I'm sorry.

MR. NICHOLSON: Sure.

THE WITNESS: I apologize for the disruption.

Okay. All right. Shouldn't hear anything else. I'm sorry about that.

BY MR. NICHOLSON:

Q. No problem. All right, sir. So --

A. So we did talk around -- absolutely, we talked around this time frame. And, again, I can't remember how many conversations there were, but it was absolutely -- my feeling was, you know, we're going to -- we're going to finalize this time frame and we're going to be done with this and we're going to close this thing out.

Q. Did Harry Morgan not tell you that if this contract wasn't closed by December 31st that the contract was dead and you had to get a new

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contract?

A. I -- I -- I -- I can't -- I can't remember -- I mean, I -- what I can remember is that clearly whether that was a -- you know, let's -- let's -- let's figure out what the time frame is, we want to sell it to you, and -- and, you know, obviously everyone understood we were clearly in a position to perform and -- and -- and let's get the time frame figured out and, you know, we -- we'd like to sell the project to you or whatever. I mean, it was a friendly perfectly -- you know, it just, you know, wasn't contentious. That's why this stuff from Cary, you know, it -- frankly there, you know, oftentimes seemed to be a disconnect and -- and -- and I figured maybe he was just, you know, doing what lawyers need to do to, you know, go through certain processes. But that -- that's not the point. The point is, you know, when we talked it was absolutely -- my takeaway was, you know, we're going to wrap up the transaction and close immediately, near term. And I explained the COVID stuff, I explained the fact that we're having trouble getting answers, all of that seemed to be a reasonable response, like clearly we all

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understand we're in the middle of an international pandemic. And, you know, again, one of the service providers, his child had COVID, he was offline for like two months, we -- we didn't hear anything, so...

Q. Okay. Do you deny that Mr. Morgan told you that you would have to have -- that this contract was dead and you had to get a new contract --

A. I can't -- I can't speak -- I don't remember -- I mean, I'm -- I'm -- what I can communicate is what I feel like the, you know, flat out approach was going to be and whatever.

Q. All right.

A. I mean, I -- I mean, again, we were requested to put new terms together, you know, the -- the whole thing. You know, be updated -- you know, how much time frame -- how much time do you need. So candidly whether we did that or reinstated, it -- it's not -- you know, respectfully, I don't think it's relevant because it's something where we're -- clearly we're here to wrap the transaction up. Everybody knew we spent money and, you know, had -- were doing a great job and the whole thing, all of which was,

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you know, complimented and praised and everything else. Very good stewards of the property while we had it under our tutelage and all of that. All of these things were complimented all along the way. They knew, you know, the job we were doing and what have you.

Q. All right, sir. You've been handed Exhibit Number 12, a January 12th, 2021, letter from Cary Griffin to Rotunda's lawyers Kennedy and Troutman. And in this letter he talks -- have you seen this letter before?

(PLF. EXHIBIT 12, Letter dated January 12, 2021, Bates-stamped MFM_00095, was marked for identification.)

THE WITNESS: I -- I'm not -- I -- again, I'm -- I'm -- I believe that I've seen it, yes, and -- and I -- same answer as before, you know, I -- I know it was part of the -- and I'm sure it got forwarded to me, I'm not contesting that it was sent and all that.

BY MR. NICHOLSON:

Q. Okay. All right. So in this one Mr. Griffin is talking about the cure period previously available to Rotunda and the PSA's

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expired. That's what he says in the first sentence, correct?

A. Correct.

Q. And -- and he has bullet points, one of which he asked for the $100,000 escrow to be released; is that right?

A. Uh-huh.

Q. And another one where he wants the $100,000 representing the additional deposit --

A. Right.

Q. -- as well, right?

And then in the following number three he talks about returning purchaser's due diligence materials; is that right?

A. He does.

Q. All right. So as of January 12th, 2021, did you think you still had a deal?

A. Oh, I absolutely thought we were going to -- like I -- again, I thought whether there was a disconnect there or -- you know, I absolutely thought we were going to finalize the -- the time frame to wrap up the development agreement and close. I think I had communicated specifically where we were, the challenges we had been having with timing and COVID and these kind of things

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and -- and that our intent was absolutely to close and that's what we were going to do. I -- I thought everyone was on the same page. I mean, candidly, to some degree I was -- it was kind of a head scratcher, like why -- what is the antagonism for? Why are we doing this? You know, we've got a deal, I mean, to close here and we're going to do it and everybody seems to, you know, be on that page.

(PLF. EXHIBIT 13, E-mail chain and attachment Bates-stamped MFM_00096 through MFM_00099, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

Q. All right, sir. We've been handed Exhibit 13 again with the header that -- my header that should be redacted. But does this appear to be a February 1st, 2021, e-mail and letter from Mr. Griffin to Mr. Troutman and Mr. Kennedy?

A. Okay.

Q. Is that what it appears to be?

A. Yes.

Q. And would you have been forwarded this by your attorneys --

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A. I'm sure.

Q. -- around February 1st, 2021?

A. I'm sure I would have, yeah.

Q. All right. And -- and what -- what is your understanding of what Mr. Cary is trying to accomplish -- what Mr. Griffin is trying to accomplish in this letter?

A. I -- I -- I don't know. We were operating under the auspices of exactly what we had -- you know, I thought we had agreed to and were doing. And within, you know, some short period of time of this we provided a time frame, a very expedited time frame to get a lot done very quickly, put up the additional earnest money, do the things we needed to do and close. So he received something in writing, you know, not -- not -- you know, not long after this and then we did another one and then we were requested to do yet another in -- in, you know, weeks after that. So I see this for sure, but I -- but I can't -- I mean, other than us doing what we had discussed doing, I'm not -- I'm just not understanding. And, again, followed through with communication, specifics, you know, those kind of things. Obviously proactively compensated them additional,

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not that, you know, $500,000 is -- should be paid for a few months' time, but respectfully we did that to be -- and work in good faith. I knew Harry had said he had sensitivities about, you know, some tax stuff they were worried about and -- and whatever. So I -- again, operating in good faith, not only put together the time frame extremely expedited, all earnest money issued to them, and -- and -- and -- and more money.

Q. Those were offers by you that were not accepted by MFM, correct?

A. Well, all I can say is I was doing what I believe we talked about and spoke about and, you know, operating in -- beyond good faith.

Q. All right, sir. Have you ever seen a copy of this letter Exhibit 14, a February 1st, 2021, letter from Mr. Troutman to Mr. Griffin?

(PLF. EXHIBIT 14, Letter dated February 1, 2021, Bates-stamped MFM_00101, was marked for identification.)

THE WITNESS: Yeah, I don't think I -- I'm sure I might have, but -- but, again, obviously, you know, I'm seeing it as -- as it relates to these -- this stuff we're doing here.

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BY MR. NICHOLSON:

Q. So you don't think you saw it -- a copy of it around the time it was sent on February 1st, 2021?

A. I -- I would need to go check. I -- I -- they -- they would probably have copied me or let us know. I mean, there's a lot that happens internally with, you know, a number of transactions and a large portfolio, but, you know, I would imagine they would have copied us or certainly anyone internally would have gotten some.

Q. Yes, sir. All right, sir. You've been handed Exhibit 15, a February 11th, 2021, letter from Cary Griffin to Mr. Kennedy and Mr. Troutman. Do you recognize this letter, sir?

(PLF. EXHIBIT 15, Letter dated February 11, 2021, Bates-stamped MFM_00102, was marked for identification.)

THE WITNESS: I -- I see it, correct. Yes.

BY MR. NICHOLSON:

Q. I mean, would you have received this on or around February 11th, 2021, from your lawyers?

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A. I'm sure we would have, yeah.

Q. Okay.

A. And I think I remember seeing that, yep.

Q. All right. And what -- what -- what is Mr. Griffin -- what is your understanding what Mr. Griffin is saying in this letter, February 11th, 2021, Exhibit 15?

A. Having not heard from you -- I'm just reading it. Talking about -- basically, you know, asking why we haven't released or, you know, done whatever -- yeah.

Q. All right.

A. Which, quite frankly, we, you know, again were surprised, confused, you know, whatever, just thought there was a disconnect. I mean, clearly the goal was to finalize the transaction which we have in good faith tried to do multiple times.

(PLF. EXHIBIT 16, E-mail chain Bates-stamped MFM_00103 and MFM_00104, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

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Q. All right, sir. You've been handed Exhibit Number 16 where -- which are a series of e-mails on February 12th and 13th between Mr. Kennedy and Mr. Griffin and it also shows some other folks copied on. I don't see you copied on them, but looking at the -- if you'd take a look at that for a minute and read that and tell me when you're through.

A. Yeah, I've -- I've seen it.

Q. All right. So on Friday, February 12th, Mr. Kennedy e-mails Mr. Griffin copying a number of folks and says: Cary, I am traveling this weekend but we do have the terms of a proposed new agreement being worked into an amendment document that we will send you either later this weekend or early next week.

That's what he says there, right?

A. Uh-huh.

Q. Now, do you know what he's talking about --

A. Yeah, I'd --

Q. -- what Mr. Kennedy's talking about?

A. -- I'd been communicating with them that we were, you know, working through the time frames. Again, some of it trying to get answers.

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The majority of this is that, trying to get answers on what -- what is the real -- you know, based on COVID, people not -- governments not being shut down, what -- what are we dealing with in order to get this done. And I think by the -- you know, the 90 and the 30 days is an unbelievably expedited time frame to close out a transaction of this size under those circumstances and willing to put up -- more than willing to put up more earnest money to do it and offered them more money. But, yeah, I was working through that trying to get answers, trying to get clarification on, you know, are they even going to have hearings, what does that mean with public hearings, how does this COVID thing work. You know, it -- it's obviously been an extremely stressful time, which, again, is why I'm utterly stunned that we're standing here, that at this point we haven't just sat in a room and said, you know, let's -- you know -- or, you know, move forward as we proposed, but...

Q. All right, sir. Now, Mr. Griffin's response says any proposal has got to be a brand new agreement -- arrangement, right?

A. That's what he says.

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Q. All right. And he also says all funds from the first deal must be paid and released along with the required due diligence materials.

That's what he says, right?

A. That's what he says.

Q. All right. Thanks.

MR. NICHOLSON: I can't make it over there.

MR. FINGER: The table's -- if we were right across the table you'd be fine.

MR. NICHOLSON: I short armed it.

(PLF. EXHIBIT 17, E-mail Bates-stamped MFM_00107, was marked for identification.)

BY MR. NICHOLSON:

Q. All right, sir. You've been handed a copy of an e-mail, Exhibit 17. Again, please ignore the -- my name at the top.

A. Yeah.

Q. Is this a copy of an e-mail from your attorney Mr. Troutman to Cary Griffin and copying Steve Kennedy on February 19th, 2021?

A. Yes.

Q. All right. And in this e-mail is Mr. Troutman making a proposed agreement to Mr. Cary for MFM?

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A. Yes.

Q. All right. Did -- and did -- was Mr. Troutman authorized by Rotunda to make this offer?

A. Yes.

Q. Okay. And so -- and -- and this would have occurred on February 19th, 2021, correct?

A. Correct.

Q. All right.

A. Candidly, I -- I think I -- I had issued and communicated to them and I think there may have been some things going on with their side, travel with the attorneys, but that's when they sent it. But, yeah, I think this was issued a little bit earlier than that, but -- and I -- and I'm trying to remember after getting -- again, oftentimes the communications from Cary seemed to be disconnected from what I was understanding and -- you know, going on and -- and we would have done this I'm -- I'm -- you know, I believe predicated on getting prompted or certainly, you know -- so, anyway, my -- but, yes, it occurred that time and those are the terms that I -- that I communicated them [sic] present.

Q. So -- so Mr. Troutman was authorized

by Rotunda to make this offer, correct?

A. Yes.

Q. All right. And he made it to Mr. Griffin, not to MFM Properties directly; isn't that right?

A. Correct.

Q. And that's because Mr. -- Mr. Troutman knew that Mr. Griffin was speaking for MFM Properties in this whole transaction; is that right?

A. Not the whole transaction, but as -- as it relates to this at this time that was -- that was -- and, candidly, oftentimes we'll send something through attorneys, we'll -- you know what I mean, we'll send it through -- you know, we'll do it direct and have the attorneys just memorialize it, but that's -- that's how we -- and candidly you can tell that Chris did it versus Steve. I think Steve was probably on the road or whatever and I was probably pushing in the background, hey, guys, let's get this wrapped up, let's get this papered, let's get this extension in place and close this thing out.

Q. And so -- so was it your proposal that there be a reinstatement of a second amendment to

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the purchase and sale agreement that we just talked about at Exhibits 2 and 3, is that part of your proposal?

A. Well, it seemed to be the most efficient and I thought that was consistent with what we were all doing in -- in -- in, you know, working towards finishing. So, yes, that's the proposal.

(PLF. EXHIBIT 18, E-mail with attachment Bates-stamped MFM_00108 and MFM_00109, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

Q. All right, sir. You've been handed an e-mail dated February 27th to Mr. Kennedy, Mr. Troutman, Amanda Calloway, and me. Please ignore the -- again, the front part. If you look at the second page, there is a February 26, 2021, letter from Mr. Griffin to Mr. Kennedy and Mr. Troutman. Would -- would you have seen a copy of this letter on or around February 26th or within a few days of February 26th, 2021?

A. Yes.

Q. All right. And what is your

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understanding of what Mr. Griffin is -- is responding to here?

A. Responding to that offer and -- and -- which, quite frankly, was baffling to say they're unwilling to consider -- I -- to the point where again my thought was is there a disconnect or -- you know. I mean, obviously, again, it's COVID, not only did we not reduce the price which many people were out there trying to do, we increased the price, we always communicated, we were happy to put additional earnest money, and the whole thing. So I was frankly stunned by this.

Q. All right, sir. We've gone through a dozen or so exhibits of letters from Mr. Griffin and -- and from your attorneys back and forth. Did you -- was there ever a letter from you or your attorneys disputing anything that Mr. Griffin said in any of his letters?

A. I -- I -- I can't -- I can't comment on it. It certainly wouldn't have been from me, it would have been from them, but I don't -- I don't know that that occurred or not.

Q. Did you ever authorize anyone to write a letter to MFM Properties or Cary Griffin disputing any of the statements in his letters?

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A. Well, I mean, I think by -- what Steve's communications was -- I mean, respectfully we -- we felt like it was -- it was badgering and antagonistic the approach, extremely antagonistic. And I -- when I told him, hey, let him know we're working through whatever, we're blah, blah, blah, that -- that -- that was the attempt to do that. Now, we were taking a bat over someone's head, no, we weren't, but we were absolutely in trying to in a gentlemanly sort of way say, hey, you know, we're working through this here. And, again, it's COVID, it's all these other crazy things going on, we're trying to get our heads around time frames and close this thing out.

Q. Why wasn't there ever a letter -- let me back up -- let me rephrase that. You testified earlier that you thought there was an inference or understanding that you didn't have to pay the additional earnest money deposit when called for in the contract I believe. Why wasn't there some letter from -- or statement from Rotunda to MFM Properties raising that issue?

A. I -- I appreciate you -- I'm glad you're bringing that up. What -- what I communicated earlier I believe, and let me make

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sure I'm clear, is that the understanding was we would be putting up that deposit and that would be a part of a new agreement at any time.

Q. Okay. So --

A. We always were planning on that.

Q. Are you -- now, are you going back to that original conversation now with Harry Morgan about -- and -- and you saying that the deal was that you would take the additional -- the additional earnest money that's called for in Exhibit 3, that $100,000, that would be put up when you reached another agreement?

A. The -- I -- I can't -- I can't -- other than let -- let's get something worked out, we want to sell, you want to buy, you know, we'd love to sell it to you, whatever, I can't -- I can't recall if I specifically went over the earnest money part of the discussion versus, you know, we got to get the time frame worked out. But always it was our -- as -- as per our actions and what -- what's been communicated -- and I -- I -- I -- I just don't want to -- you know, but certainly that was always the -- the plan and I do believe that was communicated. Not only the earnest money, we were never saying it wasn't due,

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you know what I mean, it was something we were willing to put up, we just wanted to work out the agreement that I thought we were working out which is to close on the property and get the -- the actual time frame needed. They seemed to be understanding of that, they -- I mean, you know, they're savvy guys, they know what's going on with COVID and everything else.

Q. All right.

A. So we did not contest that it was -- it was always going to be a part of the -- you know...

Q. All right, sir. Let me ask you something. The -- the initial earnest money was $100,000, correct?

A. Yes.

Q. And that was deposed with Calloway Title; is that correct?

A. Uh-huh.

Q. That has not been released by Rotunda or -- correct?

A. Well, I think we already released the hundred. You mean the second hundred?

Q. No, sir.

A. The hundred hadn't been released?

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Q. No, sir.

A. Okay. I can't -- you know, I need to go back. But quite frankly we've always been prepared and I think we've communicated that as -- as it relates to, you know, wrapping up the transaction to -- to -- that that would -- and I've proactively said not only will it be released, it'll be released to them directly because I thought that was a -- a nice accommodation versus leaving it in, you know, in escrow.

Q. Were you telling them --

A. I think that's said in that e-mail that Chris sent if I'm not mistaken.

Q. So were you conditioning the release of the escrow money of $100,000 on MFM reaching a new deal with -- with Rotunda?

A. Well, that -- my understanding was that was what we were doing all along.

Q. And to this day you have not authorized the release of the escrow money; is that correct?

A. Correct, because our...

Q. Why not?

A. Because I feel like we have been

operating in good faith and are still prepared to buy the property and have done everything we -- you know, we -- we are capitalized to do it and I -- you know, so I obviously wanted to see the same good faith. I mean, I think that was the deal and I think that's what we were doing. And I've never seen a circumstance like this, candidly. So our goal has and continues to be let's -- you know, let's get this worked out and complete the transaction.

Q. All right, sir. Is this a copy of the lawsuit that MFM Properties and MFM Residential Properties filed against Rotunda Land & Development Group --

(PLF. EXHIBIT 19, Summons and Complaint Bates-stamped MFM_00110 through MFM_00120, was marked for identification.)

THE WITNESS: Uh-huh.

BY MR. NICHOLSON:

Q. -- at Exhibit 19?

A. Yes.

Q. All right. And this -- this lawsuit was filed around March 16th of 2021; is that right?

A. Yes.

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Q. All right. Now, among the claims in this lawsuit, if you look to the -- Page 6 of the -- of the complaint, there are several causes of action. One says third cause of action, Paragraph 39, and it's a mandatory injunction for additional escrow money. Then there's a fourth cause of action on the next page, specific performance escrow money. And then there -- so -- and if you read those, both of those causes of action demand that the earnest -- initial earnest money of $100,000 be released to MFM Properties, right?

A. Correct, that's what it says.

Q. So why haven't you released -- authorized Calloway to release the earnest money?

MR. FINGER: Just note my objection. You can go ahead and answer.

THE WITNESS: Well, I -- candidly, I -- because we're here, we've been here acting in good faith to wrap the transaction up. I feel like all of this is -- is shocking and disappointing. We've been standing here to -- to complete a transaction in good faith. And based on, you know, conversations with counsel and

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what our -- our goals are, that's -- that's why.

BY MR. NICHOLSON:

Q. So do you believe -- you understand of course that --

MR. NICHOLSON: Let me strike that.

BY MR. NICHOLSON:

Q. Do you understand that MFM Properties has demanded that the earnest money, initial earnest money of $100,000 be provided to them?

A. Yes.

Q. And you -- and, to date, Rotunda has not authorized Calloway Title to give it to them?

A. Correct.

Q. All right. You -- do you think that is going to help you consummate a deal with MFM Properties in any way?

A. I -- I -- candidly, I -- I can't speak to that, because I can't believe we're here. I can't believe we're -- have been prepared, have the track record we do, the capital relationships we do, we're very unusually well capitalized, everybody knows that, we've been working in good faith, we're great stewards of the property, we're willing to put up the money, so I'm -- I'm -- you

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know, I mean, I -- you know, I don't know how to answer that. You know, I hear your question, I don't know how to answer it other than, you know, we have been -- have -- have requested meetings multiple times. This lawsuit was filed three or four or five days after it was told to us to put another offer in, so I'm -- we're baffled and befuddled. So it isn't anything to be done maliciously, I mean, you know, in any way, it's all about, you know, obviously wanting to be treated fairly and -- and get a transaction -- you know, try to get a transaction consummated and -- and -- and be done. But, you know, I mean, I -- I can't get into advice from counsel or whatever, but, I mean, it's -- it's certainly not something that's -- we -- we've been here to get a transaction done from the word go. And, again, how we're litigating, I just -- honestly, I can't believe it, I'm just -- I'm just shocked --

Q. What is --

A. -- and disappointed.

Q. What is Rotunda's contractual basis for not releasing that additional -- excuse me, that initial earnest money --

MR. FINGER: Note my objection.

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BY MR. NICHOLSON:

Q. -- in escrow?

MR. FINGER: You may answer.

THE WITNESS: Yeah, I -- candidly, I would need -- I need to get advice from -- I -- I don't know enough about those specifics, I'd need to get advice from counsel on something like that.

BY MR. NICHOLSON:

Q. Well, you reviewed the contract at Exhibit 2 before you signed it, right, purchase and sale agreement?

A. The original contract?

Q. Yes, sir.

A. Uh-huh.

Q. And you would have reviewed the first amendment -- reinstatement of the first amendment in Exhibit 3 before you signed it, right?

A. Yes.

Q. And you agree those terms were binding, whatever those terms may be?

A. Well, I mean, again, I'm -- I'm -- I believe that how we acted and how we conducted ourselves, number one, was, you know, what -- what is done in any normal reasonable situation that

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I've ever been in before and we all got a lot of experience. And so everything we've done here has been, you know, in good faith, never wanting to renegotiate with someone, you know what I mean, lower purchase prices or anything like that. So all decisions have been made based on not only how we felt the -- what was being done. And -- and so I know that's not a great answer, but I can't -- I need to -- you know.

(PLF. EXHIBIT 20, Answer to Complaint Bates-stamped MFM_00121 through MFM_00125, was marked for identification.)

THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. NICHOLSON:

Q. All right, sir. You've been handed Exhibit 20. Is this a true and correct copy of the answer of Rotunda to the complaint that we just saw at Exhibit 19?

A. Yes, it is.

Q. All right. Now --

MR. FINGER: I mean, if I recall, the second defense is probably no longer available, because I think they did go and get domesticated.

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MR. NICHOLSON: Yes, sir.

MR. FINGER: If I understand the --

MR. NICHOLSON: Agreed.

MR. FINGER: -- case law is it relates back, so --

MR. NICHOLSON: Right. And --

MR. FINGER: But, for the record, I think the second defense is probably moot at this point.

MR. NICHOLSON: Yeah, agreed. That occurred after the answer was filed.

MR. FINGER: Correct.

BY MR. NICHOLSON:

Q. All right, sir. There's -- there's something in here I'm curious about. And if you could pull the complaint in Exhibit 19, I want to ask you about your response in one of these. The complaint, which of course is the allegations of MFM Properties, at paragraphs -- if you look at the fourth page of the complaint, Paragraphs 20 and 21. And Paragraph 20 of the complaint has an allegation that says plaintiffs performed all conditions precedent under the agreement and first agreement. And then Paragraph 21, it says plaintiffs were willing -- ready --

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MR. NICHOLSON: Excuse me, strike that.

BY MR. NICHOLSON:

Q. Paragraph 21 says plaintiffs were ready, willing, and able to perform under the agreement and first amendment but Rotunda failed to perform. All right. Now if you look to your answer at Exhibit 20 in Paragraph 9 the defendant denied those -- both those allegations.

Now, with respect to the plaintiffs' complaint, Paragraph 20, what did MFM Properties not do that it was supposed to do under the agreement and first amendment?

A. I -- I think -- I think work in good faith as -- as we were doing in order to -- in order to wrap the transaction up in a fair, reasonable way, which is what we were -- that's part of why we...

Q. Okay. And by not working in good -- what exactly did -- did MFM Properties do that was not in good faith?

A. Well, I mean, I -- I -- I -- I feel like clearly we were -- we were under, you know, an understanding that we were going to, you know, wrap up the due diligence, everybody understood

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the impacts, the dramatic impacts of COVID as -- as evidenced by our response of it being a 90 and a 30, 120 days. You can get an incredible amount done when, again, people are still remote in often cases and, you know, the whole thing. That -- that was the spirit under which we were operating and, quite frankly, the fact that I -- I -- you know, we -- we were requested and put in a -- another LOI after the one that the terms were presented to our attorney and, you know, proactively requesting meetings and communication, proactively requesting -- and then this -- this -- all this is filed unbeknownst, without any communication live when clearly we've been standing there to do the deal.

Q. So when you said put in an LOI, are you referring to that Chris Troutman e-mail?

A. No, there was another one they requested, they said, you know, put -- put the -- put the revised terms -- put the terms, you know, in -- in that format, which we did.

MR. FINGER: You got that, right?

MR. NICHOLSON: Probably. Yeah, somewhere.

BY MR. NICHOLSON:

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Q. All right. So did you feel there was an obligation of MFM Properties to accept that LOI?

A. I -- I felt like it was an obligation of them to work in a reasonable good faith to wrap the transaction up, yeah. I mean, not -- you know, clearly we were, you know, trying to operate in more than good faith and we absolutely expected the same for sure.

Q. A letter of intent means what generally?

A. That was the format that they asked for. Quite frankly, we could have handled it on a five-minute phone call that said, hey, guys, here's what we're doing, this is the time frame that we've now finally gotten to the bottom of because we were really struggling with understanding what this would mean because we didn't -- obviously didn't want to continue to kick the can -- you know, we had said we want to make this the final deal and we can wrap this up. So I think, you know, we put ourselves under a huge gun in our -- in our -- you know, time wise to do that. So the idea that that's not met with a reasonable response and a wrap up and a close

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is -- is frankly inconceivable. I don't understand it and can't believe it.

Q. Well, why was MFM required to respond to your letter of intent after all of these e-mails --

A. Well, they requested it. I mean, you know, they requested the terms which we put on the table and that's why when Cary's saying we reject, it was -- it was -- it was befuddling. Like what -- you know, first of all, that's not good faith, what are we doing here. Secondly, you know, we've sent money, we spent whatever, so why would somebody be, you know, trying to, you know, take the materials or -- or, you know, get more money out of us and not just work in good faith to wrap the transaction up when they clearly want to do a deal. And -- and they requested the terms. So, yeah, I think it's in good faith that someone should respond and -- and have a conversation, get into a room. I offered -- I mean, I -- I was prepared to come here, I was prepared to do it in Atlanta in our office, whatever, and -- and here we are in all this craziness.

Q. So the letter of intent you're talking about was another offer to buy the property; is

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that right?

A. Correct.

Q. And you --

A. Well, again, I was responding to what they -- they said, you know, put it in that form. Now, again, that was done through another intermediary that that's what they requested so that's what we did. I -- I could have put it in an e-mail or -- or whatever. It didn't have to be a letter of intent. I don't want to get overly formal --

Q. Okay.

A. -- on the presentation.

Q. When you say they requested to be done through another intermediary, what do you mean?

A. I mean there was a conversation with an intermediary that was frankly jumping up and down like what are you -- what -- what are you -- the guy is going to pay you $16 million, now 16.5 for the property, and they said put it in writing, so we did. This is after Chris did and we got the response from -- from Cary, which was like I have no idea what -- you know...

Q. Who was the intermediary?

A. That gentleman was a guy named Jack

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Maloney, a broker.

Q. A broker? And did he --

A. He was the broker on the transaction.

Q. All right. So who was he representing in the transaction?

A. MFM. So he was meeting with them to obviously try to facilitate consummating the deal and wrapping this up.

Q. So was he -- was he representing MFM during the entire transaction?

A. Yes.

Q. Okay. And did -- was it -- was anything in that document signed by MFM that -- that you were sent?

A. No. But, again, it was requested and so when you asked what -- would we have expected a response in good faith, absolutely.

Q. So -- so this document that we call a letter of intent -- and it may not -- whatever it is, it's called a letter of intent, right? All right. And --

A. Because -- because supposedly that's what was requested, that's what he told me to do, so I did it. Again --

Q. But --

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A. -- trying to get something done.

Q. But that came from a broker, not from MFM Properties; is that correct?

A. What did, the request?

Q. The -- the letter.

A. No, it came from me. It was -- it was on our letterhead.

MR. FINGER: (Indicating.)

MR. NICHOLSON: Oh, thanks.

THE WITNESS: Can he have that?

MR. FINGER: Yeah.

THE WITNESS: Sorry.

MR. NICHOLSON: Yeah.

MR. FINGER: We'll make some copies.

MR. NICHOLSON: Can we?

MR. FINGER: Yeah.

MR. NICHOLSON: For some reason I didn't get this.

MR. FINGER: Okay. Yes.

MR. NICHOLSON: Let's go off the record for a minute.

(A recess transpired.)

(PLF. EXHIBIT 21, Letter of Intent dated March 11, 2021, was marked for identification.)

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BY MR. NICHOLSON:

Q. All right, sir. You've been handed Exhibit 21, which is a document entitled letter of intent. And is this the document you were just testifying about before the break?

A. Yes.

Q. All right, sir. So this document is dated March 11th, 2021. Would this document have been created by you or Rotunda folks on or around March 11th, 2021?

A. Yes.

Q. All right. And this document was created at the I take it verbal request of the broker for MFM Properties?

A. Yeah, well, the broker who -- who my understanding is was John had communicated to -- to present this.

Q. John Morgan?

A. Yeah.

Q. All right. And who told you that, the broker?

A. Yeah.

Q. All right. So did you ever talk to John Morgan or Harry Morgan about this letter of intent document at Exhibit 21?

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A. No, but I know he -- I know they received it and -- and -- and, you know, because I've got a copy of that e-mail where he sent it to them. And, again, my understanding was that was under their direction.

Q. Okay.

A. Or at least John's.

Q. And you -- and my understanding is you testified that you received no response from MFM Properties to this letter of intent, Exhibit 21?

A. I -- I candidly can't remember whether -- I -- I didn't have direct communication with John or Harry about that particular thing. But whatever the response was between the broker or the attorneys, I -- I don't know I mean at this point --

MR. FINGER: I think we perceived Exhibit 19 to be the response, which was the complaint.

THE WITNESS: Yeah. Yeah. Right. I mean it was like --

MR. NICHOLSON: Yeah, yeah.

THE WITNESS: I'm just stunned.

MR. NICHOLSON: Good point.

MR. FINGER: Yeah. Sorry, that was

improper of me and I apologize, Ned.

MR. NICHOLSON: That's all right. It was the correct observation.

THE WITNESS: I would like to -- can I say something, do you mind?

BY MR. NICHOLSON:

Q. Absolutely, sir.

A. We have -- we have been here -- we are -- we are old fashion folks, a big -- I want to -- we have wanted to communicate live, have a meeting personally at our office, here, with -- with John and/or Harry the entire time and -- and I'm shocked and stunned and disappointed we're here but -- but we have been here to, you know, act in good faith and wrap the transaction up from the word go.

Q. All right, sir. All right. If you could look back to our first exhibit, Exhibit 1, and to the Exhibit A portion of it. I just want to go through the topics with you. All right. As we go through the topics, I'm just going to start with 3 which asks for identification of all contracts written or verbal you contend you had or have with plaintiffs or either of them. All right. We've talked about the exhibit -- the

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original purchase and sale agreement, Exhibit 2, we've talked about the first amendment at Exhibit 3. It is unclear to me if you have said whether or not there was a verbal contract with MFM or if you were just talking about kind of a -- course of conduct discussions between you.

A. I -- I -- again, I -- my understanding clearly was that we -- we were in agreement of wrapping up, you know, what the time frame needed and -- and to put something to bed. So that -- that -- you know, that -- I -- I --

Q. And --

A. -- I'm shocked to be here. And, again, I -- you know, I can't -- I can't communicate how -- so -- so, yes, it was -- you know, I -- I believed there was a -- you know, an absolute understanding of how we were going to, you know, so --

Q. All right.

A. -- now did we -- anyway -- and I feel like we did all the things that were asked of us.

Q. All right. And you felt that eventually that understanding would be put into a written agreement, right?

A. Likely so.

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Q. All right. Number 4 asks all reasons why you did not close the transaction for the sale of the subject property as alleged in Paragraph 19 of the complaint. Have you covered all that, all those issues?

A. I believe so.

Q. All reasons why you contend you did not breach the agreement as alleged in the complaint. Do you think you --

A. I believe so.

Q. -- covered all the reasons?

A. Yes.

Q. Okay. All facts supporting that you were ready, willing, and able to close in November and December of 2020. Were you ready, willing, and able to close in November and December 2020?

A. I -- I -- I mean, we were ready, willing, and able to close the transaction and -- and were operating, again, in good faith on the -- everybody understood the time frames, COVID, and, you know, some moderate amount of additional time. So based on that, we were absolutely ready, willing, and able to close.

Q. I thought you testified earlier that you were still working on the development

agreement so --

A. Correct.

Q. -- and some other things. So, I mean, so I didn't think -- I thought the whole reason you wanted extra time was you were not ready to close?

A. Well, I mean, we -- we were -- we were ready, willing, and able to close under reasonable circumstances as we had discussed and we had gone over and I feel like we had -- clearly had a path in place.

Q. All right. Gotcha. Do you have -- does Rotunda contend that the plaintiffs were not ready, willing, and able to perform the agreement and close?

A. I -- I -- I don't -- I don't -- I -- I would need to defer to counsel on that. I mean, at the end of the day I don't -- I think that they -- they were -- they obviously -- I -- I don't necessarily contend that, but I clearly contend that, you know, we were on -- we were on a reasonable proper path together and that wasn't followed and here we are today, which I don't think is fair or reasonable or right.

Q. All right, sir. Look at Number 8. It

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says do you contend the plaintiffs are now required to close the transaction contemplated by the agreement referenced in the complaint. Identify all such reasons.

A. I -- I absolutely believe we should work in good faith to wrap the transaction up with the terms that we -- you know, with the extra time frame and reasonable terms like we discussed.

Q. All right. Look at Number 9. Do you contend that the plaintiffs are in breach of any contract or agreement with you or Rotunda is what I mean when I say you?

A. I -- I think we're, you know, again outside of the realm of reasonable and good faith to wrap the transaction up given our willingness and capability of closing.

Q. All right. I'm going to skip a couple down to 12. Now, have we talked about all reasons you have not paid additional earnest money as alleged, the additional money being the 100,000 that --

A. Yes, sir.

Q. -- has not been made yet --

A. Yeah.

Q. -- do you understand?

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Have you talked about all reasons for that?

A. Yes.

Q. Okay. How about for the extension fee?

A. I believe -- same.

Q. Okay. And, 14, the escrow agent, would that be the same?

A. Correct. Yes.

Q. Okay. 15 and 16 are about all reasons why the escrow agent should not pay the initial earnest money. Why shouldn't the initial escrow agent pay us the initial earnest money?

A. Again, I -- you know, feeling like the -- the -- you know, the closer of this transaction is laid out, the path is clear and -- and I would defer to counsel on anything else.

Q. Well, you -- counsel doesn't make the deal, I mean, counsel just helps -- you know, helps you. But the facts of the deal are there's got to be some factual reason why the escrow money has not been released and you have not allowed the release of the escrow money.

A. I -- again, it -- it -- it's more of the bigger picture that we're trying to, you know,

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have -- have resolved reasonably, which is to get a transaction done. And we've been more than happy to release it and -- and so I -- I don't want to say anything more than that because I'm frankly not up to speed on some of those technicalities.

Q. So you -- so are you saying that Rotunda would not release this escrow money until MFM agrees to a deal with them --

A. I mean, I'm --

Q. -- on this property?

A. -- saying that we clearly -- that -- that's -- we have been working towards, you know, that being the case and -- and -- and are -- that -- it's been more of a holistic approach quite frankly.

Q. Okay. Let's --

A. A -- a full resolution.

Q. All right, sir. The two ones we skipped over on Exhibit A where it talked about the purchase due diligence materials which are Number 10 and 11; do you see those two?

A. Uh-huh.

Q. Do you know what I'm talking about when we talk about the purchase due diligence

materials?

A. Yeah, general -- I mean, I understand what's in a PSA and the amendment.

Q. All right. And so, first of all, have -- in -- in the answer you state -- Rotunda states that there's some lack of clarity as to what the purchase due diligence materials are and are not I believe. Can you tell me what you understand the purchase due diligence materials to include? Because the reason I ask this question is we haven't -- my client hasn't gotten any of them. So if you want to refer to these two documents and the agreements again we can do that, but -- and if you want to pull Exhibits 2 and 3 up. But, I mean, I -- I mean, my initial question would be off the top of your head can you tell us anything you would consider a purchase due diligence material that should be turned over per the agreement?

A. I -- I -- I -- candidly, I don't want to -- I don't want to speak to something that I'm overly -- that I don't feel I'm necessarily qualified to speak on. I know at the end of the day obviously our approach has been to wrap the transaction up. The work we've done, we obviously

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want -- you know what I mean, it's been towards, you know, closing and this and that. We were very specific about -- about -- on -- on the front end, you know what I mean, not -- obviously not wanting to -- you know, proprietary materials and things like that. But the reality is at the end of the day, this all gets back to the same thing which is to say, you know, we're here to create a constructive solution where, you know, everyone is, you know, treated fairly and they're paid, you know, equitably and fairly for the property and we obviously, you know, aren't -- aren't -- so, anyway, I don't want to babble.

MR. FINGER: Can I talk to you for a second?

MR. NICHOLSON: Yeah, I think I may answer this -- I think I can get this --

MR. FINGER: Okay.

MR. NICHOLSON: -- if you let me ask him this. Let me -- he doesn't have to answer, but I want to ask it.

MR. FINGER: Okay.

BY MR. NICHOLSON:

Q. Is the reason you haven't released the purchase due diligence materials the same reason

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that you haven't returned the escrow money -- released the initial escrow money?

MR. FINGER: And, again, he's already mentioned advice of counsel, so...

MR. NICHOLSON: Okay. Well, if you want to take a break, we'll take a break before he talks about it. I'm -- I'm okay. I mean --

THE WITNESS: Can I use the restroom while you guys are talking?

MR. NICHOLSON: Of course. Of course.

MR. FINGER: Yeah.

THE WITNESS: Thanks, man.

MR. NICHOLSON: We can go off the record.

(A recess transpired.)

BY MR. NICHOLSON:

Q. All right. We're back on the record. I believe that Mr. Finger and I have agreed that with respect to Exhibit A, the Topics 10 and 11 regarding the purchase due diligence materials, we'll hold those topics in abeyance and not -- and not -- for another time should we ever need it, I'm not even sure we're ever going to need it, but -- so we're -- we're not going to cover that

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now.

A. Okay.

Q. Let me ask you, is there -- is there anything that you wish to add to your testimony today that you haven't said?

A. I appreciate that. I -- I'm probably reiterating it, but we have been here, capable of closing, capital and ready to close, just need to work through, you know, some nominal things and -- and I feel like we're in an extraordinarily unusual place, anyone else -- we're just very rarely capitalized to be able to close before the engineering and everything else is done. And we've been working in good faith and we've been open to meetings, live discussion, anything that's, you know, frankly, you know, a constructive open communication to -- to get something done.

MR. NICHOLSON: All right, sir. Thank you. That's all I have.

THE WITNESS: All right.

MR. FINGER: I have just a few --

MR. NICHOLSON: Follow-ups, yeah.

MR. FINGER: -- follow-up questions.

EXAMINATION

BY MR. FINGER:

Q. If you would look at Exhibit 5 for me please in your --

A. Me?

Q. Yes, you.

A. Oh, shit.

Q. Please.

A. You're wearing my jersey, man, come on.

Q. Just a couple questions.

A. All right. Which --

Q. Exhibit 5. Exhibit 5, please.

A. Okay. My bad. My bad. All right. You got a little New York in you, baby, a little impatient with me. Hold on. Hold on.

Okay.

Q. Exhibit 5 --

A. Sorry, thanks.

Q. -- which is a letter dated December 10th from Cary Griffin to Steven and Chris. I'll ask you to look at the second paragraph, please.

A. Okay.

Q. Last sentence. Does that indicate that you had been talking with the Morgans at this

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point in time and you kept Chris in the loop about your discussions?

MR. NICHOLSON: Object to the form. You can answer.

THE WITNESS: Yes.

BY MR. FINGER:

Q. Okay. And if you would find Exhibit 8 for me, please.

A. Okay.

Q. Your e-mail is incorrect on Exhibit 8; is that correct?

A. It looks like it, correct.

Q. And it was realized in some subsequent e-mails when Chris sent it directly to you. But the e-mail from -- that Cary sent out had your wrong e-mail address on it?

A. Okay.

Q. Okay.

A. Thank you.

Q. Exhibit 10, please.

A. Okay.

Q. Which is -- it probably is marked Exhibit 9 and it's all stapled together.

A. All right.

Q. It's the one that's got this dark

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header at the top. (Indicating.)

A. Oh, okay, I got it.

Q. And go to Bates Number 129, please.

A. Okay.

Q. And this is an e-mail from Steve Kennedy to Cary Griffin dated December 31st; do you see that?

A. Yeah.

Q. And does it indicate in there that you had just told Steve that you had just spoken to the seller?

A. Yep.

MR. NICHOLSON: Object to the form.

MR. FINGER: That's it. Thank you very much.

MR. NICHOLSON: Quick redirect.

MR. FINGER: Okay.

MR. NICHOLSON: Sorry.

MR. FINGER: It's all right. I opened the door, he's now going to walk through it.

MR. NICHOLSON: Well, no, I'll do this quickly.

EXAMINATION

BY MR. NICHOLSON:

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Q. Exhibit 8 that Terry just -- Exhibit 8 that Mr. Finger just talked to you about that had the wrong e-mail.

A. All right. Hang on.

Q. If you could look at Exhibit 9 as well.

A. Okay.

Q. 8 and 9.

A. Got them. Okay.

Q. I mean, am I correct that while Exhibit 8 had your -- an incorrect e-mail address for you, that in Exhibit 9 Mr. Kennedy indicates that you received that e-mail in Exhibit 8 from Mr. Kennedy; is that correct?

A. I -- yes, I believe so.

MR. NICHOLSON: Okay. Thanks. That's all I have.

THE WITNESS: Thanks.

MR. FINGER: Okay. Thank you.

Thank you, Madam Reporter.

MR. NICHOLSON: Thank you.

MR. FINGER: And we will waive reading and signing.

(The witness, after having been advised of his right to read and sign this transcript,

waives that right.)

(The 30(b)(6) deposition was concluded at 1:20 PM.)

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CERTIFICATE OF REPORTER

I, Kelly B. Baekelandt, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 23rd day of November, 2021 at Charleston, Charleston County, South Carolina.

Kelly B. Baekelandt, RPR
My Commission expires
June 16, 2026

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(No Information Requested)

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1	Defendant Rotunda Land &		
2	Development Group, LLC,		
3	Bates-stamped MFM_00001		
4	through MFM_00004		
5	PLF. EXHIBIT 2, Purchase and	18	16
6	Sale Agreement Bates-stamped		
7	MFM_00005 through MFM_00023		
8	PLF. EXHIBIT 3, Reinstatement	21	23
9	of and First Amendment to		
10	Purchase and Sale Agreement		
11	Bates-stamped MFM_00024		
12	through MFM_00027		
13	PLF. EXHIBIT 4, Letter dated	34	19
14	November 23, 2020,		
15	Bates-stamped MFM_00028 and		
16	MFM_00029		
17	PLF. EXHIBIT 5, Letter dated	37	2
18	December 10, 2020,		
19	Bates-stamped MFM_00030 and		
20	MFM_00031		
21	PLF. EXHIBIT 6, Letter dated	47	2
22	December 18, 2020,		
23	Bates-stamped MFM_00032		
24	PLF. EXHIBIT 7, Letter dated	48	23
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Bates-stamped MFM_00033 and MFM_00034			
PLF. EXHIBIT 8, E-mail chain and attachments Bates-stamped MFM_00035 through MFM_00063	56	18	
PLF. EXHIBIT 9, E-mail chain Bates-stamped MFM_00126 through MFM_00128	61	9	
PLF. EXHIBIT 10, E-mail chain Bates-stamped MFM_00129 through MFM_00131	61	12	
PLF. EXHIBIT 11, E-mail chain Bates-stamped MFM_00132 through MFM_00134	61	15	
PLF. EXHIBIT 12, Letter dated January 12, 2021, Bates-stamped MFM_00095	70	12	
PLF. EXHIBIT 13, E-mail chain and attachment Bates-stamped MFM_00096 through MFM_00099	72	10	
PLF. EXHIBIT 14, Letter dated February 1, 2021, Bates-stamped MFM_00101	74	18	
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PLF. EXHIBIT 16, E-mail chain	76	20	
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MFM_00104			
PLF. EXHIBIT 17, E-mail	79	12	
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-00482
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	PLAINTIFFS' SECOND AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION OF DEFENDANT ROTUNDA LAND & DEVELOPMENT GROUP, LLC
v.	)	
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, the Plaintiffs, by and through their undersigned counsel, will take the deposition of Defendant, Rotunda Land & Development Group, LLC, before a notary public or some other officer authorized by law to take depositions, on November 16, 2021, commencing at 11:00 a.m., at the law offices of Burr & Forman LLP, Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928. Said deposition shall continue from day to day until completed.

Pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure Rotunda Land & Development Group, LLC (also referred to herein as "you") is required to designate and fully prepare one or more officers, directors, managing agents or other individuals, to testify on its behalf regarding the attached Exhibit A designating matters and as to such information that is known or reasonably available to the Plaintiff.



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Respectfully submitted,

Dated: October 11, 2021

BURR & FORMAN LLP

By _____

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
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Attorneys for Plaintiffs,
MFM Properties, LLC and
MFM Residential Properties, LLC

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EXHIBIT A

1. Identification and authentication of all documents identified in the Complaint.

2. Identification of all written communications between your legal counsel and legal counsel for plaintiffs between November 1, 2020 through the date the Complaint was filed.

3. Identification of all contracts, written or verbal, you contend you have or had with plaintiffs, or either of them.

4. All reasons why you did not close the transaction for the sale of the subject property as alleged in paragraph 19 of the Complaint.

5. All reasons why you contend you did not breach the Agreement as alleged in the Complaint.

6. All facts supporting that you were ready, willing, and able to close in November and December of 2020.

7. If you contend that plaintiffs were not ready, willing and able to perform under the Agreement alleged in the Complaint at paragraph 21 and that at any time that prevented closing, identify all such reasons.

8. If you contend that plaintiffs are now required to close the transaction contemplated by the Agreement referenced in the Complaint, identify all such reasons.

9. If you contend the plaintiff are in any way in breach of any contract or agreement with you, please identify the contract or agreement you contend was breached and identify all facts supporting such contention.

10. Identify all materials you consider to be Purchase Due Diligence Materials as alleged in paragraphs 27 and 28 of the Complaint; as requested in the Fifth and Sixth Causes of Action in the Complaint; and as identified in paragraphs 18, 25 and 28 of the Answer.

11. All reasons why you have not turned over the Purchase Due Diligence Materials.

12. All reasons why you did not pay the Additional Earnest Money as alleged in paragraph 15 of the Complaint.

13. All reasons why you did not pay the extension fee as alleged in paragraphs 16 and 17 of the Complaint.

14. All reasons why you did not pay the Escrow Agent as alleged in paragraph 10 of your Answer.

15. All reasons why the Escrow Agent should not pay the Initial Earnest Money to plaintiffs as requested in the Second, Third, and Fourth Causes of Action in the Complaint.

16. Identify all reasons you have not consented to the release of the Initial Escrow Money to plaintiffs as alleged in paragraph 24 of the Complaint.

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STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF BEAUFORT	) CASE NO.: 2021-CP-07-00482
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)
Plaintiffs,	)
v.	) CERTIFICATE OF SERVICE
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC	)
Defendants.	)

I, Valerie Hampton, an employee of Burr Forman LLP, do hereby certify that I served the foregoing **Plaintiffs' Second Amended Notice of 30(b)(6) Deposition of Rotunda Land & Development Group, LLC** upon parties of record in the above-captioned matter, by depositing a copy of same in the United States Mail, with sufficient first-class postage affixed thereto, and addressed as follows:

Parties Served:

Amanda Calloway, Attorney
Calloway Title & Escrow, LLC
4170 Ashford Dunwoody Road, Suite 525
Atlanta, GA 30319
Pro Se Defendant Calloway Title & Escrow, LLC

Terry A. Finger, Esq.
Finger, Melnick & Brooks, P.A.
P.O. Box 24005
Hilton Head Island, SC 29925
tfinger@fingerlaw.com
Attorneys for Defendant
Rotunda Land & Development Group, LLC

Valerie N. Hampton

Columbia, South Carolina
October 11, 2021

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined in Section 1(g) below) by and between MFM PROPERTIES, LLC AND MFM RESIDENTIAL PROPERTIES, LLC, both, Georgia limited liability companies (collectively, "Seller" or "Sellers") and ROTUNDA LAND & DEVELOPMENT GROUP, LLC, a Georgia limited liability company ("Purchaser").

WITNESETH:

WHEREAS, Seller is the owner of that certain parcel of land comprised of 2,632.30 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina ("State"), as more particularly shown on Exhibit A attached hereto and incorporated herein, together with all rights, privileges, easements, benefits and agreements appurtenant thereto (collectively, the "Property").

WHEREAS, Seller desires to sell the Property and Purchaser desires to purchase the Property in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definition of Key Terms. The following defined terms shall have the meanings set forth below:

   (a) "Purchase Price" Sixteen Million and No/100 Dollars ($16,000,000.00).

   (b) "Initial Earnest Money" One Hundred Thousand and No/100 Dollars ($100,000.00).

   (c) "Additional Earnest Money" One Hundred Thousand and No/100 Dollars ($100,000.00).

   (d) "Initial Inspection Period" that period that commences on the Effective Date and ends 180 days thereafter. Additionally, Purchaser may, at its sole discretion, extend the Inspection Period for two (2) additional sixty (60) day periods (each, an "Extension Period") that Purchaser, in its sole discretion, deems necessary. In order to exercise this right, Purchaser shall provide Seller written notice at least five (5) days prior to the expiration of the Initial Inspection Period or any subsequent Extension Period that it will be exercising its rights to extend, and also as a precondition for such extension shall make an additional deposit of $45,000.00 for each such extension (each, an "Extension Fee"). Each such Extension Fee is expressly non-refundable, but shall apply to the Purchase Price at Closing. The Inspection Period and the Extension Period(s), to the extent each is validly exercised hereunder, shall collectively be referred to as the "Initial Inspection Period".

   (e) "Closing Date" that date that is on or before 30 days after the end of the Inspection Period and in any event no later than August 1, 2020.

   (f) "Property" the 2,632.30 +/- acres located in Hardeeville, Jasper County, South Carolina for which Purchaser will be seeking approval for single family residential, multi-family residential and commercial improvements to be developed on the Property.

   (g) Effective Date is August 19, 2019.

2. Earnest Money.

   (a) Within three (3) business days after the Effective Date, Purchaser shall deposit the Initial Earnest Money in escrow with Title Company as escrow agent ("Escrow Agent") in the form of a certified or cashier's check or by wire transferred funds confirmed received in the bank or savings institution of Escrow Agent, such funds to be held in a non-interest bearing account. At Closing, the Earnest Money (both Initial and Additional) and any



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Extension Fees shall be applied for Purchaser's benefit against the Purchase Price at Closing. If this Agreement is terminated prior to Closing pursuant to the terms of this Agreement, then the Earnest Money and any Extension Fees shall be returned to Purchaser or paid to Seller as provided in this Agreement.

(b) Calloway Title & Escrow, LLC (the "Title Company") shall perform Title work for this transaction.

3. Inspection Period Process; Access to Property.

(a) Within 21 days of the Effective Date, Seller will make reasonable efforts to provide access authorization for Purchaser to confer with:

(i) Thomas & Hutton Company ("T&H") as to all topographical, engineering, environmental and other studies, reports, surveys, engineering plans development agreements, geotechnical or soil reports, licenses, permits, maps, notices, plans, and other like materials with regard to the Property;

(ii) Newkirk Environmental, Inc. ("NEI") as to wetland delineations reports or other documentation or correspondence relating to any wetlands at the Property; and

(iii) Brockington & Associates ("B&A") as to any cultural resource and archeological studies and reports.

Seller will also make reasonable efforts to provide any relevant materials to Purchaser that are in Seller's possession or control (the "Seller Property Materials"). Such access to T&H, NEI and B&A shall be at no expense to Seller. Purchaser shall be prepared to reimburse such consultants for their time and expenses.

(b) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the right to enter upon the Property and any buildings and other improvements located thereon, in order to inspect and examine the same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions). Purchaser agrees that it will repair any damage to the Property resulting from surveys, tests and inspections performed in accordance herewith if Purchaser does not purchase the Property. Purchaser shall also defend, indemnify and hold harmless Seller from and against any and all loss, cost, damage, expense or liability arising out of any negligence or willful misconduct of Purchaser in performing the surveys, tests and inspections contemplated hereby; provided that the foregoing agreement to indemnify and hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to (i) any condition upon or under the Property not caused by Purchaser, (ii) any violation of law existing with respect to the Property not caused by Purchaser, or (iii) the negligence or willful misconduct of Seller or its shareholders, officers, directors, employees, agents or contractors. The foregoing indemnity shall survive the termination of this Agreement. Purchaser will incur all costs associated with due diligence items including, but not limited to, wetlands delineation, mitigation credits, etc.

(c) In the event that Purchaser determines, in its sole and absolute discretion, for any or no reason, that the Property is not suitable for Purchaser's intended use thereof, then Purchaser shall have the right to terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Initial Inspection Period, in which event this Agreement shall terminate, the Earnest Money shall be refunded to Purchaser, and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder

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(except for those that expressly survive termination of this Agreement). If Purchaser does not terminate this Agreement by the end of the Initial Inspection Period, the Initial Earnest Money shall be considered non-refundable except in the case of Seller's failure to perform.

(d) If Purchaser terminates this Agreement prior to the end of the Inspection Period, or during any Extension Period, any reports, studies, permits and other materials ("Purchaser Due Diligence Materials") generated by Purchaser for Property shall be given to Seller for no additional consideration and without any representation or warranty by Purchaser as to the accuracy thereof. Purchaser and Seller acknowledge and agree that (A) the Purchaser Due Diligence Materials will include: (i) any surveys, title reports, environmental reports, geotech reports, and similar third party consultant reports relating to the condition of the Property, (ii) any civil engineering plans, grading plans, utility plans and similar infrastructure-related plans and any contracts relating thereto as well as any architect contracts (but not architectural plans as set forth in subparagraph (B) below), (iii) any site plans and other conceptual development for development of the overall Property that have been submitted to governmental authorities, and (iv) any term sheets, letters of intent or contracts relating to the potential sale to a third party by Purchaser of any portions of the Property; (B) that the following shall be excluded from the Purchaser Due Diligence Materials: (i) proprietary material that is, or is related to, any financial data, financial modeling, financing structures, or equity or joint venture structures relating to Purchaser or the Purchaser's intended development of the Property, (ii) proprietary design schematics, architectural plans, proposed unit mix, composition and layout, and floorplans and/or other unit-specific design information; and (C) upon request by Seller, Purchaser will provide to any parties with whom Purchaser has dealt with regard to the Purchaser Due Diligence Materials an authorization for such parties to discuss with Seller such materials and the terms thereof, provided that such authorization shall not extend to any proprietary information or materials specifically excluded from delivery as set forth herein. It is also understood and agreed that nothing in this Paragraph 3.(d) shall be constructed to prohibit, or in any way limit, Seller's ability to deal with any of the third party consultants, including by way of example, T&H, NEI and B&A as referenced in Paragraph 3.(a), after Termination of this Agreement, for consultation on this Property or any other properties.

(e) Upon exercise by Purchaser of each applicable Extension Period, each of the Extension Fees of $45,000.00 payable for such Extension Period shall be considered non-refundable.

(f) Within three (3) business days after the expiration of the Initial Inspection Period, Purchaser shall deposit with Escrow Agent the Additional Earnest Money described in Section 1(c). Such Additional Earnest Money shall be non-refundable except in the case of Seller's failure to perform but it shall be applicable to the Purchase Price at Closing.

4. Title; Permitted Exceptions; Survey.

(a) Title. Within the initial forty-five (45) days following the date of this Agreement Title Company, at Purchaser's sole cost and expense, shall cause to be furnished to Purchaser a current title commitment for an owner's title insurance policy (the "Title Commitment") issued through Chicago Title Insurance Company or another material underwriter, setting forth the status of title of the Property and all exceptions, including rights-of-way, easements, restrictions, covenants, reservations and other conditions, if any, affecting the Property which would appear in an owner's title insurance policy if issued, together with true, legible copies of all instruments referred to in the Title Commitment affecting title to the Property. It is understood that this commitment will contain the standard survey exception until any additional survey work is authorized by Purchaser and completed. Purchaser agrees to notify Sellers in writing of any objections which Purchaser may have

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to any matters reflected in the Title Commitment not later than fifteen (15) days from the date of receipt of the Title Commitment. The intention of the parties hereto is to arrive at a consensus as to the acceptability of both title and survey as of the end of the Initial Inspection Period. Notwithstanding the foregoing, Seller shall have the same obligations for addressing any potential title exceptions that arise, or become applicable after the end of the Initial Inspection Period but prior to Closing.

In case legal steps are necessary to perfect the title, such action must be taken by the Sellers promptly at its own expense. If any of Purchaser's objections to the Title Commitment are not corrected within thirty (30) days following the date Purchaser notifies Sellers of any such objections, then Purchaser may, at its option, either (A) terminate this Agreement by providing written notice to Sellers, in which event the Earnest Money deposited by the Purchaser is to be returned to the Purchaser, and this Agreement shall be deemed canceled with there being no further obligation of either party hereunder unless otherwise provided in this Agreement, or (B) waive any or all objections previously made to the Title Commitment.

(b) Permitted Exceptions. Notwithstanding the foregoing, Purchaser acknowledges that there are certain restrictions, covenants, easements and other matters of record which are certainly subject to review by the Purchaser during the Inspection Period, but which are integral to the Property and will not be a basis for title objections pursuant to Section 4(a). Those are listed as "Permitted Exceptions" on Exhibit B attached hereto and incorporated herein.

At closing, at Purchaser's option, Title Company will furnish to Purchaser, at Purchaser's sole cost and expense, an Owner's Policy of Title Insurance (the "Owner's Policy") in the amount of the purchase price issued by the Title Company on the standard form in use in the State of South Carolina, insuring good and marketable fee simple title to the Property in Purchaser, subject only to the Permitted Exceptions, and the title exceptions noted on the Title Commitment or otherwise accepted by the Purchaser.

(c) Survey. There are two surveys of record which are referenced on Exhibit A. Both surveys were prepared by T&H. The first survey in 2005 is a boundary plat of the entire Property, while the second plat recorded is of the area designated "Residential Tract" allowed MFM Properties to split the ownership of the overall Property into two separate entities. The remaining acreage consisting of 1281.78 acres then being designated the "Commercial Tract". These designations are only used for convenience. It will be the Purchaser's decision during the Inspection Period whether to obtain any additional surveys of all or portions of the Property. Seller expressly authorizes Purchaser to deal with T&H, if it so desires, on the surveying tasks.

5. City Agreements:

(a) Hardeeville Development Agreement. The Property is subject to the PDD and the Development Agreement between Seller and the City of Hardeeville, SC ("City"), which govern the use and entitlements vested in the Property by the City. Annexation of the Property has been completed by the City, which resulted with an annexation agreement, a PDD ordinance and a development agreement (collectively "City Agreements") Seller refers to such City Agreements which are of record in Jasper County. (PDD recorded in Volume 507, Page 110, et seq.; Development Agreement recorded in Volume 507, Page 25, et seq.)

(b) General Summary of Contents. The City Agreements are detailed and relate to and include certain rights granted for development purposes to the landowner, and also certain obligations. By way of example the City Agreements reference the total allowable

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residential dwelling units ("DU's") for the entire Property. The City Agreements also require dedication to the City of certain lands for municipal facilities such as a 2.1 acre fire station site; a 2.1 acre police station site; park sites approximating 53 acres; a 53 acre school site; an approximate 59 acre Spine Road (150' R/W); and an approximate 6 acre Highway 278 Alternative Connector (150' right of way), all of which are contained within the Property. The City Agreements also contain certain references to Open Space requirements. The combination of the dedications, preserved wetlands, buffer areas, storm management facilities and other qualifying acreage were intended to satisfy the 25% and 8.3% Open Space requirements for the Property. Purchaser shall accept responsibility for confirming same.

(c) Modifications to City Agreements. In Purchaser's discretion during the Inspection Period, Purchaser may wish to seek modifications to portions of the City Agreements to better suit its proposed project. Seller agrees to cooperate with Purchaser's discussions with the City to the extent necessary. Purchaser may discuss such proposed modifications to the City Agreements with the City and will advise Seller in advance of any such meetings as to the time and location of same. Purchaser will not be authorized to execute any modifications which would be binding upon the Seller, without the Seller's express written approval, which approval is solely in its discretion. Until modified and/or assigned by Seller to Purchaser, Seller retains all rights under the City Agreement and reserves the right to engage in dialogue with the City as to any matters pertaining to such Agreements. Seller authorizes Purchaser to discuss any and all issues relating to the City Agreements with T&H, which was the primary consultant used by Seller in this regard. Any and all expense of a consultation with T&H shall be borne by Purchaser. Each party will agree to execute necessary consent and waiver of conflict forms, if required by T&H. Notwithstanding the foregoing, Purchaser shall have the right, without consultation with Seller or Seller's ability to participate in negotiations with the City, to enter into new or additional agreements with the City, including on subjects similar to the subject matter of the City Agreements, provided that any new such agreements do not by their terms modify or supersede the existing City Agreements or bind Seller.

6. Utilities/Access. It is understood by Purchaser that the Property is currently in an "undeveloped state" and that all utilities and fully improved/paved access are not presently available to the Property. In general, Purchaser shall be responsible for arranging all utility services for the Property with the applicable utility company and shall bear all aid-to-construction, availability and connection fees in accordance with prescribed rates currently in effect.

(a) Water and Sewer; BJWSA. Seller has previously discussed with Beaufort Jasper Water and Sewer Authority ("BJWSA") with the objective of confirming BJWSA's obligation of delivering water and sewer to the site in sufficient capacity for the development of the Property. However, there were no final agreements ever executed. Purchaser will have to finalize discussions/negotiations with BJWSA. One of Seller's Property Materials to be provided to Purchaser are Water and Sewer master plans prepared by T&H. Purchaser shall be authorized to discuss such plans with T&H but at its cost, if any, for any needed modifications and for T&H's time.

(b) Dry Utilities. In addition to the water and sewer lines, the electric, gas, cable and telephone lines will necessarily have to be installed to service the Property. The likely providers of electric and gas will be SCE&G and of cable and telephone, Hargray Communications. Purchaser is responsible for contacting the providers in this regard.

7. Closing. Provided that all conditions precedent to Purchaser's obligation to proceed to closing hereunder have been satisfied or waived, closing under the terms of this Agreement (the "Closing") shall be held on or before the Closing Date. Closing shall be held at an exact date and time as agreed

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by Purchaser and Seller in the offices of the Escrow Agent or at another location agreed to by Purchaser and Seller. Seller and Purchaser agree to cooperate with one another to deliver documents in escrow to Escrow Agent in order to eliminate the need for representatives of Seller and Purchaser to attend the Closing. Subject to the terms and provisions of this Agreement, if Purchaser elects to close earlier than the date specified above, then Purchaser shall give Seller at least ten (10) days advance written notice of the date of Closing. The Earnest Money (both the Initial and Additional) and Extension Fees, if any, shall be applicable to the Purchase Price.

(a) Closing Procedures. At Closing, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller. At Closing, Seller shall deliver possession of the Property to Purchaser in an unoccupied condition free of any right of possession or claim to right of possession by any party other than Purchaser except as otherwise stated in this Agreement. The Seller and Purchaser do not need to be physically present at the offices of Escrow Agent for Closing as long as they each cause their requisite closing documents and funds to be deposited with the Escrow Agent by the Closing date pursuant to the terms of this Agreement.

(b) Closing Documents and Purchase Price.

(i) At Closing, Seller shall deliver to Escrow Agent: (A) a limited warranty deed ("Deed") conveying the Property to the Purchaser with a legal description prepared pursuant to the current deed of what Seller owns; Seller will provide a quitclaim deed based on a new survey completed by Purchaser if Purchaser so desires and acceptable to Seller (B) an affidavit in a form acceptable to Escrow Agent that Seller is not a "foreign person" and containing such information as required by Sections 1445 and 6045 of the Internal Revenue Code and the regulations issued thereunder; (C) an owner's affidavit in a form customary in the State of South Carolina and acceptable to Escrow Agent; (D) a certificate that all of Seller's representations, warranties, and covenants as set forth in Section 9 of this Agreement are true and accurate as of Closing; and (E) such other documents, instruments, tax forms and the like documents (including, but not limited to, broker lien waivers, if applicable, and any state forms related to tax payments or withholding) as are required by the Escrow Agent, the terms of this Agreement, or reasonably necessary to complete the transaction contemplated by the terms of this Agreement. All documents to be delivered as provided above shall be duly authorized, fully executed, and, if required, acknowledged before a notary.

(ii) At Closing, Purchaser shall deliver to Escrow Agent: (i) the Purchase Price, in the form of wired transferred funds, less the Earnest Money and/or Extension Fees and subject to any adjustments as provided under this Agreement; (ii) such tax forms and the like documents as are usual, customary and/or necessary for commercial real estate closings in the city, town, county and/or state where the Property is located.

(c) Closing Costs. Seller shall pay its own attorney's fees and all recording fees on any title clearance documents, the Deed and any quitclaim deed, preparation of the Deed and quitclaim deed, and any state, local or other recording or transfer, stamp or documentary taxes. Purchaser shall pay for its survey and its attorney's fees, recording fees for the deed and any financing documents, any premiums charged for the Title Policy, and title exam costs.

(d) Prorations. All real estate taxes, special taxes, and other assessments or utility charges, if any, applicable to the Property shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date. All real estate taxes shall be prorated based upon the most recently available property assessment for the Property. If such assessment

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is not available for the year in question, taxes shall be re-prorated after Closing when the amount thereof can be ascertained. Seller shall not be responsible for the payment of any "roll-back" taxes assessed against the Property at Closing but Purchaser shall assume such obligations for payment of same subsequent to Closing, as may be required. Purchaser is responsible for any and all costs, fees, assessments with regard to the City Agreements. If any errors or omissions are discovered by either party within 12 months for Closing regarding any proration, the parties shall make the appropriate corrections promptly upon discovery thereof by paying cash to the party entitled thereto.

8. Conditions Precedent to Closing.

(a) The obligation of Purchaser to close under this Agreement is subject to all of the following:

(i) Seller shall not have breached any of its representations, warranties, or covenants under this Agreement; Seller's representations and warranties shall be true and correct as of the Closing date; and Seller shall have complied with all of the obligations required to be performed by Seller under this Agreement at or prior to Closing.

(ii) The Escrow Agent shall be unconditionally prepared to issue an owner's title insurance policy on the ALTA form and with such endorsements as selected by Purchaser in an amount equal to the Purchase Price insuring Purchaser's ownership of the Property subject to no exceptions, except for the Permitted Exceptions and those agreed upon during the Inspection Period

(iii) Purchaser shall have received approval from the City as to the assignment of the City Agreements generally consistent with, but updated from, the form attached as an exhibit to the City Agreement. The intent of the parties hereto is that the Assignment shall be made in a format so as to release Seller, on a post-closing basis, from any further obligations under the City Agreements.

(iv) The absence of any material change in the status of the use, title, occupancy, or physical condition of the Property (unless caused or consented to by Purchaser).

(b) In the event that any of the conditions precedent set forth in Section 8(a) above have not been fulfilled on the Closing Date, Purchaser shall have the right, at its option, to (i) waive the unsatisfied condition(s) precedent and proceed to Closing, or (ii) terminate this Agreement by delivering written notice to Seller, in which event the Earnest Money shall be immediately returned to Purchaser and Purchaser and Seller shall have no further rights, obligations, or liabilities hereunder (except for those that expressly survive termination of this Agreement). Notwithstanding the foregoing provision, in the event that any of the conditions precedent set forth in Section 8(a) above have not been fulfilled by the date of Closing due to breach or default by Seller, then Purchaser may, in addition to the remedies set forth above, pursue any and all of its rights set forth in Section 13(a) below (and any termination pursuant to (ii) above shall not prevent Purchaser from exercising any and all of its rights set forth in Section 13(a) below).

9. Seller Representations. One of the purposes of the lengthy Inspection Period is to allow Purchaser ample time to obtain independent review and advice as to the Property, its physical condition, as well as its developability. Seller has been a passive landowner of the Property and has not engaged in any active development. Hence, the Property is being sold to Purchaser on an "as is-where is" basis. Seller makes no representations or warranties, express or implied, with regard to the physical characteristics and/or condition of the Property. The subject Property is conveyed, transferred, and/or assigned on an "AS-IS" - "WHERE-IS" BASIS, WITH ALL FAULTS, WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO PHYSICAL CONDITION (including without limitation, any latent or patent defects), condition of soils or

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groundwater, existence or nonexistence of hazardous materials. By execution of this Contract, Purchaser agrees that Seller has made no such representations, pledges, covenants or commitments in regard to the development of the Property which has induced the Purchaser to purchase the Property herein except as stated as follows:

(a) Title to Property. Seller is the sole owner of good, marketable and insurable fee simple title to all of the Property subject to the Permitted Exceptions.

(b) Authority of Seller. Seller has the right, power and authority to enter into this Contract and sell the Property in accordance with the terms and conditions hereof and the necessary corporate, partnership or trust action to authorize this Contract has taken place.

(c) Options. No options or other contracts are still outstanding giving any other party a right to purchase any interest in the Property.

(d) Compliance with Existing Laws. Seller is, to the best of Seller's knowledge, not in violation of, and has not received notice of the violation of, any applicable building, zoning, or other ordinances, resolutions, statutes or regulations or any government, governmental agency, including but not limited to environmental control agencies, in respect to the use and condition of the Property.

(e) Condemnation Proceedings. Other than the development agreement discussions with the City, including the potential Bluffton Connector, there are no condemnation or eminent domain proceedings pending or contemplated, to the best of Seller's knowledge, against the Property or any part thereof and Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof.

(f) Mechanic's Liens. No payments for work or improvements furnished to the Property are due or owing or will become due or owing at Closing without provision for payment being made. There are no materialmen's or mechanic's liens filed of record affecting the Property and no work has been performed for which a mechanic's or materialmen's lien can be claimed.

(g) Pending Litigation. Seller is not now a party to any litigation affecting the Property and Seller knows of no litigation or threatened litigation affecting the Property or any part thereof. Seller shall give Purchaser prompt notice of the institution prior to Closing of any such litigation.

(h) Events Prior to Closing and Other Information. Seller will not cause any action to be taken which would cause any of the foregoing representations or warranties to be untrue as of the Closing. Seller agrees to immediately notify Purchaser in writing of any event or condition which occurs prior to Closing hereunder, which causes a change in the facts related to, or the truth of any of the above representations.

(i) No Defaults. Neither the execution of this Contract nor the consummation of the transaction contemplated hereby will: (a) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party, or (b) violate any restriction to which Seller is subject, or (c) to the best of Seller's knowledge, constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree, or order, or (d) result in the acceleration of any mortgage or note pertaining to the Property or the cancellation of any contract or lease pertaining to the Property, or (e) result in the creation of any lien, charge, or encumbrance upon any of the properties or assets to be sold or assigned to Purchaser pursuant to this Agreement.

(j) With reference to paragraph 7(a), Seller discloses to Purchaser the existence of

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(i) a hunting lease with a third party for a portion of the Property. The Lease is subject to termination by Seller with thirty (30) days' notice.; and

(ii) a billboard lease in favor of a third party lessee which is currently operating on a month-to-month basis, said billboard located on U.S. Highway 278.

[Note: Further details of both of the above leases are to be provided to Purchaser within the initial 60 days of the Inspection Period.]

10. Purchaser Representations. Purchaser warrants, represents and covenants to Seller that the execution of this Agreement and all the transactions contemplated hereby have been authorized by all necessary and appropriate action by Purchaser and that Purchaser has the right, power and authority to enter into this Agreement. Further, Purchaser represents to Seller that Purchaser, and the members/partners of Purchaser's entity have sufficient real estate development experience and expertise, as well as the financial abilities to develop the project as described herein. As to the financial abilities of Purchaser, no later than 150 days from the Effective Date Seller shall have been provided, by Purchaser, with written evidence from a third party source of funding, which verifies that there are sufficient funds available to Purchaser to enable it to close this transaction and to carry out all other obligations of it as set out in this Agreement. This is a key component for Seller agreeing to the Agreement and a condition precedent to Purchaser's ability to extend the Inspection Period, if applicable. Once provided by Purchaser and approved by Seller, which shall not be unreasonably withheld, a copy of such written evidence is to be attached hereto and incorporated herein as Exhibit C.

11. Notices. All notices, demands, or other communications of any type ("Notices") given by Seller to Purchaser or by Purchaser to Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be in writing and shall be deemed delivered when actually received, or, if earlier and whether or not actually received, (i) if delivered by courier or in person, when left with any person at the address reflected below, if addressed as set forth below, (ii) if by facsimile, upon the transmittal of same, addressed and directed to the facsimile number noted below, (iii) if by overnight courier service (such as, by way of example but not limitation, U.S. Express Mail, Federal Express or UPS) with instructions for delivery on the next business day, when deposited with such courier, addressed as reflected below, and (iv) if delivered by mail, when deposited in a Post Office or other depository under the care or custody of the United States Post Service, enclosed in a wrapper with proper postage affixed (as a certified or registered item, return receipt requested), addressed as follows:

AS TO SELLERS:
MFM Properties, LLC and
MFM Residential Properties, LLC
James H. Morgan, Jr., Esquire
Smith, Gambrell & Russell, LLP
1230 Peachtree Street NE
Suite 3100 Promenade II
Atlanta, GA 30309-3592
hmorgan@sgrlaw.com

AND TO:
John F. Morgan, Sr.
23-B Shelter Cove Lane Suite 202
Hilton Head Island, SC 29928
jms@southcoastcommercial.net

AND WITH COPY TO:
Burr & Forman LLP
Attn: Cary S. Griffin

AS TO PURCHASER:
Rotunda Land & Development Group, LLC
Attn: Paul Lange
2870 Peachtree Road Suite 302
Atlanta, GA 30305
plange@rotundaland.com

WITH COPY TO:
Seyfarth Shaw, LLP
Attn: Steve Kennedy
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309
skennedy@seyfarth.com

AS TO TITLE COMPANY:
Calloway Title & Escrow, LLC
Attn: George Calloway
4170 Ashford Dunwoody Road Suite 525
Atlanta, GA 30319

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Post Office Drawer 3
Hilton Head Island, SC 29938-0003
843-785-2171
cgriffin@burr.com

georgec@titlelaw.com
Fax: (678) 406-8941

12. Default.

(a) Seller's Default; Purchaser's Remedy. In the event Purchaser performs all of its obligations hereunder and Seller fails to close on the Property pursuant to the terms of this Agreement, or in the event Seller otherwise breaches any term of this Agreement and fails to cure the breach within ten (10) days after receipt of written notice of the breach from Purchaser, then Purchaser may: (i) seek to specifically enforce performance of Seller's obligation(s) under this Agreement, but if specific performance is not available because Seller has previously conveyed or contracted to convey the Property to another party, Purchaser shall have the right to pursue Purchaser's actual out-of-pocket costs incurred in connection with this Agreement including, without limitation, costs for attorneys' fees, engineers' fees, consulting fees, site plan, subdivision, and approval and permitting costs, title examination and survey fees, and all costs and expenses related to environmental, soil and feasibility tests and examinations ("Purchaser's Costs"), or (ii) terminate this Agreement (if such default occurs prior to Closing) by delivery of written notice thereof to Seller, in which event the Earnest Money shall be immediately returned to Purchaser and Purchaser shall be entitled to recover from Seller Purchaser's Costs. The foregoing remedies shall survive the termination of this Agreement and Closing and delivery of the Deed.

(b) Purchaser's Default; Seller's Remedy. In the event that all of the conditions precedent to Purchaser's obligations to close hereunder have been satisfied or waived and Seller performs all of its obligations hereunder and Purchaser fails to close on the Property in breach of the terms of this Agreement, then, within ten (10) days after receipt of written notice of the same from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement by delivery of written notice to Purchaser. In such event the Purchaser Due Diligence Materials described in Section 3.(d) above shall be promptly delivered to Seller by Purchaser and the Earnest Money and non-refundable Extension Fees shall be promptly delivered to Seller by Escrow Agent and retained by Seller as full liquidated damages and in lieu of any other claims or causes of action which may be available to Seller at law or in equity by reason of such default hereunder by Purchaser, the foregoing amount being agreed upon as liquidated damages by the parties hereto because of the difficulty of ascertaining the actual damages Seller may suffer by reason of Purchaser's breach of this Agreement. Notwithstanding the foregoing, in the event not all the Purchaser Due Diligence Materials are timely provided, Seller shall have the right to bring an action, in law or in equity, against Purchaser to recover such Purchaser Due Diligence Materials.

(c) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, SELLER RELATED AGREEMENTS OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

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13. Condemnation; Casualty.

(a) Condemnation. If, prior to Closing, all or any material portion of Property is condemned by any authority having the power of eminent domain, or if written notice of any condemnation is issued, or if any proceedings are instituted, by any authority having the power of eminent domain, then Purchaser within fifteen (15) days of receipt of notice may elect: (i) to terminate this Agreement by delivering written notice to Seller, in which event Escrow Agent shall immediately refund to Purchaser all Earnest Money and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for those that by the express terms hereof survive termination); or (ii) to proceed to Closing, in which event Seller shall assign to Purchaser at Closing all of its interest in and to all proceeds from any condemnation authority and thereupon Purchaser shall control all negotiations and proceedings undertaken with the condemning authority; Purchaser shall receive a credit at Closing in the amount of any condemnation proceeds paid to Seller with respect to the Property prior to Closing. If Purchaser shall fail to exercise either option within such fifteen (15) days period, Purchaser shall be deemed to have exercised option (ii).

(b) Casualty. If, prior to Closing, any casualty (including without limitation an earthquake, sinkhole, contamination by Hazardous Materials or act of God) damages a material portion of the Property then within fifteen (15) days of receipt of notice Purchaser may elect: (i) to terminate this Agreement by delivering written notice to Seller, in which event Escrow Agent shall immediately refund to Purchaser all Earnest Money and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for those that by the express terms hereof survive termination); or (ii) to proceed to Closing, in which event Purchaser shall receive at Closing a credit in the amount of any proceeds paid to Seller prior to Closing from any insurance policies insuring the Property from damage or destruction, plus the amount of any deductibles and the amount of any uninsured casualty. If Purchaser shall fail to exercise either option within such fifteen (15) days period, Purchaser shall be deemed to have exercised option (ii).

(c) Notice. Seller shall provide Purchaser with prompt notice of: (i) any actual or threatened taking by condemnation of all or any portion of the Property; and (ii) any damage or threatened damage to the Property as a result of any casualty of which Seller has knowledge.

14. Sole Agreement. This Agreement constitutes the only agreement between the parties relating to the sale of the Property and no modification of this Agreement shall be binding unless signed by all parties to this Agreement. No representations, promises, or inducements not included in this Agreement shall be binding upon any party hereto.

15. Miscellaneous.

(a) All rights, powers and privileges conferred hereunder upon the parties shall be cumulative, and not restricted to those given by law.

(b) No failure of either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

(c) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(d) This Agreement shall be construed under the laws of the State of South Carolina.

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(e) All the undertakings contained herein which remain executory at Closing shall survive the Closing and shall remain in full force and effect for a period of twelve (12) months from Closing.

(f) Purchaser may neither assign its rights under this Agreement nor delegate its duties under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Provided, however, that it is the intent of Purchaser to form a corporation, partnership or other entity for purposes of acquiring the property and developing the same, and Purchaser may assign its interest in this Agreement to such corporation, partnership or other entity so long as it is owned in part and controlled by Paul Lange. In such event, however, Purchaser shall remain liable to Seller under the Agreement. Seller may assign its rights hereunder and/or delegate its duties hereunder, but shall remain liable to Purchaser with respect to such rights and duties unless expressly released by Purchaser.

(g) If either party is required to institute suit against the other party to enforce its rights under this Agreement, the suit must be brought in 14th Judicial Circuit of South Carolina, and if either party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement.

(h) Whenever possible, each provision of this Agreement shall be interpreted so as to be valid and effective under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, that provision shall be ineffective only to the extent of the prohibition or invalidity, without invalidating the remainder of that provision or the remaining provisions of this Agreement.

(i) It is understood and agreed between the parties hereto that this is a contract for the sale of real estate and is in no way to be considered a joint venture between Seller and Purchaser.

(j) If the date that the performance of any obligations arising hereunder, or the date upon which any notice shall be given, is a Saturday, Sunday or any legal holiday under the laws of the State of South Carolina, then such date shall be extended to the next business day immediately succeeding such Saturday, Sunday or legal holiday.

16. TIME IS OF THE ESSENCE OF THIS CONTRACT.

17. 1031 Exchange. Each party shall cooperate, at no cost to the cooperating party, with the other and shall execute any and all documents necessary to allow such party (or its affiliates) to effectuate the conveyance of the Property as an exchange under Section 1031 of the Internal Revenue Code ("Exchange"); provided however, that at no time shall the cooperating party be required to take title to real estate other than the Property or incur any obligations other than those set forth elsewhere in this Agreement. The exchanging party shall pay all reasonable costs which may be incurred by the cooperating party in connection with such tax free exchange and the exchanging party shall indemnify the cooperating party and hold it harmless from any loss, cost, damage, expense or liability incurred in connection therewith.

18. Brokers. Each party represents and warrants to the other that no real estate broker or agent has been instrumental in the procurement of this Agreement, except Jack Maloney of MSK Commercial Services ("MSK") and Cory Galloway of Lighthouse Realty. Seller shall be responsible for the payment of a commission of three percent (3.0%) of the Purchase Price to be paid to MSK and Purchaser shall be responsible for the payment of a commission of three percent (3.0%) of the Purchase Price to Lighthouse Realty. Purchaser and Seller represent and warrant that except as set forth above, no real estate commission or finder's fee shall be due and payable as a consequence of the transaction contemplated by this Agreement. Each party shall indemnify and save the other

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party wholly harmless against any loss, cost, or other expense, including reasonable attorney's fees that may be incurred by such other party by reason of any breach of the foregoing warranty.

19. Escrow Agent. The Escrow Agent hereinabove referred to shall be the Title Company serving as escrow agent. The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing.

(a) Escrow Agent shall make disbursements of the Earnest Money and/or Extension Fees in accordance with this Agreement. Upon Escrow Agent's receipt of a written notice from either Purchaser or Seller claiming that they are entitled to the Earnest Money and/or Extension Fees pursuant to the provisions of this Agreement, Escrow Agent shall promptly forward a copy thereof to the other party and unless such party, within ten (10) business days after the receipt thereof, notifies Escrow Agent of any objection to such requested disbursement, Escrow Agent shall disburse the Earnest Money and/or Extension Fees in accordance with the provisions of this Agreement based upon the demand of the party demanding the same, and thereupon the Escrow Agent shall be released and discharged from any further duty or obligation hereunder. Notwithstanding the foregoing, upon written notice from Purchaser that Purchaser has terminated the Agreement prior to the end of the original Inspection Period, then Escrow Agent promptly disburse the Earnest Money to Purchaser (and the foregoing provision shall not apply).

(b) In the event that a dispute arises with respect to the distribution of any funds held, Escrow Agent may apply to a court of competent jurisdiction for an order determining the party to whom such Earnest Money shall be paid. All costs of such proceedings (together with all reasonable attorneys' fees) incurred by Escrow Agent and the successful party in connection therewith shall be paid by the unsuccessful party. In performing its duties as escrow agent holding the Earnest Money, the Escrow Agent shall not be liable for any act or failure to act under the provisions of this Agreement except where its acts are the result of gross negligence or willful wrongdoing. In the event of a dispute between any of the parties, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction, all Earnest Money and/or Extension Fees held under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties hereunder.

20. Confidentiality. Neither Seller nor Purchaser, nor their respective agents and representatives, shall divulge any of the information heretofore obtained, or to be obtained, from the parties in this matter unless it is to a person or entry involved with or retained by the parties in connection with the proposed acquisition. Prior to Closing, neither party nor their respective agents and representatives shall make or release any statement to the press or public without prior written consent of the other party.

21. Press Releases and Announcements. Neither Purchaser nor Seller (nor any affiliate of any such parties) will disseminate any press releases, announcements or other public disclosures relating to the transactions contemplated hereby without the prior written consent of the other party, not to be unreasonably withheld or delayed; provided, that this Section shall not preclude any party from making any disclosure as to the transactions contemplated hereby which the disclosing party reasonably believes is required by applicable laws. Each party shall provide the other with the reasonable opportunity to review any such press releases, announcements prior to dissemination. Notwithstanding the foregoing, Purchaser is expressly permitted, from and after the date of this Agreement, to make disclosures of the transactions contemplated hereby in connection with Purchaser's applying for and obtaining financing approvals; and (b) from and after the date that the Inspection Period expires or is waived in writing by Purchaser, to make disclosures of the transaction contemplated hereby in connection with Purchaser's applications for, e.g. permits,

certificates, licenses and approvals necessary for Purchaser to carry on the proposed development plans of Purchaser at the Project.

[Signatures appear on the following page.]

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Sellers and Purchaser have executed this Agreement and affixed their seals the day and year first above written.

Witness

Witness

SELLERS:

MFM PROPERTIES, LLC

By:
Name: John F. Morgan, Sr.
Title: Member

By:
Name: James H. Morgan, Jr.
Title: Member

Witness

Witness

MFM RESIDENTIAL PROPERTIES, LLC

By:
Name: John F. Morgan, Sr.
Title: Member

By:
Name: James H. Morgan, Jr.
Title: Member

Witness

Witness

PURCHASER:

ROTUNDA LAND & DEVELOPMENT GROUP, LLC

By:
Name: Paul Leiby
Title: Manager

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Exhibit A

Legal Descriptions of Property

Being ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, containing 2,632.32± acres, and being more particularly described as:

> Parcel 2 (516.78± acres) and the remaining portion of Parcel 2A (2,115.54± acres) as shown on the Plat dated December 20, 2005 entitled "A Boundary Plat of Parcel 2 and the remaining portion of Parcel 2A New River Plantation" prepared by Thomas & Hutton engineering Co, and certified by Wright C. Powers, Jr. SCPLS No. 19895, being recorded in the Office of the Clerk of Court for Jasper County in Plat Book 28 at Page 180.

For a more complete description as to the metes and bounds, courses and distances, reference is made to said Plat.

Residential Tract

(owned by MFM Residential Properties, LLC)

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,350.54± acres, more or less, and being shown and described on a Plat entitled "A 1,350.54 Acre Portion of the Remaining Portion of Parcel 2A, New River Plantation", said Plat dated December 10, 2008 prepared by Thomas & Hutton Engineering Co. and recorded as Exhibit A to the Deed in Volume 713 at Page 247 et. seq., Jasper County records.

Commercial Tract

(owned by MFM Properties, LLC)

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,281.78± acres, more or less, representing the remainder of the 2,632.32± acres referenced above after the conveyance of the Residential Tract to MFM Residential Properties, LLC by Deed recorded in Volume 713 at Page 247 of the Jasper County Records.

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Exhibit B

Permitted Exceptions

22. Taxes and assessments for the year 2020 and subsequent years, which are a lien, but are not yet due and payable.

23. Any taxes assessed under the rollback provisions of § 12-43-220 (D-4) South Carolina Code of Laws 1976, as amended.

24. Easements granted to South Carolina Electric & Gas Company as follows:

    (a) Easement dated February 3, 1953, recorded in Miscellaneous Book 4 at Page 100, Jasper County Records;

    (b) Easements to S.C. Power Company dated June 1, 1936, recorded in Deed Book 48 at Page 351, Jasper County Records;

    (c) Easement to South Carolina Power Company dated March 9, 1937, recorded in Deed Book 54 at Page 43, Jasper County Records;

    (d) Easement to South Carolina Power Company dated June 25, 1941, recorded in Deed Book 60 at Page 25, Jasper County Records;

    (e) Easement to South Carolina Power Company dated September 4, 1947, recorded in Deed Book 60 at Page 508;

    (f) Easement dated February 7, 1974, recorded in Deed Book 131 at Page 146, Jasper County Records;

    (g) Easement dated January 23, 1975, recorded in Deed Book 74 at Page 637, Jasper County Records;

    (h) Easement dated January 23, 1975, recorded in Deed Book 74 at Page 639, Jasper County Records;

    (i) Easement dated September 16, 1980, recorded in Deed Book 82 at Page 1436, Jasper County Records; and

    (j) Easement dated February 6, 1979, recorded in Deed Book 80 at Page 331, Jasper County Records.

25. Right-of-way easement granted to South Carolina Department of Transportation recorded in Deed Book 305 at Page 48, Jasper County Records.

26. Easement granted to Palmetto Electric Cooperative, Inc., recorded in Deed Book 81 at Page 190, Jasper County Records.

27. Unrecorded Borrow Pit Lease No. 9621 with South Carolina State Highway Department, located near junction of Road S-141 and S-88 and covering 4 acres, and authorizing the removal of material to a depth of four (4') feet.

28. Unrecorded billboard leases and rights of ingress/egress for maintenance thereof.

29. All easements, overhead power lines, and dirt roads, as shown on plats of record, including those recorded in the Jasper County Records in Plat Book 18 at Page 146, Plat Book 11 at Page 123.

30. Easements and maintenance obligations contained in that certain Trustees' Division Deed recorded in Deed Book 91 at Page 1593-A, as amended in Trustees' Corrective Division Deed recorded in Deed Book 92 at Page 1028, Jasper County Records.

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31. Central Electric Easement No. 164, Tract 4, 6.62 acres recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 157.

32. Central Electric Easement No. 172, Tract 17, 8.78 acres recorded in Jasper County Records on December 29, 2008 in Volume 186 at Page 202.

33. Central Electric Easement No. 171, Tract 16, 0.15 acres recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 185.

34. Central Electric Easement No. 176, Tract 21B, 0.01 acre recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 203.

35. Development Agreement (Morgan Tract) (dated December 22, 2006), recorded in Vol. 507 at Page 25.

36. Planned Development District (Morgan Tract) recorded in Vol. 507 at Page 110 (PDD).

37. Morgan Tract Phase I Declaration of Restrictive Covenants (dated September 16, 2011) (Wetland Covenants).

38. US Army Corps of Engineers, Charleston District '404' Permit (dated April 25, 2011).

39. Declaration of Restrictive Covenants (dated December 15, 2009) – Archeological sites.

40. Final SHPO Acknowledgment Letter to the US Army Corps of Engineers, Charleston District (dated September 29, 2008).

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Exhibit C

Purchaser's Evidence of Financial Assurance

(to be provided by Purchaser within 150 days of Effective Date)

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REINSTATEMENT OF AND FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS REINSTATEMENT OF AND FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into this 8th day of July, 2020 ("Effective Date"), by and between **MFM PROPERTIES, LLC AND MFM RESIDENTIAL PROPERTIES, LLC**, both, Georgia limited liability companies (collectively, "Seller" or "Sellers") and **ROTUNDA LAND & DEVELOPMENT GROUP, LLC**, a Georgia limited liability company ("Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement with an Effective Date of August 19, 2019 (the "Agreement") for the purchase and sale of that certain parcel of land comprised of 2,632 30 acres, more or less, located in Jasper County, South Carolina, and as more particularly depicted on Exhibit "A" of the Agreement;

WHEREAS, Purchaser, by letter dated February 12, 2020 and deposit of an Extension Fee in the amount of $45,000 on February 13, 2020, exercised its first option to extend the Initial Inspection Period until April 20, 2020;

WHEREAS, Purchaser, by letter dated April 17, 2020, terminated the Agreement pursuant to Section 3(c) of the Agreement (the "Termination");

WHEREAS, Seller and Purchaser desire to reinstate, amend and modify the Agreement as more specifically set forth herein.

NOW THEREFORE, for and in consideration of Ten Dollars ($10 00) paid by the parties one to the other and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Recitals; Defined Terms. The foregoing recitals of facts are hereby incorporated herein to the same extent as if hereinafter fully set forth Capitalized words and phrases used herein which are not defined herein but which are defined in the Agreement shall have the meanings ascribed thereto in the Agreement.

2. Reinstatement. Notwithstanding the Termination, the Agreement is hereby reinstated, and the parties acknowledge and agree that as of the date hereof, the terms of the Agreement, as amended hereby, shall be of full force and effect.

3. Extension of Inspection Period. Both parties confirm that there is disagreement with respect to the definition of "Initial Inspection Period" and the corresponding impact it has had on certain Deposits and wish to now, as part of this Amendment, clarify and confirm the parties' mutual agreement as to the following dates:

(a) An Inspection Period of 180 days commenced on August 19, 2019 and ran through Monday, February 17, 2020. This Inspection Period was extended for sixty (60) days by the first of two (2) sixty (60) day Extension Periods running to April 20, 2020.

PLAINTIFF'S EXHIBIT 3 Long 11/29/21 KBG

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(b) Seller and Purchaser have agreed to dispense with any further use of the defined term "Initial Inspection Period" and agree that it represented only the initial 180 days which expired on February 17, 2020 and is no longer relevant.

(c) The Inspection Period is hereby extended via a new Extension Period, which shall expire on Monday, November 30, 2020.

(d) For purposes of clarification: (i) the Purchaser shall retain the remaining one (1) option to extend the Inspection Period for a period of sixty (60) days, pursuant to Section 1(d) and Section 3(c) of the Agreement; and (ii) if Purchaser desires to exercise such extension, Purchaser shall do so on or before Monday, November 23, 2020, after which the Inspection Period shall expire on Friday, January 29, 2021.

(e) The Closing Date reference in Section 1(e), shall be redefined to be a date on or before thirty (30) days from the end of the Inspection Period as extended per Section 2(c) and/or Section 2(d) which corresponds to an outside date of either Wednesday, December 30, 2020 or Monday, March 1, 2021.

4. Earnest Money.

(a) The Initial Earnest Money deposit in the amount of $100,000 is non-refundable to Purchaser, except in the case of Seller's failure to perform but shall be applicable to the Purchase Price at Closing.

(b) Purchaser shall deposit with Escrow Agent the Additional Earnest Money deposit in the amount of $100,000 on or before Monday, November 30, 2020. In the event that Purchaser terminates the Agreement on or before November 30, 2020, Seller will have no claim to the Additional Earnest Money referenced in the first sentence of this subparagraph 4.(b), but retains its claim as described in subparagraph 4.(c) below. From and after December 1, 2020, the Additional Earnest Money shall be non-refundable except in the case of Seller's failure to perform but shall be applicable to the Purchase Price at Closing.

(c) Purchaser acknowledges Seller's claim that the Additional Earnest Money Deposit was due on February 20, 2020, three (3) days after the expiration of the 180 day Inspection Period and that Seller has previously made demand for same and has reserved all rights to make a claim for same. Seller acknowledges Purchaser's claim that the Additional Earnest Money was not owed until three (3) days after the expiration of the Inspection Period, as extended by any Extension Periods and Purchaser reserves all rights to make a claim for same, subject to Paragraph 4(b).

5. Extension Fee. Within one (1) business day after the Effective Date, Purchaser shall direct Escrow Agent to disburse the first Extension Fee, in the amount of $45,000.00, to

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Seller. The second Extension Fee, also in the amount of $45,000.00, shall only be owed in the event Purchaser timely exercises the remaining extension option, and shall be non-refundable upon deposit by Purchaser. For purposes of clarification, each such Extension Fee, to the extent deposited by Purchaser, shall be applicable to the Purchase Price at Closing.

6. Due Diligence Materials. In the event either a Termination of the Agreement prior to Closing pursuant to the provision of §3(d), or a default of Purchaser pursuant to §12(b), Purchaser's Due Diligence Materials are to be provided to Seller. The parties wish to further distinguish as to which of the Purchaser's Due Diligence Materials may be considered proprietary and which are not, and have agreed as follows:

a. Proprietary information or materials includes only (a) financial studies prepared by or for Purchaser the purpose of which is to show an economic analysis of the purchase and use of the Property by Purchaser (b) studies or reports that identify any individual, company, business, etc. with whom Purchaser has had or intends to have conversations or correspondence relating to any sales or joint venture with or other business alignment relating to the Property and (c) any information relating to any attempt by Purchaser to raise capital or debt in order to acquire the funds necessary to carry out the terms of this Agreement. However, proprietary information or materials does not include any reports or studies by T&H, any land use planners or related advisors, any wetland studies produced by NEI or other consultants, any plans intended to be presented to Hardeeville (the "City") and any other plans or studies that relate to the development or use of the Property.

b. The parties intent that the above is intended to supplement the definition of Purchaser Due Diligence Materials set forth in §3(d) of the Agreement.

7. Modification. Except as expressly modified herein, the Agreement shall not be modified hereby, shall continue in full force and effect, and is hereby ratified and reaffirmed.

8. Binding. This Amendment shall be binding upon Purchaser, Seller and their respective heirs, successors and assigns.

9. Counterparts and Delivery. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. To facilitate the execution of this Amendment, the parties may execute and exchange counterparts of signature pages affixing their signature by email or by means of an electronic signature tool, application, or software (e.g., DocuSign). Each such electronic signature of a party shall be treated as an original as if personally signed by that party. All parties hereto may rely upon e-mailed or electronic signatures as if such signatures were originals. All parties hereto agree that an e-mailed or electronic signature page may be introduced into evidence in any proceeding arising out of or related to this Amendment as if it were an original signature page.

[Remainder of page left intentionally blank]

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IN WITNESS WHEREOF, Seller and Purchaser have caused this Amendment to be executed the day and year first above written

SELLERS:

MFM PROPERTIES, LLC

By: _____
Name: John F Morgan, Sr
Title: Member

By: _____
Name: James H Morgan, Jr
Title: Member

MFM RESIDENTIAL PROPERTIES, LLC

By: _____
Name: John F Morgan, Sr
Title: Member

By: _____
Name: James H Morgan, Jr
Title: Member

PURCHASER:

ROTUNDA LAND & DEVELOPMENT GROUP, LLC

By: _____
Name: Paul [illegible]
Title: Manager

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Seyfarth

Seyfarth Shaw LLP
1075 Peachtree Street, N.E.
Suite 2500
Atlanta, GA 30309-3958
T (404) 885-1500
F (404) 892-7056

ctroutman@seyfarth.com
T (404) 885-6718

www.seyfarth.com

November 23, 2020

VIA EMAIL AND
VIA FEDERAL EXPRESS

MFM Properties, LLC
MFM Residential Properties, LLC
James H. Morgan, Jr., Esq.
Smith, Gambrell & Russell, LLP
1230 Peachtree Street, NE
Suite 3100, Promenade II
Atlanta, GA 30309-3592
Email: jhmorgan@sgrlaw.com

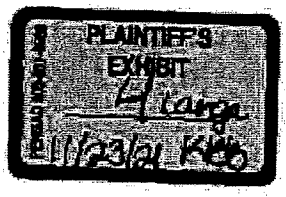
John R. Morgan, Sr.
23-B Shelter Cove Lane Suite 202
Hilton Head Island, SC 29928
Email: jrms@southcoastcommercial.net

Burr & Forman LLP
Attn: Cary S. Griffin
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, South Carolina 29928
Email: cgriffin@burr.com

Re: ***Purchase and Sale Agreement, dated August 19, 2019, as amended by that certain Reinstatement of and First Amendment to Purchase and Sale Agreement, dated July 8, 2020 (the "First Amendment", as amended, the "Agreement"), by and between MFM Properties, LLC and MFM Residential Properties, both Georgia limited liability companies (collectively, "Seller") and Rotunda Land & Development Group, LLC, a Georgia limited liability company ("Purchaser") for the purchase and sale of approximately 2,632.30 acres, more or less, located in Jasper County, South Carolina, as more particularly described in the Agreement ("Property")***

Gentlemen:

This letter is to provide written notice of Purchaser's election, pursuant to Paragraph 3(d) of the First Amendment, to extend the Inspection Period for an additional sixty (60) days. Please note that the First Amendment provided that the Inspection Period would expire on Monday, November 30, 2020. As extended by this notice (and payment of the Extension Fee), the Inspection Period shall expire on Friday, January 29, 2021, and the Closing Date shall be automatically extended an additional thirty (30) days with a Closing Date of March 1, 2021.



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Seyfarth

Purchaser shall deposit a second Extension Fee in the amount of $45,000.00 with the Escrow Agent on or before Monday, November 30, 2020. In accordance with Paragraph 4(b) of the First Amendment, Purchaser will deposit an Additional Earnest Money Deposit in the amount of $100,000.00 with the Escrow Agent, on or before Monday, November 30, 2020.

If you have any questions, please do not hesitate to contact me.

Sincerely,

SEYFARTH SHAW LLP

Chris Troutman

Chris Troutman

CT/glb

cc: Steve Kennedy (via email)
Don Gage (via email)
Paul Lange (via email)

66865858v.2

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
28-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 10, 2020

VIA EMAIL

Rotunda Land and Development Group, LLC
Attn: Steven Kennedy, Esq.
Attn: Christopher Troutman, Esq.
Seyfarth Shaw LLP
1075 Peachtree Street, NE, Suite 2500
Atlanta, GA 30309

Re: Purchase and Sale Agreement dated 8/19/19, as amended between
MFM Properties, LLC, et al and Rotunda Land and Development Group, LLC
Burr File#2117301.0000027

Gentlemen:

I am addressing this letter to you because of the unfortunate inability to receive any meaningful response to my previous request concerning the status of the deposits of the Extension Fee and the Additional Earnest Money Deposit that you referenced in your letter of November 23, 2020. That letter was intended to provide notice to extend the Inspection Period for an additional sixty (60) days. The letter also confirmed the contractual requirement to deposit the Extension Fee and the Additional Deposit on or before Monday, November 30, 2020. Neither one of those deposits was made by that date and still has not been made.

Failure to make those two deposits is a breach of the Agreement. With respect to the Additional Earnest Money, this is the second time the Purchaser has failed to make that payment. My client will be considering its course of action. In the interim, we would certainly appreciate hearing from you as to the Purchaser's position on this matter. The Seller has always honored the Contract terms and will continue to do so. Notwithstanding the implication in Chris' voicemail to me earlier this week that our clients were discussing some proposal, there are no proposals currently under consideration for anything different than the Contract terms.

From MFM's perspective, the following points are clear: (a) the Initial Deposit is non-refundable; (b) the Inspection Period is over; (c) there was no valid extension of the Inspection Period or Closing; and (d) the Additional Deposit of $100,000 was due on November 30, 2020 and was not made.

I trust you will give this the immediate attention it deserves. Please respond to this letter within the next seven (7) days, i.e., on or before December 18, 2020.



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By copy of this letter, I am notifying the Escrow Agent, Calloway Title, of this action and request that no action be taken on the existing Deposit, which remains in escrow, without our consent.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:ktp
c: Calloway Title and Escrow, LLC
MFM Properties, LLC

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

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23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 18, 2020

VIA EMAIL ONLY

Rotunda Land and Development Group, LLC
Attn: Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase and Sale Agreement dated 8/19/19, as amended between MFM Properties, LLC, et al and Rotunda Land and Development Group, LLC**
Burr File#2117301.0000027

Gentlemen:

It is now mid-afternoon on Friday, December 18th and I have not heard from you which is a bit disappointing. Assuming there is no response and, hence, no plan or proposal by your client, then my client sees that there appears to be two options: (a) MFM can be ready to close by December 31, 2020 and will close if Rotunda can fund; or (b) terminate the PSA with a termination agreement to be signed, the original and additional deposits being released to MFM and the Purchaser's Due Diligence Materials delivered to Seller pursuant to the terms of the PSA.

Please consult with your client and get back to me early next week as to whether option (a) is feasible and if not, if option (b) is agreeable. Thank you.

With best regards, I am

Very truly yours,

BURR & FORMAN LLP

Cary S. Griffin

CSG:ktp
c: Calloway Title and Escrow, LLC
MFM Properties, LLC

44654639 v2 2117301-0000027

PLAINTIFF'S EXHIBIT Co Large 11/23/21 KGB

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BURR FORMAN MCNAIR

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Fax 843.686.5991

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December 23, 2020

VIA EMAIL & UPS

Rotunda Land & Development Group, LLC
Attn: Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

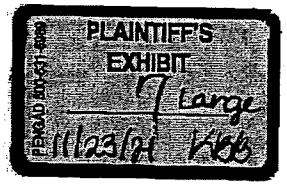
Re: **Purchase and Sale Agreement between**
MFM Properties, LLC, et al and Rotunda Land & Development Group, LLC
Burr File#2117301.0000027

Gentlemen:

While I do understand that we are in the midst of end-of-year and holiday season, however, since there has been no substantive response to my previous inquiries, that leads me to the conclusion that there may not be any response between now and the end of the year. As mentioned in my December 18th letter, MFM can be ready to close by the end of the year. To that end, enclosed are copies of the following documents each of which have been sent to my client for execution:

1. Limited Warranty Deed for both tracts owned by the two Grantors. (Note – the allocation of the total purchase price has been determined solely by gross acreage which results in a 51%/49% split.)
2. Action in Writing for each of the two entities authorizing either Harry Morgan or John Morgan to sign the closing documents.
3. Transferor Affidavits for each entity.
4. Owner Affidavit for each entity.
5. Certification of Non-Foreign Status for each entity.
6. South Carolina Non-Resident Withholding Affidavits for each entity.
7. Assignment of Rights Relating to Billboards.

These comprise the basic documents required by the PSA for execution by the Seller. These would be supplemented by a Closing Statement itemizing the financial details of the transaction. Normally that would be prepared by the buyer's counsel or closing agent, but I think we know what those are and are fairly simple. $16M purchase price against the $100,000 deposit being held in escrow. Hence, $15,900,000 would be due. As 2020 taxes are not subject to proration since it is the last day of the year, those would be



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paid by Seller. Other prorations, if any, will be minimal and can be handled on a "paid outside of closing" basis.

There will be nominal recording fees to be paid by Purchaser and transfer fees for the Deed in the amount of $59,200 ($3.70/$1,000) to be paid by Seller. 7% of the estimated gain of the Commercial Tract, or $548,525, should be withheld from the Seller's proceeds for payment to the South Carolina Department of Revenue. There are 3% brokerage commissions due to the brokers referenced in §18 of the PSA one from the Seller to MSK and the other from the Purchaser to Lighthouse (each $480,000). I am copying Amanda Calloway at Calloway Title for her information. My presumption is that Rotunda would normally have Calloway Title prepare the Closing Statement. Those are the figures I believe are pertinent from our perspective. Wiring instructions are also enclosed for the net proceeds due the Seller.

In the alternative, if your client is not going to be able to perform by December 31, 2020, then as referenced in my December 18, 2020 letter, the only other option is to terminate the PSA consistent with the terms of the PSA. A Termination Agreement is enclosed for execution. This would have to be accompanied by $100,000 wire to our Trust account from Rotunda and another $100,000 wired to our account by Calloway Title representing the Additional and Original Deposits, respectively. We will also then look to the assignment and release of any Purchaser Due Diligence Materials as soon as possible thereafter.

I do look forward to hearing from you.

Other than rather formal and sober news here, best wishes to all for a happy holiday season and a safe and successful 2021.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:sp
c: Calloway Title and Escrow, LLC (with enclosures)
MFM Properties, LLC

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Nicholson, Ned

From:	Patane, Stacy <SPatane@burr.com> on behalf of Griffin, Cary <CGriffin@burr.com>
Sent:	Wednesday, December 30, 2020 4:23 PM
To:	skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc:	jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com; plange@rotundalnad.com
Subject:	MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Attachments:	Doc#_44743868_v_3_MFM Properties -- Kennedy Letter (tender performance).PDF
Importance:	High

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

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cgriffin@burr.com • www.burr.com

360 Attorneys. 19 Offices. 1 Firm. Southeastern Strong.

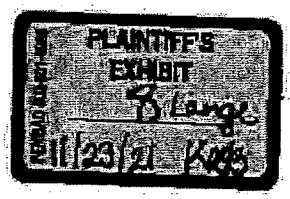
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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 23, 2020 2:54 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

From: Paige, Karen <KPaige@burr.com> **On Behalf Of** Griffin, Cary
Sent: Friday, December 18, 2020 4:13 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties / Rotunda Land and Development

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.



Thank you,

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

main 843-785-2171 • fax 843-686-5991

cgriffin@burr.com • www.burr.com

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 30, 2020

VIA EMAIL

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC**
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Attached is a copy of my letter that will be sent out via UPS tonight. I thought you should have some advance notice of same.

Best wishes for a safe New Year's weekend.

Very truly yours,

Cary S. Griffin

CSG:sp
Attachment
c: Calloway Title and Escrow, LLC Attn – Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC
Rotunda Land & Development, LLC

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Shipment Receipt

Transaction Date: 30 Dec 2020 Tracking Number: 1Z0679X70195076665

① Address Information

Ship To:	Ship From:	Return Address:
SEYFARTH SHAW LLP S KENNEDY & C TROUTMAN ESQS 1075 PEACHTREE ST NE STE 2500 ATLANTA GA 303093958	Burr & Forman LLP - Hilton Head Stacy Patane 23-B Shelter Cove Lane Suite 400 Hilton Head Island SC 29928 Telephone:843-785-2171 email:spatane@burr.com	Burr & Forman LLP - Hilton Head Stacy Patane 23-B Shelter Cove Lane Suite 400 Hilton Head Island SC 29928 Telephone:843-785-2171 email:spatane@burr.com

② Package Information

	Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1.	Letter (Letter billable)	UPS Letter		Client/Matter Number - 2117301.0000027.7081.7147 CSG/sp Reference # 2 - MFM/ROTUNDA

③ UPS Shipping Service and Shipping Options

Service: UPS Next Day Air

Delivered By: End of Day Thursday, Dec 31, 2020

Shipping Fees Subtotal:	33.83 USD	Additional Shipping Options	
Transportation	32.30 USD	Quantum View Notify E-mail Notifications:	No Charge
Fuel Surcharge	1.53 USD	1 spatane@burr.com: Delivery E-mail Failure Notification: spatane@burr.com	

④ Payment Information

Bill Shipping Charges to: Shipper's Account 0679X7

Shipping Charges:	33.83 USD
A discount has been applied for this shipment.	
Negotiated Charges:	10.78 USD
Subtotal Shipping Charges:	10.78 USD
Total Charges:	10.78 USD

Note: This document is not an invoice. Your final invoice may vary from the displayed reference rates.

* For delivery and guarantee information, see the UPS Service Guide ((0)). To speak to a customer service representative, call 1-800-PICK-UPS for domes services and 1-800-782-7892 for international services.

12/30/2020

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 30, 2020

VIA UPS FORMAL NOTICE PURSUANT TO §11 OF PSA

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

The above PSA provides for closing to occur by December 31, 2020 as you are aware from my previous correspondence to you, most recently my letter of December 23, 2020. The Seller remains ready, willing and able to close. There is no financing contingency and no other conditions precedent to closing. Since we have not received any response to the December 18, 2020 or the December 23, 2020 letters, we are tendering performance of the Seller by virtue of this letter. Therefore, enclosed are the following **original** closing documents executed by the Sellers:

1. Limited Warranty Deed for both tracts owned by the two Grantors.
2. Action in Writing for each of the two entities authorizing either Harry Morgan or John Morgan to sign the closing documents.
3. Transferor Affidavits for each entity.
4. Owner Affidavit for each entity.
5. Certification of Non-Foreign Status for each entity.
6. South Carolina Non-Resident Withholding Affidavits for each entity.
7. Assignment of Rights Relating to Billboards.
8. Seller's Certificate of Representations and Warranties.

All documents shall be deemed to be "closing documents". These would be supplemented by a HUD-1 or ALTA closing statement to be prepared by your office or by the Escrow Agent.

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You are hereby instructed to hold the "closing documents" in trust pending the following:

(a) You or Escrow Agent have on deposit in your or Escrow Agent's trust account, all of the funds due from Purchaser necessary for the purchase of the Property;
(b) You or Escrow Agent have received authorization from Purchaser to disburse the proceeds;
(c) You have received confirmation from me that I have received and approved the final closing statement; and
(d) You have faxed or electronically transmitted to me a purchaser's executed counterpart of the approved closing statement.

Immediately following the confirmation referenced in (c) above, please forward: (i) the funds due the Seller via wire transfer to our law firm pursuant to the wiring instructions enclosed; and (ii) an original counterpart of the fully executed closing statement.

If closing does not occur by the close of business Thursday, December 31, 2020, the Purchaser will be in default for the failure to close and, therefore, all closing documents shall be returned to me. This delivery constitutes complete tender of performance by the Sellers pursuant to the PSA. I have copied the Purchaser and Escrow Agent with this Notice and its enclosures.

If you have any questions, or need anything further, please contact me. Thank you.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:sp
Enclosures
c: Calloway Title and Escrow, LLC Attn - Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC
Rotunda Land & Development, LLC

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This instrument prepared by/after recording return to:
BURR FORMAN MCNAIR
23B Shelter Cove Lane Suite 400
Hilton Head Island SC 29928
843-785-2171 (CSG:sp)

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

TITLE TO REAL ESTATE
(Limited Warranty)

WHEREAS, MFM Properties, LLC and MFM Residential Properties, LLC are both Georgia limited liability companies who are related and who owned separate tracts contiguous to one another, the Commercial Tract being owned by MFM Properties, LLC, a description of which is attached hereto as Exhibit A-1, and the Residential Tract being owned by MFM Residential Property, LLC, a description of which is attached hereto as Exhibit A-2;

KNOW ALL MEN BY THESE PRESENTS, that MFM Properties, LLC, a Georgia limited liability company, and MFM Residential Properties, LLC, a Georgia limited liability company (collectively, "Grantors") in the State aforesaid, for and in consideration of the total sum of Sixteen Million and 00/100 Dollars ($16,000,000.00) to Grantors in hand paid by:

Rotunda Land & Development Group, LLC
2870 Peachtree Road Suite 302
Atlanta, GA 30305

(the "Grantee"), the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Grantee, the following described property:

See Attached Exhibit A, Exhibit A-1 and Exhibit A-2

THIS CONVEYANCE IS MADE SUBJECT TO all other easements and restrictions of record and otherwise affecting the property, including the Permitted Exceptions set forth in Exhibit A-3 attached hereto.

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 Grantee, its successors and assigns forever; subject, however, to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

AND Grantors do hereby bind themselves and their successors and assigns to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against Grantors and their successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof, but through and under them and against none other.

[Signatures on Following Page]

PIN #041-00-04-003 & PIN 041-00-04-004
44731096 v2 2117501-0000027

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IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names by their duly authorized Member and their seals to be hereto affixed, this 30th day of December, 2020.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(2) _____
Signature of 1st Witness

(3) _____
Signature of 2nd Witness/Notary Public

GRANTORS

MFM PROPERTIES, LLC

(1) By _____
Name John F. Morgan, Sr.
Title – Authorized Member

MFM RESIDENTIAL PROPERTIES, LLC

(1) By _____
Name John F. Morgan, Sr.
Title – Authorized Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that John F. Morgan, Sr., duly Authorized Member of Grantors, by and on behalf of the Limited Liability Companies personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 30th day of December, 2020.

(4) _____
Notary Public

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Exhibit A

Legal Descriptions of Property

ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, and being more particularly described as the Commercial Tract containing a total of 1,281.78± acres and the Residential Tract containing 1,350.54± acres each as described more fully on Exhibit A-1 and Exhibit A-2 set forth below.

Exhibit A-1

Commercial Tract

Being ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, containing 2,632.32± acres, and being more particularly described as:

> Parcel 2 (516.78± acres) and the remaining portion of Parcel 2A (2,115.54± acres) as shown on the Plat dated December 20, 2005 entitled "A Boundary Plat of Parcel 2 and the remaining portion of Parcel 2A New River Plantation" prepared by Thomas & Hutton Engineering Co., and certified by Wright C. Powers, Jr. SCPLS No. 19895, being recorded in the Office of the Clerk of Court for Jasper County in Plat Book 28 at Page 180.
>
> For a more complete description as to the metes and bounds, courses and distances, reference is made to said Plat.

AND ALL that certain piece, parcel or tract of land containing approximately 1.27 of an acre of land, situate, lying and being on the South side of Road S-141 Relocation near the Town of Ridgeland in Jasper County, South Carolina, and being shown on the South Carolina Department of Transportation Plans for U.S. Hwy. 278 Connector on sheets No. 12, 44 and 45, Tile 727.473, Tract No. 21. Said property being more particularly described as follows:

> BEGINNING at a point located at the West corner of the subject parcel on the South side of Road S-141 Relocation and on the new 70 foot right-of-way line and right of Road S-141 Relocation at approximate survey station 95+92; thence in a Easterly direction for a distance of approximately 348 feet, more or less, along the new 70 foot right-of-way line right of Road S-141 Relocation to a point 70 feet right of approximate survey station 99+40; thence in a Southeasterly direction for a distance of approximately 1190 feet, more or less, along the centerline of old Road S-141 to a point 125 feet right of approximate survey station 79+56 on U.S. Hwy. 278 Connector; thence in a Southerly direction for a distance of approximately 53 feet, more or less, along the new 125 foot right-of-way and control of access line from construction centerline to a point 125 feet right of approximate survey station 80+05; thence in a Westerly direction for a distance of approximately 1552 feet, more or less, along the present 37 1/2 foot right-of-way line on the South side of Old Road S-141 to the POINT OF BEGINNING. Being bound on the North by the centerline of Old Road S-141, East by new 125 foot right-of-way and control of access line for U.S. Hwy. 278 Connector, West by new 70 foot right-of-way line for Road S-141 Relocation, and South by land owned by the Grantee.

LESS AND EXCEPT from the above described property that 1,350.54± acre portion of the property conveyed by that certain Title to Real Estate from MFM Properties, LLC, to MFM Residential Properties, LLC, dated December 16, 2008, filed for record December 29, 2008 at 11:37 a.m., recorded in Book 713 at page 247, aforesaid Records.

In the event there is any conflict between the above courses and distances, metes and bounds description in the aforementioned Exhibit A, said Plat shall control.

This being a portion of the property conveyed to MFM Partnership by Deed from John F. Morgan dated February 18, 1994, recorded in the Jasper County Records in Deed Book 139 at Page 123; and by Deed from James H. Morgan, Jr. dated February 17, 1994, recorded in Deed Book 139 at Page 135.

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Exhibit A-2
Residential Tract

1,350.54 acre Portion of Parcel 2-A

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,350.54 acres, more or less, and being shown and described on an exhibit attached hereto and incorporated herein as Exhibit A, said Exhibit entitled "A 1,350.54 Acre Portion of the Remaining Portion of Parcel 2A, New River Plantation", said Exhibit A prepared by Thomas & Hutton Engineering Co. The property is more particularly described by courses and distances, metes and bounds, as follows:

The Point of Beginning is located at the point of intersection of the northerly right of way line of Coleman Loop SR-176 (66' R/W) and the northeasterly right of way line of South Carolina Highway 46 (66' R/W); from said Point of Beginning proceeding along the aforesaid right of way line of South Carolina Highway 46 N 44°17'34" W a distance of 446.57' to a point; thence 794.55' along the arc of a curve turning to the left, having a radius of 5215.94', a chord bearing of N 48°47'47" W, and a chord length of 793.78' to a point; thence N 53°03'55" W a distance of 1528.12' to a point; thence leave the aforesaid right of way line of South Carolina Highway 46 N 21°09'55" E a distance of 314.45' to a point; thence N 02°41'40" E a distance of 5434.35' to a point; thence N 02°42'28" E a distance of 4637.23' to a point; thence N 89°14'22" E a distance of 270.60' to a point; thence S 34°47'52" E a distance of 1095.69' to a point; thence S 08°34'50" E a distance of 948.90' to a point; thence S 53°43'23" E a distance of 656.42' to a point; thence N 53°48'34" E a distance of 820.77' to a point; thence N 68°59'21" E a distance of 1794.11' to a point; thence S 85°42'47" E a distance of 450.00' to a point; thence S 21°00'06" E a distance of 1137.86' to a point; thence S 88°11'16" E a distance of 1110.05' to a point in the centerline of Striker Road (Private Road); thence along the aforesaid centerline of Striker Road S 10°15'08" W a distance of 468.94' to a point; thence S 02°53'26" W a distance of 2787.52' to a point; thence S 02°38'06" E a distance of 1085.77' to a point; thence S 05°45'08" W a distance of 1369.66' to a point; thence S 04°47'05" E a distance of 172.66' to a point; thence S 04°37'54" E a distance of 376.77' to a point; thence S 03°00'52" W a distance of 972.28' to a point; thence S 01°00'46" W a distance of 1397.02' to a point; thence leaving the aforesaid centerline of Striker Road N 87°51'40" W a distance of 2288.47' to a point; thence S 02°12'20" W a distance of 1746.42' to a point on the northerly right of way line of Coleman Loop; thence along the aforesaid right of way line of Coleman Loop N 76°07'30" W a distance of 1679.45' to the Point of Beginning, having an area of 58,829,650 Square Feet or 1350.54 Acres.

Said 1,350.54 acre parcel is bounded on the north by lands of MFM, LLP; on the east by lands of N/F Hilton Head Lakes, LLC., Randolph C. Karrh and Striker Road; on the south by lands of N/F Randolph C. Karrh, Coleman Loop and South Carolina Highway 46; and on the west by lands of N/F Thomas Swygert Partnership.

In the event there is any conflict between the above courses and distances, metes and bounds description in the aforementioned Exhibit A, said Plat shall control.

This being the same property conveyed to MFM Residential, LLC by Deed from MFM Properties, LLC, and recorded in the Jasper County Records in Book 713 at Page 247.

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Exhibit A-3

Permitted Exceptions

1. Taxes and assessments for the year 2021 and subsequent years, which are a lien, but are not yet due and payable.
2. Any taxes assessed under the rollback provisions of § 12-43-220 (D-4) South Carolina Code of Laws 1976, as amended.
3. Easements granted to South Carolina Electric & Gas Company as follows:
   - (a) Easement dated February 3, 1953, recorded in Miscellaneous Book 4 at Page 100, Jasper County Records ("County Records");
   - (b) Easements to S.C. Power Company dated June 1, 1936, recorded in the County Records in Deed Book 48 at Page 351;
   - (c) Easement to South Carolina Power Company dated March 9, 1937, recorded in the County Records in Deed Book 54 at Page 43;
   - (d) Easement to South Carolina Power Company dated June 25, 1941, recorded in the County Records in Deed Book 60 at Page 25;
   - (e) Easement to South Carolina Power Company dated September 4, 1947, recorded in the County Records in Deed Book 60 at Page 508;
   - (f) Easement dated February 7, 1974, recorded in the County Records in Deed Book 131 at Page 146;
   - (g) Easement dated January 23, 1975, recorded in the County Records in Deed Book 74 at Page 637;
   - (h) Easement dated January 23, 1975, recorded in the County Records in Deed Book 74 at Page 639;
   - (i) Easement dated September 16, 1980, recorded in the County Records in Deed Book 82 at Page 1436; and
   - (j) Easement dated February 6, 1979, recorded in the County Records in Deed Book 80 at Page 331.
4. Right-of-way easement granted to South Carolina Department of Transportation recorded in the County Records in Deed Book 305 at Page 48.
5. Easement granted to Palmetto Electric Cooperative, Inc., recorded in the County Records in Deed Book 81 at Page 190.
6. Unrecorded Borrow Pit Lease No. 9621 with South Carolina State Highway Department, located near junction of Road S-141 and S-88 and covering 4 acres, and authorizing the removal of material to a depth of four (4') feet.
7. Unrecorded billboard leases and rights of ingress/egress for maintenance thereof.
8. All easements, overhead power lines, and dirt roads, as shown on plats of record, including those recorded in the County Records in Plat Book 18 at Page 146, Plat Book 11 at Page 123.
9. Easements and maintenance obligations contained in that certain Trustees' Division recorded in the County Records in Deed Book 91 at Page 1593-A, as amended in Trustees' Corrective Division Deed recorded in Deed Book 92 at Page 1028.
10. Central Electric Easement No. 164, Tract 4, 6.62 acres recorded in the County Records on December 29, 2008 in Volume 713 at Page 157.

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11. Central Electric Easement No. 172, Tract 17, 8.78 acres recorded in the County Records on December 29, 2008 in Volume 186 at Page 202.

12. Central Electric Easement No. 171, Tract 16, 0.15 acres recorded in the County Records on December 29, 2008 in Volume 713 at Page 185.

13. Central Electric Easement No. 176, Tract 21B, 0.01 acre recorded in the County Records on December 29, 2008 in Volume 713 at Page 203.

14. Easements as reserved in that certain Quit-Claim Deed from South Carolina Department of Transportation from MFM, L.L.P., a Georgia limited liability partnership, dated July 19, 2000, filed for record September 21, 2004 at 12:05 p.m., recorded in the County Records in Book 303 at Page 106.

15. Utility Easement Agreement by and between MFM Properties, LLC, a Georgia limited liability company, and SCE&G, a subsidiary of SCANA Corporation, a South Carolina corporation, dated July 23, 2008, filed for record August 12, 2008 at 11:12 a.m., recorded in the County Records in Book 688 at Page 24.

16. All those matters as disclosed by those certain plats recorded in the County Records in Plat Book 6 at Page 9; Plat Book 6 at Page 11; Plat Book 6 at Page 14; Plat Book 8 at Page 42; Plat Book 11 at Page 123A; Plat Book 11 at Page 123B; Plat Book 18 at Page 146; Plat Book 28 at Page 120; Plat Book 30 at Page 150; and Deed Book 713 at Page 247.

17. Development Agreement (Morgan Tract) (dated December 22, 2006), recorded in the County Records in Vol. 507 at Page 25.

18. Planned Development District (Morgan Tract) recorded in the County Records in Vol. 507 at Page 110 (PDD).

19. Morgan Tract Phase I Declaration of Restrictive Covenants (dated September 16, 2011) (Wetland Covenants) recorded in the County Records in Volume 824 at Page 691.

20. US Army Corps of Engineers, Charleston District '404' Permit (dated April 25, 2011).

21. Declaration of Restrictive Covenants (dated December 15, 2009) - Archeological sites.

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ACTION IN WRITING
(COMPANY RESOLUTIONS)
OF
MFM PROPERTIES, LLC
a Georgia Limited Liability Company

MFM Properties, LLC (the "Company") hereby adopts and certifies the following resolutions:

BE IT RESOLVED, that the Company, as "Seller", hereby approves the sale of that certain parcel of land comprised of 1,281.78 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina (collectively, the "Property") to Rotunda Land and Development Group, LLC, a Georgia limited liability company ("Purchaser") pursuant to the Purchase and Sale Agreement entered into by and between Seller and Purchaser dated August 19, 2019, as amended by the Reinstatement of and First Amendment to Purchase and Sale Agreement dated July 8, 2020; and

BET IT FURTHER RESOLVED, that either James H. Morgan, Jr. or John F. Morgan, Sr., each in their capacity as an Authorized Member of the Company, be and are hereby authorized on behalf of the Company to execute, without attestation, any and all documents in connection with the above-referenced sale of the Property, all and in accordance with the Operating Agreement governing the business and affairs of the Company. Such authorization includes, but is not limited to, executing the deed(s), settlement statement, contract, contract addenda, seller affidavits, assignments, or any other documents necessary to effectuate the sale of the Property as would ordinarily be required for a conveyance of unimproved real property in Jasper County, South Carolina.

BE IT FURTHER RESOLVED, that the Company hereby certifies that the Company is in good standing with the State of Georgia.

This Action may be executed in multiple counterparts, each of which shall be considered an original. The parties hereto, attorneys and lender may rely upon a facsimile and/or electronically transmitted version of this Action.

The above Resolutions were adopted on the 23rd day of December, 2020, and the undersigned certifies to their accuracy.

MFM Properties, LLC

By _____
Name James H. Morgan, Jr.
Title Member
Date 12/23/20

By _____
Name John F. Morgan, Sr.
Title Member
Date 12/23/20

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ACTION IN WRITING
(COMPANY RESOLUTIONS)
OF
MFM RESIDENTIAL PROPERTIES, LLC
a Georgia Limited Liability Company

MFM Residential Properties, LLC (the "Company") hereby adopts and certifies the following resolutions:

BE IT RESOLVED, that the Company, as "Seller", hereby approves the sale of that certain parcel of land comprised of 1,350.54 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina, (collectively, the "Property") to Rotunda Land and Development Group, LLC, a Georgia limited liability company ("Purchaser") pursuant to the Purchase and Sale Agreement entered into by and between Seller and Purchaser dated August 19, 2019, as amended by the Reinstatement of and First Amendment to Purchase and Sale Agreement dated July 8, 2020; and

BE IT FURTHER RESOLVED, that either James H. Morgan, Jr. or John F. Morgan, Sr., each in their capacity as an Authorized Member of the Company, be and are hereby authorized on behalf of the Company to execute, without attestation, any and all documents in connection with the above-referenced sale of the Property, all and in accordance with the Operating Agreement governing the business and affairs of the Company. Such authorization includes, but is not limited to, executing the deed(s), settlement statement, contract, contract addenda, seller affidavits, assignments, or any other documents necessary to effectuate the sale of the Property as would ordinarily be required for a conveyance of unimproved real property in Jasper County, South Carolina.

BE IT FURTHER RESOLVED, that the Company hereby certifies that the Company is in good standing with the State of Georgia.

This Action may be executed in multiple counterparts, each of which shall be considered an original. The parties hereto, attorneys and lender may rely upon a facsimile and/or electronically transmitted version of this Action.

The above Resolutions were adopted on the 23rd day of December, 2020, and the undersigned certifies to their accuracy.

MFM Residential Properties, LLC

By _____
Name James H. Morgan, Jr.
Title Member
Date 12/23/20

By _____
Name John F. Morgan, Sr.
Title Member
Date 12/23/20

44677745 v1 2117301-0000027

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Transferor Affidavit
Tax Lien Inapplicable
SC Code Section 12-54-124

The undersigned transferor hereby certifies as follows:

1. This affidavit is being given in connection with a transfer of property to assure the transferee that the Department will not assert that Code §12-54-124 placed a lien against the assets in the hands of the transferee, and if applicable, the Department will not refuse to issue a license and will not revoke a license based upon Code §12-54-124. This affidavit issued for purposes of Code §12-54-124 is valid for 30 days from the date signed.

   It is understood that this affidavit does not protect the transferee from a lien placed on the assets prior to the transfer by other statutory or judicial means, or relieve the transferor of his liabilities to pay all of its taxes or file all applicable returns, and that it does not protect the transferee from the Department refusing to issue a license, or revoking a license, for any other reason. For example, the transferee is not protected from a lien existing on the property due to nonpayment of real property taxes.

2. The undersigned is the transferor of the assets described in the attached description.

3.	The Transferor's name is:	MFM Properties, LLC
4.	The Transferor's address is:	1230 Peachtree Street NE Suite 3100 Promenade II Atlanta, GA 30309-3592
5.	The Transferor's taxpayer identification number is 58-1500352	
6.	Date of Transfer:	December 31, 2020
7.	The Transferee's name is:	Rotunda Land & Development Group, LLC
8.	The Transferee's address is:	2870 Peachtree Road Suite 302 Atlanta, GA 30305

I hereby certify the following concerning the transfer (check appropriate box):

☒ The assets transferred are not business assets.

☐ Less than a majority of the business assets, based on fair market value, are being transferred in this and other related or planned transfers.

The undersigned authorizes the delivery and disclosure of this affidavit to the South Carolina Department of Revenue and acknowledges that any false statement contained herein is punishable by fine, imprisonment, or both. Recognizing that I am subject to the criminal penalties under Code §12-54-44(B)(6)(a)(i), I declare that I have examined this affidavit and to the best of my knowledge and belief it is true, correct, and complete.

Transferor:
MFM Properties, LLC

By _____
Name John F. Murray, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 30th day of December, 2020.

_____ (SEAL)
Notary Public

42301161 v1 2117301-0000027

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Transferor Affidavit
Tax Lien Inapplicable
SC Code Section 12-54-124

The undersigned transferor hereby certifies as follows:

1. This affidavit is being given in connection with a transfer of property to assure the transferee that the Department will not assert that Code §12-54-124 placed a lien against the assets in the hands of the transferee, and if applicable, the Department will not refuse to issue a license and will not revoke a license based upon Code §12-54-124. This affidavit issued for purposes of Code §12-54-124 is valid for 30 days from the date signed.

   It is understood that this affidavit does not protect the transferee from a lien placed on the assets prior to the transfer by other statutory or judicial means, or relieve the transferor of his liabilities to pay all of its taxes or file all applicable returns, and that it does not protect the transferee from the Department refusing to issue a license, or revoking a license, for any other reason. For example, the transferee is not protected from a lien existing on the property due to nonpayment of real property taxes.

2. The undersigned is the transferor of the assets described in the attached description.

3. The Transferor's name is: MFM Residential Properties, LLC

4. The Transferor's address is: 1230 Peachtree Street NE
   Suite 3100 Promenade II
   Atlanta, GA 30309-3592

5. The Transferor's taxpayer identification number is 26-3973883

6. Date of Transfer: December 31, 2020

7. The Transferee's name is: Rotunda Land & Development Group, LLC

8. The Transferee's address is: 2870 Peachtree Road Suite 302
   Atlanta, GA 30305

I hereby certify the following concerning the transfer (check appropriate box):

■ The assets transferred are not business assets.

☐ Less than a majority of the business assets, based on fair market value, are being transferred in this and other related or planned transfers.

The undersigned authorizes the delivery and disclosure of this affidavit to the South Carolina Department of Revenue and acknowledges that any false statement contained herein is punishable by fine, imprisonment, or both. Recognizing that I am subject to the criminal penalties under Code §12-54-44(B)(6)(a)(i), I declare that I have examined this affidavit and to the best of my knowledge and belief it is true, correct, and complete.

Transferor:
MFM Residential Properties, LLC

By _____
Name John F. Morgan, Jr.
Title Authorized Member

SWORN to and subscribed before
me this 21st day of December, 2020.

_____ (SEAL)
Notary Public

44677793 v1 2117301-0000027

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STATE OF SOUTH CAROLINA)
) OWNER'S AFFIDAVIT
COUNTY OF JASPER)

Property: That certain parcel of land comprised of 1,281.76 acres, more or less, located in Jasper County being a portion of tax map parcel # 041-00-04-004 and 041-00-04-003, South Carolina (the "Property")

THE UNDERSIGNED owner, or his/her authorized agent, after first being duly sworn, says under oath the following, to the best of his actual knowledge:

1. That the undersigned currently owns and holds that certain real property described above.

2. That no improvements or repairs have been made on or to the said property during the 95 day period preceding, for which payment has not been made in full.

3. That there are no outstanding bills incurred (a) for labor and/or materials used in making improvements or repairs on or to said property, (b) for equipment, appliances, fixtures or accessions on or to said property, or (c) for architect's, surveyor's or engineer's services rendered on, to, for or with reference to said property.

4. That the undersigned is not aware of any disputes, pending actions or bankruptcy proceedings, execution or unrecorded judgments, leases, liens or encumbrances that affect title to said property.

5. That this Affidavit is executed with the knowledge that it will be relied upon by the purchaser(s) of said property, by the title insurance thereof, and/or by the mortgage lender.

MFM Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 30th day of December, 2020

Notary Public

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STATE OF SOUTH CAROLINA)
) OWNER'S AFFIDAVIT
COUNTY OF JASPER)

Property: That certain parcel of land comprised of 1,350.54 acres, more or less, located in Jasper County being a portion of tax map parcel #041-00-04-004 and 041-00-04-003), South Carolina (the "Property")

THE UNDERSIGNED owner, or his/her authorized agent, after first being duly sworn, says under oath the following, to the best of his actual knowledge:

1. That the undersigned currently owns and holds that certain real property described above.

2. That no improvements or repairs have been made on or to the said property during the 95 day period preceding, for which payment has not been made in full.

3. That there are no outstanding bills incurred (a) for labor and/or materials used in making improvements or repairs on or to said property, (b) for equipment, appliances, fixtures or accessions on or to said property, or (c) for architect's, surveyor's or engineer's services rendered on, to, for or with reference to said property.

4. That the undersigned is not aware of any disputes, pending actions or bankruptcy proceedings, execution or unrecorded judgments, leases, liens or encumbrances that affect title to said property.

5. That this Affidavit is executed with the knowledge that it will be relied upon by the purchaser(s) of said property, by the title insurance thereof, and/or by the mortgage lender.

MFM Residential Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 30th day of December, 2020

Notary Public

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CERTIFICATION OF NONFOREIGN STATUS

(Corporation, Partnership, Trust Transferor Estate)

Section 1445 of the Internal Revenue code provides that a transferee of a U.S. real property interest must withhold tax if the transferor ("Seller") is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee ("Buyer") that withholding of tax is not required upon the disposition of a U.S. real property interest by MFM Properties, LLC (hereinafter referred to as "Seller") the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);

3. Seller's U.S. Employer Identification number is 58-1500352;

4. Seller's office address is: 1230 Peachtree Street NE, Suite 3100 Promenade II, Atlanta, GA 30309.

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

December 30th, 2020

MFM Properties, LLC

By _____

Name John F. Morgan, Jr.

Title Authorized Member

ELECTRONICALLY FILED - 2021 Dec 08 3:27 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

CERTIFICATION OF NONFOREIGN STATUS

(Corporation, Partnership, Trust Transferor Estate)

Section 1445 of the Internal Revenue code provides that a transferee of a U.S. real property interest must withhold tax if the transferor ("Seller") is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee ("Buyer") that withholding of tax is not required upon the disposition of a U.S. real property interest by MFM Properties, LLC (hereinafter referred to as "Seller") the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);

3. Seller's U.S. Employer Identification number is 26-3973883;

4. Seller's office address is: 1230 Peachtree Street NE, Suite 3100 Promenade II, Atlanta, GA 30309

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

December 30, 2020

MFM Residential Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

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372

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
SELLER'S AFFIDAVIT
NONRESIDENT SELLER WITHHOLDING
S.C. Code Section 12-8-580 et. seq.

I-295
(Rev. 6/25/10)
3278

This is an affidavit of facts. Whether or not this affidavit is sufficient to relieve the buyer of the responsibility to withhold is governed by SC Revenue Ruling #09-13. Please read this affidavit carefully in conjunction with this Advisory Opinion.

The undersigned on oath, being first duly sworn, hereby certifies as follow:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #09-13.
2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as a part of this sale. The real property is located in the county of Jasper and its tax map number(s) is **041-00-04-003 & 041-00-04-004.**
3. The undersigned are the sellers of the property described in the attached description.
4. The closing date of this sale is **March 31, 2021.**
5. The Seller's name is **MFM Residential Properties, LLC.**
6. The Sellers' address is **1230 Peachtree Street NE`, Suite 3100 Promenade II, Atlanta, GA 30309.**
7. The Seller's EIN is 26-3973883.
8. The undersigned acknowledge their obligation to file a South Carolina income tax return for the year of the sale.
9. ☐ **Resident.** The Sellers are residents of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-6-30 et. seq.).
10. ☐ **Deemed Resident (must be a business).** Pursuant to Code Section 12-8-580(C) and SC Revenue Advisory Bulletin #09-13, the Sellers are deemed to be residents of South Carolina because:
    - 1.a. The seller is a corporation incorporated outside South Carolina, has its principal place of business in South Carolina, and does no business in its state of incorporation, **or**
    - b. The seller (i) has been in business in South Carolina during the last two taxable years, including the year of sale, (ii) will continue substantially the same business in South Carolina after the sale, (iii) is not delinquent with respect to filing any South Carolina income tax returns, (iv) has filed at least one South Carolina income tax return, and (v) has a certificate of authority to do business in South Carolina or is registered to do business in South Carolina **and**
    - 2. The seller agrees to report the sale on a timely file South Carolina income tax return.
11. ☐ **Tax-Exempt Organizations.** The Seller is an organization exempt from income taxes under Internal Revenue Code Section 501 (a) or is an insurance company exempt from South Carolina taxes on income.
12. ■ **Gain Amount.** The sellers affirm, pursuant to Section 12-8-580(B), that the amount of gain required to be recognized on this transaction and on which buyer is to make the requisite withholding will not exceed $-0-.
13. ☐ **Withholding Amount Equals Entire Net Proceeds.** If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale. See Question and Answer 15 in SC Revenue Advisory Bulletin #09-13 for a discussion of loans made in contemplation of the sale.
14. **Installment Sale.**
    - ☐ The Sellers will report this sale on the installment method for South Carolina income tax purposes and have attached an amortization schedule correctly designating the principal and interest portions of the payments. If withholding is to be limited to the gain, the sellers have entered the gain amount in Item 12.
    - ☐ The sellers elect out of the installment method for South Carolina purposes and will report the entire withholding in one payment. If withholding is to be limited to the gain, the seller has entered the gain amount in item 12.
15. ☐ **Principal Residence or Involuntary Conversion – Non-recognition of Gain.** The sale of the property will not be subject to taxes because of Internal Revenue Code Section 121 (sale of a principal residence) or Internal Revenue Code Section 1033 (involuntary conversions.) If the Sellers fail to comply with Section 1033, the Sellers acknowledge an

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3278 1023

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obligation to file an amended South Carolina income tax return for the year of the sale.

16. **Like Kind Exchange.**

☐ In a simultaneous exchange, the entire gain is deferred under Internal Revenue Code Section 1031.

☐ A gain will be partially recognized. Enter the gain amount in item 12.

☐ The gain is intended to be deferred under Internal Revenue Code Section 1031 using a qualified intermediary and the steps required by SC Revenue Ruling #09-13 have been completed. The seller authorizes the qualified intermediary to release modified forms and any other information relevant to the withholding, including information otherwise confidential in Code Section 12-54-240 as described in SC Revenue Ruling #09-13, Question 22, Option 2.

17. ☐ **Employee Relocation.** The transaction involves the sale of an employee's property which is being sold by an employer or relocation company in connection with the employee's transfer. For income tax purposes, the sale is treated as a sale by the employer or relocation company.

The undersigned understand that this affidavit may be disclosed to the Department and that any false statement contained herein could be punished by fine, imprisonment, or both.

MFM RESIDENTIAL PROPERTIES, LLC

By: _____
Name John V Morgan, Sr.
Title Authorized Member

If the person making the affidavit is not the Seller, complete the following:

_____
(Affiant's Social Security Number or Taxpayer Identification Number)

_____
(Affiant's Number, Street or Rural Route)

_____
(Affiant's City, State and Zip Code)

SUBSCRIBED AND SWORN to

before me this 30 day of **December, 2020.**

_____
(Notary Public)
My commission expires: 9/26/24

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form if you are an individual taxpayer. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

Our internet address is: **www.sctax.org**

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
SELLER'S AFFIDAVIT
NONRESIDENT SELLER WITHHOLDING
S.C. Code Section 12-8-580 et. seq.

I-295
(Rev. 6/25/10)
3278

This is an affidavit of facts. Whether or not this affidavit is sufficient to relieve the buyer of the responsibility to withhold is governed by SC Revenue Ruling #09-13. Please read this affidavit carefully in conjunction with this Advisory Opinion.

The undersigned on oath, being first duly sworn, hereby certifies as follow:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #09-13.
2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as a part of this sale. The real property is located in the county of Jasper and its tax map number(s) is **041-00-04-003 & 041-00-04-004.**
3. The undersigned are the sellers of the property described in the attached description.
4. The closing date of this sale is **March 31, 2021.**
5. The Seller's name is **MFM Properties, LLC.**
6. The Sellers' address is **1230 Peachtree Street NE`, Suite 3100 Promenade II, Atlanta, GA 30309.**
7. The Seller's EIN is 58-1500362.
8. The undersigned acknowledge their obligation to file a South Carolina income tax return for the year of the sale.
9. ☐ **Resident.** The Sellers are residents of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-6-30 et. seq.).
10. ☐ **Deemed Resident (must be a business).** Pursuant to Code Section 12-8-580(C) and SC Revenue Advisory Bulletin #09-13, the Sellers are deemed to be residents of South Carolina because:
    - 1.a. The seller is a corporation incorporated outside South Carolina, has its principal place of business in South Carolina, and does no business in its state of incorporation, **or**
    - b. The seller (i) has been in business in South Carolina during the last two taxable years, including the year of sale, (ii) will continue substantially the same business in South Carolina after the sale, (iii) is not delinquent with respect to filing any South Carolina income tax returns, (iv) has filed at least one South Carolina income tax return, and (v) has a certificate of authority to do business in South Carolina or is registered to do business in South Carolina **and**
    - 2. The seller agrees to report the sale on a timely file South Carolina income tax return.
11. ☐ **Tax-Exempt Organizations.** The Seller is an organization exempt from income taxes under Internal Revenue Code Section 501 (a) or is an insurance company exempt from South Carolina taxes on income.
12. ■ **Gain Amount.** The sellers affirm, pursuant to Section 12-8-580(B), that the amount of gain required to be recognized on this transaction and on which buyer is to make the requisite withholding will not exceed $7,837,076.00.
13. ☐ **Withholding Amount Equals Entire Net Proceeds.** If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale. See Question and Answer 15 in SC Revenue Advisory Bulletin #09-13 for a discussion of loans made in contemplation of the sale.
14. **Installment Sale.**
    - ☐ The Sellers will report this sale on the installment method for South Carolina income tax purposes and have attached an amortization schedule correctly designating the principal and interest portions of the payments. If withholding is to be limited to the gain, the sellers have entered the gain amount in item 12.
    - ☐ The sellers elect out of the installment method for South Carolina purposes and will report the entire withholding in one payment. If withholding is to be limited to the gain, the seller has entered the gain amount in item 12.
15. ☐ **Principal Residence or Involuntary Conversion – Non-recognition of Gain.** The sale of the property will not be subject to taxes because of Internal Revenue Code Section 121 (sale of a principal residence) or Internal Revenue Code

Retain for your records. DO NOT mail to the Department of Revenue.

3278 1023

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Section 1033 (involuntary conversions.) If the Sellers fail to comply with Section 1033, the Sellers acknowledge an obligation to file an amended South Carolina income tax return for the year of the sale.

16. **Like Kind Exchange.**

☐ In a simultaneous exchange, the entire gain is deferred under Internal Revenue Code Section 1031.

☐ A gain will be partially recognized. Enter the gain amount in item 12.

☐ The gain is intended to be deferred under Internal Revenue Code Section 1031 using a qualified intermediary and the steps required by SC Revenue Ruling #09-13 have been completed. The seller authorizes the qualified intermediary to release modified forms and any other information relevant to the withholding, including information otherwise confidential in Code Section 12-54-240 as described in SC Revenue Ruling #09-13, Question 22, Option 2.

17. ☐ **Employee Relocation.** The transaction involves the sale of an employee's property which is being sold by an employer or relocation company in connection with the employee's transfer. For income tax purposes, the sale is treated as a sale by the employer or relocation company.

The undersigned understand that this affidavit may be disclosed to the Department and that any false statement contained herein could be punished by fine, imprisonment, or both.

MFM PROPERTIES, LLC

By: _____
Name John F. Morgan, Sr.
Title Authorized Member

If the person making the affidavit is not the Seller, complete the following:

_____
(Affiant's Social Security Number or Taxpayer Identification Number)

_____
(Affiant's Number, Street or Rural Route)

_____
(Affiant's City, State and Zip Code)

SUBSCRIBED AND SWORN to

before me this 30th day of December, 2020.

_____
(Notary Public)
My commission expires: 9/26/24

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form if you are an individual taxpayer. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

Our Internet address is: **www.sctax.org**

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This instrument prepared by
Burr & Forman LLP
Cary S. Griffin
Post Office Drawer 3
Hilton Head Island, SC 29938-0003

Jasper County Tax ID Nos. 041-00-04-004 & 041-00-04-003

ASSIGNMENT OF RIGHTS RELATING TO BILLBOARDS

FOR AND IN CONSIDERATION of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned MFM PROPERTIES, LLC, a Georgia limited liability company ("Assignor"), hereby sell, assign, and transfer unto ROTUNDA LAND & DEVELOPMENT GROUP, LLC, a Georgia limited liability company, whose address is 2870 Peachtree Road Suite 302, Atlanta, GA 30305 ("Assignee"), its successors or assigns, to have and to hold forever, all of Assignor's right, title, interest, estate and benefit, in and to that any leases or agreements relating to billboards located on any of the property owned by Assignor herein within Jasper County Tax Map Identification Numbers 041-00-04-004 and 041-00-04-003 (collectively, the "Billboard Rights"), together with all rents, payments, deposits and other sums due or to become due thereunder. To the best of Assignor's knowledge, such leases or agreements are oral only and the latest contact information for the party using the billboards is Palmetto Advertising located at Post Office Box 671, Hardeeville, SC 29927.

Assignor hereby assigns, transfers, and sets over unto Assignee, any and all Billboard Rights it may have as a result of a verbal agreement or lease related to the billboards referenced above. Such assignment is made on an "as is" basis without any liability of Assignor.

This Assignment of Rights Relating to Billboards may be executed in counterparts, each of which shall be deemed an original and shall inure to the benefit and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Assignment of Rights Relating to Billboards effective as of the 7th day of December, 2020 (the "Effective Date").

[signature pages to follow]

44723086 v1 2117301-0000027

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IN WITNESS WHEREOF, Assignor has executed this instrument on the date set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness
Name: SHANNON LANE

Witness
Name: CRAIG GRIFFIN

ASSIGNOR:
MFM Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

The foregoing instrument was acknowledged before me this 30th day of December, 2020 by John F. Morgan, Sr., as Authorized Member of MFM Properties, LLC, on behalf of the Assignor herein. He is personally known to me or has produced sufficient form of photo identification.

NOTARY PUBLIC (SEAL)

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IN WITNESS WHEREOF, Grantee has executed this instrument on the date set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

ASSIGNEE
Rotunda Land & Development Group, LLC

_____
Witness
Name: _____

By _____
Name Paul Lange
Title Member

_____
Witness
Name:_____

2870 Peachtree Road Suite 302
Atlanta, GA 30305

STATE OF GEORGIA)
)
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____ day of December, 2020 by Paul Lange, as Manager of Rotunda Land & Development Group, LLC, on behalf of the Assignee herein. He is personally known to me or has produced sufficient form of photo identification.

_____ (SEAL)
NOTARY PUBLIC

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SELLER'S CERTIFICATE OF REPRESENTATIONS AND WARRANTIES

In accordance with the terms of that certain Purchase and Sale Agreement dated August 29, 2019 ("PSA"), by and between MFM Properties, LLC and MFM Residential Properties, LLC, both Georgia limited liability companies (collectively, "Seller") and Rotunda Land Development, LLC, a Georgia limited liability company ("Purchaser"), Seller hereby certifies to Purchaser that the representations and warranties made by Seller in the PSA are true and correct in all material respects as of the Closing Date (as that term is defined in the PSA).

IN WITNESS WHEREOF, the undersigned has executed this Seller's Certificate of Representations and Warranties as of the 30th day of December 2020, intended to be effective as of the 30th day of December, 2020.

SELLER

MFM PROPERTIES, LLC

Witness

Witness

By
Name John F. Morgan, Sr.
Title Authorized Member

MFM RESIDENTIAL PROPERTIES, LLC

Witness

Witness

By
Name John F. Morgan, Sr.
Title Authorized Member

44719063 v1 2117301-0000027

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BURR & FORMAN McNAIR

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Hilton Head Island, SC 29938

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Fax 843.686.5991

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BURR & FORMAN LLP IOLTA - HILTON HEAD

INCOMING WIRING INSTRUCTIONS - REAL ESTATE TRUST

Bank information required for wiring funds to Burr & Forman's IOLTA account:

FINANCIAL INSTITUTION:	Bank of America 100 N Tryon Street Charlotte NC 28255
ACCOUNT NAME:	Burr & Forman LLP - IOLTA Tax ID #63-0322727 23-B Shelter Cove Lane Suite 400 Hilton Head Island, SC 29928
ACCOUNT NUMBER:	000745214184
Domestic Wires ABA No.:	026009593
International Wires SWIFT BIC:	BOFAUS3N
PLEASE REFERENCE ON WIRE:	Attn: Cary S. Griffin/Stacy Patane Burr Client/Matter - MFM Properties LLC Client/Matter# - 2117301.0000027

Should you need assistance, email AccountsReceivable@burr.com

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[redacted]

From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Wednesday, December 30, 2020 5:14 PM
To: Griffin, Cary <CGriffin@burr.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, I note that Paul's email address below has a typo in it. Regardless, he did receive this from me directly.

Although you've heard this from us before in recent weeks, it is my understanding that Paul Lange intends to speak with your clients to try to work out a contract extension/solution, such that the tender of performance effort you're going through will prove to be unnecessary. Nevertheless, I understand and appreciate your need to set things up that way.

Steve

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com

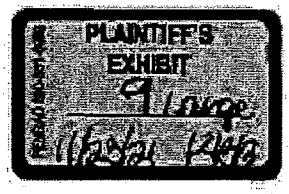
Seyfarth

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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 30, 2020 4:23 PM
To: Kennedy, Steve <SKennedy@seyfarth.com>; Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com; plange@rotundalnad.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Importance: High

[EXT. Sender]

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.



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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
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To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

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From: Paige, Karen <KPaige@burr.com> **On Behalf Of** Griffin, Cary
Sent: Friday, December 18, 2020 4:13 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties / Rotunda Land and Development

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Thank you,

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[redacted]

From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Thursday, December 31, 2020 12:04 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

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If you hear a materially different message from your client, please let me know. In the meantime, I am awaiting further information on how/who will put together the revised terms for consideration.

Steve

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com
<image003.jpg>

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Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Importance: High

[EXT. Sender]

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Thank you,

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[redacted]

From: "Griffin, Cary" <CGriffin@burr.com>
Date: January 4, 2021 at 11:42:07 AM EST
To: "Kennedy, Steve" <SKennedy@seyfarth.com>
Cc: "Troutman, Christopher (Chris)" <ctroutman@seyfarth.com>, "Amanda Calloway (AmandaC@titlelaw.com)" <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Steve—My e-mail addressed to you started with "I would request..." ... if you or your client choose to disregard the request, that is a decision to be made by you and/or your client.
CSG
843-785-2171

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Cary Griffin • *Counsel*

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From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Sunday, January 3, 2021 2:23 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; Amanda Calloway (AmandaC@titlelaw.com) <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

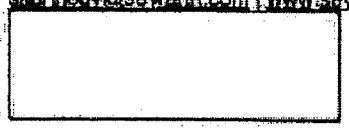
Before I relay your message to Rotunda, I want to confirm - are you demanding that my client no longer contact your client directly?

PLAINTIFF'S EXHIBIT 11 Corp. 11/23/21 KMR

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Steve

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com



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From: Griffin, Cary <CGriffin@burr.com>
Sent: Sunday, January 3, 2021 1:08 PM
To: Kennedy, Steve <SKennedy@seyfarth.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; Amanda Calloway (AmandaC@titlelaw.com) <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXT. Sender]

Steve-- I would not presume to try to interpret what your client has advised you. I can only reiterate that the MFM position has not changed and is very specifically set forth in my 12/10 , 12/18 and 12/23 letters as supplemented by the 12/30 letter.

I would request that any further communication from your client be in writing and through counsel. Please have your client authorize the Escrow Agent to release the Original Deposit as well as wire the Additional Deposit which is now overdue by more than a month .

Cary Griffin
843-785-2171

BURR FORMAN

Cary Griffin • *Counsel*

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[EXTERNAL EMAIL]

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Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

January 12, 2021

VIA EMAIL

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase & Sale Agreement ("PSA") between**
MFM Properties, LLC, et al *and* Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Gentlemen:

By my calculation, the cure period previously available to Rotunda set forth in the PSA has now expired. We have yet to hear any substantive responses to the earlier letters that have been sent to you in the last 30+ days. At this point, therefore, you are on notice that there is no cure available to Rotunda. We would once again request the following action:

1. Authorize Calloway Title, as Escrow Agent, to release the $100,000 Original Deposit.
2. Wire transfer the second $100,000, representing the Additional Deposit which is past due. An additional copy of wiring instructions is attached.
3. If you wish to have a termination and release agreement in place, please consider the form I prepared and sent to you on December 23, 2020. The sellers would still be agreeable to signing that, if, in fact, the Purchaser's Due Diligence Materials, as described in §3(d) of the PSA are provided, as well as the funds referenced above.

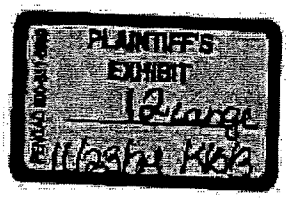
If, for some reason, your client is unwilling to sign the termination contract, please let us know at your earliest convenience. We will then consider other alternatives. Thank you.

Very truly yours,

Cary S. Griffin

CSG:klp:sp
Attachment
c: Calloway Title and Escrow, LLC Attn - Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC

44807198 v1 2117301-0000029



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Nicholson, Ned

From: Patane, Stacy <SPatane@burr.com> on behalf of Griffin, Cary <CGriffin@burr.com>
Sent: Monday, February 1, 2021 4:48 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Attachments: Kennedy & Troutman Letter 44743868_4.pdf; Termination 44720268_1.pdf; MFM Burr Wiring Instructions RE Trust 43368872_1.pdf

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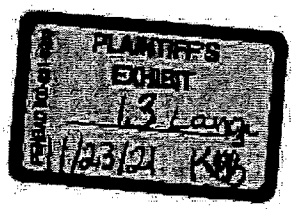
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Office 843.785.2171
Fax 843.686.5991

BURR.COM

February 1, 2021

VIA EMAIL

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Tomorrow will mark three weeks since your email of January 12th in which your client was quoted as stating "will circle momentarily". I would assume if you had heard anything you would have so advised and, therefore, my presumption is there is no news. Accordingly, I would suggest that you have the Termination of Contract and Release Agreement signed by your client, the $200,000 wire transferred to our escrow account (wiring instructions attached again). I will hold in trust until the Termination Agreement is signed by the Sellers. Payment of the funds and termination of the previous contract would be a prerequisite to any "new deal" that your client might suggest in any event. As previously referenced on numerous occasions, we also expect to receive the Purchaser's Due Diligence Materials promptly.

If we do not hear from you by the end of business on February 8, 2021, we will be forced to take alternative measures. This is the last time a release will be offered to Rotunda. Rather, my client will be forced to seek recovery of its damages.

Very truly yours,

Cary S. Griffin

CSG:sp
Attachment
c: Calloway Title and Escrow, LLC Attn – Amanda Calloway, Esquire
MFM Properties, LLC

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TERMINATION OF CONTRACT
AND
RELEASE AGREEMENT

FOR AND IN CONSIDERATION of the cancellation of the below-described Purchase and Sale Agreement and the mutual covenants, releases and promises of the parties herein, the sufficiency of which is acknowledged by the parties, the undersigned Purchaser and Seller hereby agree to terminate and cancel that certain Purchase and Sale Agreement dated August 19, 2019, as amended ("PSA"), for the purchase of certain real property known as 1281.78 Acres owned by MFM Properties, LLC; and 1350.54 Acres owned by MFM Residential Commercial, LLC, both tracts located in Jasper County and hereby release each other, as well as Calloway Title and Escrow, LLC, ("Escrow Agent") from all rights, privileges, obligations, claims, demands and actions whatsoever which they may have up to this date against any of the other parties by reason of said PSA, excepting therefrom, however, Purchaser's obligation to deliver Purchaser's Due Diligence Materials to Seller as described in §3(d) of the PSA, such obligation to survive the PSA and this Termination and Release Agreement. So as to avoid any misunderstanding, a copy of §3(d) of the PSA is attached hereto as Exhibit A.

It is specifically agreed and understood that Purchaser's earnest money deposit of $100,000.00 already deposited with Escrow Agent and Purchaser's additional deposit of $100,000 described in the PSA will be released by Escrow Agent and/or paid by Purchaser to Burr Forman McNair, counsel to Seller, via wire transfer on or before February ____, 2021. Escrow Agent is authorized to proceed with such disbursement upon receipt of this Termination and Release executed by both parties.

This Termination and Release may be executed in counterparts, any of which shall be considered an original. Each party may rely upon facsimile or electronically transmitted copies of executed counterparts.

PURCHASER

Rotunda Land & Development Group, LLC

_____
Witness

_____
Witness

By _____
Name Paul Lange
Title Manager

SELLERS

MFM Properties, LLC

_____
Witness

_____
Witness

By _____
Name James H. Morgan, Jr.
Title Member

By _____
Name John F. Morgan, Sr.
Title Member

MFM Residential Properties, LLC

_____
Witness

_____
Witness

By _____
Name James H. Morgan, Jr.
Title Member

By _____
Name John F. Morgan, Sr.
Title Member

ESCROW AGENT
CALLOWAY TITLE & ESCROW, LLC

By _____
Name _____
Title _____

44720268 v1 211730-00000027

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com
T 843.785.2171
F 843.686.5991

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

BURR & FORMAN LLP IOLTA - HILTON HEAD

INCOMING WIRING INSTRUCTIONS – REAL ESTATE TRUST

Bank information required for wiring funds to Burr & Forman's IOLTA account:

FINANCIAL INSTITUTION:	Bank of America 100 N Tryon Street Charlotte NC 28255
ACCOUNT NAME:	Burr & Forman LLP – IOLTA Tax ID #63-0322727 23-B Shelter Cove Lane Suite 400 Hilton Head Island, SC 29928
ACCOUNT NUMBER:	000745214184
Domestic Wires ABA No.:	026009593
International Wires SWIFT BIC:	BOFAUS3N
PLEASE REFERENCE ON WIRE:	Attn: Cary S. Griffin/Stacy Patane Burr Client/Matter - MFM Properties LLC Client/Matter# - 2117301.0000027

Should you need assistance, email AccountsReceivable@burr.com

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With cyber-crimes on the increase, it is important to be vigilant. If you receive an email or any other communication that appears to be generated by Burr & Forman LLP or anyone employed by Burr & Forman LLP requesting that you revise or amend the above wiring instructions, consider it suspect and call our office immediately.

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Seyfarth

Seyfarth Shaw LLP
1075 Peachtree Street, N.E.
Suite 2500
Atlanta, GA 30309-3958
T (404) 885-1500
F (404) 892-7056

ctroutman@seyfarth.com
T (404) 885-6718

www.seyfarth.com

February 1, 2021

VIA FEDERAL EXPRESS

Cary S. Griffin, Esq.
Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Re: MFM Properties, LLC and MFM Residential Properties, LLC ("Seller"); Rotunda Land & Development Group, LLC ("Buyer")
2,632.30 Acres - Hardeeville, Jasper County, South Carolina ("Property"); Parcels #041-00-04-004 and #041-00-04-003

Dear Cary:

Per your letter dated December 30, 2020, I am returning herewith your original closing document package. Please note that the return of these documents does not constitute an admission of default by Buyer.

Please call me if you have any questions.

Sincerely,

SEYFARTH SHAW LLP

Christopher Troutman

CT/glb
Enclosures

67983266v.1 / 107873-000010



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BURR & FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
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23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

February 11, 2021

FORMAL NOTICE PURSUANT TO PSA

VIA UPS OVERNIGHT DELIVERY

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al &
Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Having not heard from you in response to my February 3rd letter, we must, once again, presume that your client is not interested in signing any release agreement. Accordingly, as stated in that letter, the Sellers will now make a different approach. In that regard, so that there is no misunderstanding, the PSA dated August 19, 2019, as amended and reinstated, has been terminated for lack of performance on the part of the Buyer. There is no longer a cure period for such default.

I am copying the Buyer as well as the Escrow Agent directly based on the notice provisions.

Very truly yours,

Cary S. Griffin

CSG:sp

c: MFM Properties, LLC
Calloway Title and Escrow, LLC Attn - Amanda Calloway, Esquire
Rotunda Land & Development Group, LLC

PLAINTIFF'S EXHIBIT 15 11/23/21

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Nicholson, Ned

From: Griffin, Cary
Sent: Saturday, February 13, 2021 2:57 PM
To: Kennedy, Steve
Cc: Christopher Troutman Esq. (ctroutman@seyfarth.com); Amanda Calloway (AmandaC@titlelaw.com)
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

Steve—your e-mail arrived about an hour after I dropped a letter addressed to you in the UPS box. My letter was quite short and simple –there is no longer a contract .

So any proposal to be made would have to be a brand new arrangement. Before considering any new arrangement all funds from the first deal must be paid and released along with the required Due Diligence materials.

I will be out of the office this coming Monday through Thursday .

Cary

BURR FORMAN MCNAIR
AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928
main 843-785-2171 • fax 843-686-5991
cgriffin@burr.com • www.burr.com

360 Attorneys. 19 Offices. 1 Firm. Southeastern Strong.

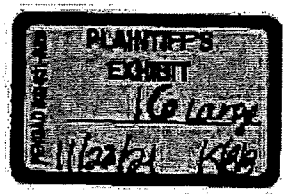
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From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Friday, February 12, 2021 6:03 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: Re: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, I am traveling this weekend but we do have the terms of a proposed new agreement being worked into an amendment document that we will send you either later this weekend or early next week. Please let me know if you have any questions in the interim.

Steve



MFM_00103

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com

[https://www.seyfarth.com/dir_docs/publications/Seyfarth_Logo_Signature.png]

The

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Nicholson, Ned

Subject: FW: Rotunda/MFM - Proposed Reinstatement

From: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Sent: Friday, February 19, 2021 3:57 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Kennedy, Steve <SKennedy@seyfarth.com>
Subject: Rotunda/MFM - Proposed Reinstatement

[EXTERNAL EMAIL]

Cary,

Based on various discussions among the parties and details associated with the remaining process to close, Rotunda proposes a reinstatement of the Agreement with the following terms:

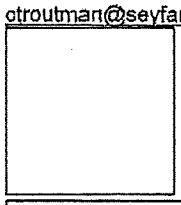
- Revise and increase purchase price to $16,500,000
- existing $100k in earnest money is released to Seller
- $100k new earnest money paid directly to Seller, which shall be non-refundable
- Closing in 90 days, with Rotunda to have right to one 30 day extension with payment of additional $50k earnest money to be released directly to Seller.

Please let me know if these terms are acceptable to the Seller and I will send over a Reinstatement of and Second Amendment to Purchase and Sale Agreement.

Thanks,

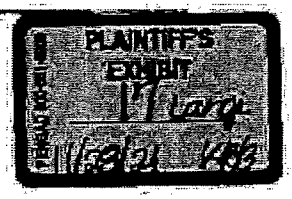
Chris

Chris Troutman | Associate | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6718 | Mobile: +1-813-679-0173 | Fax: +1-404-724-1714
ctroutman@seyfarth.com | www.seyfarth.com





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Nicholson, Ned

From: Griffin, Cary <CGriffin@burr.com>
Sent: Saturday, February 27, 2021 9:11 AM
To: Kennedy, Steve; Christopher Troutman Esq. (ctroutman@seyfarth.com)
Cc: Amanda Calloway (AmandaC@titlelaw.com); Nicholson, Ned
Subject: Rotunda matter
Attachments: 2750_001.pdf

Pls. see letter attached

CSG

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

main 843-785-2171 • fax 843-686-5991

cgriffin@burr.com • www.burr.com

360 Attorneys. 19 Offices. 1 Firm. Southeastern Strong.

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From: HHHcopier@burr.com <HHHcopier@burr.com>
Sent: Saturday, February 27, 2021 8:40 AM
To: Griffin, Cary <CGriffin@burr.com>
Subject: Attached Image



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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

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Mailing Address:
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Office 843.785.2171
Fax 843.686.5991

BURR.COM

February 26, 2021

VIA EMAIL

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Gentlemen:

This is to respond to Chris's email of last Friday afternoon. My client is not willing to entertain the proposal contained in that email. MFM is unwilling to consider any reinstatement of the PSA based upon Rotunda's lack of performance to date in satisfying its obligations thereunder. This letter does not constitute any sort of an offer or counterproposal to your email of Friday, February 22nd. It is merely a simple rejection."

While the PSA is terminated, we continue to be interested in Rotunda's response to its surviving obligations under the PSA, i.e., the payments and Due Diligence Materials which are past due. Please advise in that regard. Thank you.

Very truly yours,

BURR & FORMAN LLP

Cary S. Griffin

CSG:sp

c: MFM Properties, LLC
Calloway Title and Escrow, LLC Attn – Amanda Calloway, Esquire
Benjamin E. Nicolson, V, Esquire

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ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	CASE NO.: 2021-CP-07-_____
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC, Plaintiffs, v. ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC Defendants.	SUMMONS

TO: THE DEFENDANTS NAMED ABOVE:

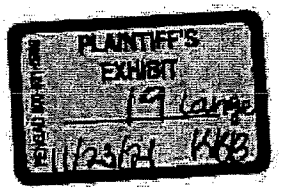
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office, whose street address is 1221 Main Street, Suite 1800, Columbia, South Carolina 29201, and whose mailing address is Post Office Box 11390, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, the plaintiff will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: March 16, 2021

BURR & FORMAN, LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278
Attorneys for Plaintiffs



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ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-_____**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	
v.	)	**COMPLAINT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	)	
Defendants.	)	

COMES NOW MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC, Plaintiffs, by and through its undersigned counsel, complaining of the Defendants, ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC, as follows:

PARTIES

1. MFM Properties, LLC ("MFM Properties") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

2. MFM Residential Properties, LLC ("MFM Residential") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

3. MFM Properties and MFM Residential are collectively referred to herein as "Plaintiffs."

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4. Upon information and belief, Defendant Rotunda Land & Development Group, LLC ("Rotunda"), is a limited liability company organized and existing under the laws of the State of Georgia and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein.

5. Upon information and belief, Defendant Calloway Title & Escrow, LLC ("Escrow Agent"), is a limited liability company organized and existing under the laws of the one of the States and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein. Escrow Agent is joined in this matter solely for the purpose of receiving guidance from the court on disbursement of funds held by Escrow Agent arising out the disputes below described.

JURISDICTION AND VENUE

6. Jurisdiction and venue in this Court are proper.

7. This is a lawsuit concerning a breach of a contract to sell real property located in Jasper County, South Carolina. Most verbal and written contacts with respect to the formation of the contract at issue occurred with Plaintiffs in Beaufort County, South Carolina.

FACTS

8. Plaintiffs and Rotunda entered into a Purchase and Sale Agreement effective August 19, 2019 ("Agreement") for the sale of certain real property located in Hardeeville, Jasper County, South Carolina ("Property.")

9. In partial consideration of Plaintiffs' execution of the Agreement, Rotunda agreed to deposit One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent. This sum is the "Initial Earnest Money."

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10. Per the term of the Agreement, should Rotunda fail to comply with certain terms of the Agreement, one of Plaintiff's remedies was that the Initial Earnest Money would be forfeited to Plaintiffs.

11. Rotunda by letter dated February 12, 2020 exercised an option to extend an Initial Inspection Period pursuant to the Agreement and tendered an extension fee to the Escrow Agent on February 13, 2020 as provided for in the Agreement.

12. By letter of April 17, 2020, Rotunda terminated the Agreement in accordance with Section 3(c) of the Agreement.

13. This termination of Rotunda entitled Plaintiffs to collect the Initial Earnest Money from escrow.

14. However, by a Reinstatement of and First Amendment to the Agreement dated July 8, 2020 ("First Amendment"), Plaintiffs and Rotunda agreed to reinstate, amend and modify the Agreement.

15. Among the terms of the First Amendment was that Rotunda tender a second One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent by November 30, 2020. This sum is the "Additional Earnest Money."

16. The First Amendment also provided that the first extension fee be disbursed by the Escrow Agent to Plaintiffs, which it did.

17. The First Amendment, among other things, required that the Additional Earnest Money be deposited by Rotunda with the Escrow Agent by November 30, 2020. It also required an additional extension fee to be paid by Rotunda.

18. Rotunda failed to deposit either the Additional Earnest Money or the additional extension fee with the Escrow Agent by November 30, 2020 as required by the First Amendment.

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19. Rotunda failed to close the transaction for the sale of the Property as contemplated by the Agreement and First Amendment.

20. Plaintiffs performed all conditions precedent under the Agreement and First Amendment.

21. Plaintiffs were ready, willing and able to perform under the Agreement and First Amendment but Rotunda failed to perform.

22. Plaintiffs have demanded that Rotunda agree for Escrow Agent to release the Initial Earnest Money to Plaintiffs but Rotunda has not done so.

23. Plaintiffs have demanded that Rotunda pay to Plaintiffs the Additional Earnest Money, which Rotunda, in breach of the First Amendment, failed to pay to the Escrow Agent.

24. Plaintiffs have demanded that Escrow Agent release the Initial Earnest Money to Plaintiffs. Upon information and belief, because Rotunda has not consented to such release of funds, Escrow Agent is holding the funds pending a resolution of the disputes described herein.

25. By this lawsuit, Plaintiffs seek a release by Escrow Agent of the Initial Escrow Money to Plaintiffs and damages from Rotunda in an amount equal to the amount of the Additional Earnest Money, which Rotunda was supposed to deposit with Escrow Agent but failed to do.

26. Further, through the Agreement and First Amendment, Rotunda agreed to return certain materials to Plaintiffs in the event of a termination of the Agreement.

27. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

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28. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

29. The allegations set forth hereinabove are incorporated herein and made a part hereof.

30. Rotunda agreed that in the event it failed to perform under the Agreement, it would forfeit the Initial Earnest Money and direct Escrow Agent to pay the Initial Earnest Money to Plaintiffs.

31. Rotunda failed to perform the Agreement, thereby breaching such Agreement, for which Plaintiffs became entitled to payment of the Initial Earnest Money from Escrow Agent.

32. In breach of its contract with Plaintiffs, Rotunda failed to permit Escrow Agent to release the Initial Earnest Money to Plaintiffs.

33. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of One Hundred Thousand ($100,000.00) Dollars and no/cents, consequential damages, incidental damages, attorney's fees, and prejudgment interest.

34. Further, Rotunda breached the First Amendment by failing to tender the One Hundred Thousand ($100,000.00) Dollars and no/cents of Additional Earnest Money to the Escrow Agent. Rotunda also breached the Agreement and First Amendment by failing to perform under the Agreement and close the sale of the Property.

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35. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of an additional One Hundred Thousand ($100,000.00) Dollars and no/cents, for a total of Two Hundred Thousand ($200,000.00) Dollars and no/cents, plus consequential damages, incidental damages, attorney's fees, and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

36. The allegations set forth hereinabove are incorporated herein and made a part hereof.

37. This cause of action is brought pursuant to the South Carolina Declaratory Judgment Act.

38. Plaintiffs seek a declaration from the Court that the Escrow Agent should pay the Initial Earnest Money to Plaintiffs without any recourse to Rotunda.

FOR A THIRD CAUSE OF ACTION
(Mandatory Injunction-Initial Escrow Money)

39. The allegations set forth hereinabove are incorporated herein and made a part hereof.

40. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

41. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

42. The Agreement permits the Plaintiffs to seek a mandatory injunction to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

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43. Plaintiffs request a mandatory injunction that Escrow Agent release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

FOR A FOURTH CAUSE OF ACTION
(Specific Performance-Initial Escrow Money)

44. The allegations set forth hereinabove are incorporated herein and made a part hereof.

45. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

46. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

47. The Agreement permits the Plaintiffs to seek a specific performance to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

48. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way the Escrow Agent and Rotunda can be forced to comply with the Agreement is a mandatory injunction ordered said delivery of the Initial Earnest Money to Plaintiffs.

49. Plaintiffs request an Order that (a) the Escrow Agent specifically perform the Escrow Agreement and (b) Rotunda specifically perform the Agreement and release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

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FOR A FIFTH CAUSE OF ACTION
(Mandatory Injunction-Return of Plaintiffs' Documents)

50. The allegations set forth hereinabove are incorporated herein and made a part hereof.

51. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

52. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

53. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

54. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

55. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

56. Plaintiffs seek a mandatory injunction compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

FOR A SIXTH CAUSE OF ACTION
(Specific Performance-Return of Plaintiffs' Documents)

57. The allegations set forth hereinabove are incorporated herein and made a part hereof.

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58. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

59. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

60. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

61. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

62. In the absence of an order of specific performance that Rotunda perform the Agreement, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

63. Plaintiffs seek an order compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

WHEREFORE, the Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC, pray for the following relief:

a) An award of actual, consequential, and incidental damages against the Defendant Rotunda, including but not limited to prejudgment interest and attorneys' fees;

b) A declaratory judgment that Plaintiffs are entitled to the Initial Escrow Money held by Escrow Agent;

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c) A mandatory injunction that Escrow Agent pay the Initial Earnest Money to Plaintiffs;

d) An Order that Escrow Agent and Rotunda specifically perform the obligations of their agreements and deliver the Initial Earnest Money to Plaintiffs;

e) A mandatory injunction commanding Rotunda to return to Plaintiffs the Purchaser Due Diligence Materials;

f) An Order that Rotunda specifically perform the obligations of the Agreement and First Amendment and return to Plaintiffs the Purchaser Due Diligence Materials; and

g) Any other such relief as the Court may deem just.

Respectfully submitted,

Dated: March 16, 2021

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
bnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278

Attorneys for Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC **Plaintiffs,** vs. ROTUNDA LAND & DEVELOPMENT GROUP, LLC and CALLOWAY TITLE & ESCROW, LLC **Defendants.**	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2021-CP-07-00482 ANSWER TO COMPLAINT

The Defendant, Rotunda Land & Development Group, LLC, by way of answer to the Complaint, would allege that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified, or explained is denied.
2. Upon information and belief, The Defendant admits the allegations in Paragraphs 1 and 2 of the Complaint that the MFM Properties, LLC and MFM Residential Properties, LLC are Georgia limited liability companies. Neither Plaintiffs are domesticated or authorized to do business in South Carolina.
3. Paragraph 3 of the Complaint needs no response.
4. Defendant admits the allegations of Paragraphs 4, 5, 6, 7, and 8 of the Complaint.
5. As to the allegations of Paragraphs 9 and 10 of the Complaint, the terms of the Contract speak for themselves.



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6. Defendant admits the allegations of Paragraphs 11, 12, and 13 of the Complaint.
7. As to the allegations of Paragraphs 14, 15, 16, and 17, the terms of the First Amendment speak for themselves.
8. Defendant admits the allegations of Paragraphs 18 and 19 of the Complaint but is ready willing and able to do so. In fact, Defendant has presented additional documentation to increase the purchase price, post all appropriate earnest money, and close.
9. Upon information and belief, Defendant denies the allegations of Paragraph 20 and 21 of the Complaint.
10. As to the allegations of Paragraph 23 of the Complaint, Defendant would admit only so much thereof as alleges that Defendant had not paid the Escrow Agent but is ready willing and able to do so.
11. As to the allegations of Paragraph 24 of the Complaint, Defendant is without sufficient information of belief as to the Escrow Agent's position and would deny same.
12. As to the allegations of Paragraph 25, Defendant would state that the Compliant speaks for itself and Defendant would crave reference to the defenses raised herein.
13. As top the allegations of Paragraphs 26 and 27 of the Complaint, Defendant would allege the terms of the referenced agreements speak for themselves.
14. Defendant admits it has not turned over any material to Plaintiffs as is alleged in Paragraph 28 of the Complaint and would crave reference to the4 defenses raised herein.
15. The allegations of Paragraph 29 of the Complaint need no further response.
16. As to the allegations of Paragraphs 30-35 of the Complaint, Defendant would allege it is ready, willing and able to close.
17. The allegations of Paragraph 36 of the Complaint need no further response.

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18. The allegation of Paragraph 37 is a conclusion of law and no response is necessary.

19. Defendant denies the allegation of Paragraph 38 of the complaint.

20. The allegations of Paragraph 39 of the Complaint need no further response.

21. The Defendant deny the allegations of Paragraphs 40-43 of the Complaint.

22. The allegations of Paragraph 44 of the Complaint need no further response.

23. The Defendant deny the allegations of Paragraphs 45-49 of the Complaint.

24. The allegations of Paragraph 50 of the Complaint need no further response.

25. The Defendant deny the allegations of Paragraphs 41-56 of the Complaint and would allege that there is a valid question as to the extent and content of the Due Diligence Materials.

26. The allegations of Paragraph 57 of the Complaint need no further response.

27. The terms of the agreements referred to in Paragraph 58 of the Complaint speak for themselves.

28. As to the allegations of Paragraphs 60-63, Defendant believes there is a dispute as to the contents of the Due diligence Materials and Defendant is ready, willing and able to close.

FOR A SECOND DEFENSE

29. Each and every allegation of the First Defense is realleged as fully as if repeated verbatim herein.

30. The Plaintiffs are not authorized to do business in the State of South Carolina.

31. This case should be dismissed since the Plaintiffs are not authorized to do business in the State of South Carolina.

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FOR A THIRD DEFENSE

32. Each and every allegation of the First and Second Defenses are realleged as fully as if repeated verbatim herein.

33. The Defendants are ready, willing, and able to close.

34. Plaintiffs are aware the Defendant is ready, willing, and able to close.

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger

Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

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CERTIFICATE OF SERVICE

This is to certify that I, Terry A. Finger, attorney with the law office of Finger, Melnick, Brooks &LaBruce, P.C., have this day served a true and correct copy of the within and foregoing ANSWER TO COMPLAINT upon counsel of record by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows:

Benjamin E. Nicholson, V
Burr & Forman, LLP
PO Box 11390
Columbia, SC 29211

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger
Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

Rotunda Land

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LETTER OF INTENT

March 11, 2021

Mr. John Morgan Sr.
MFP Properties, LLC
23B Shelter Cove Lane
Suite 202
Hilton Head, South Carolina 29938

Mr. James H. Morgan, Jr.
Smith, Gambrell & Russell, LLP
Promenade II
1230 Peachtree Street
Suite 3100
Atlanta, Georgia 30309-3592

Re: Jasper County, South Carolina Site

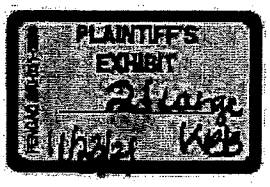
Seller:	MFM Properties, LLC a Georgia limited liability company and MFM Residential Properties, a Georgia limited liability company.
Parcels:	# 041-00-04-004 and # 041-00-04-003
County:	Jasper County
State:	South Carolina

Gentlemen:

We present this Letter of Intent ("LOI") to enter into a Purchase and Sale Agreement ("PSA") setting forth our proposal for the sale of the Parcels described above comprising 2,632.30 +/- acres of land in Jasper County, South Carolina (the "Property") from the Sellers described above to Rotunda Land & Development Group, LLC or its nominee (the "Purchaser") with an address at 5 Concourse Parkway, Suite 400, Atlanta, GA 30328, upon the following terms and conditions:

1. Purchase Price: $16,500,000. The Purchase Price (less the credit of any Earnest Money Deposits) will be paid to Seller at Closing.

2. Purchaser's Inspection and Due Diligence: Purchaser shall have 90 days from the date of the full execution of the PSA (the "Due Diligence Period") to continue its due diligence and facilitate entitlements on the Property. In addition to the Due Diligence Period, Purchaser may, at its discretion, receive an additional 30-day extension of the Due Diligence Period ("Due Diligence Extension Period").





Rotunda Land

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3. Earnest Money Deposit: Calloway Title & Escrow ("Calloway") is currently holding a $100,000 deposit under a contract between the parties dated August 19, 2019 (as amended), ("Prior Deposit"). Within 3 business days of the execution of the PSA by Seller and Purchaser, Purchaser shall instruct Calloway to release the Prior Deposit to Seller. Additionally, at same time Purchaser shall send to Seller in immediately available funds another $100,000 ("New Deposit"). Collectively the Prior Deposit and New Deposit shall be referred to as the "New PSA Deposit". The New PSA Deposit shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA. If the Purchaser exercises its rights to the Due Diligence Extension Period, Purchaser shall remit to Seller in immediately available funds an additional $100,000 bringing the total Earnest Money Deposits released to Seller to $345,000. The Earnest Money Deposits shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA.

4. Date of Closing: The Closing shall take place within 30 days of the expiration of the Due Diligence Period, as extended if the Due Diligence Period Extension is exercised by Purchaser.

5. Broker Fee: Purchaser and Seller each shall be responsible for their respective brokers. Seller shall indemnify and save Purchaser harmless from and against any loss or damage arising from Seller's breach of this representation, and Purchaser shall indemnify and save Seller harmless from and against any loss or damage arising from Purchaser's breach of this representation. This paragraph shall survive the Closing.

6. Confidentiality: All negotiations regarding the Property and the terms of a potential sale to Purchaser will not be disclosed to anyone other than the parties' respective advisors, agents, representatives, investors, affiliates, internal staff, and others as are necessary to consider and consummate this purchaser, or as otherwise required by law.

7. Standstill: Following the execution of this Letter of Intent, Seller, including its members, representatives and agents, will not solicit, negotiate or enter into discussions with any other party or offer the Property or any direct or indirect interest therein for sale to any other party until the earlier of (a) 21 days after this Letter of Intent is executed by both parties, or (b) the date Seller and Purchaser agree in writing to abandon this Letter of Intent.

If the foregoing meets with your approval, please indicate so by acknowledging where provided for below and returning it to my attention.

This Letter of Intent shall automatically expire if not accepted by both parties by 5:00 pm EST on March 21, 2021.

Rotunda Land

PURCHASER:
Rotunda Land & Development Group, LLC

By: _____ Date: 3/11/21
Paul Lange
Title: President

SELLER:
MFM Properties, LLC
MFM Residential Properties, LLC

By: _____ Date: _____
{Insert Name of Principal}
Title:

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	
v.	)	**PLAINTIFFS' NOTICE OF FILING EXHIBIT TO IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	)	
Defendants.	)	

Attached hereto for filing in the above-captioned case is Plaintiffs MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC exhibit in Support of its Motion for Summary Judgment filed in the referenced matter. The exhibit is as follows: Ex. 1, Transcript of the 30(b)(6) Deposition of Paul Anthony Lange, designated witness for Defendant Rotunda Land & Development Group, LLC dated November 23, 2021.

Respectfully submitted,

Dated: February 16, 2022

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Attorneys for Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2021-CP-07-00482
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	PLAINTIFFS' SECOND AMENDED NOTICE OF RULE 30(B)(6) DEPOSITION OF DEFENDANT ROTUNDA LAND & DEVELOPMENT GROUP, LLC
v.	)	
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, the Plaintiffs, by and through their undersigned counsel, will take the deposition of Defendant, Rotunda Land & Development Group, LLC, before a notary public or some other officer authorized by law to take depositions, on **November 16, 2021, commencing at 11:00 a.m., at the law offices of Burr & Forman LLP, Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928**. Said deposition shall continue from day to day until completed.

Pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure Rotunda Land & Development Group, LLC (also referred to herein as "you") is required to designate and fully prepare one or more officers, directors, managing agents or other individuals, to testify on its behalf regarding the attached Exhibit A designating matters and as to such information that is known or reasonably available to the Plaintiff.



Respectfully submitted,

Dated: October 11, 2021

BURR & FORMAN LLP

By _____

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278

Attorneys for Plaintiffs,
MFM Properties, LLC and
MFM Residential Properties, LLC

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EXHIBIT A

1. Identification and authentication of all documents identified in the Complaint.

2. Identification of all written communications between your legal counsel and legal counsel for plaintiffs between November 1, 2020 through the date the Complaint was filed.

3. Identification of all contracts, written or verbal, you contend you have or had with plaintiffs, or either of them.

4. All reasons why you did not close the transaction for the sale of the subject property as alleged in paragraph 19 of the Complaint.

5. All reasons why you contend you did not breach the Agreement as alleged in the Complaint.

6. All facts supporting that you were ready, willing, and able to close in November and December of 2020.

7. If you contend that plaintiffs were not ready, willing and able to perform under the Agreement alleged in the Complaint at paragraph 21 and that at any time that prevented closing, identify all such reasons.

8. If you contend that plaintiffs are now required to close the transaction contemplated by the Agreement referenced in the Complaint, identify all such reasons.

9. If you contend the plaintiff are in any way in breach of any contract or agreement with you, please identify the contract or agreement you contend was breached and identify all facts supporting such contention.

10. Identify all materials you consider to be Purchase Due Diligence Materials as alleged in paragraphs 27 and 28 of the Complaint; as requested in the Fifth and Sixth Causes of Action in the Complaint; and as identified in paragraphs 18, 25 and 28 of the Answer.

11. All reasons why you have not turned over the Purchase Due Diligence Materials.

12. All reasons why you did not pay the Additional Earnest Money as alleged in paragraph 15 of the Complaint.

13. All reasons why you did not pay the extension fee as alleged in paragraphs 16 and 17 of the Complaint.

14. All reasons why you did not pay the Escrow Agent as alleged in paragraph 10 of your Answer.

15. All reasons why the Escrow Agent should not pay the Initial Earnest Money to plaintiffs as requested in the Second, Third, and Fourth Causes of Action in the Complaint.

16. Identify all reasons you have not consented to the release of the Initial Escrow Money to plaintiffs as alleged in paragraph 24 of the Complaint.

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STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF BEAUFORT	) CASE NO.: 2021-CP-07-00482
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)
Plaintiffs,	)
v.	) CERTIFICATE OF SERVICE
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC	)
Defendants.	)

I, Valerie Hampton, an employee of Burr Forman LLP, do hereby certify that I served the foregoing **Plaintiffs' Second Amended Notice of 30(b)(6) Deposition of Rotunda Land & Development Group, LLC** upon parties of record in the above-captioned matter, by depositing a copy of same in the United States Mail, with sufficient first-class postage affixed thereto, and addressed as follows:

Parties Served:

Amanda Calloway, Attorney
Calloway Title & Escrow, LLC
4170 Ashford Dunwoody Road, Suite 525
Atlanta, GA 30319
Pro Se Defendant Calloway Title & Escrow, LLC

Terry A. Finger, Esq.
Finger, Melnick & Brooks, P.A.
P.O. Box 24005
Hilton Head Island, SC 29925
tfinger@fingerlaw.com
Attorneys for Defendant
Rotunda Land & Development Group, LLC

/s/ Valerie N. Hampton
Valerie N. Hampton

Columbia, South Carolina
October 11, 2021

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined in Section 1(g) below) by and between MFM PROPERTIES, LLC AND MFM RESIDENTIAL PROPERTIES, LLC, both, Georgia limited liability companies (collectively, "Seller" or "Sellers") and ROTUNDA LAND & DEVELOPMENT GROUP, LLC, a Georgia limited liability company ("Purchaser").

WITNESETH:

WHEREAS, Seller is the owner of that certain parcel of land comprised of 2,632.30 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina ("State"), as more particularly shown on Exhibit A attached hereto and incorporated herein, together with all rights, privileges, easements, benefits and agreements appurtenant thereto (collectively, the "Property").

WHEREAS, Seller desires to sell the Property and Purchaser desires to purchase the Property in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definition of Key Terms. The following defined terms shall have the meanings set forth below:

   (a) "Purchase Price" Sixteen Million and No/100 Dollars ($16,000,000.00).

   (b) "Initial Earnest Money" One Hundred Thousand and No/100 Dollars ($100,000.00).

   (c) "Additional Earnest Money" One Hundred Thousand and No/100 Dollars ($100,000.00).

   (d) "Initial Inspection Period" that period that commences on the Effective Date and ends 180 days thereafter. Additionally, Purchaser may, at its sole discretion, extend the Inspection Period for two (2) additional sixty (60) day periods (each, an "Extension Period") that Purchaser, in its sole discretion, deems necessary. In order to exercise this right, Purchaser shall provide Seller written notice at least five (5) days prior to the expiration of the Initial Inspection Period or any subsequent Extension Period that it will be exercising its rights to extend, and also as a precondition for such extension shall make an additional deposit of $45,000.00 for each such extension (each, an "Extension Fee"). Each such Extension Fee is expressly non-refundable, but shall apply to the Purchase Price at Closing. The Inspection Period and the Extension Period(s), to the extent each is validly exercised hereunder, shall collectively be referred to as the "Initial Inspection Period".

   (e) "Closing Date" that date that is on or before 30 days after the end of the Inspection Period and in any event no later than August 1, 2020.

   (f) "Property" the 2,632.30 +/- acres located in Hardeeville, Jasper County, South Carolina for which Purchaser will be seeking approval for single family residential, multi-family residential and commercial improvements to be developed on the Property.

   (g) Effective Date is August 19, 2019.

2. Earnest Money.

   (a) Within three (3) business days after the Effective Date, Purchaser shall deposit the Initial Earnest Money in escrow with Title Company as escrow agent ("Escrow Agent") in the form of a certified or cashier's check or by wire transferred funds confirmed received in the bank or savings institution of Escrow Agent, such funds to be held in a non-interest bearing account. At Closing, the Earnest Money (both Initial and Additional) and any

PLAINTIFF'S EXHIBIT Long 11/23/21 683

MFM_00005

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Extension Fees shall be applied for Purchaser's benefit against the Purchase Price at Closing. If this Agreement is terminated prior to Closing pursuant to the terms of this Agreement, then the Earnest Money and any Extension Fees shall be returned to Purchaser or paid to Seller as provided in this Agreement.

(b) Calloway Title & Escrow, LLC (the "Title Company") shall perform Title work for this transaction.

3. Inspection Period Process; Access to Property.

(a) Within 21 days of the Effective Date, Seller will make reasonable efforts to provide access authorization for Purchaser to confer with:

(i) Thomas & Hutton Company ("T&H") as to all topographical, engineering, environmental and other studies, reports, surveys, engineering plans development agreements, geotechnical or soil reports, licenses, permits, maps, notices, plans, and other like materials with regard to the Property;

(ii) Newkirk Environmental, Inc. ("NEI") as to wetland delineations reports or other documentation or correspondence relating to any wetlands at the Property; and

(iii) Brockington & Associates ("B&A") as to any cultural resource and archeological studies and reports.

Seller will also make reasonable efforts to provide any relevant materials to Purchaser that are in Seller's possession or control (the "Seller Property Materials"). Such access to T&H, NEI and B&A shall be at no expense to Seller. Purchaser shall be prepared to reimburse such consultants for their time and expenses.

(b) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the right to enter upon the Property and any buildings and other improvements located thereon, in order to inspect and examine the same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions). Purchaser agrees that it will repair any damage to the Property resulting from surveys, tests and inspections performed in accordance herewith if Purchaser does not purchase the Property. Purchaser shall also defend, indemnify and hold harmless Seller from and against any and all loss, cost, damage, expense or liability arising out of any negligence or willful misconduct of Purchaser in performing the surveys, tests and inspections contemplated hereby, provided that the foregoing agreement to indemnify and hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to (i) any condition upon or under the Property not caused by Purchaser, (ii) any violation of law existing with respect to the Property not caused by Purchaser, or (iii) the negligence or willful misconduct of Seller or its shareholders, officers, directors, employees, agents or contractors. The foregoing indemnity shall survive the termination of this Agreement. Purchaser will incur all costs associated with due diligence items including, but not limited to, wetlands delineation, mitigation credits, etc.

(c) In the event that Purchaser determines, in its sole and absolute discretion, for any or no reason, that the Property is not suitable for Purchaser's intended use thereof, then Purchaser shall have the right to terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Initial Inspection Period, in which event this Agreement shall terminate, the Earnest Money shall be refunded to Purchaser, and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder

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(except for those that expressly survive termination of this Agreement). If Purchaser does not terminate this Agreement by the end of the Initial Inspection Period, the Initial Earnest Money shall be considered non-refundable except in the case of Seller's failure to perform.

(d) If Purchaser terminates this Agreement prior to the end of the Inspection Period, or during any Extension Period, any reports, studies, permits and other materials ("Purchaser Due Diligence Materials") generated by Purchaser for Property shall be given to Seller for no additional consideration and without any representation or warranty by Purchaser as to the accuracy thereof. Purchaser and Seller acknowledge and agree that (A) the Purchaser Due Diligence Materials will include: (i) any surveys, title reports, environmental reports, geotech reports, and similar third party consultant reports relating to the condition of the Property, (ii) any civil engineering plans, grading plans, utility plans and similar infrastructure-related plans and any contracts relating thereto as well as any architect contracts (but not architectural plans as set forth in subparagraph (B) below), (iii) any site plans and other conceptual development for development of the overall Property that have been submitted to governmental authorities, and (iv) any term sheets, letters of intent or contracts relating to the potential sale to a third party by Purchaser of any portions of the Property; (B) that the following shall be excluded from the Purchaser Due Diligence Materials: (i) proprietary material that is, or is related to, any financial data, financial modeling, financing structures, or equity or joint venture structures relating to Purchaser or the Purchaser's intended development of the Property, (ii) proprietary design schematics, architectural plans, proposed unit mix, composition and layout, and floorplans and/or other unit-specific design information; and (C) upon request by Seller, Purchaser will provide to any parties with whom Purchaser has dealt with regard to the Purchaser Due Diligence Materials an authorization for such parties to discuss with Seller such materials and the terms thereof, provided that such authorization shall not extend to any proprietary information or materials specifically excluded from delivery as set forth herein. It is also understood and agreed that nothing in this Paragraph 3.(d) shall be constructed to prohibit, or in any way limit, Seller's ability to deal with any of the third party consultants, including by way of example, T&H, NEI and B&A as referenced in Paragraph 3.(a), after Termination of this Agreement, for consultation on this Property or any other properties.

(e) Upon exercise by Purchaser of each applicable Extension Period, each of the Extension Fees of $45,000.00 payable for such Extension Period shall be considered non-refundable.

(f) Within three (3) business days after the expiration of the Initial Inspection Period, Purchaser shall deposit with Escrow Agent the Additional Earnest Money described in Section 1(c). Such Additional Earnest Money shall be non-refundable except in the case of Seller's failure to perform but it shall be applicable to the Purchase Price at Closing.

4. Title; Permitted Exceptions; Survey.

(a) Title. Within the initial forty-five (45) days following the date of this Agreement Title Company, at Purchaser's sole cost and expense, shall cause to be furnished to Purchaser a current title commitment for an owner's title insurance policy (the "Title Commitment") issued through Chicago Title Insurance Company or another material underwriter, setting forth the status of title of the Property and all exceptions, including rights-of-way, easements, restrictions, covenants, reservations and other conditions, if any, affecting the Property which would appear in an owner's title insurance policy if issued, together with true, legible copies of all instruments referred to in the Title Commitment affecting title to the Property. It is understood that this commitment will contain the standard survey exception until any additional survey work is authorized by Purchaser and completed. Purchaser agrees to notify Sellers in writing of any objections which Purchaser may have

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to any matters reflected in the Title Commitment not later than fifteen (15) days from the date of receipt of the Title Commitment. The intention of the parties hereto is to arrive at a consensus as to the acceptability of both title and survey as of the end of the Initial Inspection Period. Notwithstanding the foregoing, Seller shall have the same obligations for addressing any potential title exceptions that arise, or become applicable after the end of the Initial Inspection Period but prior to Closing.

In case legal steps are necessary to perfect the title, such action must be taken by the Sellers promptly at its own expense. If any of Purchaser's objections to the Title Commitment are not corrected within thirty (30) days following the date Purchaser notifies Sellers of any such objections, then Purchaser may, at its option, either (A) terminate this Agreement by providing written notice to Sellers, in which event the Earnest Money deposited by the Purchaser is to be returned to the Purchaser, and this Agreement shall be deemed canceled with there being no further obligation of either party hereunder unless otherwise provided in this Agreement, or (B) waive any or all objections previously made to the Title Commitment.

(b) Permitted Exceptions. Notwithstanding the foregoing, Purchaser acknowledges that there are certain restrictions, covenants, easements and other matters of record which are certainly subject to review by the Purchaser during the Inspection Period, but which are integral to the Property and will not be a basis for title objections pursuant to Section 4(a). Those are listed as "Permitted Exceptions" on Exhibit B attached hereto and incorporated herein.

At closing, at Purchaser's option, Title Company will furnish to Purchaser, at Purchaser's sole cost and expense, an Owner's Policy of Title Insurance (the "Owner's Policy") in the amount of the purchase price issued by the Title Company on the standard form in use in the State of South Carolina, insuring good and marketable fee simple title to the Property in Purchaser, subject only to the Permitted Exceptions, and the title exceptions noted on the Title Commitment or otherwise accepted by the Purchaser.

(c) Survey. There are two surveys of record which are referenced on Exhibit A. Both surveys were prepared by T&H. The first survey in 2005 is a boundary plat of the entire Property, while the second plat recorded is of the area designated "Residential Tract" allowed MFM Properties to split the ownership of the overall Property into two separate entities. The remaining acreage consisting of 1281.78 acres then being designated the "Commercial Tract". These designations are only used for convenience. It will be the Purchaser's decision during the Inspection Period whether to obtain any additional surveys of all or portions of the Property. Seller expressly authorizes Purchaser to deal with T&H, if it so desires, on the surveying tasks.

5. City Agreements:

(a) Hardeeville Development Agreement. The Property is subject to the PDD and the Development Agreement between Seller and the City of Hardeeville, SC ("City"), which govern the use and entitlements vested in the Property by the City. Annexation of the Property has been completed by the City, which resulted with an annexation agreement, a PDD ordinance and a development agreement (collectively "City Agreements") Seller refers to such City Agreements which are of record in Jasper County. (PDD recorded in Volume 507, Page 110, et seq.; Development Agreement recorded in Volume 507, Page 25, et seq.)

(b) General Summary of Contents. The City Agreements are detailed and relate to and include certain rights granted for development purposes to the landowner, and also certain obligations. By way of example the City Agreements reference the total allowable

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residential dwelling units ("DU's") for the entire Property. The City Agreements also require dedication to the City of certain lands for municipal facilities such as a 2.1 acre fire station site; a 2.1 acre police station site; park sites approximating 53 acres; a 53 acre school site; an approximate 59 acre Spine Road (150' R/W); and an approximate 6 acre Highway 278 Alternative Connector (150' right of way), all of which are contained within the Property. The City Agreements also contain certain references to Open Space requirements. The combination of the dedications, preserved wetlands, buffer areas, storm management facilities and other qualifying acreage were intended to satisfy the 25% and 8.3% Open Space requirements for the Property. Purchaser shall accept responsibility for confirming same.

(c) Modifications to City Agreements. In Purchaser's discretion during the Inspection Period, Purchaser may wish to seek modifications to portions of the City Agreements to better suit its proposed project. Seller agrees to cooperate with Purchaser's discussions with the City to the extent necessary. Purchaser may discuss such proposed modifications to the City Agreements with the City and will advise Seller in advance of any such meetings as to the time and location of same. Purchaser will not be authorized to execute any modifications which would be binding upon the Seller, without the Seller's express written approval, which approval is solely in its discretion. Until modified and/or assigned by Seller to Purchaser, Seller retains all rights under the City Agreement and reserves the right to engage in dialogue with the City as to any matters pertaining to such Agreements. Seller authorizes Purchaser to discuss any and all issues relating to the City Agreements with T&H, which was the primary consultant used by Seller in this regard. Any and all expense of a consultation with T&H shall be borne by Purchaser. Each party will agree to execute necessary consent and waiver of conflict forms, if required by T&H. Notwithstanding the foregoing, Purchaser shall have the right, without consultation with Seller or Seller's ability to participate in negotiations with the City, to enter into new or additional agreements with the City, including on subjects similar to the subject matter of the City Agreements, provided that any new such agreements do not by their terms modify or supersede the existing City Agreements or bind Seller.

6. Utilities/Access. It is understood by Purchaser that the Property is currently in an "undeveloped state" and that all utilities and fully improved/paved access are not presently available to the Property. In general, Purchaser shall be responsible for arranging all utility services for the Property with the applicable utility company and shall bear all aid-to-construction, availability and connection fees in accordance with prescribed rates currently in effect.

(a) Water and Sewer; BJWSA. Seller has previously discussed with Beaufort Jasper Water and Sewer Authority ("BJWSA") with the objective of confirming BJWSA's obligation of delivering water and sewer to the site in sufficient capacity for the development of the Property. However, there were no final agreements ever executed. Purchaser will have to finalize discussions/negotiations with BJWSA. One of Seller's Property Materials to be provided to Purchaser are Water and Sewer master plans prepared by T&H. Purchaser shall be authorized to discuss such plans with T&H but at its cost, if any, for any needed modifications and for T&H's time.

(b) Dry Utilities. In addition to the water and sewer lines, the electric, gas, cable and telephone lines will necessarily have to be installed to service the Property. The likely providers of electric and gas will be SCE&G and of cable and telephone, Hargray Communications. Purchaser is responsible for contacting the providers in this regard.

7. Closing. Provided that all conditions precedent to Purchaser's obligation to proceed to closing hereunder have been satisfied or waived, closing under the terms of this Agreement (the "Closing") shall be held on or before the Closing Date. Closing shall be held at an exact date and time as agreed

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by Purchaser and Seller in the offices of the Escrow Agent or at another location agreed to by Purchaser and Seller. Seller and Purchaser agree to cooperate with one another to deliver documents in escrow to Escrow Agent in order to eliminate the need for representatives of Seller and Purchaser to attend the Closing. Subject to the terms and provisions of this Agreement, if Purchaser elects to close earlier than the date specified above, then Purchaser shall give Seller at least ten (10) days advance written notice of the date of Closing. The Earnest Money (both the Initial and Additional) and Extension Fees, if any, shall be applicable to the Purchase Price.

(a) Closing Procedures. At Closing, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller. At Closing, Seller shall deliver possession of the Property to Purchaser in an unoccupied condition free of any right of possession or claim to right of possession by any party other than Purchaser except as otherwise stated in this Agreement. The Seller and Purchaser do not need to be physically present at the offices of Escrow Agent for Closing as long as they each cause their requisite closing documents and funds to be deposited with the Escrow Agent by the Closing date pursuant to the terms of this Agreement.

(b) Closing Documents and Purchase Price.

(i) At Closing, Seller shall deliver to Escrow Agent: (A) a limited warranty deed ("Deed") conveying the Property to the Purchaser with a legal description prepared pursuant to the current deed of what Seller owns; Seller will provide a quitclaim deed based on a new survey completed by Purchaser if Purchaser so desires and acceptable to Seller (B) an affidavit in a form acceptable to Escrow Agent that Seller is not a "foreign person" and containing such information as required by Sections 1445 and 6045 of the Internal Revenue Code and the regulations issued thereunder; (C) an owner's affidavit in a form customary in the State of South Carolina and acceptable to Escrow Agent; (D) a certificate that all of Seller's representations, warranties, and covenants as set forth in Section 9 of this Agreement are true and accurate as of Closing; and (E) such other documents, instruments, tax forms and the like documents (including, but not limited to, broker lien waivers, if applicable, and any state forms related to tax payments or withholding) as are required by the Escrow Agent, the terms of this Agreement, or reasonably necessary to complete the transaction contemplated by the terms of this Agreement. All documents to be delivered as provided above shall be duly authorized, fully executed, and, if required, acknowledged before a notary.

(ii) At Closing, Purchaser shall deliver to Escrow Agent: (i) the Purchase Price, in the form of wired transferred funds, less the Earnest Money and/or Extension Fees and subject to any adjustments as provided under this Agreement; (ii) such tax forms and the like documents as are usual, customary and/or necessary for commercial real estate closings in the city, town, county and/or state where the Property is located.

(c) Closing Costs. Seller shall pay its own attorney's fees and all recording fees on any title clearance documents, the Deed and any quitclaim deed, preparation of the Deed and quitclaim deed, and any state, local or other recording or transfer, stamp or documentary taxes. Purchaser shall pay for its survey and its attorney's fees, recording fees for the deed and any financing documents, any premiums charged for the Title Policy, and title exam costs.

(d) Prorations. All real estate taxes, special taxes, and other assessments or utility charges, if any, applicable to the Property shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date. All real estate taxes shall be prorated based upon the most recently available property assessment for the Property. If such assessment

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is not available for the year in question, taxes shall be re-prorated after Closing when the amount thereof can be ascertained. Seller shall not be responsible for the payment of any "roll-back" taxes assessed against the Property at Closing but Purchaser shall assume such obligations for payment of same subsequent to Closing, as may be required. Purchaser is responsible for any and all costs, fees, assessments with regard to the City Agreements. If any errors or omissions are discovered by either party within 12 months for Closing regarding any proration, the parties shall make the appropriate corrections promptly upon discovery thereof by paying cash to the party entitled thereto.

8. Conditions Precedent to Closing.

(a) The obligation of Purchaser to close under this Agreement is subject to all of the following:

(i) Seller shall not have breached any of its representations, warranties, or covenants under this Agreement; Seller's representations and warranties shall be true and correct as of the Closing date; and Seller shall have complied with all of the obligations required to be performed by Seller under this Agreement at or prior to Closing.

(ii) The Escrow Agent shall be unconditionally prepared to issue an owner's title insurance policy on the ALTA form and with such endorsements as selected by Purchaser in an amount equal to the Purchase Price insuring Purchaser's ownership of the Property subject to no exceptions, except for the Permitted Exceptions and those agreed upon during the Inspection Period

(iii) Purchaser shall have received approval from the City as to the assignment of the City Agreements generally consistent with, but updated from, the form attached as an exhibit to the City Agreement. The intent of the parties hereto is that the Assignment shall be made in a format so as to release Seller, on a post-closing basis, from any further obligations under the City Agreements.

(iv) The absence of any material change in the status of the use, title, occupancy, or physical condition of the Property (unless caused or consented to by Purchaser).

(b) In the event that any of the conditions precedent set forth in Section 8(a) above have not been fulfilled on the Closing Date, Purchaser shall have the right, at its option, to (i) waive the unsatisfied condition(s) precedent and proceed to Closing, or (ii) terminate this Agreement by delivering written notice to Seller, in which event the Earnest Money shall be immediately returned to Purchaser and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder (except for those that expressly survive termination of this Agreement). Notwithstanding the foregoing provision, in the event that any of the conditions precedent set forth in Section 8(a) above have not been fulfilled by the date of Closing due to breach or default by Seller, then Purchaser may, in addition to the remedies set forth above, pursue any and all of its rights set forth in Section 13(a) below (and any termination pursuant to (ii) above shall not prevent Purchaser from exercising any and all of its rights set forth in Section 13(a) below).

9. Seller Representations. One of the purposes of the lengthy Inspection Period is to allow Purchaser ample time to obtain independent review and advice as to the Property, its physical condition, as well as its developability. Seller has been a passive landowner of the Property and has not engaged in any active development. Hence, the Property is being sold to Purchaser on an "as is-where is" basis. Seller makes no representations or warranties, express or implied, with regard to the physical characteristics and/or condition of the Property. The subject Property is conveyed, transferred, and/or assigned on an "AS-IS" - "WHERE-IS" BASIS, WITH ALL FAULTS, WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO PHYSICAL CONDITION (including without limitation, any latent or patent defects), condition of soils or

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groundwater, existence or nonexistence of hazardous materials. By execution of this Contract, Purchaser agrees that Seller has made no such representations, pledges, covenants or commitments in regard to the development of the Property which has induced the Purchaser to purchase the Property herein except as stated as follows:

(a) Title to Property. Seller is the sole owner of good, marketable and insurable fee simple title to all of the Property subject to the Permitted Exceptions.

(b) Authority of Seller. Seller has the right, power and authority to enter into this Contract and sell the Property in accordance with the terms and conditions hereof and the necessary corporate, partnership or trust action to authorize this Contract has taken place.

(c) Options. No options or other contracts are still outstanding giving any other party a right to purchase any interest in the Property.

(d) Compliance with Existing Laws. Seller is, to the best of Seller's knowledge, not in violation of, and has not received notice of the violation of, any applicable building, zoning, or other ordinances, resolutions, statutes or regulations or any government, governmental agency, including but not limited to environmental control agencies, in respect to the use and condition of the Property.

(e) Condemnation Proceedings. Other than the development agreement discussions with the City, including the potential Bluffton Connector, there are no condemnation or eminent domain proceedings pending or contemplated, to the best of Seller's knowledge, against the Property or any part thereof and Seller has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Property or any part thereof.

(f) Mechanic's Liens. No payments for work or improvements furnished to the Property are due or owing or will become due or owing at Closing without provision for payment being made. There are no materialmen's or mechanic's liens filed of record affecting the Property and no work has been performed for which a mechanic's or materialmen's lien can be claimed.

(g) Pending Litigation. Seller is not now a party to any litigation affecting the Property and Seller knows of no litigation or threatened litigation affecting the Property or any part thereof. Seller shall give Purchaser prompt notice of the institution prior to Closing of any such litigation.

(h) Events Prior to Closing and Other Information. Seller will not cause any action to be taken which would cause any of the foregoing representations or warranties to be untrue as of the Closing. Seller agrees to immediately notify Purchaser in writing of any event or condition which occurs prior to Closing hereunder, which causes a change in the facts related to, or the truth of any of the above representations.

(i) No Defaults. Neither the execution of this Contract nor the consummation of the transaction contemplated hereby will: (a) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party, or (b) violate any restriction to which Seller is subject, or (c) to the best of Seller's knowledge, constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree, or order, or (d) result in the acceleration of any mortgage or note pertaining to the Property or the cancellation of any contract or lease pertaining to the Property, or (e) result in the creation of any lien, charge, or encumbrance upon any of the properties or assets to be sold or assigned to Purchaser pursuant to this Agreement.

(j) With reference to paragraph 7(a), Seller discloses to Purchaser the existence of

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(i) a hunting lease with a third party for a portion of the Property. The Lease is subject to termination by Seller with thirty (30) days' notice.; and

(ii) a billboard lease in favor of a third party lessee which is currently operating on a month-to-month basis, said billboard located on U.S. Highway 278.

[Note: Further details of both of the above leases are to be provided to Purchaser within the initial 60 days of the Inspection Period.]

10. Purchaser Representations. Purchaser warrants, represents and covenants to Seller that the execution of this Agreement and all the transactions contemplated hereby have been authorized by all necessary and appropriate action by Purchaser and that Purchaser has the right, power and authority to enter into this Agreement. Further, Purchaser represents to Seller that Purchaser, and the members/partners of Purchaser's entity have sufficient real estate development experience and expertise, as well as the financial abilities to develop the project as described herein. As to the financial abilities of Purchaser, no later than 150 days from the Effective Date Seller shall have been provided, by Purchaser, with written evidence from a third party source of funding, which verifies that there are sufficient funds available to Purchaser to enable it to close this transaction and to carry out all other obligations of it as set out in this Agreement. This is a key component for Seller agreeing to the Agreement and a condition precedent to Purchaser's ability to extend the Inspection Period, if applicable. Once provided by Purchaser and approved by Seller, which shall not be unreasonably withheld, a copy of such written evidence is to be attached hereto and incorporated herein as Exhibit C.

11. Notices. All notices, demands, or other communications of any type ("Notices") given by Seller to Purchaser or by Purchaser to Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be in writing and shall be deemed delivered when actually received, or, if earlier and whether or not actually received, (i) if delivered by courier or in person, when left with any person at the address reflected below, if addressed as set forth below, (ii) if by facsimile, upon the transmittal of same, addressed and directed to the facsimile number noted below, (iii) if by overnight courier service (such as, by way of example but not limitation, U.S. Express Mail, Federal Express or UPS) with instructions for delivery on the next business day, when deposited with such courier, addressed as reflected below, and (iv) if delivered by mail, when deposited in a Post Office or other depository under the care or custody of the United States Post Service, enclosed in a wrapper with proper postage affixed (as a certified or registered item, return receipt requested), addressed as follows:

AS TO SELLERS:
MFM Properties, LLC and
MFM Residential Properties, LLC
James H. Morgan, Jr., Esquire
Smith, Gambrell & Russell, LLP
1230 Peachtree Street NE
Suite 3100 Promenade II
Atlanta, GA 30309-3592
hmorgan@sgrlaw.com

AND TO:
John F. Morgan, Sr.
23-B Shelter Cove Lane Suite 202
Hilton Head Island, SC 29928
jms@southcoastcommercial.net

AND WITH COPY TO:
Burr & Forman LLP
Attn: Cary S. Griffin

AS TO PURCHASER:
Rotunda Land & Development Group, LLC
Attn: Paul Lange
2870 Peachtree Road Suite 302
Atlanta, GA 30305
plange@rotundaland.com

WITH COPY TO:
Seyfarth Shaw, LLP
Attn: Steve Kennedy
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309
skennedy@seyfarth.com

AS TO TITLE COMPANY:
Calloway Title & Escrow, LLC
Attn: George Calloway
4170 Ashford Dunwoody Road Suite 525
Atlanta, GA 30319

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Post Office Drawer 3
Hilton Head Island, SC 29938-0003
843-785-2171
cgriffin@burr.com

georgec@titlelaw.com
Fax: (678) 406-8941

12. Default.

(a) Seller's Default; Purchaser's Remedy. In the event Purchaser performs all of its obligations hereunder and Seller fails to close on the Property pursuant to the terms of this Agreement, or in the event Seller otherwise breaches any term of this Agreement and fails to cure the breach within ten (10) days after receipt of written notice of the breach from Purchaser, then Purchaser may: (i) seek to specifically enforce performance of Seller's obligation(s) under this Agreement, but if specific performance is not available because Seller has previously conveyed or contracted to convey the Property to another party, Purchaser shall have the right to pursue Purchaser's actual out-of-pocket costs incurred in connection with this Agreement including, without limitation, costs for attorneys' fees, engineers' fees, consulting fees, site plan, subdivision, and approval and permitting costs, title examination and survey fees, and all costs and expenses related to environmental, soil and feasibility tests and examinations ("Purchaser's Costs"), or (ii) terminate this Agreement (if such default occurs prior to Closing) by delivery of written notice thereof to Seller, in which event the Earnest Money shall be immediately returned to Purchaser and Purchaser shall be entitled to recover from Seller Purchaser's Costs. The foregoing remedies shall survive the termination of this Agreement and Closing and delivery of the Deed.

(b) Purchaser's Default; Seller's Remedy. In the event that all of the conditions precedent to Purchaser's obligations to close hereunder have been satisfied or waived and Seller performs all of its obligations hereunder and Purchaser fails to close on the Property in breach of the terms of this Agreement, then, within ten (10) days after receipt of written notice of the same from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement by delivery of written notice to Purchaser. In such event the Purchaser Due Diligence Materials described in Section 3.(d) above shall be promptly delivered to Seller by Purchaser and the Earnest Money and non-refundable Extension Fees shall be promptly delivered to Seller by Escrow Agent and retained by Seller as full liquidated damages and in lieu of any other claims or causes of action which may be available to Seller at law or in equity by reason of such default hereunder by Purchaser, the foregoing amount being agreed upon as liquidated damages by the parties hereto because of the difficulty of ascertaining the actual damages Seller may suffer by reason of Purchaser's breach of this Agreement. Notwithstanding the foregoing, in the event not all the Purchaser Due Diligence Materials are timely provided, Seller shall have the right to bring an action, in law or in equity, against Purchaser to recover such Purchaser Due Diligence Materials.

(c) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, SELLER RELATED AGREEMENTS OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

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13. Condemnation; Casualty.

(a) Condemnation. If, prior to Closing, all or any material portion of Property is condemned by any authority having the power of eminent domain, or if written notice of any condemnation is issued, or if any proceedings are instituted, by any authority having the power of eminent domain, then Purchaser within fifteen (15) days of receipt of notice may elect: (i) to terminate this Agreement by delivering written notice to Seller, in which event Escrow Agent shall immediately refund to Purchaser all Earnest Money and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for those that by the express terms hereof survive termination); or (ii) to proceed to Closing, in which event Seller shall assign to Purchaser at Closing all of its interest in and to all proceeds from any condemnation authority and thereupon Purchaser shall control all negotiations and proceedings undertaken with the condemning authority; Purchaser shall receive a credit at Closing in the amount of any condemnation proceeds paid to Seller with respect to the Property prior to Closing. If Purchaser shall fail to exercise either option within such fifteen (15) days period, Purchaser shall be deemed to have exercised option (ii).

(b) Casualty. If, prior to Closing, any casualty (including without limitation an earthquake, sinkhole, contamination by Hazardous Materials or act of God) damages a material portion of the Property then within fifteen (15) days of receipt of notice Purchaser may elect: (i) to terminate this Agreement by delivering written notice to Seller, in which event Escrow Agent shall immediately refund to Purchaser all Earnest Money and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for those that by the express terms hereof survive termination); or (ii) to proceed to Closing, in which event Purchaser shall receive at Closing a credit in the amount of any proceeds paid to Seller prior to Closing from any insurance policies insuring the Property from damage or destruction, plus the amount of any deductibles and the amount of any uninsured casualty. If Purchaser shall fail to exercise either option within such fifteen (15) days period, Purchaser shall be deemed to have exercised option (ii).

(c) Notice. Seller shall provide Purchaser with prompt notice of: (i) any actual or threatened taking by condemnation of all or any portion of the Property; and (ii) any damage or threatened damage to the Property as a result of any casualty of which Seller has knowledge.

14. Sole Agreement. This Agreement constitutes the only agreement between the parties relating to the sale of the Property and no modification of this Agreement shall be binding unless signed by all parties to this Agreement. No representations, promises, or inducements not included in this Agreement shall be binding upon any party hereto.

15. Miscellaneous.

(a) All rights, powers and privileges conferred hereunder upon the parties shall be cumulative, and not restricted to those given by law.

(b) No failure of either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

(c) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(d) This Agreement shall be construed under the laws of the State of South Carolina.

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(e) All the undertakings contained herein which remain executory at Closing shall survive the Closing and shall remain in full force and effect for a period of twelve (12) months from Closing.

(f) Purchaser may neither assign its rights under this Agreement nor delegate its duties under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed. Provided, however, that it is the intent of Purchaser to form a corporation, partnership or other entity for purposes of acquiring the property and developing the same, and Purchaser may assign its interest in this Agreement to such corporation, partnership or other entity so long as it is owned in part and controlled by Paul Lange. In such event, however, Purchaser shall remain liable to Seller under the Agreement. Seller may assign its rights hereunder and/or delegate its duties hereunder, but shall remain liable to Purchaser with respect to such rights and duties unless expressly released by Purchaser.

(g) If either party is required to institute suit against the other party to enforce its rights under this Agreement, the suit must be brought in 14th Judicial Circuit of South Carolina, and if either party obtains a valid judgment against the other party the non-prevailing party agrees to pay all reasonable costs, expenses and reasonable attorney's fees of the prevailing party attributable to the enforcement of this Agreement.

(h) Whenever possible, each provision of this Agreement shall be interpreted so as to be valid and effective under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, that provision shall be ineffective only to the extent of the prohibition or invalidity, without invalidating the remainder of that provision or the remaining provisions of this Agreement.

(i) It is understood and agreed between the parties hereto that this is a contract for the sale of real estate and is in no way to be considered a joint venture between Seller and Purchaser.

(j) If the date that the performance of any obligations arising hereunder, or the date upon which any notice shall be given, is a Saturday, Sunday or any legal holiday under the laws of the State of South Carolina, then such date shall be extended to the next business day immediately succeeding such Saturday, Sunday or legal holiday.

16. TIME IS OF THE ESSENCE OF THIS CONTRACT.

17. 1031 Exchange. Each party shall cooperate, at no cost to the cooperating party, with the other and shall execute any and all documents necessary to allow such party (or its affiliates) to effectuate the conveyance of the Property as an exchange under Section 1031 of the Internal Revenue Code ("Exchange"); provided however, that at no time shall the cooperating party be required to take title to real estate other than the Property or incur any obligations other than those set forth elsewhere in this Agreement. The exchanging party shall pay all reasonable costs which may be incurred by the cooperating party in connection with such tax free exchange and the exchanging party shall indemnify the cooperating party and hold it harmless from any loss, cost, damage, expense or liability incurred in connection therewith.

18. Brokers. Each party represents and warrants to the other that no real estate broker or agent has been instrumental in the procurement of this Agreement, except Jack Maloney of MSK Commercial Services ("MSK") and Cory Galloway of Lighthouse Realty. Seller shall be responsible for the payment of a commission of three percent (3.0%) of the Purchase Price to be paid to MSK and Purchaser shall be responsible for the payment of a commission of three percent (3.0%) of the Purchase Price to Lighthouse Realty. Purchaser and Seller represent and warrant that except as set forth above, no real estate commission or finder's fee shall be due and payable as a consequence of the transaction contemplated by this Agreement. Each party shall indemnify and save the other

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party wholly harmless against any loss, cost, or other expense, including reasonable attorney's fees that may be incurred by such other party by reason of any breach of the foregoing warranty.

19. Escrow Agent. The Escrow Agent hereinabove referred to shall be the Title Company serving as escrow agent. The Escrow Agent shall not be charged with any knowledge until such facts are communicated to the Escrow Agent in writing.

(a) Escrow Agent shall make disbursements of the Earnest Money and/or Extension Fees in accordance with this Agreement. Upon Escrow Agent's receipt of a written notice from either Purchaser or Seller claiming that they are entitled to the Earnest Money and/or Extension Fees pursuant to the provisions of this Agreement, Escrow Agent shall promptly forward a copy thereof to the other party and unless such party, within ten (10) business days after the receipt thereof, notifies Escrow Agent of any objection to such requested disbursement, Escrow Agent shall disburse the Earnest Money and/or Extension Fees in accordance with the provisions of this Agreement based upon the demand of the party demanding the same, and thereupon the Escrow Agent shall be released and discharged from any further duty or obligation hereunder. Notwithstanding the foregoing, upon written notice from Purchaser that Purchaser has terminated the Agreement prior to the end of the original Inspection Period, then Escrow Agent promptly disburse the Earnest Money to Purchaser (and the foregoing provision shall not apply).

(b) In the event that a dispute arises with respect to the distribution of any funds held, Escrow Agent may apply to a court of competent jurisdiction for an order determining the party to whom such Earnest Money shall be paid. All costs of such proceedings (together with all reasonable attorneys' fees) incurred by Escrow Agent and the successful party in connection therewith shall be paid by the unsuccessful party. In performing its duties as escrow agent holding the Earnest Money, the Escrow Agent shall not be liable for any act or failure to act under the provisions of this Agreement except where its acts are the result of gross negligence or willful wrongdoing. In the event of a dispute between any of the parties, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction, all Earnest Money and/or Extension Fees held under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties hereunder.

20. Confidentiality. Neither Seller nor Purchaser, nor their respective agents and representatives, shall divulge any of the information heretofore obtained, or to be obtained, from the parties in this matter unless it is to a person or entry involved with or retained by the parties in connection with the proposed acquisition. Prior to Closing, neither party nor their respective agents and representatives shall make or release any statement to the press or public without prior written consent of the other party.

21. Press Releases and Announcements. Neither Purchaser nor Seller (nor any affiliate of any such parties) will disseminate any press releases, announcements or other public disclosures relating to the transactions contemplated hereby without the prior written consent of the other party, not to be unreasonably withheld or delayed; provided, that this Section shall not preclude any party from making any disclosure as to the transactions contemplated hereby which the disclosing party reasonably believes is required by applicable laws. Each party shall provide the other with the reasonable opportunity to review any such press releases, announcements prior to dissemination. Notwithstanding the foregoing, Purchaser is expressly permitted, from and after the date of this Agreement, to make disclosures of the transactions contemplated hereby in connection with Purchaser's applying for and obtaining financing approvals; and (b) from and after the date that the Inspection Period expires or is waived in writing by Purchaser, to make disclosures of the transaction contemplated hereby in connection with Purchaser's applications for, e.g. permits,

certificates, licenses and approvals necessary for Purchaser to carry on the proposed development plans of Purchaser at the Project.

[Signatures appear on the following page.]

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Sellers and Purchaser have executed this Agreement and affixed their seals the day and year first above written.

Witness

Witness

SELLERS:

MFM PROPERTIES, LLC

By:
Name: John F. Morgan, Sr.
Title: Member

By:
Name: James H. Morgan, Jr.
Title: Member

Witness

Witness

MFM RESIDENTIAL PROPERTIES, LLC

By:
Name: John F. Morgan, Sr.
Title: Member

By:
Name: James H. Morgan, Jr.
Title: Member

Witness

Witness

PURCHASER:

ROTUNDA [illegible] & DEVELOPMENT GROUP, LLC

By:
Name: [illegible]
Title: Manager

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Exhibit A

Legal Descriptions of Property

Being ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, containing 2,632.32± acres, and being more particularly described as:

> Parcel 2 (516.78± acres) and the remaining portion of Parcel 2A (2,115.54± acres) as shown on the Plat dated December 20, 2005 entitled "A Boundary Plat of Parcel 2 and the remaining portion of Parcel 2A New River Plantation" prepared by Thomas & Hutton engineering Co, and certified by Wright C. Powers, Jr. SCPLS No. 19895, being recorded in the Office of the Clerk of Court for Jasper County in Plat Book 28 at Page 180.

For a more complete description as to the metes and bounds, courses and distances, reference is made to said Plat.

Residential Tract

(owned by MFM Residential Properties, LLC)

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,350.54± acres, more or less, and being shown and described on a Plat entitled "A 1,350.54 Acre Portion of the Remaining Portion of Parcel 2A, New River Plantation", said Plat dated December 10, 2008 prepared by Thomas & Hutton Engineering Co. and recorded as Exhibit A to the Deed in Volume 713 at Page 247 et. seq., Jasper County records.

Commercial Tract

(owned by MFM Properties, LLC)

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,281.78± acres, more or less, representing the remainder of the 2,632.32± acres referenced above after the conveyance of the Residential Tract to MFM Residential Properties, LLC by Deed recorded in Volume 713 at Page 247 of the Jasper County Records.

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Exhibit B

Permitted Exceptions

22. Taxes and assessments for the year 2020 and subsequent years, which are a lien, but are not yet due and payable.

23. Any taxes assessed under the rollback provisions of § 12-43-220 (D-4) South Carolina Code of Laws 1976, as amended.

24. Easements granted to South Carolina Electric & Gas Company as follows:

    (a) Easement dated February 3, 1953, recorded in Miscellaneous Book 4 at Page 100, Jasper County Records;

    (b) Easements to S.C. Power Company dated June 1, 1936, recorded in Deed Book 48 at Page 351, Jasper County Records;

    (c) Easement to South Carolina Power Company dated March 9, 1937, recorded in Deed Book 54 at Page 43, Jasper County Records;

    (d) Easement to South Carolina Power Company dated June 25, 1941, recorded in Deed Book 60 at Page 25, Jasper County Records;

    (e) Easement to South Carolina Power Company dated September 4, 1947, recorded in Deed Book 60 at Page 508;

    (f) Easement dated February 7, 1974, recorded in Deed Book 131 at Page 146, Jasper County Records;

    (g) Easement dated January 23, 1975, recorded in Deed Book 74 at Page 637, Jasper County Records;

    (h) Easement dated January 23, 1975, recorded in Deed Book 74 at Page 639, Jasper County Records;

    (i) Easement dated September 16, 1980, recorded in Deed Book 82 at Page 1436, Jasper County Records; and

    (j) Easement dated February 6, 1979, recorded in Deed Book 80 at Page 331, Jasper County Records.

25. Right-of-way easement granted to South Carolina Department of Transportation recorded in Deed Book 305 at Page 48, Jasper County Records.

26. Easement granted to Palmetto Electric Cooperative, Inc., recorded in Deed Book 81 at Page 190, Jasper County Records.

27. Unrecorded Borrow Pit Lease No. 9621 with South Carolina State Highway Department, located near junction of Road S-141 and S-88 and covering 4 acres, and authorizing the removal of material to a depth of four (4') feet.

28. Unrecorded billboard leases and rights of ingress/egress for maintenance thereof.

29. All easements, overhead power lines, and dirt roads, as shown on plats of record, including those recorded in the Jasper County Records in Plat Book 18 at Page 146, Plat Book 11 at Page 123.

30. Easements and maintenance obligations contained in that certain Trustees' Division Deed recorded in Deed Book 91 at Page 1593-A, as amended in 'Trustees' Corrective Division Deed recorded in Deed Book 92 at Page 1028, Jasper County Records.

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31. Central Electric Easement No. 164, Tract 4, 6.62 acres recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 157.

32. Central Electric Easement No. 172, Tract 17, 8.78 acres recorded in Jasper County Records on December 29, 2008 in Volume 186 at Page 202.

33. Central Electric Easement No. 171, Tract 16, 0.15 acres recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 185.

34. Central Electric Easement No. 176, Tract 21B, 0.01 acre recorded in Jasper County Records on December 29, 2008 in Volume 713 at Page 203.

35. Development Agreement (Morgan Tract) (dated December 22, 2006), recorded in Vol. 507 at Page 25.

36. Planned Development District (Morgan Tract) recorded in Vol. 507 at Page 110 (PDD).

37. Morgan Tract Phase I Declaration of Restrictive Covenants (dated September 16, 2011) (Wetland Covenants).

38. US Army Corps of Engineers, Charleston District '404' Permit (dated April 25, 2011).

39. Declaration of Restrictive Covenants (dated December 15, 2009) – Archeological sites.

40. Final SHPO Acknowledgment Letter to the US Army Corps of Engineers, Charleston District (dated September 29, 2008).

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Exhibit C

Purchaser's Evidence of Financial Assurance

(to be provided by Purchaser within 150 days of Effective Date)

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REINSTATEMENT OF AND FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS REINSTATEMENT OF AND FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT ("Amendment") is made and entered into this 8th day of July, 2020 ("Effective Date"), by and between **MFM PROPERTIES, LLC AND MFM RESIDENTIAL PROPERTIES, LLC**, both, Georgia limited liability companies (collectively, "Seller" or "Sellers") and **ROTUNDA LAND & DEVELOPMENT GROUP, LLC**, a Georgia limited liability company ("Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain Purchase and Sale Agreement with an Effective Date of August 19, 2019 (the "Agreement") for the purchase and sale of that certain parcel of land comprised of 2,632 30 acres, more or less, located in Jasper County, South Carolina, and as more particularly depicted on Exhibit "A" of the Agreement;

WHEREAS, Purchaser, by letter dated February 12, 2020 and deposit of an Extension Fee in the amount of $45,000 on February 13, 2020, exercised its first option to extend the Initial Inspection Period until April 20, 2020;

WHEREAS, Purchaser, by letter dated April 17, 2020, terminated the Agreement pursuant to Section 3(c) of the Agreement (the "Termination");

WHEREAS, Seller and Purchaser desire to reinstate, amend and modify the Agreement as more specifically set forth herein.

NOW THEREFORE, for and in consideration of Ten Dollars ($10 00) paid by the parties one to the other and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Recitals; Defined Terms. The foregoing recitals of facts are hereby incorporated herein to the same extent as if hereinafter fully set forth Capitalized words and phrases used herein which are not defined herein but which are defined in the Agreement shall have the meanings ascribed thereto in the Agreement.

2. Reinstatement. Notwithstanding the Termination, the Agreement is hereby reinstated, and the parties acknowledge and agree that as of the date hereof, the terms of the Agreement, as amended hereby, shall be of full force and effect.

3. Extension of Inspection Period. Both parties confirm that there is disagreement with respect to the definition of "Initial Inspection Period" and the corresponding impact it has had on certain Deposits and wish to now, as part of this Amendment, clarify and confirm the parties' mutual agreement as to the following dates:

(a) An Inspection Period of 180 days commenced on August 19, 2019 and ran through Monday, February 17, 2020. This Inspection Period was extended for sixty (60) days by the first of two (2) sixty (60) day Extension Periods running to April 20, 2020.



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(b) Seller and Purchaser have agreed to dispense with any further use of the defined term "Initial Inspection Period" and agree that it represented only the initial 180 days which expired on February 17, 2020 and is no longer relevant.

(c) The Inspection Period is hereby extended via a new Extension Period, which shall expire on Monday, November 30, 2020.

(d) For purposes of clarification: (i) the Purchaser shall retain the remaining one (1) option to extend the Inspection Period for a period of sixty (60) days, pursuant to Section 1(d) and Section 3(a) of the Agreement; and (ii) if Purchaser desires to exercise such extension, Purchaser shall do so on or before Monday, November 23, 2020, after which the Inspection Period shall expire on Friday, January 29, 2021.

(e) The Closing Date reference in Section 1(e), shall be redefined to be a date on or before thirty (30) days from the end of the Inspection Period as extended per Section 2(c) and/or Section 2(d) which corresponds to an outside date of either Wednesday, December 30, 2020 or Monday, March 1, 2021.

4. Earnest Money.

(a) The Initial Earnest Money deposit in the amount of $100,000 is non-refundable to Purchaser, except in the case of Seller's failure to perform but shall be applicable to the Purchase Price at Closing.

(b) Purchaser shall deposit with Escrow Agent the Additional Earnest Money deposit in the amount of $100,000 on or before Monday, November 30, 2020. In the event that Purchaser terminates the Agreement on or before November 30, 2020, Seller will have no claim to the Additional Earnest Money referenced in the first sentence of this subparagraph 4.(b), but retains its claim as described in subparagraph 4.(c) below. From and after December 1, 2020, the Additional Earnest Money shall be non-refundable except in the case of Seller's failure to perform but shall be applicable to the Purchase Price at Closing.

(c) Purchaser acknowledges Seller's claim that the Additional Earnest Money Deposit was due on February 20, 2020, three (3) days after the expiration of the 180 day Inspection Period and that Seller has previously made demand for same and has reserved all rights to make a claim for same. Seller acknowledges Purchaser's claim that the Additional Earnest Money was not owed until three (3) days after the expiration of the Inspection Period, as extended by any Extension Periods and Purchaser reserves all rights to make a claim for same, subject to Paragraph 4(b).

5. Extension Fee. Within one (1) business day after the Effective Date, Purchaser shall direct Escrow Agent to disburse the first Extension Fee, in the amount of $45,000.00, to

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Seller. The second Extension Fee, also in the amount of $45,000.00, shall only be owed in the event Purchaser timely exercises the remaining extension option, and shall be non-refundable upon deposit by Purchaser. For purposes of clarification, each such Extension Fee, to the extent deposited by Purchaser, shall be applicable to the Purchase Price at Closing.

6. Due Diligence Materials. In the event either a Termination of the Agreement prior to Closing pursuant to the provision of §3(d), or a default of Purchaser pursuant to §12(b), Purchaser's Due Diligence Materials are to be provided to Seller. The parties wish to further distinguish as to which of the Purchaser's Due Diligence Materials may be considered proprietary and which are not, and have agreed as follows:

a. Proprietary information or materials includes only (a) financial studies prepared by or for Purchaser the purpose of which is to show an economic analysis of the purchase and use of the Property by Purchaser (b) studies or reports that identify any individual, company, business, etc. with whom Purchaser has had or intends to have conversations or correspondence relating to any sales or joint venture with or other business arrangement relating to the Property and (c) any information relating to any attempt by Purchaser to raise capital or debt in order to acquire the funds necessary to carry out the terms of this Agreement. However, proprietary information or materials does not include any reports or studies by T&II, any land use planners or related advisors, any wetland studies produced by NRI or other consultants, any plans intended to be presented to Hardeeville (the "City") and any other plans or studies that relate to the development or use of the Property.

b. The parties intent that the above is intended to supplement the definition of Purchaser Due Diligence Materials set forth in §3(d) of the Agreement.

7. Modification. Except as expressly modified herein, the Agreement shall not be modified hereby, shall continue in full force and effect, and is hereby ratified and reaffirmed.

8. Binding. This Amendment shall be binding upon Purchaser, Seller and their respective heirs, successors and assigns.

9. Counterparts and Delivery. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. To facilitate the execution of this Amendment, the parties may execute and exchange counterparts of signature pages affixing their signature by email or by means of an electronic signature tool, application, or software (e.g., DocuSign). Each such electronic signature of a party shall be treated as an original as if personally signed by that party. All parties hereto may rely upon e-mailed or electronic signatures as if such signatures were originals. All parties hereto agree that an e-mailed or electronic signature page may be introduced into evidence in any proceeding arising out of or related to this Amendment as if it were an original signature page.

[Remainder of page left intentionally blank]

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IN WITNESS WHEREOF, Seller and Purchaser have caused this Amendment to be executed the day and year first above written

SELLERS:

MFM PROPERTIES, LLC

By: _____
Name: John F Morgan, Sr
Title: Member

By: _____
Name: James H Morgan, Jr
Title: Member

MFM RESIDENTIAL PROPERTIES, LLC

By: _____
Name: John F Morgan, Sr
Title: Member

By: _____
Name: James H Morgan, Jr
Title: Member

PURCHASER:

ROTUNDA LAND & DEVELOPMENT GROUP, LLC

By: _____
Name: Paul Large
Title: Manager

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Seyfarth

Seyfarth Shaw LLP
1075 Peachtree Street, N.E.
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Atlanta, GA 30309-3958
T (404) 885-1500
F (404) 892-7056

croutman@seyfarth.com
T (404) 885-6718

www.seyfarth.com

November 23, 2020

VIA EMAIL AND
VIA FEDERAL EXPRESS

MFM Properties, LLC
MFM Residential Properties, LLC
James H. Morgan, Jr., Esq.
Smith, Gambrell & Russell, LLP
1230 Peachtree Street, NE
Suite 3100, Promenade II
Atlanta, GA 30309-3592
Email: hmorgan@sgrlaw.com

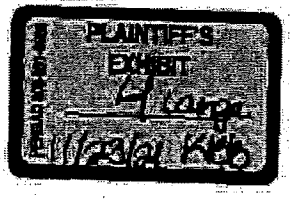
John R. Morgan, Sr.
23-B Shelter Cove Lane Suite 202
Hilton Head Island, SC 29928
Email: jms@southcoastcommercial.net

Burr & Forman LLP
Attn: Cary S. Griffin
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, South Carolina 29928
Email: cgriffin@burr.com

*Re: **Purchase and Sale Agreement, dated August 19, 2019, as amended by that certain Reinstatement of and First Amendment to Purchase and Sale Agreement, dated July 8, 2020 (the "First Amendment", as amended, the "Agreement"), by and between MFM Properties, LLC and MFM Residential Properties, both Georgia limited liability companies (collectively, "Seller") and Rotunda Land & Development Group, LLC, a Georgia limited liability company ("Purchaser") for the purchase and sale of approximately 2,632.30 acres, more or less, located in Jasper County, South Carolina, as more particularly described in the Agreement ("Property")***

Gentlemen:

This letter is to provide written notice of Purchaser's election, pursuant to Paragraph 3(d) of the First Amendment, to extend the Inspection Period for an additional sixty (60) days. Please note that the First Amendment provided that the Inspection Period would expire on Monday, November 30, 2020. As extended by this notice (and payment of the Extension Fee), the Inspection Period shall expire on Friday, January 29, 2021, and the Closing Date shall be automatically extended an additional thirty (30) days with a Closing Date of March 1, 2021.



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Seyfarth

Purchaser shall deposit a second Extension Fee in the amount of $45,000.00 with the Escrow Agent on or before Monday, November 30, 2020. In accordance with Paragraph 4(b) of the First Amendment, Purchaser will deposit an Additional Earnest Money Deposit in the amount of $100,000.00 with the Escrow Agent, on or before Monday, November 30, 2020.

If you have any questions, please do not hesitate to contact me.

Sincerely,

SEYFARTH SHAW LLP

Chris Troutman

Chris Troutman

CT/glb

cc: Steve Kennedy (via email)
Don Gage (via email)
Paul Lange (via email)

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
28-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 10, 2020

VIA EMAIL

Rotunda Land and Development Group, LLC
Attn: Steven Kennedy, Esq.
Attn: Christopher Troutman, Esq.
Seyfarth Shaw LLP
1075 Peachtree Street, NE, Suite 2500
Atlanta, GA 30309

Re: Purchase and Sale Agreement dated 8/19/19, as amended between MFM Properties, LLC, et al and Rotunda Land and Development Group, LLC
Burr File#2117301.0000027

Gentlemen:

I am addressing this letter to you because of the unfortunate inability to receive any meaningful response to my previous request concerning the status of the deposits of the Extension Fee and the Additional Earnest Money Deposit that you referenced in your letter of November 23, 2020. That letter was intended to provide notice to extend the Inspection Period for an additional sixty (60) days. The letter also confirmed the contractual requirement to deposit the Extension Fee and the Additional Deposit on or before Monday, November 30, 2020. Neither one of those deposits was made by that date and still has not been made.

Failure to make those two deposits is a breach of the Agreement. With respect to the Additional Earnest Money, this is the second time the Purchaser has failed to make that payment. My client will be considering its course of action. In the interim, we would certainly appreciate hearing from you as to the Purchaser's position on this matter. The Seller has always honored the Contract terms and will continue to do so. Notwithstanding the implication in Chris' voicemail to me earlier this week that our clients were discussing some proposal, there are no proposals currently under consideration for anything different than the Contract terms.

From MFM's perspective, the following points are clear: (a) the Initial Deposit is non-refundable; (b) the Inspection Period is over; (c) there was no valid extension of the Inspection Period or Closing; and (d) the Additional Deposit of $100,000 was due on November 30, 2020 and was not made.

I trust you will give this the immediate attention it deserves. Please respond to this letter within the next seven (7) days, i.e., on or before December 18, 2020.

PLAINTIFF'S EXHIBIT 5 George 11/23/21 KMS

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By copy of this letter, I am notifying the Escrow Agent, Calloway Title, of this action and request that no action be taken on the existing Deposit, which remains in escrow, without our consent.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:ktp
c: Calloway Title and Escrow, LLC
MFM Properties, LLC

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 18, 2020

VIA EMAIL ONLY

Rotunda Land and Development Group, LLC
Attn: Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase and Sale Agreement dated 8/19/19, as amended between MFM Properties, LLC, et al and Rotunda Land and Development Group, LLC**
Burr File#2117301.0000027

Gentlemen:

It is now mid-afternoon on Friday, December 18th and I have not heard from you which is a bit disappointing. Assuming there is no response and, hence, no plan or proposal by your client, then my client sees that there appears to be two options: (a) MFM can be ready to close by December 31, 2020 and will close if Rotunda can fund; or (b) terminate the PSA with a termination agreement to be signed, the original and additional deposits being released to MFM and the Purchaser's Due Diligence Materials delivered to Seller pursuant to the terms of the PSA.

Please consult with your client and get back to me early next week as to whether option (a) is feasible and if not, if option (b) is agreeable. Thank you.

With best regards, I am

Very truly yours,

BURR & FORMAN LLP

Cary S. Griffin

CSG:ktp
c: Calloway Title and Escrow, LLC
MFM Properties, LLC

PLAINTIFF'S EXHIBIT Co Large 1/23/21 KBB

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 23, 2020

VIA EMAIL & UPS

Rotunda Land & Development Group, LLC
Attn: Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase and Sale Agreement between**
MFM Properties, LLC, et al and Rotunda Land & Development Group, LLC
Burr File#2117301.0000027

Gentlemen:

While I do understand that we are in the midst of end-of-year and holiday season, however, since there has been no substantive response to my previous inquiries, that leads me to the conclusion that there may not be any response between now and the end of the year. As mentioned in my December 18th letter, MFM can be ready to close by the end of the year, To that end, enclosed are copies of the following documents each of which have been sent to my client for execution:

1. Limited Warranty Deed for both tracts owned by the two Grantors. (Note – the allocation of the total purchase price has been determined solely by gross acreage which results in a 51%/49% split.)
2. Action in Writing for each of the two entities authorizing either Harry Morgan or John Morgan to sign the closing documents.
3. Transferor Affidavits for each entity.
4. Owner Affidavit for each entity.
5. Certification of Non-Foreign Status for each entity.
6. South Carolina Non-Resident Withholding Affidavits for each entity.
7. Assignment of Rights Relating to Billboards.

These comprise the basic documents required by the PSA for execution by the Seller. These would be supplemented by a Closing Statement itemizing the financial details of the transaction. Normally that would be prepared by the buyer's counsel or closing agent, but I think we know what those are and are fairly simple. $16M purchase price against the $100,000 deposit being held in escrow. Hence, $15,900,000 would be due. As 2020 taxes are not subject to proration since it is the last day of the year, those would be

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paid by Seller. Other prorations, if any, will be minimal and can be handled on a "paid outside of closing" basis.

There will be nominal recording fees to be paid by Purchaser and transfer fees for the Deed in the amount of $59,200 ($3.70/$1,000) to be paid by Seller. 7% of the estimated gain of the Commercial Tract, or $548,525, should be withheld from the Seller's proceeds for payment to the South Carolina Department of Revenue. There are 3% brokerage commissions due to the brokers referenced in §18 of the PSA one from the Seller to MSK and the other from the Purchaser to Lighthouse (each $480,000). I am copying Amanda Calloway at Calloway Title for her information. My presumption is that Rotunda would normally have Calloway Title prepare the Closing Statement. Those are the figures I believe are pertinent from our perspective. Wiring instructions are also enclosed for the net proceeds due the Seller.

In the alternative, if your client is not going to be able to perform by December 31, 2020, then as referenced in my December 18, 2020 letter, the only other option is to terminate the PSA consistent with the terms of the PSA. A Termination Agreement is enclosed for execution. This would have to be accompanied by $100,000 wire to our Trust account from Rotunda and another $100,000 wired to our account by Calloway Title representing the Additional and Original Deposits, respectively. We will also then look to the assignment and release of any Purchaser Due Diligence Materials as soon as possible thereafter.

I do look forward to hearing from you.

Other than rather formal and sober news here, best wishes to all for a happy holiday season and a safe and successful 2021.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:sp
c: Calloway Title and Escrow, LLC (with enclosures)
MFM Properties, LLC

44654639 v3 2117301-0000027

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[redacted]

From: Patane, Stacy <SPatane@burr.com> on behalf of Griffin, Cary <CGriffin@burr.com>
Sent: Wednesday, December 30, 2020 4:23 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com; plange@rotundalnad.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Attachments: Doc#_44743868_v_3_MFM Properties -- Kennedy Letter (tender performance).PDF

Importance: High

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-8 Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

main 843-785-2171 • fax 843-686-5991

cgriffin@burr.com • www.burr.com

360 Attorneys. 19 Offices. 1 Firm. Southeastern Strong.

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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 23, 2020 2:54 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

From: Paige, Karen <KPaige@burr.com> **On Behalf Of** Griffin, Cary
Sent: Friday, December 18, 2020 4:13 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties / Rotunda Land and Development

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

PLAINTIFF'S EXHIBIT 8 Lange 11/23/21 KMS

MFM_00035

Thank you,

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

main 843-785-2171 • fax 843-686-5991

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 30, 2020

VIA EMAIL

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Attached is a copy of my letter that will be sent out via UPS tonight. I thought you should have some advance notice of same.

Best wishes for a safe New Year's weekend.

Very truly yours,

Cary S. Griffin

CSG:sp
Attachment
c: Calloway Title and Escrow, LLC Attn – Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC
Rotunda Land & Development, LLC

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Shipment Receipt

Transaction Date: 30 Dec 2020 **Tracking Number:** 1Z0679X70195076665

① Address Information

Ship To:	Ship From:	Return Address:
SEYFARTH SHAW LLP S KENNEDY & C TROUTMAN ESQS 1075 PEACHTREE ST NE STE 2500 ATLANTA GA 303093958	Burr & Forman LLP - Hilton Head Stacy Patane 23-B Shelter Cove Lane Suite 400 Hilton Head Island SC 29928 Telephone:843-785-2171 email:spatane@burr.com	Burr & Forman LLP - Hilton Head Stacy Patane 23-B Shelter Cove Lane Suite 400 Hilton Head Island SC 29928 Telephone:843-785-2171 email:spatane@burr.com

② Package Information

	Weight	Dimensions / Packaging	Declared Value	Reference Numbers
1.	Letter (Letter billable)	UPS Letter		Client/Matter Number - 2117301.0000027.7081.7147 CSG/sp Reference # 2 - MFM/ROTUNDA

③ UPS Shipping Service and Shipping Options

Service:	UPS Next Day Air		
Delivered By:	End of Day Thursday, Dec 31, 2020		
Shipping Fees Subtotal:	33.83 USD	Additional Shipping Options	
Transportation	32.30 USD	Quantum View Notify E-mail Notifications:	No Charge
Fuel Surcharge	1.53 USD	1 spatane@burr.com: Delivery E-mail Failure Notification: spatane@burr.com	

④ Payment Information

Bill Shipping Charges to: Shipper's Account [redacted]

Shipping Charges:	33.83 USD
A discount has been applied for this shipment.	
Negotiated Charges:	10.78 USD
Subtotal Shipping Charges:	10.78 USD
Total Charges:	10.78 USD

Note: This document is not an invoice. Your final invoice may vary from the displayed reference rates.

* For delivery and guarantee information, see the UPS Service Guide ((0)). To speak to a customer service representative, call 1-800-PICK-UPS for domes services and 1-800-782-7892 for international services.

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

December 30, 2020

VIA UPS

FORMAL NOTICE PURSUANT TO §11 OF PSA

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: **Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC**
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

The above PSA provides for closing to occur by December 31, 2020 as you are aware from my previous correspondence to you, most recently my letter of December 23, 2020. The Seller remains ready, willing and able to close. There is no financing contingency and no other conditions precedent to closing. Since we have not received any response to the December 18, 2020 or the December 23, 2020 letters, we are tendering performance of the Seller by virtue of this letter. Therefore, enclosed are the following **original** closing documents executed by the Sellers:

1. Limited Warranty Deed for both tracts owned by the two Grantors.
2. Action in Writing for each of the two entities authorizing either Harry Morgan or John Morgan to sign the closing documents.
3. Transferor Affidavits for each entity.
4. Owner Affidavit for each entity.
5. Certification of Non-Foreign Status for each entity.
6. South Carolina Non-Resident Withholding Affidavits for each entity.
7. Assignment of Rights Relating to Billboards.
8. Seller's Certificate of Representations and Warranties.

All documents shall be deemed to be "closing documents". These would be supplemented by a HUD-1 or ALTA closing statement to be prepared by your office or by the Escrow Agent.

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You are hereby instructed to hold the "closing documents" in trust pending the following:

(a) You or Escrow Agent have on deposit in your or Escrow Agent's trust account, all of the funds due from Purchaser necessary for the purchase of the Property;
(b) You or Escrow Agent have received authorization from Purchaser to disburse the proceeds;
(c) You have received confirmation from me that I have received and approved the final closing statement; and
(d) You have faxed or electronically transmitted to me a purchaser's executed counterpart of the approved closing statement.

Immediately following the confirmation referenced in (c) above, please forward: (i) the funds due the Seller via wire transfer to our law firm pursuant to the wiring instructions enclosed; and (ii) an original counterpart of the fully executed closing statement.

If closing does not occur by the close of business Thursday, December 31, 2020, the Purchaser will be in default for the failure to close and, therefore, all closing documents shall be returned to me. This delivery constitutes complete tender of performance by the Sellers pursuant to the PSA. I have copied the Purchaser and Escrow Agent with this Notice and its enclosures.

If you have any questions, or need anything further, please contact me. Thank you.

With best regards, I am

Very truly yours,

Cary S. Griffin

CSG:sp
Enclosures
c: Calloway Title and Escrow, LLC Attn - Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC
Rotunda Land & Development, LLC

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This instrument prepared by/after recording return to:
BURR FORMAN MCNAIR
23B Shelter Cove Lane Suite 400
Hilton Head Island SC 29928
843-785-2171 (CSG:sp)

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

TITLE TO REAL ESTATE
(Limited Warranty)

WHEREAS, MFM Properties, LLC and MFM Residential Properties, LLC are both Georgia limited liability companies who are related and who owned separate tracts contiguous to one another, the Commercial Tract being owned by MFM Properties, LLC, a description of which is attached hereto as Exhibit A-1, and the Residential Tract being owned by MFM Residential Property, LLC, a description of which is attached hereto as Exhibit A-2;

KNOW ALL MEN BY THESE PRESENTS, that MFM Properties, LLC, a Georgia limited liability company, and MFM Residential Properties, LLC, a Georgia limited liability company (collectively, "Grantors") in the State aforesaid, for and in consideration of the total sum of Sixteen Million and 00/100 Dollars ($16,000,000.00) to Grantors in hand paid by:

Rotunda Land & Development Group, LLC
2870 Peachtree Road Suite 302
Atlanta, GA 30305

(the "Grantee"), the receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said Grantee, the following described property:

See Attached Exhibit A, Exhibit A-1 and Exhibit A-2

THIS CONVEYANCE IS MADE SUBJECT TO all other easements and restrictions of record and otherwise affecting the property, including the Permitted Exceptions set forth in Exhibit A-3 attached hereto.

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 Grantee, its successors and assigns forever; subject, however, to the rights, conditions and restrictions that constitute covenants running with the land, all as set forth herein.

AND Grantors do hereby bind themselves and their successors and assigns to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against Grantors and their successors and assigns, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof, but through and under them and against none other.

[Signatures on Following Page]

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IN WITNESS WHEREOF, the Grantors have caused these presents to be executed in their names by their duly authorized Member and their seals to be hereto affixed, this 30th day of December, 2020.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

(2) _____
Signature of 1st Witness

(3) _____
Signature of 2nd Witness/Notary Public

GRANTORS

MFM PROPERTIES, LLC

(1) By _____
Name John F. Morgan, Sr.
Title – Authorized Member

MFM RESIDENTIAL PROPERTIES, LLC

(1) By _____
Name John F. Morgan, Sr.
Title – Authorized Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that John F. Morgan, Sr., duly Authorized Member of Grantors, by and on behalf of the Limited Liability Companies personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 30th day of December, 2020.

(4) _____
Notary Public

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Exhibit A

Legal Descriptions of Property

ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, and being more particularly described as the Commercial Tract containing a total of 1,281.78± acres and the Residential Tract containing 1,350.54± acres each as described more fully on Exhibit A-1 and Exhibit A-2 set forth below.

Exhibit A-1

Commercial Tract

Being ALL those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, containing 2,632.32± acres, and being more particularly described as:

> Parcel 2 (516.78± acres) and the remaining portion of Parcel 2A (2,115.54± acres) as shown on the Plat dated December 20, 2005 entitled "A Boundary Plat of Parcel 2 and the remaining portion of Parcel 2A New River Plantation" prepared by Thomas & Hutton Engineering Co., and certified by Wright C. Powers, Jr. SCPLS No. 19895, being recorded in the Office of the Clerk of Court for Jasper County in Plat Book 28 at Page 180.
>
> For a more complete description as to the metes and bounds, courses and distances, reference is made to said Plat.

AND ALL that certain piece, parcel or tract of land containing approximately 1.27 of an acre of land, situate, lying and being on the South side of Road S-141 Relocation near the Town of Ridgeland in Jasper County, South Carolina, and being shown on the South Carolina Department of Transportation Plans for U.S. Hwy. 278 Connector on sheets No. 12, 44 and 45, Tile 727.473, Tract No. 21. Said property being more particularly described as follows:

> BEGINNING at a point located at the West corner of the subject parcel on the South side of Road S-141 Relocation and on the new 70 foot right-of-way line and right of Road S-141 Relocation at approximate survey station 95+92; thence in a Easterly direction for a distance of approximately 348 feet, more or less, along the new 70 foot right-of-way line right of Road S-141 Relocation to a point 70 feet right of approximate survey station 99+40; thence in a Southeasterly direction for a distance of approximately 1190 feet, more or less, along the centerline of old Road S-141 to a point 125 feet right of approximate survey station 79+56 on U.S. Hwy. 278 Connector; thence in a Southerly direction for a distance of approximately 53 feet, more or less, along the new 125 foot right-of-way and control of access line from construction centerline to a point 125 feet right of approximate survey station 80+05; thence in a Westerly direction for a distance of approximately 1552 feet, more or less, along the present 37 1/2 foot right-of-way line on the South side of Old Road S-141 to the POINT OF BEGINNING. Being bound on the North by the centerline of Old Road S-141, East by new 125 foot right-of-way and control of access line for U.S. Hwy. 278 Connector, West by new 70 foot right-of-way line for Road S-141 Relocation, and South by land owned by the Grantee.

LESS AND EXCEPT from the above described property that 1,350.54± acre portion of the property conveyed by that certain Title to Real Estate from MFM Properties, LLC, to MFM Residential Properties, LLC, dated December 16, 2008, filed for record December 29, 2008 at 11:37 a.m., recorded in Book 713 at page 247, aforesaid Records.

In the event there is any conflict between the above courses and distances, metes and bounds description in the aforementioned Exhibit A, said Plat shall control.

This being a portion of the property conveyed to MFM Partnership by Deed from John F. Morgan dated February 18, 1994, recorded in the Jasper County Records in Deed Book 139 at Page 123; and by Deed from James H. Morgan, Jr. dated February 17, 1994, recorded in Deed Book 139 at Page 135.

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Exhibit A-2
Residential Tract

1,350.54 acre Portion of Parcel 2-A

ALL that certain tract or parcel of land lying and being in the City of Hardeeville, Jasper County, South Carolina, having and containing 1,350.54 acres, more or less, and being shown and described on an exhibit attached hereto and incorporated herein as Exhibit A, said Exhibit entitled "A 1,350.54 Acre Portion of the Remaining Portion of Parcel 2A, New River Plantation", said Exhibit A prepared by Thomas & Hutton Engineering Co. The property is more particularly described by courses and distances, metes and bounds, as follows:

The Point of Beginning is located at the point of intersection of the northerly right of way line of Coleman Loop SR-176 (66' R/W) and the northeasterly right of way line of South Carolina Highway 46 (66' R/W); from said Point of Beginning proceeding along the aforesaid right of way line of South Carolina Highway 46 N 44°17'34" W a distance of 446.57' to a point; thence 794.55' along the arc of a curve turning to the left, having a radius of 5215.94', a chord bearing of N 48°47'47" W, and a chord length of 793.78' to a point; thence N 53°03'55" W a distance of 1528.12' to a point; thence leave the aforesaid right of way line of South Carolina Highway 46 N 21°09'55" E a distance of 314.45' to a point; thence N 02°41'40" E a distance of 5434.35' to a point; thence N 02°42'28" E a distance of 4637.23' to a point; thence N 89°14'22" E a distance of 270.60' to a point; thence S 34°47'52" E a distance of 1095.69' to a point; thence S 08°34'50" E a distance of 948.90' to a point; thence S 53°43'23" E a distance of 656.42' to a point; thence N 53°48'34" E a distance of 820.77' to a point; thence N 68°59'21" E a distance of 1794.11' to a point; thence S 85°42'47" E a distance of 450.00' to a point; thence S 21°00'06" E a distance of 1137.86' to a point; thence S 88°11'16" E a distance of 1110.05' to a point in the centerline of Striker Road (Private Road); thence along the aforesaid centerline of Striker Road S 10°15'08" W a distance of 468.94' to a point; thence S 02°53'26" W a distance of 2787.52' to a point; thence S 02°38'06" E a distance of 1085.77' to a point; thence S 05°45'08" W a distance of 1369.66' to a point; thence S 04°47'05" E a distance of 172.66' to a point; thence S 04°37'54" E a distance of 376.77' to a point; thence S 03°00'52" W a distance of 972.28' to a point; thence S 01°00'46" W a distance of 1397.02' to a point; thence leaving the aforesaid centerline of Striker Road N 87°51'40" W a distance of 2288.47' to a point; thence S 02°12'20" W a distance of 1746.42' to a point on the northerly right of way line of Coleman Loop; thence along the aforesaid right of way line of Coleman Loop N 76°07'30" W a distance of 1679.45' to the Point of Beginning, having an area of 58,829,650 Square Feet or 1350.54 Acres.

Said 1,350.54 acre parcel is bounded on the north by lands of MFM, LLP; on the east by lands of N/F Hilton Head Lakes, LLC., Randolph C. Karrh and Striker Road; on the south by lands of N/F Randolph C. Karrh, Coleman Loop and South Carolina Highway 46; and on the west by lands of N/F Thomas Swygert Partnership.

In the event there is any conflict between the above courses and distances, metes and bounds description in the aforementioned Exhibit A, said Plat shall control.

This being the same property conveyed to MFM Residential, LLC by Deed from MFM Properties, LLC, and recorded in the Jasper County Records in Book 713 at Page 247.

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Exhibit A-3

Permitted Exceptions

1. Taxes and assessments for the year 2021 and subsequent years, which are a lien, but are not yet due and payable.

2. Any taxes assessed under the rollback provisions of § 12-43-220 (D-4) South Carolina Code of Laws 1976, as amended.

3. Easements granted to South Carolina Electric & Gas Company as follows:

   (a) Easement dated February 3, 1953, recorded in Miscellaneous Book 4 at Page 100, Jasper County Records ("County Records");

   (b) Easements to S.C. Power Company dated June 1, 1936, recorded in the County Records in Deed Book 48 at Page 351;

   (c) Easement to South Carolina Power Company dated March 9, 1937, recorded in the County Records in Deed Book 54 at Page 43;

   (d) Easement to South Carolina Power Company dated June 25, 1941, recorded in the County Records in Deed Book 60 at Page 25;

   (e) Easement to South Carolina Power Company dated September 4, 1947, recorded in the County Records in Deed Book 60 at Page 508;

   (f) Easement dated February 7, 1974, recorded in the County Records in Deed Book 131 at Page 146;

   (g) Easement dated January 23, 1975, recorded in the County Records in Deed Book 74 at Page 637;

   (h) Easement dated January 23, 1975, recorded in the County Records in Deed Book 74 at Page 639;

   (i) Easement dated September 16, 1980, recorded in the County Records in Deed Book 82 at Page 1436; and

   (j) Easement dated February 6, 1979, recorded in the County Records in Deed Book 80 at Page 331.

4. Right-of-way easement granted to South Carolina Department of Transportation recorded in the County Records in Deed Book 305 at Page 48.

5. Easement granted to Palmetto Electric Cooperative, Inc., recorded in the County Records in Deed Book 81 at Page 190.

6. Unrecorded Borrow Pit Lease No. 9621 with South Carolina State Highway Department, located near junction of Road S-141 and S-88 and covering 4 acres, and authorizing the removal of material to a depth of four (4') feet.

7. Unrecorded billboard leases and rights of ingress/egress for maintenance thereof.

8. All easements, overhead power lines, and dirt roads, as shown on plats of record, including those recorded in the County Records in Plat Book 18 at Page 146, Plat Book 11 at Page 123.

9. Easements and maintenance obligations contained in that certain Trustees' Division recorded in the County Records in Deed Book 91 at Page 1593-A, as amended in Trustees' Corrective Division Deed recorded in Deed Book 92 at Page 1028.

10. Central Electric Easement No. 164, Tract 4, 6.62 acres recorded in the County Records on December 29, 2008 in Volume 713 at Page 157.

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11. Central Electric Easement No. 172, Tract 17, 8.78 acres recorded in the County Records on December 29, 2008 in Volume 186 at Page 202.

12. Central Electric Easement No. 171, Tract 16, 0.15 acres recorded in the County Records on December 29, 2008 in Volume 713 at Page 185.

13. Central Electric Easement No. 176, Tract 21B, 0.01 acre recorded in the County Records on December 29, 2008 in Volume 713 at Page 203.

14. Easements as reserved in that certain Quit-Claim Deed from South Carolina Department of Transportation from MFM, L.L.P., a Georgia limited liability partnership, dated July 19, 2000, filed for record September 21, 2004 at 12:05 p.m., recorded in the County Records in Book 303 at Page 106.

15. Utility Easement Agreement by and between MFM Properties, LLC, a Georgia limited liability company, and SCE&G, a subsidiary of SCANA Corporation, a South Carolina corporation, dated July 23, 2008, filed for record August 12, 2008 at 11:12 a.m., recorded in the County Records in Book 688 at Page 24.

16. All those matters as disclosed by those certain plats recorded in the County Records in Plat Book 6 at Page 9; Plat Book 6 at Page 11; Plat Book 6 at Page 14; Plat Book 8 at Page 42; Plat Book 11 at Page 123A; Plat Book 11 at Page 123B; Plat Book 18 at Page 146; Plat Book 28 at Page 120; Plat Book 30 at Page 150; and Deed Book 713 at Page 247.

17. Development Agreement (Morgan Tract) (dated December 22, 2006), recorded in the County Records in Vol. 507 at Page 25.

18. Planned Development District (Morgan Tract) recorded in the County Records in Vol. 507 at Page 110 (PDD).

19. Morgan Tract Phase I Declaration of Restrictive Covenants (dated September 16, 2011) (Wetland Covenants) recorded in the County Records in Volume 824 at Page 691.

20. US Army Corps of Engineers, Charleston District '404' Permit (dated April 25, 2011).

21. Declaration of Restrictive Covenants (dated December 15, 2009) – Archeological sites.

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ACTION IN WRITING
(COMPANY RESOLUTIONS)
OF
MFM PROPERTIES, LLC
a Georgia Limited Liability Company

MFM Properties, LLC (the "Company") hereby adopts and certifies the following resolutions:

BE IT RESOLVED, that the Company, as "Seller", hereby approves the sale of that certain parcel of land comprised of 1,281.78 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina (collectively, the "Property") to Rotunda Land and Development Group, LLC, a Georgia limited liability company ("Purchaser") pursuant to the Purchase and Sale Agreement entered into by and between Seller and Purchaser dated August 19, 2019, as amended by the Reinstatement of and First Amendment to Purchase and Sale Agreement dated July 8, 2020; and

BET IT FURTHER RESOLVED, that either James H. Morgan, Jr. or John F. Morgan, Sr., each in their capacity as an Authorized Member of the Company, be and are hereby authorized on behalf of the Company to execute, without attestation, any and all documents in connection with the above-referenced sale of the Property, all and in accordance with the Operating Agreement governing the business and affairs of the Company. Such authorization includes, but is not limited to, executing the deed(s), settlement statement, contract, contract addenda, seller affidavits, assignments, or any other documents necessary to effectuate the sale of the Property as would ordinarily be required for a conveyance of unimproved real property in Jasper County, South Carolina.

BE IT FURTHER RESOLVED, that the Company hereby certifies that the Company is in good standing with the State of Georgia.

This Action may be executed in multiple counterparts, each of which shall be considered an original. The parties hereto, attorneys and lender may rely upon a facsimile and/or electronically transmitted version of this Action.

The above Resolutions were adopted on the 23rd day of December, 2020, and the undersigned certifies to their accuracy.

MFM Properties, LLC

By
Name James H. Morgan, Jr.
Title Member
Date 12/23/20

By
Name John F. Morgan, Sr.
Title Member
Date 12/23/20

44677636 v1 21173O1-0000027

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

ACTION IN WRITING
(COMPANY RESOLUTIONS)
OF
MFM RESIDENTIAL PROPERTIES, LLC
a Georgia Limited Liability Company

MFM Residential Properties, LLC (the "Company") hereby adopts and certifies the following resolutions:

BE IT RESOLVED, that the Company, as "Seller", hereby approves the sale of that certain parcel of land comprised of 1,350.54 acres, more or less, located in Jasper County (land map parcel # 041-00-04-004 and 041-00-04-003), South Carolina, (collectively, the "Property") to Rotunda Land and Development Group, LLC, a Georgia limited liability company ("Purchaser") pursuant to the Purchase and Sale Agreement entered into by and between Seller and Purchaser dated August 19, 2019, as amended by the Reinstatement of and First Amendment to Purchase and Sale Agreement dated July 8, 2020; and

BE IT FURTHER RESOLVED, that either James H. Morgan, Jr. or John F. Morgan, Sr., each in their capacity as an Authorized Member of the Company, be and are hereby authorized on behalf of the Company to execute, without attestation, any and all documents in connection with the above-referenced sale of the Property, all and in accordance with the Operating Agreement governing the business and affairs of the Company. Such authorization includes, but is not limited to, executing the deed(s), settlement statement, contract, contract addenda, seller affidavits, assignments, or any other documents necessary to effectuate the sale of the Property as would ordinarily be required for a conveyance of unimproved real property in Jasper County, South Carolina.

BE IT FURTHER RESOLVED, that the Company hereby certifies that the Company is in good standing with the State of Georgia.

This Action may be executed in multiple counterparts, each of which shall be considered an original. The parties hereto, attorneys and lender may rely upon a facsimile and/or electronically transmitted version of this Action.

The above Resolutions were adopted on the 23rd day of December, 2020, and the undersigned certifies to their accuracy.

MFM Residential Properties, LLC

By _____
Name James H. Morgan, Jr.
Title Member
Date 12/23/20

By _____
Name John F. Morgan, Sr.
Title Member
Date 12/23/20

44077745 v1 2117301-0000027

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Transferor Affidavit
Tax Lien Inapplicable
SC Code Section 12-54-124

The undersigned transferor hereby certifies as follows:

1. This affidavit is being given in connection with a transfer of property to assure the transferee that the Department will not assert that Code §12-54-124 placed a lien against the assets in the hands of the transferee, and if applicable, the Department will not refuse to issue a license and will not revoke a license based upon Code §12-54-124. This affidavit issued for purposes of Code §12-54-124 is valid for 30 days from the date signed.

   It is understood that this affidavit does not protect the transferee from a lien placed on the assets prior to the transfer by other statutory or judicial means, or relieve the transferor of his liabilities to pay all of its taxes or file all applicable returns, and that it does not protect the transferee from the Department refusing to issue a license, or revoking a license, for any other reason. For example, the transferee is not protected from a lien existing on the property due to nonpayment of real property taxes.

2. The undersigned is the transferor of the assets described in the attached description.

3. The Transferor's name is: MFM Properties, LLC

4. The Transferor's address is: 1230 Peachtree Street NE
   Suite 3100 Promenade II
   Atlanta, GA 30309-3592

5. The Transferor's taxpayer identification number is: [redacted]

6. Date of Transfer: December 31, 2020

7. The Transferee's name is: Rotunda Land & Development Group, LLC

8. The Transferee's address is: 2870 Peachtree Road Suite 302
   Atlanta, GA 30305

I hereby certify the following concerning the transfer (check appropriate box):

■ The assets transferred are not business assets.

☐ Less than a majority of the business assets, based on fair market value, are being transferred in this and other related or planned transfers.

The undersigned authorizes the delivery and disclosure of this affidavit to the South Carolina Department of Revenue and acknowledges that any false statement contained herein is punishable by fine, imprisonment, or both. Recognizing that I am subject to the criminal penalties under Code §12-54-44(B)(6)(a)(i), I declare that I have examined this affidavit and to the best of my knowledge and belief it is true, correct, and complete.

Transferor:
MFM Properties, LLC

By _____
Name John F. Morgan, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 30th day of December, 2020.

_____ (SEAL)
Notary Public

42301161 v1 2117301-0000027

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Transferor Affidavit
Tax Lien Inapplicable
SC Code Section 12-54-124

The undersigned transferor hereby certifies as follows:

1. This affidavit is being given in connection with a transfer of property to assure the transferee that the Department will not assert that Code §12-54-124 placed a lien against the assets in the hands of the transferee, and if applicable, the Department will not refuse to issue a license and will not revoke a license based upon Code §12-54-124. This affidavit issued for purposes of Code §12-54-124 is valid for 30 days from the date signed.

   It is understood that this affidavit does not protect the transferee from a lien placed on the assets prior to the transfer by other statutory or judicial means, or relieve the transferor of his liabilities to pay all of its taxes or file all applicable returns, and that it does not protect the transferee from the Department refusing to issue a license, or revoking a license, for any other reason. For example, the transferee is not protected from a lien existing on the property due to nonpayment of real property taxes.

2. The undersigned is the transferor of the assets described in the attached description.

3. The Transferor's name is: MFM Residential Properties, LLC

4. The Transferor's address is: 1230 Peachtree Street NE
   Suite 3100 Promenade II
   Atlanta, GA 30309-3592

5. The Transferor's taxpayer identification number is [redacted]

6. Date of Transfer: December 31, 2020

7. The Transferee's name is: Rotunda Land & Development Group, LLC

8. The Transferee's address is: 2870 Peachtree Road Suite 302
   Atlanta, GA 30305

I hereby certify the following concerning the transfer (check appropriate box):

■ The assets transferred are not business assets.

☐ Less than a majority of the business assets, based on fair market value, are being transferred in this and other related or planned transfers.

The undersigned authorizes the delivery and disclosure of this affidavit to the South Carolina Department of Revenue and acknowledges that any false statement contained herein is punishable by fine, imprisonment, or both. Recognizing that I am subject to the criminal penalties under Code §12-54-44(B)(6)(a)(i), I declare that I have examined this affidavit and to the best of my knowledge and belief it is true, correct, and complete.

Transferor:
MFM Residential Properties, LLC

By _____
Name John F. Morgan, Jr.
Title Authorized Member

SWORN to and subscribed before
me this 21st day of December, 2020.

_____ (SEAL)
Notary Public

44677793 v1 2117301-0000027

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STATE OF SOUTH CAROLINA)
) OWNER'S AFFIDAVIT
COUNTY OF JASPER)

Property: That certain parcel of land comprised of 1,281.76 acres, more or less, located in Jasper County being a portion of tax map parcel # 041-00-04-004 and 041-00-04-003, South Carolina (the "Property")

THE UNDERSIGNED owner, or his/her authorized agent, after first being duly sworn, says under oath the following, to the best of his actual knowledge:

1. That the undersigned currently owns and holds that certain real property described above.

2. That no improvements or repairs have been made on or to the said property during the 95 day period preceding, for which payment has not been made in full.

3. That there are no outstanding bills incurred (a) for labor and/or materials used in making improvements or repairs on or to said property, (b) for equipment, appliances, fixtures or accessions on or to said property, or (c) for architect's, surveyor's or engineer's services rendered on, to, for or with reference to said property.

4. That the undersigned is not aware of any disputes, pending actions or bankruptcy proceedings, execution or unrecorded judgments, leases, liens or encumbrances that affect title to said property.

5. That this Affidavit is executed with the knowledge that it will be relied upon by the purchaser(s) of said property, by the title insurance thereof, and/or by the mortgage lender.

MFM Properties, LLC

By
Name John P. Morgan, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 30th day of December, 2020

Notary Public

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA)
) OWNER'S AFFIDAVIT
COUNTY OF JASPER)

Property: That certain parcel of land comprised of 1,350.54 acres, more or less, located in Jasper County being a portion of tax map parcel #041-00-04-004 and 041-00-04-003), South Carolina (the "Property")

THE UNDERSIGNED owner, or his/her authorized agent, after first being duly sworn, says under oath the following, to the best of his actual knowledge:

1. That the undersigned currently owns and holds that certain real property described above.

2. That no improvements or repairs have been made on or to the said property during the 95 day period preceding, for which payment has not been made in full.

3. That there are no outstanding bills incurred (a) for labor and/or materials used in making improvements or repairs on or to said property, (b) for equipment, appliances, fixtures or accessions on or to said property, or (c) for architect's, surveyor's or engineer's services rendered on, to, for or with reference to said property.

4. That the undersigned is not aware of any disputes, pending actions or bankruptcy proceedings, execution or unrecorded judgments, leases, liens or encumbrances that affect title to said property.

5. That this Affidavit is executed with the knowledge that it will be relied upon by the purchaser(s) of said property, by the title insurance thereof, and/or by the mortgage lender.

MFM Residential Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

SWORN to and subscribed before
me this 20th day of December, 2020

Notary Public

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

CERTIFICATION OF NONFOREIGN STATUS

(Corporation, Partnership, Trust Transferor Estate)

Section 1445 of the Internal Revenue code provides that a transferee of a U.S. real property interest must withhold tax if the transferor ("Seller") is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee ("Buyer") that withholding of tax is not required upon the disposition of a U.S. real property interest by MFM Properties, LLC (hereinafter referred to as "Seller") the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);

3. Seller's U.S. Employer Identification number is [redacted]

4. Seller's office address is: 1230 Peachtree Street NE`, Suite 3100 Promenade II, Atlanta, GA 30309.

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

December 30th, 2020

MFM Properties, LLC

By

Name John F. Morgan, Jr.

Title Authorized Member

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

CERTIFICATION OF NONFOREIGN STATUS

(Corporation, Partnership, Trust Transferor Estate)

Section 1445 of the Internal Revenue code provides that a transferee of a U.S. real property interest must withhold tax if the transferor ("Seller") is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee ("Buyer") that withholding of tax is not required upon the disposition of a U.S. real property interest by MFM Properties, LLC (hereinafter referred to as "Seller") the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Seller is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);

3. Seller's U.S. Employer Identification number is [redacted];

4. Seller's office address is: 1230 Peachtree Street NE, Suite 3100 Promenade II, Atlanta, GA 30309

Seller understands that this certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

December 30, 2020

MFM Residential Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
SELLER'S AFFIDAVIT
NONRESIDENT SELLER WITHHOLDING
S.C. Code Section 12-8-580 et. seq.

I-295
(Rev. 6/25/10)
3278

This is an affidavit of facts. Whether or not this affidavit is sufficient to relieve the buyer of the responsibility to withhold is governed by SC Revenue Ruling #09-13. Please read this affidavit carefully in conjunction with this Advisory Opinion.

The undersigned on oath, being first duly sworn, hereby certifies as follow:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #09-13.
2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as a part of this sale. The real property is located in the county of Jasper and its tax map number(s) is **041-00-04-003 & 041-00-04-004.**
3. The undersigned are the sellers of the property described in the attached description.
4. The closing date of this sale is **March 31, 2021.**
5. The Seller's name is **MFM Residential Properties, LLC.**
6. The Sellers' address is **1230 Peachtree Street NE`, Suite 3100 Promenade II, Atlanta, GA 30309.**
7. The Seller's EIN is [redacted].
8. The undersigned acknowledge their obligation to file a South Carolina income tax return for the year of the sale.
9. ☐ **Resident.** The Sellers are residents of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-6-30 et. seq.).
10. ☐ **Deemed Resident (must be a business).** Pursuant to Code Section 12-8-580(C) and SC Revenue Advisory Bulletin #09-13, the Sellers are deemed to be residents of South Carolina because:
    - 1.a. The seller is a corporation incorporated outside South Carolina, has its principal place of business in South Carolina, and does no business in its state of incorporation, **or**
    - b. The seller (i) has been in business in South Carolina during the last two taxable years, including the year of sale, (ii) will continue substantially the same business in South Carolina after the sale, (iii) is not delinquent with respect to filing any South Carolina income tax returns, (iv) has filed at least one South Carolina income tax return, and (v) has a certificate of authority to do business in South Carolina or is registered to do business in South Carolina **and**
    - 2. The seller agrees to report the sale on a timely file South Carolina income tax return.
11. ☐ **Tax-Exempt Organizations.** The Seller is an organization exempt from income taxes under Internal Revenue Code Section 501 (a) or is an insurance company exempt from South Carolina taxes on income.
12. ■ **Gain Amount.** The sellers affirm, pursuant to Section 12-8-580(B), that the amount of gain required to be recognized on this transaction and on which buyer is to make the requisite withholding will not exceed $-0-.
13. ☐ **Withholding Amount Equals Entire Net Proceeds.** If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale. See Question and Answer 15 in SC Revenue Advisory Bulletin #09-13 for a discussion of loans made in contemplation of the sale.
14. **Installment Sale.**
    - ☐ The Sellers will report this sale on the installment method for South Carolina income tax purposes and have attached an amortization schedule correctly designating the principal and interest portions of the payments. If withholding is to be limited to the gain, the sellers have entered the gain amount in Item 12.
    - ☐ The sellers elect out of the installment method for South Carolina purposes and will report the entire withholding in one payment. If withholding is to be limited to the gain, the seller has entered the gain amount in item 12.
15. ☐ **Principal Residence or Involuntary Conversion – Non-recognition of Gain.** The sale of the property will not be subject to taxes because of Internal Revenue Code Section 121 (sale of a principal residence) or Internal Revenue Code Section 1033 (involuntary conversions.) If the Sellers fail to comply with Section 1033, the Sellers acknowledge an

Retain for your records. DO NOT mail to the Department of Revenue.

3278 1023

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obligation to file an amended South Carolina income tax return for the year of the sale.

16. **Like Kind Exchange.**

☐ In a simultaneous exchange, the entire gain is deferred under Internal Revenue Code Section 1031.

☐ A gain will be partially recognized. Enter the gain amount in item 12.

☐ The gain is intended to be deferred under Internal Revenue Code Section 1031 using a qualified intermediary and the steps required by SC Revenue Ruling #09-13 have been completed. The seller authorizes the qualified intermediary to release modified forms and any other information relevant to the withholding, including information otherwise confidential in Code Section 12-54-240 as described in SC Revenue Ruling #09-13, Question 22, Option 2.

17. ☐ **Employee Relocation.** The transaction involves the sale of an employee's property which is being sold by an employer or relocation company in connection with the employee's transfer. For income tax purposes, the sale is treated as a sale by the employer or relocation company.

The undersigned understand that this affidavit may be disclosed to the Department and that any false statement contained herein could be punished by fine, imprisonment, or both.

MFM RESIDENTIAL PROPERTIES, LLC

By: _____
Name John F. Morgan, Sr.
Title Authorized Member

If the person making the affidavit is not the Seller, complete the following:

_____
(Affiant's Social Security Number or Taxpayer Identification Number)

_____
(Affiant's Number, Street or Rural Route)

_____
(Affiant's City, State and Zip Code)

SUBSCRIBED AND SWORN to

before me this 30 day of **December, 2020.**

_____
(Notary Public)
My commission expires: 9/26/24

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form if you are an individual taxpayer. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

Our internet address is: **www.sctax.org**

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372

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
SELLER'S AFFIDAVIT
NONRESIDENT SELLER WITHHOLDING
S.C. Code Section 12-8-580 et. seq.

I-295
(Rev. 8/25/10)
3278

This is an affidavit of facts. Whether or not this affidavit is sufficient to relieve the buyer of the responsibility to withhold is governed by SC Revenue Ruling #09-13. Please read this affidavit carefully in conjunction with this Advisory Opinion.

The undersigned on oath, being first duly sworn, hereby certifies as follow:

1. This affidavit is being given in connection with a sale of real estate pursuant to SC Revenue Ruling #09-13.
2. I have attached to this affidavit a description of the real property and any tangible personal property being sold as a part of this sale. The real property is located in the county of Jasper and its tax map number(s) is **041-00-04-003 & 041-00-04-004.**
3. The undersigned are the sellers of the property described in the attached description.
4. The closing date of this sale is **March 31, 2021.**
5. The Seller's name is **MFM Properties, LLC.**
6. The Sellers' address is **1230 Peachtree Street NE`, Suite 3100 Promenade II, Atlanta, GA 30309.**
7. The Seller's EIN is [redacted].
8. The undersigned acknowledge their obligation to file a South Carolina income tax return for the year of the sale.
9. ☐ **Resident.** The Sellers are residents of South Carolina, as that term is defined in the South Carolina income tax laws (S.C. Code Section 12-6-30 et. seq.).
10. ☐ **Deemed Resident (must be a business).** Pursuant to Code Section 12-8-580(C) and SC Revenue Advisory Bulletin #09-13, the Sellers are deemed to be residents of South Carolina because:
    - 1.a. The seller is a corporation incorporated outside South Carolina, has its principal place of business in South Carolina, and does no business in its state of incorporation, **or**
    - b. The seller (i) has been in business in South Carolina during the last two taxable years, including the year of sale, (ii) will continue substantially the same business in South Carolina after the sale, (iii) is not delinquent with respect to filing any South Carolina income tax returns, (iv) has filed at least one South Carolina income tax return, and (v) has a certificate of authority to do business in South Carolina or is registered to do business in South Carolina **and**
    - 2. The seller agrees to report the sale on a timely file South Carolina income tax return.
11. ☐ **Tax-Exempt Organizations.** The Seller is an organization exempt from income taxes under Internal Revenue Code Section 501 (a) or is an insurance company exempt from South Carolina taxes on income.
12. ■ **Gain Amount.** The sellers affirm, pursuant to Section 12-8-580(B), that the amount of gain required to be recognized on this transaction and on which buyer is to make the requisite withholding will not exceed $7,837,076.00.
13. ☐ **Withholding Amount Equals Entire Net Proceeds.** If the withholding amount is limited to the entire net proceeds, any lien, mortgage or credit line advance which was made within one year prior to the closing was not made in contemplation of the sale. See Question and Answer 15 in SC Revenue Advisory Bulletin #09-13 for a discussion of loans made in contemplation of the sale.
14. **Installment Sale.**
    - ☐ The Sellers will report this sale on the installment method for South Carolina income tax purposes and have attached an amortization schedule correctly designating the principal and interest portions of the payments. If withholding is to be limited to the gain, the sellers have entered the gain amount in item 12.
    - ☐ The sellers elect out of the installment method for South Carolina purposes and will report the entire withholding in one payment. If withholding is to be limited to the gain, the seller has entered the gain amount in item 12.
15. ☐ **Principal Residence or Involuntary Conversion – Non-recognition of Gain.** The sale of the property will not be subject to taxes because of Internal Revenue Code Section 121 (sale of a principal residence) or Internal Revenue Code

Retain for your records. DO NOT mail to the Department of Revenue.

3278 1023

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Section 1033 (involuntary conversions.) If the Sellers fail to comply with Section 1033, the Sellers acknowledge an obligation to file an amended South Carolina income tax return for the year of the sale.

16. **Like Kind Exchange.**

☐ In a simultaneous exchange, the entire gain is deferred under Internal Revenue Code Section 1031.

☐ A gain will be partially recognized. Enter the gain amount in item 12.

☐ The gain is intended to be deferred under Internal Revenue Code Section 1031 using a qualified intermediary and the steps required by SC Revenue Ruling #09-13 have been completed. The seller authorizes the qualified intermediary to release modified forms and any other information relevant to the withholding, including information otherwise confidential in Code Section 12-54-240 as described in SC Revenue Ruling #09-13, Question 22, Option 2.

17. ☐ **Employee Relocation.** The transaction involves the sale of an employee's property which is being sold by an employer or relocation company in connection with the employee's transfer. For income tax purposes, the sale is treated as a sale by the employer or relocation company.

The undersigned understand that this affidavit may be disclosed to the Department and that any false statement contained herein could be punished by fine, imprisonment, or both.

MFM PROPERTIES, LLC

By: _____
Name John F. Morgan, Sr.
Title Authorized Member

If the person making the affidavit is not the Seller, complete the following:

_____
(Affiant's Social Security Number or Taxpayer Identification Number)

_____
(Affiant's Number, Street or Rural Route)

_____
(Affiant's City, State and Zip Code)

SUBSCRIBED AND SWORN to

before me this 31st day of **December, 2020.**

_____
(Notary Public)
My commission expires: 9/26/24

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form if you are an individual taxpayer. 42 U.S.C. 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

Our Internet address is: **www.sctax.org**

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This instrument prepared by
Burr & Forman LLP
Cary S. Griffin
Post Office Drawer 3
Hilton Head Island, SC 29938-0003

Jasper County Tax ID Nos. 041-00-04-004 & 041-00-04-003

ASSIGNMENT OF RIGHTS RELATING TO BILLBOARDS

FOR AND IN CONSIDERATION of Ten and no/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned MFM PROPERTIES, LLC, a Georgia limited liability company ("Assignor"), hereby sell, assign, and transfer unto ROTUNDA LAND & DEVELOPMENT GROUP, LLC, a Georgia limited liability company, whose address is 2870 Peachtree Road Suite 302, Atlanta, GA 30305 ("Assignee"), its successors or assigns, to have and to hold forever, all of Assignor's right, title, interest, estate and benefit, in and to that any leases or agreements relating to billboards located on any of the property owned by Assignor herein within Jasper County Tax Map Identification Numbers 041-00-04-004 and 041-00-04-003 (collectively, the "Billboard Rights"), together with all rents, payments, deposits and other sums due or to become due thereunder. To the best of Assignor's knowledge, such leases or agreements are oral only and the latest contact information for the party using the billboards is Palmetto Advertising located at Post Office Box 671, Hardeeville, SC 29927.

Assignor hereby assigns, transfers, and sets over unto Assignee, any and all Billboard Rights it may have as a result of a verbal agreement or lease related to the billboards referenced above. Such assignment is made on an "as is" basis without any liability of Assignor.

This Assignment of Rights Relating to Billboards may be executed in counterparts, each of which shall be deemed an original and shall inure to the benefit and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Assignment of Rights Relating to Billboards effective as of the 30th day of December, 2020 (the "Effective Date").

[signature pages to follow]

IN WITNESS WHEREOF, Assignor has executed this instrument on the date set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Witness
Name: STACY FATANE

Witness
Name: CASEY SCOFFIELD

ASSIGNOR:
MFM Properties, LLC

By
Name John F. Morgan, Sr.
Title Authorized Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

The foregoing instrument was acknowledged before me this 30th day of December, 2020 by John F. Morgan, Sr., as Authorized Member of MFM Properties, LLC, on behalf of the Assignor herein. He is personally known to me or has produced sufficient form of photo-identification.

NOTARY PUBLIC (SEAL)

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IN WITNESS WHEREOF, Grantee has executed this instrument on the date set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

ASSIGNEE
Rotunda Land & Development Group, LLC

_____
Witness
Name: _____

By _____
Name Paul Lange
Title Member

_____
Witness
Name: _____

2870 Peachtree Road Suite 302
Atlanta, GA 30305

STATE OF GEORGIA)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2020 by Paul Lange, as Manager of Rotunda Land & Development Group, LLC, on behalf of the Assignee herein. He is personally known to me or has produced sufficient form of photo identification.

_____ (SEAL)
NOTARY PUBLIC

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SELLER'S CERTIFICATE OF REPRESENTATIONS AND WARRANTIES

In accordance with the terms of that certain Purchase and Sale Agreement dated August 29, 2019 ("PSA"), by and between MFM Properties, LLC and MFM Residential Properties, LLC, both Georgia limited liability companies (collectively, "Seller") and Rotunda Land Development, LLC, a Georgia limited liability company ("Purchaser"), Seller hereby certifies to Purchaser that the representations and warranties made by Seller in the PSA are true and correct in all material respects as of the Closing Date (as that term is defined in the PSA).

IN WITNESS WHEREOF, the undersigned has executed this Seller's Certificate of Representations and Warranties as of the 30th day of December 2020, intended to be effective as of the 30th day of December, 2020.

SELLER

MFM PROPERTIES, LLC

Witness

Witness

By
Name John F. Morgan, Sr.
Title Authorized Member

MFM RESIDENTIAL PROPERTIES, LLC

Witness

Witness

By
Name John F. Morgan, Sr.
Title Authorized Member

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BURR FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com
T 843.785.2171
F 843.686.5991

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 8
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

BURR & FORMAN LLP IOLTA - HILTON HEAD

INCOMING WIRING INSTRUCTIONS - REAL ESTATE TRUST

Bank information required for wiring funds to Burr & Forman's IOLTA account:

FINANCIAL INSTITUTION:	Bank of America 100 N Tryon Street Charlotte NC 28255
ACCOUNT NAME:	Burr & Forman LLP - IOLTA Tax ID [redacted] 23-B Shelter Cove Lane Suite 400 Hilton Head Island, SC 29928
ACCOUNT NUMBER:	[redacted]
Domestic Wires ABA No.:	[redacted]
International Wires SWIFT BIC:	[redacted]
PLEASE REFERENCE ON WIRE:	Attn: Cary S. Griffin/Stacy Patane Burr Client/Matter - MFM Properties LLC Client/Matter# - 2117301.0000027

Should you need assistance, email AccountsReceivable@burr.com

IMPORTANT NOTICE
With cyber-crimes on the increase, it is important to be vigilant. If you receive an email or any other communication that appears to be generated by Burr & Forman LLP or anyone employed by Burr & Forman LLP requesting that you revise or amend the above wiring instructions, consider it suspect and call our office immediately.

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

[redacted]

From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Wednesday, December 30, 2020 5:14 PM
To: Griffin, Cary <CGriffin@burr.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, I note that Paul's email address below has a typo in it. Regardless, he did receive this from me directly.

Although you've heard this from us before in recent weeks, it is my understanding that Paul Lange intends to speak with your clients to try to work out a contract extension/solution, such that the tender of performance effort you're going through will prove to be unnecessary. Nevertheless, I understand and appreciate your need to set things up that way.

Steve

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com

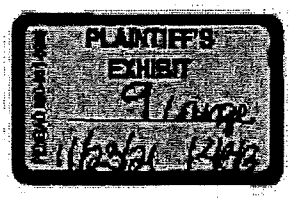
Seyfarth

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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 30, 2020 4:23 PM
To: Kennedy, Steve <SKennedy@seyfarth.com>; Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com; plange@rotundalnad.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Importance: High

[EXT. Sender]

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.



MFM_00126

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Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928
main 843-785-2171 • fax 843-686-5991
cgriffin@burr.com • www.burr.com [burr.com]

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From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 23, 2020 2:54 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; jmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

From: Paige, Karen <KPaige@burr.com> **On Behalf Of** Griffin, Cary
Sent: Friday, December 18, 2020 4:13 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; jmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties / Rotunda Land and Development

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

Thank you,

BURR FORMAN MCNAIR
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[redacted]

From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Thursday, December 31, 2020 12:04 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, Paul Lange just advised me as follows: " All, quick update as just spoke to Seller. We agreed we are going to put together revised terms which among other things allow us to complete entitlements and close."

If you hear a materially different message from your client, please let me know. In the meantime, I am awaiting further information on how/who will put together the revised terms for consideration.

Steve

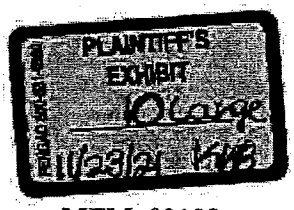
Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com
<image003.jpg>

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Sent: Wednesday, December 30, 2020 4:23 PM
To: Kennedy, Steve <SKennedy@seyfarth.com>; Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com; plange@rotundalnad.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Importance: High

[EXT. Sender]

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.



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Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928
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Sent: Wednesday, December 23, 2020 2:54 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

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Subject: MFM Properties / Rotunda Land and Development

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Thank you,

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[redacted]

From: "Griffin, Cary" <CGriffin@burr.com>
Date: January 4, 2021 at 11:42:07 AM EST
To: "Kennedy, Steve" <SKennedy@seyfarth.com>
Cc: "Troutman, Christopher (Chris)" <ctroutman@seyfarth.com>, "Amanda Calloway (AmandaC@titlelaw.com)" <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

CAUTION: This email is from an external source. Do not click links or attachments unless it's from a verified sender.

Steve—My e-mail addressed to you started with "I would request..." ... if you or your client choose to disregard the request, that is a decision to be made by you and/or your client.
CSG
843-785-2171

BURR FORMAN

Cary Griffin • *Counsel*

AL • DE • FL • GA
MS • NC • SC • TN

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928
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From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Sunday, January 3, 2021 2:23 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; Amanda Calloway (AmandaC@titlelaw.com) <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Before I relay your message to Rotunda, I want to confirm - are you demanding that my client no longer contact your client directly?

PLAINTIFF'S EXHIBIT 11 Corp. 11/29/21 KMR

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

Steve

Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com



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From: Griffin, Cary <CGriffin@burr.com>
Sent: Sunday, January 3, 2021 1:08 PM
To: Kennedy, Steve <SKennedy@seyfarth.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; Amanda Calloway (AmandaC@titlelaw.com) <AmandaC@titlelaw.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXT. Sender]

Steve– I would not presume to try to interpret what your client has advised you. I can only reiterate that the MFM position has not changed and is very specifically set forth in my 12/10 , 12/18 and 12/23 letters as supplemented by the 12/30 letter.

I would request that any further communication from your client be in writing and through counsel. Please have your client authorize the Escrow Agent to release the Original Deposit as well as wire the Additional Deposit which is now overdue by more than a month .

Cary Griffin
843-785-2171

BURR FORMAN

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

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From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Thursday, December 31, 2020 12:04 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, Paul Lange just advised me as follows: " All, quick update as just spoke to Seller. We agreed we are going to put together revised terms which among other things allow us to complete entitlements and close."

If you hear a materially different message from your client, please let me know. In the meantime, I am awaiting further information on how/who will put together the revised terms for consideration.

Steve

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1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
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BURR & FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

January 12, 2021

VIA EMAIL

Rotunda Land & Development Group, LLC
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
Seyfarth Shaw LLP
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between
MFM Properties, LLC, et al *and* Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Gentlemen:

By my calculation, the cure period previously available to Rotunda set forth in the PSA has now expired. We have yet to hear any substantive responses to the earlier letters that have been sent to you in the last 30+ days. At this point, therefore, you are on notice that there is no cure available to Rotunda. We would once again request the following action:

1. Authorize Calloway Title, as Escrow Agent, to release the $100,000 Original Deposit.
2. Wire transfer the second $100,000, representing the Additional Deposit which is past due. An additional copy of wiring instructions is attached.
3. If you wish to have a termination and release agreement in place, please consider the form I prepared and sent to you on December 23, 2020. The sellers would still be agreeable to signing that, if, in fact, the Purchaser's Due Diligence Materials, as described in §3(d) of the PSA are provided, as well as the funds referenced above.

If, for some reason, your client is unwilling to sign the termination contract, please let us know at your earliest convenience. We will then consider other alternatives. Thank you.

Very truly yours,

Cary S. Griffin

CSG:kjp:sp
Attachment
c: Calloway Title and Escrow, LLC Attn - Amanda Calloway
MFM Properties, LLC
MFM Residential Properties, LLC

PLAINTIFF'S EXHIBIT 18 Entered 11/28/21 HKB

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

[redacted]

From: Patane, Stacy <SPatane@burr.com> on behalf of Griffin, Cary <CGriffin@burr.com>
Sent: Monday, February 1, 2021 4:48 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC
Attachments: Kennedy & Troutman Letter 44743868_4.pdf; Termination 44720268_1.pdf; MFM Burr Wiring Instructions RE Trust 43368872_1.pdf

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

From: Patane, Stacy <SPatane@burr.com> **On Behalf Of** Griffin, Cary
Sent: Wednesday, December 23, 2020 2:54 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

From: Paige, Karen <KPaige@burr.com> **On Behalf Of** Griffin, Cary
Sent: Friday, December 18, 2020 4:13 PM
To: skennedy@seyfarth.com; ctroutman@seyfarth.com
Cc: jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: MFM Properties / Rotunda Land and Development

This email and attachment(s) are being sent on behalf of Cary S. Griffin (cgriffin@burr.com). Please contact Mr. Griffin directly with any questions.

Thank you,

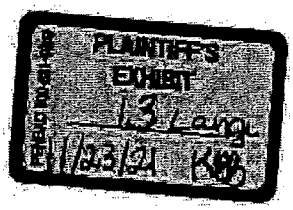
BURR FORMAN MCNAIR
AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 33-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928
main 843-785-2171 • fax 843-686-5991
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BURR & FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
28-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

February 1, 2021

VIA EMAIL

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al & Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Tomorrow will mark three weeks since your email of January 12th in which your client was quoted as stating "will circle momentarily". I would assume if you had heard anything you would have so advised and, therefore, my presumption is there is no news. Accordingly, I would suggest that you have the Termination of Contract and Release Agreement signed by your client, the $200,000 wire transferred to our escrow account (wiring instructions attached again). I will hold in trust until the Termination Agreement is signed by the Sellers. Payment of the funds and termination of the previous contract would be a prerequisite to any "new deal" that your client might suggest in any event. As previously referenced on numerous occasions, we also expect to receive the Purchaser's Due Diligence Materials promptly.

If we do not hear from you by the end of business on February 8, 2021, we will be forced to take alternative measures. This is the last time a release will be offered to Rotunda. Rather, my client will be forced to seek recovery of its damages.

Very truly yours,

Cary S. Griffin

CSG:sp
Attachment
c: Calloway Title and Escrow, LLC Attn – Amanda Calloway, Esquire
MFM Properties, LLC

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

TERMINATION OF CONTRACT
AND
RELEASE AGREEMENT

FOR AND IN CONSIDERATION of the cancellation of the below-described Purchase and Sale Agreement and the mutual covenants, releases and promises of the parties herein, the sufficiency of which is acknowledged by the parties, the undersigned Purchaser and Seller hereby agree to terminate and cancel that certain Purchase and Sale Agreement dated August 19, 2019, as amended ("PSA"), for the purchase of certain real property known as 1281.78 Acres owned by MFM Properties, LLC; and 1350.54 Acres owned by MFM Residential Commercial, LLC, both tracts located in Jasper County and hereby release each other, as well as Calloway Title and Escrow, LLC, ("Escrow Agent") from all rights, privileges, obligations, claims, demands and actions whatsoever which they may have up to this date against any of the other parties by reason of said PSA, **excepting therefrom, however,** Purchaser's obligation to deliver Purchaser's Due Diligence Materials to Seller as described in §3(d) of the PSA, such obligation to survive the PSA and this Termination and Release Agreement. So as to avoid any misunderstanding, a copy of §3(d) of the PSA is attached hereto as **Exhibit A**.

It is specifically agreed and understood that Purchaser's earnest money deposit of $100,000.00 already deposited with Escrow Agent and Purchaser's additional deposit of $100,000 described in the PSA will be released by Escrow Agent and/or paid by Purchaser to Burr Forman McNair, counsel to Seller, via wire transfer on or before February ____, 2021. Escrow Agent is authorized to proceed with such disbursement upon receipt of this Termination and Release executed by both parties.

This Termination and Release may be executed in counterparts, any of which shall be considered an original. Each party may rely upon facsimile or electronically transmitted copies of executed counterparts.

PURCHASER
Rotunda Land & Development Group, LLC

_____
Witness

_____
Witness

By _____
Name Paul Lange
Title Manager

SELLERS
MFM Properties, LLC

_____
Witness

_____
Witness

By _____
Name James H. Morgan, Jr.
Title Member

By _____
Name John F. Morgan, Sr.
Title Member

MFM Residential Properties, LLC

_____
Witness

_____
Witness

By _____
Name James H. Morgan, Jr.
Title Member

By _____
Name John F. Morgan, Sr.
Title Member

ESCROW AGENT
CALLOWAY TITLE & ESCROW, LLC

By _____
Name _____
Title _____

4472026R v1 2117301-00000027

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BURR FORMAN MCNAIR

Cary S. Griffin
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BURR.COM

BURR & FORMAN LLP IOLTA - HILTON HEAD

INCOMING WIRING INSTRUCTIONS – REAL ESTATE TRUST

Bank information required for wiring funds to Burr & Forman's IOLTA account:

FINANCIAL INSTITUTION:	Bank of America 100 N Tryon Street Charlotte NC 28255
ACCOUNT NAME:	Burr & Forman LLP – IOLTA Tax ID [redacted] 23-B Shelter Cove Lane Suite 400 Hilton Head Island, SC 29928
ACCOUNT NUMBER:	[redacted]
Domestic Wires ABA No.:	[redacted]
International Wires SWIFT BIC:	[redacted]
PLEASE REFERENCE ON WIRE:	Attn: Cary S. Griffin/Stacy Patane Burr Client/Matter - MFM Properties LLC Client/Matter# - 2117301.0000027

Should you need assistance, email AccountsReceivable@burr.com

IMPORTANT NOTICE

With cyber-crimes on the increase, it is important to be vigilant. If you receive an email or any other communication that appears to be generated by Burr & Forman LLP or anyone employed by Burr & Forman LLP requesting that you revise or amend the above wiring instructions, consider it suspect and call our office immediately.

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Seyfarth

Seyfarth Shaw LLP
1075 Peachtree Street, N.E.
Suite 2500
Atlanta, GA 30309-3958
T (404) 885-1500
F (404) 892-7056

ctroutman@seyfarth.com
T (404) 885-6718

www.seyfarth.com

February 1, 2021

VIA FEDERAL EXPRESS

Cary S. Griffin, Esq.
Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Re: MFM Properties, LLC and MFM Residential Properties, LLC ("Seller"); Rotunda Land & Development Group, LLC ("Buyer")
2,632.30 Acres - Hardeeville, Jasper County, South Carolina ("Property"); Parcels #041-00-04-004 and #041-00-04-003

Dear Cary:

Per your letter dated December 30, 2020, I am returning herewith your original closing document package. Please note that the return of these documents does not constitute an admission of default by Buyer.

Please call me if you have any questions.

Sincerely,

SEYFARTH SHAW LLP

Christopher Troutman

CT/glb
Enclosures

67983266v.1 / 107873-000010

PLAINTIFF'S EXHIBIT 14 long 11/23/21

MFM_00101

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BURR & FORMAN MCNAIR

Cary S. Griffin
cgriffin@burr.com

Burr & Forman LLP
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address:
Post Office Drawer 3
Hilton Head Island, SC 29938

Office 843.785.2171
Fax 843.686.5991

BURR.COM

February 11, 2021

FORMAL NOTICE PURSUANT TO PSA

VIA UPS OVERNIGHT DELIVERY

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al &
Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Dear Messrs. Kennedy & Troutman:

Having not heard from you in response to my February 3rd letter, we must, once again, presume that your client is not interested in signing any release agreement. Accordingly, as stated in that letter, the Sellers will now make a different approach. In that regard, so that there is no misunderstanding, the PSA dated August 19, 2019, as amended and reinstated, has been terminated for lack of performance on the part of the Buyer. There is no longer a cure period for such default.

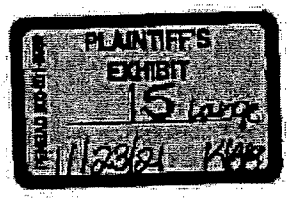
I am copying the Buyer as well as the Escrow Agent directly based on the notice provisions.

Very truly yours,

Cary S. Griffin

CSG:sp

c: MFM Properties, LLC
Calloway Title and Escrow, LLC Attn - Amanda Calloway, Esquire
Rotunda Land & Development Group, LLC



ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

[redacted]

From: Griffin, Cary
Sent: Saturday, February 13, 2021 2:57 PM
To: Kennedy, Steve
Cc: Christopher Troutman Esq. (ctroutman@seyfarth.com); Amanda Calloway (AmandaC@titlelaw.com)
Subject: RE: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

Steve—your e-mail arrived about an hour after I dropped a letter addressed to you in the UPS box. My letter was quite short and simple –there is no longer a contract .

So any proposal to be made would have to be a brand new arrangement. Before considering any new arrangement all funds from the first deal must be paid and released along with the required Due Diligence materials.

I will be out of the office this coming Monday through Thursday .

Cary

BURR FORMAN MCNAIR
AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

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From: Kennedy, Steve <SKennedy@seyfarth.com>
Sent: Friday, February 12, 2021 6:03 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>; jms@southcoastcommercial.net; hmorgan@sgrlaw.com; amandac@titlelaw.com
Subject: Re: MFM Properties LLC/MFM Residential Properties LLC/Rotunda Land & Development Group LLC

[EXTERNAL EMAIL]

Cary, I am traveling this weekend but we do have the terms of a proposed new agreement being worked into an amendment document that we will send you either later this weekend or early next week. Please let me know if you have any questions in the interim.

Steve



Steven L. Kennedy | Partner | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6735 | Mobile: +1-678-360-6008 | Fax: +1-404-724-1735
skennedy@seyfarth.com | www.seyfarth.com

[https://www.seyfarth.com/dir_docs/publications/Seyfarth_Logo_Signature.png]

The

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ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

[redacted]

From: Troutman, Christopher (Chris) <ctroutman@seyfarth.com>
Sent: Friday, February 19, 2021 3:57 PM
To: Griffin, Cary <CGriffin@burr.com>
Cc: Kennedy, Steve <SKennedy@seyfarth.com>
Subject: Rotunda/MFM - Proposed Reinstatement

[EXTERNAL EMAIL]

Cary,

Based on various discussions among the parties and details associated with the remaining process to close, Rotunda proposes a reinstatement of the Agreement with the following terms:

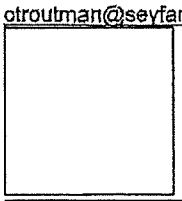
- Revise and increase purchase price to $16,500,000
- existing $100k in earnest money is released to Seller
- $100k new earnest money paid directly to Seller, which shall be non-refundable
- Closing in 90 days, with Rotunda to have right to one 30 day extension with payment of additional $50k earnest money to be released directly to Seller.

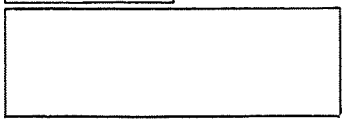
Please let me know if these terms are acceptable to the Seller and I will send over a Reinstatement of and Second Amendment to Purchase and Sale Agreement.

Thanks,

Chris

Chris Troutman | Associate | Seyfarth Shaw LLP
1075 Peachtree Street, N.E. | Suite 2500 | Atlanta, Georgia 30309-3958
Direct: +1-404-885-6718 | Mobile. +1-613-679-0173 | Fax: +1-404-724-1714
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[redacted]

From: Griffin, Cary <CGriffin@burr.com>
Sent: Saturday, February 27, 2021 9:11 AM
To: Kennedy, Steve; Christopher Troutman Esq. (ctroutman@seyfarth.com)
Cc: Amanda Calloway (AmandaC@titlelaw.com); Nicholson, Ned
Subject: Rotunda matter
Attachments: 2750_001.pdf

Pls. see letter attached

CSG

BURR FORMAN MCNAIR

AL • DE • FL • GA
MS • NC • SC • TN

Cary Griffin • *Counsel*

Shelter Cove Executive Park, 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, South Carolina 29928

main 843-785-2171 • fax 843-686-5991

cgriffin@burr.com • www.burr.com

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From: HHHcopier@burr.com <HHHcopier@burr.com>
Sent: Saturday, February 27, 2021 8:40 AM
To: Griffin, Cary <CGriffin@burr.com>
Subject: Attached Image



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BURR & FORMAN MCNAIR

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cgriffin@burr.com

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February 26, 2021

VIA EMAIL

Seyfarth Shaw LLP
Attn - Steven Kennedy, Esquire
& Christopher Troutman, Esquire
1075 Peachtree Street NE Suite 2500
Atlanta, GA 30309

Re: Purchase & Sale Agreement ("PSA") between MFM Properties, LLC, et al &
Rotunda Land & Development Group, LLC
Burr File#2117301.0000029

Gentlemen:

This is to respond to Chris's email of last Friday afternoon. My client is not willing to entertain the proposal contained in that email. MFM is unwilling to consider any reinstatement of the PSA based upon Rotunda's lack of performance to date in satisfying its obligations thereunder. This letter does not constitute any sort of an offer or counterproposal to your email of Friday, February 22nd. It is merely a simple rejection."

While the PSA is terminated, we continue to be interested in Rotunda's response to its surviving obligations under the PSA, i.e., the payments and Due Diligence Materials which are past due. Please advise in that regard. Thank you.

Very truly yours,

BURR & FORMAN LLP

Cary S. Griffin

CSG:sp

c: MFM Properties, LLC
Calloway Title and Escrow, LLC Attn – Amanda Calloway, Esquire
Benjamin E. Nicolson, V, Esquire

45205325 v1 2117301-0000029

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-_____**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	
v.	)	**SUMMONS**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC	)	
Defendants.	)	

TO: THE DEFENDANTS NAMED ABOVE:

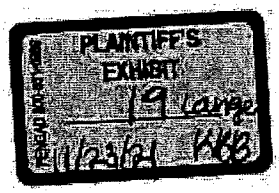
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office, whose street address is 1221 Main Street, Suite 1800, Columbia, South Carolina 29201, and whose mailing address is Post Office Box 11390, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, the plaintiff will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated: March 16, 2021

BURR & FORMAN, LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
bnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278
Attorneys for Plaintiffs



ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	CASE NO.: 2021-CP-07-____
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC, Plaintiffs, v. ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC, Defendants.	COMPLAINT

COMES NOW MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC, Plaintiffs, by and through its undersigned counsel, complaining of the Defendants, ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC, as follows:

PARTIES

1. MFM Properties, LLC ("MFM Properties") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

2. MFM Residential Properties, LLC ("MFM Residential") is a limited liability company organized under the laws of the State of Georgia and doing business in Beaufort County, South Carolina.

3. MFM Properties and MFM Residential are collectively referred to herein as "Plaintiffs."

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ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

4. Upon information and belief, Defendant Rotunda Land & Development Group, LLC ("Rotunda"), is a limited liability company organized and existing under the laws of the State of Georgia and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein.

5. Upon information and belief, Defendant Calloway Title & Escrow, LLC ("Escrow Agent"), is a limited liability company organized and existing under the laws of the one of the States and doing business in Beaufort County, South Carolina by virtue of contacts alleged herein. Escrow Agent is joined in this matter solely for the purpose of receiving guidance from the court on disbursement of funds held by Escrow Agent arising out the disputes below described.

JURISDICTION AND VENUE

6. Jurisdiction and venue in this Court are proper.

7. This is a lawsuit concerning a breach of a contract to sell real property located in Jasper County, South Carolina. Most verbal and written contacts with respect to the formation of the contract at issue occurred with Plaintiffs in Beaufort County, South Carolina.

FACTS

8. Plaintiffs and Rotunda entered into a Purchase and Sale Agreement effective August 19, 2019 ("Agreement") for the sale of certain real property located in Hardeeville, Jasper County, South Carolina ("Property.")

9. In partial consideration of Plaintiffs' execution of the Agreement, Rotunda agreed to deposit One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent. This sum is the "Initial Earnest Money."

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ELECTRONICALLY FILED - 2021 Mar 16 8:16 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

10. Per the term of the Agreement, should Rotunda fail to comply with certain terms of the Agreement, one of Plaintiff's remedies was that the Initial Earnest Money would be forfeited to Plaintiffs.

11. Rotunda by letter dated February 12, 2020 exercised an option to extend an Initial Inspection Period pursuant to the Agreement and tendered an extension fee to the Escrow Agent on February 13, 2020 as provided for in the Agreement.

12. By letter of April 17, 2020, Rotunda terminated the Agreement in accordance with Section 3(c) of the Agreement.

13. This termination of Rotunda entitled Plaintiffs to collect the Initial Earnest Money from escrow.

14. However, by a Reinstatement of and First Amendment to the Agreement dated July 8, 2020 ("First Amendment"), Plaintiffs and Rotunda agreed to reinstate, amend and modify the Agreement.

15. Among the terms of the First Amendment was that Rotunda tender a second One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with Escrow Agent by November 30, 2020. This sum is the "Additional Earnest Money."

16. The First Amendment also provided that the first extension fee be disbursed by the Escrow Agent to Plaintiffs, which it did.

17. The First Amendment, among other things, required that the Additional Earnest Money be deposited by Rotunda with the Escrow Agent by November 30, 2020. It also required an additional extension fee to be paid by Rotunda.

18. Rotunda failed to deposit either the Additional Earnest Money or the additional extension fee with the Escrow Agent by November 30, 2020 as required by the First Amendment.

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19. Rotunda failed to close the transaction for the sale of the Property as contemplated by the Agreement and First Amendment.

20. Plaintiffs performed all conditions precedent under the Agreement and First Amendment.

21. Plaintiffs were ready, willing and able to perform under the Agreement and First Amendment but Rotunda failed to perform.

22. Plaintiffs have demanded that Rotunda agree for Escrow Agent to release the Initial Earnest Money to Plaintiffs but Rotunda has not done so.

23. Plaintiffs have demanded that Rotunda pay to Plaintiffs the Additional Earnest Money, which Rotunda, in breach of the First Amendment, failed to pay to the Escrow Agent.

24. Plaintiffs have demanded that Escrow Agent release the Initial Earnest Money to Plaintiffs. Upon information and belief, because Rotunda has not consented to such release of funds, Escrow Agent is holding the funds pending a resolution of the disputes described herein.

25. By this lawsuit, Plaintiffs seek a release by Escrow Agent of the Initial Escrow Money to Plaintiffs and damages from Rotunda in an amount equal to the amount of the Additional Earnest Money, which Rotunda was supposed to deposit with Escrow Agent but failed to do.

26. Further, through the Agreement and First Amendment, Rotunda agreed to return certain materials to Plaintiffs in the event of a termination of the Agreement.

27. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

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28. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

29. The allegations set forth hereinabove are incorporated herein and made a part hereof.

30. Rotunda agreed that in the event it failed to perform under the Agreement, it would forfeit the Initial Earnest Money and direct Escrow Agent to pay the Initial Earnest Money to Plaintiffs.

31. Rotunda failed to perform the Agreement, thereby breaching such Agreement, for which Plaintiffs became entitled to payment of the Initial Earnest Money from Escrow Agent.

32. In breach of its contract with Plaintiffs, Rotunda failed to permit Escrow Agent to release the Initial Earnest Money to Plaintiffs.

33. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of One Hundred Thousand ($100,000.00) Dollars and no/cents, consequential damages, incidental damages, attorney's fees, and prejudgment interest.

34. Further, Rotunda breached the First Amendment by failing to tender the One Hundred Thousand ($100,000.00) Dollars and no/cents of Additional Earnest Money to the Escrow Agent. Rotunda also breached the Agreement and First Amendment by failing to perform under the Agreement and close the sale of the Property.

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35. Due to Rotunda's breach of contract, Plaintiffs are entitled to an award of an additional One Hundred Thousand ($100,000.00) Dollars and no/cents, for a total of Two Hundred Thousand ($200,000.00) Dollars and no/cents, plus consequential damages, incidental damages, attorney's fees, and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

36. The allegations set forth hereinabove are incorporated herein and made a part hereof.

37. This cause of action is brought pursuant to the South Carolina Declaratory Judgment Act.

38. Plaintiffs seek a declaration from the Court that the Escrow Agent should pay the Initial Earnest Money to Plaintiffs without any recourse to Rotunda.

FOR A THIRD CAUSE OF ACTION
(Mandatory Injunction-Initial Escrow Money)

39. The allegations set forth hereinabove are incorporated herein and made a part hereof.

40. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

41. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

42. The Agreement permits the Plaintiffs to seek a mandatory injunction to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

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43. Plaintiffs request a mandatory injunction that Escrow Agent release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

FOR A FOURTH CAUSE OF ACTION
(Specific Performance-Initial Escrow Money)

44. The allegations set forth hereinabove are incorporated herein and made a part hereof.

45. Per the Agreement, Plaintiffs own a complete possessory interest in the Initial Earnest Money held by the Escrow Agent.

46. Upon a decision by the Court that Plaintiffs are owed the Initial Earnest Money by Rotunda, Escrow Agent's duties will be completed upon payment of the Initial Earnest Money to Plaintiffs.

47. The Agreement permits the Plaintiffs to seek a specific performance to force performance of the Agreement with respect to the payment of the Initial Earnest Money.

48. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way the Escrow Agent and Rotunda can be forced to comply with the Agreement is a mandatory injunction ordered said delivery of the Initial Earnest Money to Plaintiffs.

49. Plaintiffs request an Order that (a) the Escrow Agent specifically perform the Escrow Agreement and (b) Rotunda specifically perform the Agreement and release and pay the Initial Earnest Money to Plaintiffs, and that upon such payment, Escrow Agent is released of any further duty or liability to the Plaintiffs or Rotunda.

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FOR A FIFTH CAUSE OF ACTION
(Mandatory Injunction-Return of Plaintiffs' Documents)

50. The allegations set forth hereinabove are incorporated herein and made a part hereof.

51. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

52. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

53. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

54. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

55. In the absence of a mandatory injunction, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

56. Plaintiffs seek a mandatory injunction compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

FOR A SIXTH CAUSE OF ACTION
(Specific Performance-Return of Plaintiffs' Documents)

57. The allegations set forth hereinabove are incorporated herein and made a part hereof.

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58. Pursuant to Section 12(b) of the Agreement, and Section 6 of the First Amendment, Rotunda was obligated to return materials referred to as the "Purchaser Due Diligence Materials," as described in Section 3(b) of the Agreement and Section 6 of the First Amendment, to Plaintiffs upon termination of the Agreement.

59. Plaintiffs are thus entitled to possession of the Purchaser Due Diligence Materials.

60. Rotunda has failed to return to Plaintiffs the Purchaser Due Diligence Materials despite demand that it do so.

61. The Agreement expressly provides that Plaintiffs may bring an action in law or equity to seek recover of the Purchase Due Diligence Materials in the event that Rotunda failed to return them as promised.

62. In the absence of an order of specific performance that Rotunda perform the Agreement, Plaintiffs have no adequate remedy at law and would suffer irreparable harm, as the only way for Rotunda to comply with the Agreement is to deliver the Purchase Due Diligence Materials to Plaintiffs.

63. Plaintiffs seek an order compelling Rotunda to comply with the Agreement and First Amendment and return to Plaintiffs the Purchase Due Diligence Materials.

WHEREFORE, the Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC, pray for the following relief:

a) An award of actual, consequential, and incidental damages against the Defendant Rotunda, including but not limited to prejudgment interest and attorneys' fees;

b) A declaratory judgment that Plaintiffs are entitled to the Initial Escrow Money held by Escrow Agent;

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c) A mandatory injunction that Escrow Agent pay the Initial Earnest Money to Plaintiffs;

d) An Order that Escrow Agent and Rotunda specifically perform the obligations of their agreements and deliver the Initial Earnest Money to Plaintiffs;

e) A mandatory injunction commanding Rotunda to return to Plaintiffs the Purchaser Due Diligence Materials;

f) An Order that Rotunda specifically perform the obligations of the Agreement and First Amendment and return to Plaintiffs the Purchaser Due Diligence Materials; and

g) Any other such relief as the Court may deem just.

Respectfully submitted,

Dated: March 16, 2021

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

Benjamin E. Nicholson, V
SC Bar # 10137
nnicholson@burr.com
1221 Main St., Suite 1800 (29201)
P.O. Box 11390 (29211)
Columbia, South Carolina
Tel. (803) 799-9800
Fax. (803) 753-3278

Attorneys for Plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC

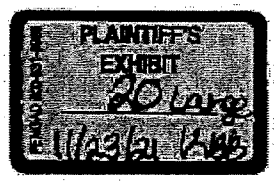
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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC Plaintiffs, vs. ROTUNDA LAND & DEVELOPMENT GROUP, LLC and CALLOWAY TITLE & ESCROW, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2021-CP-07-00482 ANSWER TO COMPLAINT

The Defendant, Rotunda Land & Development Group, LLC, by way of answer to the Complaint, would allege that:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, qualified, or explained is denied.
2. Upon information and belief, The Defendant admits the allegations in Paragraphs 1 and 2 of the Complaint that the MFM Properties, LLC and MFM Residential Properties, LLC are Georgia limited liability companies. Neither Plaintiffs are domesticated or authorized to do business in South Carolina.
3. Paragraph 3 of the Complaint needs no response.
4. Defendant admits the allegations of Paragraphs 4, 5, 6, 7, and 8 of the Complaint.
5. As to the allegations of Paragraphs 9 and 10 of the Complaint, the terms of the Contract speak for themselves.



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6. Defendant admits the allegations of Paragraphs 11, 12, and 13 of the Complaint.
7. As to the allegations of Paragraphs 14, 15, 16, and 17, the terms of the First Amendment speak for themselves.
8. Defendant admits the allegations of Paragraphs 18 and 19 of the Complaint but is ready willing and able to do so. In fact, Defendant has presented additional documentation to increase the purchase price, post all appropriate earnest money, and close.
9. Upon information and belief, Defendant denies the allegations of Paragraph 20 and 21 of the Complaint.
10. As to the allegations of Paragraph 23 of the Complaint, Defendant would admit only so much thereof as alleges that Defendant had not paid the Escrow Agent but is ready willing and able to do so.
11. As to the allegations of Paragraph 24 of the Complaint, Defendant is without sufficient information of belief as to the Escrow Agent's position and would deny same.
12. As to the allegations of Paragraph 25, Defendant would state that the Compliant speaks for itself and Defendant would crave reference to the defenses raised herein.
13. As top the allegations of Paragraphs 26 and 27 of the Complaint, Defendant would allege the terms of the referenced agreements speak for themselves.
14. Defendant admits it has not turned over any material to Plaintiffs as is alleged in Paragraph 28 of the Complaint and would crave reference to the4 defenses raised herein.
15. The allegations of Paragraph 29 of the Complaint need no further response.
16. As to the allegations of Paragraphs 30-35 of the Complaint, Defendant would allege it is ready, willing and able to close.
17. The allegations of Paragraph 36 of the Complaint need no further response.

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18. The allegation of Paragraph 37 is a conclusion of law and no response is necessary.

19. Defendant denies the allegation of Paragraph 38 of the complaint.

20. The allegations of Paragraph 39 of the Complaint need no further response.

21. The Defendant deny the allegations of Paragraphs 40-43 of the Complaint.

22. The allegations of Paragraph 44 of the Complaint need no further response.

23. The Defendant deny the allegations of Paragraphs 45-49 of the Complaint.

24. The allegations of Paragraph 50 of the Complaint need no further response.

25. The Defendant deny the allegations of Paragraphs 41-56 of the Complaint and would allege that there is a valid question as to the extent and content of the Due Diligence Materials.

26. The allegations of Paragraph 57 of the Complaint need no further response.

27. The terms of the agreements referred to in Paragraph 58 of the Complaint speak for themselves.

28. As to the allegations of Paragraphs 60-63, Defendant believes there is a dispute as to the contents of the Due diligence Materials and Defendant is ready, willing and able to close.

FOR A SECOND DEFENSE

29. Each and every allegation of the First Defense is realleged as fully as if repeated verbatim herein.

30. The Plaintiffs are not authorized to do business in the State of South Carolina.

31. This case should be dismissed since the Plaintiffs are not authorized to do business in the State of South Carolina.

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FOR A THIRD DEFENSE

32. Each and every allegation of the First and Second Defenses are realleged as fully as if repeated verbatim herein.

33. The Defendants are ready, willing, and able to close.

34. Plaintiffs are aware the Defendant is ready, willing, and able to close.

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger

Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

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CERTIFICATE OF SERVICE

This is to certify that I, Terry A. Finger, attorney with the law office of Finger, Melnick, Brooks &LaBruce, P.C., have this day served a true and correct copy of the within and foregoing ANSWER TO COMPLAINT upon counsel of record by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows:

Benjamin E. Nicholson, V
Burr & Forman, LLP
PO Box 11390
Columbia, SC 29211

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger
Terry A. Finger, Esq.
(S.C. Bar 2012)
Attorney for Defendant
Rotunda Land & Development Group, LLC
35 Hospital Center, Suite 200
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000
tfinger@fingerlaw.com

May 28, 2021
Hilton Head Island, SC

Rotunda Land

ELECTRONICALLY FILED - 2022 Feb 16 10:45 AM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

LETTER OF INTENT

March 11, 2021

Mr. John Morgan Sr.
MFP Properties, LLC
23B Shelter Cove Lane
Suite 202
Hilton Head, South Carolina 29938

Mr. James H. Morgan, Jr.
Smith, Gambrell & Russell, LLP
Promenade II
1230 Peachtree Street
Suite 3100
Atlanta, Georgia 30309-3592

Re: Jasper County, South Carolina Site

Seller:	MFM Properties, LLC a Georgia limited liability company and MFM Residential Properties, a Georgia limited liability company.
Parcels:	# 041-00-04-004 and # 041-00-04-003
County:	Jasper County
State:	South Carolina

Gentlemen:

We present this Letter of Intent ("LOI") to enter into a Purchase and Sale Agreement ("PSA") setting forth our proposal for the sale of the Parcels described above comprising 2,632.30 +/- acres of land in Jasper County, South Carolina (the "Property") from the Sellers described above to Rotunda Land & Development Group, LLC or its nominee (the "Purchaser") with an address at 5 Concourse Parkway, Suite 400, Atlanta, GA 30328, upon the following terms and conditions:

1. Purchase Price: $16,500,000. The Purchase Price (less the credit of any Earnest Money Deposits) will be paid to Seller at Closing.

2. Purchaser's Inspection and Due Diligence: Purchaser shall have 90 days from the date of the full execution of the PSA (the "Due Diligence Period") to continue its due diligence and facilitate entitlements on the Property. In addition to the Due Diligence Period, Purchaser may, at its discretion, receive an additional 30-day extension of the Due Diligence Period ("Due Diligence Extension Period").



Rotunda Land

3. Earnest Money Deposit: Calloway Title & Escrow ("Calloway") is currently holding a $100,000 deposit under a contract between the parties dated August 19, 2019 (as amended), ("Prior Deposit"). Within 3 business days of the execution of the PSA by Seller and Purchaser, Purchaser shall instruct Calloway to release the Prior Deposit to Seller. Additionally, at same time Purchaser shall send to Seller in immediately available funds another $100,000 ("New Deposit"). Collectively the Prior Deposit and New Deposit shall be referred to as the "New PSA Deposit". The New PSA Deposit shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA. If the Purchaser exercises its rights to the Due Diligence Extension Period, Purchaser shall remit to Seller in immediately available funds an additional $100,000 bringing the total Earnest Money Deposits released to Seller to $345,000. The Earnest Money Deposits shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA.

4. Date of Closing: The Closing shall take place within 30 days of the expiration of the Due Diligence Period, as extended if the Due Diligence Period Extension is exercised by Purchaser.

5. Broker Fee: Purchaser and Seller each shall be responsible for their respective brokers. Seller shall indemnify and save Purchaser harmless from and against any loss or damage arising from Seller's breach of this representation, and Purchaser shall indemnify and save Seller harmless from and against any loss or damage arising from Purchaser's breach of this representation. This paragraph shall survive the Closing.

6. Confidentiality: All negotiations regarding the Property and the terms of a potential sale to Purchaser will not be disclosed to anyone other than the parties' respective advisors, agents, representatives, investors, affiliates, internal staff, and others as are necessary to consider and consummate this purchaser, or as otherwise required by law.

7. Standstill: Following the execution of this Letter of Intent, Seller, including its members, representatives and agents, will not solicit, negotiate or enter into discussions with any other party or offer the Property or any direct or indirect interest therein for sale to any other party until the earlier of (a) 21 days after this Letter of Intent is executed by both parties, or (b) the date Seller and Purchaser agree in writing to abandon this Letter of Intent.

If the foregoing meets with your approval, please indicate so by acknowledging where provided for below and returning it to my attention.

This Letter of Intent shall automatically expire if not accepted by both parties by 5:00 pm EST on March 21, 2021.

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Rotunda Land

PURCHASER:
Rotunda Land & Development Group, LLC

By: _____ Date: 3/11/21
Paul Lange
Title: President

SELLER:
MFM Properties, LLC
MFM Residential Properties, LLC

By: _____ Date: _____
{Insert Name of Principal}
Title:

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ELECTRONICALLY FILED - 2022 Feb 22 2:04 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-00482_**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	
v.	)	**AFFIDAVIT OF CARY S. GRIFFIN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA)
) SS
COUNTY OF BEAUFORT)

AFFIDAVIT OF CARY S. GRIFFIN

PERSONALLY APPEARED before me, Cary S. Griffin, who being duly sworn, deposes and says as follows:

1. I am over the age of 18 years old, competent to make the statements herein, and have personal knowledge of the statements herein.

2. I am an attorney licensed to practice law in the State of South Carolina.

3. The plaintiffs in the above captioned lawsuit, MFM Properties, LLC and MFM Residential Properties, LLC, (collectively, "MFM") are my clients and clients of Burr & Forman, LLP. Specifically, I was retained by Plaintiffs to represent them in a possible transaction with the defendant in this matter, Rotunda Land & Development Group, LLC ("Rotunda") regarding a

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possible sale of land owned by MFM in South Carolina to Rotunda. The above captioned lawsuit arises out of this possible transaction.

4. To that end, I communicated with Rotunda's legal counsel, Steven Kennedy, squire and Christopher Troutman, Esquire, of the law firm of Seyfarth Shaw, LLP in Atlanta, Georgia ("Rotunda Counsel") regularly about that possible transaction.

5. It is my understanding that Rotunda Counsel were the authorized legal representatives of Rotunda as I sent them letters and emails and they sent me letters and emails, all on the basis that I represented MFM and that they represented Rotunda in connection with the possible land sale. MFM to my knowledge communicated mainly through me and Rotunda mainly through Rotunda Counsel regarding the possible transaction.

6. I have reviewed the SCRCP Rule 30(b)(6) Deposition of Rotunda taken on November 16, 2021 and the exhibits attached therein.

7. I can authenticate Exhibits 4, 9, 10, 14, and 17 as true and correct copies of letters or emails (with attachments, if applicable) I received from Rotunda Counsel on our about the dates stated therein.[1] These letters were received from Rotunda Counsel in their capacity as legal counsel for Rotunda. I received such letters in my capacity as legal counsel for MFM.

8. I can authenticate Exhibits 5, 6, 7, 8, 11, 12, 13, 15, 16, and 18 as true and correct copies of letters or emails (with attachments, if applicable) I sent to Rotunda Counsel on our about the dates stated therein.[2] These letters were sent to Rotunda Counsel in their capacity as legal counsel for Rotunda. I sent such letters in my capacity as legal counsel for MFM.

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[1] Except the top header that says "Ned Nicholson" which was not part of the original email.

[2] See footnote 1.

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9. To summarize the letters, MFM determined that Rotunda was in default of the Agreement that is the subject of the above captioned lawsuit, and I provided notices required under the Agreement to Rotunda Counsel and Rotunda Counsel received such notices.

10. Rotunda Counsel never advised me that Rotunda did not think it was in default of said agreement or that Rotunda had withdrawn or revoked its authorization to them to act on behalf of Rotunda with respect to the Agreement.

FURTHER AFFIANT SAYETH NOT!

Cary S. Griffin

Sworn to and subscribed before me

this 22nd day of February, 2022

Notary for South Carolina
My Commission Expires: 10/20/2024

LINDA M. LOOMER
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
11-21-2024

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) TRANSCRIPT OF RECORD

----------x
MFM PROPERTIES, LLC, et al.,)
)
Plaintiffs,)
vs.) Case No. 2021-CP-07-00482
)
ROTUNDA LAND & DEVELOPMENT GROUP, LLC,)
)
Defendant.)
----------x

April 5, 2022

B E F O R E:

The Honorable Robert J. Bonds, Presiding Judge

A P P E A R A N C E S:

Ben Nicholson, Esq.
Attorney for the Plaintiff

Terry A. Finger, Esq.
Attorney for the Defendant

Recorded by: Webex Hearing

Transcribed by: Bobbi Fisher
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceeding	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceeding commenced as follows:)

THE COURT: All right. No. 4, we've got a motion for summary judgment. Mr. Nicholson, Mr. Finger, MFM Properties versus Rotunda Land & Development Group.

MR. NICHOLSON: We're here, Your Honor.

THE COURT: Great.

MR. NICHOLSON: I don't know if it makes a difference, Mr. Finger and I (indiscernible). If it's easier on the Court, we don't need (indiscernible).

THE COURT: I mean, that's fine. Whatever -- if y'all agree to that, that's fine. No problem at all. Go ahead.

MR. NICHOLSON: If it please the Court, I'm Ben Nicholson here for the plaintiffs, MFM Residential Properties. Your Honor, in 30 years, I've probably filed a motion for summary judgment on behalf of the plaintiff on fewer fingers than I have on my right hand. It's a rare event, but I think, in this case, it's appropriate.

This is a very simple case at the end of the day. It's about a real estate contract that wasn't closed down and what happens to the earnest money. And we believe that even all the facts, if you take the plaintiff's facts as true, they still get thrown out as an issue of law.

This is a purchase agreement for 2600 acres in Jasper County for $16 million. My clients were the sellers.

Mr. Finger's client's, Rotunda, was the buyer. The contract -- the initial contract was entered into in August of 2019. $100,000 in earnest money was put down. We call that the initial earnest money. Rotunda terminated that agreement by letter of April 7th, 2020. However, the parties continued to talk, and on July 8th of 2020, a first amendment was drafted, which essentially reinstated the old agreement with certain conditions, and that first amendment also required that an additional $100,000 be deposited -- of earnest money be deposited.

And that's kind of where things went off the rails, because the earnest money was never paid by the deadline of November 30 of 2020. The transaction never closed by the end of 2020, and my client, finally, through his lawyer, sent a letter on January 12th, 2021, saying, "That's it. You're done. You're in default."

And now the defendant says, "Well, you can't -- I don't -- I'm not authorizing the payment of the earnest money that's being held in trust, and I'm not paying you the additional $100,000 because we were still negotiating, essentially."

And we deposed the plaintiff. And keep in mind that this is a $16 million purchase. You had sophisticated lawyers on both sides of this deal in Hilton Head and in Atlanta, and they're doing all --

MR. FINGER: Neither Mr. Nicholson or myself were involved in that.

MR. NICHOLSON: We are the unsophisticated lawyers litigating it, Your Honor.

So they had -- everyone had lawyers. There were letters going back and forth. These are long contracts. They're on the record. And on the 30(b)(6) deposition of the owner -- one of the owners of Rotunda, the defendant, essentially his testimony was, was that I had a call from one of the owners of the plaintiff, and I thought we were still negotiating.

Now, he couldn't name a price, he couldn't name a time, he couldn't name a place for the closing or anything like that. And so, it's our position that, under three different theories, there is no change to the original contract. There is, therefore, a default of the original contract. Therefore, they have forfeited the $100,000 in earnest money, and therefore, they owe my client the additional $100,000 in earnest money, for a total of $200,000 plus prejudgment interest and attorney's fees and that kind of thing.

And it's very simple. Under the old case that everyone's talking about, (indiscernible) *v. Chandler*, you got to have certain terms for an agreement. And they didn't have a price. They didn't have a time. They didn't have a place.

In order to modify a written agreement, which has an integration clause, which this one does, you've got to at

least have all those things. And in consideration, there's no -- there's nothing in the plaintiff's that -- the defendant's deposition that covers any of that.

So, there was no evidence of the elements of a contract, even if there was one or an attempt to prove one. The parole evidence rule also bars it because this -- obviously, we have written -- sophisticated written agreements. We have integration clauses. We have lawyers going back and forth. But the bottom line is, is you can't change the terms of a written contract with oral negotiations absent consideration, and there's no evidence of any.

To top it all off, of course, this is a land contract and the statute of frauds says that all agreements to purchase sale land have to be in writing, and the law also says, in the *Wyndham (ph) vs. Honeywell* (ph) case, that, in order to amend a contract that is covered by the statute of frauds, you must have another written contract. Again, there's no written contract and, therefore, there's -- the statute of frauds forbids any kind of claim that the defendant may make.

So, again, Your Honor, we have two sophisticated parties. We have oral negotiations taking the plaintiff -- the defendant at his word that don't amount to a contract. We certainly have no consideration for a change to the contract. And even if there was an oral agreement, the statute of frauds bars it. So with that, Your Honor, that is probably the

shortest summary judgment argument I've made in my career. Thank you.

MR. FINGER: May it please the Court? Terry Finger for the defendants. I'll probably be just as short.

Let me first apologize to the Court for two typos in my memorandum in opposition. That memorandum was done at the end of February, and we had COVID go through our office, and I took typing a real long time ago. And so I had 2.632 acres and it was supposed to be two comma: 2,632. But, on the second page, it had an incorrect date at 2030 instead of 2020. So I do apologize to the Court for both of those typographical errors that I did not catch.

I think the issue in this case is what is the factual issue, and the factual issue that is not disputed by the plaintiffs in any fashion is that, in November and December of 2020, before the contract was set to expire, my client had conversations with the sellers and they agreed, just like they agreed the first time where they continued to talk and they reached a new agreement, due to the COVID problems that took place in the spring of 2020, my client was unable to get his development agreement worked out with the Town of Hardeeville on this 2,600 acres. You couldn't get the experts to get any work done on the land planning. You couldn't get any town council at the time, and things just kept getting pushed back, and the due diligence just did not get done due to COVID.

In November and December, my client spoke with Mr. Morgan -- both Morgans, the two brothers who are the principals and the plaintiffs, and they agreed to an extension. That's what my client testified to.

Mr. Nicholson has submitted a full deposition of my client, the 30(b)(6) and you have that full deposition. In Exhibit 10 -- and that is an email from my client's Atlanta sophisticated lawyer -- that said -- Mr. Lang said, "I just spoke with the seller. We agree we are going to put together a revised terms, which among other things, will allow us to complete entitlements and close."

And within a reasonable time after that, a new letter of intent was submitted, the price was increased by $500,000, and the response that my client got to that -- not from the Morgans, the owners -- was from Mr. Carey Griffin said, "No, just reject it. Go away." And about two weeks later, the lawsuit was filed.

So, the factual issue was, did the parties actually reach an agreement just like they did the first time to extend it? And I would ask that the Court construe the -- take a look at the -- the relevant parts of the depositions are pages about 38 through 50, which talks about those specific discussions.

THE COURT: The deposition of who? I'm sorry?

MR. FINGER: The deposition of Paul Lang, a 30(b)(6) of the defendant. And there are -- and it's Exhibit 10 to that

deposition is the email I just quoted a minute ago.

There have been no contrary affidavits submitted saying these discussions did not take place, and if they did, that's not what we agreed to. So, the only evidence before the Court is that an agreement was reached by the principals prior to the conclusion of the contract period to extend it so my client could get his development agreement done with the Town of Hardeeville. And, again, this is a $16 million transaction. My client has the wherewithal to conclude the transaction. And when they came back after a reasonable time within the letter of intent, they bumped the price up on $500,000. So that would answer the consideration question.

But I would ask the Court to simply just skim the -- the relevant portions of the deposition are, I believe, page 38 to 50, and I think that creates a material issue of fact.

THE COURT: All right.

MR. FINGER: Thank you very much, Your Honor.

(Indiscernible).

MR. NICHOLSON: Yes, sir. Will do.

Your Honor, if I could just briefly say, even if you assume everything that the plaintiff says is true, there's nothing in writing that's signed by my client. The statute of frauds still bars it.

THE COURT: (Indiscernible).

MR. FINGER: I think that I've made -- I think that

definition covers that. There's a writing in the back from my client over to the other side to Mr. Griffin, from the lawyers representing my clients -- from one sophisticated lawyer to the other ones. And I think that complies with it.

And then there was a letter of intent that was properly -- promptly and properly submitted, which bumped the purchase price and extended it out so my client could finish with Hardeeville.

THE COURT: Is 14 days enough? Do you need more time than that?

MR. FINGER: No, sir. 14 days is fine with me.

MR. NICHOLSON: Your Honor, if I could respectfully ask for maybe another week. I got Heritage (ph) starting in my world Wednesday, tomorrow. I'm the vice chairman of the foundation, and we've got Heritage -- RBC Heritage starting, and I'm out of commission for the next ten days.

THE COURT: That's no problem. I'll give each one of you 21 --

MR. NICHOLSON: 21 sounds good. Thank you, Judge.

(The above hearing concluded.)

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: MFM Properties v. Rotunda Land

2021-CP-07-00482

DATE OF HEARING: 4/5/2022

COURT REPORTER/MONITOR: Webex Recording

I, Bobbi Fisher, 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.

Bobbi Fisher

_/s/ Bobbi Fisher_____

Bobbi Fisher, Certified Transcriber

Date Prepared: January 22, 2023

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ELECTRONICALLY FILED - 2022 Feb 25 12:30 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

.STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	**CIVIL ACTION NO.: 2021-CP-07-00482**
MFM PROPERTIES, LLC and MFM RESIDENTIAL PROPERTIES, LLC	
Plaintiffs,	**MEMORANDUM OF DEFENDANT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**
vs.	
ROTUNDA LAND & DEVELOPMENT GROUP, LLC and CALLOWAY TITLE & ESCROW, LLC	
Defendants.	

The Defendant, Rotunda Land and Development Group, LLC (Rotunda), by way of opposition to the Plaintiff's Motion for Summary Judgment, hereby submits this Memorandum.

This matter involves a Purchase and Sale agreement whereby Rotunda was going to purchase 2.632 acres of land in Jasper County from the Defendants. The Agreement was dated August 19, 2019 with a closing scheduled no later than August 1, 2020. The purchase price was $16 Million dollars.

The vacant property was to be developed by Rotunda and development was to be under the auspices of the Town of Hardeeville. As in any development of this size and scale, Rotunda began its due diligence and a major portion of that effort involved dealing with the Hardeeville Planning department and Town Council. The goal was to negotiate a Development Agreement that would control the development density, types of uses, fees, schedules, infrastructure, public improvements/donations, and other typical development agreement features. This is a complex negotiation that involves public meetings and proceedings at the Planning Commission and Town Council level. Also essentially involved is acquiring the necessary land planning experts such as engineers, land planners, and other design professionals.

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Rotunda properly and diligently proceeded with the needed actions to reach an agreement with the Town of Hardeeville. At the critical time in early 2020, COVID hit and the planning process came to a grinding halt. (See Lange deposition at pages 18, 24, 44, and 45).

The parties on July 8, 2020 reached an amendment to the Purchase and Sale agreement extending the due diligence and closing date. (See exhibit 3 to Lange deposition). In late November and early December, Paul Lange, owner of Rotunda, had conversations with Harry Morgan, a principal of the Plaintiff. In those conversation. Lange spoke of the need for additional time due to the COVID problems in getting the development agreement negotiated to a comfortable point. Morgan was aware of the problems that COVID was causing. (See Lange deposition at pages 43-44).

As a result of the conversations, Paul Lange firmly believed that Plaintiff agreed to additional extension due to COVID and Plaintiff wanted the extension proposal to be put in writing.

Thereafter, the attorney for Plaintiff, Gary Griffin, through a series of letters and emails in December did not acknowledge the conversations and agreement to extend that the principals had agreed to and tendered performance on December 30, 2020.

On December 31, 2030, counsel for Rotunda informed Cary Griffin that the principals had talked and had agreed to put together revised terms. (See exhibit 10 to Lange deposition).

Thereafter, Cary Griffin requested that Paul Lange not contact his client directly and in January claimed that the contract was terminated. (See exhibits 11, 12, and 13 of Lange deposition).

On February19, 2020, counsel for Rotunda sent the revised proposal that the principal of the Plaintiff requested in late December. Among other things, the price was increased to $16.5 Million, additional earnest money non-refundable, and closing in 120 days. (See exhibit 17 to Lange deposition). That offer was responded to on February 26, 2020 with a "simple rejection." (See exhibit 18 to Lange deposition). On March 11, 2021, Rotunda submitted a Letter of Intent to document the discussions of the principles in November and December, 2020. A copy of that Letter of Intent is attached as Exhibit 1. Plaintiff filed suit on March 16, 2020.

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The material issue of material fact is whether the parties reached an agreement to extend the contract in December 2020 and to have the necessary steps taken to document the extension and close. Exhibit 17 was in furtherance of the agreement between the parties. The deposition of Paul Lange clearly states that. There is no counter evidence in the record to dispute that fact.

The affidavit of Cary Griffin mostly authenticates documents introduced in the Lange deposition. The affidavit does not dispute the fact as testified by Paul Lange that he reached an agreement with Plaintiff to extend the time to perform under the contract.

FINGER, MELNICK, BROOKS
& LABRUCE, P.A.

s/Terry A. Finger

Terry A. Finger, Esq.
(S.C. Bar 2012)
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February 25, 2022
Hilton Head Island, SC

Rotunda Land

EXHIBIT
tabbies
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LETTER OF INTENT

March 11, 2021

Mr. John Morgan Sr.
MFP Properties, LLC
23B Shelter Cove Lane
Suite 202
Hilton Head, South Carolina 29938

Mr. James H. Morgan, Jr.
Smith, Gambrell & Russell, LLP
Promenade II
1230 Peachtree Street
Suite 3100
Atlanta, Georgia 30309-3592

Re: Jasper County, South Carolina Site

Seller:	MFM Properties, LLC a Georgia limited liability company and MFM Residential Properties, a Georgia limited liability company.
Parcels:	# 041-00-04-004 and # 041-00-04-003
County:	Jasper County
State:	South Carolina

Gentlemen:

We present this Letter of Intent ("LOI") to enter into a Purchase and Sale Agreement ("PSA") setting forth our proposal for the sale of the Parcels described above comprising 2,632.30 +/- acres of land in Jasper County, South Carolina (the "Property") from the Sellers described above to Rotunda Land & Development Group, LLC or its nominee (the "Purchaser") with an address at 5 Concourse Parkway, Suite 400, Atlanta, GA 30328, upon the following terms and conditions:

1. Purchase Price: $16,500,000. The Purchase Price (less the credit of any Earnest Money Deposits) will be paid to Seller at Closing.

2. Purchaser's Inspection and Due Diligence: Purchaser shall have 90 days from the date of the full execution of the PSA (the "Due Diligence Period") to continue its due diligence and facilitate entitlements on the Property. In addition to the Due Diligence Period, Purchaser may, at its discretion, receive an additional 30-day extension of the Due Diligence Period ("Due Diligence Extension Period").

Rotunda Land

3. Earnest Money Deposit: Calloway Title & Escrow ("Calloway") is currently holding a $100,000 deposit under a contract between the parties dated August 19, 2019 (as amended), ("Prior Deposit"). Within 3 business days of the execution of the PSA by Seller and Purchaser, Purchaser shall instruct Calloway to release the Prior Deposit to Seller. Additionally, at same time Purchaser shall send to Seller in immediately available funds another $100,000 ("New Deposit"). Collectively the Prior Deposit and New Deposit shall be referred to as the "New PSA Deposit". The New PSA Deposit shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA. If the Purchaser exercises its rights to the Due Diligence Extension Period, Purchaser shall remit to Seller in immediately available funds an additional $100,000 bringing the total Earnest Money Deposits released to Seller to $345,000. The Earnest Money Deposits shall be applied toward the Purchase Price of the Property and shall be non-refundable to Purchaser except in the case of a Seller default under the PSA.

4. Date of Closing: The Closing shall take place within 30 days of the expiration of the Due Diligence Period, as extended if the Due Diligence Period Extension is exercised by Purchaser..

5. Broker Fee: Purchaser and Seller each shall be responsible for their respective brokers. Seller shall indemnify and save Purchaser harmless from and against any loss or damage arising from Seller's breach of this representation, and Purchaser shall indemnify and save Seller harmless from and against any loss or damage arising from Purchaser's breach of this representation. This paragraph shall survive the Closing.

6. Confidentiality: All negotiations regarding the Property and the terms of a potential sale to Purchaser will not be disclosed to anyone other than the parties' respective advisors, agents, representatives, investors, affiliates, internal staff, and others as are necessary to consider and consummate this purchaser, or as otherwise required by law.

7. Standstill: Following the execution of this Letter of Intent, Seller, including its members, representatives and agents, will not solicit, negotiate or enter into discussions with any other party or offer the Property or any direct or indirect interest therein for sale to any other party until the earlier of (a) 21 days after this Letter of Intent is executed by both parties, or (b) the date Seller and Purchaser agree in writing to abandon this Letter of Intent.

If the foregoing meets with your approval, please indicate so by acknowledging where provided for below and returning it to my attention.

This Letter of Intent shall automatically expire if not accepted by both parties by 5:00 pm EST on March 21, 2021.

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Rotunda Land

PURCHASER:
Rotunda Land & Development Group, LLC

By: _____ Date: 3/11/21
Paul Lange
Title: President

SELLER:
MFM Properties, LLC
MFM Residential Properties, LLC

By: _____ Date: _____
{Insert Name of Principal}
Title:

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ELECTRONICALLY FILED - 2022 Feb 28 12:13 PM - BEAUFORT - COMMON PLEAS - CASE#2021CP0700482

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF BEAUFORT	)	**CASE NO.: 2021-CP-07-00482_**
MFM PROPERTIES, LLC and., MFM RESIDENTIAL PROPERTIES, LLC,	)	
Plaintiffs,	)	
v.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
ROTUNDA LAND & DEVELOPMENT GROUP, LLC, and CALLOWAY TITLE & ESCROW, LLC,	)	
Defendants.	)	

TO: TERRY A. FINGER, ESQUIRE COUNSEL FOR THE PLAINTIFF:

The plaintiffs, MFM Properties, LLC and MFM Residential Properties, LLC, seek summary judgment against the defendant, Rotunda Land & Development Group, LLC ("Rotunda") on the basis that there is no genuine issue of material fact but that Rotunda breached a land sales contract (as amended) by failing to pay earnest money it forfeited when it failed to close the contract in the timelines provided. Plaintiffs by this action simply request the payment of forfeited earnest money to them by Rotunda.

I. INTRODUCTION

All of the following facts are not in dispute. MFM Properties, LLC and MFM Residential Properties, LLC (collectively, "MFM") entered into a Purchase and Sale Agreement with Rotunda effective August 19, 2019 ("Agreement") for the sale of undeveloped real property located in

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Hardeeville, Jasper County, South Carolina ("Property") for $16,000,000. (Complaint, ¶8 and Rotunda Deposition, Ex. 2.)[1]

Per Section 1(b) of the Agreement, in partial consideration of Plaintiffs' execution of the Agreement, Rotunda agreed to deposit One Hundred Thousand ($100,000.00) Dollars and no/cents in escrow with as escrow agent, defendant Calloway Title and Escrow, Inc. ("Escrow Agent.")[2] This sum is the "Initial Earnest Money." (Complaint, ¶¶9-10 and Rotunda Depo., Ex. 2.) Per Section 12(b) of the Agreement, should Rotunda default under the Agreement, one of MFM's remedies was that the Initial Earnest Money would be forfeited to MFM.

Rotunda by letter dated February 12, 2020 exercised an option to extend an Initial Inspection Period pursuant to the Agreement and tendered an extension fee to the Escrow Agent on February 13, 2020 as provided for in the Agreement. By letter of April 17, 2020, Rotunda terminated the Agreement in accordance with Section 3(c) of the Agreement which entitled MFM to recover the Initial Earnest Money. (Complaint, ¶¶11-13; *admitted* in Answer, ¶6.)

However, rather than require the forfeiture of the Initial Earnest Money, MFM gave Rotunda a second chance. By a Reinstatement of and First Amendment to the Agreement dated July 8, 2020 ("First Amendment"), Plaintiffs and Rotunda agreed to reinstate, amend and modify the Agreement. (Complaint, ¶¶14-17 and Rotunda Depo., Ex. 3.) Among the terms of the First Amendment was that Rotunda per Section 4(b) tender a second One Hundred Thousand

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[1] The SCRCP 30(b)(6) deposition of Rotunda was taken on November 21, 2021 and the transcript and exhibits were filed in support of this Motion on February 16, 2022.

[2] Calloway Title & Escrow, LLC is a defendant in this lawsuit only by virtue of the fact that it holds the Initial Earnest Money in trust. Calloway has been served but has not answered or appeared as all parties agree that Calloway is a nominal party with the sole purpose of paying the Initial Earnest Money to the prevailing party in this litigation. MFM seeks in its Third and Fourth Causes of Action an order that Calloway pay the Initial Earnest Money to MFM, which should be granted if the Court grants summary judgment on the First and Second Causes of Action against Rotunda.

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($100,000.00) Dollars and no/cents in escrow with Escrow Agent by November 30, 2020. This sum is called the "Additional Earnest Money" in the First Amendment and herein. (Complaint, ¶¶14-17 and Rotunda Depo., Ex. 3.) The First Amendment also confirmed at Section 4(a) that the Initial Earnest Money was non-refundable. (Rotunda Depo., Ex. 3.)

Rotunda failed to deposit either the Additional Earnest Money or the additional extension fee with the Escrow Agent by November 30, 2020 as required by the First Amendment. (Complaint, ¶18; *admitted* in Answer, ¶8.) Rotunda failed to close on the property as required by the Agreement and First Extension. (Complaint, ¶19; *admitted* in Answer, ¶8.) MFM demanded that Rotunda direct the Escrow Agent to pay the Initial Earnest Money of $100,000 to MFM and Rotunda has not done so. (Complaint, ¶23; *admitted* in Answer, ¶10.) Further, MFM has demanded that Rotunda pay the Additional Earnest Money to MFM and Rotunda has not done so. (Complaint, ¶24; *admitted* in Answer, ¶10.)

While admitting that it had not performed these steps required by the Agreement and First Amendment, Rotunda repeatedly asserts in its Answer that it is "ready and willing and able to do so." (Answer, ¶¶8 and 10.)

Notwithstanding Rotunda's position that it was still negotiating, MFM clearly told Rotunda four times in December 2020 that either Rotunda close by December 31, 2020 or send th Initial Escrow Money and the Additional Escrow Money to MFM. (Rotunda Depo. Exs. 5, 6, 7, and 8.) MFM declared the Agreement and First Amendment irrevocably in default by letter of January 12, 2021. (Rotunda Depo., Ex. 12.)

II. SUMMARY JUDGMENT STANDARD

Summary judgment is proper where there is no issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Ent., Inc., 363 S.C. 531, 611

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S.E.2d 922, 925 (2005). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433, 438 (2003). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432, 438 (Ct. App. 2003).

III. ARGUMENTS

1. Rotunda Breached the Agreement and First Amendment.

There is no genuine issue of material fact but that Rotunda breached the Agreement and its First Amendment. Just like it failed to perform the Agreement and originally forfeited the Initial Earnest Money (which inexplicably it has not paid to date), Rotunda again failed to perform by defaulting under the First Amendment. There is no dispute that Rotunda failed to perform as the First Amendment required. To recover for a breach of contract, the plaintiff must prove:

(1) a binding contract entered into by the parties;

(2) a breach or unjustifiable failure to perform the contract; and

(3) damage suffered by the plaintiff as a direct and proximate result of the breach.

Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

Here, there is no dispute as to (1) and (3) above; that the Agreement and First Amendment are binding contracts between MFM and Rotunda and that the damages are the $100,000 in Initial Earnest Money and $100,000 in Additional Earnest Money, plus prejudgment interest,[3] and the prevailing party's reasonable costs and attorney's fees per Section 15(g) of the Agreement.

[3] Prejudgment interest on the $200,000 would be recoverable from January 12, 2021 (the final date of default by Rotunda, see Rotunda Depo., Ex. 12), at the statutory rate set at S.C. Code Ann. § 34-31-20(A).

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The only dispute is that Rotunda claims there is no actual breach or unjustified failure to perform as it is it still "ready, willing and able" to perform and that at one time, it claims one of the owners of MFM, Harry Morgan, discussed with the principle owner of Rotunda, Paul Lange, a possible new deal regarding the Property. However, these allegations, as noted *infra*, do not excuse Rotunda's non-performance.

2. Rotunda Had No Legally Cognizable Excuse for Non-performance.

Rotunda is owned primarily by Paul Lange, Rotunda's SCRCP 30(b)(6) deposition designee, and his wife. (Rotunda Depo., 11:2-12:3; 14:20-25.) Mr. Lange is a highly sophisticated real estate investor with a career in commercial development. (Rotunda Depo., 7:18-8:4; 16:16-21.) Lange in no way disputed any of the terms of the Agreement or First Amendment in the Rotunda deposition. He admitted these were the only written agreements with MFM. (Rotunda Depo., 22:17.)

When asked repeatedly for the terms of any other agreement with MFM regarding the Property, Lange never could identify one with any specificity. However, he finally admitted that MFM Properties never granted an extension to the First Amendment. (Rotunda Depo., 29:8-12.) He promptly then tried to change his answer, but never was able to qualify any exact term of such extension. (Rotunda Depo., 29:12-33:4.)

Lange eventually testified that MFM asked Rotunda, through an alleged intermediary of MFM, to present a contract for an extension to MFM. (Rotunda Depo., 33:8-34:6.) Rotunda subsequently by a proposed letter of intent dated March 11, 2021[4] with an increase in purchase price to $16,500,000 sought *reinstatement* of the Agreement and First Amendment, but that MFM

[4] This was well after the Agreement and First Amendment had been declared irrevocably terminated by MFM on January 12, 2021 as noted *supra*.

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never accepted those terms. (Rotunda Depo., 33:8-34:6; 81:24-82:8; 102:2-103:5; Exhibit 21.) MFM's response was this lawsuit.

Lange also admitted that notwithstanding Rotunda's assertion that it was ready, willing and able to perform the Agreement and First Amendment, Rotunda never paid the Additional Earnest Money (and has not to this date.) (Answer, ¶10.)[5] Lange admitted that no one at MFM told him not to pay the Additional Earnest money; rather, Lange just *inferred* it from a conversation he alleged he had with Harry Morgan. (Rotunda Depo., 41:13-44:16.)

Every answer Lange gave in the deposition regarding why none of the earnest money was paid was based on the reasoning that he thought Rotunda would operate "in good faith," ... and would offer yet another extension. However, he never could say that he was expressly told that Rotunda would be granted another extension. For several legal reasons as delineated below, Rotunda's characterization of any discussions held with MFM do not rescue it from summary judgement.

3. Rotunda's Excuse is barred by the Parole Evidence Rule.

The Agreement has a merger clause at Section 14 stating that the Agreement is the only agreement and no modification may be made except in writing signed by both parties. The Agreement also has a non-wavier provision at Section 15(b) that states:

> No failure by either party to exercise any power given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

(Rotunda Depo., Ex 2.)

[5] On the other hand, Lange could not identify any reason why MFM was not ready, willing and able to perform and close the transaction. (Rotunda Depo., 95:4-96:15; 107:12-34.)

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Finally, Section 16 provides that "TIME IS OF THE ESSENCE OF THIS CONTRACT."[6] Thus, Rotunda cannot offer any evidence that the terms of the agreements mean other than what they say, and certainly Rotunda was on notice that deadlines in the agreements would be strictly enforced, as time was of the essence.

The First Amendment did not change these terms; per Section 2 it was simply a reinstatement of the Agreement with a few changed terms. (Rotunda Depo., Ex. 3.) Further, the First Amendment at Section 7 also expressly ratified the Agreement's terms, including those listed above.

Beyond the merger clause, the parole evidence rule bars any attempt by Rotunda to change the terms of these written agreements. "When an agreement is reduced to writing, there is a strong implication the whole intention of the parties has been expressed and there is no agreement or intention contrary to that expressed." Lingefelt v. Forest Hills Homes, Inc., 305 S.C. 197, 201, 406 S.E.2d 394, 396 (Ct. App. 1991) (quoting Palmetto State Sav. Bank of S.C. v. Barr, 293 S.C. 252, 254, 359 S.E.2d 531, 532 (Ct. App. 1987). "The parole evidence rule is particularly applicable where the writing in question has an integration clause." U.S. Leasing Corp. v. Janicare, Inc., 294 S.C. 312, 318, 364 S.E.2d 202, 205 (Ct. App. 1988).

The parole evidence rule does not prohibit evidence of a subsequent and independent agreement. Lingefelt, 406 S.E.2d at 396. However, any modification of written contract must satisfy all requisites of valid contract. Bishop Realty & Rentals, Inc. v. Perk, Inc., 292 S.C. 182, 355 S.E.2d 298 (Ct. App. 1987). As noted *infra*, Rotunda fails to demonstrate such elements.

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[6] A "time is of the essence clause" has special relevance in a contract for the sale of land. "Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence' must be performed by the date fixed in the contract or the contract is no longer viable." Dudek v. Ferro, No. 2014-002633, 2017 WL 128702, at *1 (S.C. Ct. App. Jan. 11, 2017) *quoting* 61 Am. Jur. 3d *Proof of Facts* § 325 (2001). *Cf.*, Cotter v. James L. Tapp Co., 267 S.C. 647, 653, 230 S.E.2d 715, 717–18 (1976)("It is also well settled in this state that if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required.")

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4. At Best, Rotunda's Allegations Concern Negotiations, not a new Contract.

Rotunda provides no evidence of the essential terms of a contract extension, such as price, time for performance, and Rotunda does not even claim that such essential terms of a contract were agreed to. "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms." Potomac Leasing Co. v. Otts Mkt., Inc., 292 S.C. 603, 606, 358 S.E.2d 154 (Ct. App. 1987). "Furthermore, the assent must be as to all the terms of the contract." Id. (Emphasis added.)

The formation of a contract requires offer, acceptance and consideration for all of which there must be mutual assent, or a "meeting of the minds" as to the essential terms. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891, 895 (1989). "Certain terms, such as price, time and place, are considered indispensable and must be set out with reasonable certainty." McPeters v. Yeargin Const. Co., 290 S.C. 327, 350 S.E.2d 208, 211 (Ct. App. 1986); Player, 382 S.E.2d at 895 (contract "must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement.")

Thus, there can be no contract where the parties never completed their negotiations or where essential terms are lacking. As stated by the Supreme Court:

> Frequently, agreements are arrived at piecemeal with different terms and items being discussed and agreed upon separately. However, as long as the parties know there is an essential term not yet agreed on, there is no contract. The preliminary agreements on specific items are mere preliminary negotiation building up the terms of the final offer that may or may not be made.

Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 582, 762 S.E.2d 696, 703 (2014), quoting 1 Corbin on Contracts § 2.8. *See* W.E. Gilbert & Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 330 S.E.2d 307, 309 (Ct. App. 1985). *Also see,* Oeland v. Kimbrell's Furniture Co., 210

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S.C. 223, 42 S.E.2d 228, 230 (1947)("[M]aterial terms of the contract cannot be left for future settlement.") Craven v. Williams, 302 F. Supp. 885, 890 (D.S.C. 1969) ("[A] contract is not made so long as both parties anticipate that something remains to be done to establish contractual relations."); and Savannah Guano Co. v. Fogle, 112 S.C. 234, 100 S.E. 59 (1919)(party cannot be held liable for only promising to make a contract and refusing later to fulfill that promise where all terms are not agreed upon.)

As Rotunda offers no evidence of any price (consideration), or time for performance for an oral modification of the Agreement or First Amendment, there was no agreement formed, only negotiations.

5. Any Claim by Rotunda of a Contract Modification is barred by the Statute of Frauds.

There is no evidence of a written amendment to the Agreement and First Amendment. These agreements are for the sale of land. The South Carolina Statute of Frauds requires that any contract for an interest in land must be in writing and signed by the party against whom it is seeking to be enforced. S.C. Code Ann. § 32-3-10(4)[7]. Failure to put such a contract in writing renders it void. Id. Moreover, a contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. Windham v. Honeycutt, 279 S.C. 109, 302 S.E.2d 856 (1983) (Court held evidence of oral modification of the real estate contract violated the Statute of Frauds); see Player, 382 S.E.2d at 895.

"To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled." Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602,

[7] S.C. Code Ann. § 32-3-10(4) provides: "No action shall be brought whereby: ... (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; ... Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized."

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604 (2007). "The burden of proof is on the party seeking to enforce the contract." Id. "The writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement." Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Ctr., Inc., 367 S.C. 108, 623 S.E.2d 853, 856 (Ct. App. 2005). The writing must "'be thereafter executed with such clarity and certainty as to show that the minds of the parties had met on all material terms and with no material term left for future agreement or negotiation.'" Robert Harmon & Bore, Inc. v. Jenkins, 282 S.C. 189, 318 S.E.2d 371, 374 (Ct. App. 1984) *quoting in part* 73 Am. Jur. 2d Statute of Frauds § 341.

Rotunda purports to change the Agreement and First Amendment by changing the terms for their performance, that is, the payment of the Initial Earnest Money and Additional Earnest Money. However, Rotunda has presented no writing signed by MFM evidencing this alleged agreement. Thus, any such oral contract is void pursuant to the Statute of Frauds.

IV. CONCLUSION[8]

Rotunda twice failed to honor its obligations to purchase the Property, and now attempts to rely on an assertion that it deserved a third bite of the apple. However, there is no legal basis for this position, as Rotunda has failed to demonstrate the essential elements to form a contract amendment and can produce no writing as required by the Statute of Frauds to support its claim. Thus, there is no genuine issue of material fact but that Rotunda breached the Agreement and First Amendment, and judgment should be awarded to MFM.

[8] Should the Court grant this Motion, MFM abandons its remaining claims in the Complaint, the Fifth and Sixth Causes of Action.

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Further, as part of this judgment, and as requested in the Third and Fourth Causes of Action, the Court is requested to order that the Escrow Agent release the Initial Earnest Money to MFM, which would reduce the judgement by $100,000 upon receipt by MFM. Finally, MFM would be entitled to contractual attorney's fees and costs as provided in the Agreement, and MFM requests that the Court declare MFM the prevailing party in this litigation and award such fees. Fici, 642 S.E.2d at 604.[9]

WHEREFORE, MFM prays that the Court grant itis Motion for Summary Judgment, and award to it all relief sought against the defendants in the First, Second, Third, and Fourth Causes of Action in the Complaint, including all actual damages, prejudgment interest, attorney's fees and costs, and equitable relief.

Respectfully submitted,

Dated: February 28, 2022

BURR & FORMAN LLP

By *s/Benjamin E. Nicholson, V*

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MFM Residential Properties, LLC

[9] As it customary, Plaintiffs request that should the Court grant this Motion, Plaintiff's be allowed to submit an attorney's fees affidavit for the Court's consideration.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) TRANSCRIPT OF RECORD

----------x
MFM PROPERTIES, LLC, et al.,)
)
Plaintiffs,)
vs.) Case No. 2021-CP-07-00482
)
ROTUNDA LAND & DEVELOPMENT GROUP, LLC,)
)
Defendant.
----------x

April 5, 2022

B E F O R E:

The Honorable Robert J. Bonds, Presiding Judge

A P P E A R A N C E S:

Ben Nicholson, Esq.
Attorney for the Plaintiff

Terry A. Finger, Esq.
Attorney for the Defendant

Recorded by: Webex Hearing

Transcribed by: Bobbi Fisher
SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceeding	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceeding commenced as follows:)

THE COURT: All right. No. 4, we've got a motion for summary judgment. Mr. Nicholson, Mr. Finger, MFM Properties versus Rotunda Land & Development Group.

MR. NICHOLSON: We're here, Your Honor.

THE COURT: Great.

MR. NICHOLSON: I don't know if it makes a difference, Mr. Finger and I (indiscernible). If it's easier on the Court, we don't need (indiscernible).

THE COURT: I mean, that's fine. Whatever -- if y'all agree to that, that's fine. No problem at all. Go ahead.

MR. NICHOLSON: If it please the Court, I'm Ben Nicholson here for the plaintiffs, MFM Residential Properties. Your Honor, in 30 years, I've probably filed a motion for summary judgment on behalf of the plaintiff on fewer fingers than I have on my right hand. It's a rare event, but I think, in this case, it's appropriate.

This is a very simple case at the end of the day. It's about a real estate contract that wasn't closed down and what happens to the earnest money. And we believe that even all the facts, if you take the plaintiff's facts as true, they still get thrown out as an issue of law.

This is a purchase agreement for 2600 acres in Jasper County for $16 million. My clients were the sellers.

Mr. Finger's client's, Rotunda, was the buyer. The contract -- the initial contract was entered into in August of 2019. $100,000 in earnest money was put down. We call that the initial earnest money. Rotunda terminated that agreement by letter of April 7th, 2020. However, the parties continued to talk, and on July 8th of 2020, a first amendment was drafted, which essentially reinstated the old agreement with certain conditions, and that first amendment also required that an additional $100,000 be deposited -- of earnest money be deposited.

And that's kind of where things went off the rails, because the earnest money was never paid by the deadline of November 30 of 2020. The transaction never closed by the end of 2020, and my client, finally, through his lawyer, sent a letter on January 12th, 2021, saying, "That's it. You're done. You're in default."

And now the defendant says, "Well, you can't -- I don't -- I'm not authorizing the payment of the earnest money that's being held in trust, and I'm not paying you the additional $100,000 because we were still negotiating, essentially."

And we deposed the plaintiff. And keep in mind that this is a $16 million purchase. You had sophisticated lawyers on both sides of this deal in Hilton Head and in Atlanta, and they're doing all --

MR. FINGER: Neither Mr. Nicholson or myself were involved in that.

MR. NICHOLSON: We are the unsophisticated lawyers litigating it, Your Honor.

So they had -- everyone had lawyers. There were letters going back and forth. These are long contracts. They're on the record. And on the 30(b)(6) deposition of the owner -- one of the owners of Rotunda, the defendant, essentially his testimony was, was that I had a call from one of the owners of the plaintiff, and I thought we were still negotiating.

Now, he couldn't name a price, he couldn't name a time, he couldn't name a place for the closing or anything like that. And so, it's our position that, under three different theories, there is no change to the original contract. There is, therefore, a default of the original contract. Therefore, they have forfeited the $100,000 in earnest money, and therefore, they owe my client the additional $100,000 in earnest money, for a total of $200,000 plus prejudgment interest and attorney's fees and that kind of thing.

And it's very simple. Under the old case that everyone's talking about, (indiscernible) *v. Chandler*, you got to have certain terms for an agreement. And they didn't have a price. They didn't have a time. They didn't have a place.

In order to modify a written agreement, which has an integration clause, which this one does, you've got to at

least have all those things. And in consideration, there's no -- there's nothing in the plaintiff's that -- the defendant's deposition that covers any of that.

So, there was no evidence of the elements of a contract, even if there was one or an attempt to prove one. The parole evidence rule also bars it because this -- obviously, we have written -- sophisticated written agreements. We have integration clauses. We have lawyers going back and forth. But the bottom line is, is you can't change the terms of a written contract with oral negotiations absent consideration, and there's no evidence of any.

To top it all off, of course, this is a land contract and the statute of frauds says that all agreements to purchase sale land have to be in writing, and the law also says, in the *Wyndham (ph) vs. Honeywell* (ph) case, that, in order to amend a contract that is covered by the statute of frauds, you must have another written contract. Again, there's no written contract and, therefore, there's -- the statute of frauds forbids any kind of claim that the defendant may make.

So, again, Your Honor, we have two sophisticated parties. We have oral negotiations taking the plaintiff -- the defendant at his word that don't amount to a contract. We certainly have no consideration for a change to the contract. And even if there was an oral agreement, the statute of frauds bars it. So with that, Your Honor, that is probably the

shortest summary judgment argument I've made in my career. Thank you.

MR. FINGER: May it please the Court? Terry Finger for the defendants. I'll probably be just as short.

Let me first apologize to the Court for two typos in my memorandum in opposition. That memorandum was done at the end of February, and we had COVID go through our office, and I took typing a real long time ago. And so I had 2.632 acres and it was supposed to be two comma: 2,632. But, on the second page, it had an incorrect date at 2030 instead of 2020. So I do apologize to the Court for both of those typographical errors that I did not catch.

I think the issue in this case is what is the factual issue, and the factual issue that is not disputed by the plaintiffs in any fashion is that, in November and December of 2020, before the contract was set to expire, my client had conversations with the sellers and they agreed, just like they agreed the first time where they continued to talk and they reached a new agreement, due to the COVID problems that took place in the spring of 2020, my client was unable to get his development agreement worked out with the Town of Hardeeville on this 2,600 acres. You couldn't get the experts to get any work done on the land planning. You couldn't get any town council at the time, and things just kept getting pushed back, and the due diligence just did not get done due to COVID.

In November and December, my client spoke with Mr. Morgan -- both Morgans, the two brothers who are the principals and the plaintiffs, and they agreed to an extension. That's what my client testified to.

Mr. Nicholson has submitted a full deposition of my client, the 30(b)(6) and you have that full deposition. In Exhibit 10 -- and that is an email from my client's Atlanta sophisticated lawyer -- that said -- Mr. Lang said, "I just spoke with the seller. We agree we are going to put together a revised terms, which among other things, will allow us to complete entitlements and close."

And within a reasonable time after that, a new letter of intent was submitted, the price was increased by $500,000, and the response that my client got to that -- not from the Morgans, the owners -- was from Mr. Carey Griffin said, "No, just reject it. Go away." And about two weeks later, the lawsuit was filed.

So, the factual issue was, did the parties actually reach an agreement just like they did the first time to extend it? And I would ask that the Court construe the -- take a look at the -- the relevant parts of the depositions are pages about 38 through 50, which talks about those specific discussions.

THE COURT: The deposition of who? I'm sorry?

MR. FINGER: The deposition of Paul Lang, a 30(b)(6) of the defendant. And there are -- and it's Exhibit 10 to that

deposition is the email I just quoted a minute ago.

There have been no contrary affidavits submitted saying these discussions did not take place, and if they did, that's not what we agreed to. So, the only evidence before the Court is that an agreement was reached by the principals prior to the conclusion of the contract period to extend it so my client could get his development agreement done with the Town of Hardeeville. And, again, this is a $16 million transaction. My client has the wherewithal to conclude the transaction. And when they came back after a reasonable time within the letter of intent, they bumped the price up on $500,000. So that would answer the consideration question.

But I would ask the Court to simply just skim the -- the relevant portions of the deposition are, I believe, page 38 to 50, and I think that creates a material issue of fact.

THE COURT: All right.

MR. FINGER: Thank you very much, Your Honor.

(Indiscernible).

MR. NICHOLSON: Yes, sir. Will do.

Your Honor, if I could just briefly say, even if you assume everything that the plaintiff says is true, there's nothing in writing that's signed by my client. The statute of frauds still bars it.

THE COURT: (Indiscernible).

MR. FINGER: I think that I've made -- I think that

definition covers that. There's a writing in the back from my client over to the other side to Mr. Griffin, from the lawyers representing my clients -- from one sophisticated lawyer to the other ones. And I think that complies with it.

And then there was a letter of intent that was properly -- promptly and properly submitted, which bumped the purchase price and extended it out so my client could finish with Hardeeville.

THE COURT: Is 14 days enough? Do you need more time than that?

MR. FINGER: No, sir. 14 days is fine with me.

MR. NICHOLSON: Your Honor, if I could respectfully ask for maybe another week. I got Heritage (ph) starting in my world Wednesday, tomorrow. I'm the vice chairman of the foundation, and we've got Heritage -- RBC Heritage starting, and I'm out of commission for the next ten days.

THE COURT: That's no problem. I'll give each one of you 21 --

MR. NICHOLSON: 21 sounds good. Thank you, Judge.

(The above hearing concluded.)

CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: MFM Properties v. Rotunda Land

2021-CP-07-00482

DATE OF HEARING: 4/5/2022

COURT REPORTER/MONITOR: Webex Recording

I, Bobbi Fisher, 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.

Bobbi Fisher

_/s/ Bobbi Fisher_____

Bobbi Fisher, Certified Transcriber

Date Prepared: January 22, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2021-CP-07-00482
Appellate Case No. 2022 – 001097

MFM Properties, LLC; and MFM Residential Properties, LLC,..... Respondents,

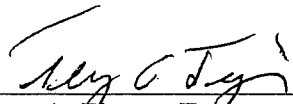
v.

Rotunda Land & Development Group, LLC; and Calloway Title & Escrow, LLC,..... Defendants,

Of Which Rotunda Land & Development Group, LLC, is the.....Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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